

Approved: 2-12-08
Date

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Jay Emler at 9:30 A.M. on February 5, 2008 in Room 526-S of the Capitol.

Committee members absent:

Committee staff present: Raney Gilliland, Kansas Legislative Research Department
Cindy Lash, Kansas Legislative Research Department
Mike Corrigan, Revisor of Statutes
Ann McMorris, Committee Secretary

Conferees appearing before the committee:

Earl Watkins, CEO, Sunflower Electric Power Corp.
Andy Sanchez, Kansas AFL-CIO 224 7298
Brian Moline, ASEP - Alliance for Sound Energy Policy
Bob Vancrum, Tri State Generation & Transmission, Inc.
William Wehrun, Hunton & Williams LLP, Washington, DC
Duane Simpson, Kansas Grain and Feed Assn.
Corey Peterson, Associated General Contractors

Others in attendance: See attached list

Chair continued hearing on **SB 515 - Electric generation, transmission and efficiency and air emissions**

Proponents:

Earl Watkins, Jr., President & CEO, Sunflower Electric Power Corporation, noted its goal is to provide energy to its customers at the lowest possible cost. Recent events make it clear we cannot afford to take reliable and affordable energy for granted. Sunflower continues to focus its efforts on carbon dioxide emissions and have concluded Phase One of a test to determine the best strain of algae to be used in an algae reactor at Holcomb. The algae reactor uses CO² as a food stock for algae that is then 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. 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 in an emergency. Without clear public policy and regulatory certainty, there is no predictability. Without predictability, there is no stability and without stability, there is no progress. **SB 515** restores the public's confidence in government's ability to function properly. (Attachment 1)

Andy Sanchez, Kansas AFL-CIO, concentrated on the opportunities provided by this legislation - namely, jobs and the potential for a skilled workforce. (Attachment 2)

Brian Moline, Chairman, Alliance for Sound Energy Policy, stated the Alliance was established to ensure the economic prosperity of Kansas by promoting a climate of regulatory stability and a balanced energy policy. The Alliance believes that prosperity and environmental stewardship stem from sound energy policy, which require the fair and uniform application of Kansas statutes, regulations and rules. This legislation will place Kansas on a level playing field with its neighboring states. More importantly, this bill will help create new jobs, ensure that existing jobs remain in Kansas, and promote our state's economic prosperity. (Attachment 3)

Bob Vancrum, Tri-State Generation & Transmission Association, Inc., provided legislative history on KSA Section 65-3012. He quoted from a January 28, 1993 memo by John Irwin, Director, Bureau of Air and Radiation, Kansas Department of Health and Environment, which sets out KDHE's response to testimony presented by the Sierra Club.

CONTINUATION SHEET

MINUTES OF THE Senate Utilities Committee at 9:30 A.M. on February 5, 2008 in Room 526-S of the Capitol.

The position of KDHE is that **SB 29** and therefore 65-3012 as amended by **SB 29** was never intended to take the state of Kansas beyond the requirements of federal law. (Attachment 4)

William Wehrun, Hunton & Williams LLP, Washington, DC, said he was present for a very particular purpose, to talk about the provisions of **SB 515** that relate to 65-3012 of Kansas Statutes. Provisions of the bill specify that Section 3012 does not apply, and has never been applicable, to the air quality permitting process. As to his qualifications, he has been an environment professional for close to 25 years and focused on the Clean Air Act. He provided a short history on Section 3012 and stated this law was intended to be directed at extraordinary air pollution episodes. Section 3012 has been amended only once in its history and that was 1993. In looking at the legislative history, it is very clear that the intent of the Kansas Legislature at that time was to expand the scope of Section 3012 to make it consistent with the scope of the comparable federal provisions. Section 3012 should not be construed to apply to proposed new air emissions sources. The Federal Clean Air Act has a second provision that is very important to the analysis and that is the provision the Federal government has an important responsibility to control air pollution; the federal government sets goals, standards, sets structure. The Federal Clean Air Act also gives states primary responsibility for adopting the air pollution control measures necessary to provide healthy air. (Attachment 5)

Duane Simpson, Kansas Grain and Feed Assn., voiced the concern of its members about the KDHE decision to deny the Holcomb air permit. Each of its members believes the Kansas' regulatory agencies should all base their regulations on sound science. He listed concerns of its membership on (1) New Section 11 which applies the new carbon dioxide regulation to new fossil fuel based electric generation facilities, and (2) New Section 12 which had several provisions which it felt needed some change. (Attachment 6)

Corey Peterson, Associated General Contractors, presented an amendment for consideration. The amendment related to new state building efficiency standards on state-owned buildings and public schools. (Attachment 7)

Paul Beck, President, Kansas Legislative Policy Group, presented written testimony in support of **SB 515**. (Attachment 8)

Questions from the committee to various conferees: (Q) What is happening in federal government? (A) There are two primary events underway. Under EPA whether that agency should regulate greenhouse gases, but they have taken no action. At the federal level, there is legislation to take action on this. (Q) What is happening with carbon tax at the federal level? Does that decision impact regulation of mobile sources and not stationary sources? (A) this was specific to most vehicles. There are no regulations for stationary sources. (Q) Explain the financing on this Holcomb project. (A) \$540 million would be the cost of Sunflower's investment in the two plants and Mr. Watkins gave a detailed explanation of Sunflower's money sources. (Q) Life expectancy of the plants (A) 30 to 35 years (Q) Will plans go ahead with the energy center?(A) yes Q. Would the construction of just one plant rather than the two allow for the establishment of a training facility? A. Absolutely.

The committee had requested information which was distributed as follows:

Kansas Chamber of Commerce - 2007 Corporate Survey (Attachment 9)

Kansas Legislative Research - Comparison chart of Kansas Power Plants (Attachment 10)

Adjournment.

Respectfully submitted,

Ann McMorris, Secretary

Attachments - 10


SENATE UTILITIES COMMITTEE GUEST LIST

DATE: FEBRUARY 5, 2008

Name	Representing
Carol McDowell	Tallgrass Ranchers
Val DeFever	Schools for Quality Ed.
J. [unclear]	DEPT Design Section
Joseph Hobbs	Bibbville
Phil WAGES	KEPCO
Scott Heidner	Gaches, Braden, Barbee & Associates
Brian Moline	ALLIANCE FOR SOUND ENERGY Policy
Steve Miller	Sunflower
Tom Thompson	Sierra Club
[unclear]	KAPA - KRMCA
Kari Prestley	Hearney & Assoc.
John D. Linegan	Sunflower
Emily [unclear]	Hein Law
Alan Kearney	Kearney & Assoc.
Bill Wehrum	Hunter & Williams



SUNFLOWER ELECTRIC POWER CORPORATION

A Touchstone Energy® Cooperative 

**TESTIMONY OF
L. EARL WATKINS, Jr., PRESIDENT AND CEO
SUNFLOWER ELECTRIC POWER CORPORATION
ON SENATE BILL 515
BEFORE THE SENATE UTILITIES COMMITTEE
February 5, 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 Senate Bill 515. 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.

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

Our support for this legislation is offered on behalf of Sunflower, its six Member cooperatives, and the 400,000 people they serve.

Our support is on behalf of every hard working Kansan who is concerned about the cost of energy to run his or her home or business, on behalf of every retiree on a fixed income who is concerned about having enough money to live out their remaining years independently and with dignity, and on behalf of every Kansan that is concerned about enjoying for themselves, and for the next generation, a Kansas sunset in the midst of our beautiful, clear, and clean skies.

I believe I can speak in such broad terms. Sunflower, like the other participants in the project, are all not-for-profit cooperatives that are owned and controlled by the customers they serve.

In our Members' service territories nearly 54,000 people live at or below the federal poverty level. Nearly 68,000 are retired.

Most of our Members customers are primarily engaged in farming, ranching and other agriculture-related businesses and live in a rural setting. For those of you that represent rural Kansans, you can appreciate that life is

Senate Utilities Committee
February 5, 2008
Attachment 1-1

good in the rural areas but 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.

However, 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 have the affordable electric power to do so. With the advent of the biofuels industry, rural Kansas has the opportunity to attract new industry and create new jobs for the current and next generation of Kansans. If we can seize that opportunity, we can end the migration of our youth by providing them with high paying jobs in Kansas and by providing the chance to live and raise their families here in Kansas. To seize these opportunities, however, it will take affordable and reliable electric power. Electric power of which we are now running short. The Holcomb expansion project addresses this need and gives us the chance to compete with others for a place in these new and expanding markets.

The Holcomb expansion project is a collaborative effort of four electric cooperatives and 22 Kansas cities. It consists of two 700 megawatt steam turbine plants. 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.

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 and so it is important to them to maintain it for each generation that follows. Plus, they live next door to these plants. 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. The commitment to the environment resulted in Sunflower owning the cleanest coal-fired power plant in the state of Kansas. 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. The experiment led to new burner technology now used to produce cleaner emissions. In 2003, to address growing concerns over mercury emissions, Sunflower again was the proving ground for the injection of carbon activated lime that cuts mercury emissions by 85%. This technology will now allow Sunflower to construct the two new plants and emit no more mercury emissions from the existing and two new plants than were formerly emitted from our current smaller 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 CO₂ 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. The process will capture up to 40% of the CO₂ emitted. This will make the net CO₂ emissions from coal plants equal to the CO₂ emitted from gas-fired generation without subjecting our members to the higher electric rates that result from gas generation. Furthermore, the 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. Because of the modest nature of our members, they have not publicized their accomplishments. They generally have been reluctant to seek praise for doing the right thing. They believe being environmentally responsible is just expected of a responsible cooperative and not worthy of praise. Consequently, it is very offensive to our members for certain opponents to contend Kansas will become the ashtray of the Midwest. We believe Sunflower has been a leader in clean power and this bill positions Kansas as a leader in solving environmental concerns instead of just complaining about it. However, we can't expect those who can't do anything but say "no", to provide any responsible solutions to our energy needs and 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 opponents’ 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.

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. If we listen to the opponents of this bill, then all Kansans, rural and urban alike, will be unnecessarily forced to pay higher power prices. However, this will be more burdensome on rural customers who are already paying more for electricity.

It appears the environmental community is aware of what impact such a policy will have on electric bills and are prepared to embrace the outcome. The Sierra Club advocates that the doubling of rates is a satisfactory way of addressing environmental concerns. Others have said we have lived on a cheap energy policy that discourages conservation. We can only assume their solution is to raise prices to encourage energy conservation. Our customers, especially those that live below the poverty level and are on fixed incomes, already struggle to pay for what they conservatively use today. It is irresponsible for anyone financially well off to expect others who are less fortunate to pay more. It is simply a cynical way to tell them to do without.

Additionally, some have stated 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 can not be meet with efficiency programs, and even if they could, the average age of the state’s generating fleet is nearly 40 years old. In the near future, utilities will be forced to build new generation to replace the old or be subject to very expensive power in the out-of-state market place to meet our energy needs.

If we follow the advice the opponents of this bill, we will sacrifice the quality of life we Kansans have come to expect. Higher electric rates will ripple through the economy. Every commodity you buy 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 Holcomb expansion 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. Because the existing site was originally developed for further plant expansion, certain facilities at Holcomb station were originally over sized 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 operate the plants for the benefit of the other participants for which we will receive an operator's fee, plus Sunflower will be able to operate the larger complex by doubling the number of employees, but reducing its 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 a saving to our customers of 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. In other words, we are using out of state investors to lower our costs and make our members' investment in the next source of baseload generation to serve future generations of Kansans.

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.

This is not, however, just a two coal plant project. It is much more. It is the only current project in the country that will result in the construction of an expansive transmission system for enabling the development of wind projects in Kansas and through out central United States. The transmission lines required to be constructed for the plant expansion will make it possible for the development of up to 1500 MWs of wind to be transmitted to the east and south, and up to 3000 MWs to the west, where more valuable market

exists for wind. With the development of wind, this project will provide for additional revenues for landowners and jobs and opportunities for Kansans.

The Holcomb project will provide out-of-state funding for Sunflower to use in advancing the development of a bio-energy center with Kansas State University and Kansas Bioscience Authority. The bio-energy center will consist of an 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 coal plants by 40%. This is the type of innovation for which Kansans are known.

The Holcomb expansion project will provide for over 280 new jobs in western Kansas, an additional \$98 million dollars in new tax revenue, over \$20 million in property taxes when the plant abatement ends, and additional tax revenues on transmission lines and additional tax revenue from railroad improvements, and the ability to seize the opportunity to revitalize rural Kansas by providing affordable power. As you can see, this is much more than a coal plant project.

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 led 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 this state's long established energy policy without advanced notice, 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.

In our case, Sunflower followed and 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 any Kansan 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. Kansans believe that the regulatory process must be certain, fair and impartial. We also believe 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.

Senate Bill 515 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 Senate Bill 515.



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 SB 515
Senate Utilities Committee
February 5, 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 SB 515. 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. SB 515 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 SB 515.



Senate Utilities Committee
February 5, 2008
Attachment 2-1

TESTIMONY
by
BRIAN J. MOLINE, CHAIRMAN
ALLIANCE FOR SOUND ENERGY POLICY
before the
KANSAS STATE SENATE
COMMITTEE ON UTILITIES
on
TUESDAY, FEBRUARY 5, 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 Senate Bill 515. 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.

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.

Senate Bill 515 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 Senate Bill 515.

- **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 Senate
Utilities Committee
February 5, 2008

Honorable Chairman Emler and Honorable Senators:

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.

Senate Utilities Committee
February 5, 2008
Attachment 4-1

Joan Finney, Governor



Department of Health and Environment

Robert C. Harder, Secretary Reply to:

February 1, 1993

The Honorable Don Sallee
Chairman
Senate Energy and Natural Resources Committee
Room 128 South
State House
Topeka, Kansas 66612

Dear Senator Sallee:

Please find attached a memorandum which sets out KDHE's response to testimony presented by the Sierra Club. We hope you find it useful and would be happy to provide any additional information you might need.

Sincerely,

Charles Jones, Director
Division of Environment

jp
Attachment


senate Energy & Nat'l Resour
February 2, 1993
Attachment 1

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT
DIVISION OF ENVIRONMENT

Bureau of Air and Radiation

M E M O R A N D U M

TO: Charles Jones, Director
Division of Environment

FROM:  John Irwin, Director
Bureau of Air and Radiation

DATE: January 28, 1993

SUBJECT: Response to Kansas Sierra Club Comments on
Senate Bill 29

I have provided below a series of brief clarifying remarks on the major issues raised in the Sierra Club's comments on Senate Bill 29. I do not expect that a formal response is necessary, but it appears appropriate that the Division be prepared to answer questions should they arise. As you are aware, their testimony also raises several philosophical questions pertaining to the Division's enforcement policies, management of incinerator issues and risk assessment procedures. Rather than prepare a lengthy technical document responding to each of these issues, it seems more appropriate that we respond to specific questions, as requested. Suffice it to say, we believe the Kansas air program operates very effectively considering the resources available.

You should also be aware that the Kansas Sierra Club has a member on the Kansas Clean Air Act Implementation Advisory Group who attended two meetings at which Senate Bill 542 was discussed. Most of the issues raised in their testimony could have been easily clarified or resolved in that forum. For some reason, they elected not to raise these questions before the Advisory Group.

Finally, having reviewed these comments and others on Senate Bill 29, we have not identified a substantive need to amend the bill and recommend that the agency continue to support the bill as originally proposed.

Specific Comments on Senate Bill 29

A. Change in Preamble Statement

The old statutory preamble language was removed at the request of the Revisor of Statutes. The statement had no legal significance and such statements are routinely excised as statutes are up-dated.

B. Local Units of Government

The relationship between KDHE and the four local agencies that support the Kansas air program has not been changed in Senate Bill 29. KDHE relies on local government to the extent that their activities augment and are consistent with the state program. While the support of local air agencies has been very helpful, KDHE retains authority to disapprove as a part of the state program any activities that are determined to be inconsistent.

C. Definition of "Air Contaminant"

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The statutory definition of air contaminant has remained unchanged in Kansas for over 20 years. Senate Bill 29 does not change it. As enabling legislation, it is important that the Secretary have available a broad definition of air contaminant. Implementing regulations provide more specific definitions when necessary to effectively implement the air program.

D. Permissive Wording

As "enabling" legislation, Senate Bill 29 is intended to empower the Secretary to implement a complex statewide air program and not to prescribe how the program is to be operated. The Secretary must have available certain authorities to gain federal approval but is required to exercise these authorities only to the extent that they apply to Kansas (or are effective in Kansas) or are required by federal law. To force the Secretary to implement each and every action authorized whether or not it continues to be required under federal law or is determined to be an appropriate part of the Kansas program is unsound public policy.

E. Eliminating Mandatory Public Hearings

New Section 6 does not eliminate mandatory public hearings as suggested in testimony. Old Section 5 (c) reads: "The Secretary shall not issue a permit without holding a public hearing upon the written request of any person affected by such issuance. The request for hearing on the issuance of a permit shall set forth the basis for the request and if in the judgement of the secretary there is sufficient reason a hearing shall be held." (Emphasis added.)

New Section 6 (a) reads: "No permit shall be issued, modified, renewed or reopened without first providing the public an opportunity to comment and request a public hearing on the proposed permit action. The request for a public hearing on the issuance of a permit shall set forth the basis

for the request and a public hearing shall be held if, in the judgement of the secretary, there is sufficient reason."

Under both the old language and the new language, a hearing had to be requested and a hearing had to be held if, in the secretary's judgement, sufficient reason was expressed in the request.

F. Issuing Permits Without Public Comment

Section 5 (d) does not authorize permits to be renewed without public comment as suggested in testimony. Section 5 (d) simply states that if a regulated entity timely submits a complete application for a permit and appropriate fees, the current permit will not expire until KDHE has acted upon the application. This is in conformance with the Kansas administrative procedures act (K.S.A. 77-511(d)) and as required by the federal clean air act (section 503(d)). Public participation is still required before the agency is authorized to renew the permit. (See New Sec. 6(a)).

G. Permit Authority for Facilities That Are Not Sources of Air Emissions.

The air quality statutes are intended to address air quality issues only. Other statutes give the secretary or other appropriate entities necessary authority to address other environmental or social issues.

H. Permissive vs. Mandatory Regulations

The legislation gives the secretary authority to apply less stringent requirements or smaller fees to small businesses. However, in order to do so, KDHE will be required to promulgate regulations specifying any less stringent requirements or reduced fees, to whom they will apply, and how such alternative requirements will be implemented. The regulations will provide the specificity to ensure fair and consistent implementation of the authorities granted the secretary under the legislation.

I. Definition of Small Business

The definition of "small business stationary source" stated in New Sec. 15 comes directly from the federal clean air act (Sec. 507(c)) and is the mandatory minimum definition of businesses which may participate in the small business assistance program.

J. Emissions Fee Cap of 4000 Tons

The 4000 ton emissions fee cap statutory language was taken from Section 502 of the federal Clean Air Act which was intended to specifically authorize states to establish a maximum fee liability level. This provision was inadvertently omitted from Senate Bill 542 and the Clean Air Act Implementation Advisory Group recommended that it be added to Senate Bill 29. KDHE concurs with the recommendation because without this provision, the language in New Section 8 leaves the fee assessment process completely open-ended.

clw:Jones/jci

**Testimony of
William L. Wehrum
Before the Senate Utilities Committee
On Senate Bill 515
February 5, 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 Senate Bill 515 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 1967.¹ 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.”² 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 1970³ and 1974⁴, 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 1993.⁵ This revision was made “to bring Kansas into compliance with the federal Clean Air Act amendments of 1990.”⁶ The

¹ L. 1967, ch. 347, § 12.

² *Id.*

³ L. 1970, ch. 261, § 12.

⁴ L. 1974, ch. 352, § 144.

⁵ L. 1993, ch. 13, § 12.

⁶ *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.⁷ 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

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”).

⁷ *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.⁸ The clear purpose of this new provision was to establish authority to expeditiously address air pollution emergencies cause by existing emissions sources.⁹

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

⁸ Pub. L. 90-148, 81 Stat. 497.

⁹ 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.¹⁰ 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,¹¹ 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.¹²

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.¹³ 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."

¹⁰ 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.").

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

¹² Pub. L. 101-549, title VII, § 704, 104 Stat. 2681.

¹³ 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.¹⁴ 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.

¹⁴ 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 3012.¹⁵ 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.”¹⁶ 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

¹⁵ 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”).

¹⁶ Bremby Letter at 2.

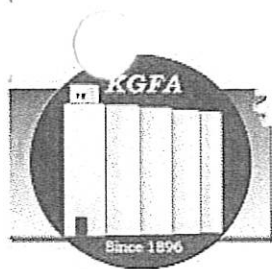
5-7

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.

Kansas Grain & Feed Association
Kansas Agribusiness Retailers Association
Association of Ethanol Processors



Statement in Support of Senate Bill 515
Senate Utilities Committee
Senator Jay Emler, Chairman
February 5, 2008

Thank you Mr. Chairman and members of the Committee; I am Duane Simpson, Chief Operating Officer and Vice President of the Kansas Grain and Feed Association (KGFA), Kansas Agribusiness Retailers Association (KARA) and Kansas Association of Ethanol Processors (KAEP). KGFA is a member of the Alliance for Sound Energy Policy and all three organizations support their goal of ensuring the economic prosperity of Kansas by promoting a climate of regulatory stability and a balanced energy policy. I am appearing here today on behalf of these organizations in support of Senate Bill 515.

The members of our associations are all regulated by the Kansas Department of Health and Environment as well as other state agencies. In addition, several of our members are in the Sunflower service area and would benefit from the increased base load capacity and potentially lower rates the Holcomb Station expansion would provide. As such, our members have been concerned about KDHE's decision to deny the air permit not only because of the precedent setting nature of the decision, but also because of the lost potential for lower electric rates and increased base load capacity.

Each of our associations believes that Kansas' regulatory agencies should all base their regulations on sound science. We believe that a stable regulatory environment is fundamental to a business' ability to grow and compete in a global economy. Any basis for denial of any permit or license should be set out in rules and regulations. We believe that the rules set by government should not change without following the proper statutory and regulatory procedures so that businesses will know that their investments are not unnecessarily at risk. Furthermore, we believe that fair and uniform regulations should apply throughout the state.

Senate Bill 515 is an opportunity for the Legislature to resolve the Holcomb case the way it should have been resolved by KDHE according to existing regulations. In addition, the Legislature will set an important precedent for all state agencies and businesses. The Legislature has the opportunity to reassure businesses and to put state regulators on notice that if regulators overstep their statutory authority, the Legislature will not sit idly by. Sections 30, 31, 32, and 33 of the bill clarify the original intent of existing law and will resolve the crisis that was started when KDHE overstepped its regulatory authority.

However, I would caution this committee to be careful about what other precedents this legislation will set. Our associations have a few specific concerns about Senate Bill 515.

- New Section 11 beginning on page 7 of the bill sets up a new system of regulating carbon dioxide emissions. The bill only applies this new carbon dioxide regulation to *new* fossil fuel based electric generation facilities. In addition to requiring them to meet a standard that existing facilities do not need to meet, it requires these new facilities to meet an even stricter standard 10 years after they go into operation. Meanwhile, every other entity in the state that emits carbon dioxide is completely exempt from any regulation. Furthermore, the standard only increases for facilities after they are built meaning that a facility built 12 years from now will not have to meet the stricter standards that the Holcomb plant will be meeting at that time. This section violates the very concept of uniform regulations across the state. In addition, there does not appear to be any scientific standard for the amount of emissions that are permissible. The cost of meeting these new regulations will be borne by the ratepayers in the area. In the case of Sunflower, many of our members will bear this new and unnecessary cost.
- New Section 12 on page 8 of the bill sets up a system of carbon credits to help these newly regulated facilities meet the regulations. Several methods of sequestering, storing or displacing carbon dioxide are granted credits of various multiples of the actual total carbon dioxide that is offset. By multiplying the value of different carbon offsets based upon the

Senate Utilities Committee

February 5, 2008

Attachment 6-1

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- political popularity of each method the bill divorces itself from any objective scientific basis.
- More importantly, New Section 12 subsection (a)(6) on page 9 of the bill gives “an offset credit equal to three times the actual carbon dioxide tonnage sequestered as a result” of “conversion of cultivated land to pasture land.” Why would the state of Kansas want to encourage Kansas farmers to stop producing grain? We are currently facing historic lows in worldwide stores of wheat, corn and soybeans. The resulting high prices in those commodities have depressed the state’s livestock, meat packing, milling, and biofuel production industries. Federal and state government policy should be focused on reducing the number of incentives that exist for idling productive farm land. At a minimum, legislation designed to overturn an air permit ruling on the expansion of an electric plant should not be attempting to simultaneously set agricultural land use policy. If this provision is in the final product of this committee, our associations will be forced to stand in opposition to the entire bill.
 - Also in New Section 12 subsection (h)(1) on page 11 of the bill, the nation’s first carbon tax is created. While this tax only applies to a small percentage of carbon emitting businesses, and only as a penalty for not meeting the new carbon emission standards, it is still the first such tax in the nation. In addition, the tax will likely be passed on to the ratepayers, many of whom are our members.
 - Several of the other provisions have the potential to increase the costs to the utility. Since our members eventually pay those increased costs through higher electric rates, we are concerned about the necessity of including those provisions in this legislation. However, the utilities are more capable of identifying which of these provisions could result in unnecessary costs being passed on to our members.

I can certainly appreciate the enormous political task that confronts this committee and I applaud the Chairmen and Ranking Members for crafting a comprehensive bill to solve the current crisis. While I have noted several concerns we have with the bill, I want to reiterate that we support the underlying bill and stand ready to work with the committee and all interested parties to make sure that at a bare minimum, Sections 30, 31, 32, and 33 become law. Our state’s energy security and businesses’ ability to have a reliable regulatory environment that is uniform and based on sound science depend on the success of your work. Thank you for the opportunity to testify in support of SB 515 and I will stand for questions at the appropriate time.



Building a Better Kansas Since 1934
200 SW 33rd St. Topeka, KS 66611 785-266-4015

**TESTIMONY OF
ASSOCIATED GENERAL CONTRACTORS OF KANSAS
BEFORE SENATE COMMITTEE ON UTILITIES
SB 515**

February 5, 2008

By Corey D Peterson, Associated General Contractors of Kansas, Inc.

Mister Chairman and members of the committee, my name is Corey D Peterson. I am the Executive Vice President of the Associated General Contractors of Kansas, Inc. The AGC of Kansas is a trade association representing the commercial building construction industry, including general contractors, subcontractors and suppliers throughout Kansas (with the exception of Johnson and Wyandotte counties).

AGC of Kansas supports SB 515 and respectfully requests that the committee consider an amendment relating to new state building efficiency standards on state-owned buildings and public schools.

The economic impact in western Kansas from the construction of a new power plant will be a major stimulus for communities and it cannot be ignored.

- The average number of jobs available in western Kansas will grow by more than 1,500 during the Project construction period.
- According to the Gamble study, these workers will earn more than \$42 million per year and the taxes collected will increase by more than \$1 million. The jobs skills required for these positions will range from basic labor through the highly technical skills common to large construction projects.
- The total spending of construction crews in Kansas is expected to be more than \$56 million during the construction period. Much of that spending will flow to the housing, food and hospitality sectors of the economy.

*Data from <http://www.holcombstation.coop/Benefits/project-benefits.cfm>

AGC has concern with the language from in New Section 6 and New Section 7, establishing new energy efficiency standards for state-owned buildings and public schools. More specifically, New Section 7(b) where it states

“If the average building energy or water consumption savings over the one-year period following the date of beneficial occupancy is 85% or less than the energy efficiency performance standards or water efficiency performance standards established pursuant to this act, parties including, but not limited to, the building architect or designer, state agency or school district and the contractor or the construction manager at risk, shall investigate, determine the cause of the failure to achieve the standards and recommend corrections or modifications to meet such standards.”

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Attachment 7-1

AGC objects to the language that requires the “contractor or construction manager at-risk to investigate and determine the cause of the failure to achieve the standards and recommend corrections or modifications to meet such standards.”

I have attached to my testimony a balloon for SB 515. The AGC of Kansas **respectfully requests that you amend SB 515 and recommend it for passage.** Thank you for your consideration.

1. effect on the effective date of this act; (2) for calculation of the indoor
2. water use baseline for new state buildings and new public school building
3. in accordance with the department of energy federal emergency man-
4. agement program standards using water usage data from new state build-
5. ings and new public school buildings constructed in the state during the
6. 2006, 2007 and 2008 fiscal years; and (3) requiring outdoor potable water
7. or harvested groundwater consumption of state agencies and school dis-
8. tricts shall be reduced by not less than 25% over the amount of water
9. consumed by conventional means, through water use efficient landscape
10. materials and irrigation policies, including, but not limited to, water reuse
11. and recycling.
12. New Sec. 7. (a) New state buildings and new public school buildings
13. shall include installation of building owner's meters for electricity, natural
14. gas, fuel oil and water in accordance with United States department of
15. energy guidelines issued under section 103 of the energy policy act of
16. 2005. The state agency or school district and the building architect or
17. designer shall compare metered data from the first year of building op-
18. eration with the energy efficiency performance standards adopted by the
19. secretary of administration and shall submit a written report concerning
20. each such building to the secretary of administration within two months
21. following the first year of operation.
22. (b) If the average building energy or water consumption savings over
23. the one-year period following the date of beneficial occupancy is 85% or
24. less than the energy efficiency performance standards or water efficiency
25. performance standards established pursuant to this act, ~~parties including,~~
26. ~~but not limited to, the building architect or designer, state agency or~~
27. ~~school district and the contractor or the construction manager at risk,~~
28. ~~shall investigate,~~ determine the cause of the failure to achieve the stan-
29. dards and recommend corrections or modifications to meet such
30. standards.

New Sec. 8. (a) As used in this section:

- (1) "Load serving entity" means: (A) An entity selling electric energy
31. to retail customers pursuant to rates regulated by a state regulatory body;
32. (B) any cooperative, as defined by K.S.A. 17-4603, and amendments
33. thereto, or any other member-owned corporation or limited liability com-
34. pany organized and existing under the laws of this state or another state,
35. whose primary purpose is to furnish retail or wholesale electric energy,
36. either directly or indirectly, to its members or to an entity owned or
37. controlled by its members; or (C) a municipally owned or operated elec-
38. tric utility.

Delete line 25 after "act," through "shall investigate line 28.

Replace with new language as follows:

an independent design agency shall, at the cost of the owner,



KANSAS LEGISLATIVE POLICY GROUP

P.O. Box 555 • Topeka, Kansas 66601 • 785-235-6245 • Fax 785-235-8676

**Testimony of
Paul Beck, President
Kansas Legislative Policy Group
To the Senate Utilities Committee
RE: Senate Bill No. 515**

Chairman Emler and Members of the Committee:

Kansas Legislative Policy Group (KLPNG) is pleased to offer testimony in support of Senate Bill No. 515. KLPNG represents the interests of more than 30 counties located in western Kansas.

At our 2007 Annual Meeting our members voted to support and encourage the development of the Sunflower Electric Power Cooperative expansion of the Holcomb Plant.

The expansion project is about meeting the energy needs of our communities, with reliable and affordable power. It is also about the creation of jobs and the positive financial impact the expansion will have in our communities for years to come.

The discussion and debate your committee will engage in is important. The Holcomb expansion will open new energy markets for Kansas to tap into. It will also put Kansas on the forefront of developing and advancing new energy technologies. Both are vitally important to our economies in Kansas.

We encourage the Committee to favorably consider Senate Bill No. 515.

Thank you for your consideration and the opportunity to present these written remarks.

February 5, 2008

Senate Utilities Committee
February 5, 2008
Attachment 8-1



Ranked #10: Availability of High-Speed Internet Access

By Michelle Comerford, Senior Location Consultant, Austin Consulting (Oct/Nov 07)

As more and more companies adopt Internet-based enterprise systems, AVAILABILITY OF High-speed Internet ACCESS will remain among the top-10 factors in Area Development's Corporate Survey. **More**



Ranked #9: Energy Availability & Costs

By Eric Stavriotis, Jones Lang LaSalle (Oct/Nov 07)

While ENERGY AVAILABILITY AND COSTS is not a critical site selection factor for some, it does have a significant impact on data center decisions. **More**



Ranked #8: Availability of Skilled Labor

By Richard L. Ferguson, CEO and Chairman of the Board, ACT, Inc. (Aug/Sep 07)

The high ranking of the availability of skilled labor factor is confirmed by those firms taking advantage of programs pre-certifying workers' skills. **More**



Ranked #7: Occupancy or Construction Costs

By Les J. Cranmer, Senior Managing Director; and Art M. Wegfahrt, Corporate Managing Director; Studley, Inc. (Aug/Sep 07)

A closer look at the Corporate Survey reveals that the occupancy or construction costs factor is not as critical to the location decision as it first appears. **More**



Ranked #6: Tax Exemptions

By Michael Press, Managing Director, Business Incentives Advisory, Duff & Phelps LLC, New York (Jun/Jul 07)

Area Development's 2006 Corporate Survey respondents are so familiar with the benefits of TAX EXEMPTIONS for both economic development and other purposes that they have ranked this factor high in importance. **More**



Ranked #5: Availability of Telecommunications Services

By Dan Gatti, Innovative Capital Ventures, Inc. (Jun/Jul 07)

The companies that rated AVAILABILITY OF TELECOMMUNICATIONS as very important in Area Development's 2006 Corporate Survey realize that those communities setting ICT trends are more attractive locations than those just reacting to these trends. **More**



Ranked #4: State and Local Incentives

By Michael Huber, Cushman & Wakefield – Location Incentives Group (Apr/May 07)

As in 2005, the results of Area Development's 2006 Corporate Survey demonstrate that state and local incentives are given increasing consideration in the facilities planning process. **More**



Ranked #3: Corporate Tax Rate

By Tom Bertino, Strategic Relocation & Expansion Services Practice, KPMG LLP (Apr/May 07)

Respondents to Area Development's 21st Annual Corporate Survey have named Corporate Tax Rate as the third most important factor in the site selection process behind only labor costs and highway accessibility.

More



Ranked #2: Highway Accessibility

By Rick Thomas, Director Managed Transportation, CEVA Logistics (Feb/Mar 07)

Highway accessibility was ranked as the #2 factor by the respondents to Area Development's 2006 Annual Corporate Survey for a myriad of reasons. **More**



Ranked #1: Labor Costs

By John M. Rhodes, Senior Principal, Moran, Stahl & Boyer, LLC (Feb/Mar 07)

The respondents to the 2006 Corporate Survey conducted by Area Development identified the cost of labor as the number-one factor for making site selection decisions. Here is some insight into the importance of labor costs. **More**

2006 CO₂ lbs/MWh
Kansas 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 ₂ Mass (US Short Tons)	CO ₂ Mass in Lbs. (tons*2000)	CO ₂ 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
Sunflower Holcomb Expansion				1,910.00
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
Initial Performance Limit *				1,520.00
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
10-year limit *				1,330.00
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.

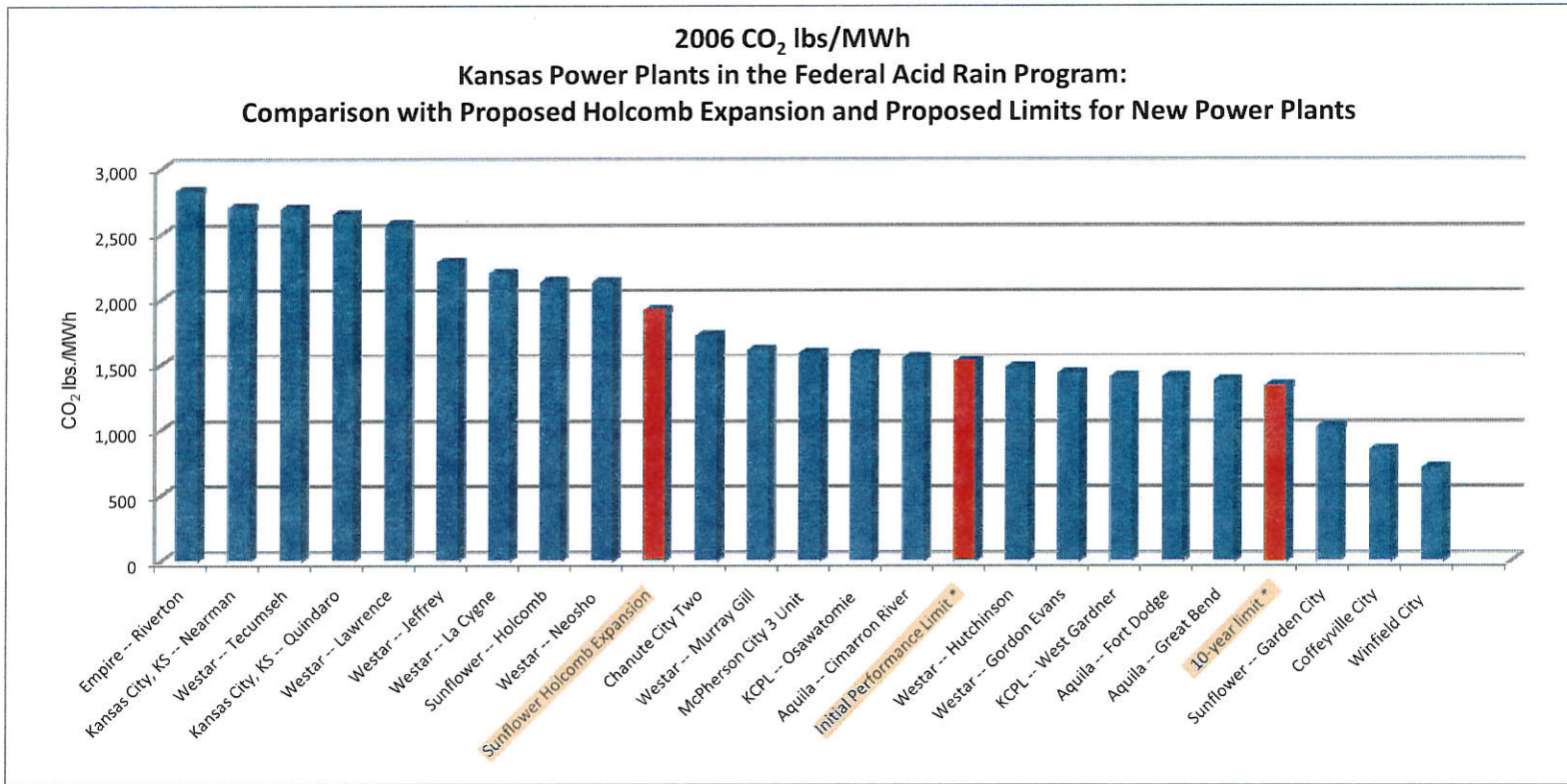
Data Sources:

<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 (data downloaded 01/29/2008).

Senate Utilities Committee
February 5, 2008
Attachment 10-1

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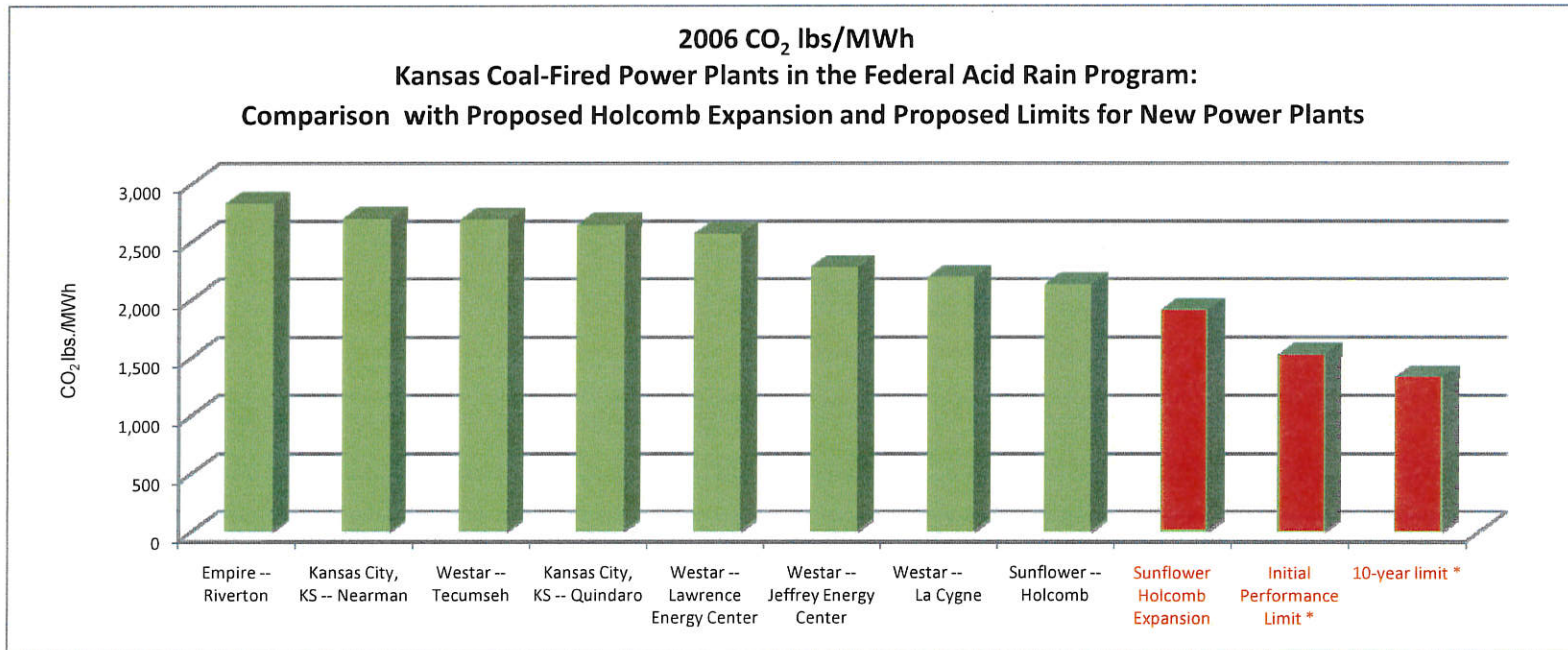


See notes with preceding table.

10-3

2006 CO₂ 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 ₂ Mass (US Short Tons)	CO ₂ Mass in Lbs. (tons*2000)	CO ₂ Lbs/MWh
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