

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 11, 2009, in Room 783 of the Docking State Office Building.

All members were present.

Committee staff present:

Melissa Doeblin, Office of the Revisor of Statutes
Mary Torrence, Office of the Revisor of Statutes
Mary Galligan, Kansas Legislative Research Department
Cindy Lash, Kansas Legislative Research Department
Renaë Hansen, Committee Assistant

Others attending:

Thirty-two including the attached list.

Action on:

HB 2013 - Establishing renewable portfolio standards for public utilities.

Representative Forrest Knox explained that the subcommittee worked about 12 hours on renewables issues, with 6.5 hours on Friday, and then tabled **HB 2127**.

Representative Forrest Knox explained the proposed amendment to **HB 2013**, which includes **HB 2127** with some of the proposed changes recommended by the committee.

Questions were asked and comments made by Representatives: Tom Sloan, Forrest Knox,

Representative Forrest Knox moved to amend **HB 2013** (Attachment 1), with the proposed amendments minus the boxes on page 2 of **HB 2127** and page 3 (large boxes). Seconded by Representative Don Myers.

Questions were asked and comments made by Representatives: Tom Sloan, Forrest Knox, and Josh Svaty.

Representative Tom Sloan believes that the 1.25 will not bring in more construction.

Motion carried unanimously.

Representative Josh Svaty moved to amend on page 2 line 36 of **HB 2127** of **HB 2013** strike 1.25 and replace with 1.0. Seconded by Representative Tom Sloan.

Questions were asked and comments made by Representative: Forrest Knox, and Josh Svaty.

Motion to amend passed 11-9.

Representative Forrest Knox moved to amend **HB 2013** using balloon 2 of **HB 2127** on page 2. Seconded by Vern Swanson.

Questions were asked and comments made by Representative: Tom Sloan, Tom Moxley, and Forrest Knox.

Motion to amend passed.

Representative Sloan asked to be recorded as voting no.

Representative Forrest Knox moved to amend **HB 2013** using balloon 3 of **HB 2127** and the entire wording in the balloon under KCC determination on page 3. Seconded by Representative Mike Burgess.

Questions were asked and comments made by Representatives: Josh Svaty, Tom Sloan, Forrest Knox, Carl Holmes, and Revisor Melissa Doeblin.

CONTINUATION SHEET

Minutes of the House Energy And Utilities Committee at 9:00 a.m. on February 11, 2009, in Room 783 of the Docking State Office Building.

Representative Forrest Knox and the second Representative Mike Burgess agreed to take out the wording, "taking into account future environmental regulatory risk including risk of greenhouse gas regulation."

Questions were asked and comments made by Representatives: Tom Sloan, Forrest Knox, Carl Holmes, and Annie Kuether.

Motion passed 19-1.

On page 2, line 16 of the **HB 2127** portion of **HB 2013** it was noted there was some ambiguity for the amount of the portion of the portfolio requirements.

Questions were asked and comments made by Representatives: Tom Sloan, Annie Kuether, and Forrest Knox.

Representative Forrest Knox moved to recommend for adoption **HB 2013** as amended. Seconded by Representative Don Myers. Motion carried.

Action on:

HB 2043 - Establishing the net metering and easy connection act for wind generation.

Representative Forrest Knox explained to the committee recommendations for changes in **HB 2043** and why some of those changes are being suggested.

Representative Forrest Knox moved to amend **HB 2043** (Attachment 2), with sections 18 and 19 deleted. Seconded by Representative Vern Swanson.

Questions were asked and comments made by Representatives: Don Myers, Rob Olson, Forrest Knox, Josh Svaty, Tom Sloan, Joe Seiwert, and Tom Moxley.

Motion to amend passed.

Questions were asked and comments made by Representatives: Tom Sloan, Carl Holmes, Forrest Knox, and Joe Seiwert,

Representative Forrest Knox moved to recommend for adoption **HB 2043** as amended. Seconded by Representative Joe Seiwert. Motion passed.

Action on:

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

Representative Tom Moxley explained a proposed amendment to **HB 2182**, noting how this allows the Kansas law to mirror federal law.

Representative Tom Moxley moved to amend **HB 2182** (Attachment 3). Seconded by Representative Vern Swanson.

Questions were asked and comments made by Representatives: Josh Svaty, Tom Moxley, Joe Seiwert, Margaret Long, Annie Kuether, Forrest Knox, and Rob Olson.

CONTINUATION SHEET

Minutes of the House Energy And Utilities Committee at 9:00 a.m. on February 11, 2009, in Room 783 of the Docking State Office Building.

Several technical changes were made to the balloon by Representative Tom Moxley and Vern Swanson.

Motion to amend passed 12-8.

Representative Josh Svaty moved to strike the new sub-section d under section 4 on the new amendment. Seconded by Representative Annie Kuether.

Questions were asked and comments made by Representative: Forrest Knox, and Josh Svaty.

Motion to remove sub-section d of section 4 fails, 7-11.

Representative Don Myers moved to recommend for adoption, **HB 2182** as amended. Seconded by Representative Rob Olson.

The discussion on **HB 2182** would continue tomorrow

It was noted the committee would revisit **HB 2014, HB 2225, HB 2013** and a stand alone Science based bill.

The next meeting is scheduled for February 12, 2009.

The meeting was adjourned at 10:50 a.m.

HOUSE ENERGY AND UTILITIES COMMITTEE GUEST LIST

DATE: February 11, 2009

NAME	REPRESENTING
Joe Dick	KCBPU
Dave Spryng	Curb
Scott Jones	KCAPL
TOM DAY	KCC
Mani Tucker	Dept of Commerce
PHIL WAGES	KEPCO
LON STANTON	NORTHERN NATURAL GAS
Carol McDowell	Tallgrass Ranchers
LARRY BEES	MIDWEST ENERGY
Matt Casey	BBA
Dan Holthaus	KEC
Bob Johnson	SEPC
Jim Grogan	AT&T
Kimberly Loren Svaty	GSPA
Mark Johnson	Sunflower
Chris Gigstad	Federico Consulting
Tom Thompson	Sierra Club
BROD HARRELSON	KFB
CLARE GUSTIN	Sunflower Elec.

HOUSE ENERGY AND UTILITIES COMMITTEE GUEST LIST

DATE: February 11, 2009

NAME	REPRESENTING
Nelson Knueger	PAR
Jacquie Steineman	USC
Edlin Dwin	KLA
Wayne Fenrod	Sunflow
JEFF GLENDENING	KS CHAMBER
Mark Schreiber	Westar

HOUSE BILL No. 2013

By Committee on Energy and Utilities

1-13

Balloon 2

HOUSE ENERGY AND UTILITIES

DATE: 2/11/2009

ATTACHMENT 1-1

9 AN ACT concerning utilities; relating to renewable portfolio standards.

10 **net**

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

12 Section 1. (a) As used in this section:

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

affected

16 (2) "renewable electric generation facilities" means facilities gener-
17 ating electricity utilizing renewable energy resources or technologies, as
18 defined in K.S.A. 79-201, and amendments thereto, and the capacity of
19 all net metering systems operating in the state.

17-4652

20 (b) ~~Except as provided in subsection (c):~~

21 (1) ~~By the year 2012, for each public utility, the nameplate capacity~~
22 ~~of the renewable electric generation facilities included in the public util-~~
23 ~~ity's generation portfolio, whether owned by the public utility or con-~~
24 ~~tracted for energy purchase by the public utility, shall be no less than~~
25 ~~10% of the public utility's peak load, expressed in megawatts, in the state~~
26 ~~of Kansas, for a three year average for the 2008, 2009 and 2010 calendar~~
27 ~~years.~~

28 (2) ~~By the year 2016, for each public utility, the nameplate capacity~~
29 ~~of the renewable electric generation facilities included in the public util-~~
30 ~~ity's generation portfolio, whether owned by the public utility or con-~~
31 ~~tracted for energy purchase by the public utility, shall be no less than~~
32 ~~15% of the public utility's peak load, expressed in megawatts, in the state~~
33 ~~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 util-~~
~~ity's generation portfolio, whether owned by the public utility or con-~~
~~tracted for energy purchase by the public utility, shall be no less than~~
~~0% 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.~~

(c) ~~Notwithstanding the provisions of subsection (b), any electric pub-~~
~~lic utility which operates a pulverized coal electricity generating facility~~

(2) "commission" means the state corporation commission;
(3) "net renewable generation capacity" means the gross hourly maximum output capability of a renewable energy resource when not limited by ambient conditions, equipment, operating or regulatory restrictions less auxiliary power requirements to operate the resource, and refers to resources located in the state or resources serving ratepayers in the state, regardless of the allocation of the resource for ratemaking purposes;
(4) "peak demand" means the one-hour maximum annual demand imposed by the affected utility's retail load in the state;
(5) "renewable energy credit" means a credit representing energy produced by a renewable energy resources issued as part of a program that has been approved by the state corporation commission;
(6) "renewable energy resources" shall have the meaning ascribed thereto in K.S.A. 17-4652, and amendments thereto, and also means municipal or other solid waste and animal waste.

[Renumber remaining paragraph.]

[Insert Attachment from HB 2127.]

HOUSE ENERGY AND UTILITIES
DATE: 2/11/09
ATTACHMENT 1

1 ~~that is constructed in Kansas after the effective date of this act shall be~~
 2 ~~required to meet the percentages set forth in such subsection at least four~~
 3 ~~years before such utility would be otherwise required to meet such per-~~
 4 ~~centages. For purposes of this subsection, the percentage shall be based~~
 5 ~~on the utility's peak load, expressed in megawatts, in the state of Kansas,~~
 6 ~~for a three year average for the 2nd, 3rd and 4th calendar years preceding~~
 7 ~~the year such percentage is required to be met pursuant to this~~
 8 ~~subsection.~~

9 (d) ~~The state corporation commission shall establish rules and regu-~~
 10 ~~lations to govern reporting requirements and prevention of duplication~~
 11 ~~of the application of the requirements of this section.~~

12 Sec. 2. This act shall take effect and be in force from and after its
 13 publication in the statute book.

HOUSE BILL No. 2127

By Committee on Energy and Utilities

Balloon 4

1-3

9 AN ACT concerning utilities; establishing the renewable energy stan-
10 dards act; establishing the net metering and easy connection act; re-
11 lating to energy efficiency for state buildings; amending K.S.A. 2008
12 Supp. 66-1,184 and repealing the existing section.
13

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

15 New Section 1. Sections 1 through 7, and amendments thereto, shall
16 be known and may be cited as the renewable energy standards act.

17 ~~New Sec. 2. As used in the renewable energy standards act:~~

18 (a) ~~“Affected utility” means any electric public utility, as defined in~~
19 ~~K.S.A. 66-101a, and amendments thereto, but does not include any por-~~
20 ~~tion of any municipally owned or operated electric utility.~~

21 (b) ~~“Commission” means the state corporation commission.~~

22 (c) ~~“Net renewable generation capacity” means the gross generation~~
23 ~~capacity of the renewable energy resource located over a four-hour period~~
24 ~~when not limited by ambient conditions, equipment, operating or regu-~~
25 ~~latory restrictions less auxiliary power required to operate the resource,~~
26 ~~and refers to resources located in the state or resources serving ratepayers~~
27 ~~in the state.~~

28 (d) ~~“Peak demand” means the demand imposed by the affected util-~~
29 ~~ity’s retail load in the state.~~

30 (e) ~~“Renewable energy credit” means a credit representing energy~~
31 ~~produced by renewable energy resources issued as part of a program that~~
32 ~~has been approved by the state corporation commission.~~

33 (f) ~~“Renewable energy resources” means net renewable generation~~
34 ~~capacity from:~~

- 35 (1) Wind;
- 36 (2) solar thermal sources;
- 37 (3) photovoltaic cells and panels;
- 38 (4) dedicated crops grown for energy production;
- 39 (5) cellulosic agricultural residues;
- 40 (6) plant residues;
- 41 (7) methane from landfills or from wastewater treatment;
- 42 (8) clean and untreated wood such as pallets;
- 43 (9) hydropower, not including pumped storage, that does not require

1 a new diversion or impoundment of water and that has a nameplate rating
2 of 10 megawatts or less;

3 (10) fuel cells using hydrogen produced by one of the above named
4 renewable energy resources; and

5 (11) other sources of energy, not including nuclear power, that be-
6 come available after the effective date of this section, and that are certified
7 as renewable by rules and regulations established by the commission,
8 pursuant to section 7, and amendments thereto.

9 New Sec. 3. (a) The commission shall establish by rules and regula-
10 tions a portfolio requirement for all affected utilities to generate or pur-
11 chase electricity generated from renewable energy resources or purchase
12 renewable energy credits. For the purposes of calculating the capacity
13 from renewable energy credit purchases, the affected utility shall use its
14 actual capacity factor from its owned renewable generation from the im-
15 mediately previous calendar year. Renewable energy credits may only be
16 used to meet a portion of portfolio requirements for the years 2010, 2016
17 and 2020, unless otherwise allowed by the commission. Such portfolio
18 requirement shall provide net renewable generation capacity that shall
19 constitute the following portion of each affected utility's peak demand:

[Insert language into HB 2013.]

20 (1) Not less than 10% of the affected utilities' peak demand for cal-
21 endar years 2010 through 2015, based on the average demand of the prior
22 three years of each year's requirement;

23 (2) not less than 15% of the affected utilities' peak demand for cal-
24 endar years 2016 through 2019, based on the average demand of the prior
25 three years of each year's requirements; and

26 (3) not less than 20% of the affected utilities' peak demand for each
27 calendar year beginning in 2020, based on the average demand of the
28 prior three years of each year's requirement.

29 (b) The portfolio requirements described in subsection (a) shall apply
30 to all power sold to Kansas retail consumers whether such power is self-
31 generated or purchased from another source in or outside of the state.
32 The capacity of all net metering systems interconnected with the affected
33 utilities under the net metering and easy connection act in section 8 et
34 seq., and amendments thereto, shall count toward compliance.

35 (c) Each megawatt of eligible capacity in Kansas installed after Jan-
36 uary 1, 2005, shall count as 1.25 megawatts for purposes of compliance.

37 (d) The commission shall establish rules and regulations required in
38 this section within six months of the effective date of this act 240 days

#2

An affected utility may count savings from energy efficiency programs toward up to 25% of the portfolio requirements of this section. Savings from energy efficiency programs shall be determined in accordance with rules and regulations established by the commission and shall include savings at customer facilities and savings by the utility in the generation and distribution of electricity from the level of usage expected without the energy efficiency programs.

39 New Sec. 4. The commission shall allow affected utilities to recover
40 reasonable costs incurred to meet the new renewable energy resource
41 requirements required in the renewable energy standards act.

42 New Sec. 5. For each affected utility, the commission shall deter-
43 mine whether investment in renewable energy resources required to

2000

5-1

1 meet the renewable portfolio requirement, as required by section 3, and
2 amendments thereto, causes the affected utility's total revenue require-
3 ment to increase one percent or greater. The ~~retail rate~~ impact shall be
4 determined net of new nonrenewable alternative sources of electricity
5 supply reasonably available at the time of the determination.

revenue requirement

#3

, taking into account future environmental regulatory risk including risk of greenhouse gas regulation. A utility may delay compliance with any of the foregoing portfolio requirements to the extent that firm transmission is not available for a renewable generation resource, if the commission determines that there would be substantial benefit to the utility customers by delaying compliance in order to obtain firm transmission from a renewable generation source which will not be available until a later calendar year, or if the utility can demonstrate that the cost of compliance would have an adverse impact on the credit rating or liquidity of the utility

6 New Sec. 6. (a) The commission shall establish rules and regulations
7 for the administration of the renewable energy standards act, including
8 reporting and enforcement mechanisms necessary to ensure that each
9 affected utility complies with this standard and other provisions governing
10 the imposition of administrative penalties assessed after a hearing held
11 by the commission. Administrative penalties should be set at a level that
12 will promote compliance with the renewable energy standards act, and
13 shall not be limited to penalties set forth in K.S.A 66-138 and 66-177,
14 and amendments thereto.

15 (b) For the calendar years 2010 and 2011, the commission is not
16 required to assess penalties if the affected utility can demonstrate it made
17 a good faith effort to comply with the portfolio standards requirement.
18 The commission shall exempt an affected utility from administrative pen-
19 alties for an individual compliance year if the utility demonstrates that
20 the ~~retail rate~~ impact described in section 5, and amendments thereto,
21 has been reached or exceeded and the utility has not achieved full com-
22 pliance with section 3, and amendments thereto. In imposing penalties,
23 the commission shall have discretion to consider mitigating circum-
24 stances. Under no circumstances shall the costs of administrative penalties
25 be recovered from Kansas retail customers.

revenue requirement

26 (c) The commission shall establish rules and regulations required in
27 this section within ~~six months~~ of the effective date of this act.

28 New Sec. 7. (a) The commission shall establish rules and regulations
29 for the administration of a certification process for use of renewable en-
30 ergy resources not currently listed in the renewable energy standards act
31 for purposes of fulfilling the requirements of section 3, and amendments
32 thereto. Criteria for the certification process for renewable energy gen-
33 eration facilities shall be determined by factors that include, but are not
34 limited to: Fuel type, technology and the environmental impacts of the
35 renewable energy generation facility. Renewable energy facilities shall not
36 cause undue or adverse air, water or land use impacts, including impacts
37 associated with the gathering of generation feedstocks.

240 days

38 (b) The commission shall establish rules and regulations required in
39 this section within ~~six months~~ of the effective date of this act.

40 ~~New Sec. 8. Sections 8 through 16, and amendments thereto, shall
41 be known and may be cited as the net metering and easy connection act.~~

42 ~~New Sec. 9. As used in the net metering and easy connection act:
43 (a) "Commission" means the state corporation commission.~~

HOUSE BILL No. 2043

By Committee on Energy and Utilities

1-21

Balloon 5

HOUSE ENERGY AND UTILITIES
DATE: 2/11/2009
ATTACHMENT 2-1

9 AN ACT concerning utilities; establishing the net metering and easy con-
10 nection act for wind generation; amending K.S.A. 2008 Supp. 66-1,184
11 and repealing the existing section.
12

renewable

13 *Be it enacted by the Legislature of the State of Kansas:*
14 New Section 1. Sections 1 through 17, and amendments thereto,
15 shall be known and may be cited as the net metering and easy connection
16 act for wind generation.

17 New Sec. 2. As used in the net metering and easy connection act for
18 wind generation:

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

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

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

27 (1) Is powered by wind;
28 (2) has an electrical generating system with a capacity of not more
29 than 100 kilowatts;

renewable energy resources

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

32 (4) is interconnected and operates in parallel phase and synchroni-
3 zation with a retail electric supplier and has been approved by such retail
4 electric supplier;

is sized appropriately for the customer-generator's
electrical load and

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

7 (6) meets all applicable safety, performance, interconnection and re-
8 liability standards established by the national electrical code, the national
9 electrical safety code, the institute of electrical and electronics engineers,
0 underwriters laboratories, the federal energy regulatory commission and
1 any local governing authorities; and

the connecting electric utility

2 (7) contains a mechanism accessible by electric utility personnel that
3 automatically disables the unit and interrupts the flow of electricity back

HOUSE ENERGY AND UTILITIES
DATE: 2/11/09
ATTACHMENT 2

1 onto the supplier's electricity lines in the event that service to the cus-
2 tomer-generator is interrupted.

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

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

11 New Sec. 3. A retail electric supplier shall:

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

26 (b) offer to the customer-generator a ~~tariff~~ or contract that is identical
27 in electrical energy rates, rate structure and monthly charges to the con-
28 tract or ~~tariff~~ that the customer would be assigned if the customer were
29 not an eligible customer-generator but shall not charge the customer-
30 generator any additional standby, capacity, interconnection or other fee
31 or charge that would not otherwise be charged if the customer were not
32 an eligible customer-generator; and

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

36 New Sec. 4. A customer-generator's facility shall be equipped with
37 sufficient metering equipment that can measure the net amount of elec-
38 trical energy produced or consumed by the customer-generator. If the
39 ~~customer-generator's~~ existing meter equipment does not meet these
40 requirements or if it is necessary for the electric supplier to install addi-
41 tional distribution equipment to accommodate the customer-generator's
42 facility, the customer-generator shall reimburse the retail electric supplier
43 for the costs to purchase and install the necessary additional equipment.

(f) "Renewable energy resources" shall have the meaning ascribed thereto in K.S.A. 17-4652, and amendments thereto, and also means municipal or other solid waste and animal waste.
(g) "Peak load" means the one-hour maximum annual demand imposed by the affected utility's retail load in the state;

rate schedule

~~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. 5. 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. 6. Consistent with the provisions of the net metering and easy connection act for ~~wind~~ generation, the net electrical energy measurement shall be calculated in the following manner:

renewable

(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 3, 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.

and/or demand

(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.

and the excess electricity shall be retained by the supplier as a contribution to the fixed costs associated with owning and maintaining the facilities required to provide electric service when the customer-generator cannot meet its supply needs.

(e) For any electric cooperative utility or electric municipal utility, upon agreement of the wholesale generator supplying electric energy to the retail electric supplier, at the option of the retail electric supplier, the

1 credit to the customer generator may be provided by the wholesale
2 generator.

3 New Sec. 7. (a) Each qualified electric energy generation unit used
4 by a customer-generator shall meet all applicable safety, performance,
5 interconnection and reliability standards established by any local code
6 authorities, the national electrical code, the national electrical safety code,
7 the institute of electrical and electronics engineers and underwriters lab-
8 oratories for distributed generation. No supplier shall impose any fee,
9 charge or other requirement not specifically authorized by the net me-
10 tering and easy connection act for ~~wind~~ generation or the rules and reg-
11 ulations promulgated under such act unless the fee, charge or other re-
12 quirement would apply to similarly situated customers who are not
13 customer-generators, except that a retail electric supplier may require
14 that a customer-generator's system contain a switch, circuit breaker, fuse
15 or other easily accessible device or feature located in immediate proximity
16 to the customer-generator's metering equipment that would allow a utility
17 worker the ability to manually and instantly disconnect the unit from the
18 utility's electric distribution system.

renewable

19 (b) For systems of 10 kilowatts or less, a customer-generator whose
20 system meets the standards specified by subsection (a) shall not be re-
21 quired to install additional controls, perform or pay for additional tests or
22 distribution equipment or purchase additional liability insurance beyond
23 what is required under subsection (a) ~~and section 4, and amendments~~
24 ~~hereto.~~

The customer-generator shall, at its own expense, maintain in force general liability insurance without any exclusion for liabilities related to the interconnection. The amount of such insurance shall be sufficient to insure against all reasonably foreseeable direct liabilities given the size and nature of the generating equipment being interconnected, the interconnection itself and the characteristics of the system to which the interconnection is made.

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

insurance

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

31 (2) establish the qualifications for exemption from a requirement to
32 install additional controls, perform or pay for additional tests or distri-
33 bution equipment or purchase additional liability insurance.

34 New Sec. 8. (a) Applications by a customer-generator for intercon-
35 nection of the qualified generation unit to the distribution system shall
36 be accompanied by the plan for the customer-generator's electrical gen-
37 erating system, including, but not limited to, a wiring diagram and spec-
38 ifications for the generating unit, and shall be reviewed and responded
39 to by the retail electric supplier within 30 days after receipt for systems
40 of 10 kilowatts or less and within 90 days after receipt for all other systems.
41 Prior to the interconnection of the qualified generation unit to the sup-
42 plier's system, the customer-generator will furnish the retail electric sup-
43 plier a certification from a qualified professional electrician or engineer

5-2

1 that the installation meets the requirements of subsection (a) of section
2 7, and amendments thereto. If the application for interconnection is ap-
3 proved by the retail electric supplier and the customer-generator does
4 not complete the interconnection within one year after receipt of notice
5 of the approval, the approval shall expire and the customer-generator shall
6 be responsible for filing a new application.

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

10 New Sec. 9. Each retail electric supplier regulated by the commis-
11 sion shall submit an annual net metering report to the commission and
12 each other retail electric supplier shall submit the same report to its re-
13 spective governing body. For data collection purposes only, non-regulated
14 electric suppliers shall submit the same report to the commission. The
15 report shall include the following information for the previous calendar
16 year: The total number of customer-generator facilities, the total esti-
17 mated generating capacity of its net-metered customer-generators and
18 the total estimated net kilowatt-hours received from customer-generators.
19 The supplier shall make such report available to any consumer of the
20 supplier upon request.

21 New Sec. 10. Within nine months after the effective date of the net
22 metering and easy connection act for ~~wind~~ generation, the commission
23 shall adopt rules and regulations necessary for the administration of such
24 act for electric public utilities, which shall include rules and regulations
25 ensuring that simple contracts will be used for interconnection and net
26 metering. For systems of 10 kilowatts or less, the application process shall
27 use an all-in-one document that includes a simple interconnection re-
28 quest, simple procedures and a brief set of terms and conditions.

29 New Sec. 11. Within nine months after the effective date of the net
30 metering and easy connection act for ~~wind~~ generation, the governing body
31 of an electric cooperative utility or electric municipal utility shall adopt
32 policies establishing a simple contract to be used for interconnection and
33 net metering. For systems of 10 kilowatts or less, the application process
34 shall use an all-in-one document that includes a simple interconnection
35 request, simple procedures and a brief set of terms and conditions.

36 New Sec. 12. For any cause of action relating to any damages to
37 property or person caused by the generation unit of a customer-generator
38 or the interconnection thereof, the retail electric supplier shall have no
39 liability absent clear and convincing evidence of fault on the part of the
40 supplier.

41 New Sec. 13. The estimated generating capacity of all net metering
42 systems operating under the provisions of the net metering and easy con-
43 nection act for ~~wind~~ generation shall count towards accomplishment by

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1 the respective retail electric supplier, or the wholesale generator supply-
2 ing electric energy to the retail electric supplier, of any renewable energy
3 portfolio target or mandate adopted by the Kansas legislature.

4 New Sec. 14. Any costs incurred under the net metering and easy
5 connection act for ~~wind~~ generation by a retail electric supplier shall be
6 recoverable in the utility's rate structure.

7 New Sec. 15. No consumer shall connect or operate an electric gen-
8 eration unit in parallel phase and synchronization with any retail electric
9 supplier without written approval by such supplier that all of the require-
10 ments under subsection (a) of section 8, and amendments thereto, have
11 been met. For a consumer who violates this provision, a supplier may
12 immediately and without notice disconnect the electric facilities of such
13 consumer and terminate such consumer's electric service.

14 New Sec. 16. The manufacturer of any electric generation unit used
15 by a customer-generator may be held liable for any damages to property
16 or person caused by a defect in the electric generation unit of a customer-
17 generator.

18 New Sec. 17. The seller, installer or manufacturer of any electric
19 generation unit who knowingly misrepresents the safety aspects of an
20 electric generation unit may be held liable for any damages to property
21 or person caused by the electric generation unit of a customer-generator.

22 ~~New Sec. 18. (a) On and after the effective date of this act, any pro-
23 vision of a restrictive covenant which restricts or prohibits the use of any
24 ~~wind turbine or any other~~ equipment used for ~~wind~~ power on or adjacent
25 to any residential dwelling is hereby declared to be against public policy
26 and such provision shall be void and unenforceable.~~

27 ~~(b) The provisions of this section shall apply to any restrictive cove-
28 nant in existence on the effective date of this act.~~

29 ~~New Sec. 19. (a) On and after the effective date of this act, any pro-
30 vision of a city or county ordinance, resolution or regulation restricting
31 or prohibiting the use of any ~~wind turbine or any other~~ equipment used
32 for ~~wind~~ power installed on or adjacent to buildings is hereby declared
33 to be against public policy and such provision shall be void and
34 unenforceable.~~

35 ~~(b) The provisions of this section shall apply to any ordinance, reso-
36 lution or regulation in existence on the effective date of this act.~~

37 Sec. 20. K.S.A. 2008 Supp. 66-1,184 is hereby amended to read as
38 follows: 66-1,184. (a) Except as provided in subsection (b), every public
39 utility which provides retail electric services in this state shall enter into
40 a contract for parallel generation service with any person who is a cus-
41 tomer of such utility, upon request of such customer, whereby such cus-
42 tomer may attach or connect to the utility's delivery and metering system
43 an apparatus or device for the purpose of feeding excess electrical power

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1 which is generated by such customer's energy producing system into the
2 utility's system. No such apparatus or device shall either cause damage
3 to the public utility's system or equipment or present an undue hazard
4 to utility personnel. Every such contract shall include, but need not be
5 limited to, provisions relating to fair and equitable compensation on such
6 customer's monthly bill for energy supplied to the utility by such
7 customer.

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

9 (A) "Utility" means an electric public utility, as defined by K.S.A. 66-
10 101a, and amendments thereto, any cooperative, as defined by K.S.A. 17-
11 4603, and amendments thereto, or a nonstock member-owned electric
12 cooperative corporation incorporated in this state, or a municipally owned
13 or operated electric utility;

14 (B) "school" means Cloud county community college and Dodge City
15 community college; and

16 (C) "*avoided energy cost*" means the current average cost of fuel and
17 purchased energy for the preceding ~~12~~ months for the utility, or in the
18 case of a non-generating utility, for such utility's wholesale power sup-
19 plier, as defined by the governing body with jurisdiction over any electric
20 municipal utility, electric cooperative utility or electric public utility.

21 (2) Every utility which provides retail electric services in this state
22 shall enter into a contract for parallel generation service with any person
23 who is a customer of such utility, if such customer is a residential customer
24 of the utility and owns a renewable generator with a capacity of 25 kilo-
25 watts or less, or is a commercial customer of the utility and owns a re-
26 newable generator with a capacity of 200 kilowatts or less or is a school
27 and owns a renewable generator with a capacity of 1.5 megawatts or less.
28 Such generator shall be appropriately sized for such customer's antici-
29 pated electric load. A commercial customer who uses the operation of a
30 renewable generator in connection with irrigation pumps shall not request
31 more than 10 irrigation pumps connected to renewable generators be
32 attached or connected to the utility's system. At the customer's delivery
33 point on the customer's side of the retail meter such customer may attach
34 or connect to the utility's delivery and metering system an apparatus or
35 device for the purpose of feeding excess electrical power which is gen-
36 erated by such customer's energy producing system into the utility's sys-
37 tem. No such apparatus or device shall either cause damage to the utility's
38 system or equipment or present an undue hazard to utility personnel.
39 Every such contract shall include, but need not be limited to, provisions
40 relating to fair and equitable compensation for energy supplied to the
41 utility by such customer. Such compensation shall be not less than 100%
42 of the utility's monthly system average cost of energy per kilowatt hour
43 *avoided energy cost* except that in the case of renewable generators with

1 a capacity of 200 kilowatts or less, such compensation shall be not less
2 than 150% of the utility's monthly system average cost of energy per
3 kilowatt hour avoided energy cost. A utility may credit such compensation
4 to the customer's account or pay such compensation to the customer at
5 least annually or when the total compensation due equals \$25 or more.

6 (3) A customer-generator, as defined by section 2, and amendments
7 thereto, shall have the option of entering into a contract pursuant to this
8 subsection (b) or utilizing the net metering and easy connection act for
9 wind generation. The customer-generator shall exercise the option in writ-
10 ing, filed with the utility and shall not be entitled to change the option
11 once it is filed.

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12 (c) The following terms and conditions shall apply to contracts en-
13 tered into under subsection (a) or (b):

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

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

26 (3) the customer shall furnish, install, operate, and maintain in good
27 order and repair and without cost to the utility, such relays, locks and
28 seals, breakers, automatic synchronizer, and other control and protective
29 apparatus as shall be designated by the utility as being required as suitable
30 for the operation of the generator in parallel with the utility's system. In
31 any case where the customer and the utility cannot agree to terms and
32 conditions of any such contract, the state corporation commission shall
33 establish the terms and conditions for such contract. In addition, the
34 utility may install, own, and maintain a disconnecting device located near
35 the electric meter or meters. Interconnection facilities between the cus-
36 tomer's and the utility's equipment shall be accessible at all reasonable
37 times to utility personnel. Upon notification by the customer of the cus-
38 tomer's intent to construct and install parallel generation, the utility shall
39 provide the customer a written estimate of all costs that will be incurred
40 by the utility and billed to the customer to accommodate the intercon-
41 nection. The customer may be required to reimburse the utility for any
42 equipment or facilities required as a result of the installation by the cus-
43 tomer of generation in parallel with the utility's service. The customer

1 shall notify the utility prior to the initial energizing and start-up testing
2 of the customer-owned generator, and the utility shall have the right to
3 have a representative present at such test;

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

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

11 (d) Service under any contract entered into under subsection (a) or
12 (b) shall be subject to either the utility's rules and regulations on file with
13 the state corporation commission, which shall include a standard inter-
14 connection process and requirements for such utility's system, or the cur-
15 rent federal energy regulatory commission interconnection procedures
16 and regulations.

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

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

31 (g) For the purpose of meeting the governor's stated goal of produc-
32 ing 10% of the state's electricity by wind power by 2010 and 20% by 2020,
33 any renewable energy portfolio target or mandate adopted by the Kansas
34 legislature, the parallel generation of electricity provided for in this sec-
35 tion shall be included as part of the state's renewable energy generation
36 by wind power.

37 (h) The provisions of the net metering and easy connection act for
38 ~~wind~~ generation shall not preclude the state corporation commission from
39 approving net metering tariffs upon request of an electric utility for other
40 methods of renewable generation not prescribed in subsection (c)(1) of
41 section 2, and amendments thereto.

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42 Sec. 21. K.S.A. 2008 Supp. 66-1,184 is hereby repealed.

43

1 Sec. 22. This act shall take effect and be in force from and after its
2 publication in the statute book.

HOUSE BILL No. 2182

By Committee on Energy and Utilities

1-30

Balloon 2

HOUSE ENERGY AND UTILITIES

DATE: 2/11/2009

ATTACHMENT 3-1

9 AN ACT concerning the department of health and environment; requir-
10 ing the Kansas air quality act be consistent and uniform with the fed-
11 eral clean air act; amending K.S.A. 19-101a, 65-3012 and K.S.A. 2008
12 Supp. 65-3005 and 65-3008a and repealing the existing sections.
13

14 WHEREAS, The federal government is currently contemplating the
15 regulation of certain emissions from stationary, mobile and area sources
16 not currently regulated by the United States environmental protection
17 agency, the form and requirements of which cannot be predicted at this
18 time, but which could include cap and trade regulations, national energy
19 taxes or a specific tax on one or more of such emissions that would pre-
20 empt state-specific programs intended to reduce the emission of green-
21 house gases and other emissions; and

22 WHEREAS, Any uncoordinated state regulatory initiative intended to
23 regulate such emissions may be inconsistent with subsequent congress-
24 sional determinations and with related federal legislation; and

25 WHEREAS, An individual Kansas response to the development of
26 new regulatory programs intended to regulate emissions not currently
27 regulated by the federal government is premature: Now, therefore,
28

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

30 Section 1. K.S.A. 19-101a is hereby amended to read as follows: 19-
31 101a. (a) The board of county commissioners may transact all county
32 business and perform all powers of local legislation and administration it
33 deems appropriate, subject only to the following limitations, restrictions
34 or prohibitions:

35 (1) Counties shall be subject to all acts of the legislature which apply
36 uniformly to all counties.

37 (2) Counties may not affect the courts located therein.

38 (3) Counties shall be subject to acts of the legislature prescribing
39 limits of indebtedness.

40 (4) In the exercise of powers of local legislation and administration
41 authorized under provisions of this section, the home rule power con-
42 ferred on cities to determine their local affairs and government shall not
43 be superseded or impaired without the consent of the governing body of

1 *ceedings shall be conducted in accordance with K.S.A. 77-601 et seq., and*
2 *amendments thereto, however the applicant or permittee shall not be re-*
3 *quired to exhaust any other or additional administrative remedies avail-*
4 *able within the agency notwithstanding any other provision of law.*

5 Sec. 3. K.S.A. 2008 Supp. 65-3008a is hereby amended to read as
6 follows: 65-3008a. (a) No permit shall be issued, modified, renewed or
7 reopened without first providing the public an opportunity to comment
8 and request a public hearing on the proposed permit action. The request
9 for a public hearing on the issuance of a permit shall set forth the basis
10 for the request and a public hearing shall be held if, in the judgment of
11 the secretary, there is sufficient reason.

12 (b) The secretary shall affirm, modify or reverse the decision on such
13 permit after the public comment period or public hearing *and shall affirm*
14 *the issuance of any permit, the terms and conditions of which comply*
15 *with all requirements established by rules and regulations promulgated*
16 *pursuant to the Kansas air quality act.* Any person who participated in
17 the public comment process or the public hearing who otherwise would
18 have standing under K.S.A. 77-611, and amendments thereto, shall have
19 standing to obtain judicial review of the secretary's final action on the
20 permit pursuant to the act for judicial review and civil enforcement of
21 agency actions in the court of appeals. Any such person other than the
22 applicant for or holder of the permit shall not be required to have ex-
23 hausted administrative remedies in order to be entitled to review. The
24 court of appeals shall have original jurisdiction to review any such final
25 agency action. The record before the court of appeals shall be confined
26 to the agency record for judicial review and consist of the documentation
27 submitted to or developed by the secretary in making the final permit
28 decision, including the permit application and any addenda or amend-
29 ments thereto, the permit summary, the draft permit, all written com-
30 ments properly submitted to the secretary, all testimony presented at any
31 public hearing held on the permit application, all responses by the ap-
32 plicant or permit holder to any written comments or testimony, the sec-
33 retary's response to the public comments and testimony and the final
34 permit.

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

38 Sec. 4. K.S.A. 65-3012 is hereby amended to read as follows: 65-
39 3012. ~~(a) Notwithstanding any other provision of this act, the secretary~~
40 ~~may take such action as may be necessary to protect the health of persons~~
41 ~~or the environment. (1) Upon receipt of information that the emission of~~
42 ~~an air pollution source or combination of air pollution sources presents a~~
43 ~~an imminent and substantial endangerment to the public health of per-~~

[Replace language in K.S.A. 65-3012 with:

(a) Upon receipt of information that emissions from an air pollution source or combination of sources presents an imminent and substantial endangerment to public health or welfare or the environment, or for an imminent or actual violation of this act, or any permit conditions required by this act, or any orders issued under this act or any permit issued by this act, the secretary may issue a temporary order not to exceed 72 hours in duration, directing the owner or operator, or both, to take such steps as necessary to prevent the act or eliminate the practice.

(b) Upon ^{ISSUANCE} expiration of the temporary order, the secretary may commence an action in the district court to enjoin acts or practices or request the attorney general or appropriate county or district attorney to commence an action to enjoin those acts or practices.

(c) Upon a showing by the secretary that a person has engaged in acts or practices in violation of subsection (a), 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.

(d) The owner or operator, or both, aggrieved by an order of the secretary issued pursuant to this section shall be immediately be entitled to judicial review of such agency action by filing a petition for judicial review in district court. The aggrieved party shall not be required to exhaust administrative remedies. A petition for review under this subsection shall have precedence over other cases in respect to order of trial.

1 sons or welfare or to the environment, or (2) for an imminent or actual
2 violation of this act, any rules and regulations adopted under this act, any
3 orders issued under this act or any permit conditions required by this act.

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

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

10 ~~— (2) Commencing, the secretary may commence an action in the dis-
11 trict court to enjoin acts or practices specified in subsection (a) or re-
12 questing request the attorney general or appropriate county or district
13 attorney to commence an action to enjoin those acts or practices.~~

14 ~~(b) Upon a showing by the secretary that a person has engaged in
15 those acts or practices, a permanent or temporary injunction, restraining
16 order or other order may be granted by any court of competent jurisdic-
17 tion. An action for injunction under this subsection shall have precedence
18 over other cases in respect to order of trial.~~

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

26 ~~— (c) In any civil action brought pursuant to this section in which a
27 temporary restraining order or preliminary injunction is sought, it shall
28 not be necessary to allege or prove at any stage of the proceeding that
29 irreparable damage will occur should the temporary restraining order or
30 preliminary injunction not be issued or that the remedy at law is inade-
31 quate, and the temporary restraining order or preliminary injunction shall
32 issue without such allegations and without such proof.~~

33 ~~— (d) Any order of the secretary pursuant to subsection (b)(1) is subject
34 to hearing and review in accordance with the Kansas administrative pro-
35 cedure act.~~

36 Sec. 5. K.S.A. 19-101a, 65-3012 and K.S.A. 2008 Supp. 65-3005 and
37 65-3008a are hereby repealed.

38 Sec. 6. This act shall take effect and be in force from and after its
39 publication in the statute book.

3-3