

MINUTES OF THE HOUSE ENERGY AND UTILITIES COMMITTEE

The meeting was called to order by Chairman Carl Holmes at 9:00 a.m. on February 4, 2009, in Room 783 of the Docking State Office Building.

All members were present.

Committee staff present:

Sean Ostrow, Office of the Revisor of Statutes  
Mary Galligan, Kansas Legislative Research Department  
Cindy Lash, Kansas Legislative Research Department  
Renaë Hansen, Committee Assistant

Conferees appearing before the committee:

Mark Calcara, Sunflower  
Amy Blankenbiller, Chamber of Commerce  
Allie Devine, Kansas Livestock Association  
Leslie Kaufman, Kansas Cooperative Council  
Tom Thompson, Sierra Club  
Nancy Jackson, Climate Energy Project  
Tom Gross & Rick Brunetti, Kansas Department of Health and Environment

Others attending:

Forty-four including the attached list.

Hearing on:

**HB 2182 - Requiring the Kansas air quality act to be consistent and uniform with the federal clean air act.**

Cindy Lash, Kansas Legislative Research Department, gave an explanation to the committee on **HB 2182**.

Questions were asked and comments made by Representative Tom Sloan.

Proponents:

Mark Calcara, Sunflower (Attachment 1), offered testimony in support of **HB 2182** and noted that this language is similar to legislation that is in effect in some of the surrounding states to Kansas. He commented that this bill is fundamental to maintaining the letter of the law. He believes if we vary and look the other way on this issue, then it is only a matter of time before other letters of the law are silently violated and little by little our freedoms are taken away.

Amy Blankenbiller, Chamber of Commerce (Attachment 2), presented testimony in support of **HB 2182**. She noted that the important part of **HB 2182** is to make certainty and confidence the perception of businesses and doing business in the state of Kansas. Ms. Blankenbiller made reference to Representative Carlson's testimony, and the loss of a refinery bid because of the perception of regulatory uncertainty in the state of Kansas.

Allie Devine, Kansas Livestock Association (Attachment 3), presented testimony in support of **HB 2182**. She presented flow charts explaining what has happened in the Sunflower case, and what the current law is designed to do.

Written Proponents:

Richard Carlson, Representative, (Attachment 4), offered written testimony in support of **HB 2182**.

CONTINUATION SHEET

Minutes of the House Energy And Utilities Committee at 9:00 a.m. on February 4, 2009, in Room 783 of the Docking State Office Building.

Leslie Kaufman, Kansas Cooperative Council (Attachment 5), offered written testimony in support of **HB 2182**.

Opponents:

Tom Thompson, Sierra Club (Attachment 6), offered testimony in opposition to **HB 2182**. He commented that the Sierra Club believes this bill is designed to get coal fired plants built.

Written Opponents:

Nancy Jackson, Climate Energy Project (Attachment 7), offered written testimony in opposition to **HB 2182**.

Neutral:

Tom Gross & Rick Brunetti, Kansas Department of Health and Environment (Attachment 8), offered testimony in response to **HB 2182**.

Questions were asked and comments made by Representatives: Dan Johnson, Milack Talia, Tom Sloan, Josh Svaty, Margaret Long, and Annie Kuether.

The hearing will be continued on **HB 2182** on Thursday February 5, 2009.

Various handouts were given to committee members relating to previous issues and current events as follows:

- Kansas Electric Cooperatives (Attachments 9 & 10).
- Westar (Attachment 11 & 12).
- Hutchinson News Article (Attachment 13).
- Article on ruling on emissions of mercury (Attachment 14).

The next meeting is scheduled for February 5, 2009.

The meeting was adjourned at 9:55 a.m.

# HOUSE ENERGY AND UTILITIES COMMITTEE GUEST LIST

DATE: February 4, 2009


NAME	REPRESENTING
Dave Holtzhaus	KEC
Joe Dick	KEBPY
Amy Blankenbiller	KS Chamber
Jeff Givens	IC
Pam Spray	Curb
Corey Mohr	Commerce
Eldred Wenger	Public -- no one
Paul Salera	Sunflower Elec.
Patricia Wagos	KCP&O
Larry Berg	MIDWEST ENERGY
Mark Schreiber	Westar
Ron Carter	Williams
Selby Bush	Williams
BRAD HARRELSON	KFB
Allie Stewart	Ke. Limestone Assoc
Stephanie Cole	Sierra Club
John Donley	KS Cust Ass'n
Ron Seiber	KARA / KGFPA / KASFP
Scott Jones	KCP







# SUNFLOWER ELECTRIC POWER CORPORATION

A Touchstone Energy® Cooperative 

February 4, 2009

## Before the House Energy and Utilities Committee

### House Bill 2182 – Requiring the Kansas air quality act be consistent and uniform with the federal clean air act

**Conferee: Mark Calcara, Vice President & General Counsel**

**POSITION: Sunflower Electric Power Corporation supports this legislation.**

- It establishes a state policy that the regulation of air quality is in accordance with the federal Clean Air Act to ensure that public health and the environment are protected.
  - 26 other states, including Missouri, Oklahoma, and Colorado, have adopted legislation similar to HB 2182.
  - Global emission issues should be regulated at the federal level to ensure states do not create a patchwork of regulations that aren't consistent with one another.
- The bill reaffirms the state's adherence to the rule of law by directing KDHE to follow lawfully adopted rules and regulations and issue, renew or modify permits in accordance with well established and published rules and regulations.
- It reaffirms that K.S.A. 65-3012, is limited to emergencies and is not part of the permitting process while providing the Secretary with reasonable and adequate remedies to address imminent and substantial threats to the public health or the environment.
- The amendment to K.S.A. 65-3005 provides for the reconsideration of any permit still pending before KDHE or the courts which was denied on a basis inconsistent with the policy of this state as set forth in this bill.
  - While it would not assure the issuance of any reconsidered permit, it does ensure that every applicant will be treated fairly and uniformly with all other applicants if the permit application meets all regulatory requirements.
- Business and industry needs the Legislature to establish the state's policy as to the regulation of emissions not currently regulated at the federal level, because the State's current policy is unclear. Should the legislature elect to regulate in accordance with the federal regulatory scheme, then passage of this bill is necessary. If not passed, then further legislation is necessary to set forth the basis upon which such emissions will be regulated. The public needs an answer to this basic and fundamental question.
- We support the regulation of air quality in accordance with the federal Clean Air Act and ask you to support this legislation.

FILED BY CLERK  
K.S. DISTRICT COURT  
THIRD JUDICIAL DIST.  
TOPP, KS.

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS  
DIVISION 12

2007 AUG 3 AM 10 30

Sarah and Raymond Dean  
Petitioners,

vs.

Case No. 07 C 706

07C402

Kansas Department of Health and  
Environment  
Respondent.

THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT'S  
REPLY BRIEF TO PETITIONER'S ACTION FOR MANDAMUS

COMES NOW, the Kansas Department of Health and Environment (KDHE), by and through its legal counsel, Yvonne C. Anderson, and files its reply to the response brief filed by petitioners in their action for mandamus.

The petitioners are urging the court to grant mandamus to require the State of Kansas to quickly develop a program to regulate green house gases, specifically carbon dioxide. The State of Kansas has recently entered into a climate registry agreement with sister states to collect information related to existing carbon dioxide emissions in the region but the research is in its preliminary stages. There exists no dispute that the issue of carbon dioxide regulation is an issue of national and international debate.

It is not an abuse of discretion or a failure of the state to exercise its discretion, for the state, in absence of federal requirements for adoption of uniform state carbon dioxide regulations, developed after national scientific and public comment and debate, to refrain from adoption of a carbon dioxide state regulatory program at this time. The petitioners continue to ignore the complex state-federal statutory scheme and the state benefits derived from that scheme, which include the extensive scientific and political input into national regulatory criteria

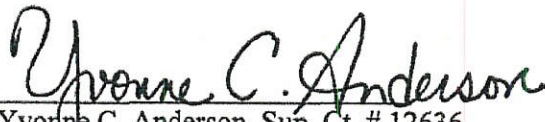


and the financial incentives to states to adopt the federally promulgated regulations. National regulation insures a level playing field for state industry. It is undisputed that the state has adopted timely regulations for other criteria air pollutants as required by the federal government. This action is yet another try to obtain a moratorium on coal fired plants, which moratorium failed at the national and state legislative level.

An enabling statute allowing for adoption of regulations related to air quality pollution should not be construed so as to require immediate adoption of regulations in response to an action for mandamus where the state regulatory agency has a reasonable basis to wait until the federal government has adopted national criteria and a program of implementation.

The action for mandamus filed by petitioners should be dismissed

Respectfully submitted,



Yvonne C. Anderson, Sup. Ct. # 12636  
General Counsel  
Kansas Department of Health and Environment  
Curtis State Office Building, Suite 560  
1000 S.W. Jackson  
Topeka, Kansas 66612  
(785) 296-5334  
FAX (785) 291-3607

## Legislative Testimony Summary

HB 2182

February 4, 2009

Testimony before House Utilities Committee

**Amy J. Blankenbiller, President and CEO  
The Kansas Chamber**

**Position:** The coalition supports HB 2182 and its positive impact on the regulatory environment. HB 2182 clarifies the air permitting process and ensures that all Kansas businesses will be treated fairly by the state government. The coalition also believes this legislation will prevent subjective and unprecedented decisions that jeopardize investment and innovation in the state and our workers.

**Coalition:** Kansas Chamber, Kansas Farm Bureau, Kansas Livestock Association, Kansas Bankers Association, Midwest Energy, Sunflower Electric Power Corporation, Ark Valley Electric Cooperative, Lenexa Chamber of Commerce, Kansas Grain and Feed Association, Kansas Agri-Business Retailers Association, Kansas Association of Ethanol Processors, Kansas Contractor's Association, Grant County Chamber of Commerce

**Section 1** – We support the efforts to amend the county home rule authority to assure that air issues are uniformly regulated across Kansas.

**Section 2** - Today, more than ever before, we are in a regional, national and even global competition to attract and retain businesses that create jobs and support the state tax base. Kansas businesses should not be unfairly burdened with more stringent rules and regulations than what the federal government demands.

Those seeking to do business in Kansas must have assurances that if they meet state and federal requirements, and they address any other stipulations outlined during the application development process, the permit should be granted. There should be no unforeseen outcomes.

Common sense would also dictate that it is only fair to allow those who have recently sought an air permit, and have been unduly denied, to receive a review of their permit.

**Section 3** - If an entity complies with requirements established by rules and regulations relating to the Kansas air quality act, a permit shall be granted. If businesses follow the law and meet the qualifications outlined by the state, it is only fair to believe the state has the obligation to allow the business the right to function.

**Section 4** - Kansans have the right to assume that emergency powers will only be utilized when in fact an emergency has occurred. HB 2182 clarifies that such an emergency is an "imminent and substantial threat to public health or welfare or to the environment."





# Legislative Testimony

HB 2182

February 4, 2009



Testimony before House Utilities Committee

**Amy J. Blankenbiller, President and CEO  
The Kansas Chamber**

Thank you Mr. Chairman and members of the committee for the opportunity to voice the business community's support for HB 2182. My name is Amy Blankenbiller, President and CEO of the Kansas Chamber, and I am here representing a broad based business coalition.

The coalition supports HB 2182 and its positive impact on the regulatory environment. HB 2182 clarifies the air permitting process and ensures that all Kansas businesses will be treated fairly by the state government. The coalition also believes this legislation will prevent subjective and unprecedented decisions that jeopardize investment and innovation in the state and our workers.

In the Kansas Chamber's most recent CEO Poll, an annual survey of Kansas business leaders from small, medium and large companies, energy costs became the 2<sup>nd</sup> most important issue facing businesses in Kansas today. Two years ago that number was 2%. Taxation is the only issue that narrowly eclipses energy in importance.

42% of respondents in the same poll indicated that reducing fuel and energy costs was one of their two most important issues to the profitability of their business.

We support the efforts in **Section 1 of the bill to amend the county home rule authority to assure that air issues are uniformly regulated across Kansas.**

While there are certainly a number of issues that should be debated and decided at the local level, regulatory certainty as it pertains to air quality is not one of them. Issues of this magnitude should only be addressed at the state and federal level.

**Section 2 is a statement of public policy that Kansas will be uniform and consistent with the federal government, a reassurance to permit seekers that application will be approved if all known requirements are met and a fair realization that permit seekers in the recent past should be afforded the same treatment.**



Today, more than ever before, we are in a regional, national and even global competition to attract and retain businesses that create jobs and support the state tax base. Kansas businesses should not be unfairly burdened with more stringent rules and regulations than what the federal government demands.

When developing a complex major new source review permit application, the permitting process is a series of dialogs between the applicant and KDHE staff. Applicants will meet and/or discuss the permit application development process with state agency personnel periodically throughout the process to not only ensure that regulatory requirements are met, but also to address any KDHE concerns, such as CO2 or other non-regulated pollutants, are met within the application packet. Those seeking to do business in Kansas must have assurances that if they meet state and federal requirements, and they address any other stipulations outlined during the application development process, the permit should be granted. There should be no unforeseen outcomes.

Common sense would also dictate that it is only fair to allow those who have recently sought an air permit, and have been unduly denied, to receive a review of their permit.

**Section 3 re-establishes the rule of law as it relates to the issuance of air permits.**

If an entity complies with requirements established by rules and regulations relating to the Kansas air quality act, a permit shall be granted. If businesses follow the law and meet the qualifications outlined by the state, it is only fair to believe the state has the obligation to allow the business the right to function.

**Section 4 clarifies the emergency powers provision that we strongly believe was misused by Secretary Bremby.**

As the *Wall Street Journal* Editorial Board wrote on April 4, 2008, "It was the first time ever that such reasoning formed the sole basis for blocking a power project; and, in the absence of any state laws relating to carbon control, it amounted to a public policy putsch."

It is important to note the project was not blocked because it was a power plant. The administration cited concerns over specific emissions that were not previously regulated as the reason. Other projects at different types of industry sectors could have very well been denied even though no regulations or statutory restrictions were breached.

When asked in the Kansas Chamber's CEO Poll if the Secretary of the Kansas Department of Health and Environment should have the authority to deny a permit, even if it meets all current requirements, nearly 70% of business leaders indicated their opposition to the secretary with 49% strongly opposed.

The Merriam–Webster Dictionary defines an emergency with words such as unforeseen and urgent. Unfortunately the Secretary of KDHE attempted to redefine emergency as a response to a political whim not based on fact or pragmatism.

Kansans have the right to assume that emergency powers will only be utilized when in fact an emergency has occurred. HB 2182 clarifies that such an emergency is an “imminent and substantial threat to public health or welfare or to the environment.”

In summary, Kansans need your support of this critical piece of legislation. While other states are fighting to make their business environments more stable and friendly to sustain and create jobs, Kansas has been placed under a cloud of uncertainty. HB 2182 is your opportunity to create a better Kansas.

*“The losers here are ordinary Kansans, who won't benefit from a reliable source of low-cost power and will pay higher electricity rates. The state is running up against the limits of its ability to provide electricity for its growing population and economy.” – The Wall Street Journal, April 4, 2008*

Thank you again for allowing me the opportunity to voice the Kansas Chamber's support as well as the other members of the business coalition to HB 2182 and the clarification it brings.

February 4, 2009

House Committee on Energy and Utilities:

Good morning Mr. Chairman and members of the Committee. My name is Allie Devine, appearing today on behalf of the Business Coalition outlined by Ms. Blankenbiller.

The Coalition strongly supports the adoption of Section 1 which amends KSA 19-101a (27), page 3 line 30 of HB 2182, by adding "65-3001 through 65-3028", the provisions of the Kansas air quality act. This provision clarifies that the state, not local units of government, regulate air quality. This assures that Kansas will have a comprehensive program across county borders and no variation among counties. A statewide program provides stability as the rules are presumably known and easily accessible to the regulated community; administered by professionals with expertise in the area; avoids regulatory "advantages" or "disadvantages"; and avoids duplication for industries operating in multiple jurisdictions.

The coalition strongly supports the adoption of section 4 which amends KSA 65-3012 to clarify its meaning for the regulation of EMERGENCY situations. Kansas law should parallel the Clean Air Act (42 USC 7306) which contains two key concepts critical to an open and fair regulatory process: (1) use of the term "imminent and substantial endangerment" and (2) provisions for an evidentiary hearing wherein the interests of the government are weighed against the interests of the individual. These provisions are either absent or unclear in the current Kansas law.

Today, KSA 65-3012 allows the Secretary to take action "***notwithstanding any other provision of law,***" and "***upon receipt of information that the emission of air pollution presents a substantial endangerment to health of persons or to the environment***". "***Notwithstanding any other provision of law***" may be interpreted to allow the Secretary to act against ***ANY*** person or facility regardless of whether the facility is regulated or not. This provision appears to allow the Secretary to "set aside" the balancing contained within the regulatory permit process between public health and environmental protections and use of resources to benefit society, in favor of another review that focuses upon "***receipt of information***" that an emission of air pollution presents a "***substantial endangerment***". These terms are overly broad and undefined. The rules of evidence are not required. Once the secretary "receives information" and finds "substantial endangerment" he/she is authorized to act by issuing an order or seeking an injunction. This process undermines the integrity of the Kansas permitting process for everyone because no one knows who or what is regulated until "a Secretary" has acted.

By inserting "imminent" before "substantial endangerment" the legislature would clarify the application of this section to emergency situations. Emergency situations that pose an "imminent and substantial endangerment" would include those threats that will occur "now". Non-emergency situations would still be regulated by the current agency review and permitting process.

The coalition also recommends that emergency situations be litigated by the district court according to the process used for temporary restraining orders or permanent or temporary injunctions. This assures that the rules of evidence and the balancing of interests is done in an open forum where the rules of evidence apply to protect all parties.

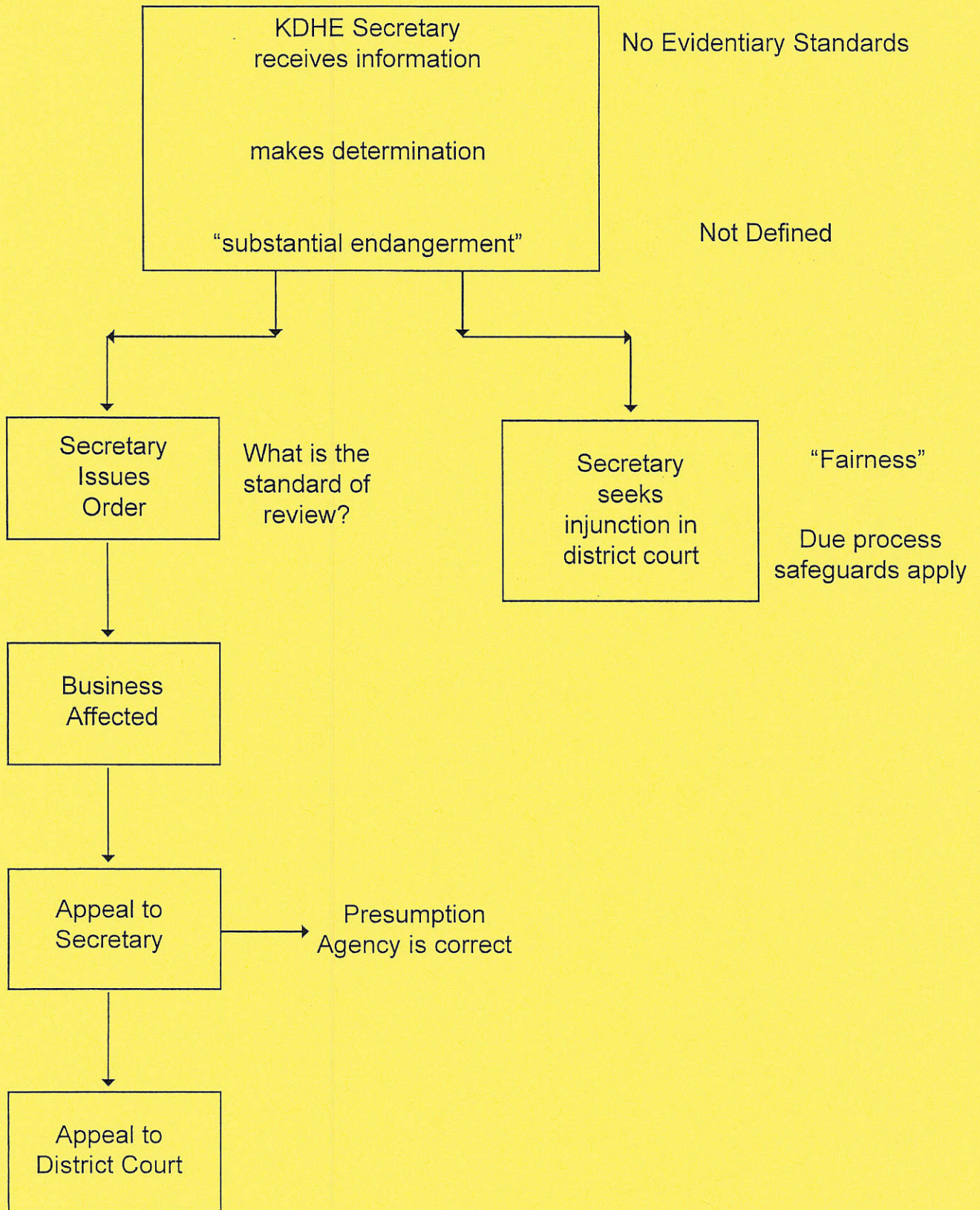
HOUSE ENERGY AND UTILITIES

DATE: 2/4/2009

ATTACHMENT 3-1



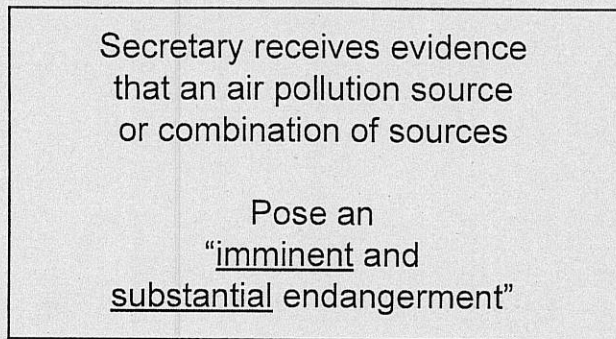
# K.S.A. 65-3012 Current





# HR 2182 amendments to K.S.A. 65-3012

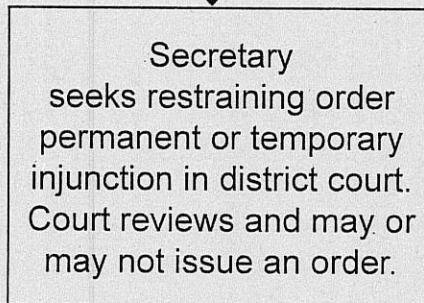
## Emergency Process



"Imminent"  
Immediate  
Threat

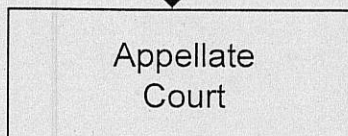
### Restraining order

1. Can be issued without evidentiary hearing.
2. Must file a verified pleading or affidavit setting forth the elements necessary for injunctive relief.
3. Restrain for "very brief period."\*



### Temporary Injunction

1. Must have an evidentiary hearing.
2. Proof of:
  - a. Reasonable probability of irreparable future harm;
  - b. Substantial likelihood that Secretary will prevail on merits;
  - c. Remedy at law is inadequate;
  - d. Threatened injury outweighs any harm the enjoined party would experience;
  - e. That the requested relief would not be adverse to the public interest.\*



\* See 7 Kan. Law & Prac., Kan. Trial Handbook § 41:3 (2<sup>nd</sup> ed.)



# Kansas Air Permitting Process

## Hazardous Air Pollutants

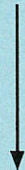
- Is my source a major source?
- Is there an existing standard for any HAP emission from my source?
- If yes to either question, then determine what the appropriate control technology(s) would be for my source.

## Am I Regulated?

- Does my proposed source have the "potential to emit" criteria pollutants exceeding 100 tons annually? [For certain sources this is 250 tons/year.]
- Will my proposed source emit more than 10 tons per year of any hazardous air pollutant or more than 25 tons per year of all of the 189 hazardous air pollutants?

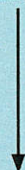
## Criteria Pollutants

- Sulfur dioxide (SO<sub>2</sub>)
- Nitrogen oxides (NO<sub>x</sub>)
- Carbon monoxide (CO)
- Lead (Pb)
- Volatile Organic Compounds (VOCs)
- Particulate matter (PM)
- Do fugitive emissions count?



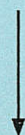
### Application Process: First 6 Steps

- Define your source
- Hire an engineer or professional consultant to guide you
- Prepare basic information about the source for the agency
- Pre-application meeting – explain your source
- Identify the information the agency will need to evaluate the impact of your source – estimating emissions, preconstruction monitoring, ambient air impact modeling, PSD modeling, etc.
- Document the meeting and requirements determined



### Application Process: Second 6 Steps

- Establish monitoring methods
- Establish modeling methods
- Prepare the application
- Submit the application
- Respond to Agency Data Requests
- Establish the permit conditions (negotiate)



(Continued on page 2)



**Application Process:  
Third 6 Steps**

- Submit your version of a draft permit for agency consideration
- Negotiate the permit
- Approve a draft permit
- KDHE releases the draft permit for public comment
- Public comment period (and hearing)
- Agency compiles all comments for response



**Application Process:  
Fourth 6 Steps**

- Prepare your response to the public comments
- Negotiate any changes to the draft permit
- Agency issues final responsiveness summary
- Agency issues final permit
- Permit administrative appeal and final decision
- Court appeal(s) and final decision
- Commence "continuous" construction



**Application Process:  
Fifth 6 Steps**

- Agency inspections during construction
- Complete construction
- Notification of first operation of source
- Initial source testing
- Agency inspection
- Timely apply for operating permit





TOPEKA

HOUSE OF  
REPRESENTATIVES

February 3, 2009

Written Testimony for **HB2182**

Conferee: Representative Richard Carlson, 61<sup>st</sup> District, Pottawatomie and Wabaunsee Counties.

Chairman Holmes and Members of the House Energy and Utilities Committee:

Thank you for the opportunity to present testimony before your committee today. I would very much prefer to present this testimony personally, however, my Taxation Committee meets at the same time.

The reality of unintended consequences from a lack of regulatory certainty in Kansas hit home with me and my district in January 2008. For about eight months prior to January 2008, I and others worked with Hyperion, Inc. of Dallas to recognize Kansas as one of the two sites being considered for the first new oil refinery to be built in the United States in nearly 36 years. We worked with Hyperion on a confidential basis, as they are not a utility, and they do not have condemnation rights to purchase land and therefore, must purchase the site on the open market. Prices are known to skyrocket once word gets out that land is being considered for purchase. For about six months, I worked with certain landowners in my district, and was finally able to put together 5,000 acres of land with willing sellers that Hyperion could option and buy later.

During the summer and fall of 2007 Hyperion communicated with the KDHE working to obtain an air quality permit for the refinery. The refinery, although it would be the cleanest, state of the art refinery, would still emit more greenhouse gases than the proposed Holcomb power plant.

To make a long story short, in late January or early February, I received a telephone call from the Hyperion project manager stating that due to the regulatory uncertainty in Kansas (the Holcomb plant denial was a few months earlier), Hyperion was no longer considering Kansas as a potential site. The day Hyperion called me was the last day they had to exercise the options on the land. Rather than spending hundreds of thousands, or perhaps millions of dollars for land options they were withdrawing Kansas from consideration.

The losses to Kansas and Kansas jobs are staggering. Permanent jobs were estimated at a minimum of 2,500 and temporary jobs during the four to five years of construction were 4,000 to 6,000. The cost of the project was estimated at eight billion for the refinery, another two billion for building the power plant, for a total of ten billion dollars.

Regulatory UNCERTAINTY means jobs will CERTAINLY be lost for Kansas workers. On September 11, 2008, South Dakota issued the "air quality permit" to Hyperion, Inc.

While my testimony is short, I trust we will all realize our regulatory climate has consequences.

Thank you.

Sincerely,

Richard Carlson

HOUSE ENERGY AND UTILITIES

DATE: 2/4/2009

ATTACHMENT 4

# House Energy & Utilities Committee

February 4, 2009  
Topeka, Kansas

## HB 2182 - Consistency with Federal Clean Air Act.

Chairman Holmes and members of the House Energy & Utilities Committee, thank you for the opportunity to comment in support of HB 2182. I am Leslie Kaufman and I serve the Kansas Cooperative Council as Executive Director.

The Kansas Cooperative Council represents all forms of cooperative businesses across the state -- agricultural, utility (electric and telephone), credit, financial and consumer cooperatives.

As we understand it, HB 2182 seeks to ensure that regulatory action taken by the state is consistent with the federal clean air act and founded on adopted regulations and statutes. The KCC is a strong proponent of governing by the rule of law. Regulated entities need to know what is expected and what the "playing field" looks like. They also need to have confidence in their regulatory environment - confidence that when they meet (or exceed) the adopted standards that they will be allowed to carry on their lawful business activities.

The certainty that our members have in the regulatory process has been dealt a blow during the past year-and-a-half. We believe that HB 2182 is a good step toward restoring our system of governing by adopted statute and regulation, where public input has been considered, impacts on the regulated community are examined, and sound scientific principles/data are foundational to the regulation.

Additionally, the linkage HB 2182 provides to federal action will be important in insuring that Kansas is on the same competitive plain as the rest of the nation. Our state, or counties within the state, will not be "islands" of non-competitiveness. Nor, will we be plagued by a "patchwork" of vary standards across the state.

The KCC supports a balanced energy policy that provides regulatory certainty and considers cost to the consumer, reliability of service, and environmental stewardship. The KCC also supports initiatives which promote the development, use and promotion of economically viable renewable energy sources. We also support governing systems that eliminate unnecessary regulation, encourage business development and promote growth in the Kansas economy. Passage of HB 2182 will move us forward in the effort to restore certainty in our regulatory environment and help accomplish these goals. As such, we respectfully request favorable action on HB 2182.

If you have any questions regarding our testimony, please feel free to call me. Thank you.

Leslie Kaufman, Executive Director  
Kansas Cooperative Council (785-220-4068)

HOUSE ENERGY AND UTILITIES

DATE: 2/4/2009

ATTACHMENT 5



### Kansas Cooperative Council

P.O. Box 1747  
Hutchinson, Kansas  
67504-1747

Phone: 785-233-4085

Fax: 620-662-1144

Toll Free: 888-603-COOP (2667)

Email: council@kansasco-op.coop

www.kansasco-op.coop

The Mission of the Kansas Cooperative Council is to promote, support and advance the interests and understanding of agricultural, utility, credit and consumer cooperatives and their members through legislation and regulatory efforts, education and public relations.

**Testimony before the House Energy and Utilities Committee  
February 4, 2009  
Opposing H.B. 2182**

Chairperson Holmes and Honorable Members of the Committee:

My name is Tom Thompson and I represent the Kansas Chapter of the Sierra Club. I have come today to speak in opposition to H.B. 2182.

The Sierra Club opposes the construction of coal-fired power plants because they add to the increasing amount of greenhouse gas in the atmosphere. In the case of the Holcomb plant, it will mean an additional 11 million tons of carbon dioxide. The Sierra Club believes climate change is real and it is time to do something about it. Instead HB 2182 will contribute to climate change while catering to a special interest.

2182's primary purpose is to allow more carbon dioxide to be emitted in Kansas. This destructive gas will be emitted at an extremely high rate by the Holcomb development. This is being done in Kansas where the wind is abundant allowing for a robust renewable energy potential that could create jobs throughout the state. The Sierra Club believes that building Holcomb will undercut the economic benefits that Kansas could have from renewable energy.

It is time to develop an energy plan that decreases the production of carbon dioxide and increases the production of clean renewable energy. A new coal plant cannot be part of this formula.

2182 usurps the KDHE Secretary's authority to consider matters not yet fleshed out by rules and regulations, as may be required, where there is a threat to human health or the environment and a new problem such as carbon dioxide. The US Supreme Court has ruled that CO2 is an air pollutant that must be regulated if it presents an endangerment to human health and the environment.

2182 is inconsistent with the Clean Air Act which does not require issuance of a permit under any circumstances, even where an applicant meets stated requirements, and reserves to states broad authority to reject any application based on any environmental, economic or energy related considerations.

The Sierra Club believes that requiring that state laws not be stricter than federal is a serious issue that can have unforeseen consequences. It is important to allow laws to be able to react to the needs for environmental protection in unforeseen situations.

Sierra Club also believes that 2182 sets an unreasonable timeline for administrative actions by KDHE. Fifteen days for a response by the Secretary KDHE is inadequate.

The Sierra Club encourages the committee to oppose HB 2182.

Sincerely  
Tom Thompson, Sierra Club

*HOUSE ENERGY AND UTILITIES*  
DATE: 2/4/2009  
ATTACHMENT 6

Mr. Chairman, members of the Committee, I write today not in my professional capacity but simply as the mother of two young daughters.

As I read HB2182, its passage would prevent the Secretary of Health & Environment from responding directly and immediately to emerging threats such as anthrax, avian flu, or natural disaster.

In an age of terrorism, biological weapons, and increasingly extreme weather, Kansans need and deserve a Department of Health and Environment ready and fully able to protect our health. As a citizen and a mother, I urge the Committee to preserve that ability.

Nancy Jackson  
Eudora, Kansas

*HOUSE ENERGY AND UTILITIES*

DATE: 2/4/2009

ATTACHMENT 7





Kathleen Sebelius, Governor  
Roderick L. Bremby, Secretary

DEPARTMENT OF HEALTH  
AND ENVIRONMENT

[www.kdheks.gov](http://www.kdheks.gov)

## Written Testimony on House Bill 2182

Submitted to the  
House Energy and Utilities Committee

By  
John W. Mitchell  
Director, Division of Environment

February 4, 2009

Thank you, Chairman Holmes and members of the Committee, for the opportunity to provide written testimony on HB 2182, requiring the Kansas air quality act to be consistent and uniform with the federal clean air act.

Section 2, page 6, lines 13 - 17, limits the scope of the secretary's authority by restricting Kansas's implementation of the Clean Air Act (CAA) to being no more stringent, restrictive or expansive than is required by the CAA. Using PSD permits as an example, K.A.R. 28-19-350 does not implement all of the federal requirements for PSD. For example, Kansas implements Kansas-specific requirements for stack heights, air quality analysis, and visibility monitoring, which depart from the federal PSD requirements. Unlike the federal PSD rules, Kansas regulations do not require permit applicants to file environmental impact statements. The department is also concerned that a number of regulatory and voluntary programs it has implemented to prevent air pollution would be prohibited from expanding beyond the scope of the CAA. Examples of ongoing programs include: Sustainable Skylines Program; Blue Skyways Program; and the Kansas City Clean Air Action Plan.

Subsection (b)(1), page 6, lines 17 - 20, provides an exception for non-attainment areas to the restrictions imposed on the secretary's authority in lines 13 - 17. While the department acknowledges the need for this exception, we must note that the primary purpose of the Kansas Air Quality Act is to avoid federal designation of any area of Kansas as non-attainment. Such a designation means that the area does not meet the National Ambient Air Quality Standards and comes at a significant cost not only to the industries subject to further emission restrictions but to the public, in terms of health and restrictions on their personal activities, i.e., gasoline purchases, lawn mowing. The bill language would allow the department to take action only after non-attainment occurs rather than taking a preventative approach to avoid designation as non-attainment. The department is currently developing administrative regulations to implement contingency measures in a Kansas City maintenance plan, which is part of the state implementation plan to avoid a non-attainment designation. To clarify the scope of the exception, the department would strike the last sentence of subsection (b)(1) and insert in its

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place the following: "The restrictions of this section shall not apply to actions of the secretary taken to address violations of the National Ambient Air Quality Standards in maintenance or nonattainment areas subject to a United States environmental protection agency approved state implementation plan."

With respect to Section 3, which amends K.S.A. 2008 Supp. 65-3008a, HB 2182 appears to create an additional affirmation step by requiring permit affirmations to include a statement that the terms and conditions of the permit comply with the Kansas air quality act. The bill does not define the form or procedure to be used for this additional affirmation step. Further, the bill does not address how the affirmation should consider any changes in federal law or regulations in the period between January 1, 2006, and the effective date of the act.

Section 4, which restricts the authority of the Secretary under K.S.A. 65-3012, is in conflict with Section 303 of the federal Clean Air Act. Section 303 provides that if it is not practicable to assure prompt protection of public health or welfare or the environment by commencement of an injunctive action, the Administrator may issue such orders as necessary to protect public health or welfare or the environment. Section 4 does not grant the Secretary any ability to issue such orders as may be necessary to protect public health or welfare or the environment. As such, Section 4 does not comply with the federal Clean Air Act.

I appreciate the opportunity to provide these comments.



# Kansas Electric Power Cooperative, Inc.

## HB 2020 Financial Impact to KEPCo Member Cooperatives

The proposal under the balloon offered Thursday, January 29, is for utilities to pay 160% of avoided cost to the generator of the renewable energy.

The cost impact to KEPCo Member Cooperatives is as follows:

- 16 MG of potential exposure via a 4% cap on a 400 MW system.
- 35% capacity factor (wind generator).
- 3.63/kWh approximate KEPCo average annual avoided fuel cost.
- 5.81/kWh approximate 160% avoided fuel cost.
- Approximately 49 million kWh's would be purchased.
- Difference in current cost and cost associated with the balloon is approximately \$1,060,000 annually.

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ATTACHMENT *9*



# Kansas Electric Power Cooperative, Inc.

## HOUSE ENERGY AND UTILITIES SUB-COMMITTEE

### On Renewables

February 3, 2009

Attached is analysis regarding Renewable Energy Portfolio Standard (RPS) prepared by Les Evans, Vice President Power Supply, Kansas Electric Power Cooperative, Inc. (KEPCo). This is in response to specific questions raised during discussions by the Sub-Committee on Renewables and a request to conferees for information.

1. Analysis showing difference between RPS based on energy vs. RPS based on nameplate capacity.
2. Analysis showing RPS cost impact to Kansas
3. Analysis showing RPS cost impact to KEPCo using wind
4. Energy Information Administration (EIA)2006 Kansas electricity statistics (latest available)

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ATTACHMENT 10-1

## RPS Based on Energy vs. Nameplate Capacity

### Purpose:

For an RPS, illustrate the difference between 10% wind on an energy basis vs. 10% wind on a nameplate capacity basis.

### Assumptions:

Kansas total generating capacity from 2006 EIA is 11,124 MW  
Kansas total annual generation from 2006 EIA is 45,523,736 MWH  
Wind generates at 40% Net Capacity Factor (NCF)

### Analysis:

For wind to supply 10% of Kansas' energy requirements on an energy basis

$$10\% \times 45,523,736 \text{ MWH} = 4,552,374 \text{ MWH}$$

The following calculates the amount of wind generation required in order to generate 4,552,374 MWH.

$$4,552,374 \text{ MWH} / 40\% \text{ NCF} / 8,760 \text{ Hours} = 1,299 \text{ MW}$$

On a nameplate capacity basis this equates to the following % of wind.

$$1,299 \text{ MW} / 11,124 \text{ MW total Kansas generation} = 11.7\%$$

↙

$$1.5 = 866$$
$$3 = 400$$



RPS Cost Impact To Kansas

Assumptions  
 ↓↓

Fuel Source	Kansas Generation Mix		Kansas Generation Mix With 10% Wind		Net Change (MWH)	Fuel Cost (\$/MWH)	Net Change (\$)
	(MWH)	(%)	(MWH)	(%)			
Coal	33,281,380	73%	29,284,116	64%	(3,997,264)	15	(59,958,966)
Petroleum	51,142	0%	51,142	0%	-		
Natural Gas	1,839,406	4%	2,276,187	5%	436,781	70	30,574,656
Nuclear	9,350,269	21%	9,350,269	21%	-		
Hydro	9,649	0%	9,649	0%	-		
Other Renewables	991,890	2%	4,552,374	10%	3,560,484	50	178,024,180
<b>Total</b>	<b>45,523,736</b>		<b>45,523,736</b>		<b>-</b>		<b>\$148,639,870</b>

Assumptions:

- 2006 EIA Data - most current available
- Increase in gas generation to balance increase in wind (50% of wind generation)
- Increase in wind and gas generation will be off-set by decrease in coal generation
- Average coal fuel cost \$15/MWH
- Average natural gas fuel cost \$70/MWH
- Average wind cost through purchase power agreement \$50/MWH (includes Production Tax Credit)

Summary:

A 10% RPS for wind on an energy basis with the listed assumptions would increase the cost of generation in Kansas nearly \$150,000,000 annually.

↑  
 annual  
 increase  
 costs  
 to have  
 10%  
 wind!

□ what per customer

### RPS Cost Impact To KEPCo Using Wind

Fuel Source	KEPCo Generation Mix		KEPCo Generation Mix With 10% Wind		Net Change (MWH)	Fuel Cost (\$/MWH)	Net Change (\$)
	(MWH)	(%)	(MWH)	(%)			
Coal	786,393	40%	589,795	30%	(196,598)	15	(2,948,973)
Petroleum	-	0%	-	0%	-		
Natural Gas	196,598	10%	196,598	10%	-		-
Nuclear	629,114	32%	629,114	32%	-		
Hydro	353,877	18%	353,877	18%	-		
Other Renewables	-	0%	196,598	10%	196,598	50	9,829,910
<b>Total</b>	<b>1,965,982</b>		<b>1,965,982</b>		<b>-</b>		<b>\$6,880,937</b>

**Assumptions:**

- Generation based on normalized hydro and nuclear operations
- Gas generation would be required in same ration as wind for balancing
- Increase in wind will be off-set by decrease in coal generation
- Average coal fuel cost \$15/MWH
- Average wind cost through purchase power agreement \$50/MWH (includes Production Tax Credit)

**Summary:**

A 10% RPS for wind on an energy basis with the listed assumptions would increase the cost of generation to KEPCo nearly \$7,000,000 annually.

**Table 1. 2006 Summary Statistics**

Item	Value	U.S. Rank
<b>Kansas</b>		
NERC Region(s).....		SPP
Primary Energy Source.....		Coal
Net Summer Capacity (megawatts).....	11,124	33
Electric Utilities.....	10,829	22
Independent Power Producers & Combined Heat and Power.....	295	47
Net Generation (megawatthours).....	45,523,736	32
Electric Utilities.....	44,621,389	21
Independent Power Producers & Combined Heat and Power.....	902,347	45
Emissions (thousand metric tons).....		
Sulfur Dioxide.....	101	24
Nitrogen Oxide.....	74	22
Carbon Dioxide.....	35,639	28
Sulfur Dioxide (lbs/MWh).....	4.9	19
Nitrogen Oxide (lbs/MWh).....	3.6	10
Carbon Dioxide (lbs/MWh).....	1,726	14
Total Retail Sales (megawatthours).....	39,751,302	32
Full Service Provider Sales (megawatthours).....	39,751,302	31
Direct Use (megawatthours).....	7,386	49
Average Retail Price (cents/kWh).....	6.89	38

See footnotes at end of tables.

**Table 2. Ten Largest Plants by Generating Capacity, 2006**

Plant	Primary Energy Source or Technology	Operating Company	Net Summer Capacity (MW)
<b>Kansas</b>			
1. Jeffrey Energy Center.....	Coal	Westar Energy Inc	2,190
2. La Cygne.....	Coal	Kansas City Power & Light Co	1,422
3. Wolf Creek Generating Station.....	Nuclear	Wolf Creek Nuclear Optg Corp	1,166
4. Gordon Evans Energy Center.....	Gas	Kansas Gas & Electric Co	826
5. Lawrence Energy Center.....	Coal	Westar Energy Inc	524
6. Hutchinson Energy Center.....	Gas	Westar Energy Inc	474
7. Holcomb.....	Coal	Sunflower Electric Power Corp	360
8. Murray Gill.....	Gas	Kansas Gas & Electric Co	317
9. West Gardner.....	Gas	Kansas City Power & Light Co	308
10. Nearman Creek.....	Coal	Kansas City City of	305

See footnotes at end of tables.

**Table 3. Top Five Retailers of Electricity, with End Use Sectors, 2006**  
(Megawatthours)

Entity	Type of Provider	All Sectors	Residential	Commercial	Industrial	Transportation
<b>Kansas</b>						
1. Kansas Gas & Electric Co .....	Investor-Owned	9,936,518	3,081,078	2,991,285	3,864,155	-
2. Westar Energy Inc .....	Investor-Owned	9,621,028	3,374,963	4,286,572	1,959,493	-
3. Kansas City Power & Light Co.....	Investor-Owned	6,356,693	2,814,030	3,105,298	437,365	-
4. City of Kansas City.....	Public	2,462,894	562,350	992,215	908,329	-
5. Aquila Inc .....	Investor-Owned	1,899,009	478,131	597,638	823,240	-
Total Sales, Top Five Providers .....		30,276,142	10,310,552	11,973,008	7,992,582	-
Percent of Total State Sales .....		76	76	81	70	-

See footnotes at end of tables.

**Table 4. Electric Power Net Summer Capacity by Primary Energy Source and Industry Sector, 1990, 1995, and 2001 Through 2006**  
(Megawatts)

Energy Source	1990	1995	2001	2002	2003	2004	2005	2006	Percentage Share	
									1990	2006
<b>Kansas</b>										
Electric Utilities.....	9,578	9,675	10,223	10,244	10,731	10,705	10,734	10,829	99.6	97.3
Coal.....	5,064	5,244	5,295	5,310	5,265	5,222	5,250	5,203	52.6	46.8
Petroleum.....	622 <sup>R</sup>	579 <sup>R</sup>	652	546	564	587	583	565	6.5	5.1
Natural Gas.....	2,755 <sup>R</sup>	2,685 <sup>R</sup>	3,106	3,219	3,735	3,729	3,734	3,793	28.6	34.1
Nuclear.....	1,135	1,167	1,170	1,170	1,165	1,166	1,166	1,166	11.8	10.5
Hydroelectric.....	2	-	-	-	-	-	-	-	*	-
Other Renewables.....	*	-	-	-	2	1	1	101	*	0.9
<b>Independent Power Producers and Combined Heat and Power .....</b>	<b>43</b>	<b>49</b>	<b>153</b>	<b>152</b>	<b>145</b>	<b>145</b>	<b>295</b>	<b>295</b>	<b>0.4</b>	<b>2.7</b>
Petroleum.....	4	4	4	4	-	-	-	-	*	-
Natural Gas.....	38	43	34	33	31	31	31	31	0.4	0.3
Hydroelectric.....	*	2	2	2	3	3	3	3	*	*
Other Renewables.....	-	-	112	112	112	112	262	262	-	2.4
<b>Total Electric Industry.....</b>	<b>9,621</b>	<b>9,725</b>	<b>10,376</b>	<b>10,396</b>	<b>10,876</b>	<b>10,850</b>	<b>11,029</b>	<b>11,124</b>	<b>100.0</b>	<b>100.0</b>
Coal.....	5,064	5,244	5,295	5,310	5,265	5,222	5,250	5,203	52.6	46.8
Petroleum.....	626 <sup>R</sup>	583 <sup>R</sup>	656	550	564	587	583	565	6.5	5.1
Natural Gas.....	2,793 <sup>R</sup>	2,728 <sup>R</sup>	3,140	3,252	3,766	3,759	3,764	3,824	29.0	34.4
Nuclear.....	1,135	1,167	1,170	1,170	1,165	1,166	1,166	1,166	11.8	10.5
Hydroelectric.....	3	2	2	2	3	3	3	3	*	*
Other Renewables.....	*	-	112	112	114	113	263	363	*	3.3

See footnotes at end of tables.

**Table 5. Electric Power Net Generation by Primary Energy Source and Industry Sector, 1990, 1995, and 2001 Through 2006**  
(Megawatthours)

Energy Source	1990	1995	2001	2002	2003	2004	2005	2006	Percentage Share	
									1990	2006
<b>Kansas</b>										
Electric Utilities.....	33,868,644	38,230,483	44,642,712	46,691,936	46,155,505	46,409,328	45,421,033	44,621,389	99.1	98.0
Coal.....	23,720,258	25,896,959	31,768,001	35,369,189	35,109,616	34,593,346	34,480,731	33,281,380	69.4	73.1
Petroleum.....	65,744	73,764	616,418	508,857	963,751	853,742	986,378	51,142	0.2	0.1
Natural Gas.....	2,196,341	2,197,557	1,911,642	1,772,188	1,190,819	826,668	1,132,201	1,832,168	6.4	4.0
Nuclear.....	7,874,487	10,062,177	10,346,651	9,041,702	8,889,667	10,132,736	8,820,945	9,350,269	23.0	20.5
Hydroelectric.....	11,769	-	-	-	-	-	-	-	*	-
Other Renewables.....	45	26	-	-	1,651	2,835	778	106,430	*	0.2
<b>Independent Power Producers and Combined Heat and Power.....</b>	<b>316,213</b>	<b>190,222</b>	<b>105,811</b>	<b>496,510</b>	<b>412,056</b>	<b>373,331</b>	<b>441,663</b>	<b>902,347</b>	<b>0.9</b>	<b>2.0</b>
Petroleum.....	8,282	2,100	759	221	381	-	30	-	*	-
Natural Gas.....	306,466	176,908	39,658	16,864	34,951	4,987	5,251	7,238	0.9	*
Hydroelectric.....	1,465	11,214	25,562	12,746	12,435	12,547	11,337	9,649	*	*
Other Renewables.....	-	-	39,832	466,679	364,288	355,797	425,045	885,460	-	1.9
<b>Total Electric Industry.....</b>	<b>34,184,857</b>	<b>38,420,705</b>	<b>44,748,523</b>	<b>47,188,446</b>	<b>46,567,561</b>	<b>46,782,659</b>	<b>45,862,696</b>	<b>45,523,736</b>	<b>100.0</b>	<b>100.0</b>
Coal.....	23,720,258	25,896,959	31,768,001	35,369,189	35,109,616	34,593,346	34,480,731	33,281,380	69.4	73.1
Petroleum.....	74,026	75,864	617,177	509,078	964,132	853,742	986,408	51,142	0.2	0.1
Natural Gas.....	2,502,807	2,374,465	1,951,300	1,789,052	1,225,770	831,655	1,137,452	1,839,406	7.3	4.0
Nuclear.....	7,874,487	10,062,177	10,346,651	9,041,702	8,889,667	10,132,736	8,820,945	9,350,269	23.0	20.5
Hydroelectric.....	13,234	11,214	25,562	12,746	12,435	12,547	11,337	9,649	*	*
Other Renewables.....	45	26	39,832	466,679	365,939	358,632	425,823	991,890	*	2.2

See footnotes at end of tables.

**Table 6. Electric Power Delivered Fuel Prices and Quality for Coal, Petroleum, and Natural Gas, 1990, 1995, and 2001 Through 2006**

Fuel, Quality	1990	1995	2001	2002	2003	2004	2005	2006
<b>Kansas</b>								
Coal (cents per million Btu)	124	102	105	98	101	103	112	119
Average heat value (Btu per pound)	8,948	8,730	8,700	8,571	8,619	8,626	8,569	8,607
Average sulfur Content (percent)	0.58	0.43	0.43	0.44	0.48	0.44	0.44	0.45
Petroleum (cents per million Btu)	540	212	336	273	362	407	556	485
Average heat value (Btu per gallon)	138,176	104,067	154,286	157,186	156,948	156,855	155,174	144,821
Average sulfur Content (percent)	0.13	2.80	1.60	1.58	1.62	1.66	1.81	2.79
Natural Gas (cents per million Btu)	176	161	358	309	530	546	770	624
Average heat value (Btu per cubic foot)	990	980	1,010	1,004	1,014	1,008	1,010	1,014

See footnotes at end of tables.



**Table 7. Electric Power Industry Emissions Estimates, 1990, 1995, and 2001 Through 2006**  
(Thousand Metric Tons)

Emission Type	1990	1995	2001	2002	2003	2004	2005	2006
<b>Kansas</b>								
<b>Sulfur Dioxide</b> .....								
Coal	77	64	103	113	119	104	112	98
Petroleum	1	*	6	5	9	8	12	3
Natural Gas	*	*	*	*	*	*	*	*
Total	78	64	109	118	128	112	124	101
<b>Nitrogen Oxide</b> .....								
Coal	120	134	72	83	82	81	77	69
Petroleum	*	*	2	1	3	2	3	2
Natural Gas	4	4	5	5	4	2	3	3
Total	125	138	79	89	88	85	82	74
<b>Carbon Dioxide</b> .....								
Coal	25,368	27,112	33,406	36,968	36,803	36,313	35,779	34,219
Petroleum	75	70	587	457	843	817	939	51
Natural Gas	1,662	1,610	1,365	1,149	837	597	925	1,369
Total	27,106	28,792	35,358	38,574	38,484	37,726	37,642	35,639

See footnotes at end of tables.

**Table 8. Retail Sales, Revenue, and Average Retail Prices by Sector, 1990, 1995, and 2001 Through 2006**

Sector	1990	1995	2001	2002	2003	2004	2005	2006	Percentage Share	
									1990	2006
<b>Kansas</b>										
<b>Retail Sales (thousand megawatthours)</b> .....										
Residential	9,515	10,356	12,062	12,745	12,602	12,417	13,406	13,503	35.0	34.0
Commercial	9,169	10,273	12,787	13,392	13,751	13,831	14,453	14,786	33.8	37.2
Industrial	8,087	9,356	10,569	10,195	10,382	10,879	11,165	11,462	29.8	28.8
Other	378	372	429	381	NA	NA	NA	NA	1.4	NA
All Sectors	27,149	30,357	35,847	36,714	36,735	37,127	39,024	39,751	100.0	100.0
<b>Retail Revenue (million dollars)</b> .....										
Residential	745	820	925	977	971	962	1,059	1,114	41.7	40.7
Commercial	609	687	793	841	882	893	954	1,030	34.1	37.6
Industrial	400	451	481	462	479	510	542	596	22.4	21.8
Other	31	34	38	35	NA	NA	NA	NA	1.7	NA
All Sectors	1,785	1,992	2,236	2,315	2,333	2,364	2,555	2,740	100.0	100.0
<b>Average Retail Prices (cents/kWh)</b> .....										
Residential	7.83	7.92	7.66	7.67	7.71	7.74	7.90	8.25	NA	NA
Commercial	6.64	6.68	6.20	6.28	6.42	6.45	6.60	6.96	NA	NA
Industrial	4.94	4.82	4.55	4.53	4.61	4.69	4.85	5.20	NA	NA
Other	8.17	9.21	8.91	9.30	NA	NA	NA	NA	NA	NA
All Sectors	6.57	6.56	6.24	6.31	6.35	6.37	6.55	6.89	NA	NA

See footnotes at end of tables.

**Table 9. Retail Electricity Sales Statistics, 2006**

Item	Full Service Providers					Other Providers		Total
	Investor-Owned	Public	Federal	Cooperative	Facility	Energy	Delivery	
Number of Entities	6	119	1	29	1	NA	NA	156
Number of Retail Customers	979,455	236,579	7	222,919	3	NA	NA	1,438,963
Retail Sales (thousand megawatthours)	28,081	7,038	24	4,504	105	NA	NA	39,751
Percentage of Retail Sales	70.64	17.70	0.06	11.33	0.26	NA	NA	100.00
Revenue from Retail Sales (million dollars)	1,785	534	1	414	7	NA	NA	2,740
Percentage of Revenue	65.14	19.50	0.02	15.10	0.25	NA	NA	100.00
Average Retail Price (cents/kWh)	6.36	7.59	2.59	9.18	6.43	NA	NA	6.89

Table 9 Notes: Data are shown for All Sectors. Full Service Providers sell bundled electricity services (e.g., both energy and delivery) to end users. Full Service Providers may purchase electricity from others (such as independent Power Producers or other full service providers) prior to delivery. Other Providers sell either the energy or the delivery services, but not both. Sales volumes and customer counts shown for Other Providers refer to delivered electricity, which is a joint activity of both energy and delivery providers; for clarity, they are reported only in the Energy column in this table. The revenue shown under Other Providers represents the revenue realized from the sale of the energy and the delivery services distinctly. "Public" entities include municipalities, State power agencies, and municipal marketing authorities. "Federal" entities are either owned or financed by the Federal Government. "Cooperatives" are electric utilities legally established to be owned by and operated for the benefit of those using its services. The cooperative will generate, transmit and/or distribute supplies of electric energy to a specified area not being serviced by another utility. "Facility" sales represent direct electricity transactions from independent generators to end use consumers.

**Table 10. Supply and Disposition of Electricity, 1990, 1995, and 2001 Through 2006**  
(Million Kilowatthours)

Category	1990	1995	2001	2002	2003	2004	2005	2006
<b>Kansas</b>								
<b>Supply</b>								
<b>Generation</b>								
Electric Utilities	33,869	38,230	44,643	46,692	46,156	46,409	45,421	44,621
Independent Power Producers	1	11	65	479	377	368	436	895
<b>Electric Power Sector Generation Subtotal</b>	<b>33,870</b>	<b>38,242</b>	<b>44,708</b>	<b>47,171</b>	<b>46,532</b>	<b>46,778</b>	<b>45,857</b>	<b>45,516</b>
Combined Heat and Power, Commercial	-	5	2	1	1	1	*	-
Combined Heat and Power, Industrial	315	174	38	16	34	4	5	7
<b>Industrial and Commercial Generation Subtotal</b>	<b>315</b>	<b>179</b>	<b>40</b>	<b>17</b>	<b>35</b>	<b>5</b>	<b>5</b>	<b>7</b>
<b>Total Net Generation</b>	<b>34,185</b>	<b>38,421</b>	<b>44,749</b>	<b>47,188</b>	<b>46,568</b>	<b>46,783</b>	<b>45,863</b>	<b>45,524</b>
<b>Total Supply</b>	<b>34,185</b>	<b>38,421</b>	<b>44,749</b>	<b>47,188</b>	<b>46,568</b>	<b>46,783</b>	<b>45,863</b>	<b>45,524</b>
<b>Disposition</b>								
<b>Retail Sales</b>								
Full Service Providers	27,149	30,357	35,847	36,714	36,735	37,022	38,921	39,646
Facility Direct Retail Sales	-	-	-	-	-	104	103	105
<b>Total Electric Industry Retail Sales</b>	<b>27,149</b>	<b>30,357</b>	<b>35,847</b>	<b>36,714</b>	<b>36,735</b>	<b>37,127</b>	<b>39,024</b>	<b>39,751</b>
Direct Use	315	180	60	61	62	62	5	7
<b>Total International Exports</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>*</b>	<b>*</b>	<b>-</b>
Estimated Losses	2,036	2,305	2,882	3,285	3,085	3,456	4,278	3,459
<b>Total Disposition</b>	<b>29,499</b>	<b>32,841</b>	<b>38,789</b>	<b>40,060</b>	<b>39,883</b>	<b>40,645</b>	<b>43,308</b>	<b>43,218</b>
Net Interstate Trade	4,685	5,579	5,960	7,128	6,685	6,137	2,555	2,306
Net Trade Index (ratio)	1.16	1.17	1.15	1.18	1.17	1.15	1.06	1.05

R = Revised.

NA = Not applicable; NM = Not meaningful.

W = Withheld to avoid disclosure of individual company data.

- = Data not available.

\* = Value is less than half of the smallest unit of measure (e.g., for values with no decimals, the smallest unit is 1 and values under 0.5 are shown as \*.)

Totals may not equal sum of components because of independent rounding.

Table 10 Notes: Estimated Losses are reported at the utility level, and then allocated to States based on the utility's retail sales by State. Reported losses may include electricity unaccounted for by the utility. Net Interstate Trade represents the difference between the amount of electricity produced in the State and consumed in the State. Positive values indicate a State that is a net interstate exporter of electricity; negative values indicate a State that is a net interstate importer of electricity. The Net Trade Index represents a State's electricity self-sufficiency. Values greater than 1 indicate that, on an annual net basis, the State supplied electricity consumed outside the State; values less than 1 indicate that, on an annual net basis, the State consumed electricity produced outside the State.

General Notes: Table 4 "Other Renewables" includes wood, black liquor, other wood waste, municipal solid waste, landfill gas, sludge waste, agriculture byproducts, other biomass, geothermal, solar thermal, photovoltaic energy, and wind. The "Other" category includes batteries, chemicals, hydrogen, pitch, purchased steam, sulfur, tire-derived fuels and miscellaneous technologies. However, Table 5 "Other Renewables" includes only biogenic municipal solid waste, in addition to wood, black liquor, other wood waste, landfill gas, sludge waste, agriculture byproducts, other biomass, geothermal, solar thermal, photovoltaic energy, and wind. In Table 5 "Other" includes Non-biogenic municipal solid waste, batteries, chemicals, hydrogen, pitch, purchased steam, sulfur, tire-derived fuels and miscellaneous technologies. In Table 7, "Other Renewables" emissions include biogenic municipal solid waste, and other renewable waste.

Direct use is commercial or industrial use of electricity that (1) is self-generated (2) is produced by either the same entity that consumes the power or an affiliate, and (3) is used in direct support of a service or industrial process located within the same facility or group of facilities that houses the generating equipment. Direct use is exclusive of station use.

10-89

# Westar Energy

2-3-09

We have 295 MW of wind currently. To meet the 20% in 2020 means we would need to add approximately 900 MW at a cost approaching \$1.9 billion.

The average impact on residential rates over a 20 year depreciated life is about 10% per year increase.

If the RPS was based on production instead of nameplate, we would need to build about 30% more wind. Thus the cost would escalate to about \$2.5 billion and the average increase in residential bills would be about 13%.

These assumptions do not include any additional gas generation or transmission upgrades.

*HOUSE ENERGY AND UTILITIES*

DATE: 2/4/2009

ATTACHMENT II

# Estimated Cost of 20% RPS

## Westar Energy

2-4-09

- MWs needed to meet 20% RPS by 2020 = 900
- Cost of building 900 MWs of wind = \$1.9 billion
- Current residential kwh cost = 8.5 cents/kwh
- Estimated average residential kwh cost in first year after adding 900 MWs of wind = 9.6 cents/kwh
- Estimated average residential kwh cost in year 20 after adding 900 MWs of wind = 9.02 cents/kwh
- The average residential increase over the 20 year period is approximately 10%.
- Does not include any costs for additional gas generation or transmission upgrades.



## Seward Co. wins EPA honor for gas recovery

Hutchinson News, The (KS) - Sunday, February 1, 2009

*Author: The News staff*

Seward County's landfill recently earned a national award from the Environmental Protection Agency for its methane recovery program, which the EPA identified as a model for small landfills across the country.

Mike Tabor, who manages the county's landfill, accepted the Community Partner of the Year Award from the EPA Landfill Methane Outreach Program at a special ceremony in Baltimore.

Like most landfills, the one in Seward County produces methane-rich landfill gas - in this case, about 70 cubic feet per minute.

This amount is generally considered too small to be technically and economically feasible for recovery. However, the county realized that a recovery project could be feasible if the landfill gas was combined with methane generated by the adjacent National Beef packing plant.

The company installed floating covers over 20 acres of wastewater lagoons to recover the methane released by their wastewater treatment process.

The recovery effort involves piping the methane-rich landfill gas to the wastewater lagoons. The combined methane stream is collected and used to help power the beef plant.

"It is very encouraging to see this cooperative community effort where a public entity, Seward County, is working with a private business, National Beef, to beneficially use this renewable **energy** resource rather than allow its release to the atmosphere," said Rod Bremby, secretary of the Kansas Department of Health and Environment.

"Natural resources are conserved and the environment benefits. It is also encouraging to see that EPA has recognized this Kansas project, because it will serve as a model for others nationwide."

KDHE nominated Tabor and the landfill, and the EPA awards committee selected Seward County for the 2008 Community Partner Award.

Rachel Goldstein, team leader of the EPA Landfill Methane Outreach Program, also praised Seward County's accomplishment.

"Seward County Landfill represents the very best in the landfill gas industry and LMOP is pleased to recognize your outstanding accomplishments," she said.

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ATTACHMENT 13



Posted on Sat, Jan. 31, 2009

## Rule rejected on emissions of mercury in Pa.

By Sandy Bauers

Inquirer Staff Writer

A Commonwealth Court judge ruled yesterday that Pennsylvania's rule limiting mercury emissions from power plants was "unlawful, invalid and unenforceable."

> Environmentalists criticized the decision, saying it denied the state's children protection from toxic mercury pollution.

> But a spokesman for PPL Generation L.L.C., the Allentown utility that filed suit against the state, said the company was pleased to get "clarity" about regulations.

> The U.S. Environmental Protection Agency originally passed regulations that a federal court overturned, ordering the EPA to write new ones. Last week, the new EPA administration issued a memo saying it would. But Pennsylvania elected not to participate in the federal program and passed stricter regulations.

> PPL has invested \$1.5 billion in control technology at its two Pennsylvania plants, said spokesman George Lewis. The state's rules would have required additional "tens of millions, perhaps hundreds of millions," of dollars.

> He said PPL did not want to move forward "only to find that the new EPA rule said, 'Nope. That's the wrong technology. We're ordering you to install something else.' "

> Jan Jarrett, president of Citizens for Pennsylvania's Future, which in 2004 filed a petition on behalf of many groups demanding state regulation, blamed "the Bush administration's failed and ill-advised regulatory charade" for yesterday's ruling.

> Invalidating the state rule because the Bush regulations were nixed by the federal courts, she said, "brings a new and ironic twist to the saying 'throwing the baby out with the bath water.' "

> John Hanger, acting secretary of the state Department of Environmental Protection, said the ruling makes Pennsylvania's economy "less competitive in the long run." He said the agency

would "carefully consider our legal options."

>

HOUSE ENERGY AND UTILITIES

DATE: 2/4/2009

ATTACHMENT 14