SESSION OF 2008

SUPPLEMENTAL NOTE ON SENATE SUBSTITUTE FOR HOUSE BILL NO. 2066

As Amended by Senate Committee of the Whole

Brief*

Senate Substitute for HB 2066 would enact new law creating a study commission to examine issues related to electric service in Kansas and establish net metering for small solar electricity generation projects. In addition, the bill would amend existing law regarding the regulatory authority of the Secretary of the Kansas Department of Health and Environment (KDHE) related to air pollution, as well as existing law regarding Kansas Corporation Commission (KCC) regulation of large electric cooperatives.

Kansas Electric Generation, Transmission and Efficiency Study Commission

The bill would create an 11-member Commission with the following membership:

- The chairperson, vice-chairperson, and ranking minority member of the house committee on energy and utilities;
- The chairperson, vice-chairperson, and ranking minority member of the senate committee on utilities;
- One member appointed by the governor;
- One member appointed by the president of the senate; such member would be required to have a scientific background;
- One member appointed by the speaker of the house of representatives; such member would be required to have a scientific background;

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*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at http://www.kslegislature.org

- The chief of energy operations of the KCC, who would be a non-voting member; and
- The director of the division of environment at KDHE, who would be a non-voting member.

The Commission would study a variety of issues related to electric service, including:

- The economic impact of generation, transmission, and distribution of electricity on communities and on customers' rates;
- The fuel portfolio balance of the electricity generating facilities;
- Incentives for renewable energy investment;
- The impact of conservation on the need for expansion of electric capacity; and
- The impact on tax revenues of various means of generating and transmitting electricity, and other issues.

The Commission would make a preliminary report to the 2009 Legislature, and a final report to the 2010 Legislature. Authorization for the Commission would sunset on June 30, 2010.

The Net Metering and Easy Connection Act

The bill would establish a net metering procedure for small solar electricity generating units that are interconnected with a retail electricity supplier. In addition, it would allow the KCC to approve net metering tariffs for other sources of renewable energy if requested by an electric utility.

Electric generation equipment covered by the act includes interconnected solar-powered units with a maximum capacity of 100 kilowatts located on premises controlled by the customer, and used to offset all or part of the customer's electricity needs.

The bill defines net metering as the use of metering equipment to measure the difference between the electrical energy supplied to a customer-generator by a retail electric supplier and the electrical energy supplied by a customer-generator to the retail electric supplier.

Retail electricity suppliers would be required to make net metering available to customers up to a maximum generation capacity established by the KCC or the governing body of a municipal or cooperative electric utility.

Customers would be billed for any electricity provided by the retail supplier in excess of the amount generated by the customer.

Customers would receive credit applied to the succeeding billing period, at least equal to the avoided energy cost, for electricity generated in excess of that provided to the customer by the retail supplier. Credits would expire without compensation either 12 months after their issuance or when the customer-generator disconnects service or terminates the net metering relationship with the supplier.

The existing parallel generation statute, KSA 66-1,184, would be amended to provide customers with the option of using the existing act or the Net Metering and Easy Connection Act. The customer's decision would be recorded in writing and filed with the retail electricity supplier.

Regulatory Amendments

The Kansas Air Quality Act would be amended to authorize the Secretary of Health and Environment to implement the federal Clean Air Act and to prohibit the Secretary, absent specific statutory authority, from adopting rules and regulations under the Kansas act that are more stringent than required by the federal act or rules and regulations authorized by that act. The restriction would not apply to an implementation plan for a non-attainment area. The provision authorizes the Secretary to enter into agreements with permittees that are more stringent, restrictive, or expansive than the federal requirements.

The Secretary would be prohibited from denying or delaying issuance of a permit under the Act if the requirements of the Act have been met by the applicant. The Secretary also would be prohibited from utilizing emergency powers under KSA 65-3012, or other discretionary authority, in the air quality permitting process.

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

An applicant aggrieved by the Secretary's action would be able to file a petition for review with the Kansas Court of Appeals within 30 days of the Secretary's determination. The Court's review would be conducted in accordance with the Act for Judicial Review and Civil Enforcement of Agency Actions without the need to exhaust other administrative remedies.

The Kansas Air Quality Act would be amended to specify that the Secretary could take certain actions against only existing sources to protect the public health or the environment if emission of an air pollutant presents an "imminent" and substantial danger.

Finally, existing law would be amended to permit members of certain large electric cooperatives, including generation and transmission companies, to elect to be exempt from regulation by the KCC. Current law provides that cooperatives with 15,000 or more customers are regulated by the KCC.

This bill would take effect and be in force from and after its publication in the *Kansas Register.*

Background

The Senate Committee of the Whole amended the net metering portion of the bill to do the following:

- Broaden the definition of avoided energy costs to include the cost of purchased power as well as the cost of fuel;
- Require the customer-generator's emergency shut-off mechanism to be accessible by staff of the electric utility;
- Require that meters and equipment used for billing be supplied, owned, and maintained by the utility, rather than by the customer-generator;
- Allow the utility to install, at its expense, load research metering for the purpose of monitoring customer generation and load; and
- Allow the KCC to approve net metering tariffs for other methods of renewable generation, if requested by an electric utility.

HB 2066 was introduced during the 2007 Session by the House Committee on Energy and Utilities and dealt with the issue of authorizing utilities to construct transmission lines across the service territory of another retail electric supplier.

The bill was amended by both the House Committee on Energy and Utilities and the House Committee of the Whole. The bill was referred to the Senate Utilities Committee but was not acted upon during the 2007 Session.

During the 2008 Session, the Senate Committee on Utilities deleted the provisions of HB 2066, as passed by the House, and added some provisions of 2008 SB 515.

The substitute bill recommended by the Senate Committee on Utilities differs from the introduced version of SB 515 by removing:

- All provisions dealing with energy efficiency and water savings in certain public buildings;
- The provisions prohibiting merchant power plants in Kansas; and
- The provisions that would enact the Carbon Dioxide Emissions Offset Act.

In addition, the Senate Committee amended the provisions that would create the Kansas Electric Generation, Transmission and Efficiency Study Commission by making the members from the KCC and KDHE non-voting, reducing the number of members appointed by the Governor from three to one, and by adding one appointment each by the Speaker of the House and the President of the Senate.

Further, the Senate Committee amended the language dealing with the regulation of large electric cooperatives to permit them, in certain circumstances, to elect to be deregulated.

The Senate Committee on Utilities held four days of hearings on SB 515 and one day of discussion prior to accepting proposed amendments for consideration and action.

Proponents of the introduced version of SB 515 included representatives of Midwest Energy, Inc.; Tri-State Generation and Transmission Association, Inc.; Orion Ethanol; the Kansas Chamber; the Finney County Economic Development Corporation; Sunflower Electric Power Corporation; the Building & Construction Trades Council of Central & Western Kansas; Kansas AFL-CIO; the Alliance for Sound Energy Policy; Hunton

& Williams, LLP; the Kansas Grain and Feed Association; and the Associated General Contractors. Several of the proponents described the demographics of western Kansas and argued for the need for additional base load electric generation capacity in the area. In addition, these conferees described the difference in retail electric rates between eastern and western Kansas and the impact that difference has on economic development. Other proponents discussed the transmission aspect of the Sunflower project which they argued would permit the expansion of renewable energy generation, such as wind. Still others argued that the bill would create regulatory certainty with regard to air quality permits issued by KDHE. Several of the conferees commented on the number of jobs in western Kansas that could be created by the construction and operation of the proposed Sunflower expansion, additional transmission, and associated wind development. Written testimony in support of the bill was received from the Kansas Association of Counties; the Coffey County Commissioners; and the Kansas Legislative Policy Group.

Additional conferees expressed concerns to particular portions of the introduced version of SB 515. Conferees from United School Administrators and the Olathe School District expressed concern with the provisions of the bill that would create energy efficiency and water conservation standards for public school buildings. The conferee from the United School Administrators asked to have those provisions removed, and the conferee from the Olathe School District expressed concern regarding the date after which the standards would apply and requested that the bill only apply to projects for which bonds had not yet been issued.

The representative of the KCC expressed concern regarding the portion of the bill that would amend the law that authorizes cooperatives to elect not to be regulated by the Commission. The conferee stated that the original language would alter the longstanding regulatory policy governing public utilities in Kansas by allowing utilities in Kansas to restructure in order to be deregulated to the detriment of customers who would have no representation at the decision-making level of the utility.

A spokesperson from the American Council of Engineering Companies requested an amendment to the portion of the bill dealing with energy efficiency and water conservation for state buildings and public schools. Written testimony containing concerns with language dealing with biomass and waste-to-energy in the bill was provided by a representative of Waste Management. Senator Steineger provided an alternative proposal for addressing some issues addressed in SB 515 in the form of SB 553.

A conferee from KDHE expressed concerns with several provisions of the bill as introduced. Several of these concerns dealt with the proposed amendments to the Kansas Clean Air Act.

Opponents included representatives of the Kansas Sierra Club; the Kansas Solar Electric Cooperatives; the Citizens' Utility Ratepayer Board; the Kansas Natural Resources Council; Americans for Tax Reform; Americans for Prosperity; and the Kansas Taxpayers Network. The last representatives in the preceding list expressed concern about the carbon offset fee which was included in the introduced version of SB 515. Other opponents included individuals from Wichita, Topeka, Lawrence, and Overland Park; a retired engineer from Overland Park; and an independent scientist from Kansas City, Missouri. The opponents expressed various concerns, including the pace at which this bill was moving, the acceleration of global warming, the health impacts of coal-fired electricity generation on Kansans, the fact that the U.S. Supreme Court has addressed a case on the issue of the regulation of carbon dioxide, the lack of proven technology to reduce carbon emissions using the technology proposed in the Sunflower expansion, and the rapid cost increase of coal-fired plants.

Written testimony either in opposition to the bill or with concerns was provided by the American Institute of Architects; DCP Midstream (the parent company of National Helium); and the Kansas Farmers Union. Additional written testimony in opposition to the bill was received from an individual from Topeka and a university professor from Hays.

Informational written testimony was received from Kansas City Power & Light and Westar Energy.

The fiscal note prepared by the Division of the Budget for SB 515 included costs for several provisions that were not carried over to Senate Substitute for HB 2066. Estimated costs for the provisions that were carried over were approximately $70,000 related to the Study Commission and $50,000 related to net metering. The Division of the Budget's fiscal note on the introduced version of HB 2066 is not pertinent to the substitute bill.