

MINUTES OF THE SENATE UTILITIES COMMITTEE.

The meeting was called to order by Chairman Senator Stan Clark at 9:40 a.m. on March 19, 2001 in Room 231-N of the Capitol.

All members were present except: Senator Jay Emler, excused  
Senator Susan Wagle, excused

Committee staff present: Raney Gilliland, Legislative Research  
Tom Severn, Legislative Research  
Bruce Kinzie, Revisor of Statutes  
Lisa Montgomery, Revisor of Statutes  
Ann McMorris, Secretary

Conferees appearing before the committee: none

Others attending: See attached list.

Chairman continued on the discussion from the March 16 meeting regarding draft **bkpsecs** and asked for definition on porosity storage indicating Kansas has 702 such storage wells in 18 locations. KCC Tom Day noted at one time these were active oil and gas wells which were emptied and are used as storage for natural gas and that they contain shale and porous materials. Question as to whether this category of storage wells was covered in this draft. KCC indicated it was.

KCC answered question on who regulates straddle plants. These are covered by the Processing Safety Management Group which is a federal agency and under federal provision 29 CFR 1910.119. This group also covers interstate pipelines. KCC covers no straddle plants in Kansas. KCC would cover intrastate in Kansas but there are none.

The phrase "safe and secure" in referring to safety aspect of processing natural gas should be deleted.

Amend underground storage into the "ingress and egress" section.

Bruce Kinzie suggested some technical changes on page 14 which will appear in the next draft.

On page 21, there should be three funds listed - conservation fee fund, well plugging assurance fund or the abandoned oil and gas well fund.

Further discussion on this draft is scheduled after adjournment of the Senate on March 19, 2001.

Committee was provided copies of a March 15, 2001 memo from KDHE regarding proposed legislation on underground storage of natural gas. (Attachment 1)

Staff Review of

**HB 2266- Independent power producers, coal fired generation; exemption from regulation; bonds for pollution control devices; property tax, and**

**HB 2268 - Electric public utilities; coal-fired generation; construction work in progress; bonds for pollution control; property tax exemption**

Explanation was presented by Lynne Holt of the Legislative Research Division. Copies of the following were distributed:

1. Memo from Larry Holloway, KCC on February 5, 2001 to House Utilities Committee - In response to questions and Topics raised by subcommittees on Independent Power Producers and Merchant Power Plants. (Attachment 2)

2. Explanation of **HB 2266** - a bill that would provide various incentives for the construction in Kansas of independent power producer (IPP) facilities meeting certain criteria. (Attachment 3)

3. Explanation of **HB 2268** - a bill that would provide various incentives for the construction in Kansas of certain electric utility property which is owned and operated by Kansas public utilities. (Attachment 4)

Much discussion on the tax aspect of these bills, application to retail as well as wholesale sales, definition of IPP and merchant power plants.

Time did not permit explanation on **HB 2245**.

Approval of Minutes

Moved by Senator Barone, seconded by Senator Taddiken, minutes of the Senate Utilities Committee meeting of March 16, 2001 be approved. Motion carried.

Next meeting of the Senate Utilities Committee will be held on March 19, 2001 on adjournment of the Senate.

Adjournment.

Respectfully submitted

Ann McMorris, Secretary

Attachments - 4

# SENATE UTILITIES COMMITTEE GUEST LIST

DATE: MARCH 19, 2001

Name	Representing
- Dick F Rohlf	Western Resources
Dave Hatch	WR.
J. C. Long	UCA.
Gordon Smith	KCPCL
John Miles	KEC
Bob Furber	Ks Pork Assn.
Bob Kuehnel	KIOBA
John C. Bottenby	KPA / Westoules
Ron Gaches	CBBA
Jim Allen	Seaboard
Amy A. Campbell	Midwest Energy
TOM DAY	KCC



**KANSAS**  
**DEPARTMENT OF HEALTH & ENVIRONMENT**  
BILL GRAVES, GOVERNOR  
Clyde D. Graeber, Secretary

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March 15, 2001

TO: Chairman Stan Clark, Senate Committee on Utilities

THRU: Ronald F. Hammerschmidt, Director of Environment *RFA*

FROM: Pat Casey, KDHE Attorney *PC*  
Don Carlson, KDHE *DC*

RE: Proposed legislation on underground storage of natural gas

Pursuant to your discussion with Ron Hammerschmidt yesterday, Don Carlson and Pat Casey prepared the attached comments on the proposed legislation. Also attached are copies of proposed sections on access, penalty provisions, and funding. An additional section is needed for existing facilities, which we understand will be drafted by the revisor for the Utilities Committee.

If the revisor wishes to have KDHE's comments and attachments emailed, please advise.

If there are questions or comments, Pat Casey can be reached at 296 - 6053.

Senate Utilities Committee  
March 19, 2001 #1  
Attachment 1-1

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KDHE Comments on Proposed Bill amending 65-171d, 74-623, 55-155 and 55-180

Comments have been confined to the new bill and amendments to 65-171d and 74-623.

1. Proposed new Section (presumably One) to new statute

(a)(1) Salt solution mining [ current regs. at 28-43-1 specify salt solution ]

(4) There is currently no aquifer storage of hydrocarbons in Kansas.

(b)(6) safety requirements , including public notification:

(7) closure and abandonment:

(8) long term monitoring.

(c) The secretary of health and environment may/shall (/) enter into contracts... Was this intended to be mandatory or an option for the secretary?

2. Additions of sections in new statute concerning access, penalty provisions, funding and grandfather or transitional clause for current facilities. I have attached proposed language for access, penalty provisions and funding.

3. 65 171d (f)(3) should be deleted, since new funding provisions are being added.

4. 74 - 623 (a) Add new subsection and (3) underground storage of natural gas in depleted oil or gas formations.

new (g) second and third lines regulations governing the safe and secure underground storage of natural gas in depleted oil or gas formations.

## **Funding**

(a) (1) There is hereby created the subsurface hydrocarbon storage fund to administer the underground storage of hydrocarbons, natural gas and liquid petroleum gas. All moneys received by the secretary as grants, gifts, bequests or state or federal appropriations shall be deposited in such fund. All expenditures from this fund shall be made in accordance with appropriations acts and upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary.

(2) The secretary is authorized to receive from the federal government or any of its agencies or from any private or governmental source any funds made available under laws, rules and regulations for the underground storage of hydrocarbons, natural gas and liquid petroleum gas, or facility cleanup or other remedial action where environmental pollution is or threatens to create a public health or environmental hazard.

(b) The secretary is authorized to use moneys from the above fund to pay the cost of:

(1) all activities related to permitting activities including but not limited to development and issuance of permits, compliance monitoring, inspections, well and well system closures, long term monitoring and enforcement actions;

(2) review and witnessing of test procedures;

(3) review and witnessing of routine work over or repair procedures;

(4) investigation of violations, complaints, pollution and events effecting public health;

(5) design and review of remedial action plans;

(6) contracting for services needed to supplement the department's staff expertise in facility investigations;

(7) consultation needed concerning remedial action at a permitted facility;

(8) mitigation of adverse environmental impacts;

(9) emergency or long-term remedial activities;

(10) legal costs, including expert witnesses, incurred in administration of the underground storage of hydrocarbons, natural gas and liquid petroleum gas;

(11) costs of program administration.

**Administrative penalties; procedure; hearing; judicial review.** (a) The secretary of the department of health and environment or the director of the division of environment, if designated by the secretary, upon a finding that a person has violated any provision of K.S.A. **New statute**, amendments thereto and regulations promulgated thereunder, may impose a penalty not to exceed \$10,000 per violation which shall constitute an economic deterrent to the violation for which it is assessed and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(b) No penalty shall be imposed pursuant to this section except after an opportunity for hearing upon the written order of the secretary or the director of the division of environment, if designated by the secretary, to the person who committed the violation. The order shall state the violation, the penalty to be imposed and, in the case of an order of the director of the division of environment, the right to appeal to the secretary for a hearing thereon. Any person may appeal an order of the director of the division of environment by making a written request to the secretary for a hearing within 15 days of service of such order. Hearings under this subsection shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(c) Any action of the secretary pursuant to this section is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

## Access

In performing investigations or administrative functions relating to surface and subsurface water pollution, soil pollution and public health, the secretary of health and environment or the secretary's duly authorized representatives may enter any property or facility which is subject to the provisions of K.S.A. 65 -171d and **New statute** or any amendments thereto, for the purpose of observing, monitoring, collecting samples, examining records and facilities to determine compliance or noncompliance with state laws and rules and regulations relating to water pollution, soil pollution or public health.

The representatives of the secretary shall have the right of ingress and egress upon any lands to clean-up pollution resulting from the underground storage of hydrocarbons, natural gas and liquid petroleum gas. Such representatives shall have the power to occupy such land if necessary to investigate and clean up such pollution. Any agent entering upon any land to conduct cleanup activities shall not be liable for any damages necessarily resulting therefrom except damages to growing crops, livestock or improvements on the land.

The secretary of health and environment or the secretary's duly authorized representative shall make such requirements as they deem necessary relating to the inspection, monitoring, investigation, recording and reporting by any holder of a permit issued under K.S.A. 65- 171d and **New statute** and the regulations promulgated thereunder.



## BEFORE THE HOUSE UTILITIES COMMITTEE

Larry Holloway of the Kansas Corporation Commission Staff  
February 5, 2001

### In Response to Questions and Topics Raised by Subcommittees

#### Independent Power Producers and Merchant Power Plants

##### Independent Power Producer (IPP)

This is a term that has been around for over twenty years and generally refers to a power plant that is not owned or operated by a public utility. Since the late 1970s certain small generators that were either cogeneration facilities or used renewable energy could qualify under the PURPA statutes. A qualifying facility (QF) under PURPA could request, and obtain, the avoided cost of generation for any electricity sold to a public utility. All QFs were, and still are, IPPs, almost by definition, since a utility owned or operated plant would normally be included in the utility's normal retail electric rates.

In the 1995 Edison Electric Institute "Glossary of Electric Terms" the following definitions were provided:

**Independent Power Producer (IPP)** Any person or entity that owns or operates, in whole or in part, one or more new independent power facilities.

**Independent Power Facility** A facility, or portion thereof, that is not in a utility's rate base and sells only to electric utilities for resale to ultimate customers.

In the late 1980s and throughout the 1990s IPPs were traditionally financed by first procuring a long term purchase power agreement (PPA) with a public utility. Not only was this the tradition in the United States, but increasingly this type of financial arrangement has been used to develop IPPs throughout the world. Generally, the IPP obtains a long term contract, often 20 years or longer in length, for a specific capacity payment and terms for energy produced. For example, the PPA might state that a 100 megawatt IPP would receive \$100/year for each kilowatt of capacity, or \$100,000/year per megawatt, for a total of \$10,000,000 a year for 20 years, for the capacity. In addition the PPA would state a specific energy charge for generation produced, say 2 cents a kilowatthour plus some type of inflation clause. Typically, the PPA would state certain availability and operating requirements and contain penalty provisions if the IPP did not perform. The IPP would then take the PPA to the financial community and borrow the necessary funds to construct the plant, normally based upon the revenue guaranteed by the PPA. Not only did the PPA represent a guarantee of income, it also addressed the concern that the IPP had the necessary electric transmission access to deliver its electricity to the purchasing utility. The utility would then order the IPP to dispatch generation when needed, and compensate the IPP as described by the terms of the PPA. The utility would pass through the costs associated with purchasing power from the IPP in its retail rates.

## Merchant Power Plant

This is a term that has only recently been used in the industry. In fact, the same 1995 Edison Electric Institute "Glossary of Electric Terms" does not even mention the term merchant power plant. Generally, as usage has developed in the industry the term merchant power plant has been used to describe an IPP that is built either entirely or partially without the benefit of a long term PPA. For example a 200 megawatt plant might be constructed with only 100 megawatts sold under a long term PPA. The remaining 100 megawatts is intended for sale on the short term wholesale market.

Until recently a proposed merchant plant would have had difficulty obtaining the necessary financing. However the recent development of electric futures and options trading markets have provided merchant power plant developers with needed financial tools. Additionally, as the Federal Energy Regulatory Commission (FERC) has opened up transmission access giving merchant power plants some assurance that they will have access to potential wholesale power purchasers throughout a large region. Both of these developments have prompted the financial confidence necessary to encourage the increasing development of merchant power plants.

Another term often used in conjunction with IPPs is exempt wholesale generators (EWGs). This term was described legally by section 711 of the 1992 Energy Policy Act (EPACT). The 1995 Edison Electric Institute "Glossary of Electric Terms" provides the following definition:

**Exempt Wholesale Generator (EWG)** A wholesale power generator that is exempt from the provisions of the Public Utility Holding Company Act (PUHCA). This legal class of companies was created by the Energy Policy Act of 1992 in order to allow registered public utility holding companies, other corporate entities and individuals to own wholesale generating assets that are leased or sell power to non-affiliates without subjecting the owners to the regulations under PUHCA.

### State and Federal Rules and Regulations Regarding Merchant Power Plants.

Obviously, like any industrial facility, there are certain safety and environmental federal and state regulations that would apply to merchant power plants. This discussion is limited to regulatory requirements of merchant power plants as electric generating facilities operating to sell power into wholesale electric markets.

#### Federal

KCC Staff is aware of only two federal requirements for most merchant power plants, both by the FERC. First if a merchant power plant is an EWG it would need to obtain an exemption from the FERC. Second, the merchant plant would need to obtain FERC approval to make wholesale power sales. Many merchant plants satisfy this requirement by selling power through a power marketer. These power marketers are licensed through the FERC to make sales into the wholesale market. While technically the FERC has to approve power sales, most marketers receive an approval to make sales at market based rates or belong to an industry group that has a

large group of pro-forma contracts already approved by the FERC. Sales under either these pre-approved contracts or market based rates are reported quarterly by power marketers to the FERC. While not a requirement of the power marketer, the FERC also approves the terms, conditions and rates that transmission providers charge to interconnect merchant power plants to the electric transmission system, or to deliver power across the system.

## **State**

Under the definition of K.S.A. 66-104 merchant plants would be considered public utilities in Kansas. This essentially has 3 effects. First, the merchant plant would be taxed at the higher assessment rate for public utilities. Second, the merchant plant would have the opportunity to use the same powers of eminent domain granted utilities. Third, the merchant plant would need to receive a certificate per the requirements of K.S.A. 66-131, which requires all public utilities as defined by K.S.A. 66-104 to obtain a certificate. While this is a regulatory requirement, because the merchant plant would have no obligation to serve, and no retail customers, it would appear to be a minor inconvenience.

## **Encouraging Merchant Power Plants to Locate and Stay in Kansas**

Encouraging merchant power plants to stay in Kansas, once they are built here, is probably not an issue. Like building a home, a generating facility typically requires a substantial amount of site preparation and construction and is not easy to relocate. While the operator may choose to sell to another entity, seldom would it make economic sense to move or dismantle the facility. The more problematic issue is creating the incentive for merchant plant construction in Kansas.

Merchant power plants, like any other generating or production facility are going to locate where the economics make the most sense. Capital costs and operating expenses are primary considerations, as well as available markets, or load centers, for whatever power is generated. Obviously the ability to sell its power motivates merchant plants to locate either close to load centers, or close to a robust transmission system with interconnections to many load centers. While wholesale power prices in Kansas have been moderate relative to much of the country, regionally wholesale prices are likely adequate to encourage merchant plant construction. However, while Kansas has an increasing need for generating capacity in the near future, it does not have the concentration of load centers seen on the east or west coasts. Nonetheless, future regional power demand is likely adequate to support development of merchant plants in Kansas if there is adequate transmission capacity to deliver the power produced to other load centers in the region. But most of the transmission system constructed in our region was designed and built to connect generating plants to load, not to provide a great deal of capacity for moving generation from any location to any load. Efforts to organize and operate transmission on a more regional basis will undoubtedly increase the efficiency of using the transmission system we have, but increased regional transmission capacity and interconnects will be important to encourage merchant plant development in Kansas.

Capital costs and operating expenses will also be key elements in merchant plant development in the state. The ability of new merchant plants to obtain good site locations, as well as the

necessary access to fuel and cooling water would likely be concerns. Adequate capacity on natural gas transportation pipelines in Kansas would likely be a positive consideration for gas-fired merchant plants. However rail access and railroad performance will be vital for the development of merchant coal plants. Kansas construction costs are moderate compared to many regions of the country and should therefore lower the capital costs of building a new power plant.

Operating expenses would include such items as property taxes, fuel costs and labor. Assuming Kansas would be competitive with other areas on labor costs, the remaining considerations would be fuel costs and property taxes. It is Staff's understanding that Kansas property taxes are higher than other states in the region and this could influence merchant plants to develop elsewhere. Fuel costs in Kansas may actually be favorable. Coal costs are fairly low in the region, if adequate rail transportation exists, and Kansas may have a slight advantage in natural gas transportation costs. Most natural gas pipelines through Kansas appear to have adequate capacity to support new gas fired units.

In summation, to encourage merchant plant development in Kansas it will likely be necessary to encourage expansion and regional operation of the electric transmission system and to address property tax treatment of merchant power facilities.

### **Wholesale Power Sales**

Electricity in wholesale markets is sold either long term or short term and either firm or nonfirm. While wholesale electric sales can take place under numerous terms and conditions, a few of the more common traditional and more recent methods will be discussed here.

#### **Traditional Power Sales**

Traditionally, wholesale power has been sold through long term agreements. Until the last few years almost all power sales could be classified as either capacity sales or energy sales. Traditionally, capacity sales represented a firm obligation for a utility or power plant to sell a given amount of megawatts each hour as requested by the wholesale customer. Normally the contract required the seller to deliver the power to a specified transmission substation, or to several transmission substations. Pricing for capacity was based upon the capital costs of the generating plants involved in the capacity sale, while the energy produced was generally priced at the cost of producing it plus some small profit. Energy sales were either wholesale interruptible power sales at a predetermined amount, or based upon some pooling arrangement whereby a neighboring utility pays the selling utility to generate on an hourly basis an amount slightly more than the seller's generating costs to avoid dispatching a more expensive unit on the buyer's system.

Capacity sales in this environment actually allowed utilities to sell excess generating capacity until such time as the utility needed that capacity for its own customers. This was particularly important when the utility had constructed large baseload units and needed to secure some wholesale revenue to offset costs that would be passed on to retail customers. For example a

typical baseload plant may take 5 to 7 years to plan, develop, construct and startup. This requires a utility to attempt to forecast electric load many years into the future, and because of the economies of scale, construct a plant that may be larger than needed at the time it goes into operation. If the utility was off in its forecast, or if economic conditions change and demand growth is less than assumed, the utility may find that it has overbuilt generation capacity. While the utility may project that it will need the additional generating capacity in 5 to 10 years, it finds it does not need the capacity when the plant is first operational. The utility may then enter into wholesale power contracts selling its excess capacity into the future until such time that it needs the capacity to serve its own customers.

Energy sales in the past served a somewhat different need. A utility that constructs generating plants to serve the needs of its retail customers must build adequate generation capacity to provide power to meet its retail customers peak demand. During periods of time that all of the available utilities generation is not needed, the utility may better utilize its resources by selling excess generation on the wholesale market. When the utility needs that generation, if it is an interruptible wholesale agreement, the utility merely stops providing generation for the wholesale customer and uses the generation to supply power to its firm retail and wholesale customers. This can benefit everyone involved in the wholesale transaction. For example, suppose an electric utility needs to operate a large generation unit at 50% load to supply its own needs. At this level the plant is operating at a reduced efficiency. If the utility can operate at the unit at 100% it may only use only one and one half times as much fuel and yet produce twice the power. If it can sell the excess power at wholesale above its costs, not only does it increase its efficiency, it can receive revenue to offset its costs for its retail customers. Similarly if the utility can purchase power for less than it can operate the unit, it may shut the unit down and save its customers money.

### **Power Sales in the New Wholesale Market**

The wholesale power market has changed dramatically in the last few years. Initiatives by the FERC to promote open access to the transmission system and allow market based power transactions have dramatically changed the way power is sold and delivered. Today a utility may make either firm or nonfirm (interruptible) generation sales to numerous utilities or marketers on terms ranging from one hour to one year. Even more important, often power sales are made without the utility actually knowing the final destination. Suppose a utility agrees to sell one power marketer 50 megawatts of power for the next hour. The utility's only responsibility may be to generate the additional 50 megawatts of power the next hour. The marketer must obtain all of the necessary transmission capacity and figure out where the power will go. Suppose a utility bought 50 megawatts of power for the same hour. The utility would simply not generate any more or less than it would without the 50 megawatt sale and purchase.

Wholesale hourly markets are very volatile and prices may change greatly over a short period of time. The utility that owns its own generation may benefit by selling excess power into these markets and these revenues may be used to offset the costs of serving its own retail customers. The utility that does not own or purchase firm long term generation capacity may need to purchase power in these volatile wholesale markets and may end up needing to raise the rates it

charges its retail customers, if wholesale prices are very high.

### **Construction Work in Progress (CWIP)**

1995 Edison Electric Institute "Glossary of Electric Terms" provides the following definition:

**Construction Work in Progress (CWIP)** A subaccount in the utility plant section of the balance sheet representing the sum of the balances of work orders for utility plant in process of construction but not yet placed in service.

CWIP is the term used to represent the cost of utility improvements that are under construction but have not yet been placed in service. Often the term for placing utility assets in service is "used and useful". In other words a utility asset is not considered used and useful until it can be placed in service to provide benefits for the utility's customers.

Until the late 1970s many utility commissions allowed utility assets such as generating plants into the ratebase before they were operational. For example, suppose a utility had applied to a regulatory commission for an increase in electric rates because it was building a large power plant, but had only completed and spent about 50% of the amount necessary to place the unit in service. The commission might consider two alternatives. One alternative might be to go ahead and place the completed portion of the plant in the utility's ratebase and adjust rates accordingly. Another alternative might be to disallow inclusion of the generating unit in the ratebase until it was operational. Each alternative has its advantages and disadvantages. If the commission decided to wait until the unit was operational, the utility would incur carrying charges on the amount of money it had already spent, and these charges would be accumulated to increase the overall cost of the project when it was placed in service. On the other hand, if the commission allowed the inclusions of a partially completed unit into the ratebase and the unit was not finished within the predicted cost or timeframe, or did not operate properly, not only would it be difficult to adjust it out of the utility's rates in the future, but ratepayers would have paid for a poor investment in the interim. Regardless of the advantages or disadvantages of either method, waiting until a large generating project is complete to recover any of the capital costs can place a strain on the utility's ability to borrow or raise money to finance other improvements or day to day operation.

In Kansas, K.S.A. 66-128 reads as follows

**66-128.** *Valuation of property for rate-making purposes by commission; construction work in progress.*

*(a) The state corporation commission shall determine the reasonable value of all or whatever fraction or percentage of the property of any common carrier or public utility governed by the provisions of this act which property is used and required to be used in its services to the public within the state of Kansas, whenever the commission deems the ascertainment of such value necessary in order to enable the commission to fix fair and reasonable rates, joint rates, tolls and charges. In making such valuations the commission may avail itself of any reports, records*

*or other things available to the commission in the office of any national, state or municipal officer or board.*

*(b) For the purposes of this act, property of any public utility which has not been completed and dedicated to commercial service shall not be deemed to be used and required to be used in the public utility's service to the public, except that, any property of a public utility may be deemed to be completed and dedicated to commercial service if: (1) Construction of the property will be commenced and completed in one year or less; (2) the property is an electric generation facility that has a capacity of 100 megawatts or less and converts wind, solar, biomass, landfill gas or any other renewable source of energy; or (3) construction of the property has been authorized by a siting permit issued under K.S.A. 66-1,158 et seq. or 66-1,177 et seq., and amendments thereto.*

As shown in K.S.A. 66-128(b) the KCC is normally prohibited by law from including CWIP in the ratebase of an electric public utility. Only projects completed in one year or less, certain renewable energy projects, or generation plants sited by the KCC may be allowed in ratebase. In these circumstances the Commission is given the discretion and *may* allow CWIP. In all other circumstances the KCC is prohibited by statute from inclusion of CWIP in a utility's ratebase.

### **Building New Baseload Capacity in Kansas**

Baseload generation is an important component of the generation mix of Kansas generating capacity. Recent generation projects announced and under construction by Kansas utilities can be categorized as either peaking or cycling units, also an important part of the generation mix. Most power plants are considered either baseload, cycling (sometimes referred to as "intermediate") or peaking units. A baseload unit is designed to operate close to full capacity most of the time, unless the unit is down for maintenance or repairs. A good example of a baseload unit would be a large coal or nuclear power plant. Cycling or intermediate units are designed to operate as load increases, and can also be used to follow load over the course of the day. Examples include small older coal units, gas-fired steam generating plants and gas-fired combined cycle units. Peaking units are generally gas-fired combustion turbines. Baseload units have the lowest operating costs (including fuel) but the highest capital costs, while peaking units have the highest operating costs and the lowest capital costs. Cycling units are somewhere in the middle. Generally, if a utility plans to operate additional generating capacity 60% of the time or more, economics would dictate constructing a baseload unit, 30% to 50% of the time, a cycling unit, and 10% or less of the time, a peaking unit. Generally, constructing a baseload unit may take from 5 to 7 years, a cycling unit from 3 to 4 years, and a peaking unit from 1 to 2 years.

Kansas utilities have not constructed a baseload unit since the early 1980s. While part of this is certainly a result of the reluctance of utilities to invest in a major long term project in the face of restructuring uncertainty, until recently Kansas has also had an excess of baseload generating. Even today, a conventional analysis might not determine that Kansas is short of baseload capacity, however many would argue that time for new baseload generation is quickly approaching and no new projects have been announced. Additionally, recent increases in the price of natural gas could affect traditional analysis of generation mix.

Baseload units have substantially different requirements than peaking or cycling units. While a gas-fired combustion turbine peaking unit or a gas-fired combined cycle intermediate unit have a small footprint and modest cooling water requirements, the same claim cannot generally be made for a large coal or nuclear plant. In particular coal units need access to a good water supply and reliable railroad service. Additionally, of course, any major generating unit must have access to electric transmission facilities adequate to transmit all power produced to retail and wholesale customers. In terms of the best site locations, given rail access and transmission facilities, most of the existing generation plants in Kansas likely represent the best locations for additional coal generation. Much of the expensive site development costs have already been incurred at these locations and adding new baseload units would be far less expensive than developing a greenfield site. On the positive side, many of these sites could accommodate additional generating units. However even these locations may require additional upgrades in electric transmission lines and facilities. Additionally, while Kansas utilities may own and operate these generation sites, they may not be the ones most anxious to develop them. Even at an existing site, with adequate space and facilities for an additional generating capacity, a substantial financial investment will be required to construct a new baseload plant.



## HOUSE BILL NO. 2266 (HCOW)

HB 2266 would provide various incentives for the construction in Kansas of independent power producer (IPP) facilities meeting certain criteria.

### **Section 1 – Amends the definition of “public utility” for regulatory purposes**

- Excludes from the definition of “public utility” in the Kansas Corporation Commission’s regulatory statutes IPPs meeting certain criteria.
- IPPs are power plants that are not owned or operated by an electric public utility, electric cooperative, or municipal electric utility. They sell power on the wholesale market to electric utilities and cooperatives and not to retail customers.
- An IPP must be placed in service on or after January 1, 2001 (e)(1).
- An IPP must be coal-fired or use some natural gas within specified limits either for peak load purposes (to meet peak demand) or to back up a renewable generation facility (defined in (f)) when that facility is not generating electricity ((e) (2)).
- An IPP may not be included in a utility’s or cooperative’s rate base ((e) (3)).

### **New Section 2 – Treats IPP property for assessment purposes as commercial and industrial property**

- Defines “independent power producer property” and assesses such property at a rate of 25 percent (commercial or industrial) instead of 33 percent (utility property).

### **New Section 3 – Access to economic development incentives**

- IPPs would be eligible for any statutorily-authorized property tax exemption, income tax credit, or economic development incentive that is available to other types of business in Kansas.

### **Section 4 – Amends the definition of “public utility” for property tax purposes**

- Excludes IPPs from the definition of “public utility” in the property valuation statutes.

### **New Section 5 – KDFA authorized to issue bonds for pollution control devices**

- IPPs would be eligible to receive revenue bond financing from the Kansas Development Finance Authority (KDFA) for the construction, purchase and installation of pollution control devices at their facilities.

### **New Section 6 – Property tax exemptions – IPP facilities and pollution control devices**

- IPP generation facilities would be exempt from property taxation (a).
- That exemption would apply from and after commencement of construction of IPP facilities for the ten taxable years immediately following the year of completion (a).
- All pollution control devices installed at generation facilities would be exempt from property taxation (b).
- That exemption would apply from and after purchase or commencement of construction or installation of such devices for the ten taxable years immediately following the year of completion (b)
- The property tax exemption for those purposes would take effect beginning January 1, 2001 (c).

**New Section 7 – Property tax exemptions – Electric transmission lines**

- All electric transmission lines (345 Kv or more) would be exempt from property taxation (a).
- That exemption would apply to the year of installation or commencement of construction and the ten taxable years immediately following the year of completion (b).
- The property tax exemption for this purpose would take effect beginning January 1, 2001 (c).

**New Section 8 – IPP reporting requirement**

- IPPs would be required to file annual reports with the Kansas Corporation Commission to enable the Commission to determine whether the IPP meets the criteria set forth in the bill and whether the IPP is eligible for the property tax exemption.
- If the IPP is not qualified for the exemption, the Commission must submit a written report to the Director of Taxation in the Kansas Department of Revenue.

**New Section 9 – KDFFA authorized to issue bonds for renewable resource facilities**

- If an IPP is predominantly a renewable generation facility, the IPP also would be eligible to receive revenue bond financing from the KDFFA for construction, renovation or repair of one or more such facilities (a).
- In order to qualify, the IPP must have a capacity of between two and 25 megawatts (a).

**New Section 10 – Valuation of IPP property**

- The Director of Property Valuation of the Kansas Department of Revenue would contract with counties to determine the fair market valuation of IPP property.

**New Section 11 – Severability clause**

**Section 12 – Repeals statutes amended in the bill**

**Section 13 – Effective date of Act is July 1, 2001**

## HOUSE BILL NO. 2268 (H.C.W.)

HB 2268 would provide various incentives for the construction in Kansas of certain electric utility property which is owned or operated by Kansas public utilities.

### **Section 1 – Amends Kansas Corporation Commission’s authorized use of Construction Work in Progress**

- Extends the accounting treatment of Construction Work in Progress (CWIP) to:
  - coal-fired electric generation facilities and additions to those facilities ( (b) (2) (D)); and
  - natural gas-fired generation peaking plants (as defined by the capacity factor threshold of 20 percent in any year) ((b) (2) (E)).
- CWIP is a term used to represent the cost of utility improvements that are under construction but have not yet been placed in service. Under existing law, construction costs of coal-fired base load facilities and natural gas peaking facilities may not be included in customers’ rates until the facilities are completed and ready to provide service. This bill would allow regulated electric utilities, at the discretion of the Kansas Corporation Commission, to recover their costs prior to that time.
- To qualify for CWIP, a generation facility or transmission lines would have to be placed in service on or after January 1, 2001 ((b) (2) (E, F, and G)).

### **New Section 2 – Authorizes the Kansas Development Finance Authority (KDFFA) to issue revenue bonds for pollution control devices**

- Public utilities would be eligible to receive revenue bond financing from the Kansas Development Finance Authority (KDFFA) for the construction, purchase and installation of pollution control devices at these electric generation facilities.

### **New Section 3 – Authorizes property tax exemptions for generation facilities and pollution control devices**

- Applies to construction of coal-fired generation facilities and natural gas peaking plants and additions thereto (a).
- Provision for forfeiture of a property tax exemption if an otherwise qualified peaking facility were to exceed the specified threshold for natural gas capacity over a two-year period (a).
- Ten year property tax exemption for eligible generation facilities beginning January 1, 2001 (a).

- Applies to all pollution control devices installed at coal-fired generation facilities and natural gas peaking plants (b).
- Ten year property tax exemption for pollution control devices beginning January 1, 2001 (b).

**New Section 4 – Authorizes property tax exemptions for electric transmission lines**

- Applies to all electric transmission lines, including towers, poles and other necessary property, that are used to transmit electricity from a coal-fired generation plant (a).
- Ten year property tax exemption for pollution control devices beginning January 1, 2001 (b).

**Section 5** – Repeals existing CWIP statute amended by this bill.

**Section 6** – Takes effect upon publication in the *Kansas Register*.