Approved: April 4, 2008
Date

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Jay Emler at 9:30 A.M. on April 2, 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:

Others in attendance: No record made.

Mary Torrence, Revisor of Statutes, explained the language difference from **H. Sub for SB 327** as proposed for **Sen. Sub for HB 2919.** The provisions added are:

1. Establishing maximum nitrogen oxides and sulfur dioxide emissions levels for the proposed Sun flower power plant expansion;

2. Creating requirements for investor-owned and cooperative electric utilities;

3. Develop an energy efficiency and loan management program to provide information, technical assistance and incentives to customers; and

4. Requiring Sunflower Electric Power Corporation to request that the Southwest Power Pool determine whether transmission line upgrades are necessary to deliver electricity that would be purchased from Sunflower by any requesting municipal electric utility or electricity distribution cooperative and the appropriate cost recovery mechanism under Southwest Power Pool tariffs and rules.

Moved by Senator Taddiken, seconded by Senator Lee, conceptually amend the language as reviewed by the Revisor into **Senate Substitute for House Bill 2919.** Motion carried. (Attachment 1)

Moved by Senator Francisco, to delete the language that changes the definition of the electrical cooperatives. Motion failed due to lack of a second.

Moved by Senator Francisco, include language that would require a vote from the individual members of the electrical cooperative to remove the membership from KCC. Motion died for lack of a second.

Chair called a recess to await receipt of the draft of the proposed **Senate Substitute for HB 2919** from the Revisor.

Chair called the meeting back to order and Revisor distributed copies of **Senate Substitute for HB 2919.** (Attachment 2)

Moved by Senator Francisco, seconded by Senator Taddiken, to amend **Senate Substitute for HB 2919** by deleting the word "new" in New Section 1(a) and in New Section 3 (2). Motion carried.

Moved by Senator Taddiken, seconded by Senator Petersen, to pass **Senate Substitute for HB 2919** out favorably as amended. Motion carried. "No" vote recorded for Senator Francisco.

Adjournment.

Respectfully submitted,

Ann McMorris, Secretary
Attachments - 2

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

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April 2, 2008

Re: Sen. Sub. for HB 2919

Summary

The bill differs from H. Sub. for SB 327 by adding provisions:

- Establishing maximum nitrogen oxides and sulfur dioxide emissions levels for the proposed Sunflower power plant expansion;
- Creating requirements for investor-owned and cooperative electric utilities to:
  - develop and submit to the Kansas Corporation Commission (KCC), by July 1, 2009, a retail tariff for electricity generated from wind, if the utility and its member-owned wholesale provider, if any, own or purchase wind-generated electricity;
  - develop an energy efficiency and load management program to provide information, technical assistance and incentives to customers; and
  - develop and implement a program to assist businesses and institutions with inventorying and assessing greenhouse gas emissions and developing means of reducing those emissions; and
- Requiring Sunflower Electric Power Corporation to request that the Southwest Power Pool determine whether transmission line upgrades are necessary to deliver electricity that would be purchased from Sunflower by any requesting municipal electric utility or electricity distribution cooperative and the appropriate cost recovery mechanism under Southwest Power Pool tariffs and rules.

In addition, the bill changes one requirement that was in H. Sub. for SB 327 by limiting the implementation of carbon capture or reduction practices to certain coal-fired electricity generating units. (In H. Sub. for SB 327 the requirement would have applied to certain fossil-fueled electricity generation units.)

Specific differences between H. Sub. for SB 327 and this bill are described below.

Requirements for the Sunflower Expansion

In regard to nitrogen oxides and sulfur dioxide, the bill would establish for the new Sunflower units, annual emission limits of:

- 0.050 lbs nitrogen oxides/mmBtu, and

- 0.065 lbs sulfur dioxide /mmBtu for low-sulfur coal or 0.085 lbs sulfur dioxide/mmBtu for high-sulfur coal.

Under the bill, low-sulfur coal would be defined as having a scrubber inlet emission rate of less than 0.9 lb/mmBtu. High-sulfur coal would be defined as having a scrubber inlet emission rate of 0.9 lb./mmBtu or greater.

The emissions provisions established by the bill would be required to be incorporated into the construction permit issued pursuant to the Kansas Air Quality Act.

Wind Generated Electricity Tariff

The bill would require that by July 1, 2009, certain electric public utilities develop and submit to the KCC for approval, a tariff applicable to the retail purchase of electricity generated from a wind resource. The provision would not apply to municipal utilities. The provision also would not apply to utilities that do not own wind generation capacity and do not purchase wind-generated energy from another entity nor would the provision apply if a utility's member-owned wholesale provider does not own wind generation. For those utilities to which the provision applies, the wind-powered electricity generating resource could be owned by the utility or owned by another generator from whom the utility purchases the electricity at wholesale.

Energy Efficiency and Load Management

Each electric utility, other than a municipal electric utility, would be required to develop energy efficiency and load management programs that provide information, technical assistance and incentives to each type and class of customer in order to control energy use. In addition, each such utility would be required to submit to the KCC, by July 1, 2010, a report of the elements of the program developed in accordance with the requirement.

Greenhouse Gas Emission Reduction

All electric utilities, except municipal electric utilities, would be required to develop, or work with regional or local organizations to develop, and implement a voluntary conservation program to assist businesses and institutions with inventorying and assessing the emission of greenhouse gases from purchased electricity, heat, or steam. The inventory also would include, if feasible, indirect emissions from activities of the business or institution. Under this provision, utilities also would be required to assist businesses and institutions with developing methods and practices with which to reduce greenhouse gas emissions while considering the economic impact of the methods and practices.

Determination of Need for Transmission Upgrades

When a municipal utility or distribution cooperative utility requests the purchase of electricity from Sunflower Electric Power Corporation, Sunflower would be required to apply to the Southwest Power Pool (SPP) for a determination of any transmission line upgrades necessary to deliver the

purchased electricity to the purchasing utility. SPP also would determine the appropriate cost recovery mechanism under its tariffs and rules.

Carbon Dioxide Capture

After establishment of rules and regulations regarding emission of carbon dioxide, owners or operators of certain coal-fired electric generation facilities would be required to implement carbon dioxide capture or reduction practices using the best available control technologies. The issuance of an air permit could not be delayed or deferred pending adoption of rules and regulations regarding carbon dioxide. Facilities subject to the requirement would be coal-fired, steam electricity generating units, of more than 250 million BTUs per hour heat input, operation of which began after January 1, 2008. Facilities owned by the federal government or facilities on tribal lands would not be subject to the requirement.

Proposed SENATE Substitute for HOUSE BILL NO. 2919

By Committee on Utilities

AN ACT concerning energy; relating to conservation and electric generation, transmission and efficiency and air emissions; amending K.S.A. 65-3008b, 65-3012 and 66-104d and K.S.A. 2007 Supp. 65-3005, 65-3008a, 66-1,184 and 74-616 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) Any new pulverized coal electricity generating facility which is constructed in Kansas after the effective date of this act, has 1,400 megawatts or more nameplate capacity and is co-located with an existing coal-fired electric generating unit in western Kansas that has greater than 325 megawatts nameplate capacity shall meet the following emission limits: (1) Nitrogen oxides, an annual rate of 0.050 lbs/mmBtu; and (2) sulfur dioxide, an annual rate of 0.065 lbs/mmBtu for low-sulfur coal (coal having a scrubber inlet emission rate less than 0.9 lbs/mmBtu) or 0.085 lbs/mmBtu for high-sulfur coal (coal having a scrubber inlet emission rate equal to or greater than 0.9 lbs/mmBtu).

(b) The emissions limits in this section shall be set forth in the construction permit pursuant to the Kansas air quality act.

New Sec. 2. (a) As used in this section "public utility" means an electric public utility, as defined in K.S.A. 66-101a, and amendments thereto, but does not include any municipally owned or operated electric utility.

(b) Each public utility selling energy at retail shall, no later than July 1, 2009, develop and submit to the state corporation commission for approval a retail tariff providing for the purchase by the utility's retail customers of energy from a commercial wind generation resource. Such wind generation resource shall be either owned by the public utility or owned by another generator from which the public utility or its member-owned wholesale provider purchases the energy. If a public utility selling energy at retail does not own wind generation and does not purchase wind energy from a commercial wind generator,

and if the utility's member-owned wholesale provider, if any, owns no wind generation, the public utility shall not be required to submit such tariff for approval.

(c) Each public utility shall develop energy efficiency and load management programs which provide information, technical assistance and incentives to each type of customer and customer class to control energy use. No later than July 1, 2010, each public utility shall submit to the state corporation commission a report setting forth the elements of the utility's energy efficiency and load management programs.

(d) Each public utility shall develop, or work with regional or local organizations to develop, and implement a voluntary conservation program to assist businesses and institutions in: (1) Inventorying and assessing the emissions of greenhouse gases from purchased electricity, heat or steam and, where feasible, indirect emissions from activities of the business or institution; and (2) developing methods and practices to reduce such emissions while taking into consideration the economic impact of such methods and practices.

New Sec. 3. (a) As used in this section:

(1) "Electric cooperative utility" means any corporation which sells electric energy at retail and which is organized under the electric cooperative act, K.S.A. 17-4601 et seq., and amendments thereto, or becomes subject to the electric cooperative act in the manner in such act.

(2) "Generation and transmission utility" means any public utility operating a new pulverized coal electricity generating facility which is constructed in Kansas after the effective date of this act, has 1,400 megawatts or more nameplate capacity and is co-located with an existing coal-fired electric generating unit in western Kansas that has greater than 325 megawatts nameplate capacity.

(3) "Municipal utility" means any Kansas municipality which owns or operates an electric utility and sells electric energy at retail.

(4) "Public utility" means an electric public utility as defined in K.S.A. 66- 101a, and amendments thereto.

(b) Upon request by any municipal utility or any electric cooperative utility to purchase electric energy from a generation and transmission utility, the generation and transmission utility shall make application to the southwest power pool to make a determination of the transmission line upgrades necessary to deliver the purchased electricity to such municipal utility or electric cooperative utility and the appropriate cost recovery mechanism under southwest power pool tariffs and rules. Costs of studies or upgrades, if any, shall be the responsibility of the requesting municipal utility or electric cooperative utility.

New Sec. 4. As used in sections 4 through 8, and amendments thereto:

(a) "ASHRAE" means American society of heating, refrigerating and air-conditioning engineers, Inc. standard 90.1-2004.

(b) "Energy star" means the joint program of the United States environmental protection agency and the United States department of energy which labels certain products that meet energy efficiency standards adopted for such products.

(c) "IECC" means the 2006 international energy conservation code.

(d) "New state building" means any building or structure which is constructed by the state or any agency of the state and the construction of which commences on or after July 1, 2009.

New Sec. 5. The secretary of administration shall adopt rules and regulations for state agencies for the purchase of products and equipment, including, but not limited to, appliances, lighting fixtures and bulbs, and computers, which meet energy efficiency guidelines which are not less than the guidelines adopted for such products to qualify as an energy star product if the projected cost savings for the useful life of such products and equipment is equal to or greater than the additional cost compared to functionally equivalent such products and

equipment of lower efficiency.

New Sec. 6. (a) The department of administration shall collect data on energy consumption and costs for all state-owned and leased real property and the secretary of administration shall submit a written report to the legislature on or before the first day of the 2009 regular session of the legislature and on or before the first day of each ensuing regular session of the legislature identifying state-owned or leased real property locations in which an excessive amount of energy is being used in accordance with rules and regulations adopted by the secretary of administration concerning energy efficiency performance standards for state-owned or leased real property.

(b) The secretary of administration shall not approve a new lease or a renewal or extension of an existing lease of non-state owned real property unless the lessor has submitted an energy audit for such real property that is the subject of such lease. The secretary of administration shall adopt rules and regulations establishing energy efficiency performance standards which shall apply to leased space and improvements which the lessor shall be required to address based on such energy audit.

New Sec. 7. (a) Within the limitations of appropriations therefor, the Kansas energy office of the state corporation commission shall develop and increase the participation of school districts and local governments in the facilities conservation improvements program (FCIP) pursuant to K.S.A. 75-37,125, and amendments thereto.

(b) The state corporation commission shall strongly encourage state agencies which operate and maintain state-owned buildings that are not participating in the FCIP to participate in the FCIP pursuant to K.S.A. 75-37,125, and amendments thereto, on or before December 1, 2010.

New Sec. 8. The secretary of administration shall adopt rules and regulations prescribing energy efficiency performance standards requiring that all new construction and, to the extent possible, renovated state-owned buildings, be designed and

constructed to achieve energy consumption levels that are at least 10% below the levels established under the ASHRAE standard or the IECC, as appropriate, if such levels of energy consumption are life-cycle cost-effective for such buildings and also recommending that new and, to the extent possible, renovated school and municipal buildings meet the same requirements.

New Sec. 9. (a) There is hereby established the Kansas electric generation, science and technology commission. The commission shall be made up of the following 15 members:

(1) Chairperson of the house committee on energy and utilities, or the chairperson's appointee, to be appointed from the house committee on energy and utilities, or its successor, for the appointee's legislative term;

(2) vice-chairperson of the house committee on energy and utilities, or the vice-chairperson's appointee, to be appointed from the house committee on energy and utilities, or its successor, for the appointee's legislative term;

(3) ranking minority member of the house committee on energy and utilities, or the ranking minority member's appointee, to be appointed from the house committee on energy and utilities, or its successor, for the appointee's legislative term;

(4) chairperson of the senate committee on utilities, or the chairperson's appointee, to be appointed from the senate committee on utilities, or its successor, for the appointee's legislative term;

(5) vice-chairperson of the senate committee on utilities, or the vice-chairperson's appointee, to be appointed from the senate committee on utilities, or its successor, for the appointee's legislative term;

(6) ranking minority member of the senate committee on utilities, or the ranking minority member's appointee, to be appointed from the senate committee on utilities, or its successor, for the appointee's legislative term;

(7) chief of energy operations of the state corporation commission who shall serve as a nonvoting member of the

commission;

(8) director of the division of environment in the Kansas department of health and environment who shall serve as a nonvoting member of the commission;

(9) one member appointed by the governor;

(10) two members appointed by the speaker of the house of representatives;

(11) one member appointed by the minority leader of the house of representatives;

(12) two members appointed by the president of the senate; and

(13) one member appointed by the minority leader of the senate.

(b) Appointments made in (a)(9) through (a)(13) shall have one of the following qualifications, but no more than two members appointed shall fall into any one qualification category:

(1) Expertise in global greenhouse gas regulation or practices or climatology;

(2) expertise in energy conservation;

(3) expertise in baseload generation and regulation; or

(4) expertise in renewable energy resources.

(c) The chairperson of the house committee on energy and utilities, or its successor, or the chairperson's appointee, shall call the first meeting, at which time the members shall elect the chairperson and vice-chairperson of the commission. The commission shall meet at least four times a year on call of the chairperson. A majority of the members of the commission or their appointees shall constitute a quorum for the exercise of powers conferred upon the commission.

(d) The commission is hereby granted such specific powers as are necessary to carry out the functions enumerated in this section. The commission shall examine issues related to electric service in this state, including, but not limited to:

(1) The actions of federal and regional entities regarding electric generation and transmission;

(2) the obligations of all entities that generate, transmit or distribute electricity;

(3) the economic impact of generation, transmission and distribution of electricity on community economic development and on electric rates for various classes of customers;

(4) the impact of electric generation and transmission on the state's environment and types of remediation that may be required to limit undesirable impacts;

(5) the social impact on Kansas residents of various methods of generation and transmission of electricity;

(6) the impact on state and local tax revenues of the various means of generating and transmitting electricity;

(7) the adequacy of the state's capacity to generate electricity in light of current and future needs of the state, region and nation;

(8) the impact of conservation on the need for expansion of electric generation capacity in the short and long term;

(9) the fuel portfolio balance of the state's electric generation facilities;

(10) the effectiveness of existing incentives for renewable energy investment;

(11) other states' existing incentives for renewable energy investment; and

(12) the reports and recommendations of the electricity committee of the Kansas energy council.

(e) The commission shall submit a preliminary written report of the activities and recommendations of the commission to the house committee on energy and utilities and the senate committee on utilities on or before the first day of the 2009 regular session of the legislature and shall submit subsequent written reports on or before the first day of each subsequent regular session of the legislature. The commission shall submit a final written report of its activities and recommendations on or before the first day of the 2012 regular session of the legislature. The final written report of the commission shall include, but not be

limited to, recommendations for:

(1) New incentives for development of a diversified electricity generation portfolio;

(2) an appropriate energy generation portfolio goal, or series of goals, taking into consideration regional and national markets;

(3) laws, rules and regulations, and policies needed to facilitate diversification of the electricity generation portfolio; and

(4) any additional studies related to the commission's charge that might appropriately be undertaken by the Kansas research universities.

(f) The commission may receive and expend moneys appropriated to the commission from the public service regulation fund created by K.S.A. 66-1a01, and amendments thereto, and moneys received from any other source, whether public or private, to further the purposes of this section.

(g) Commission members shall be paid compensation, subsistence allowances, mileage and other expenses as provided by K.S.A. 75-3223, and amendments thereto, for each day of actual attendance at any meeting of the commission or any subcommittee meeting approved by the commission.

(h) The state corporation commission shall provide assistance to the commission. Each other state agency shall provide assistance to the commission as may be requested by the commission.

(i) The provisions of this section shall expire on December 31, 2011, unless extended by statute.

New Sec. 10. As used in this section:

(a) (1) "Affected facility" means a coal-fired steam electricity generating unit commencing operation after January 1, 2008, of more than 250 million British thermal units per hour of heat input other than:

(A) An affected facility owned or operated by the federal government; or

(B) an affected facility on tribal lands.

(2) "Best available control technology" means an emissions limitation, including a visible emission standard, based on the maximum degree of reduction for each pollutant subject to regulation under this section which would be emitted from any proposed major stationary source or major modification which the secretary, on a case-by-case basis, taking into account energy, environmental and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 C.F.R. parts 60 and 61. If the secretary determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

(b) In the event rules and regulations regulating the emission of carbon dioxide from affected facilities are established in accordance with subsection (b)(1) of K.S.A. 65-3005, and amendments thereto, the owner or operator of an affected facility shall engage in the capture or reduction of carbon dioxide using the best available control technology, or such other means or methodology proven to mitigate the emission of carbon dioxide from the affected facility. If best available control technology is applied, the owner or operator shall not be

required to reapply best available control technology thereafter unless otherwise required because of a major modification to the affected facility. The issuance of any air permit shall not be delayed or deferred pending the establishment of any rules and regulations regulating carbon dioxide.

New Sec. 11. (a) (1) By the year 2012, for each public utility, the nameplate capacity of the renewable electric generation facilities included in the public utility's generation portfolio, whether owned by the public utility or contracted for energy purchase by the public utility, shall be no less than 10% of the public utility's peak load, expressed in megawatts, in the state of Kansas, for a three-year average for the 2008, 2009 and 2010 calendar years.

(2) By the year 2016, for each public utility, the nameplate capacity of the renewable electric generation facilities included in the public utility's generation portfolio, whether owned by the public utility or contracted for energy purchase by the public utility, shall be no less than 15% of the public utility's peak load, expressed in megawatts, in the state of Kansas, for a three-year average for the 2012, 2013 and 2014 calendar years.

(3) By the year 2020, for each public utility, the nameplate capacity of the renewable electric generation facilities included in the public utility's generation portfolio, whether owned by the public utility or contracted for energy purchase by the public utility, shall be no less than 20% of the public utility's peak load, expressed in megawatts, in the state of Kansas, for a three-year average for the 2016, 2017 and 2018 calendar years.

(b) The state corporation commission shall establish rules and regulations to govern reporting requirements and prevention of duplication of the application of the requirements of this section.

(c) As used in this section:

(1) "Public utility" means an electric public utility, as defined in K.S.A. 66-101a, and amendments thereto, but does not include any portion of any municipally owned or operated electric

utility; and

(2) "renewable electric generation facilities" means facilities generating electricity utilizing renewable energy resources or technologies, as defined in K.S.A. 79-201, and amendments thereto, and the capacity of all net metering systems operating under the net metering and easy connection act.

New Sec. 12. Sections 12 through 28, and amendments thereto, shall be known and may be cited as the net metering and easy connection act.

New Sec. 13. As used in the net metering and easy connection act:

(a) "Avoided energy cost" means the current average cost of fuel and purchased energy for the preceding 12 months for the utility, or in the case of a non-generating utility, for such utility's wholesale power supplier, as defined by the governing body with jurisdiction over any municipal electric utility, electric cooperative utility or electric public utility.

(b) "Commission" means the state corporation commission.

(c) "Customer-generator" means the owner or operator of a qualified electric energy generation unit which:

(1) Is powered by solar thermal sources or photovoltaic cells and panels;

(2) has an electrical generating system with a capacity of not more than 100 kilowatts;

(3) is located on a premises owned, operated, leased or otherwise controlled by the customer-generator;

(4) is interconnected and operates in parallel phase and synchronization with a retail electric supplier and has been approved by such retail electric supplier;

(5) is intended primarily to offset part or all of the customer-generator's own electrical energy requirements;

(6) meets all applicable safety, performance, interconnection and reliability standards established by the national electrical code, the national electrical safety code, the institute of electrical and electronics engineers,

underwriters laboratories, the federal energy regulatory commission and any local governing authorities; and

(7) contains a mechanism accessible by electric utility personnel that automatically disables the unit and interrupts the flow of electricity back onto the supplier's electricity lines in the event that service to the customer-generator is interrupted.

(d) "Net metering" means using metering equipment sufficient to measure the difference between the electrical energy supplied to a customer-generator by a retail electric supplier and the electrical energy supplied by the customer-generator to the retail electric supplier over the applicable billing period.

(e) "Retail electric supplier" means any municipal electric utility, electric cooperative utility or electric public utility which provides retail electric service in this state.

New Sec. 14. A retail electric supplier shall:

(a) Make net metering available to customer-generators on a first-come, first-served basis, subject to the following: (1) A supplier shall not be required to make net metering available in a calendar year if total rated generating capacity of all applications for interconnection already approved by the supplier in the calendar year equals or exceeds 1% of the supplier's single-hour peak load for the previous calendar year; and (2) a supplier shall not be required to make net metering available to a customer-generator if the total rated generating capacity of net metering systems equals; (A) 5% of the supplier's Kansas single-hour peak load during the previous year; or (B) such higher percentage as specified by the commission, for a public utility, or the governing body, for any other utility, once the total rated generating capacity of net metering systems has reach 5% of the supplier's single-hour peak load during the previous year;

(b) offer to the customer-generator a tariff or contract that is identical in electrical energy rates, rate structure and monthly charges to the contract or tariff that the customer would be assigned if the customer were not an eligible

customer-generator but shall not charge the customer-generator any additional standby, capacity, interconnection or other fee or charge that would not otherwise be charged if the customer were not an eligible customer-generator; and

(c) disclose annually the availability of the net metering program to each of its customers with the method and manner of disclosure being at the discretion of the supplier.

New Sec. 15. A customer-generator's facility shall be equipped with sufficient metering equipment that can measure the net amount of electrical energy produced or consumed by the customer-generator. If the customer-generator's existing meter equipment does not meet these requirements or if it is necessary for the electric supplier to install additional distribution equipment to accommodate the customer-generator's facility, the customer-generator shall reimburse the retail electric supplier for the costs to purchase and install the necessary additional equipment. At the request of the customer-generator, such costs may be initially paid for by the retail electric supplier and any amount equal to not more than the total costs plus a reasonable interest charge may be recovered from the customer-generator over the course of not more than 12 billing cycles. Any subsequent meter testing, maintenance or meter equipment change necessitated by the customer-generator shall be paid for by the customer-generator.

New Sec. 16. The utility will supply, own and maintain all necessary meters and associated equipment utilized for billing. In addition, and for the purposes of monitoring customer generation and load, the utility may install at its expense, load research metering. The customer shall supply, at no expense to the utility, a suitable location for meters and associated equipment used for billing and for load research.

New Sec. 17. Consistent with the provisions of the net metering and easy connection act, the net electrical energy measurement shall be calculated in the following manner:

(a) For a customer-generator, a retail electric supplier

shall measure the net electrical energy produced or consumed during the billing period in accordance with normal metering practices for customers in the same rate class, by employing a single, bidirectional meter that measures the amount of electrical energy produced and consumed, by employing multiple meters that separately measure the customer-generator's consumption and production of electricity or by employing an alternative technology.

(b) If the electricity supplied by the supplier exceeds the electricity generated by the customer-generator during a billing period, the customer-generator shall be billed for the net electricity supplied by the supplier in accordance with normal practices for customers in the same rate class.

(c) If the electricity generated by the customer-generator exceeds the electricity supplied by the supplier during a billing period, the customer-generator shall be billed for the appropriate customer charges for that billing period in accordance with section 14, and amendments thereto, and shall be credited an amount at least equal to 150% of the avoided energy cost for the excess kilowatt-hours generated during the billing period, with this credit applied to the following billing period.

(d) Any credits granted pursuant to this section shall expire without any compensation at the earlier of either 12 months after their issuance or when the customer-generator disconnects service or terminates the net metering relationship with the supplier.

(e) For any electric cooperative utility or municipal electric utility, upon agreement of the wholesale generator supplying electric energy to the retail electric supplier, at the option of the retail electric supplier, the credit to the customer-generator may be provided by the wholesale generator.

New Sec. 18. (a) Each qualified electric energy generation unit used by a customer-generator shall meet all applicable safety, performance, interconnection and reliability standards established by any local code authorities, the national

electrical code, the national electrical safety code, the institute of electrical and electronics engineers and underwriters laboratories for distributed generation. No supplier shall impose any fee, charge or other requirement not specifically authorized by the net metering and easy connection act or the rules and regulations promulgated under such act unless the fee, charge or other requirement would apply to similarly situated customers who are not customer-generators, except that a retail electric supplier may require that a customer-generator's system contain a switch, circuit breaker, fuse or other easily accessible device or feature located in immediate proximity to the customer-generator's metering equipment that would allow a utility worker the ability to manually and instantly disconnect the unit from the utility's electric distribution system.

(b) For systems of 10 kilowatts or less, a customer-generator whose system meets the standards specified by subsection (a) shall not be required to install additional controls, perform or pay for additional tests or distribution equipment or purchase additional liability insurance beyond what is required under subsection (a) and section 15, and amendments thereto.

(c) For customer-generator systems of greater than 10 kilowatts, the commission for public utilities and the governing body for other utilities, by rule or equivalent formal action by each respective governing body, shall:

(1) Set forth safety, performance and reliability standards and requirements; and

(2) establish the qualifications for exemption from a requirement to install additional controls, perform or pay for additional tests or distribution equipment or purchase additional liability insurance.

New Sec. 19. (a) Applications by a customer-generator for interconnection of the qualified generation unit to the distribution system shall be accompanied by the plan for the

customer-generator's electrical generating system, including, but not limited to, a wiring diagram and specifications for the generating unit, and shall be reviewed and responded to by the retail electric supplier within 30 days after receipt for systems of 10 kilowatts or less and within 90 days after receipt for all other systems. Prior to the interconnection of the qualified generation unit to the supplier's system, the customer-generator will furnish the retail electric supplier a certification from a qualified professional electrician or engineer that the installation meets the requirements of subsection (a) of section 18, and amendments thereto. If the application for interconnection is approved by the retail electric supplier and the customer-generator does not complete the interconnection within one year after receipt of notice of the approval, the approval shall expire and the customer-generator shall be responsible for filing a new application.

(b) Upon the change in ownership of a qualified electric energy generation unit, the new customer-generator shall be responsible for filing a new application under this section.

New Sec. 20. Each retail electric supplier regulated by the commission shall submit an annual net metering report to the commission and each other retail electric supplier shall submit the same report to its respective governing body. For data collection purposes only, non-regulated electric suppliers shall submit the same report to the commission. The report shall include the following information for the previous calendar year: The total number of customer-generator facilities, the total estimated generating capacity of its net-metered customer-generators and the total estimated net kilowatt-hours received from customer-generators. The supplier shall make such report available to any consumer of the supplier upon request.

New Sec. 21. Within nine months after the effective date of the net metering and easy connection act, the commission shall adopt rules and regulations necessary for the administration of such act for electric public utilities, which shall include rules

and regulations ensuring that simple contracts will be used for interconnection and net metering. For systems of 10 kilowatts or less, the application process shall use an all-in-one document that includes a simple interconnection request, simple procedures and a brief set of terms and conditions.

New Sec. 22. Within nine months after the effective date of the net metering and easy connection act, the governing body of an electric cooperative utility or electric municipal utility shall adopt policies establishing a simple contract to be used for interconnection and net metering. For systems of 10 kilowatts or less, the application process shall use an all-in-one document that includes a simple interconnection request, simple procedures and a brief set of terms and conditions.

New Sec. 23. For any cause of action relating to any damages to property or person caused by the generation unit of a customer-generator or the interconnection thereof, the retail electric supplier shall have no liability absent clear and convincing evidence of fault on the part of the supplier.

New Sec. 24. The estimated generating capacity of all net metering systems operating under the provisions of the net metering and easy connection act shall count towards accomplishment by the respective retail electric supplier, or the wholesale generator supplying electric energy to the retail electric supplier, of any renewable energy portfolio target or mandate adopted by the Kansas legislature.

New Sec. 25. Any costs incurred under the net metering and easy connection act by a retail electric supplier shall be recoverable in the utility's rate structure.

New Sec. 26. No consumer shall connect or operate an electric generation unit in parallel phase and synchronization with any retail electric supplier without written approval by such supplier that all of the requirements under subsection (a) of section 19, and amendments thereto, have been met. For a consumer who violates this provision, a supplier may immediately and without notice disconnect the electric facilities of such

consumer and terminate such consumer's electric service.

New Sec. 27. The manufacturer of any electric generation unit used by a customer-generator may be held liable for any damages to property or person caused by a defect in the electric generation unit of a customer-generator.

New Sec. 28. The seller, installer or manufacturer of any electric generation unit who knowingly misrepresents the safety aspects of an electric generation unit may be held liable for any damages to property or person caused by the electric generation unit of a customer-generator.

Sec. 29. K.S.A. 2007 Supp. 66-1,184 is hereby amended to read as follows: 66-1,184. (a) Except as provided in subsection (b), every public utility which provides retail electric services in this state shall enter into a contract for parallel generation service with any person who is a customer of such utility, upon request of such customer, whereby such customer may attach or connect to the utility's delivery and metering system an apparatus or device for the purpose of feeding excess electrical power which is generated by such customer's energy producing system into the utility's system. No such apparatus or device shall either cause damage to the public utility's system or equipment or present an undue hazard to utility personnel. Every such contract shall include, but need not be limited to, provisions relating to fair and equitable compensation on such customer's monthly bill for energy supplied to the utility by such customer.

(b) (1) For purposes of this subsection:

(A) "Utility" means an electric public utility, as defined by K.S.A. 66-101a, and amendments thereto, any cooperative, as defined by K.S.A. 17-4603, and amendments thereto, or a nonstock member-owned electric cooperative corporation incorporated in this state, or a municipally owned or operated electric utility;

(B) "school" means Cloud county community college and Dodge City community college~~.~~; and

(C) "avoided energy cost" means the average cost of fuel and

purchased energy for the preceding 12 months for the utility, or in the case of a non-generating utility, such utility's wholesale power supplier, as defined by the governing body with jurisdiction over any electric cooperative utility or electric public utility.

(2) Every utility which provides retail electric services in this state shall enter into a contract for parallel generation service with any person who is a customer of such utility, if such customer is a residential customer of the utility and owns a renewable generator with a capacity of 25 kilowatts or less, or is a commercial customer of the utility and owns a renewable generator with a capacity of 200 kilowatts or less or is a school and owns a renewable generator with a capacity of 1.5 megawatts or less. Such generator shall be appropriately sized for such customer's anticipated electric load. A commercial customer who uses the operation of a renewable generator in connection with irrigation pumps shall not request more than 10 irrigation pumps connected to renewable generators be attached or connected to the utility's system. At the customer's delivery point on the customer's side of the retail meter such customer may attach or connect to the utility's delivery and metering system an apparatus or device for the purpose of feeding excess electrical power which is generated by such customer's energy producing system into the utility's system. No such apparatus or device shall either cause damage to the utility's system or equipment or present an undue hazard to utility personnel. Every such contract shall include, but need not be limited to, provisions relating to fair and equitable compensation for energy supplied to the utility by such customer. Such compensation shall be not less than 100% of the ~~utility's-monthly-system-average-cost-of-energy per-kilowatt-hour~~ avoided energy cost except that in the case of renewable generators with a capacity of 200 kilowatts or less, such compensation shall be not less than 150% of the ~~utility's monthly--system--average-cost-of-energy-per-kilowatt-hour~~ avoided energy cost. A utility may credit such compensation to the

customer's account or pay such compensation to the customer at least annually or when the total compensation due equals $25 or more.

(3) A customer-generator, as defined by section 13, and amendments thereto, shall have the option of entering into a contract pursuant to this subsection (b) or utilizing the net metering and easy connection act. The customer-generator shall exercise the option in writing, filed with the utility and shall not be entitled to change the option once it is filed.

(c) The following terms and conditions shall apply to contracts entered into under subsection (a) or (b):

(1) The utility will supply, own, and maintain all necessary meters and associated equipment utilized for billing. In addition, and for the purposes of monitoring customer generation and load, the utility may install at its expense, load research metering. The customer shall supply, at no expense to the utility, a suitable location for meters and associated equipment used for billing and for load research;

(2) for the purposes of insuring the safety and quality of utility system power, the utility shall have the right to require the customer, at certain times and as electrical operating conditions warrant, to limit the production of electrical energy from the generating facility to an amount no greater than the load at the customer's facility of which the generating facility is a part;

(3) the customer shall furnish, install, operate, and maintain in good order and repair and without cost to the utility, such relays, locks and seals, breakers, automatic synchronizer, and other control and protective apparatus as shall be designated by the utility as being required as suitable for the operation of the generator in parallel with the utility's system. In any case where the customer and the utility cannot agree to terms and conditions of any such contract, the state corporation commission shall establish the terms and conditions for such contract. In addition, the utility may install, own, and

maintain a disconnecting device located near the electric meter or meters. Interconnection facilities between the customer's and the utility's equipment shall be accessible at all reasonable times to utility personnel. Upon notification by the customer of the customer's intent to construct and install parallel generation, the utility shall provide the customer a written estimate of all costs that will be incurred by the utility and billed to the customer to accommodate the interconnection. The customer may be required to reimburse the utility for any equipment or facilities required as a result of the installation by the customer of generation in parallel with the utility's service. The customer shall notify the utility prior to the initial energizing and start-up testing of the customer-owned generator, and the utility shall have the right to have a representative present at such test;

(4) the utility may require a special agreement for conditions related to technical and safety aspects of parallel generation; and

(5) the utility may limit the number and size of renewable generators to be connected to the utility's system due to the capacity of the distribution line to which such renewable generator would be connected, and in no case shall the utility be obligated to purchase an amount greater than 4% of such utility's peak power requirements.

(d) Service under any contract entered into under subsection (a) or (b) shall be subject to either the utility's rules and regulations on file with the state corporation commission, which shall include a standard interconnection process and requirements for such utility's system, or the current federal energy regulatory commission interconnection procedures and regulations.

(e) In any case where the owner of the renewable generator and the utility cannot agree to terms and conditions of any contract provided for by this section, the state corporation commission shall establish the terms and conditions for such contract.

(f) The governing body of any school desiring to proceed under this section shall, prior to taking any action permitted by this section, make a finding that either: (1) Net energy cost savings will accrue to the school from such renewable generation over a 20-year period; or (2) that such renewable generation is a science project being conducted for educational purposes and that such project may not recoup the expenses of the project through energy cost savings. Any school proceeding under this section may contract or enter into a finance, pledge, loan or lease-purchase agreement with the Kansas development finance authority as a means of financing the cost of such renewable generation.

(g) For the purpose of meeting the ~~governor's-stated-goal-of producing-10%-of-the-state's-electricity-by-wind--power--by--2010 and--20%--by--2020,~~ requirements of section 11, and amendments thereto, the parallel generation of electricity provided for in this section shall be included as part of the state's renewable energy generation ~~by-wind-power~~.

(h) The provisions of the net metering and easy connection act shall not preclude the state corporation commission from approving net metering tariffs upon request of an electric utility for other methods of renewable generation not prescribed in subsection (c)(1) of section 13, and amendments thereto.

Sec. 30. K.S.A. 2007 Supp. 65-3005 is hereby amended to read as follows: 65-3005. (a) The secretary shall have the power to:

~~(a)~~ (1) Adopt, amend and repeal rules and regulations implementing and consistent with this act.

~~(b)~~ (2) Hold hearings relating to any aspect of or matter in the administration of this act concerning air quality control, and in connection therewith, compel the attendance of witnesses and the production of evidence.

~~(c)~~ (3) Issue such orders, permits and approvals as may be necessary to effectuate the purposes of this act and enforce the same by all appropriate administrative and judicial proceedings.

~~(d)~~ (4) Require access to records relating to emissions which cause or contribute to air pollution.

~~(e)~~ (5) Prepare and develop a comprehensive plan or plans for the prevention, abatement and control of air pollution originating in Kansas that affects air quality in Kansas or in other states or both.

~~(f)~~ (6) Adopt rules and regulations governing such public notification and comment procedures as authorized by this act.

~~(g)~~ (7) Encourage voluntary cooperation by persons or affected groups to achieve the purposes of this act.

~~(h)-(1)~~ (8) (A) Encourage local units of government to handle air pollution problems within their respective jurisdictions and on a cooperative basis; ~~(2)~~ (B) provide technical and consultative assistance therefor; and ~~(3)~~ (C) enter into agreements with local units of government to administer all or part of the provisions of the Kansas air quality act in the units' respective jurisdictions.

~~(i)~~ (9) Encourage and conduct studies, investigations and research relating to air contamination and air pollution and their causes, effects, prevention, abatement and control.

~~(j)~~ (10) Encourage air contaminant emission sources to voluntarily implement strategies, including the development and use of innovative technologies, market-based principles and other private initiatives to reduce or prevent pollution.

~~(k)~~ (11) Determine by means of field studies and sampling the degree of air contamination and air pollution in the state and the several parts thereof.

~~(l)~~ (12) Establish ambient air quality standards for the state as a whole or for any part thereof.

~~(m)~~ (13) Collect and disseminate information and conduct educational and training programs relating to air contamination and air pollution.

~~(n)~~ (14) Advise, consult and cooperate with other agencies of the state, local governments, industries, other states, interstate or interlocal agencies, and the federal government, and with interested persons or groups.

~~(o)~~ (15) Accept, receive and administer grants or other

funds or gifts from public and private entities, including the federal government, for the purpose of carrying out any of the functions of this act. Such funds received by the secretary pursuant to this section shall be deposited in the state treasury to the account of the department of health and environment.

~~(p)~~ (16) Enter into contracts and agreements with other state agencies or subdivisions, local governments, other states, interstate agencies, the federal government or its agencies or private entities as is necessary to accomplish the purposes of the Kansas air quality act.

~~(q)~~ (17) Conduct or participate in intrastate or interstate emissions trading programs or other programs that demonstrate equivalent air quality benefits for the prevention, abatement and control of air pollution in Kansas or in other states or both.

~~(r)~~ (18) Prepare and adopt a regional haze plan as may be necessary to prevent, abate and control air pollution originating in Kansas that affects air quality in Kansas or in other states or both. Any regional haze plan prepared by the secretary shall be no more stringent than is required by 42 U.S.C. 7491.

~~(s)~~ (19) Participate in the activities of any visibility transport commission established under 42 U.S.C. 7492. The secretary shall report to the governor and the legislature on the activities of any such visibility transport commission annually.

(b) It is the policy of this state to prevent the deterioration of air quality in accordance with the following:

(1) The secretary shall not in the exercise of powers and duties, except as provided below, promulgate any rule and regulation, or issue any order or take any other action under any provision of the Kansas air quality act or other provision of law, that is more stringent, restrictive or expansive than required by the federal clean air act (42 U.S.C. 7401 et seq.) or any rule and regulation adopted by the United States environmental protection agency under the federal clean air act, as amended. If the secretary determines that a more stringent, restrictive or expansive rule and regulation is necessary, the

secretary may implement the rule and regulation only after approval by an act of the legislature. Nothing herein shall preclude the secretary and applicant or permittee from concurring with a more stringent, restrictive or expansive condition in a permit to construct or operate a stationary source.

(2) The restrictions of the secretary's powers herein shall not apply to: (A) Actions by the secretary to prevent designation of an area as a nonattainment area by the United States environmental protection agency; or (B) an implementation plan developed by the secretary to bring a nonattainment area into compliance or to maintain compliance as that plan is implemented within the nonattainment area.

(3) For any application for a permit required by federal or state law, the secretary shall not deny or delay the issuance of such permit when the requirements of this act have been met.

(c) In as much as K.S.A. 65-3012, and amendments thereto, does not now apply, nor has it ever been applicable, to the air quality permitting process, the secretary may not use the emergency powers granted by K.S.A. 65-3012, and amendments thereto, in the air quality permitting process, nor any powers or discretion under any other statute not strictly applicable to the air quality permitting process.

(d) Any action by the secretary on any application filed after January 1, 2006, and before the effective date of this act, which seeks the issuance, modification, amendment, revision or renewal of any approval or permit, and which is still the subject of any administrative or judicial review proceedings, shall be reconsidered by the secretary upon the applicant's or permittee's timely written request, which shall be filed no later than 60 days after the effective date of this act. Within 15 days after the applicant or permittee files a written request pursuant hereto, the secretary shall reconsider the secretary's decision, agency action or order and shall determine in accordance with the provisions of this act, as amended, whether the issuance, modification, amendment, revision or renewal of any approval or

permit requested by the permittee or applicant should be issued, modified, amended, revised or renewed. If the applicant or permittee is aggrieved by the secretary's determination hereunder, the applicant or permittee shall be immediately entitled to judicial review of such agency action by filing a petition for judicial review in the court of appeals within 30 days from the date of the secretary's determination. If the secretary fails to act within the 15 days, the applicant or permittee immediately shall be entitled to seek a writ of mandamus compelling the secretary to act by filing for such writ in the court of appeals. Such proceedings shall be conducted in accordance with K.S.A. 77-601 et seq., and amendments thereto, however the applicant or permittee shall not be required to exhaust any other or additional administrative remedies available within the agency notwithstanding any other provision of law.

Sec. 31. K.S.A. 2007 Supp. 65-3008a is hereby amended to read as follows: 65-3008a. (a) 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 judgment of the secretary, there is sufficient reason.

(b) The secretary shall affirm, modify or reverse the decision on such permit after the public comment period or public hearing, and shall affirm the issuance of any permit the terms and conditions of which comply with all requirements established by rules and regulations promulgated pursuant to the Kansas air quality act. Any person who participated in the public comment process or the public hearing who otherwise would have standing under K.S.A. 77-611, and amendments thereto, shall have standing to obtain judicial review of the secretary's final action on the permit pursuant to the act for judicial review and civil enforcement of agency actions in the court of appeals. Any such person other than the applicant for or holder of the permit shall

not be required to have exhausted administrative remedies in order to be entitled to review. The court of appeals shall have original jurisdiction to review any such final agency action. The record before the court of appeals shall be confined to the agency record for judicial review and consist of the documentation submitted to or developed by the secretary in making the final permit decision, including the permit application and any addenda or amendments thereto, the permit summary, the draft permit, all written comments properly submitted to the secretary, all testimony presented at any public hearing held on the permit application, all responses by the applicant or permit holder to any written comments or testimony, the secretary's response to the public comments and testimony and the final permit.

(c) When determined appropriate by the secretary, the procedures set out in subsection (a) may be required prior to the issuance, modification, renewal or reopening of an approval.

Sec. 32. K.S.A. 65-3008b is hereby amended to read as follows: 65-3008b. (a) The secretary may suspend or revoke an approval or a permit if the permittee has violated any provision of the approval or the permit, any provision of this act or any rule and regulation adopted under this act and applicable to the permitted source.

(b) As applicable to the source for which the approval or permit is sought, the secretary may deny an approval or permit, or a renewal thereof, if the applicant fails to: (1) Submit a complete application; or (2) submit an application fee.

(c) The secretary may deny a permit for any proposed new stationary source if the owner or operator of such a source fails to demonstrate to the satisfaction of the secretary that any other stationary source owned or operated by such person, or by any entity controlling, controlled by or under common control with such person, in this state is in compliance, or meeting a schedule for compliance, with all applicable emission limitations and standards under this act and the federal clean air act, and

amendments thereto.

(d) The secretary may modify or reopen an approval or a permit for cause. The secretary shall reopen a permit whenever requirements under this act become applicable to a permitted source and three or more years remain on the original term of the permit. Any permit revision incorporating a requirement adopted by the secretary shall be effective as soon as practicable, but not later than 18 months after the promulgation of the requirement by the United States environmental protection agency.

(e) Within 15 days after the issuance of a notice of intent to take any action authorized by subsection (a), (b), (c) or (d), or within 15 days after the secretary's written decision to affirm, modify or reverse a permit decision pursuant to subsection (b) of K.S.A. 65-3008a, the permittee may file a request for a hearing with the secretary. Each such notice of intent shall specify the provision of this act or rule and regulation allegedly violated, the facts constituting the alleged violation and the secretary's intended action. Each notice of intent or written decision to affirm, modify or reverse a permit decision shall state the permittee's right to request a hearing. Such hearing shall be conducted in accordance with the Kansas administrative procedure act.

(f) The filing of a request by the permittee for an approval or permit modification, revocation or amendment, or the filing by the permittee of a notification of planned changes or anticipated noncompliance, does not stay any approval or permit condition.

(g) ~~No-permit-shall-be-issued,-modified,-amended,-revised-or renewed-unless-the-United-States-environmental-protection--agency has--certified-that-such-permit-complies-with-the-requirements-of the-federal-clean-air-act,-except-that-a-permit-may-be-issued--if the---United--States--environmental--protection--agency--has--not notified--the--secretary--of--the--United--States---environmental protection--agency's-decision-within-45-days-after-receipt-of-the proposed-permit-by-such-agency.~~ For any operating permit issued in accordance with title V of the federal clean air act, a copy

<u>of a permit proposed to be issued and a copy of the application (and any application for a permit modification or renewal) or such portion thereof, including any compliance plan, shall be transmitted to the administrator of the United States environmental protection agency. Should the administrator of the United States environmental protection agency determine the proposed permit is not in compliance with the requirements of the federal clean air act, including the requirement of an applicable implementation plan, and within 45 days after receipt objects in writing to the issuance of the permit as not in compliance with such requirements, then in such event the secretary shall respond in writing to the administrator. If the administrator of the United States environmental protection agency does not object in writing within 45 days after receipt of the proposed permit, the secretary shall issue, amend, revise or renew the permit consistent with the provisions of this act.</u>

(h) The secretary shall issue or deny the permit (including requests for modification or to reopen the permit):

(1) Within three years of the date the United States environmental protection agency approves the state permitting program pursuant to the provisions of the federal clean air act, as amended in November 1990, for permit applications submitted within the first full year after such date;

(2) pursuant to the time schedule provided by title IV (acid rain) of the 1990 amendments to the federal clean air act, for air contaminant emission sources subject to that title; or

(3) within 18 months after receiving a complete application, in all other cases.

(i) Failure of the secretary to issue or deny the permit, or grant or deny a request to modify or reopen the permit, within the period stated in subsection (h) shall not result in the default issuance of a permit, permit amendment, permit modification or permit renewal nor shall such failure result in any other entity assuming jurisdiction to act on the permit or the request.

Sec. 33. K.S.A. 65-3012 is hereby amended to read as follows: 65-3012. (a) Notwithstanding any other provision of this act, the secretary may take such action against any existing source as may be necessary to protect the health of persons or the environment: (1) Upon receipt of information that the emission of air pollution presents ~~a~~ an imminent and substantial endangerment to the health of persons or to the environment; or (2) for an imminent or actual violation of this act, any rules and regulations adopted under this act, any orders issued under this act or any permit conditions required by this act.

(b) The action the secretary may take under subsection (a) includes but is not limited to:

(1) Issuing an order directing the owner or operator, or both, to take such steps as necessary to prevent the act or eliminate the practice. Such order may include, with respect to a facility or site, temporary cessation of operation.

(2) Commencing an action to enjoin acts or practices specified in subsection (a) or requesting the attorney general or appropriate county or district attorney to commence an action to enjoin those acts or practices. Upon a showing by the secretary that a person has engaged in those acts or practices, a permanent or temporary injunction, restraining order or other order may be granted by any court of competent jurisdiction. An action for injunction under this subsection shall have precedence over other cases in respect to order of trial.

(3) Applying to the district court in the county in which an order of the secretary under subsection (b)(1) will take effect, in whole or in part, for an order of that court directing compliance with the order of the secretary. Failure to obey the court order shall be punishable as contempt of the court issuing the order. The application under this subsection for a court order shall have precedence over other cases in respect to order of trial.

(c) In any civil action brought pursuant to this section in which a temporary restraining order or preliminary injunction is

sought, it shall not be necessary to allege or prove at any stage of the proceeding that irreparable damage will occur should the temporary restraining order or preliminary injunction not be issued or that the remedy at law is inadequate, and the temporary restraining order or preliminary injunction shall issue without such allegations and without such proof.

(d) Any order of the secretary pursuant to subsection (b)(1) is subject to hearing and review in accordance with the Kansas administrative procedure act.

Sec. 34. K.S.A. 66-104d is hereby amended to read as follows: 66-104d. (a) As used in this section, "cooperative" means any ~~cooperative,--as--defined--by--K.S.A.--17-4603,---and amendments--thereto,--which--has--fewer-than-15,000-customers-and which-provides-power-principally-at-retail~~ <u>corporation organized under the electric cooperative act, K.S.A. 17-4601 et seq., and amendments thereto, or which becomes subject to the electric cooperative act in the manner therein provided; or any limited liability company or corporation providing electric service at wholesale in the state of Kansas that is owned by four or more electric cooperatives that provide retail service in the state of Kansas; or any customer-owned corporation formed prior to 2004</u>.

(b) Except as otherwise provided in subsection (f), a cooperative may elect to be exempt from the jurisdiction, regulation, supervision and control of the state corporation commission by complying with the provisions of subsection (c).

(c) To be exempt under subsection (b), a cooperative shall poll its members as follows:

(1) An election under this subsection may be called by the board of trustees or shall be called not less than 180 days after receipt of a valid petition signed by not less than 10% of the members of the cooperative.

(2) The proposition for deregulation shall be presented to a meeting of the members, the notice of which shall set forth the proposition for deregulation and the time and place of the meeting. Notice to the members shall be written and delivered not

less than 21 nor more than 45 days before the date of the meeting.

(3) If the cooperative mails information to its members regarding the proposition for deregulation other than notice of the election and the ballot, the cooperative shall also include in such mailing any information in opposition to the proposition that is submitted by petition signed by not less than 1% of the cooperative's members. All expenses incidental to mailing the additional information, including any additional postage required to mail such additional information, must be paid by the signatories to the petition.

(4) If the proposition for deregulation is approved by the affirmative vote of not less than a majority of the members voting on the proposition, the cooperative shall notify the state corporation commission in writing of the results within 10 days after the date of the election.

(5) Voting on the proposition for deregulation shall be by mail ballot.

(d) A cooperative exempt under this section may elect to terminate its exemption in the same manner as prescribed in subsection (c).

(e) An election under subsection (c) or (d) may be held not more often than once every two years.

(f) Nothing in this section shall be construed to affect the single certified service territory of a cooperative or the authority of the state corporation commission, as otherwise provided by law, over a cooperative with regard to service territory~~,~~; charges, fees or tariffs for transmission services~~,~~; sales of power for resale, other than sales between a cooperative, as defined in subsection (a), that does not provide retail electric service and an owner of such cooperative; and wire stringing and transmission line siting, pursuant to K.S.A. 66-131, 66-183, 66-1,170 et seq. or 66-1,177 et seq., and amendments thereto.

(g) (1) Notwithstanding a cooperative's election to be

exempt under this section, the commission shall investigate all rates, joint rates, tolls, charges and exactions, classifications and schedules of rates of such cooperative if there is filed with the commission, not more than one year after a change in such cooperative's rates, joint rates, tolls, charges and exactions, classifications or schedules of rates, a petition, in the case of a retail distribution cooperative, signed by not less than 5% of all the cooperative's customers or 3% of the cooperative's customers from any one rate class, or, in the case of a generation and transmission cooperative, not less than 20% of its members or 5% of the aggregate retail customers of its members. If, after investigation, the commission finds that such rates, joint rates, tolls, charges or exactions, classifications or schedules of rates are unjust, unreasonable, unjustly discriminatory or unduly preferential, the commission shall have the power to fix and order substituted therefor such rates, joint rates, tolls, charges and exactions, classifications or schedules of rates as are just and reasonable.

(2) The cooperative's rates, joint rates, tolls, charges and exactions, classifications or schedules of rates complained of shall remain in effect subject to change or refund pending the state corporation commission's investigation and final order.

(3) Any customer of a cooperative wishing to petition the commission pursuant to subsection (g)(1) may request from the cooperative the names, addresses and rate classifications of all the cooperative's customers or of the cooperative's customers from any one or more rate classes. The cooperative, within 21 days after receipt of the request, shall furnish to the customer the requested names, addresses and rate classifications and may require the customer to pay the reasonable costs thereof.

(h) (1) If a cooperative is exempt under this section, not less than 10 days' notice of the time and place of any meeting of the board of trustees at which rate changes are to be discussed and voted on shall be given to all members of the cooperative and such meeting shall be open to all members.

(2) Violations of subsection (h)(1) shall be subject to civil penalties and enforcement in the same manner as provided by K.S.A. 75-4320 and 75-4320a, and amendments thereto, for violations of K.S.A. 75-4317 et seq. and amendments thereto.

(i) (1) Any cooperative exempt under this section shall maintain a schedule of rates and charges at the cooperative headquarters and shall make copies of such schedule of rates and charges available to the general public during regular business hours.

(2) Any cooperative which fails, neglects or refuses to maintain such copies of schedule of rates and charges under this subsection shall be subject to a civil penalty of not more than $500.

New Sec. 35. (a) For taxable years 2008 and 2009, there shall be allowed tax credits against the income tax liability imposed upon a taxpayer pursuant to the Kansas income tax act, in an amount equal to the following:

(1) For nonowner occupied multiple family dwellings, $100 per dwelling unit located immediately below the attic space where sufficient ceiling insulation is installed to achieve an insulation value of R-52; and

(2) for nonowner occupied multiple family dwellings, $300 times the number of dwelling units served by the system for a newly installed heating and air conditioning system which replaces an existing system, has a separate temperature control for each dwelling unit and meets one or more of the following criteria:

(A) Furnace or boiler must meet or exceed 92% AFUE;

(B) split systems must meet or exceed SEER 14, EER of 11.5;

(C) single package systems must meet or exceed SEER 14;

(D) air source heat pumps must meet or exceed HSPF 8, SEER 14 and EER of 11.5; and

(E) ground-source heat pumps must meet or exceed:

(i) Closed-loop systems--14.1 cooling EER and 3.3 heating coefficient of performance (COP);

(ii) open-loop systems--16.2 EER and 3.6 COP;

(iii) direct-expansion systems--15 EER and 3.5 COP; and

(iv) all ground-source heat pumps must include a desuperheater, which preheats water for a water heater, or an integrated water heating system.

(b) If the amount of tax credits allowed pursuant to this section exceeds the taxpayer's income tax liability for the year in which the expenditures were incurred, the amount thereof which exceeds such tax liability may be carried over for deduction from the taxpayer's income tax liability in the next succeeding taxable year or years until the total amount of the tax credits have been deducted from tax liability, except that no such tax credits shall be carried over for deduction after the fifth taxable year succeeding the taxable year in which the expenditures are made.

(c) The taxpayer claiming a credit pursuant to this section shall provide evidence of purchase and installation of the item or items for which the credit is claimed as required by rules and regulations of the secretary of revenue.

(d) The secretary of revenue shall adopt rules and regulations to implement the provisions of this section.

(e) The secretary of revenue shall submit a report to the legislature regarding utilization of credits claimed pursuant to this section, for purposes of evaluation of the program. Such report shall be due on or before the first day of the 2010 legislative session.

New Sec. 36. (a) In addition to the income tax credit allowed pursuant to section 35, and amendments thereto, for taxable years 2008 and 2009, a taxpayer shall be entitled to a deduction from Kansas adjusted gross income with respect to: (1) The amortization of the amortizable costs of a new heating and air conditioning system based upon a period of five years; plus (2) the costs of installation of such new system spread over five years. For the first taxable year in which such new system is in use, such deduction shall be an amount equal to 60% of the

amortizable costs of such new system plus 60% of the costs of installation of such new system. For each of the next four taxable years, such deduction shall be an amount equal to 10% of the amortizable costs of such new system plus 10% of the costs of installation of such new system.

(b) The election of the taxpayer to claim the deduction allowed by subsection (a) shall be made by filing a statement of such election with the secretary of revenue in the manner and form and within the time prescribed by rules and regulations adopted by the secretary.

(c) The secretary of revenue shall adopt rules and regulations as deemed necessary to carry out the provisions of this section.

New Sec. 37. (a) As used in this section:

(1) "Affected unit" means any emissions unit which: (A) Commenced operation on or after January 1, 2008; (B) generates electricity in this state; (C) combusts coal in an amount greater than 10% of its total heat input on a rolling 12-month basis; and (D) is a new unit.

(2) "Inlet conditions" means the concentration of mercury in the flue gas exiting the combustion source prior to application of any air pollution control device as determined using the coal analysis procedures established in the United States environmental protection agency's mercury information collection request, as amended.

(3) "Mercury" means mercury and mercury compounds in either a gaseous or particulate form.

(b) The secretary of health and environment shall adopt rules and regulations requiring affected units to achieve 80% or greater reduction of mercury from the calculated inlet condition of the affected unit.

(c) This section shall be part of and supplemental to the Kansas air quality act.

Sec. 38. K.S.A. 2007 Supp. 74-616 is hereby amended to read as follows: 74-616. In addition to other powers and duties

provided by law, in administering the provisions of this act the state corporation commission shall:

(a) Adopt rules and regulations necessary for the administration of this act;

(b) develop a comprehensive state energy conservation plan and the procedures for implementing the plan according to federal requirements;

(c) allow, for commission approved energy efficiency, conservation and demand management programs, at the option of the requesting utility, the capitalization and addition to rate base of investments in and expenditures for such approved programs;

(d) make requests for and accept funds and other assistance from federal agencies for energy conservation and other energy-related activities in this state, including, but not limited to, the state energy program;

~~(d)~~ (e) administer federal energy conservation programs in this state; and

~~(e)~~ (f) prepare an emergency management plan for natural gas and electric energy to be adopted during activation of emergency support function 12 of the Kansas response plan established under K.S.A. 48-920 et seq., and amendments thereto, which plan shall include the system of priorities for natural gas and electric energy allocation and curtailment of energy resources consumption established under K.S.A. 74-620, and amendments thereto.

New Sec. 39. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity shall not affect any other provision or application of the act which can be given effect without the invalid provision or application. To this end the provisions of this act are severable.

Sec. 40. K.S.A. 65-3008b, 65-3012 and 66-104d and K.S.A. 2007 Supp. 65-3005, 65-3008a, 66-1,184 and 74-616 are hereby repealed.

Sec. 41. This act shall take effect and be in force from and after its publication in the Kansas register.