

Session of 2015

SENATE BILL No. 151

By Committee on Utilities

2-4

1 AN ACT concerning utilities; relating to electric generating units and
2 carbon dioxide emission standards; concerning the establishment of
3 state performance standards; state corporation commission; secretary of
4 health and environment; amending K.S.A. 2014 Supp. 65-3031 and
5 repealing the existing section.

6
7 WHEREAS, The United States environmental protection agency has
8 proposed a carbon dioxide emission standard that requires the state of
9 Kansas to comply with a state-wide emission standard rather than
10 requiring individual utilities to meet a specific emission standard on a
11 generating unit basis. In determining a carbon dioxide emission standard
12 for Kansas, the environmental protection agency has elected to require
13 states to re-dispatch coal-fired electric generating units to natural gas-fired
14 combined cycle generation units and renewable generating resources as
15 well as the use of energy efficiency and demand-side management
16 resources. Because the environmental protection agency's approach to
17 setting a carbon dioxide emission standard crosses jurisdictional
18 authorities, and due to the complexity of re-dispatching the integrated
19 electric system in the state of Kansas while maintaining reliable electric
20 service and reasonable electric rates for ratepayers, both the Kansas
21 department of health and environment and the state corporation
22 commission will need to provide their respective expertise in order to
23 efficiently and effectively develop a cost-effective and reliable compliance
24 plan. This act shall be called the Kansas electric ratepayer protection act.

25
26 *Be it enacted by the Legislature of the State of Kansas:*

27 Section 1. K.S.A. 2014 Supp. 65-3031 is hereby amended to read as
28 follows: 65-3031. (a) ~~For all coal-fired and natural gas electric generating~~
29 ~~units that are affected units pursuant to 42 U.S.C. § 7411, as in effect on~~
30 ~~the effective date of this act, that have been constructed or have received a~~
31 ~~prevention of significant deterioration permit by July 1, 2014, the secretary~~
32 of health and environment may establish separate standards of
33 performance for carbon dioxide emissions based upon: (1) The best system
34 of emission reduction that has been adequately demonstrated while
35 considering the cost of achieving such reduction;

36 (2) reductions in emissions of carbon dioxide that can reasonably be

In accordance with the requirements of the environmental protection agency's rulemaking pursuant to docket EPA-HQ-OAR-2013-0602, the secretary may develop and submit to the environmental protection agency a state plan for compliance with the regulation of carbon dioxide from affected or existing electric generating units pursuant to 42 U.S.C. § 7411. The

1 achieved through measures taken at each electric generating unit; and

2 (3) efficiency and other measures that can be undertaken at each
3 electric generating unit to reduce carbon dioxide emissions without any
4 requirements for fuel switching, co-firing with other fuels or limiting the
5 utilization of the unit.

6 (b) In establishing any standard of performance for any existing
7 electric generating unit pursuant to this section, the secretary may consider
8 alternative standards and metrics or may provide alternative compliance
9 schedules than those provided by federal rules or regulations by
10 evaluating: (1) Unreasonable costs of achieving an emission limitation due
11 to plant age, location or the design of an electric generating unit;

12 (2) any unusual physical or compliance schedule difficulties or
13 impossibility of implementing emission reduction measures;

14 (3) the cost of applying the performance standard to an electric
15 generating unit;

16 (4) the remaining useful life of an electric generating unit;

17 (5) any economic or electric transmission and distribution impacts
18 resulting from closing the electric generating unit if compliance with the
19 performance standard is not possible; and

20 (6) the potential for a standard of performance relating to unit
21 efficiency, including any requirements for a new source review or the
22 application of a best available control technology emission limitation for
23 any criteria pollutant as a condition of receiving a permit or authorization
24 for the project.

25 (c) The secretary may implement ~~such standards through flexible~~
26 ~~regulatory mechanisms, including the averaging of emissions, emissions~~
27 ~~trading or other alternative implementation measures that the secretary~~
28 ~~determines to be in the interest of Kansas. The secretary shall not~~
29 ~~implement a carbon emission trading mechanism without first obtaining~~
30 ~~specific statutory authority for the mechanism. The secretary may enter~~
31 ~~into voluntary agreements with utilities that operate fossil-fuel based~~
32 ~~electric generating units within Kansas to implement these carbon dioxide~~
33 ~~emission standards. Such agreements may aggregate the carbon dioxide~~
34 ~~emissions levels from electric resources in this state, including coal,~~
35 ~~petroleum, natural gas or renewable energy resources as defined in K.S.A.~~
36 ~~66-1257, and amendments thereto, that are owned, operated or utilized by~~
37 ~~power purchase agreements by utilities for purposes of determining~~
38 ~~compliance with such carbon dioxide emission standards. Such~~
39 ~~agreements shall not be effective until the secretary has given notice to the~~
40 ~~state corporation commission, held a hearing pursuant to K.S.A. 77-501 et~~
41 ~~seq., and amendments thereto, and issued an order which adopts the state~~
42 ~~corporation commission's order pursuant to subsection (d).~~

43 (d) Before establishing any standard of performance for any existing

a state plan through regulatory mechanisms
that may include administrative regulations,
permits, agreements or other flexible
regulatory measures

permit participation in
an organized

market

Nothing in this act shall be construed to
prohibit a Kansas utility with multiple
affected units from aggregating emissions
between such units to achieve a mass-based
or rate-based goal.

affected or

1 ~~electric generating unit or flexible regulatory mechanism pursuant to this~~
 2 ~~section, the secretary shall give notice to the state corporation commission~~
 3 ~~and adopt the order of the commission. In making a recommendation to~~
 4 ~~the secretary, the commission shall: (1) Conduct any investigations~~
 5 ~~necessary to determine each jurisdictional utility's re-dispatch options~~
 6 ~~along with the cost of each option;~~

7 ~~(2) conduct any investigations necessary to determine the lowest~~
 8 ~~possible cost re-dispatch options on a state-wide basis;~~

9 ~~(3) ensure that the recommended options maintain the reliability of~~
 10 ~~Kansas' integrated electric systems;~~

11 ~~(4) issue an order, within 300 days of receiving notice by the~~
 12 ~~secretary, which provides a detailed explanation of the commission's~~
 13 ~~findings and recommendations. Nothing in this subsection shall preclude~~
 14 ~~all parties and the commission from agreeing to extend the 300-day~~
 15 ~~period. The commission shall expeditiously conduct any such investigation~~
 16 ~~as covered within this subsection; and~~

17 ~~(5) provide the secretary a copy of the commission's order along with~~
 18 ~~any evidence requested by the secretary.~~

19 ~~(e) In any hearing held pursuant to subsection (c), the commission~~
 20 ~~shall function as an official intervenor and may make application for a~~
 21 ~~rehearing or seek judicial review of any order or decision of the secretary~~
 22 ~~issued pursuant to this act.~~

23 ~~(d) (f) This section shall be part of and supplemental to the Kansas air~~
 24 ~~quality act.~~

25 Sec. 2. K.S.A. 2014 Supp. 65-3031 is hereby repealed.

26 Sec. 3. This act shall take effect and be in force from and after its
 27 publication in the Kansas register.

conduct a joint investigation with the state corporation commission pursuant to K.S.A. 65-3005 and K.S.A. 66-106, and amendments thereto, and hold a joint hearing pursuant to procedures under K.S.A. 77-501 et seq., and amendments thereto, as applied to the state corporation commission. In establishing any standard of performance or flexible regulatory mechanism pursuant to this section, the secretary and the state corporation commission shall: (1) Exercise the secretary's and commission's respective existing statutory authority over the affected utilities;

(2)

And by redesignating the remaining paragraphs

any option selected maintains

(5) issue a joint final order establishing the compliance goal and defining the regulatory mechanisms for the state plan, which provides a detailed explanation of the joint findings; and

(6) issue a joint interim order within 180 days of initiation of the joint investigation, if necessary to submit a state plan within any deadline imposed by the environmental protection agency. If a joint interim order is issued, it shall establish the compliance goal and define the regulatory mechanisms for the state plan. The secretary shall request an extension upon submission of the state plan.

(e) After issuance of a joint interim order, the secretary shall promulgate and submit a state plan establishing the compliance goal and regulatory mechanisms approved in the joint order. If the findings of a joint final order differ from those of the joint interim order, the secretary shall promulgate and submit modifications to the state plan to the environmental protection agency by the department to incorporate the findings approved in that joint final order.