

MINUTES OF THE HOUSE ENERGY AND UTILITIES COMMITTEE

The meeting was called to order by Chairman Carl Holmes at 9:00 A.M. on February 4, 2008 in Room 313-S of the Capitol Building.

All members were present except:

Dan Johnson- excused

Committee staff present:

Mary Galligan, Kansas Legislative Research

Carol Toland, Kansas Legislative Research

Melissa Doeblin, Revisor's Office

Rena Hansen, Committee Administrative Assistant

Conferees appearing before the committee:

Earl Watkins, President & CEO , Sunflower Electric Power Corp

Bill Wehrum, Hunton & Williams, Washington, DC

Brian Moline, Alliance for Sound Energy Policy

Bob Vancrum, Tri-State

Andy Sanchez, AFL-CIO

Others attending:

Seventy Five including the attached list.

Carl Holmes informed the committee about a piece of information prepared by the Kansas Research Department (Attachment 1), that shows current and projected emissions of CO<sub>2</sub> from existing and potential future coal, and natural gas electric generation plants.

Hearing on:

**HB 2711-Electric generation, transmission and efficiency and air emissions.**

Proponents:

Earl Watkins, President & CEO, Sunflower Electric Power Corporation, (Attachment 2), presented testimony in support of **HB 2711** noting the progressive work that went into making this innovative legislation.

Bill Wehrum, Hunton & Williams, Washington, DC, (Attachment 3), spoke in favor of **HB 2711** noting Kansas Law 65-3012. He talked about the Federal Clean Air Act and how the Kansas legislation relates to the current federal regulations. He noted that section 3012 is modified in **HB 2711** and makes it more parallel to the current Federal rules and regulations of the Clean Air Act. He noted that the Kansas law section 65-3012 is written for emergency situations in the state of Kansas only and not for the examination of new air quality permits.

Brian Moline, Alliance for Sound Energy Policy, (Attachment 4), presented testimony in support of **HB 2711**. He noted specifically the diversity of members that are involved in the unity of the mission of this organization: organizations that typically do not often fall on the same side of very many issues. The coalition of individuals are most concerned with the denial of a permit based on a regulation that was not in existence, but that someone felt should be there.

Bob Vancrum, Tri-State, (Attachment 5), presented testimony in favor of **HB 2711**. He noted that in reviewing the history of the legislative intent of 65-3012 it was clear that the KDHE did not want the authority to make decisions pertaining to the clean air act but that they did want it to remain congruent to the Clean Air Act of the Federal Government. The legislation was specifically written to give them authority only during emergency situations and to deal with existing plants and not new emitters of air emissions.

CONTINUATION SHEET

MINUTES OF THE House Energy and Utilities Committee at 9:00 A.M. on February 4, 2008 in Room 313-S of the Capitol Building.

Andy Sanchez, AFL-CIO, (Attachment 6), spoke in favor of **HB 2711** noting the number of jobs created by the construction of these plants and the number of skilled workers that will enter the market place because of this legislation. They believe that this legislation leads the way in balancing the demand for energy and protecting the environment.

Written Proponents:

Judy Moler, Kansas Association of Counties, (Attachments 7) presented written testimony in support of **HB 2711**.

Questions were asked and comments made by Representatives: Josh Svaty, Bill Light, Tom Sloan, Annie Kuether, Peggy Mast, Tom Moxley, Don Myers, Oletha Faust-Goudeau, and Vaughn Flora.

It was noted that to finance a facility that will serve Kansas customers both plants have to be built. The financing for the first plant would come from Tri-State, Colorado. If only one plant is built the power will go out of state and not to the people of Kansas. Tri-State would fund 20% of the cost of building the Kansas portion of the project amounting to approximately 100 million dollars of the approximately 500 million dollar project. It was noted this project will allow transmission lines to be built that would carry increased production of wind.

Mr. Watkins noted that it would not be their intent to ever write a check to the state of Kansas for the purpose of paying for their inability to reduce carbon emissions. He noted that anytime they can do projects that would offset the carbon emissions that would benefit the people of Kansas they would always choose to use those methods.

Mr. Bill Wehrum noted that due to the Supreme Court ruling, CO<sub>2</sub> would now be considered a pollutant, The EPA is in the process of making a determination on how to define CO<sub>2</sub> as a pollutant. It was noted that there are three paths the EPA could take: 1. Find a definitive way to find the endangerment via CO<sub>2</sub>, 2. Look at the facts and conclude that endangerment does not exist, or 3. They could decide not to decide.

A copy of the bill brief was included in the folders (Attachment 8),

The next meeting is scheduled for February 5, 2008.

The meeting was adjourned at 11:03 a.m.

# HOUSE ENERGY AND UTILITIES COMMITTEE GUEST LIST

DATE: February 4, 2008

NAME	REPRESENTING
Nelson Krueger	PAR Electric
Woody Moses	Ks. Comm. Council
EARL WATKINS	SUNFLOWER ELECT
HARRY BERC	MIDWEST ENERGY
CLARE GUSTIN	Sunflower Electric
Doug Smith	Sunflower Elect.
Mark Schrober	Westar
Steve Johnson	Ks. Gas Service
Brian Molin	Alliance Que Sound F. Policy
Bill Wehrum	Hunter & Williams LLP
Lindsey Douglas	Hein Law Firm
Joe Dick	KC BPU
Dan Halthaus	KEC
EARL WATKINS	Sunflower
Mick Urban	KGS
TOM DAY	KCC
Bill Smalley	Smalley Heating-Cooling
Kimberly Green Sady	KMY
Paul Shuder	KPL

**2006 CO<sub>2</sub> lbs/MWh  
 Kansas Power Plants in the Federal Acid Rain Program:  
 Comparison with Proposed Holcomb Expansion and Proposed Limits for New Power Plants**

ENERGY AND HOUSE UTILITIES  
 DATE: 2/4/2008  
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FACILITY_NAME	Net Generation (MWh)	CO <sub>2</sub> Mass (US Short Tons)	CO <sub>2</sub> Mass in Lbs. (tons*2000)	CO <sub>2</sub> Lbs/MWh
Empire -- Riverton	542,069.00	766,094.08	1,532,188,150.00	2,826.56
Kansas City, KS -- Nearman	1,288,282.00	1,736,883.03	3,473,766,054.00	2,696.43
Westar -- Tecumseh	1,192,962.00	1,601,838.19	3,203,676,382.00	2,685.48
Kansas City, KS -- Quindaro	1,079,973.00	1,427,431.64	2,854,863,284.00	2,643.46
Westar -- Lawrence	3,257,371.00	4,181,451.56	8,362,903,126.00	2,567.38
Westar -- Jeffrey	14,264,089.00	16,239,424.98	32,478,849,952.00	2,276.97
Westar -- La Cygne	9,390,258.00	10,275,074.77	20,550,149,542.00	2,188.45
Sunflower -- Holcomb	2,384,975.00	2,534,424.06	5,068,848,124.00	2,125.33
Westar -- Neosho	6,435.00	6,832.80	13,665,602.00	2,123.64
<b>Sunflower Holcomb Expansion</b>				<b>1,910.00</b>
Chanute City Two	12,608.00	10,806.50	21,613,000.00	1,714.23
Westar -- Murray Gill	144,042.00	115,759.18	231,518,368.00	1,607.30
McPherson City 3 Unit	18,207.00	14,446.75	28,893,498.00	1,586.94
KCPL -- Osawatomie	13,878.00	10,949.93	21,899,850.00	1,578.03
Aquila -- Cimarron River	139,252.00	107,987.68	215,975,352.00	1,550.97
<b>Initial Performance Limit *</b>				<b>1,520.00</b>
Westar -- Hutchinson	100,081.00	73,603.90	147,207,802.00	1,470.89
Westar -- Gordon Evans	484,982.00	345,756.81	691,513,622.00	1,425.85
KCPL -- West Gardner	130,696.00	91,378.10	182,756,200.00	1,398.33
Aquila -- Fort Dodge	291,191.00	203,182.65	406,365,306.00	1,395.53
Aquila -- Great Bend	107,318.00	73,492.05	146,984,098.00	1,369.61
<b>10-year limit *</b>				<b>1,330.00</b>
Sunflower -- Garden City	115,122.00	58,737.37	117,474,746.00	1,020.44
Coffeyville City	36,065.00	15,172.18	30,344,350.00	841.38
Winfield City	1,661.00	580.70	1,161,400.00	699.22

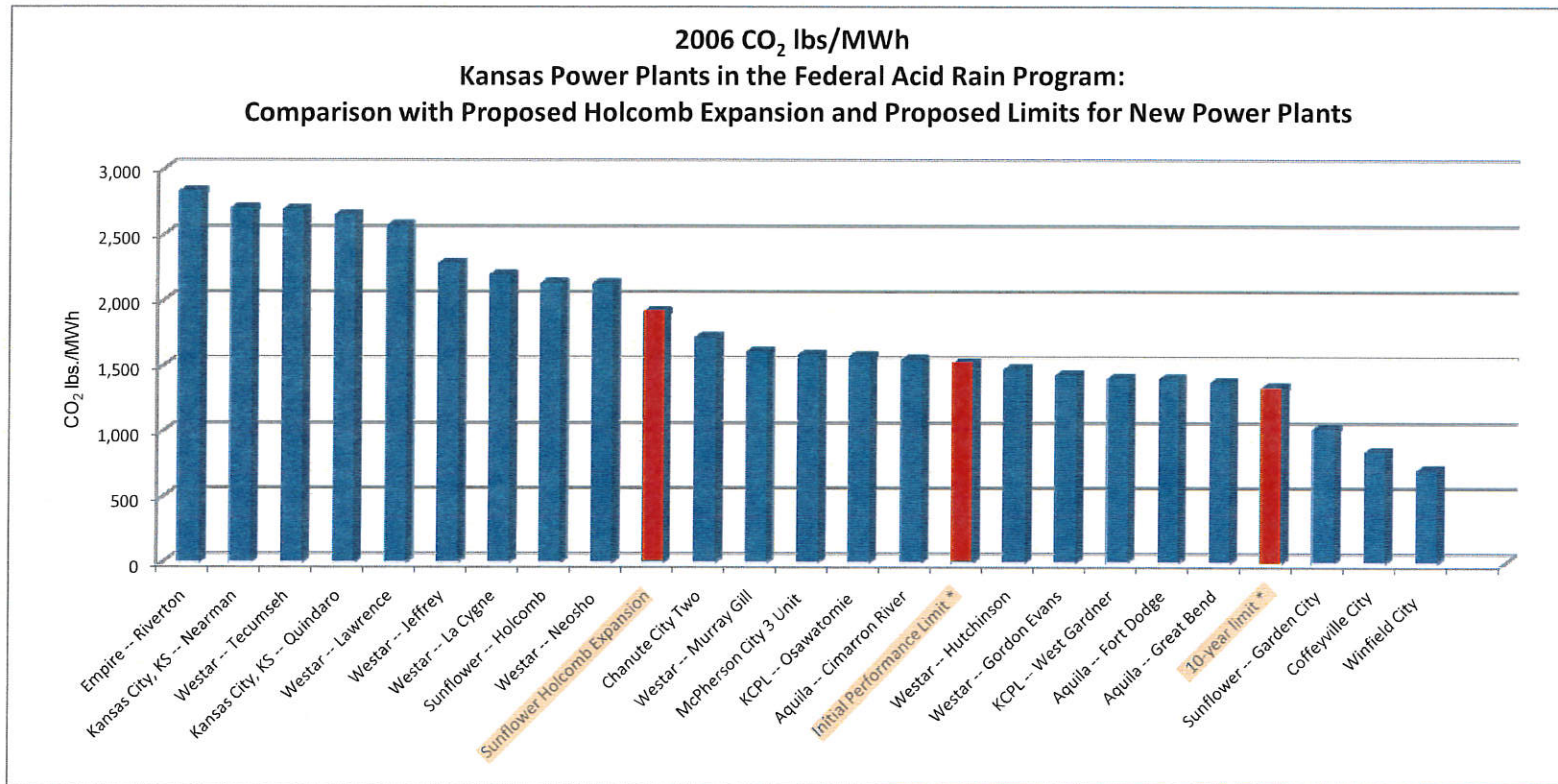
\* Limits proposed in 2008 HB 2711 and SB 515. Those bills, as introduced, would not apply to existing plants listed above in black.

Data Sources:

<http://camddataandmaps.epa.gov/gdm/index.cfm?fuseaction=emissions.output&startMarker=1> (data downloaded 12/26/2007).  
[http://www.eia.doe.gov/cneaf/electricity/page/eia906\\_920.html](http://www.eia.doe.gov/cneaf/electricity/page/eia906_920.html) (data downloaded 01/29/2008).



1-21

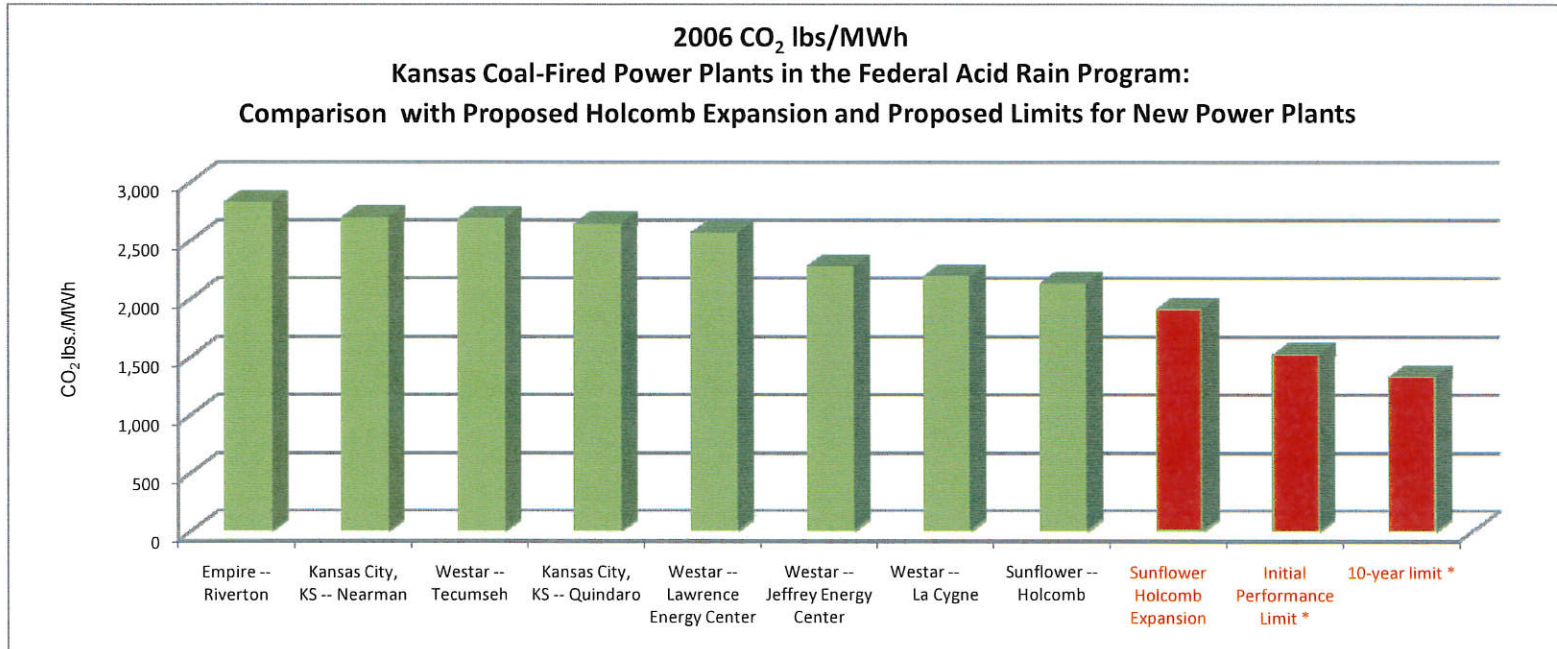


See notes with preceding table.

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**2006 CO<sub>2</sub> lbs/MWh**  
**Kansas Coal Fired Power Plants in the Federal Acid Rain Program:**  
**Comparison with Proposed Holcomb Expansion and Proposed Limits for New Power Plants**

FACILITY_NAME	Net Generation (MWh)	CO <sub>2</sub> Mass (US Short Tons)	CO <sub>2</sub> Mass in Lbs. (tons*2000)	CO <sub>2</sub> Lbs/MWh
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Initial Performance Limit *				1,520.00
10-year limit *				1,330.00




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[http://www.eia.doe.gov/cneaf/electricity/page/eia906\\_920.html](http://www.eia.doe.gov/cneaf/electricity/page/eia906_920.html) (data downloaded 01/29/2008).



# SUNFLOWER ELECTRIC POWER CORPORATION

A Touchstone Energy<sup>®</sup> Cooperative 

**TESTIMONY OF  
L. EARL WATKINS, Jr., PRESIDENT AND CEO  
SUNFLOWER ELECTRIC POWER CORPORATION  
ON HOUSE BILL 2711  
BEFORE THE HOUSE ENERGY AND UTILITIES COMMITTEE  
February 4, 2008**

Mr. Chairman and distinguished members of the Committee, my name is Earl Watkins. I am the President and CEO of Sunflower Electric Power Corporation. I come before you today to speak in support of House Bill 2711.

Before I begin, I want to thank the Committee for your efforts in developing this legislation. I commend you for your efforts to develop a sound energy policy that addresses the energy needs and environmental concerns of this state and nation.

Leadership is easy to talk about, but it is something quite different to demonstrate it as reflected in this comprehensive piece of energy legislation.

## **Sunflower System**

All of you know of our interest in this legislation. We have struggled to get our power plants built in western Kansas for many years. I believe this legislation will provide for a clear path, with regulatory certainty, to help us do what is needed for our project partners, our six Member cooperatives, and the 400,000 they serve in central and western Kansas.

Our passion for this project is based on the fact that we are proposing to build the cleanest coal-fired power plants in the United States. Our existing plant at Holcomb is the cleanest coal-plant in Kansas and we are proud to carry on that tradition with this new generation of plants that are decidedly cleaner than our existing unit that was built in 1983. In fact, the units we propose to build will consume 700,000 less tons of coal annually than they would use if we used the 1980 technology.

Our passion also extends to our Member's consumers. A large amount number of our customers are small businesses and ag producers who struggle to make their businesses succeed each month.

In our 55-county service area, we have nearly 54,000 people who live at or below the federal poverty level. Nearly 68,000 are retired. A small increase

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in their cost of electricity can truly make a difference in whether they can or cannot enjoy the basic necessities of life, like food and medicine.

For those of you that represent rural Kansans, you can appreciate that life is good in our rural areas, but it is not easy. For that reason, rural electric cooperatives work hard daily to provide reliable and affordable power to their friends and neighbors who have entrusted them with the operation of their electric coop. Our highest praise is when our neighbors tell us that they simply take electric power for granted.

### **Project Background**

Recent events make it clear we can't afford to take reliable and affordable energy for granted. With the development of new energy sources from wind and biomass fuels, we have the opportunity to revitalize rural Kansas, but only if we can provide our consumers with affordable electric power.

With the advent of the biofuels industry, as evidenced by our bioenergy center plans, rural Kansas has the opportunity to attract new industry and create new jobs for the coming generations of Kansans. If we can seize that opportunity, we can end the migration of our youth by providing them with high paying jobs that will provide them the chance to live and raise their families in Kansas. To achieve this goal, however, electric power supplies must be reliable and affordable.

Our project is a collaborative effort of four not-for-profit electric cooperatives and 22 Kansas municipalities. It will be built with the latest state of the art emission control equipment, making it one of the cleanest coal plants in the country. As confirmed by the professional staff at KDHE, these plants meet all the emission standards and regulations KDHE has determined are necessary to protect the health of the public and the environment.

### **Environmental Stewardship**

Over the years, our Members have continually exhibited good environmental stewardship. And why wouldn't they. Most of our Member owners make a living off the land. It is important for them to maintain that land for our children and grandchildren. Understandably, our Members have a strong interest in the impact these plants will have on them and the place where they live and work.

It is that concern and interest for public health that permeates the decisions of Sunflower's board of directors. When Sunflower constructed its first coal unit in Holcomb in the early 80s, our Members installed over \$110 million of environmental control equipment on a plant that cost a total of \$396 million.



This was a significant cost to the Members, but consistent with their environmental stewardship.

Repeatedly, our Members have sought and advanced technology to reduce emissions from the Holcomb plant. In 2000, Sunflower participated in a low NOx burner test to find a new way to reduce the emissions of nitrogen oxide.

In 2003, to address growing concerns over mercury emissions, Sunflower again was the proving ground for the injection of activated carbon that cuts mercury emissions by 85%. This technology will now allow Sunflower to construct the two new 700 MW plants and emit no more mercury emissions from all three plants than were formerly emitted from the existing 360 MW plant.

In their continuing efforts to address carbon dioxide emissions, our Members are once again participating in the development of cutting edge environmental technology. Sunflower has currently concluded Phase One of a test to determine the best strain of algae to be used in an algae reactor at our Holcomb plant.

The algae reactor uses CO<sub>2</sub> as a food stock for algae that is then further processed to produce oil used to produce biodiesel and starch for ethanol production, protein for cattle feeding and will clean water for reuse in the power plant.

Because of the success of Phase One, Sunflower hopes to soon initiate Phase Two which will take a giant step towards the commercial production of algae from the flue gas of coal plants. This process will not only reduce emissions, it will move the United States toward less dependency on foreign oil and LNG by allowing us to use our abundant supplies of coal cleanly.

Sunflower has also advanced the development of wind generation in Kansas. We have already contracted for the purchase of 125 megawatts of wind generation which is nearly 13% of Sunflower's peak load. We are proud of the fact we have accomplished this two years earlier than the goal set by the Governor.

Over the years, our Members have quietly worked at finding new technology to address current environmental challenges. They believe being environmentally responsible is just expected of a responsible cooperative and not worthy of praise. Sunflower has been a leader in clean power and this bill positions Kansas as a leader in solving environmental concerns.

Those who just say "no coal" fail to responsibly respond to the needs of the people of this state. For our Members, the opponent's position is particularly difficult to accept. Today, coal is the least expensive source for base load energy. During peak demand, our coal resources serve 53% of our 1,000 megawatt system. When our contract expires at the Jeffrey Energy Center in 2018, our coal resources will drop to only 36% of our total demand based upon today's peak which we know will be much greater 10 years from now. The expansion plan was a small, yet firm step to replace that resource with cleaner coal generation than we currently have.

### **Low-Cost Energy Policies**

Rural customers are already paying higher energy costs than customers in urban areas. This is due, in part, to the higher costs to serve areas of sparse populations, but it is also due to a fuel mix differential. If you don't believe me, compare a typical residential bill in Liberal with Topeka or in Dodge City with Overland Park. We must continue to work hard to make certain that all Kansans, rural and urban alike, are not unnecessarily forced to pay higher power prices.

Some have said we have lived on a cheap energy policy that discourages conservation. We don't agree. In our view our low energy prices have resulted from the innovation and stewardship of all the public utilities in Kansas.

Additionally, some believe that all of our energy needs can be addressed by conservation and energy efficiency programs. Although Sunflower's Members promote energy conservation, and will continue to do so, the immediate energy needs cannot be met with efficiency programs. Even if they could, the average age of the state's generating fleet is nearly 40 years old. If the correct policy decisions are not made now, in the near future, utilities will be forced to replace our old units with very expensive power from the out-of-state power markets.

Those higher electric rates will ripple through our Kansas economy. Every commodity has an electric component in the price. Some more than others, but the price of all purchased goods will increase. Furthermore, as higher rates drive industry and jobs beyond our borders, individual taxes will increase as greater burdens are placed on fewer people.

Some have questioned why it is necessary for the project to consist of two plants, one of which only serves customers outside the state. I would like to address that question.

Sunflower is committed to providing reliable power to its Members in an environmentally sensitive and sensible way for the lowest possible cost. For Sunflower to meet this commitment, it is essential the Holcomb Expansion project consist of two plants.

### **Sunflower's Project Benefits**

Because the existing site was originally developed for further plant expansion, certain common facilities at Holcomb station were originally oversized to meet the needs of the expansion when it occurred. This excess plant capacity is a valuable asset for which others are willing to pay a fee to Sunflower for its use.

Additionally, Sunflower will receive a fee to operate the plants for the benefit of the other participants. We will be able to operate the larger complex by doubling the number of employees while reducing the overall labor cost per megawatt.

In total, the development fees paid by other participants amount to about \$95 million. These upfront payments provide for the equity necessary for Sunflower's 200 MW portion of the plant which will cost a total of about \$540 million.

Overall, the collaboration with other cooperatives in the Holcomb project means saving our customers about \$25 million per year for 30 years. None of this is possible without the construction of two plants through the participation with three other cooperatives and 22 Kansas cities. Simply put, we are using out of state investors to lower our costs for the benefit of our Members' consumers.

Additionally, Sunflower has enhanced the reliability of its generation system by having the right to call upon the other plant to provide up to 200 megawatts of power an emergency event. Presently, Sunflower has no such capability.

### **Not Just A Coal Project**

This is not, however, just a two-plant project. It is much more. It will result in the construction of an expansive transmission system that will enable the development of wind projects in Kansas and through out central United States.

The transmission lines required to be constructed for the project will make it possible for the development of up to 1,500 MWs of wind to be transmitted to the east and south, and up to 3,000 MWs to the west, where more valuable markets exists for wind energy. With the development of wind, this

project will provide for additional revenues for landowners and more jobs for Kansans.

The project also provides out-of-state funding for us to use in the development of our integrated bioenergy center. Our work with Kansas State University and Kansas Bioscience Authority will result in the creation of a center that will consist of a ethanol plant, biodiesel plant, dairy, and an anaerobic digester, all while conserving water. The center will also advance the commercial operation of an algae reactor that will reduce the carbon dioxide emissions from the coal plants.

The Holcomb expansion project will provide for over 280 new jobs in western Kansas, new tax revenues, over more than \$20 million annually in property taxes when the tax abatement ends. In addition, new tax revenues on transmission lines and railroad improvements will help us do our part to revitalize rural Kansas. As you can see, this is much more than a coal plant project.

### **Regulatory Certainty**

For years, Kansas utilities have operated under a well-established energy policy which requires utilities to provide reliable power at the least cost. This policy has lead to rates in Kansas that have encouraged economic growth and sustained the quality of life we now enjoy. This long-standing policy set by the legislature has been the guiding principle under which utilities have operated to meet their statutory duty to serve the electric customers of Kansas.

In Sunflower's case, Secretary Bremby's denial of our air permit drastically altered Kansas' regulatory policy without rulemaking, without due process and, most importantly, without the authority of the legislature. As unsettling as the denial may be to Sunflower, it has been just as unsettling to other utilities, industry, labor, financial markets and the public.

Without clear public policy and regulatory certainty, there is no predictability, without predictability there is no stability and without stability, there is no progress. People are simply unwilling and unable to act when the regulatory process functions without adherence to established policies and rules.

Our project met all established requirements for issuance of its permit, but the permit was still denied by the Secretary. His denial was made in the absence of any known or established rule on CO2 authorizing his denial. In fact, to date there is still no established rule on CO2 the public can look to determine if a business is entitled to a permit or not. Furthermore, his action



was unlawful in the fact he unilaterally altered public policy which only the Legislature has the authority to do.

The fact that an applicant can meet all known requirements, rules and regulations, and still be denied a permit is a significant threat and a grave concern to all fair-minded Kansans. We know that Kansans believe that the regulatory process must be certain, fair and impartial.

Public policy should be set by the Legislature and followed by the governmental agencies. If not, public confidence is shaken and one of our most fundamental principles of a democratic society is violated.

House Bill 2711 restores the public's confidence in government's ability to function properly. It restores certainty in regulation, and reasserts the Legislature's proper role in setting public policy. For Sunflower and other public utilities, it provides a clear understanding of this state's energy policy which is absolutely essential for utilities to make long range planning decisions.

For the reasons stated, Sunflower and its Members strongly urge the passage of House Bill 2711.

**Testimony of  
William L. Wehrum  
Before the House Energy and Utilities Committee  
On House Bill 2711  
February 4, 2008**

Good Morning. My name is William L. Wehrum. I am a partner with the law firm of Hunton & Williams LLP in Washington, D.C. Prior to joining the firm last year, I worked for almost six years at the U.S. Environmental Protection Agency in Washington, D.C. For the first four years, I served as chief counselor to the Assistant Administrator for Air and Radiation. For the last two years, I served as the Acting Assistant Administrator for Air and Radiation. In that capacity, I was the federal government's top air official. I was responsible for all of EPA's air programs -- from stationary sources, to motor vehicles and fuels, to climate change. I have worked in various capacities as an environmental professional for close to 25 years.

I am here to testify on the provisions of House Bill 2711 related to K.S.A. 65-3012 ("Section 3012"). Section 3012 is part of the Kansas Air Quality Act. It is an emergency provision that authorizes the Secretary of the Kansas Department of Health and Environment ("KDHE") to take action when emissions of air pollution present a substantial endangerment to health or the environment. The pending bill would do two things with regard to Section 3012. First, language would be added to K.S.A. 65-3005, relating to the powers and duties of the Secretary, which makes clear that Section 3012 does not now apply, and has never been applicable, to the air quality permitting process. Second, the text of Section 3012 would be revised to emphasize that this section applies only to existing sources of air emissions.

The purpose of my testimony is to provide a short history of Section 3012 and to illustrate the role that Section 3012, and provisions like it, play in the context of the

comprehensive state and federal air pollution control programs. The history and context show that Section 3012 is an emergency provision directed at addressing emissions from existing sources of air pollution.

**I. A Short History of Section 3012**

Section 3012 was originally enacted in 1967.<sup>1</sup> At that time, there was no comprehensive state or federal program to control air pollution. However, environmental issues were rapidly gaining prominence with the general public. Both the State of Kansas and the federal government were moving swiftly to adopt landmark measures addressing a wide range of environmental media, including air. The original text of Section 3012 was plainly directed at air emissions from existing sources that constitute “an emergency which requires immediate action to protect human health or safety.”<sup>2</sup> These were the days of burning rivers and the “London smog.” The most basic remedial measures to address such overwhelming pollution episodes simply did not exist until provisions such as Section 3012 were enacted.

Section 3012 was amended in 1970<sup>3</sup> and 1974<sup>4</sup>, but these changes were purely administrative (reassigning authority to implement the provision, ultimately to the KDHE Secretary). The last revision to Section 3012 occurred in 1993.<sup>5</sup> This revision was made “to bring Kansas into compliance with the federal Clean Air Act amendments of 1990.”<sup>6</sup> The

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<sup>1</sup> L. 1967, ch. 347, § 12.

<sup>2</sup> *Id.*

<sup>3</sup> L. 1970, ch. 261, § 12.

<sup>4</sup> L. 1974, ch. 352, § 144.

<sup>5</sup> L. 1993, ch. 13, § 12.

<sup>6</sup> *See* Minutes of the Senate Committee on Energy and Natural Resources, Jan. 21, 1993 (noting that “Charles Jones, Air and Waste Management, appeared as a proponent of SB 29, air

legislature also used the occasion to revise Section 3012 to make it more consistent with a similar provision in the Kansas hazardous waste statute.<sup>7</sup> While the 1993 revision included new text authorizing the Secretary to issue an order to “prevent the act” that is causing a substantial endangerment, there is no suggestion that the Legislature intended to expand the scope of Section 3012 beyond existing air pollution sources to include proposed new sources. Thus, from the time of its genesis to the current day, Section 3012 was focused on dangerous air emissions from existing sources.

## **II. The Development of Section 3012 Tracked the Analogous Federal Provision**

The history and purpose of Section 3012 come into even clearer focus when placed in the broader context of federal air pollution control law. At the very same time that the Kansas legislature was deliberating the original Section 3012 in 1967, the United States Congress was engaged in a similar debate at the federal level. The federal Clean Air Act (“CAA”) was originally enacted in 1955. At that time, the law was a mere shadow of its current form. It included authority to regulate air pollution, but only after complex and lengthy administrative

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contaminant emissions and provided testimony concerning the bill to committee members. Attachment 3. Mr. Jones notes the purpose of SB 29 was to bring Kansas into compliance with the federal Clean Air Act amendments of 1990.”); see also Testimony, Robert C. Harder, Secretary, Department of Health and Environment, State of Kansas, to the Senate Energy & Natural Resources Committee, Senate Bill 29 (Attachment 3 to Minutes of the Senate Committee on Energy & Natural Resources, Jan. 21, 1993) (noting that “Senate Bill 29 represents enabling legislation to update the Kansas air quality statutes to provide KDHE with the necessary authorities to implement the requirements of the federal Clean Air Act Amendments of 1990 (CAA),” and that “[t]he substantive revisions proposed in Senate Bill 29 are those that must be made in the Kansas statutes in order to implement the mandatory requirements that do apply to Kansas”).

<sup>7</sup> *See, e.g.*, Testimony, Robert C. Harder, Secretary, Department of Health and Environment, State of Kansas, to the Senate Energy & Natural Resources Committee, Senate Bill 29 (Attachment 3 to Minutes of the Senate Committee on Energy & Natural Resources, Jan. 21, 1993) (noting that Senate Bill 29, Section 12 “[a]mends K.S.A. 65-3012 to provide an update of the Secretary’s emergency authorities to replace outdated language. The specific language was patterned after Kansas hazardous waste statutes”).



procedures were accomplished. In 1967, the CAA was amended to include, among other things, a new authority to expeditiously bring action to abate “imminent and substantial endangerment” from existing sources of air pollution.<sup>8</sup> The clear purpose of this new provision was to establish authority to expeditiously address air pollution emergencies cause by existing emissions sources.<sup>9</sup>

Notably, the Kansas legislators who were deliberating the passage of Section 3012 were clearly aware of the parallel federal legislative effort and decided to move forward with Section 3012, at least in part, out of concern that the new federal law would preempt Kansas law unless

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<sup>8</sup> Pub. L. 90-148, 81 Stat. 497.

<sup>9</sup> See 1967 Cong. Rec. S19171, Debates on S. 780, Air Quality Act (July 18, 1967) (Sen. Edmund S. Muskie, stating that “[t]he committee realized that conditions exist in many parts of the country which, with a shift in meteorological conditions, could bring about emergencies overnight resulting in the death of many, many people. At the present time authority to deal with that kind of situation does not exist at the Federal level, and it should exist, particularly since so many of these potentially dangerous conditions are interstate in character. I think the intent is very clear”) (emphasis added); *id.* (Sen. Hiram L. Fong, stating that S. 780 provides that “[w]hen health of persons is imminently and substantially endangered, the Secretary of Health, Education, and Welfare is empowered to go immediately to court to seek an injunction against the emission of contaminants responsible for the danger. At such times of imminent and substantial hazards to people’s health, as in Donora, Pa., a few years ago and in New York City last Thanksgiving, the Federal Government could move swiftly to curb the source or combination of sources causing the hazard”) (emphasis added); *id.* (Sen. Abraham Ribicoff, stating that “The Secretary is authorized to initiate court proceedings to halt any pollution that creates a substantial and imminent public health danger anywhere in the country. This will enable the Secretary to act immediately to prevent a recurrence of the air pollution disasters of Donora, Pa., in 1948 and New York City in 1953 and 1966”) (emphasis added); *see also id.* (Sen. Edmund S. Muskie, stating that “[i]t is the objective of this legislation... to, first of all, provide adequate authority to deal with emergency situations”); *id.* (Hon. Jennings Randolph, stating that “[i]t is my feeling that when we deal with an emergency there must be lodged within a responsible official of the Government the desire, the determination, and the decision to think in terms of public interest, and the authority to implement his decisions”) (emphasis added); *id.* (Sen. John Sherman Cooper, stating that “in one of the most important provisions added by the Committee, the bill authorizes the Secretary to act immediately in potential disaster situations, by seeking an injunction where there is imminent and substantial endangerment to the health of persons.... Our bill provides emergency powers to the Secretary”) (emphasis added).

the Kansas provision was adopted first.<sup>10</sup> Although there is no express indication in the Kansas legislative history, it seems clear from the language of Section 3012 that the emergency provision being added to Kansas law reflected the language of the emergency provision in the federal bill.

In 1970, the 1967 Act's federal endangerment provision was recodified as Section 303 of the CAA,<sup>11</sup> which is where it resides today. The only significant change to this provision occurred in 1990, when it was expanded to cover imminent and substantial endangerment not only to health, but also to welfare and the environment.<sup>12</sup>

The other important development in 1970 was the passage of most of the basic elements of the "modern" federal CAA – including a division of labor that gave the federal government responsibility for establishing the basic goals and structure of the air program, but assigned states primary responsibility for adopting the control measures needed to attain good air quality.<sup>13</sup> Among the long list mandatory state program elements is the requirement in CAA Section 110(a)(2)(G) for states to have "authority comparable to that in [Section 303] and adequate contingency plans to implement such authority."

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<sup>10</sup> See House Judiciary Committee, Minutes (Apr. 12, 1967) ("The question was also asked of Mr. Steineger as to how close we are to federal intervention in the area of air pollution. Mr. Steineger replied that he did not know. That there is pending before Federal Congress legislation which would provide complete authority by the Federal Government outside of the Interstate Commerce powers. The act will contain a clause that whenever a state has acted in this area, they will continue to run their own pollution program.").

<sup>11</sup> Pub. L. 91-604, § 12(a), 84 Stat. 1705.

<sup>12</sup> Pub. L. 101-549, title VII, § 704, 104 Stat. 2681.

<sup>13</sup> See, e.g., 42 U.S.C. § 7401(a)(3) (that air pollution prevention ... and air pollution control at its source is the primary responsibility of States and local governments).

It is clear that Section 3012 is “authority comparable” to Section 303. For example, the change in scope of CAA Section 303 in 1990 to include welfare and the environment compelled a comparable change in scope to Section 3012 in 1993 – from “action to protect human health or safety” to action “to protect the health of persons or the environment.” Without this change to Section 3012, the Secretary would not have had “authority comparable” to Section 303.

Similarly, under the authority of Section 3012, KDHE adopted air pollution emergency episode regulations in 1972 (K.A.R. 28-19-55 through 58) designed to meet the obligation to have “adequate contingency plans” to implement its emergency authority. EPA promulgated a rule in 1972 approving these regulations as meeting the federal requirements.<sup>14</sup> To my knowledge, these are the only regulations KDHE has adopted using the authority of Section 3012. Consistent with Section 303, they apply only to air emissions from existing sources.

In practice, KDHE’s actions over the years indicate that the Department has historically understood that Section 3012 is an emergency provision for addressing extraordinary air emissions “episodes” caused by existing sources. As a result, Section 3012 has not been used as authority to promulgate regulations directed at newly constructed air emissions sources.

Moreover, KDHE has issued countless permits and approvals authorizing new emissions from proposed new sources. Except for the very recent denial of the Sunflower Electric Power Corporation (“Sunflower”) application to construct two new coal-fired electricity generating units, I am not aware that KDHE has ever cited Section 3012 as authority for imposing any restrictions on new sources, much less as a basis for denying approval for new source construction. This history of implementation is consistent with the way in which EPA has administered Section 303.

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<sup>14</sup> 37 *Fed. Reg.* 10842, 10867 (May 31, 1972).

The federal CAA is structured such that Section 303 is separate and distinct from the new source permitting requirements. Section 303 is included in general provisions subchapter, while the new source permitting requirements are included as part of the air quality subchapter. The new source permitting provisions provide a detailed and specific roadmap of the requirements that must be satisfied to obtain approval to construct a new source. These provisions do not require that any determination be made regarding Section 303 in issuing a permit. The reason is obvious – Section 303 does not apply to proposed new air emissions sources. KDHE’s air permitting regulations mirror the federal permitting regulations in all relevant respects and, therefore, the same conclusion holds true under the Kansas air permitting program.

### **III. Does KDHE’s Action Comport With the Intent of Section 3012?**

My short answer is that KDHE’s interpretation of Section 3012 is inconsistent with the plain language of the current Section 3012 and with the proposed legislation related to Section 3012. After seeking the opinion of the Kansas Attorney General, the Secretary concluded he had the authority under Section 3012 to deny an air permit under a new interpretation of Section 3012.<sup>15</sup> The Secretary took preemptive action against a proposed new source of emissions on the grounds that the air emissions from the proposed source would present a “substantial endangerment to the health of persons or the environment.”<sup>16</sup> In my view, this action is based on a flawed interpretation of the law.

The interpretation that Section 3012 applies to proposed new air emission sources is inconsistent with the plain text of Section 3012, which unambiguously authorizes action only

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<sup>15</sup> See Attorney General Opinion No. 2007-31 (Sept. 24, 2007) and correspondence from Roderick L. Bremby, Secretary, KDHE, to Wayne Penrod, Senior Manager, Sunflower Electric Power Corporation (Act. 18, 2007) (“Bremby Letter”).

<sup>16</sup> Bremby Letter at 2.

when “the *emission* of air pollution *presents* a substantial endangerment” to health or the environment. The use of the present tense in this provision clearly limits the scope of Section 3012 to existing sources of air emissions.

Moreover, such an interpretation is at odds with the clear history and legislative purpose of Section 3012. It also is inconsistent with the scope of CAA Section 303, the federal provision on which Section 3012 is modeled. KDHE established a meaning for Section 3012 – a meaning that limits its applicability to existing air emissions sources – through its reliance on Section 3012 to satisfy the federal obligation to have authority “comparable to Section 303” and through the emergency episode regulations adopted under the authority of Section 3012. Lastly, KDHE’s long history of regulatory implementation demonstrates that – at least until the Sunflower denial was issued at the end of 2007 – Section 3012 did not play any role in the implementation of the KDHE permitting program for new sources.

In sum, Section 3012 should not be construed to apply to proposed new air emissions sources. Like the federal provision on which it is based, Section 3012 is an emergency provision that authorizes expeditious action to alleviate dangerous conditions caused by emissions from existing sources of air pollution. A separate, comprehensive air permitting program exists to guide decisions about how to permit proposed new emissions sources. The proposed legislation would re-affirm Section 3012’s historic role in managing air quality in Kansas. Thank you for the opportunity to testify today on this important issue. I am happy to answer any questions that you may have.



**TESTIMONY**

by

**BRIAN J. MOLINE, CHAIRMAN**

**ALLIANCE FOR SOUND ENERGY POLICY**

before the

**KANSAS HOUSE OF REPRESENTATIVES**

**COMMITTEE ON ENERGY AND UTILITIES**

on

**MONDAY, FEBRUARY 4, 2008**

Mr. Chairman and members of this Committee, thank you for giving me the opportunity to testify before you today on behalf of the Alliance for Sound Energy Policy on House Bill 2711. My name is Brian J. Moline. I currently serve as the Chairman of this newly formed coalition and am pleased to report that our statewide, non-partisan coalition of businesses, industries, consumers, agriculture producers, labor interests, civic leaders, elected officials and others, several of whom you will hear from today, is rapidly growing.

The Alliance for Sound Energy Policy was established to ensure the economic prosperity of Kansas by promoting a climate of regulatory stability and a balanced energy policy.

The recent decision by the Kansas Department of Health and Environment (KDHE) to deny the Holcomb Station expansion air permit, in the absence of a steady, reliable regulatory framework, was a great disappointment to the people and communities in southwest Kansas. This project's state-of-the-art technologies will enable it to meet all federal regulations in place to protect public health and the environment. KDHE's decision to arbitrarily deny the air permit, contrary to its own professional staff's recommendations, not only denies our state the expansion of much needed electricity generation and increased revenues, it sets a terrible precedent for economic development in Kansas.

The implications of this decision extend far beyond Holcomb. Concerns about the uncertainty of our state's regulatory environment have been echoed by independent businesses, manufacturers, agriculture producers, and other stakeholders from Scammon to Saint Francis, from Rolla to Reserve, and all points in between...not to mention those outside our state's borders who ever thought to do business in Kansas.

These shared concerns about regulatory stability and energy security inspired statewide organizations like the Kansas Chamber, Kansas Farm Bureau, Kansas AFL-CIO, Kansas Electric Cooperatives, and many others to join the Alliance for Sound Energy Policy.

Collectively, the Alliance believes that prosperity and environmental stewardship stem from sound energy policies, which require the fair and uniform application of Kansas statutes, regulations and rules. We believe that sensible and balanced energy policies safeguard public health, protect consumers, utilize domestic resources, and integrate renewable energy solutions.

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And, through the growing strength of our organization, we believe we can reasonably affect policies that encourage the development of an affordable, reliable, and diverse energy portfolio to fuel Kansas' future.

House Bill 2711 makes significant strides in helping our state, our communities, and our citizens achieve these goals.

As the former chairman of the Kansas Corporation Commission, I understand the importance of a regulatory climate with clear rules and expectations. Businesses, industries, and consumers rely on the fact that these regulations will be applied in a fair and consistent manner.

This is especially true in the application of our state's energy policy. As one of the most significant cost pressures businesses and consumers have today, energy issues must be addressed. A balanced, affordable, and sensible energy policy is at the heart of our state's economy, our nation's economy, and our national security. It ensures that our quality of life continues to be the highest in the world.

That is why, as stakeholders concerned about the consequences of this decision, the Alliance specifically commends your efforts to address the issues of energy security and regulatory stability in Sections 9, 30, 31, 32, and 33 of House Bill 2711.

- **Section 9 – *Creation of Electric Generation, Transmission, and Efficiency Commission***  
The Alliance supports the creation of this commission. We believe the balance between growing energy demands, environmental stewardship, consumer rates, and generation sources should be studied carefully while taking into account sound science and economic impacts.
  
- **Sections 30, 31, 32, and 33 – *KDHE Powers and Procedures***  
The Alliance supports these sections of the legislation. We believe they clarify the intent of existing legislation and more clearly define the authority of the KDHE Secretary. These sections of the bill are necessary to ensure that the regulatory process is fair and impartial to all applicants. Furthermore, these provisions promote public confidence in the regulatory process by ensuring regulatory stability and consistency which is essential to good regulatory oversight. They ensure that any applicant in the permitting process will be issued a permit if it complies with and meets all regulatory requirements for issuance of a permit. Equally as important, these proposals will ensure that the State of Kansas maintains its competitive position relative to other states by precluding the establishment of emission standards that are more restrictive than the U.S. Environmental Protection Agency. Twenty-six other states, including Missouri, Oklahoma, and Colorado, have similar provisions that restrict their regulators' ability to regulate beyond the stringency of the federal government.

If enacted, these measures will ensure that all Kansas businesses, producers, workers, and consumers will be treated fairly and equally by their state government. They will prevent arbitrary and unprecedented decisions that jeopardize investment and innovation in the state and our workers. Furthermore, this legislation will place Kansas on a level playing field with its

neighboring states. Most importantly, however, this bill will help create new jobs, ensure that existing jobs remain in Kansas, and promote our state's economic prosperity.

Mr. Chairman, the Alliance commends you and your colleagues for taking swift, decisive, bi-partisan action to address these needs so critical to our state's energy security and economic prosperity.

Thank you again for giving us the opportunity to testify before you today. I will be happy to answer any questions you may have.

**Alliance for Sound Energy Policy  
Organization Members  
February 1, 2008**

**Ark Valley Electric Cooperative Assn., Inc.  
BSNF Railroad  
Central & Western Kansas Building &  
Construction Trades Council  
Garden City Area Chamber of Commerce  
DS&O Rural Electric Cooperative  
Evans Cattle Inc.  
Finney County Economic Development Corp  
Grant County Economic Development  
Greeley County Community Development  
Hays Area Planning Commission  
Hodgeman County Economic Development  
Hybrid Power Technologies  
IBEW Local #304  
Insurance Planning, Inc  
Iron Workers Local Union #24  
Kansas AFL-CIO  
Kansas Chamber  
Kansas Economic Development Alliance  
Kansas Electric Cooperatives, Inc.  
Kansas Farm Bureau  
Kansas Grain and Feed Association  
Kansas Electric Power Cooperative, Inc.  
Lane-Scott Electric Cooperative, Inc.  
Leavenworth Jefferson Electric Cooperative**

**Midwest Energy, Inc.  
Ness County Economic Development  
  
Orion Energy LLC  
Parsons Farms  
Phillips County Economic Development  
Pioneer Communications  
Pioneer Electric Cooperative, Inc.  
Plumbers & Pipefitters of Kansas Local #441  
Prairie Land Electric Cooperative, Inc.  
Rahjes Farms  
Rooks County Economic Development  
Russell County Economic Development  
Scott County  
Sedgwick County Electric Cooperative  
Sharp Bros. Seed Co.  
Sheet Metal Workers 29  
Sunflower Electric Power Corporation  
Thomas County Economic Development Alliance  
Tri-State Generation & Transmission  
Victory Electric  
Wedell Dozing  
Western Cooperative Electric Association, Inc.  
Wheatland Electric Cooperative, Inc.  
Wichita Independent Business Association  
Yohon Pumping**



Testimony of Robert Vancrum  
To the House Energy and Utilities Committee  
Monday, February 4, 2008

Honorable Chairman Holmes and Honorable Representatives:

I represent Tri State Generation and Transmission Association, Inc. ("Tri State"), one of the largest sellers of electric power in Colorado, and covering large part of three other states. More importantly, it is one of the entities who are applying to build two new 700 megawatt coal fired units and retrofitting the existing unit in Holcomb, Kansas with the very latest air pollution control systems. Sunflower is the contract manager, and has been the public spokesman from the beginning.

Recently, however, my law firm has been asked to review the recent AG opinion and the legislative history of KSA Section 65- 3012. Others in our firm with environmental and litigation expertise believe this interpretation gives the Secretary of KDHE unexpected and alarming self executing powers to declare a substance a pollutant and regulate it without the usual public hearings and deliberative process required in writing statutes or regulations. My job was merely to review the legislative history.

The good news is that the written legislative history (1993 SB 29 – Chapter 13, Section 12 is the amendment containing the purported authority for the opinion) couldn't be much clearer that KDHE didn't want that authority, didn't intend it, and that its sole purpose in seeking the amendment was to allow them to keep the Kansas Air Quality Act in careful alignment with the FEDERAL EPA regulations under the 1990 federal clean air act . The department's written testimony and the official committee minutes definitely state that is all the language intended to do! In fact, the Sierra Club opposed the bill because it DIDN'T allow the Secretary to exercise his full authority under the Clean Air Act without regard to what EPA does, and the entire Kansas business and utility and concrete and aggregate industries appeared in SUPPORT of the amendments to KSA 65-3012!!!

***If something sounds strange about the AG opinion , it should. The writer on page 43 even states "While it is not clear whether the legislature intended to enhance the secretary's authority by giving him the ability to take preventative action... it is presumed the legislature ... (intended to change something) !!!!!*** Perhaps you'll excuse me for hyperbole, because a certain Senator Vancrum was Vice Chairman of the committee, was present for all those hearings and remembers what happened quite vividly!!! My recollection is that the concern was that the Kansas City area or some area would be deemed a non attainment area that EPA would say they have to step in and regulate existing sources of emissions and the fear was that KDHE would be unable to retain its status of privacy over the EPA in regulating Kansas sites. This was the only emergency contemplated. I urge you to recover and read the entire legislative history- at least enough to prove what I say is true.



President  
**Mark Love**

Executive Secretary  
Treasurer  
**Andy Sanchez**

Executive Vice  
President  
**Wil Leiker**

Executive Board

*Paul Babich  
Paula Bentley  
Mike Brink  
Kurt Chaffee  
Rick Greeno  
David Han  
Larry Horseman  
Jim Keele  
Lloyd Lavin  
Gerald Raab  
Emil Ramirez  
Earl Ransom  
Steve Rooney  
Rory Schaffer  
Deb Shepard  
Mark Shughart  
Richard Taylor  
Dan Woodard*



**Testimony in Support of HB 2711  
House Energy and Utilities Committee  
February 4, 2008**

By Andy Sanchez, Executive Secretary-Treasurer  
Kansas AFL-CIO

Thank you Mr. Chairman and members of the Committee. I appreciate this opportunity to speak in support of HB 2711. We believe that this legislation is a concerted effort to resolve any ambiguities in current regulatory laws, set goals for efficiency and provide for a most worthy cause. That cause is opportunity. In fact, numerous opportunities.

The first opportunity I want to mention is Jobs. I need only look to our organization's constitution and by-laws to affirm our position. It speaks to the hopes and aspirations of working people, and to the adoption of methods that will offer greater opportunities and benefit Kansas wage-earners. It speaks to the enjoyment of a life which a worker's skills make possible. Our state's regulatory environment for energy must be stable to create jobs.

Second, is the potential for a skilled workforce. Apprenticeships are a cornerstone of our affiliates. The numbers for a skilled workforce that will be in demand into the future are daunting. Here is an opportunity for Kansas to not only be an active participant in developing a skilled and qualified workforce, but also to see a community flourish. You really can't put a price on the careers that will develop when economic development can work within a regulatory atmosphere to set higher expectations for efficiency and technology. This is how new skilled professions are created and how trades for building and constructing evolve.

Last, the Kansas AFL-CIO would prefer that Kansans lead the way in balancing the demand for energy and protecting the environment. HB 2711 is a conscientious effort to tackle these concerns by regulating with clarity and developing solutions on in to the future.

Thank you again for allowing me the opportunity to share my comments of support for HB 2711.

*ENERGY AND HOUSE UTILITIES*

DATE: *2/4/2008*

ATTACHMENT *6*





**KANSAS**  
ASSOCIATION OF  
**COUNTIES**

## WRITTEN TESTIMONY ON HB 2711

Submitted to the House Energy and Utilities Committee

February 4, 2008

By Judy A. Moler, General Counsel/Legislative Services Director

Thank you, Chairman Holmes and Members of the Committee for allowing the Kansas Association of Counties to provide written testimony on HB 2711, dealing with electric generation, transmission and efficiency and air emissions.

The membership of the Kansas Association of Counties, at its November, 2007 Annual Conference, adopted policy language stating the following:

*"Energy Policy. The Kansas Association of Counties seeks a comprehensive and integrated approach to energy at the federal and state level that balances increased domestic oil and gas production on public and privately owned lands with the accelerated development of alternative and renewable energy resources, clean energy, nuclear energy, energy efficient programs, ethanol and clean coal technologies. The KAC supports a state energy policy that promotes development of a balanced portfolio of affordable energy, blending renewable resources with clean coal technologies and encouraging economic development by assuring that the regulatory process is clearly defined and implemented. KAC supports legislation that also gives counties specific authority to receive payment in lieu of tax moneys when energy companies locate in a specific county."*

HB 2711 appears to be consistent with the KAC's policy statement, which urges a comprehensive and integrated approach to energy at the federal and state level, and urges a clearly defined regulatory process for permitting electrical generating facilities. We are not conversant and knowledgeable about every technical issue addressed in the legislation, and urge all parties to continue to negotiate the best possible solution which addresses power needs in the most environmentally responsible manner. As such, we urge favorable consideration of HB 2711, with allowance for constructive refinements.

The Kansas Association of Counties, an instrumentality of member counties under K.S.A. 19-2690, provides legislative representation, education and technical services, and a wide range of informational services to its member counties. Inquiries concerning this testimony should be directed to Randy Allen or Judy Moler by calling (785) 272-2585.

300 SW 8th Avenue  
3rd Floor  
Topeka, KS 66603-3912  
785•272•2585  
Fax 785•272•3585

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### **Requires Increased Energy Efficiency in New State and Public School Buildings as Well as in State Vehicles**

- New state buildings (including Regents facilities) and new public school buildings must be designed to meet energy and water use efficiency standards. Facilities that do not achieve at least 85 percent of the standard in the first year of operation must identify corrections. (New Sections 6 & 7)
  - ▶ New products and equipment such as appliances, light fixtures, and computers purchased by state agencies must be at least as energy efficient as similar products that qualify for the EnergyStar rating. (New Section 3)
- The average fuel economy for state-owned vehicles purchased in 2010 must be at least 10 percent higher than the average for vehicles purchased in 2007. (New Section 2)
- New or extended leases for real property and state-owned real property will be required to meet energy efficiency standards. The Legislature will receive an annual report identifying state-owned and leased real property where an excessive amount of energy is used. (New Section 4)
- The Kansas Energy Office is tasked with increasing the participation of school districts, local governments, and state agencies in the KCC's Facilities Conservation Improvements Program. (New Section 5)

### **Prohibits Construction or Expansion of Merchant, Fossil-Fuel Burning Electricity Generating Plants**

- As of the effective date of the Act, construction or expansion of coal-fired merchant power plants will be prohibited in Kansas.
  - ▶ A merchant power plant is defined as an electricity generating plant with a nameplate rating of at least 300 megawatts and which sells less than 50 percent of its output to retail customers or to "load serving entities."
  - ▶ A load serving entity is defined as a regulated utility that sells electricity to retail customers; a municipal utility; or a cooperative, other member-owned corporation or an LLC whose primary purpose is to provide electricity to its members. (New Section 8)

### **Creates the Kansas Electric Generation, Transmission and Efficiency Study Commission to Look at Issues Related to Electric Service in Kansas**

- The Commission will have 11 members - six legislators, the chief of energy operations of the KCC, the director of the division of environment at KDHE, and three members appointed by the

Governor. Authorization for the Commission will sunset on June 30, 2010.

- The Commission will study a variety of issues related to electric service, such as:
  - ▶ the economic impact of generation, transmission, and distribution of electricity on communities and on customers' rates;
  - ▶ the fuel portfolio balance of the electricity generating facilities;
  - ▶ incentives for renewable energy investment;
  - ▶ the impact of conservation on the need for expansion of electric capacity; and
  - ▶ the impact on tax revenues of various means of generating and transmitting electricity.
- The Commission will make a preliminary report to the 2009 Legislature, and a final report to the 2010 Legislature. (New Section 9)

### **Establishes CO<sub>2</sub> Emissions Limitations for New Electricity Generation Facilities Using Fossil Fuels**

- Large new power plants (other than federal facilities, plants on tribal land, or plants exempt from the New Source Performance Standards (NSPS) of the federal Clean Air Act) constructed or expanded after December 31, 2007 will be required to comply with new emissions limitations. (New Sections 10 and 11)
- The maximum CO<sub>2</sub> emissions for the first ten years of operation of a coal-fired plant will be 1,520 pounds per net megawatt hour. After that, the maximum will drop to 1,330 pounds per megawatt hour. (New Sec. 11(b)(1))
- For plants using other fossil fuels, the maximum CO<sub>2</sub> emission level will be:
  - ▶ 1,080 pounds per net megawatt hour for fuel oil and diesel; and
  - ▶ 810 pounds per net megawatt hour for natural gas-fired plants. (New Sec. 11(b)(1))

### **Creates a Mechanism for Offsetting CO<sub>2</sub> Emissions that Exceed the Statutory Limitation**

- Emissions offsets created by wind-powered electricity generating facilities in Kansas, except community wind projects, will be determined by multiplying together one and one-half the fossil fuel facility's emission rate, the nameplate rating of the wind-powered facility, the capacity factor of the wind facility and the number of hours per year. Projects located outside Kansas generate a lesser credit. (New Sec. 12(a)(1))
- Offset credits equal to two times the amount of CO<sub>2</sub> emissions captured will be created for projects using chilled ammonia, amine capture, or coal gasification. (New Sec. 12(a)(2)(A))

- Offset credits equal to three times the amount of CO<sub>2</sub> emissions captured, stored, displaced, or avoided will be created for:
  - ▶ CO<sub>2</sub> storage projects utilizing specified injection or sequestration methods;
  - ▶ Projects that develop technology that displaces or offsets the release of CO<sub>2</sub> using algae to produce bio-diesel or starch substitutes for grain-based ethanol;
  - ▶ New nuclear or hydro-power electric generation projects located in the state, large-scale energy storage projects, and any central station solar energy project or any efficiency project of an existing fossil-fueled electricity generating facility (any such projects located outside Kansas would create credits equal to the actual CO<sub>2</sub> avoided); and
  - ▶ Demand-side peak-shaving, photo-voltaic, biomass or community wind projects located in the state, and electricity purchased from a customer-generator pursuant to the Net Metering and Easy Connection Act. (New Sec. 12(a)(2)-(4))
  
- Ultra-supercritical pulverized coal technology projects will create offset credits equal to three times the difference between the CO<sub>2</sub> emissions of the project and a super critical pulverized coal project. (New Sec. 12(a)(5))
  
- Minimum till or no-till agricultural practices, conversion of cultivated land to pasture, forest sequestration, windbreaks, or community beautification projects will create credits equal to three times the amount of CO<sub>2</sub> sequestered if the project is in Kansas, and two times the amount of CO<sub>2</sub> sequestered if the project is within the service territory of the electrical plant. (New Sec. 12(a)(6))
  
- Transmission system improvements that enable or enhance development of electricity generation from renewable resources located in Kansas will create offset credits based on the capacity of the improvement. The amount of credit attributable to transmission system improvements would be recalculated on an annual basis. (New Sec. 12(b))
  
- Each dollar invested in research projects to develop new carbon capture, displacement, or sequestration technology will create an offset credit equal to one ton of CO<sub>2</sub>. (New Sec. 12(c))
  
- Each dollar expended by a Kansas public utility for energy conservation education programs will create an offset credit equal to one-half ton of CO<sub>2</sub>. (New Sec. 12(d))
  
- An offset credit will be created for electricity generating units taken out of service as long as the retired unit utilized the same fuel as the unit to which the credit will be applied. (New Sec. 12(e))
  
- Offset credits resulting from carbon mitigation projects in Kansas could be sold, traded, or exchanged. (New Sec. 12(g))
  
- Excess CO<sub>2</sub> emissions not offset by any other method would be offset by payment of \$3 per ton to the Energy Efficiency Grant Programs Fund which will be administered by the KCC. (New Sec. 12(h))
  
- The Secretary of Health and Environment, in consultation with the KCC, will adopt rules and regulations necessary to implement the CO<sub>2</sub> emissions offset provisions. The Secretary cannot



defer or delay issuance of any construction permit under the Kansas Air Quality Act until the rules and regulations are adopted. (New Sec. 12(i))

### **Enacts The Net Metering and Easy Connection Act**

- Establishes a net metering procedure for small solar electricity generating units that are interconnected with a retail electricity supplier.
  - Electric generation equipment covered by the act includes interconnected solar-powered units with maximum capacity of 100 kilowatts located on premises controlled by the customer, and used to offset all or part of the customer's electricity needs. (Sec. 14(c))
- Defines net metering as the use of metering equipment to measure the difference between the electrical energy supplied to a customer-generator by a retail electric supplier and the electrical energy supplied by a customer-generator to the retail electric supplier. (Sec. 14(d))
- Retail electricity suppliers will be required to make net metering available to customers up to a maximum generation capacity established by the KCC or the governing body of a municipal or cooperative electric utility. (Sec. 15)
  - Customers will be billed for any electricity provided by the retail supplier in excess of the amount generated by the customer. (Sec. 17)
  - Customers will receive credit applied to the succeeding billing period, at least equal to the avoided fuel cost, for electricity generated in excess of that provided to the customer by the retail supplier. (Sec. 17(c))
  - Credits will expire without compensation either 12 months after their issuance or when the customer-generator disconnects service or terminates the net metering relationship with the supplier. (Sec. 17(d))
- Establishes safety requirements (Sec. 18), procedures for customers to apply to the retail supplier for interconnection (Sec. 19), reporting requirements for retail suppliers (Sec. 20), a requirement that the KCC and the governing bodies of electric co-ops and municipal electric utilities adopt rules and regulations and procedures to implement the act within nine months of the effective date of the act (Secs 21 and 22), requires that costs incurred pursuant to the Act by the retail supplier will be recovered in the utility's rate structure (Sec. 25), and addresses liability issues (Secs. 23, 27, and 28).
- The existing parallel generation statute will be amended to provide customers with the option of using the existing act or the Net Metering and Easy Connection Act. The customer's decision will be recorded in writing and filed with the retail electricity supplier. (Sec. 29(b)(3))

### **Enacts Regulatory Amendments**

- The Kansas Air Quality Act would be amended to authorize the Secretary of Health and Environment to implement the federal Clean Air Act and to prohibit the Secretary, absent specific



statutory authority, from adopting rules and regulations under the Kansas act that are more stringent than required by the federal act or rules and regulations authorized by that act. The restriction will not apply to an implementation plan for a non-attainment area. The provision authorizes the Secretary to enter into agreements with permittees that are more stringent, restrictive, or expansive than the federal requirements. (Sec. 30)

- ▶ The Secretary will be prohibited from denying or delaying issuance of a permit under the Act if the requirements of the Act have been met by the applicant. (Sec. 30(t)(3) and Sec. 31(b)) The Secretary also will be prohibited from utilizing emergency powers under KSA 65-3012, or other discretionary authority, in the air quality permitting process (Sec. 30(t)).
  - ▶ If requested by the applicant, the Secretary will be required to reconsider an application for a permit filed after January 1, 2006 and prior to the effective date of the Act that remains pending in any administrative or judicial review proceeding. The application for reconsideration will have to be filed with the Secretary within 60 days of the effective date of the Act and the Secretary will have 15 days during which to act on the request (Sec. 30(t))
  - ▶ An applicant aggrieved by the Secretary's action will be able to file a petition for review with the Kansas Court of Appeals within 30 days of the Secretary's determination. The Court's review would be conducted in accordance with the Act for Judicial Review and Civil Enforcement of Agency Actions without the need to exhaust other administrative remedies (Sec. 30(t)).
  - ▶ The Act would be amended to specify that the Secretary could take certain actions against only existing sources to protect the public health or the environment if emission of an air pollutant presents an "imminent" and substantial danger. (Sec. 33(a))
- Existing law would be amended to permit members of large electric cooperatives to elect to be exempt from regulation by the Kansas Corporation Commission utilizing the procedure currently available only to cooperatives with fewer than 15,000 customers. (Sec. 34(a))