Approved: March 17, 2008
Date

MINUTES OF THE HOUSE ENERGY AND UTILITIES COMMITTEE

The meeting was called to order by Chairman Carl Holmes at 9:15 A.M. on February 26, 2208 in Room 783 of the Docking State Office Building.

All members were present except:
Vaughn Flora- excused

Committee staff present:
Mary Galligan, Kansas Legislative Research
Carol Toland, Kansas Legislative Research
Melissa Doeblin, Revisor's Office
Renae Hansen, Committee Administrative Assistant

Conferees appearing before the committee:
Representative Ray Merrick
Steve Miller, Sunflower

Others attending:
Twenty-two including the attached list.

Continued Hearing on:

HB 2872- Removing the assessment of actual expense of services by the state corporation commission.

Proponents:

Representative Ray Merrick, 27th District, (Attachment 1), presented testimony in support of **HB 2872.** His testimony was a copy of a letter he presented to the KCC. Additionally, he explained the history of this issue to the committee and why this bill came to be drafted.

Questions were asked and comments made by Representatives: Don Myers, Margaret Long, Tom Hawk, Bill Light, Cindy Neighbor, Annie Kuether, and Terry McLachlan.

Tom Day, KCC, also contributed to continued questions.

The hearing on **HB 2872** was closed.

Hearing on:

HB 2894-Duties and powers of the secretary of KDHE in issuing permits for electric generation facility.

There were no proponents on **HB 2894.**

Opponents:

Mark Calcara, Vice President and General Counsel, Sunflower Electric Power Corporation, (Attachment 2), presented testimony in opposition to **HB 2894.**

Written Opponents:

Mark Schreiber, Westar Energy, (Attachment 3), offered written testimony in opposition to **HB 2894.**

Paul Snider, KCP&L, (Attachment 4), presented written testimony in opposition to **HB 2894.**

MINUTES OF THE House Energy and Utilities Committee at 9:15 A.M. on February 26, 2208 in Room 783 of the Docking State Office Building.

Neutral:

Roderick Bremby, Secretary, Kansas Department of Health and Environment, (Attachment 5), offered written testimony to **HB 2894.**

Question were asked and comments made by Representatives: Don Myers, Peggy Mast, Carl Holmes, Annie Kuether, Vern Swanson, Tom Sloan, Forrest Knox, and Bill Light.

It was noted that the bill came out of appropriations, and was proposed by Representative Bob Bethall.

Bob Gross from KDHE was available to answer questions, as well as Paul Snider from KCP&L.

The hearing on **HB 2894** was closed.

Discussion on:

HB 2881- Net metering.

Representative Tom Sloan moved to recommend **HB 2881** favorable for passage to the House floor, seconded by Representative Annie Kuether.

Discussion on the motion ensued by Representatives: Annie Kuether, Rob Olson, Don Myers, Forrest Knox, Tom Hawk, and Tom Sloan.

The motion to pass **HB 2881** to the House floor failed 8-11.

The chairman reminded the committee members about the committee dinner sponsored by AT&T on February 26, 2008.

Chairman Holmes distributed an article (Attachment 6) to the committee written by Matt Simmons, that addresses a letter to the incoming President of the United States in 2009, and read the article to the committee as he felt it is an important warning to all those concerned with energy issues in the United States and the world.

Questions or discussion ensued by Representatives: Forrest Knox, Carl Holmes, Tom Moxley, Judy Morrison, Rob Olson, Don Myers, Josh Svaty, Bill Light, Terry McLachlan, Peggy Mast, and Annie Kuether.

The next meeting is scheduled for next week.

The meeting was adjourned at 10:10 a.m.

HOUSE ENERGY AND UTILITIES COMMITTEE
GUEST LIST

DATE: February 26, 2008

NAME	REPRESENTING
LARRY BERG	MIDWEST ENERGY
TOM DAY	KCC
PHIL WAGGS	KCPCO
Don Hallam	KEC
Mark Salcara	Sunflower
Steve Miller	Sunflower
Lindsay Douglas	Hein Law Firm
Kristin Mayo	Foulston Siefkin
Paul Snider	KCPL
Kimberly Svaty	KMU
Mick Urban	KANSAS GAS SERVICE

It has come to my attention that the Kansas Corporation Commission (KCC) has assessed the Kansas Payphone Association (KPA) for over $16,000 related to providing agency services in conjunction with the Telecommunications Act of 1996.

In consideration of the fact that the KCC is a state agency with the responsibility of regulating public utilities and administering and investigating complaints made by consumers, I am deeply concerned with the KCC's action against the KPA. The KPA is a not for profit association seeking equitable opportunity in the market, not a public utility. The services the KCC performed are part of the responsibility for which the Legislature has created it.

It is my understanding that there are serious concerns regarding equal protection under the Kansas and U.S. Constitutions in light of the fact that the Commission has refused to limit its assessment against KPA to 0.6% of KPA's Kansas revenues, as the Commission does when it assesses public utilities under the statute. In addition, the Commission may be implementing the statute in a manner which constitutes an equal protection violation since no other consumer has been assessed a fee for registering a complaint with the KCC regarding a public utility.

I would ask that the KCC review this case and rescind the levy against the KPA. Such a misuse of KSA 66-1502(b) calls for serious review of the authority of the Legislature has given KCC and warrants our action next legislative session.

I look forward to hearing of the fast and favorable resolution to this matter.

HOUSE ENERGY AND UTILITIES
DATE: 2|26|2008
ATTACHMENT 1

SUNFLOWER ELECTRIC POWER CORPORATION

A Touchstone Energy® Cooperative

TESTIMONY SUBMITTED TO
HOUSE ENERGY AND UTILITIES COMMITTEE
IN OPPOSITION TO HB 2894

Presented by
Mark Calcara, Vice President and General Counsel

February 26, 2008

Mr. Chairman, and members of the Committee, my name is Mark Calcara. I am the Vice President and General Counsel for Sunflower Electric Power Corporation. Our interest in this legislation, as you might imagine, results from the denial of our air quality permit last fall by KDHE.

Sunflower is here this morning to oppose this legislation. Believe me; we do not want any other company to have to endure what Sunflower has suffered through in these last four months. In our opinion, what the Secretary did was without legal authority, was both arbitrary and capricious, and must not be allowed to stand if we want to return Kansas to a state with regulatory certainty, not one governed by the rule of whim.

Let me expand on why this uncertainty, we believe, will continue. The fundamental concern we have is that the KDHE Secretary is continuing on his mission to restrict CO2 emissions without rule or regulation, and more importantly, without the approval or consent of the Congress or this Legislature.

In an article published last weekend in the Salina Journal, Secretary Bremby reportedly said Kansas cannot afford to wait for the federal government to address the state's environmental problems. He said, "Washington never comes to the rescue in time," he said. "I'm not waiting for Washington."

To me it is obvious that the Secretary is on a personal mission, not one governed by the rule of law. His actions have not involved due process or rulemaking, and he has not held public hearings regarding the potential endangerment CO_2 may cause Kansans. He denied the permit without any rule or regulation on CO2 that he could cite.

In an interview with the Journal before his speech, Secretary Bremby was asked about regulatory uncertainty. He said, "That is a very artfully crafted phrase." He pointed out that since January 2003 his office has approved 2,900 air quality permits, including 179 since his decision involving the coal plants. "There's never been any uncertainty," he said. "There's only been one denial."

301 West 13th Street ~ P.O. Box 1020 ~ Hays, Kansas 67601-1020 ~ Tel. 785.628.2845 ~ Fax 7

HOUSE ENERGY AND UTILITIES
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ATTACHMENT 2-1

Mr. Chairman, what are we to make of the fact that we are the only ones to have suffered from these unwritten rules; especially since our application, as confirmed by the Secretary's professional staff, met all permit requirements? What amount of CO2 emission is acceptable to the Secretary?

Because of the uncertainty created by this denial, I would suggest that no proposed large stationary source in our State is comfortable for the state of regulations at our KDHE.

Let me draw your attention to several other relevant facts regarding this matter:

- When the Secretary denied our permit he said he was going to develop a policy on CO_2— obviously implying there is no existing policies on this matter. He has sought to establish a registry of CO2 emitters.
- In a February 12, 2008 article for Harris News Service, Chris Green writes:

  Bremby said legislation pending in Congress could force the state to reduce its carbon emissions by as much as 70 to 80 percent by 2050. He said such restrictions were almost certain to pass within the next three years and would create a price for carbon emissions that could be at least $20 to $30 a ton.

  In the meantime, he said, his agency planned to work with emitters reapplying for air-quality permits to voluntarily lower emissions. However, KDHE couldn't force compliance unless it used the "stick" of denying permits for changes such as modifications to existing fossil-fuel power plants.

  Bremby indicated that such denials would likely be a last resort. "There's a lot of space in between to make some things happen and hopefully see some improvement," he said.

  That prompted Sen. Janis Lee, D-Kensington, to reply: "But they really aren't voluntary if the ultimate end is that the permit will not be re-issued."
- Orion Ethanol recently reported that a second ethanol plant they intended to build in Kansas was halted when their bankers on Wall Street told them money was not available for this project as a result of the uncertainty regarding CO_2 in Kansas; just last week the financial closing on that project happened---in Texas.
- We have seen a large amount of concern about regulatory certainty in Kansas through our efforts with the Kansas Chamber of Commerce and the Kansas Farm Bureau, labor unions, and many of our electric cooperatives in Kansas.

Conclusion

As you can see, Mr. Chairman, we don't want this same process to be experienced by any other business in Kansas; none of them can afford the cost, and neither can the 400,000 people we serve in central and western Kansas.

We would urge the Committee to vote NO on this bill.

Westar Energy®

MARK A. SCHREIBER
Director, Government Affairs

Testimony of Mark Schreiber
Before the House Energy and Utilities Committee
On HB 2894
February 26, 2008

Chairman Holmes and members of the committee: I present this written testimony in opposition to HB 2894. This bill would require the secretary of KDHE to apply the same standards and criteria in renewing permits that he used in denying the permit for the new coal plants at Holcomb.

When Jim Ludwig testified before the Electric Generation Review Panel November 6 of last year, he said this about the KDHE permitting process:

> *My core message today about air permits is that we have them before the KDHE as a normal course of business, and changes in policy direction can immediately affect our operations and costs. We have air permit applications before KDHE today, and will have more of them before the agency for years to come. They are a routine part of doing our business.*

Jim's comments then still apply today. For example, right now we have an important air permit pending before the KDHE, a permit for which we applied in August of last year. If this permit were denied, Westar could not move forward to install new emission control equipment at one of our coal plants. In other words, denying the permit would mean that we could not reduce air pollution.

Westar does not know what standards and criteria the secretary used to deny the permit for the new Holcomb coal plants. But if those standards and criteria caused applications for renewals of permits to also be denied, it would harm our operations and raise costs for customers, plus we could not carry out planned investments to improve air quality. Some of our investments have been planned years in advance to occur during regularly scheduled major maintenance outages.

We urge the committee to oppose HB 2894.

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Kansas City Power & Light®
ENERGIZING LIFE

Testimony of Paul Snider
Before the House Energy and Utilities Committee
In Oppositions to House Bill 2894
February 26, 2008

Sunflower Electric's proposed power plant project in Holcomb, Kansas has generated vigorous debate about the advisability of building baseload coal generation given concerns about carbon emissions. The air permit denial for the project set off a different, and equally important, debate about the state's legal authority to regulate carbon.

This debate illustrates a need for utilities to work collaboratively with their customers, the communities they serve, the state and region to develop mutually agreed upon solutions to meet future energy needs in an economically viable and environmentally friendly manner.

Applying the same standards and criteria used in evaluation and denial of the air permit for the new coal-based electric generation plants in Holcomb to existing electric generation facilities in Kansas creates a myriad of potential problems, including putting in jeopardy the continued operation of a significant portion of Kansas's electric generation portfolio. KCP&L is opposed to this bill for the following reasons:

- KCP&L is supportive of efforts to control and reduce carbon emissions. KCP&L has been a leader in developing wind generation and advancing energy efficiency efforts. However, we must harmonize deadlines for carbon reductions with commercially viable technologies and installation costs that minimize economic impact to customers. Replacing existing electric generation that is already paid for, with new electric generation would be a very expensive proposition for Kansas ratepayers.
- Through our Comprehensive Energy Plan, KCP&L is already committed to working toward building carbon-free generation, employing carbon offsets and limiting other emissions in their existing fleet of electric plants.
- Federal regulations and pending court decisions on carbon are imminent. In addition, Congress is actively working on legislation addressing global climate change and carbon emissions. Kansas should wait for federal law and rules to be passed in order to operate under a single set of standardized rules.
- The construction of new plants offers much greater flexibility and options to control emissions. Changing or retrofitting existing plants is very costly because of the limited options available from a technology standpoint.

HOUSE ENERGY AND UTILITIES
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KCP&L is proud of our efforts to develop a comprehensive energy plan that brought together a diverse range of stakeholders to addresses supply issues as well as carbon mitigation and environmental issues.

The State and the Legislature have started a needed dialogue on energy issues. Additional debate and information sharing on energy prices, supply options and environmental concerns is needed and a more comprehensive approach developed before bills such as HB 2894 should be approved.

###

Paul Snider – KCP&L
Manager, Kansas Government Affairs
816-556-2111; paul.snider@kcpl.com

KANSAS

DEPARTMENT OF HEALTH
AND ENVIRONMENT

Kathleen Sebelius, Governor
Roderick L. Bremby, Secretary

www.kdheks.gov

Written Testimony on House Bill 2894

Submitted to the
House Energy and Utilities Committee
By
Roderick L. Bremby
Secretary, Kansas Department of Health and Environment

February 26, 2008

Thank you, Chairman Holmes and members of the Committee, for the opportunity to provide written testimony on HB 2894, regarding the consideration of carbon dioxide emissions for permit renewals.

The bill would require that the same standards and criteria used for the Holcomb permit denial would be applied to any application for permit renewal filed by electric generation facilities. In the case of Sunflower Electric, the Kansas Department of Health and Environment (KDHE) denied issuance of a Prevention of Significant Deterioration (PSD) *construction* permit for expansion of a coal-fired power plant that would have been built near Holcomb and that would have contributed 11 million tons of new carbon dioxide emissions.

Since the new emissions units have not been constructed and are not operational, the situation differs from that of an existing facility requesting renewal of an *operating* permit. See the attached "Review of KDHE Air Permitting Process and Timeline" Dr. Ron Hammerschmidt presented to the Senate Natural Resources Committee on January 31, 2008.

Historically under the federal Clean Air Act (CAA), new and existing sources of air pollution have received different regulatory treatment. The 1970 amendments to the federal Clean Air Act (CAA) authorized EPA to set emission standards for stationary sources, which became applicable to "new sources," those that commenced construction or modification after EPA's publication of the emission standards. As a result, existing sources became subject to the published standards only upon the source's modification. In effect, existing sources were "grandfathered" into the new regulatory scheme.

The 1977 Clean Air Act amendments established the New Source Review (NSR) program, which requires new or modified sources to obtain permits before construction or modification can occur. Again, existing sources become subject to the PSD requirements at the time of their modification, if conditions exist to trigger PSD permitting requirements.

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In 1990, the Clean Air Act Amendments focused on establishing a comprehensive *operating* permit program under Title V. The Kansas Class I operating permit program satisfies the requirements of the federal Title V program and closely parallels the requirements of 40 CFR Part 70.

Under KDHE's state implementation plan (SIP) with the U.S. Environmental Protection Agency (EPA) KDHE issues two types of air quality permits for major stationary sources, such as the electric generation facilities at issue in this bill. *Construction* permits are issued prior to building both new sources and for certain major modifications at existing facilities. Multiple construction permits could be issued for a given facility as new units or changes to existing units are made. *Operating permits* are issued after the facility has been constructed and are renewed for a period of five years upon the request of the facility. All existing and any new applicable requirements are included in the issuance of the renewal permit.

In the years since the 1977 Clean Air Act Amendments, there have been numerous federal court cases interpreting EPA's PSD rules and numerous EPA rulemaking efforts to clarify when modifications at a source trigger PSD review. The effect of these federal activities has been to extend the application of the "grandfather" clause of the CAA.

As a practical matter, retrofitting emissions units that represent several different vintages of design and technological controls to effectively bring them up to present-day emissions standards is an exercise inherently limited in its effect to reduce emissions. Whatever regulatory scheme is crafted to reduce carbon dioxide emissions would have to consider the technological and design differences that exist between older and newer controls and/or the regulatory scheme would have to consider using a trigger other than modification, i.e., setting a mandatory emissions reductions goal and providing a menu of offset options, which might include fuel switching, process changes, equipment retirement and/or replacement, use of renewable energy alternatives.

If House Bill 2894 were to be passed, KDHE would work with industry and stakeholders to develop either greenhouse gas regulations for the state or obtain voluntary agreements to reduce greenhouse gas emissions from each of the existing electric generation companies.

Thank you for your consideration of these comments.

KANSAS

DEPARTMENT OF HEALTH
AND ENVIRONMENT

Kathleen Sebelius, Governor
Roderick L. Bremby, Secretary

www.kdheks.gov

Review of KDHE Air Permitting Process and Timeline

Presented to
Senate Natural Resources Committee
By
Ronald F. Hammerschmidt
Director, Division of Environment

January 31, 2008

Chairperson McGinn and members of the Committee, I am Ron Hammerschmidt, Director of KDHE's Division of Environment. I am pleased to appear before you today to provide a review of the Kansas Department of Health and Environment's (KDHE) air permitting process.

KDHE's Bureau of Air and Radiation (BAR) is responsible for preparing air permits and approvals regulating major and minor facilities based on emissions. BAR issues two categories of air permits and approvals: construction and operating. BAR also issues general permits, a type of operating permit, that entitle some minor sources to operate by rule, i.e., reciprocating engines, organic solvent evaporative sources, hot mix asphalt facilities, sources with actual emissions less than 50% of major source thresholds. The general permit program offers an alternative to regular permits and simplifies the process for authorizing operation.

The Department of Air Quality of the Unified Government of Wyandotte County assists in the permitting process in Wyandotte County.

Permits are issued for major stationary sources of air pollutants and approvals are issued for minor stationary sources. The distinction between a major and minor source depends on whether a source meets or exceeds a specified level of emissions. The purpose of a permit or approval is to specify emission limits and requirements for construction and operation of the source subject to the permit or approval. Permit/approval conditions also specify the emission testing and monitoring requirements applicable to each source. These requirements are the primary means for demonstrating compliance with the emission limits.

Construction Permits/Approvals

PSD Permits – K.A.R. 28-19-350:

The department issues prevention of significant deterioration (PSD) permits for new major stationary sources and for significant modifications at existing major stationary sources. The purpose of the PSD program is to implement the Federal Clean Air Act requirements for the prevention of significant deterioration of air quality. These requirements ensure that the permitting of proposed industrial facilities is consistent with the preservation of clean air resources. The PSD program provides special emphasis on implementation of best available control technology (BACT), air quality analysis, protection of scenic areas such as national parks, and informed public participation.

PSD is a preconstruction permitting program that requires a major stationary source to obtain a permit before it can begin construction or make a major modification if the construction or modification will increase emissions by an amount large enough to trigger PSD requirements. Under Part C of Title I of the Clean Air Act, states have the primary responsibility for developing a state implementation plan and issuing permits subject to the emission limits and other control measures developed in the plan, which is approved by the USEPA.

As part of the PSD permitting process, BAR staff reviews the applicant's consideration of BACT - whether all available control systems for the source, including the most stringent, have been considered. BACT is a top-down process; the applicant must consider the most effective control technology first. The most effective alternative is established as the BACT unless the applicant demonstrates it is not achievable due to technical, energy, environmental, or economic issues. Economic impact is based on $ /ton of pollutant reduced. KDHE generally uses $5,000/ton as a cutoff.

BAR staff completes required air quality modeling analysis of the project to ensure the project maintains compliance with the National Ambient Air Quality Standards (NAAQS). Kansas also tracks and controls the emission of air pollutants by calculating the maximum increase in concentration allowed to occur above an established background level, known as a PSD increment.

National Ambient Air Quality Standards

Pollutant	Primary Stds.	Averaging Times	Secondary Stds.
Carbon Monoxide	9 ppm ($10\ mg/m^3$)	8-hour[1]	None
	35 ppm ($40\ mg/m^3$)	1-hour[1]	None
Lead	$1.5\ \mu g/m^3$	Quarterly Average	Same as Primary
Nitrogen Dioxide	0.053 ppm ($100\ \mu g/m^3$)	Annual (Arithmetic Mean)	Same as Primary
Particulate Matter (PM_{10})	Revoked[2]	Annual[2] (Arith. Mean)	Revoked[2]
	$150\ \mu g/m^3$	24-hour[3]	Same as Primary
Particulate Matter ($PM_{2.5}$)	$15.0\ \mu g/m^3$	Annual[4] (Arith. Mean)	Same as Primary
	$35\ \mu g/m^3$	24-hour[5]	Same as Primary
Ozone	0.08 ppm	8-hour[6]	Same as Primary
	0.12 ppm	1-hour[7] (Applies only in limited areas)	Same as Primary
Sulfur Oxides	0.03 ppm	Annual (Arith. Mean)	-------
	0.14 ppm	24-hour[1]	-------
	-------	3-hour[1]	0.5 ppm ($1300\ \mu g/m^3$)

[1] Not to be exceeded more than once per year.

[2] Due to a lack of evidence linking health problems to long-term exposure to coarse particle pollution, the agency revoked the annual PM_{10} standard in 2006 (effective December 17, 2006).

[3] Not to be exceeded more than once per year on average over 3 years.

[4] To attain this standard, the 3-year average of the weighted annual mean $PM_{2.5}$ concentrations from single or multiple community-oriented monitors must not exceed $15.0\ \mu g/m^3$.

[5] To attain this standard, the 3-year average of the 98th percentile of 24-hour concentrations at each population-oriented monitor within an area must not exceed $35\ \mu g/m^3$ (effective December 17, 2006).

[6] To attain this standard, the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over each year must not exceed 0.08 ppm.

[7] (a) The standard is attained when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 ppm is ≤ 1, as determined by appendix H.
(b) As of June 15, 2005 EPA revoked the 1-hour ozone standard in all areas except the fourteen 8-hour ozone nonattainment Early Action Compact (EAC) Areas.

Source: http://epa.gov/air/criteria.html

For the purposes of PSD, a stationary source is major if it:

- emits or has the potential to emit 100 tons per year of any regulated pollutant and is one of 28 source categories, including fossil fuel-fired steam electric plants (>250 Mmbtu/hour

heat input), Portland cement plants, petroleum refineries, chemical process plants, glass fiber plants; or
- emits or has the potential to emit 250 tons per year of any regulated pollutant.

A regulated pollutant for PSD is any pollutant:

- for which a National Ambient Air Quality Standard (NAAQS) has been promulgated;
- subject to any standard under CAA Section 111 (New Source Performance Standards);
- that is a Class I or II substance subject to any standard under CAA, Title VI (Stratospheric Ozone Protection);
- otherwise subject to regulation under the CAA (except hazardous air pollutants, CAA Section 112)

Construction Permits – K.A.R. 28-19-300(a):

The department issues a construction permit for non-PSD stationary sources or emissions units that have the potential-to-emit or, for modifications at existing sources, the increase in the potential-to-emit resulting from the modification, equals or exceeds the following major source thresholds:

- either 25 tons per year of particulate matter or 15 tons per year of PM10, except for any agricultural-related activity, in which case the emission level is 100 tons per year of particulate matter, including but not limited to PM10;
- 40 tons per year of sulfur dioxide or sulfur trioxide or a combination thereof;
- 100 tons per year of carbon monoxide;
- 40 tons per year of volatile organic compounds;
- 40 tons per year of oxides of nitrogen; or
- 0.6 tons per year of lead or lead compound

Or for:

- an affected source (subject to the acid rain rules, CAA Title IV);
- a major source of hazardous air pollutants;
- an incinerator used to dispose of refuse by burning or pyrolysis or used for the processing of salvageable materials, except incinerators installed on residential premises that contain less than six dwelling units and that are used to burn waste materials associated with normal habitation of those dwelling units; or
- as required by the secretary based on air emissions from the emissions unit or stationary source.

Construction Approvals – K.A.R. 28-19-300(b):

The BAR issues a construction approval for stationary sources or emissions units that have the potential-to-emit or, for modifications at existing sources, the increase in the potential-to-emit resulting from the modification, equals or exceeds the following:

- either 5 pounds per hour of particulate matter or 2 pounds per hour of PM10, except for any agricultural-related activity in which case the emission level is 5 pounds per hour of particulate matter, including but not limited to PM10;
- 2 pounds per hour of sulfur dioxide or sulfur trioxide or a combination thereof;
- 50 pounds per 24 hour period of carbon monoxide;
- 50 pounds per 24 hour period of volatile organic compounds, except when the stationary source or emissions unit is located in an area designated as a nonattainment area at 40 CFR 81.317 as in effect on July 1, 1989 in which case approval is required if the emission level exceeds either 15 pounds per 24 hour period or 3 pounds per hour;
- 50 pounds per 24 hour period of oxides of nitrogen calculated as nitrogen dioxide; or
- 0.1 pounds per hour of lead or lead compound;
- as required by the secretary based on air emissions from the emissions unit or stationary source.

Construction approvals are also issued to emissions units or stationary sources not otherwise required to have a construction permit but that are subject to the following:

- an emissions limitation or standard pursuant to K.A.R. 28-19-720, new source performance standards, except the standards of performance for new residential wood heaters, 40 CFR part 60, subpart AAA;
- K.A.R. 28-19-735, national emission standards for hazardous air pollutants, except the national emissions standard for asbestos, standard for demolition and renovation, 40 CFR 61.145; or
- K.A.R. 28-19-750 et seq., hazardous air pollutants; or
- the source is seeking an approval with operational restrictions

Examples of projects for which construction approvals are issued include boilers, painting operations, petroleum storage tanks, natural gas reciprocating engines.

Operating Permits/Approvals

Class I (Title V) Operating Permits – K.A.R. 28-19-500:

The 1990 Clean Air Act Amendments (CAAA) established a comprehensive operating permit program under Title V. KDHE's Class I Operating Permits are for sources of air

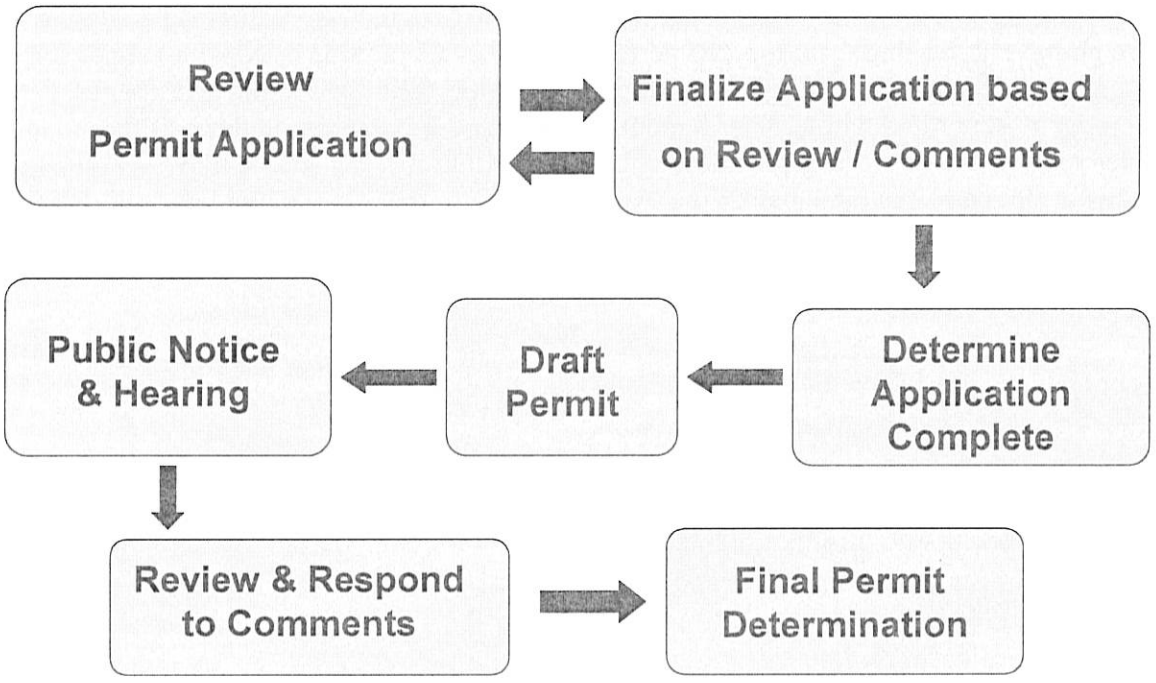
pollution regulated by the Title V of the Federal Clean Air Act. These sources include those that are subject to acid rain rules, and those that emit pollutants in excess of 100 tons/year. The Title V program also features a unique fee system. Sources calculate and pay annual fees based on their air pollution for the previous calendar year.

The Kansas Class I operating permit program satisfies the requirements of the federal Title V program and closely parallels the requirements of 40 CFR Part 70. A Class I operating permit is required for major sources of air pollution and provides a complete listing of all air quality regulatory requirements in one document.

Class II Operating Permits – K.A.R. 28-19-540:

The Kansas Class II operating permit program provides a method to reduce the potential-to-emit of a source below the major source thresholds and thereby allows the source to operate without a Class I operating permit.

Air Permitting Process



Air Permitting Timelines

Legal Requirements:

K.S.A. 3008b(h)(3) requires the Secretary of KDHE to issue or deny air permits within 18 months after receiving a complete application. Once construction permits and approvals have been issued, the permit holder has 18 months in which to commence construction or to seek an extension. 40 CFR 52.21(i)(1)(ii)(c) and K.A.R. 28-19-16 for PSD and 28-19-301(c) for regular construction permits. After initial startup, the permit holder has 12 months in which to apply for an operating permit, if applicable. Class I operating permits are valid for 5 years and a renewal application must be submitted within 6 to 18 months prior to permit expiration date. If the permit holder submits the renewal application within this time frame, the source may continue to operate if the current permit expires before the expiration date in the initial Class I permit. Class II approvals have no expiration date.

Timeliness Considerations:

- Pre-application meetings with KDHE
- Completeness and quality of application
- Timely response to agency's comments during review
- Minimal changes to application
- Applicant-hosted public information meetings
- Concurrent notices for public notice and public hearing
- Environmental Protection Agency enforcement issues
- Staffing of permit program

Permit Streamlining Initiatives:

- Applicant provides electronic copy of permit application and a proposed draft permit
- Public notice for the draft permit and tentative public hearing is published concurrently
- Informational meeting with the proposed facility to discuss project details requirements
- Development of standard expedited permits/approvals for common projects (i.e., emergency generators, small natural gas compressor stations, etc.)

Thank you for the opportunity to appear before the Senate Natural Resources Committee. I will gladly stand for questions the committee may have on this topic.

Viewpoints, Outlook

Feb. 23, 2008, 2:09PM

Energy policy: U.S. needs to show world the way

By MATT SIMMONS

If I were preparing a briefing for the president-elect on urgent energy actions needed in the administration's first 30 days, it would read as follows:

• **Be prepared for peak oil and gas.** While the data is still imperfect, there is a high risk that global use of oil and gas is now at or beyond a sustainable level. While demand for both key fossil fuels still rages ahead, new supplies are struggling to grow fast enough to offset rising production declines from old (and very old) oil and gas basins.
For two decades, the number of exploration discoveries has declined and the size of the average new discovery also shrank. For the sake of the global economy, the United States needs to assume the leading role in guiding the world's key oil consuming nations to a rapid change in the intensity of how we now use oil and gas.

It is impossible to predict any precise timing of when peak supply will be reached, nor the duration this peak output will stay at an "undulating plateau" before then going into what could be a steep decline. Hence, the world's leaders need to assume we have no more than three to five years to make a transition to a post-peak oil and gas world.

A global energy summit needs to be convened by the end of the first month of the new presidency. At this summit, mandates must be instituted for how key stakeholders will begin reducing their use of oil and gas in ways that make a significant impact on this pending crisis.

• **Revamping our electricity grid.** Another U.S. energy crisis looms just over the horizon. America's electricity grid is nearing full capacity in many fast-growing parts of the country. New coal-fired power plant additions have ground to a halt, due to carbon concerns and climate change worries. The time to build new nuclear plants is still measured in a multiple number of years. North America strains to supply our nation's current natural gas-fired power plants. It takes too long to build even liquefied natural gas receiving terminals. In a looming gas-scarce world, we should not use this precious natural gas supply as a feedstock for electricity — it is too inefficient a use of scarce gas. Finding solutions to this pending problem, absent running the country by brownouts and blackouts during peak electricity use, will also take emergency efficiency measures and a fast growth in wind and solar energy.

• **Fighting rust: How we rebuild our energy infrastructure.** Compounding our energy problem is the age and state of our nation's energy infrastructure, which is now too old and far too rusty. We need a widespread rebuilding of our pipelines and gathering systems, our tank farms, refineries, drilling rigs and much of our electricity grid. Tax incentives are needed to spur this construction, which must be tackled by the private sector but with careful oversight by the government.

• **Transforming a graying energy work force into a younger work force**. As an unintended consequence of a two and a half decade energy depression, few young people are entering the energy industry. Today, a high percent of the industry's skilled and unskilled energy work force is too old and will soon retire. A national emergency needs to be declared to begin a classic "Uncle Sam Needs You" job search so that the qualified personnel are in place to get these challenging energy issues addressed. A job training initiative with the same vigor as America's race to build a war machine for World War II needs to be a key initiative in our first 30 days.

• **Leave no 'supply source' stone unturned.** There are no new sources of energy supply that can quickly be brought into use to relieve this pending energy squeeze, but every supply source helps, and no new supply source is too risky or too small. Everything that can safely work and last for more than a two- to four-year time frame needs to be inventoried and developed as soon as possible.

These are the most crucial energy issues that must be addressed by the new administration in its first 30 days in office. Once these efforts are under way, far more comprehensive steps to begin creating a less energy-intensive economy, both here and abroad, can be initiated.

For the past eight administrations and 25 Congresses, America based its entire energy policy on a concept that oil would always be cheap and ever abundant. In such a world, all other energy sources would stay even less expensive than oil. As a result, we wasted three decades to begin addressing these serious issues and spent far too much time and money trying to clean up what was perceived as energy that was too dirty.

Modern energy (oil, natural gas and electricity) was the basis for creating the 20th century. But in the 21st century, we will have to learn how to live without consuming vast amounts of fossil fuels. The time to wake from these illusions is now. How these challenges are tackled will define the success or failure of this presidency.

Simmons heads Simmons & Company International, which has provided investment banking services to the energy industry since 1974.

HOUSE ENERGY AND UTILITIES
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ATTACHMENT 6