

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Pat Apple at 1:00 p.m. on February 18, 2009, in Room 545-N of the Capitol.

All members were present.

Committee staff present:

Mike Corrigan, Office of the Revisor of Statutes  
Melissa Doeblin, Office of the Revisor of Statutes  
Raney Gilliland, Kansas Legislative Research Department  
Cindy Lash, Kansas Legislative Research Department  
Mary Galligan, Kansas Legislative Research Department  
Ann McMorris, Committee Assistant

Conferees appearing before the committee:

Amy Blankenbiller, Kansas Chamber of Commerce  
Allie Devine, Kansas Livestock Association  
Paul Joseph, President, Garden City Chamber of Commerce  
Doug Aldrich, Terracon  
Kimberly Svaty, Wind Coalition  
Mark Lawlor, Horizon Wind  
Eric Stafford, Associated General Contractors of Ks., Inc.  
Mark Calcara, Sunflower Electric Power Corporation

Others attending:

See attached list.

Chair opened the meeting and called on Cindy Lash, Kansas Legislative Research Department, to provide a detailed explanation of **SB 265**. Cindy summarized the major provisions of the bill by topic area. (Attachment 1)

A summary of the 2009 Senate Comprehensive Energy Plan was distributed to the committee. (Attachment 2)

Chair opened the hearing on:

**SB 265 - Energy conservation and electric generation, transmission and efficiency and air emissions.**

Proponents:

Amy Blankenbiller, Kansas Chamber of Commerce, represents a broad based coalition of 50 entities and voiced the business community's support for **SB 265**. The coalition supports **SB 265** and its positive impact on the regulatory environment. **SB 265** 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. (Attachment 3)

Allie Devine, Kansas Livestock Association, KLA strongly supports **SB 265** and approves Section 24 which adds the provisions of the Kansas air quality act and Section 28 which clarifies the meaning for the regulation of emergency situations. Some additional language was suggested to further clarify Section 28. (Attachment 4)

Paul Joseph, President, Garden City Chamber of Commerce, voiced his concerns on three points: (1) employment; (2) regulatory fairness; and (3) business loss. (Attachment 5)

Doug Aldrich, Terracon, noted the provisions in **SB 265** to enact a Renewable Energy Standard for Kansas takes a very positive step to help the economic climate of Kansas. (Attachment 6)

CONTINUATION SHEET

Minutes of the Senate Utilities Committee at 1:00 p.m. on February 18, 2009, in Room 545-N of the Capitol.

Kimberly Svaty, Wind Coalition, stated the wind coalition supports the implementation of a meaningful renewable portfolio standard (RPS) in Kansas. An RPS will encourage the development of the rich wind power resources within the state and increase direct and indirect economic development. (Attachment 7)

Mark Lawlor, Horizon Wind Energy, commended the committee and the utilities in Kansas for taking steps to solidify future wind development through a market-stabilizing RPS. A strong RPS will send a clear signal to regional and national entities planning transmission superhighways that Kansas will provide clean, renewable energy. (Attachment 8)

Eric Stafford, Associated General Contractors of Ks., Inc., AGC supports **SB 265**. (Attachment 9)

Mark Calcara, Vice President and General Counsel, Sunflower Electric Power Corporation, Sunflower supports the renewable portfolio standards outlined in **SB 265**. He suggested that a new section providing for the further deregulation of cooperatives be included and provided language. (Attachment 10)

Written testimony was provided by Eric Depperschmidt, President, Finney County Economic Development Corporation. (Attachment 11)

Chair opened for questions. Questions asked regarding who are members of cooperatives and limited liability cooperatives and regulation of wind development.

Chair recessed the hearing on **SB 265**.

The next meeting is scheduled for February 19, 2009.

The meeting was adjourned at 2:30 p.m.

Respectfully submitted,

Ann McMorris  
Committee Assistant

Attachments - 11

GUEST LIST  
 SENATE UTILITIES COMMITTEE  
 FEBRUARY 18, 2009

NAME

COMPANY

John D. Pinegar	Pinegar Smith + Assoc.
Tom Thompson	Sierra Club
Mari Tucker	Dept of Commerce
Jim Stanton	Northern Natural Gas
Scott Jones	KCPK
PAUL JOSEPH	GARDEN CITY CHAMBER OF COM
Patricia LABOS	KCPKO
Mick Urban	ONEOK/K65
LARRY BELLE	MIDWEST ENERGY
Bob Johnson	SEPC
Doug Aldrich	TERRACON
Wendell White	TERRACON
Whites Jam	Empire
TOM DAY	KCC
Mark Schreiber	Westar
DeeDee Helm	Helm Co. Farm
Kimberly Susan Saty	Wind Coalition
Mark Rowland	Stouffer Wind

GUEST LIST  
SENATE UTILITIES COMMITTEE  
FEBRUARY 18, 2009

NAME

COMPANY

Kian Presley

Hearney & Associates

Dave Holden

KEC

Nelson Kraeger P A R

Jacquie Stinemann

USC



## Bill Explanation for Senate Bill 265

Senate Bill 265 is a comprehensive energy bill. Provisions of the bill enact new law and amend existing law related to several programs. Major provisions of the bill are summarized below, by topic area.

### State Purchase of Products and Equipment

Requires the Secretary of Administration to adopt rules and regulations mandating that state agencies purchase products and equipment at least as energy efficient as similar products that qualify for Energy Star Certification. The requirement only applies if the projected cost savings over the life of the product is equal to or greater than the additional cost paid for the more efficient product. **(New Sec. 2)**

### State Energy Use Data

Requires the Secretary of Administration to collect data on energy consumption and costs for all state-owned or leased real property. The Secretary must submit annual reports to the Legislature identifying properties that use an excessive amount of energy and are in violation of rules and regulations adopted by the Secretary concerning energy efficiency standards for state owned or leased property. Reports would be due on the first day of the Legislative Session in 2010 and annually thereafter.

Additionally, the Secretary of Administration could not approve a new lease or a renewal of an existing lease unless the lessor has submitted an energy audit of the property. The lessor would be required to make improvements to the property based on the audit. The Secretary would be required to adopt rules and regulations establishing energy efficiency performance standards. **(New Sec. 3)**

### Agency Participation in the Facilities Conservation Improvement Program

Requires the Kansas Energy Office of the Kansas Corporation Commission (KCC), within the limits of appropriations, to develop and increase the participation of school districts and local governments in the Facilities Conservation Improvement Program (FCIP). The KCC shall strongly encourage state agencies that operate state-owned buildings to participate in FCIP if the agencies have not already done so. **(New Sec. 4)**

### State Building Construction and Renovation Standards

Establishes energy efficiency performance standards for state buildings. All newly constructed and, to the extent possible, renovated state-owned buildings must be designed and constructed to achieve energy consumption levels that are at least 10 percent below the levels



established by ASHRAE or IECC, as prescribed in rules and regulations adopted by the Secretary of Administration. The regulations only apply if the levels are life-cycle cost-effective. The Secretary also would recommend that new and, to the extent possible, renovated school and municipal buildings meet the same requirements. **(New Sec. 5)**

### **Renewable Resources Requirement**

Creates a renewable resources requirement for public electric utilities, excluding those owned or operated by municipalities. Requires that, by 2013, public utilities are able to generate or purchase an amount of energy from renewable resources that is equal to at least 10 percent of their three-year average (calendar years 2009, 2010, and 2011) peak load, expressed in megawatts, in the State of Kansas. The required amount of renewable resources would increase to 15 percent by 2017 and to 20 percent by 2021.

Renewable energy provided to a utility under the Net Metering and Easy Connection Act may be counted toward the utility's renewable resource requirement. The KCC is required to adopt rules and regulations to govern reporting requirements and prevention of duplication of the application of the renewable resources requirements.

Renewable resources for this requirement include wind, solar, photovoltaic, biomass, hydropower, geothermal, and landfill gases. **(New Sec. 6)**

### **Net Metering and Easy Connection Act**

Enacts the Net Metering and Easy Connection Act which establishes a net metering procedure for small solar electricity generating units (100 kw maximum capacity) that are interconnected with a retail electricity supplier. Retail electric suppliers include any municipal electric utility, electric cooperative utility, or electric public utility that provides retail electric service in Kansas. **(New Sec. 7, 8)**

Net metering would be available to customer-generators on a first-come, first-served basis, but suppliers would not be required to make the net metering available if the total rated generating capacity exceeds certain parameters outlined in the bill. **(New Sec. 9)**

Customer-generators who produce more electricity than they receive from a supplier during a billing period will be billed for appropriate customer charges and will be credited an amount at least equal to 150 percent of the avoided energy cost for the excess kilowatt-hours generated. Unused credits expire without compensation 12 months after they are issued. **(New Sec. 12 (c,d))**

Retail electric suppliers are required to submit an annual net metering report either to the KCC or to the retail supplier's governing body. The KCC is required to adopt rules and regulations for administration of the Act for electric public utilities, within nine months of the effective date of the bill. Also within nine months after the effective date of the bill, the governing body of an electric cooperative utility or a municipal electric utility would be required to adopt policies establishing a simple contract to be used for interconnection and net metering. **(New Sec. 15 - 17)**



Costs incurred under the Net Metering and Easy Connection Act by a retail electric supplier are recoverable in the utility's rate structure. **(New Sec. 20)**

### **Home Rule Provisions**

Prohibits counties from using home rule powers to opt-out of the Kansas Air Quality Act and makes technical changes to the statute. **(Sec. 24)**

### **Parallel Generation**

Amends the parallel generation statute to allow a person operating a small solar electricity generating unit that is interconnected with a retail electricity supplier the option of participating under the parallel generation statute or the Net Metering and Easy Connection Act. Once made, the option selected could not be changed. **(Sec. 25 (b) (3))**

Renewable energy provided to a utility under a parallel generation contract may be counted toward the utility's renewable resource requirement. **(Sec. 25 (g))**

The Kansas Corporation Commission, upon request of a utility, may approve net metering tariffs for renewable generation from other resources in addition to solar. **(Sec. 25 (h))**

### **Powers of the Secretary Under the Kansas Air Quality Act**

Asserts the policy of the state to regulate Kansas air quality and implement laws and regulations that are applied equally and uniformly throughout the state and consistent with those of the federal government. **(Sec 26 (b))**

Authorizes the Secretary of Health and Environment to promulgate rules and regulations to ensure Kansas is in compliance with the federal Clean Air Act, however the standards established cannot be any more stringent, restrictive or expansive than required by the federal Clean Air Act, and cannot be enforced prior to the time required by the federal Act. These restrictions do not apply to an implementation plan for a non-attainment area under the Clean Air Act. **(Sec. 26 (b) (1))**

Prohibits the Secretary from denying or delaying issuance of a permit required by federal or state law if the applicant has met the requirements of the Kansas Air Quality Act. **(Sec. 26 (b) (2))**

If requested by the applicant, the Secretary is required to reconsider an application for a permit filed after January 1, 2006, and prior to the effective date of this Act that remains pending in any administrative or judicial review proceeding. The application for reconsideration must be filed with the Secretary within 60 days of the effective date of this Act, and the Secretary has 15 days during which to act on the request. **(Sec. 26 (c))**

An applicant aggrieved by the Secretary's action may file a petition for review with the Kansas Court of Appeals within 30 days of the Secretary's determination. The Court's review must be conducted in accordance with the Act for Judicial Review and Civil Enforcement of



Agency Actions without the need to exhaust other administrative remedies. **(Section 26 (c))**

### **Approvals and Permits for Emission Stationary Sources**

Requires the Secretary, after a public comment period or public hearing, to affirm the issuance of any permit that complies with all requirements of rules and regulations promulgated under the Kansas Air Quality Act. **(Sec. 27)**

### **Action to Protect Health or Environment**

Authorizes the Secretary to issue a temporary order upon receiving evidence that emissions from an air pollution source or sources presents an imminent and substantial danger to public health, welfare or environment; or an imminent or actual violation of the Act or permit conditions required by the Act. The temporary order, limited to 72 hours, could direct the owner or operator of a facility or site to take steps as necessary to prevent the act or eliminate the practice. The Secretary may initiate action in the district court upon expiration of the temporary order. **(Sec. 28 (a,b))**

An owner or operator aggrieved by the Secretary's order is immediately entitled to judicial review of the agency action, upon filing a petition, without the need to exhaust administrative remedies. **(Sec. 28 (d))**

### **Severability**

If any provisions of the act are held to be invalid, it shall not affect the validity of the remaining portions of the act. **(Sec. 29)**

### **Effective Date**

The Act would take effect upon publication in the *Kansas Register*. **(Sec. 31)**





## Kansas Senate Committee on Utilities

Senator Pat Apple, Chairman  
785/296-7368  
[Pat.Apple@senate.ks.gov](mailto:Pat.Apple@senate.ks.gov)

Senator Mike Petersen, Vice-Chairman  
785/296-7355  
[Mike.Petersen@senate.ks.gov](mailto:Mike.Petersen@senate.ks.gov)

### Summary of the 2009 Senate Comprehensive Energy Plan

The 2009 Senate Comprehensive Energy Plan, Senate Bill 265, was developed with bi-partisan support. It is based on previous legislation that was supported by more than 80% of the Senate. This plan addresses our state's growing energy needs through increased production of renewable energies, improved conservation of energy usage by state agencies and buildings, and clarifying emissions regulations.

Kansans expect and deserve an Energy Plan that doesn't drive up their energy costs and convinces businesses to expand or build new facilities in our state. Our bi-partisan plan includes policies that are good for the environment, businesses, and ratepayers

**Good for the Environment:** State policy should encourage the development and usage of renewable energy sources so they may begin to play a larger role in the overall solution to our energy requirement.

- **Establish Renewable Portfolio Standard (RPS)**
  - Require each public utility to include renewable energy sources in its generation portfolio to total at least: 10% by 2013; 15% by 2017; and 20% by 2021 of the public utility's peak load. This provision excludes municipalities.
- **State Energy Efficiency Standards (EES):** Require Secretary of Administration to adopt rules and regulations prescribing EES.
  - Applies to all new construction and to the extent possible, renovated state-owned buildings.
  - Requires design and construction achieve energy consumption levels that are at least 10% better than set national and international professional standards if they are life-cycle cost effective.
- **Facilities Conservation Improvements Program (FCIP)**
  - Encourage schools and local governments to improve their energy conservation through FCIP.
    - Entity partners work with a private energy service company to identify and evaluate energy-saving opportunities and improvements to be paid for through savings.



- **Energy Consumption Assessment**

- Direct the Department of Administration to collect data on energy consumption and cost for all state-owned and leased real property and report to the legislature areas of excessive use.

**Good for Businesses:** Establish consistent and predictable regulatory policy for Kansas to create a more business friendly climate that attracts and keeps new, well-paying jobs. Lenders have made it clear that it is simply impossible to provide potential businesses with financing if they are unable to trust that the state's policy and oversight will not be subject to regulatory uncertainty.

- **State Emission Standards:** Direct the KDHE to establish standards that are no more stringent, restrictive or expansive than those required under the Federal Clean Air Act.
  - This does not apply to parts of the State Implementation Plan developed to bring a non-attainment area into compliance.
  - Position Kansas to be in line with future national standards.
  - Missouri, Colorado and Oklahoma have legislation that is no more stringent.
  - Provides fairness when employers want to build or expand in Kansas.
  - Allows Kansas to be "Open for Business".
- **Emergency Responses by KDHE:** Clarify the KDHE Secretary use of emergency powers
  - KDHE Secretary may issue a temporary order upon receipt of evidence that emissions from air pollution pose an imminent and substantial endangerment to public health or welfare or to the environment.
  - The secretary must seek judicial review within 72 hours.
  - Gives aggrieved party immediate access to judicial review without exhausting administrative remedies.
  - Removes politics out of the process – making it clear the Secretary is responding to an emergency situation as was intended.

**Good for Ratepayers:** With the rising price of natural gas, and petroleum in general, it is important to find responsible and cost effective solutions for future energy requirements.

- **Net Metering**
  - Allows Kansans who produce their own electricity through solar sources to sell excess power their produce back to their utility company at a fair price.
- **Previous Applications**
  - Direct the KDHE Secretary to reconsider action taken on any application after January 1, 2006 that involves an air permit so needed energy is produce at affordable rates and meet future base load demand.

# Legislative Testimony



SB 265

February 18, 2009

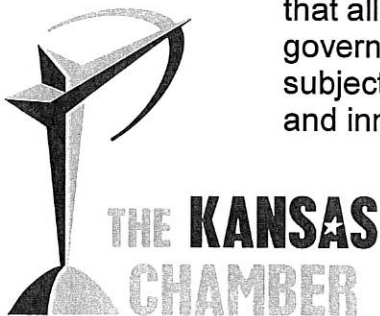
Testimony before Senate Utilities Committee

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

**Coalition:** Kansas Chamber, Kansas Farm Bureau, Kansas Livestock Association, Kansas Bankers Association, National Federation of Independent Businesses – Kansas, 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, Hoisington Chamber of Commerce, Girard Area Chamber of Commerce, Paola Chamber of Commerce, Ottawa Area Chamber of Commerce, Garden City Area Chamber of Commerce, Wichita Hispanic Chamber of Commerce, Wichita Independent Business Association, Derby Chamber of Commerce, Junction City Geary County Economic Development Corporation, Associated General Contractors of Kansas, Kansas Electric Cooperatives, Kansas Cooperative Council, Kansas Petroleum Marketers Association, Liberal Area Chamber of Commerce, Dodge City Area Chamber of Commerce, Great Bend Chamber of Commerce and Economic Development, Ness County Economic Development, Royal Farms Dairy, Greeley County Community Development, Wheatland Water, Wheatland Electric Cooperative, Rooks County Economic Development, Pioneer Electric Cooperative, Wichita Area Chamber of Commerce, Central and Western Kansas Building Trades, Southeast Kansas Building Trades, Northeast Kansas Building Trades, City of Holcomb, Americans for Prosperity, Barton County Commission, Hays Area Chamber of Commerce, Lane-Scott Electric Cooperative, Prairie Land Electric Cooperative, Southern Pioneer Electric, Victory Electric Cooperative, Western Cooperative Electric

Thank you Mr. Chairman and members of the committee for the opportunity to voice the business community's support for SB 265. My name is Amy Blankenbiller, President and CEO of the Kansas Chamber, and I am here representing a broad based coalition.

The coalition supports SB 265 and its positive impact on the regulatory environment. SB 265 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.



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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 of the Section 24 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 26 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 CO<sub>2</sub> 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 27 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 28 (a, b) 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.

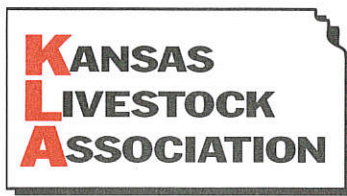
Kansans have the right to assume that emergency powers will only be utilized when in fact an emergency has occurred. SB 265 clarifies that such an emergency is an "imminent and substantial threat to public health or welfare or to the environment."

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. SB 265 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 SB 265 and the clarification it brings.





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## TESTIMONY

To: Senate Committee on Energy and Utilities  
Senator Pat Apple, Chair

From: Allie Devine, Vice President and General Counsel

Date: February 18, 2009

Subj: **Senate Bill 265 – Energy and Regulatory Certainty**

*The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing over 5,000 members on legislative and regulatory issues. KLA members are involved in many aspects of the livestock industry, including seed stock, cow-calf and stocker production, cattle feeding, dairy production, grazing land management and diversified farming operations.*

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 24 which amends KSA 19-101a (27), page 10 line 39 of HB 265, 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 28 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

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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.

SB 265 provides the secretary with the authority to act to address emergency situations by issuing an order not to exceed 72 hours directing the alleged offending operator to cease activities. If the Secretary seeks to expand the order then the Secretary must go to district court and seek a temporary or permanent restraining order.

This assures that the rules of evidence and the balancing of interests is done in an open forum to protect all parties. If during the 72 hour period that the Secretary seeks an emergency order an aggrieved party seeks immediate relief, that party can appeal to district court. There would be no requirement that the party exhaust administrative appeals. This system parallels the federal law and provides the balancing of interests to assure that all parties "have their day in court."

Thank you for your time.



Garden City Area Chamber of Commerce  
Leading Businesses. Leading Communities.  
Advocacy. Opportunity. Impact. Focus

D. Paul Joseph  
President

Personal Cell (620) 805-1625

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## Legislative Testimony

February 18, 2009

- SB 265 - Testimony before Senate Utilities Committee

Paul Joseph, President  
Garden City Area Chamber of Commerce  
Garden City, Kansas

Good Afternoon:

Thank you, Mr. Chairman and members of the committee for the opportunity to voice the Garden City, Kansas Area Chamber of Commerce's business community's support for SB 265. My name is Paul Joseph, president of the Chamber. I have three points for discussion.

Employment:

Many people think that a construction project the size of the proposed Holcomb power plant expansion will be "manpowered" by locals. This is not the case. A job this size will result in many union and construction workers from Kansas City and Wichita moving to Garden City for the 2-4 years during the construction phase of the this project . We encourage you to talk to them regarding the need for growth, construction and development in our state. These skilled workers, from all over the state, know how important this job is to them, right now, in their home state. Our fellow Kansans that are skilled laborers know how important economic development is to the average welder and machinist member. Economic vitality can and should occur at each end of the state. But more important than this, job development must not be "willed" away by a minority executive voice in Kansas. Many of us in Western Kansas marvel at the real lack of insight exhibited by the executive branch in

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1511 East Fulton Terrace \* Garden City, Kansas 67846-6165

P: 620) 276-3264, ext. 205 \* F: 620) 276-3290

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denying the application for the air permit. Besides being the only permit denied in 2007 it was the biggest. Not biggest for our parochial interest, but in the interest of our great state, Kansas. The Garden City Area Chamber is committed to support economic development in our region. We want to put people to work. We can handle the growth. We can handle the children and the workers in our town and our schools. We just passed a 90 Million dollar bond project for our schools. We have prospered with industry that followed our healthy agricultural sector growth. Historically, we have demonstrated the "can do" attitude to overcome the "surge" of challenges that comes with this kind of project. In our humble opinion, Jobs, and lots of them, await the state that has the courage to follow President Obama's pledge to support "clean coal." We think that state must be Kansas.

#### Regulatory Fairness:

We do not operate business in Kansas according to the shifting sands and the whim of the executive branch. Business in Kansas must be predicated upon the foundation of the rule of law, that what the rules are when you start are the rules when you are finished. This bill puts Kansas back on a solid, sound and concrete foundation for growth. Ask yourselves, who would want to come and do business here if you can't educate yourself on the rules, apply according to the rules, and expect government to act by them? The answer is no one. This bill is vitally important to wash away the 'shifting sands' mentality of the permitting process and mandate a policy of fairness, right now. The urgency of this portion of the bill cannot be overemphasized. We cannot stand to lose one more project, one more job opportunity due to regulatory uncertainty. All of Kansas will benefit. That's why I'm here, today. Kansans have a voice and that voice joins with membership of the Garden City Area Chamber and asks our Legislature to be concrete about our future, concrete about the process, concrete about our regulatory policy. The policy of Kansas must be solid. We must take the "whim" out of the process. We, as Kansans, deserve nothing less.

#### Business Loss:

We have lost out on a number of business relocation jobs. I can easily recite five companies and two of which were major employers that have taken Garden City, Kansas off their consideration list. Five businesses and totaling over 60 jobs. Jobs that we need. Several of these companies were close to

purchasing property in Kansas until they heard the fate of the 2008 expansion. At least five companies and countless others we don't know about that were looking at Western Kansas as a place to live, work and play. Can we as a state afford to lose others? We did realize several new retail companies that came and built in Garden City that we attribute to the proposed expansion: IHOP, Sam's Club, A & W and Hampton Inn and the repurchase and complete renovation of the Clarion Inn and Conference Center.

I close by addressing this committee and noting that I am a relative newcomer to Western Kansas. I have been amazed by the lack of control exhibited by the Legislature when the voice of the people is so very clear. There is not a single Senator or Representative from the Western One Third of Kansas that does not support this project or this bill. The "checks" and "balances" of government must be brought to bear. When a 'whim' is the foundation of a decision, the rule makers need to take control of the rule 'breakers'. This Legislature needs to be lead into action. We need leadership now. Kansas cannot be put on a whimsical path that has 'shifting sands', but rather this Legislature need to be direct, concise, firm, direct and concrete in making the policy that leads to success.

We know that economic vitality, right now, right here in Kansas could not be more important. We have made the trip to Topeka as to provide a common voice for our Chamber membership and for all working Kansans that we need this work, we need to feed the economic engine, not with bailout tax dollars, but with opportunity for real jobs. That's what it's all about. Give us a chance to show what prosperity can do for you. Every job counts. Every household deserves a lighted and bright future at reasonable costs, and we need your swift action on this bill.

Thank you again for allowing me the opportunity to voice the Garden City Area Chamber of Commerce's support of SB 265.

I will be happy to take your questions.

D. Paul Joseph  
President  
Garden City Area Chamber of Commerce





Legislative Testimony

SB 265

February 18, 2009

Testimony before Senate Utilities Committee

Douglas A. Aldrich, P.E., Senior Principal, Terracon Consultants, Inc.

I am a registered professional engineer in Kansas, and have been practicing geo-environmental engineering in Kansas since 1983. I am currently responsible for the management of consulting engineering offices in Wichita and Garden City with a combined staff of about 60. As you may know, Terracon is recognized as a top national engineering firm with nearly 100 offices nationwide, including Kansas offices in Wichita, Garden City, Manhattan, Topeka, and Lenexa, as well as our corporate headquarters in Olathe.

Over the years, we have assisted numerous Kansas businesses and industries to achieve compliance with Kansas regulations. Our clients knew that in achieving compliance, they would be issued a permit to construct or operate their project. This knowledge allowed them to evaluate the cost impact of the regulations and make an informed business decision on whether to proceed with their project.

Within the clearly understood framework established by Kansas law and applicable regulations carefully developed by stakeholders, through consensus, and with decades of precedence, denial of Sunflower Electric's permit application was not suitable for an economy that depends on due process. The denial was surprising, based on our past years of experience and trust in the KDHE regulatory and compliance processes.

We would estimate that Sunflower spent millions over several years to develop a permit application that met all current Kansas regulations. To deny a compliant permit application at that point is clearly "regulatory uncertainty", and would be discouraging to other industries considering new projects.

The denial would have significant negative economic impact, including the loss of Sunflower's \$3.6 billion power plants and numerous projects to support the construction of the plants. Equally important is the negative economic impact from industries not willing to invest in Kansas due to the risk of uncertain Kansas regulations, including ironically, windfarm projects that will rely on new transmission lines to be built for Sunflower. Higher electric rates would also have an adverse affect on our Kansas economy. The stated concern that some of the electricity generated would be exported beyond Kansas contradicts our support of aircraft production, agriculture, oil and other industries that export their products.

We don't disagree that climate change is a concern, and the bill's provisions to enact a Renewable Energy Standard for Kansas takes a very positive step to help in that regard. All of the strategies necessary to manage Kansas' energy needs must involve cost-effective solutions developed through a democratic process.

We, and our Kansas clients, need to clearly know the applicable codes and regulations and how they will be applied. I encourage you to take the action required to permit the construction of the Sunflower power plants, which would be appropriate at any time, and certainly in this challenging economy.

Senate Utilities Committee  
February 18, 2009  
Attachment 6-1





100 Congress Ave., Ste. 800

Austin, Texas 78701

Paul Sadler, Executive Director

### Testimony on SB 265

The Wind Coalition supports the implementation of a meaningful renewable portfolio standard (RPS) in Kansas. An RPS that results in measurable increases in the demand for Kansas will encourage the development of the rich wind power resources within the state and significantly increase direct and indirect economic development at a time when it is sorely needed.

The nation is focused on energy more today than perhaps at any time in history. The recent experiences of the nation in being held hostage to the whims of oil rich countries abroad and sky rocketing prices coupled with a realization that America's national security is in part tied to energy has provided us with a focused resolve to become more energy independent. The development of wind energy moves the nation toward addressing these goals.

The popularity of investing in more American made clean energy is growing. The majority of states now require significant levels of renewable energy among their states' utilities. The most recent addition in Missouri was passed in November through an initiative petition winning garnering nearly 70% of the votes cast.

For Kansas and other states in the plains region of the country, this will mean billions of dollars of new economic development. Today Kansas has approximately 1000 MW of wind power in the state. According to the National Energy Renewable Energy Laboratory, the addition of these generators translates into over a billion dollars in cumulative economic benefit.

**"We forecast the cumulative economic benefits from 1000 MW of development in Kansas to be \$1.08 billion, annual CO2 reductions are estimated at 3.2 million tons, and annual water savings are 1,816 million gallons."** NREL

The future possibilities of additional positive economic impact are impressive. Kansas is third in the nation, according to NREL, in the total potential for wind energy development. The fact that Kansas has an enormous amount of wind resource is not the only factor that will influence this development. In order to realize the state's potential, Kansas should ensure that the landscape for investors making decisions on where to build the wind generation and manufacturing facilities is competitive with other states. Adopting a meaningful Renewable Portfolio Standard (RPS) would send a positive signal to the wind industry by providing additional certainty in the minimum levels of demand for wind energy. Having a RPS has proven to be impactful to both developers and manufacturers. Several States that have adopted standards have seen an influx of investment. For

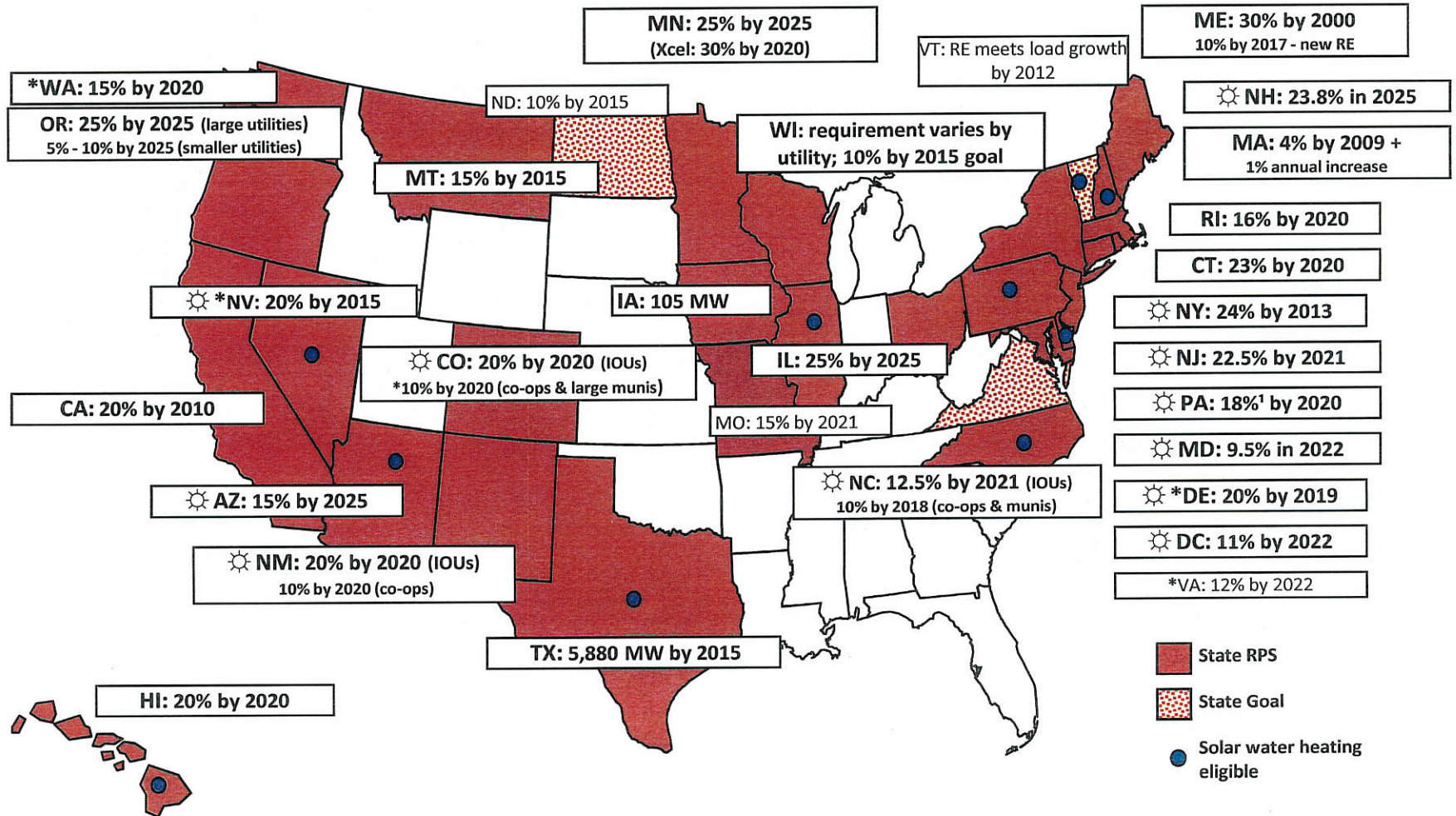
example, Colorado established an RPS while also addressing the lack of transmission to windy areas through regulatory policies. This dual effort, along with actively recruiting companies to locate wind manufacturing facilities in the state, signaled a welcome mat for the wind industry. Subsequent investment in new wind farms and new manufacturing that followed shows Colorado as a rising wind power state.

Two years before the goal set by Governor Sebelius, Kansas has eclipsed the goal of building 1000 MW of wind generation in the state. With the vast wind resources at the disposal of the state it will not be difficult to attain the levels set in out this bill. Kansas could easily achieve higher levels and not only become a user of wind energy, but an exporter of wind energy as well. The Wind Coalition requests that the Legislature consider amending the legislation to increase the use of Kansas domestic resources either by establishing standards that are a percentage of energy consumed or by raising the percentages. The Coalition also asks that the Committee give consideration to adding a special provision mandating that the state government's energy consumption of Kansas renewable energy be established. Recently, Oklahoma University issued a statement that it intended to reach a goal of having 100% of its energy come from renewable sources. Establishing a significant minimum level of renewable energy consumption for state facilities would send a strong message that the legislature believes in investing in the economically competitive development of its home grown wind resources.

Wind energy is a critical element in the fight for our national security and energy independence. The development of wind energy has been proven to be a cost effective clean source of energy. In fact, wind energy has competed head to head with other traditional energy sources. In many instances, wind energy has been on par with or less expensive than new coal, natural gas or nuclear resources. The level of demand across the country is increasing and there is great opportunity for the state to capitalize on the potential to develop its rich wind resources.

As this body knows well, issues such as transmission development are critical to wind energy development. The future expansion of any type of energy development will depend on the construction of a delivery system to export Kansas wind energy, and other traditional energy resources, to other parts of the nation. The level of investment that occurs in Kansas is also dependent on the policies and messages sent by Kansas policy makers about the support that exists within the state for wind development and the likelihood for growth in demand. Passing a meaningful RPS will send just that kind of message, giving Kansas a recruiting advantage over surrounding wind states that have not yet passed a Renewable Portfolio Standard. It will act as a bridge in ensuring that a minimum level of demand will be present within the state in the near term, giving Kansas an additional tool in recruiting development in these challenging economic times. The Wind Coalition supports the passage of legislation instituting a renewable portfolio standard.

# State RPS Requirements

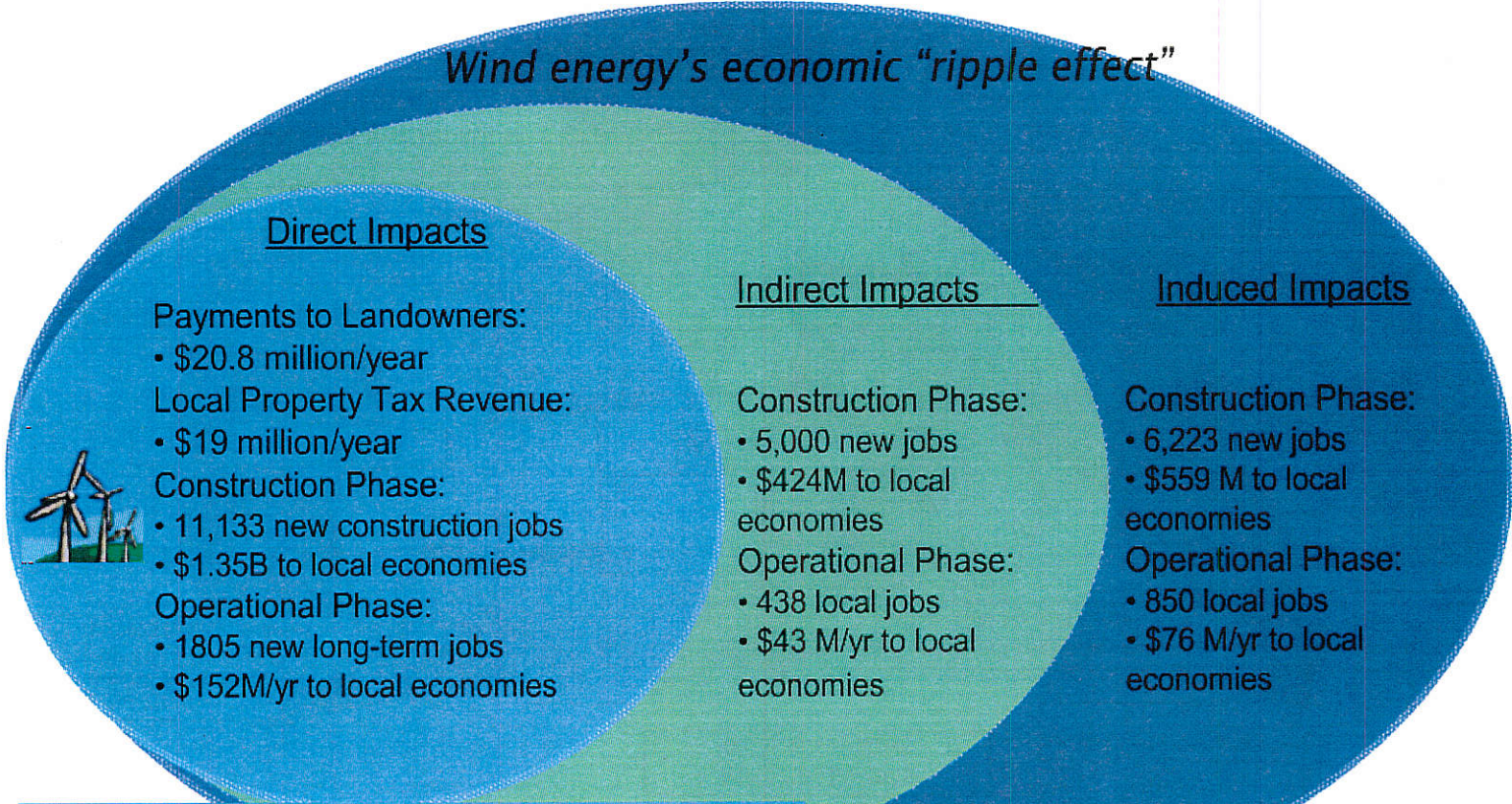


RPS: Renewable Portfolio Standard, also known as Renewable Energy Standards



# Economic Impacts to Kansas from 7158 MW of new wind development by 2030

*Wind energy's economic "ripple effect"*



Direct Impacts

- Payments to Landowners:
  - \$20.8 million/year
- Local Property Tax Revenue:
  - \$19 million/year
- Construction Phase:
  - 11,133 new construction jobs
  - \$1.35B to local economies
- Operational Phase:
  - 1805 new long-term jobs
  - \$152M/yr to local economies

Indirect Impacts

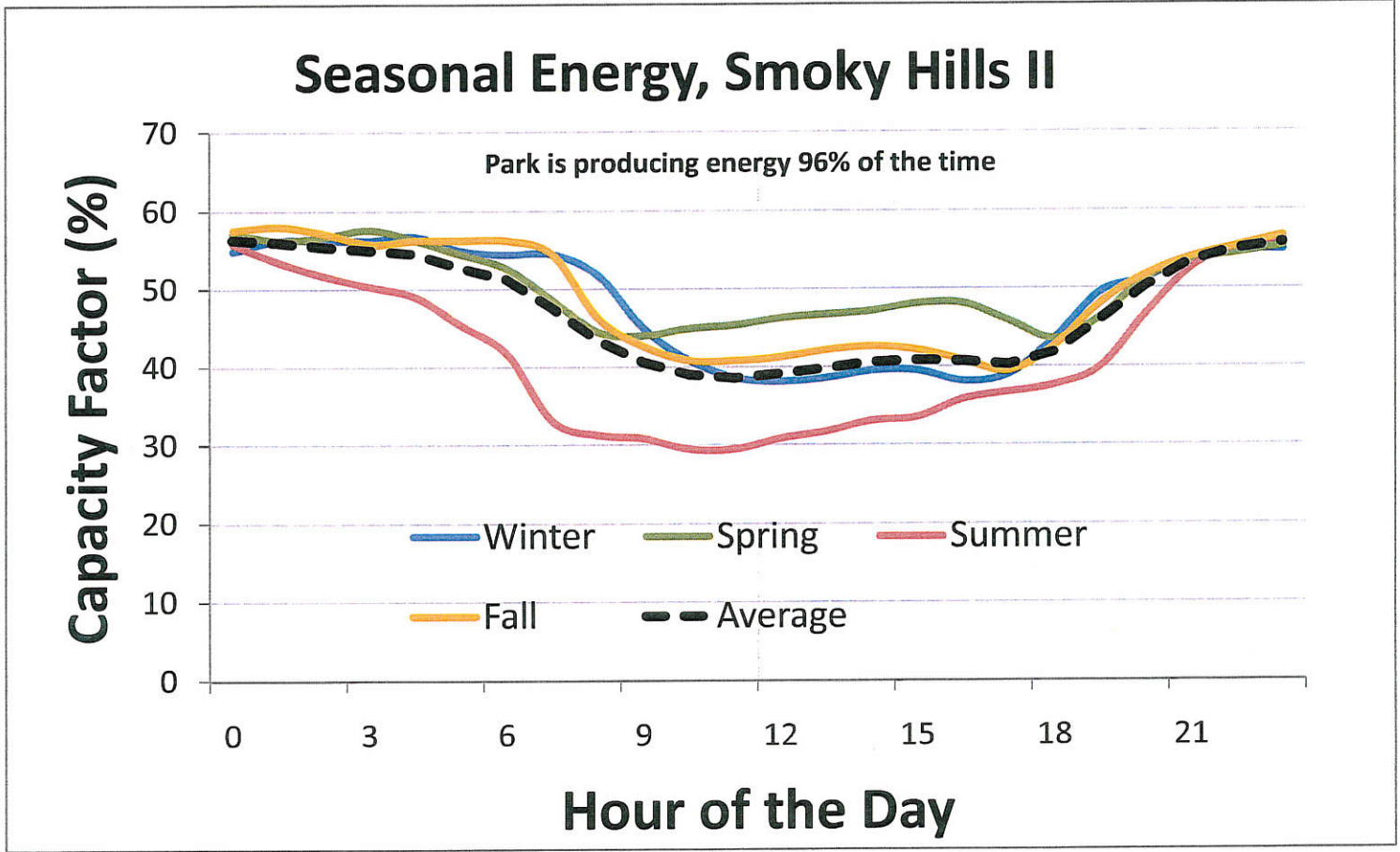
- Construction Phase:
  - 5,000 new jobs
  - \$424M to local economies
- Operational Phase:
  - 438 local jobs
  - \$43 M/yr to local economies

Induced Impacts

- Construction Phase:
  - 6,223 new jobs
  - \$559 M to local economies
- Operational Phase:
  - 850 local jobs
  - \$76 M/yr to local economies

Totals (construction + 20 yrs)  
 Total economic benefit to Kansas = \$7.8 billion  
 New local jobs during construction = over 23,000  
 New long-term jobs for Kansans = over 3,000

7-5







Horizon Wind Energy, owned by EDP Renewables, the fourth largest wind energy producer in the world, recently commissioned the 201MW Meridian Way Wind Farm in Cloud County, KS. Horizon has several projects under development in Kansas. We have been developing projects in Kansas since 2000. We commend this Committee and the utilities in Kansas for taking steps to solidify future wind development through a market-stabilizing RPS.

A meaningful RPS is the cornerstone to capitalizing on the abundant wind resources in Kansas. Such a policy sends a positive signal to the wind industry by providing certainty to the minimum levels of demand for wind energy. Having a RPS has proven to be impactful to both developers and manufacturers in other states.

Decisions about where transmission superhighways will be located are currently under development. These lines will certainly be located where markets have been developed and supported. A strong RPS will send a clear signal to regional and national entities planning these lines that Kansas will provide the clean, renewable energy that will help fuel our country's future.

The economic impact that an RPS law brings cannot not be understated. There are few economic development opportunities for rural Kansas these days. Wind has been well received throughout the state by landowners, local governments, economic development offices and chambers of commerce. This bill helps make the economic opportunities of wind attainable to a Kansas economy that desperately needs investment.

We encourage the passage of a simple, straight forward RPS bill without confusing efficiency provisions and unnecessary in-state incentives. These provisions (currently in HB 2014) work to negate the benefits of a meaningful RPS. Horizon Wind Energy supports a strong RPS law in Kansas. Thank you.

Mark Lawlor  
Horizon Wind Energy  
(913)402-1020  
[mark.lawlor@horizonwind.com](mailto:mark.lawlor@horizonwind.com)

Senate Utilities Committee  
February 18, 2009  
Attachment 8-1



**TESTIMONY OF  
ASSOCIATED GENERAL CONTRACTORS OF KANSAS  
BEFORE SENATE COMMITTEE ON UTILITIES  
SB 265**

February 18, 2009

By Eric Stafford, Associated General Contractors of Kansas, Inc.

Mister Chairman and members of the committee, my name is Eric Stafford. I am the Director of Government Affairs for the Associated General Contractors of Kansas, Inc. The AGC of Kansas is a trade association representing the commercial building construction industry, including general contractors, subcontractors and suppliers throughout Kansas (with the exception of Johnson and Wyandotte counties).

**AGC of Kansas supports SB 265 and asks that you report it favorably for passage.**

New Sections 1 through 5 address energy efficiency standards for newly constructed and renovated state-owned buildings. This language authorizes the state to study efficiency levels of state-owned and leased property and implement policies for new construction and renovations without placing unreasonable mandates which could possibly deter new construction due to the higher cost of “green” construction.

The positive economic impact of a substantial investment in the Holcomb power plant expansion cannot be ignored. Estimates show that 2,400 construction jobs will be created on this project. When you factor in the need for investment from local communities for infrastructure such as schools, roads and retail/office space, that number would easily cross 3,000 jobs.

**Again, the AGC of Kansas supports SB 265 and asks that you report it favorably for passage.**  
Thank you for your consideration.



## The Construction Industry in Kansas

### The Economic Impact of Stimulus Investment in Kansas:

- An additional \$1 billion in nonresidential construction spending would add about \$2.2 billion to the state's Gross Domestic Product (GDP), about \$646 million to personal earnings and create or sustain 21,000 jobs.
  - 7,100 of these jobs would be on-site construction jobs located within Kansas.
  - 3,400 of these jobs would be direct and indirect jobs associated with construction supply materials and services. The majority of these jobs would be located within the state but there would be some out of state jobs supported.
  - 10,500 of these jobs would be created when construction, supplier and service providers spend their incomes. These jobs would be based in Kansas and throughout the economy.

### Construction Employment:

- In 2007, a total of 113,000 jobs were supported by the direct and indirect outlays associated with the state's nonresidential construction spending.
- The construction industry (residential plus nonresidential) employed 65,000 workers in October 2008, a decrease of 2,200 (3.3%) from January 2000 when construction employment in Kansas peaked.

### Nonresidential Construction Spending:

- Nonresidential construction spending in Kansas totaled an estimated \$5.4 billion in 2007.
- This direct construction spending in the state contributed a total of \$12.0 billion (10.3%) to state GDP of \$117.3 billion.
- Direct construction spending in the state added \$3.5 billion in additional personal earnings to the benefit of Kansas residents working in the state.

### Construction Industry Pay:

- In 2007 annual pay of all construction workers in Kansas averaged \$41,200, 9.6% more than the average for all private sector employees.


### Small Business:

- Kansas had 8,000 construction firms in 2006, of which 91.2% were small businesses employing fewer than 20 workers.





# SUNFLOWER ELECTRIC POWER CORPORATION

A Touchstone Energy<sup>®</sup> Cooperative 

**February 18, 2009**

**Before the Senate Utilities Committee  
Senate Bill 265 – An Act Concerning Energy**

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

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

- We support the renewable portfolio standards outlined in the bill.
  - Sunflower/Mid-Kansas has already achieved the 2013 requirement and is working on strategies that would allow us to achieve the more stringent requirements in future years.
- We can support the net metering requirements as proposed, but believe the monthly sweep provisions proposed by the Kansas Electric Cooperatives is a preferable method (monthly sweep) to manage this generation resource.
- We believe sections 26-28 dealing with regulatory uniformity are essential for the development of a comprehensive long-term energy policy in Kansas.
- Finally, I would like to suggest that a new section providing for the further deregulation of cooperatives be included in your legislation. I've attached language we believe is appropriate to this testimony.
  - Limited co-op deregulation has been in place in Kansas since the early 1990s and has operated without any requests for regulation from co-op members.
  - Across the country few cooperatives are regulated like we are in Kansas. Trusting that co-op board members are capable of managing their utility resources is analogous to relying on local government officials to manage their municipal utilities. In fact, it is quite similar to the formula used to elect the Legislature.
  - One of the major benefits of utility deregulation is the effect it has on the cost of money. It easily reduces the cost of capital by at least 50 basis points which is a large amount of money when funding capital improvement projects.
  - The main thing I want to leave you with is the important point that passage of this law does not de-regulate co-ops. It merely gives the remaining systems the opportunity to present the proposition to their membership for approval.
- With these changes, we would ask for your support of SB 265.

Senate Utilities Committee  
February 18, 2009  
Attachment 10-1



## **EXPLANATION OF REGULATORY CERTAINTY AND UNIFORMITY PROVISIONS**

- 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.
  - 22 other states, including Missouri, Oklahoma, and Colorado, have adopted legislation similar to SB 265.
  - 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 need 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 strongly support the regulation of air quality in accordance with the federal Clean Air Act so Kansas businesses can indeed have regulatory certainty needed in Kansas.

Summary of States That Regulate Air Quality Permits Consistent with the Clean Air Act					
	Yes	Yes, with Exceptions	No	Silent	Statutory Reference
Alabama				X	
Alaska		X			46.14.010
Arkansas		X			8-1-203
California			X		
Colorado		X			25.7.114.2
Connecticut			X		
Delaware				X	
Florida		X			403.061
Georgia			X		
Hawaii				X	
Idaho	X				39-107D
Illinois			X		
Indiana			X		
Iowa				X	
Kansas				X	
Kentucky	X				224.10.100
Louisiana				X	
Maine				X	
Maryland				X	
Massachusetts				X	
Michigan				X	
Minnesota		X			"delegated"
Mississippi		X			
Missouri		X			XL-640.033
Montana		X			75-2-207
Nebraska				X	
Nevada				X	
New Hampshire			X		
New Jersey		X			26:2c-9.2
New Mexico		X			74-2-5
New York		X			19-0302
North Carolina				X	
North Dakota		X			23.25.03.3
Ohio	X				3704-03
Oklahoma		X			27-1-1-206
Oregon				X	
Pennsylvania		X			35.23.4004.2
Rhode Island		X			23-23.5
South Carolina				X	
South Dakota	X				1-40-4.1
Tennessee				X	
Texas			X		382.0173
Utah		X			19-2-106
Vermont				X	
Virginia				X	
Washington			X		70.94.152
West Virginia		X			22-5-4
Wisconsin		X			285.27
Wyoming			X		
TOTAL	4	18	9	19	

### Coal-based Electricity Generating Units

Plant Operator Name	Plant Name	State	Online Date	Unit	Capacity (MW)
Dynegy Inc	Sandy Creek	Texas	4/1/2012	1	900
Kansas City Power & Light Co	Iatan	Missouri	6/1/2010	2	850
TXU Power	Oak Grove	Texas	10/1/2009	1	817
TXU Power	Oak Grove	Texas	6/30/2010	2	817
CMS Enterprises Co	Prairie State	Illinois	1/1/2011	1	800
CMS Enterprises Co	Prairie State	Illinois	1/1/2012	2	800
Duke Energy Carolinas	Cliffside	N Carolina	6/1/2012	6	800
CPS Energy	J K Spruce	Texas	6/1/2010	2	750
Louisville Gas & Electric Co	Trimble	Kentucky	1/1/2010	2	750
Public Service Co of Colorado	Comanche	Colorado	10/1/2009	3	750
GenPower LLC	Longview	W Virginia	3/1/2011	1	695
Plum Point Energy Associates LLC	Plum Point	Arkansas	6/1/2010	1	665
Omaha Public Power District	Nebraska City	Nebraska	5/1/2009	2	663
CLECO Power LLC	Rodemacher	Louisiana	9/1/2009	3	660
Duke Energy Indiana	Edwardsport IGCC	Indiana	1/1/2012	1	630
Wisconsin Electric Power Co	Oak Creek	Wisconsin	12/31/2009	1	615
Wisconsin Electric Power Co	Oak Creek	Wisconsin	9/29/2010	2	615
Virginia Electric & Power Co	Virginia City	Virginia	6/1/2012	1	585
Energy Future Holdings Corp	Sadow	Texas	6/30/2009	5	581
Basin Electric Power Coop	Dry Fork	Wyoming	1/1/2011	1	422
Tucson Electric Power Co	Springerville	Arizona	9/30/2009	4	400
Springfield MO (City of)	Southwest	Missouri	10/1/2010	2	300
East Kentucky Power Coop	Spurlock	Kentucky	4/1/2009	4	278
Springfield Water Light & Power	Dallman	Illinois	1/1/2010	4	250
Hastings Utilities	Whelan	Nebraska	1/1/2011	2	220
Black Hills Power Inc	Wygen	Wyoming	6/1/2010	3	100
Great River Energy	Spiritwood	N Dakota	3/31/2010	1	99
Goodland Energy Resources	Goodland	Kansas	9/1/2010	1	22

### Non-utility Coal-based Electricity Generators

Plant Operator Name	Plant Name	State	Online Date	Unit	Capacity (MW)
Formosa Plastics Corp TX	Port Lavaca	Texas	6/1/2009	1	150
Formosa Plastics Corp TX	Port Lavaca	Texas	6/1/2009	2	150
Archer Daniels Midland Co	Clinton	Iowa	5/1/2009	2	97.65
Archer Daniels Midland Co	Clinton	Iowa	3/1/2009	1	69.75

10

FILED BY CLERK  
KANSAS DISTRICT COURT  
THIRD JUDICIAL DIST.  
TOPIC, KS.

IN THE DISTRICT COURT OF SHAWNEE COUNTY  
DIVISION 12

2007 AUG 3 AM 10 30

Sarah and Raymond Dean  
Petitioners,

vs.

Case No. 07 C 706

Kansas Department of Health and  
Environment  
Respondent.

07C402

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

10-5

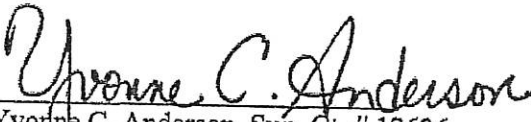


and the financial incentives to states to adopt the federally promulgated regulations. National regulation insures a level playing field for state industry. It is undisputed that the state has adopted timely regulations for other criteria air pollutants as required by the federal government. This action 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

## REVISIONS TO COOPERATIVE DEREGULATION STATUTE

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

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

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

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

(2) The proposition for deregulation shall be presented to a meeting of the members, the notice of which shall set forth the proposition for deregulation and the time and place of the meeting. Notice to the members shall be written and delivered not less than 21 nor more than 45 days before the date of the meeting.

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

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

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

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

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

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



(g) (1) Notwithstanding a cooperative's election to be exempt under this section, the commission shall investigate all rates, joint rates, tolls, charges and exactions, classifications and schedules of rates of such cooperative if there is filed with the commission, not more than one year after a change in such cooperative's rates, joint rates, tolls, charges and exactions, classifications or schedules of rates, a petition, *in the case of a retail distribution cooperative, signed by not less than 5% of all the cooperative's customers or 3% of the cooperative's customers from any one rate class, or, in the case of a generation and transmission cooperative, not less than 20% of the generation and transmission cooperative's members or 5% of the aggregate retail customers of such members.* If, after investigation, the commission finds that such rates, joint rates, tolls, charges or exactions, classifications or schedules of rates are unjust, unreasonable, unjustly discriminatory or unduly preferential, the commission shall have the power to fix and order substituted therefor such rates, joint rates, tolls, charges and exactions, classifications or schedules of rates as are just and reasonable.

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

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

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

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

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

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

(j) *A cooperative that has elected to be exempt under the provisions of subsection (b) shall include a provision in its notice to customers, either before or after a rate change, of the customer's right to request the commission to review the rate change, as allowed in subsection (g).*

# **Finney County Economic Development Corporation**

## **TESTIMONY**

**By**

**Eric Depperschmidt, President**

**Finney County Economic Development Corporation**

**Before the**

**Kansas Senate**

**Committee on Utilities**

**On**

**Wednesday, February 18, 2009**

Chairman Apple and members of the committee, good morning, I appreciate the opportunity to provide written testimony to express my strong support for Senate Bill 265.

My name is Eric Depperschmidt and I serve as the President of Finney County Economic Development Corporation (FCEDC). FCEDC is a not-for-profit corporation operated as a partnership of Finney County, City of Garden City, City of Holcomb, and Garden City Community College.

I would like to state this bill has several progressive elements regarding the development of Kansas energy policy it will ensure that Kansas Department of Health and Environment regulatory process will be fair and impartial to all applicants while also promoting a level playing field by ensuring regulatory certainty and consistency. To do otherwise would only create doubt in public confidence hamper new economic growth in the State of Kansas.

Also it further recognizes a path to reduce and or mitigate carbon dioxide emissions and limitations while allowing Kansas to maintain its competitive position relative to other states by only allowing the state legislature to establish emission standards that are more restrictive than current established federal regulations.

Senate Bill 265 ensures the uniform application of our state's rules and regulations while promoting environmental care and economic prosperity for the State of Kansas. Thank you for the opportunity to provide written testimony in support of this legislation and please let me know if I can be of any service to you in regards to this legislation.

Senate Utilities Committee  
February 18, 2009  
Attachment 11-1