

MINUTES

ELECTRIC GENERATION REVIEW PANEL

November 6, 2007
Room 514-S—Statehouse

Members Present

Representative Carl Holmes, Chairman
Senator Jay Emler, Vice-Chairman
Representative Eber Phelps
Senator Janis Lee
Senator Steve Morris

Member Absent

Representative Melvin Neufeld

Staff Present

Raney Gilliland, Kansas Legislative Research Department
Mary Galligan, Kansas Legislative Research Department
Cindy Lash, Kansas Legislative Research Department
Matt Todd, Office of the Revisor of Statutes
Mike Corrigan, Office of the Revisor of Statutes
Jason Thompson, Office of the Revisor of Statutes
Renaë Hansen, Administrative Assistant

Chairman Holmes called the meeting to order at approximately 1:30 p.m. and asked Panel members for opening remarks.

Representative Phelps wished that there could have been a compromise on the issue instead of a direct decline of the air permit for the new Holcomb plants. He invited an economist from Fort Hays State University to this meeting so that perspective would be before the Panel.

Senator Lee expressed interest in listening to the testimony and is interested in the new path Secretary Bremby is on for the air permit process.

Senator Morris commented that this is a huge issue that has tremendous implications for the whole State, not just western Kansas.

Chairman Holmes recognized Earl Watkins to speak to the Panel.

Earl Watkins, President and CEO, Sunflower Electric Power Corporation, believes that the decision Secretary Bremby made was seriously flawed and goes well beyond the laws and regulations enacted in this State to protect the health and environment of Kansas. Sunflower Electric Power Corporation believes that the Secretary needs to reverse his position; and that if he does not, the company must turn to both the judicial and legislative branches for relief. He noted that the Governor's latest energy policy is a significant shift from the policy of this State in the past. In response to the administration's estimate that the new Holcomb units would produce 11 million tons of new CO₂, he noted that because some plants will come off line when these new units go into production, the net amount of new CO₂ emissions would be 4.9 million tons, which is equivalent to that produced by 14 ethanol plants. Mr. Watkins noted that the manmade CO₂ in the atmosphere is only 4 percent of the total CO₂ gas present in the atmosphere. Of all the global greenhouse gases, CO₂ makes up only 3.6 percent. He commented that Sunflower's commitment is to serve its members with a reliable electricity source at the lowest possible cost. He noted that artificially elevated utility rates are something Sunflower Electric is not going to accept for its members without a fight ([Attachment 1](#)).

The Chairman opened the floor to questions from the Panel.

Representative Eber Phelps asked if the transmission line project was dependent on a coal fired plant being built. Mr. Watkins noted that many transmission lines would be built, but many will not be built. ITC Great Plains invests in transmission lines for a rate of return, and if it does not identify a reliable revenue stream, it would not invest. Representative Phelps also asked about the company's estimate of 4.9 million tons of CO₂ emissions compared to the reported 11 million tons. Mr. Watkins noted that Sunflower believes it is a carbon neutral facility because of the innovative approach to carbon sequestration proposed with the comprehensive energy center.

Senator Lee asked if the transmission line from Spearville to Wichita was deemed an economic investment, and if so, whether Kansans would pay for it. Mr. Watkins responded that the cost either will be allocated to Kansans, or the Federal Energy Regulatory Commission (FERC) will allocate the cost to others. Senator Lee noted that retail, industrial, and commercial electric rates are significantly different in eastern Kansas, as compared to the western portion of the State.

Chairman Holmes noted that he pays 77 percent more in western Kansas than in eastern Kansas for electricity, and that without the new coal plants, the rates in the west will go up another 55 percent.

Senator Lee asked what the impact would be if we have to go to natural gas for our energy fuel supply. Mr. Watkins responded that it was hard to justify a move to gas, as the company would have to spend \$500,000 just to determine the economic feasibility.

Senator Morris noted that he is convinced that 12,000 irrigation wells will have to convert to using electricity rather than natural gas in the very near future. He wondered if there was any idea of where the power will come from if these proposed plants are not built. Mr. Watkins commented that Sunflower would go to Texas and Oklahoma to purchase electricity, and that as a result, those states would get the jobs, taxes, and economic benefit.

Senator Emler asked Mr. Watkins to comment on the impact of the denial on the permitting process. Mr. Watkins responded that at a minimum, the denial postponed the project 2-6 months. He commented further that the Missouri permitting agency cannot consider emissions that are not

federally regulated. Senator Emler then asked if the denial permanently killed the project. Mr. Watkins noted that there would be no construction if the permit is denied permanently.

Chairman Holmes noted that a report has been released by Carnegie Mellon University about the CO₂ emissions resulting from importing Liquid Natural Gas (LNG) when the United States' supply of domestic natural gas is exhausted.

The Chairman recognized Dr. Ralph Gamble, Professor of Economics and Finance at Fort Hays State University, to discuss with the Panel the economic impact of the proposed Holcomb plants and estimated emissions from the Plant (Attachments 2 and 3).

Chairman Holmes recognized Dr. Patrick Barker, Chairman of the Board, Orion Ethanol. Dr. Barker presented information relating to the permit process his company went through in order to begin operation of the ethanol plant. The company had to obtain 42 different permits. The process took four years, and that was a government process on which they were able to rely. He noted that any permitting process or criteria change that occurs while a permit application is being considered creates a great deal of uncertainty and will necessitate a higher return in order to attract investors (Attachment 4).

Senator Emler asked about the impact of this permit denial. Dr. Barker responded that they will probably go elsewhere to expand the company if the permit process is unstable.

The Chairman recognized Duane Simpson, Kansas Association of Ethanol Processors. Mr. Simpson stated that the Association believes this decision will not impact the number of permits for ethanol plants in the State of Kansas. He noted that the Association has concerns about the precedent set by the Secretary's decision, and believes that any change in the policy should have been made public before the permit process began (Attachment 5).

Senator Lee asked where the Association obtained its numbers in terms of CO₂ emissions. Mr. Simpson responded that the numbers came from the University of Iowa. Senator Lee commented that it would be prudent for them to look at data regarding CO₂ emitted per unit of energy output.

Chairman Holmes noted that at the previous Panel meeting, the Deputy Attorney General responded "yes" when asked if the denial of this permit based on CO₂ emission would allow the Kansas Department of Health and Environment (KDHE) to take action on any other CO₂ emitter; and asked for Mr. Simpson's perspective on that matter. Mr. Simpson replied that the Association does not believe that right now it is in danger of that happening.

Chairman Holmes recognized Jay Caspary, Director of Engineering for the Southwest Power Pool (SPP). Mr. Caspary provided, via telephone, an update to the panel on the proposed upgrades to transmission lines in Kansas. He noted that Sunflower has withdrawn its request for transmission services associated with the Holcomb expansion so the need for the western half of the X plan is delayed due to the rejection of the air permit. The currently approved transmission expansion plan included construction of those new lines by 2015, but the electricity transmission requests associated with the proposed Holcomb expansion moved that up three years. He noted that SPP had cause for concern about the economic nature of electric generation expansion due to the ruling on the Holcomb plant (Attachment 6).

Senator Lee asked if the V plan and plan to build new transmission lines through Northeast Kansas were now economic upgrade lines. Mr. Caspary responded they were economic upgrade lines, and were not needed for reliability based on the SPP's criteria. He also noted that being an

economic upgrade makes a significant difference in regard to who pays for the line. Economic upgrade costs are taken on by the project sponsor, and recovery is generally concentrated in the direct area of use.

Chairman Holmes asked if an economic project would be more heavily allocated to Kansans. Mr. Caspary responded that as of today that is the case.

The Chairman recognized Jim Ludwig, Executive Vice President for Public Affairs and Consumer Services for Westar Energy. Mr. Ludwig noted that Westar has permit applications before the KDHE routinely, as they do today. If some of those applications were delayed, there would be an immediate adverse economic impact on the company. He noted Westar's 3Es of energy: Energy Efficiency; Electricity needs are growing; and Environmental stewardship. Mr. Ludwig commented that the reason that Westar does not have to secure base load generation approval for the 300 megawatts of wind-generated electricity it will bring online by 2008 is it has current base load levels sufficient to supplement that wind capacity for about two years. He also noted that wind energy generation is not environmentally benign because wind generation must be supported by some other non-intermittent source of power. He noted that most base load power is coal and nuclear. Westar does not believe that natural gas is a reliable baseload power fuel source because of the volatility of the cost. Even with improved efficiency, customers' rates will increase if natural gas becomes a major fuel source. Mr. Ludwig noted that there is no charting of CO₂ emission because that gas is not regulated, and that there is no effective way of producing energy that is CO₂ neutral. Westar believes that climate change is a global challenge requiring a global solution. It is widely accepted that it will take a variety of schemes to reduce the carbon emissions, with the projected increase of electric energy (Attachment 7).

Representative Phelps asked about slide 13 in Mr. Ludwig's presentation. Mr. Ludwig explained the graph in detail. He noted that wind does not have capacity value because it has to be backed up with something that is reliable. He then explained slide 18, noting that no renewable fuel sources are a complete replacement for base load generation fuels, and that the pairing of wind and natural gas can be price competitive with coal, but it is not a replacement for coal generation.

Senator Lee asked the percentage of nuclear and coal generation in Kansas. Mr. Ludwig responded that currently, the mix is 80 percent coal, 15 percent nuclear, and 5 percent or less natural gas. Senator Lee asked Mr. Ludwig to put a dollar amount on the carbon tax, and he replied that a \$10 carbon tax per pound of CO₂ would roughly equal its cost for coal. Senator Lee noted that the Holcomb plant would be emitting less CO₂ per megawatt than any current plant online. She commented that it is morally wrong to deny a permit in western Kansas for a plant that would produce less CO₂ per megawatt and allow eastern Kansas to have higher emitting plants.

Senator Morris asked how long Westar's permit processes generally take. Mr. Ludwig noted that normally a permit process would start a year in advance of turning dirt on a project.

Chuck Caisley, Director of Government Affairs, KCPL, presented testimony about the CO₂ emission ruling from its perspective as a company that produces electricity primarily using coal. KCPL's "bridge strategy" is to use energy efficiency and wind energy to reduce the demand for coal-generated electricity to some extent (Attachment 8).

Representative Phelps asked about the goal of ongoing use of new technology to reduce CO₂ emissions. Mr. Caisley noted that it is partnering with Empire Electric in eastern Missouri and is participating in a pilot carbon sequestration project in Springfield, but noted that it is not commercially or technologically viable at this time.

The Chairman noted the Kansas Chamber had submitted written testimony ([Attachment 9](#)).

Chairman Holmes informed the Panel that the Assistant Attorney General refused to present testimony to the Panel in person. Senator Emler distributed a written statement submitted by the Attorney General's Office ([Attachment 10](#)).

Secretary Roderick Bremby presented testimony in response to questions from the previous meeting ([Attachment 11](#)).

The next section of the minutes contains a verbatim transcription of the proceedings of the Electric Generation Review Panel.

Secretary Roderick Bremby: When we were last before you, there were several questions that were asked regarding the permitting process. We have collected responses to those questions about the permitting. We're prepared to go through the responses. I'll do so briefly, hitting the highlights and I've got Clark Duffy here, who is our Bureau Director of Air and Radiation Division, for the Division of Environment. But as you may recall, there was some concern about the timeliness of the permitting process for Sunflower. I believe there were about five questions that were asked. And we have responses to those questions, Mr. Chairman. So, I can go through those briefly; if you want more detailed information, Mr. Duffy can come and follow.

1. The very first question was the differences between Sunflower Electric permit and the Goodland Energy Center. There was some question about why that permitting process took just a mere 5 months, and the other was taking some 15 months. The Goodland Energy Center was 22 megawatts in size. It was 1 percent of the size of the original Sunflower application, and it was only 2 percent of the size of the Sunflower plant that we ultimately decided on. There were only 46 comments in the public hearings, as contrasted with 774 comments with the Sunflower. Also, the Goodland did not have to go through the PSD because it did not meet the threshold for federal limits. So, if you would like more information about that, we can go through that, but the Goodland facility was a much smaller, less complicated facility. Therefore, the process only took 5 months, as opposed to the 15 months for the Sunflower Holcolm permitting.
2. There was a Sand Sage permit process that I believed the Chairman asked about, relative to the Sunflower permit. Sand Sage was a forerunner, if you will, of this Sunflower permitting process. Actually, they were very similar in time frame for the permitting. Now, the Sand Sage was a much smaller facility but they both took 15 to 16 months. Actually, Sand Sage took 16 months. There were three public hearings for Sand Sage, as there also was for the Sunflower. And the Sunflower decision was made in 15 months. On page four we have a chart that highlights the number of people attending hearings, as well as the comments. And then you can also see the potential emissions that were proposed in that one process.
3. Moving on down, Mr. Chairman, I believe we had a concern about what was happening during the time frame we had to do the additional modeling. We had to do some additional modeling because of the Department of Interior's Fish and Wildlife Service. They were concerned about the visibility, actually down in Oklahoma, as a result of the Sunflower plant. During that process, where we actually had to run models, the staff did not stop working. They actually continued

to work on the comments that came in during the public hearing process. That's down on the page, bottom of page four in this material. And so, the point that I'm trying to make is that the staff did not stop working on this Sunflower permit, while they continued to do modeling.

4. Number 4 was just going back over a concern about why was the Wichita Mountains a concern for the Department of Interior. Again, they were concerned about the visibility impacts. And I think we resolved that.
5. And then lastly, question number 5 was, compare the CO₂ emissions between the different types of electrical generation units: those that are coal fired versus those that are gas fired. And I believe we have answered that as well. Mr. Chairman, I am not here to go through this in any great detail, but I do stand before you willing to answer questions and to have a conversation.

Chairman Holmes: OK. Senator Lee.

Senator Janis Lee: Since you denied the Holcomb expansion in terms of CO₂, what is the basis for that?

Secretary Roderick Bremby: In your, Senator Lee, in the packet we have included on the left hand side, (Attachment 12), a letter dated October 18 to a Mr. Penrod, who is the applicant for Sunflower. In the letter I have spelled out my basis for the denial of the decision. Reading in part, starting with the third paragraph, I cited the Supreme Court of the United States in *Massachusetts vs. EPA*, "That Carbon Dioxide, a greenhouse gas, meets the broad definition of air pollutant under the clean air act." The Kansas Air Quality Act similarly has a broad definition of what constitutes air pollution and then the Court also recognized the significant existing national and international information available on the deleterious impact of green house gasses on the environment which we live. The reason why I keep citing that is because this information was not available to us at the beginning of this permitting process. Nor was it available to us until April of this year. It is on the basis of carbon dioxide, as a green house gas, to be a pollutant under the Clean Air Act that I chose to deny that.

Senator Janis Lee: So then, you think that it is appropriate that the State should begin to control CO₂ emissions? And if so on what basis? How are you going to make those determinations?

Secretary Roderick Bremby: That's a good question Senator. When I was here before I said that, I believe Senator Emler asked about whether I was considering CO₂ as a component of the decision. I said at that time I hadn't decided yet. I do believe that we are ready to take the next step, which I believe engages industry stakeholders to establish goals to reducing CO₂ emissions and develop strategies to achieve them. Kansas would not be first by any means in that stead. There are some 35 states that have already done so or in the process of creating climate action plans to include not just carbon but other green house gasses. My position is just to, it's not in terms of economic development, it's also not energy policy. But it is to look out after the health and the environment of Kansans.

Senator Janis Lee: You have given this generality while I,____. You have made a decision to completely stop one facility based on CO₂.

Secretary Roderick Bremby: Yes ma'am.

Senator Janis Lee: So how then are you going to administer the same sort of regulations, the same sort of requirements on those other people that are already there? Or, if they're already there, it doesn't matter?

Secretary Roderick Bremby: It... What I am prepared to say today is that, of the permits that are in our shop we have some _____.

Senator Janis Lee: You don't

Secretary Roderick Bremby: Maybe I don't understand your question.

Senator Janis Lee: You don't understand my question Secretary Bremby. You made a decision that, because of some arbitrary number, 11 million tons, whatever it is, this facility is not going to be built. You've obviously decided that, as far as I can find out is about 1,900 pounds per megawatt hour. That's a decision you've made, that's too much CO₂ to allow to happen in this State. So when are you going to begin to administer the same sort of requirements to all other energy producers that are producing more than 1,900 pounds of CO₂ per megawatt hour?

Secretary Roderick Bremby: Senator that is one ratio that one could use to try to regulate. That is not a ratio that I would use to regulate. What I am trying to suggest is the scale of Sunflower was different. Erin has a chart here that I think will help to depict ([Attachment 13](#)) what was different about Sunflower. Over the last 5 years we have permitted over 300 facilities emitting CO₂. Because of the limits of Excel software we can only plot out for you 255 of those. Of the 255 shown along the bottom axis of this chart you see that Sunflower is here, 11 million, and the scale of the others is almost indistinguishable.

Senator Janis Lee: But Westar Energy at St. Marys is 18 million. Kansas City Power and Light at LaCeigne is 10 million.

Secretary Roderick Bremby: Senator I

Senator Janis Lee: You don't have on your chart.

Secretary Roderick Bremby: No, these are the ones that we permitted over the last five years. The ones that you have cited were permitted long before we came.

Senator Janis Lee: But they still

Secretary Roderick Bremby: And long before CO₂ was defined by the Supreme Court as an air pollutant, and long before we understood the affects of carbon on climate change

Senator Janis Lee: But they are still out there on a regular basis polluting if this is what you consider polluting. So then it must be, it is incumbent upon you by the fact that you use this by the Attorney General to begin to regulate an entity that's not there, it obviously has to be much more incumbent upon you to immediately regulate those entities that are already producing. Because this is an entity that never produced one bit of CO₂ and you have a number of other facilities in this state that on a daily basis are, according to your parameter, polluting with CO₂. How can you not? How can you say it's immoral to allow them to be built and not consider it immoral to allow them to continue.

Secretary Roderick Bremby: Senator I never said that one was immoral or that other was immoral.

Senator Janis Lee: The administration said so.

Secretary Roderick Bremby: What I am saying is that we are ready to engage stakeholders and other interested parties in taking this next step to look at existing inventories of CO₂ emissions. We believe it is of concern. We are ready and eager to take that next step. What I had before me, Senator, was one permit, that was about to add to the portfolio of some 11 million tons of CO₂. I took the decision. Or I made the decision and I acted in what I felt was best for the health of all Kansans and the environment of all Kansans. I do believe that we have an issue to deal with in terms of existing CO₂ emissions, but I don't stand here saying that I'm ready to make that decision on my own unilaterally. When I was here before the panel last time, the Chairman said he was very concerned, in fact he asked the assistant Attorney General at the time, "What about rules and regulations? How can he do that without rules and regulations?" I heard the Chairman and I factored that in to an opinion. I factored that into my judgment. I believe that it is time for us to have the conversation and begin to look at how we address CO₂ emissions as a state. To follow the lead that's already out there by some 35 other states, I believe it's time.

Senator Janis Lee: Up until now, when did KDHE bring to the legislature either the Natural Resources or the Utilities committee proposals to begin to regulate CO₂?

Secretary Roderick Bremby: KDHE has not brought to the Legislature to this date, any information about the regulation of CO₂. The Legislature was in session last April when the CO₂ definition as a pollutant was clarified for all of us.

Senator Janis Lee: And did you bring legislation back then when we came back at the end of April for us to look at.

Secretary Roderick Bremby: Ma'am I don't think that it is possible to bring legislation at that late date.

Senator Janis Lee: I think it's possible.

Secretary Roderick Bremby: OK. So if it is possible Senator and we had not developed the means whereby we would do that, it would have been premature at that time.

Senator Janis Lee: I have a list, of I don't know how many is here, of a hundred entities, and I believe a few more than that, that produce CO₂ in some manner in the State. Are you looking then at some sort of regulation that follow those?

Secretary Roderick Bremby: We cannot and will not seek to regulate entities beyond the control of KDHE. I read in, and I think this is going to get me in trouble, reading an article where there was a question about regulating carbon units for soft drinks. We have no intent of doing that, but I do believe that we do need to take the next step in looking at a climate change action plan like 35 other states. Now, there is something that I think is important, and I do believe that we have it in another chart. It shows the industries by CO₂ emissions. So this is the first industry that we focus on, because by far and away, it is the largest emitter. But to answer your question specifically, I have no interest nor desire in trying to regulate all industries in this state without the purview of KDHE and the authority of KDHE because they emit CO₂.

Senator Janis Lee: Alright I respectfully disagree with you on terms of soda and soda content. You all do get to have some authority over health issues dealing with food. And if you wanted to for soda you would figure a way. You just have figured out a way to stop Holcomb with CO₂.

Secretary Roderick Bremby: No one seeks an air permit for a soda machine. No one. We do regulate food services. But within the food code there is nothing about CO₂, I'm sorry.

Senator Janis Lee: In terms of those entities that you monitor, you only monitor generation facilities for CO₂. Is that correct?

Secretary Roderick Bremby: I'm sorry. You're saying we only monitor,

Senator Janis Lee: The information I have received from your agency through Legislative Research is, that the only entities that you actually monitor for CO₂, are the generation facilities. That the others that you use, that either they use self reporting, or you use what's called CO₂ equivalent emissions, which is not actual emissions but is projections.

Clark Duffy: Senator Lee, Clark Duffy, Director of Air Radiation, the electric services, the power plants, report those actual CO₂ emissions to EPA, and those are the only emissions that are actually reported.

Senator Janis Lee: Those are the only ones that are actually measured?

Clark Duffy: By EPA, yes, yes ma'am.

Senator Janis Lee: Does the State measure any other?

Clark Duffy: Any other CO₂ emissions? No, we do not.

Senator Janis Lee: So any CO₂ emissions that are attributed to any other facility are simply done through an estimation process?

Clark Duffy: It is through AP 42 standard, of comparing those emissions standards, by the activity, and it's a calculation. Yes ma'am. It's not an actual monitoring of emissions.

Senator Janis Lee: OK Chair that's all I have.

Chairman Holmes: President Morris

Senator Steve Morris: Secretary, do I understand you to say that there are 35 states that regulate carbon dioxide?

Secretary Roderick Bremby: No sir, what I said was that there are 35 states that have begun the process or have completed the process of developing a climate action change plan whereby, they looked at strategies to reduce their CO₂ emissions, and put in place in some states, regulations or laws to get there. Those are the strategies. But no sir, I didn't say 35 states currently have laws, just have completed plans.

Senator Steve Morris: Do any states have regulations on CO₂?

Secretary Roderick Bremby: What I have also provided in your packet on the left hand side, I believe now is a document that looks like, I'm sorry, it's on the right hand side, looks like this ([Attachment 14](#)). It says select state actions to address climate change. This was compiled by the national caucus of environmental legislators. And so, there are states on the front page that have set green house emissions targets. There are others that have followed California on auto emissions which we have not, like the coke dispenser, have any interest in doing. There are cap and trade programs. This document has all the legislative components by state, who's doing what.

Senator Steve Morris: Without having to read that then, are there any states that actually have regulated CO₂ thus far?

Secretary Roderick Bremby: There are, to my knowledge, no states with laws on the books that have been upheld by the courts at this time, to regulate CO₂. California attempted to do so for auto emissions and that was, that was not upheld at the court level. Now, that case was bundled with Massachusetts vs. EPA, which means that, that case needs to be decided now, in California on auto emissions. So, hopefully that answers the question. I do know that other states have goals and plans to reduce. But in terms of regulating, that is the one state I am well aware of.

Senator Janis Lee: You mentioned that you had no interest in auto emissions

Secretary Roderick Bremby: That was a parenthetical comment, yes ma'am.

Senator Janis Lee: My understand. Well, in Kansas compare the emissions of CO₂ from generation facilities vs. the CO₂ from automobiles.

Secretary Roderick Bremby: We have some additional charts to show. Um, OK we don't have them? You know what, I apologize. Let's go to the document that I first referenced, which at the responses to the last session's questions at the very top, has a seal on the side. At the bottom of page 7 there is a chart that looks at 2004 Kansas carbon dioxide emissions by fossil fuel combustion. I believe that is a comparison that might begin to answer the question.

Senator Janis Lee: Where does that come from?

Secretary Roderick Bremby: Calculated by KDHE using EPA state greenhouse gas inventory tool.

Additionally, attached to the KDHE testimony were: a chart titled "CO₂ tons by energy producers" (Attachment 15), and a map entitled "Ethanol and Bio-diesel Plant Activity in Kansas" (Attachment 16).

Chairman Holmes: I have a follow up to that. You mentioned 35 states, and the CO₂. Has Kansas signed in as one of the 35 states?

Secretary Roderick Bremby: Kansas, um, I want to make sure that I get this right. I'm going to ask Clark to come up, because I don't know the exact status of the western _____.

Clark Duffy: Kansas has joined the climate registry which is an inventory registry, but, we are monitoring all of the other groups, the other organizations that are meeting at this time. The director of environment is participating in those as an observer.

Chairman Holmes: Do you have a follow up to that?

Senator Janis Lee: Was there legislative authority for that, to be part of that process?

Secretary Roderick Bremby: I don't think legislative authority was sought for that.

Chairman Holmes: You mentioned a few of those states, there were targets and goals. That's not enforceable. That's just a number out there that somebody is shooting at. Isn't that right?

Secretary Roderick Bremby: You know, I don't know what the hooks are in ensuring that those goals are met. I do know that they have a process, and in that process they have also elected

legislators to ensure enforcement, or how do you attain those goals. So we're ready to begin that next step.

Chairman Holmes: You turned down this permit based upon CO₂. But as I said before I do not believe we have rules and regulations on those and are not enforceable by laws. Since you turned down this permit based on CO₂ when you had no authority to do that, now I know you're going further than that. Specifically in the law, where does it mention that you have the authority to regulate CO₂? (pause) Is CO₂ mentioned anyplace in the law?

Secretary Roderick Bremby: Air pollutant is referenced in the law.

Chairman Holmes: So what you have done, you have declared that air pollutants include CO₂.

Secretary Roderick Bremby: I didn't that sir, the Supreme Court declared that.

Chairman Holmes: It's not the Supreme Court there, I don't believe. Unless you're talking about Massachusetts.

Secretary Roderick Bremby: Massachusetts vs. EPA

Chairman Holmes: That doesn't refer to this course of the federal case. Representative Phelps.

Representative Eber Phelps: At the last meeting I enlisted some help with the decision you could make on this permit you mentioned that you could deny or modify. I didn't quite understand if that meant you could request modifications for the Sunflower Electric could provide modifications. I was wondering if in your deliberations if there was anything that. Did that ever come up as far as modifications that could be made or if there were proposals in the making that could make this more amenable?

Attorney for KDHE: Well I think that there has been discussion I think, within the Bureau and stuff, within the program, on their proposals but, we didn't have any enforceable kind of consent agreement or anything like that with Sunflower.

Representative Eber Phelps: Because the way I understood it, is that the Sunflower Electric submitted their permit request without any knowledge, I guess, maybe that's something you can correct me on too, I guess, without any idea that CO₂ would kind of be the determining factor on whether or not that permit was given or not. I was wondering how it kind of got directed to that, based on the Massachusetts decision, is that correct? Were we told a reason for that?

Secretary Roderick Bremby: I'm going to try to go back and answer the first question as carefully as I can. I believe that Sunflower submitted an application for an air construction permit. Whether their understanding of CO₂ was relevant to the decision or not, I can't say, but what I can say is that, as I did mention to the Chairman at the last meeting, I was encouraged by Sunflower's development of a bio-energy center to begin to look at how it is that you begin to deal with carbon outside. So, they have established an interest in trying to mitigate CO₂. So, there is a strong awareness by Sunflower in terms of CO₂ and the harmful effects of CO₂. I believe there was even, and again I keep saying that this may get me in trouble in reading from the newspapers, about several quotes adhering to CO₂ limits should federal law come into play. So, I don't know to what extent they believe that CO₂ would be a factor in this permit.

Representative Eber Phelps: And I could be wrong, in this assumption here but, one of the pieces of information that has come my way is that the two new plants would actually have less emissions

than the current Holcomb One. I don't know if that includes carbon dioxide, or if that's mercury levels or whatever the case may be.

Secretary Roderick Bremby: That was mercury.

Representative Eber Phelps: Mercury. I still would have to look at the, from the stand point of the, from the technological approach to this, this is new, and as I have heard the expression, cutting edge technology going into this building of the two new plants and it seems to me that that would be somewhat of a plan of action to me. Or that you go with cutting edge technology and also the fact that technology is constantly evolving and that since it actually improves beyond that, and now we're gonna just get the old technology and emission levels that are quite wide, etcetera. I guess that's all the comment I could make.

Secretary Roderick Bremby: We would hope that is continued development of those CO₂ mitigating technologies. I think the country, the world is looking for those, Sunflower is well positioned on phase one and on phase two is beginning to take off. That's very encouraging and I keep mentioning this to the chair person, we are encouraged about what Sunflower is doing on that behalf, but I did what my council said, was that there was nothing enforceable in terms of that provision, or CO₂ mitigating techniques or options. So, that's where I'll leave it for now.

Chairman Holmes: Senator Lee

Senator Janis Lee: Mr. Secretary, as a stock holder in Sunflower, as one who has several Sunflower meters that I read every month, quite frankly I am not interested in that work and the algae mitigation, unless it comes with something more than that for me as an electric rate payer. And if it doesn't come with something that helps me lower my rates, without new generation that's going to help lower my rates, I'm quite frankly not interested in seeing my investment, my money, used in that manor and maybe as a state you are, and you can find state dollars to do that. But frankly I don't want Sunflower using my dollars, unless it comes along with it a way to lower my rates. That's an aside from what my comments were going to be. You keep citing the Massachusetts vs. US EPA Supreme Court decision. It's my understanding that the central holding in that case is that the EPA may regulate CO₂, but that it must do it pursuant to the rule making process. Is that your understanding?

Secretary Roderick Bremby: It is not my understanding.

Senator Janis Lee: You think it just gives the EPA the right to regulate CO₂.

Secretary Roderick Bremby: Actually, I should let counsel comment, but I believe the case was remanded back to the EPA, and they needed to determine whether there was a scientific reason of why they shouldn't regulate CO₂.

Senator Janis Lee: And so how did they decide?

Secretary Roderick Bremby: I don't know. We've not talked with the EPA.

Senator Janis Lee: But you based your whole finding on that.

Secretary Roderick Bremby: I based my finding on, not the whole finding, not at all. But I did base a large portion of this decision on Massachusetts vs. EPA and the language. That's, yeah.

KDHE Counsel: I'm general council for Kansas Department of Health and Environment, so perhaps the questions would be best directed to me. That the Secretary has a ah.

Senator Janis Lee: Did you make the decisions?

KDHE Counsel: No I did not.

Secretary Roderick Bremby: I apologize, I came into the meeting wanting to be very forthright and responsive to the questions, and I may have communicated far beyond what I should have in the sense that, this case has been appealed. And so there is a duty, because I will be a hearing. This case could come back before me as a hearing officer. And so we really should not talk about this case. And as you begin to ask about issues regarding my decision, I tried to be forthright in that. But we keep bringing that back around to Sunflower. So, with all due respect, any further comments about this Sunflower, I'll defer to general council. And I apologize for that.

Representative Carl Holmes: I have a question for you and it's not on this case, but it relates to this case. You made the decision on this based on CO₂. I believe that we have some coal fired plants coming up for renewal of licenses coming up in the next several years. In fact I think there's one next year, or I think at least the year after that. And are you going to apply these standards you applied to Sunflower, to those power plants when they come back in for license renewal for the next year or two?

Secretary Roderick Bremby: The power plants will be up for renewal next year. I think they come staggering in. I believe that voluntary emissions mitigation is appropriate. Several of them have already begun to look at ways to mitigate CO₂. So, that's my comment.

Representative Carl Holmes: Last week, for the committee members, you'll find this in your books, somewhere in the very first tab of background (Attachment 17). I made open records request to your agency, and as yet I've not heard anything back on the open records request.

Secretary Roderick Bremby: Yes sir, you will have that before the statutory limit. You will have that before 5 o'clock today. That is the limit.

Representative Carl Holmes: It's 5 after 5.

Secretary Roderick Bremby: OK, then it's been mailed. I'm certain it's in the mail.

Representative Carl Holmes: In the mail to where?

Secretary Roderick Bremby: To you sir.

Representative Carl Holmes: At Topeka or at Liberal? Where did you send it to?

Secretary Roderick Bremby: Why don't I call counsel and find out where he mailed it to. We can do that.

KDHE Counsel: I believe it was mailed to the Liberal address, but we can check with our council to work on that.

Representative Carl Holmes: I won't be in Liberal till next Friday.

Secretary Roderick Bremby: Hopefully the mails a lot quicker than that, but I did review the request and the responses.

Representative Carl Holmes: I won't be home till next Friday.

Secretary Roderick Bremby: I'm sorry.

Representative Carl Holmes: That's all right.

KDHE Counsel: We can send you a fax of that.

Secretary Roderick Bremby: Where?

Representative Carl Holmes: I don't have a fax machine.

Secretary Roderick Bremby: Where would you like it sent to?

KDHE Counsel: Well we already sent it.

Representative Carl Holmes: I will be out of this building till 10 o'clock tomorrow morning.

Secretary Roderick Bremby: Sir, I will have a copy for you in this building at 10 o'clock in the morning.

Representative Carl Holmes: Senator Emler

Senator Jay Emler: Thank you Mr. Chairman. Mr. Secretary you commented on Massachusetts. I want to clarify just a couple of things since you used that for your opinion. That case does not apply to stationary sort of production, it's more on mobile sort of production. Isn't that what the basic case was about?

Secretary Roderick Bremby: The basic case was about auto emissions.

Senator Jay Emler: Correct, and it also did not apply to a state statute, did it?

Secretary Roderick Bremby: Of, no it did not.

Senator Jay Emler: And I guess I would concur with the question that Senator Lee, in form of a statement, said that were made to be the central holding in the case, that dealt with being to regulate with CO₂ provided there was a rule making procedure which there has not been a rule making procedure at this point. Isn't that correct, in the state of Kansas?

KDHE Counsel: That's correct.

Senator Jay Emler: Now, that case did not involve the EPA's emergency powers either, did it?

KDHE Counsel: I can't say at this point.

Senator Jay Emler: Well, if they have emergency powers they don't need to make a rule making, because they already have the power to do whatever it is they're going to do. But I won't argue with you about that. Are you aware, Mr. Secretary, of the legislative history of 65-3012. No, I'm asking if you're aware Mr. Secretary. Hopefully, counsel has researched this.

Secretary Roderick Bremby: Counsel has.

Senator Jay Emler: Are you aware of the legislative history and that it deals with emergency powers?

Secretary Roderick Bremby: Counsel is well aware of the statute.

Senator Jay Emler: Counselor are you aware that it came in, in 1967 and it specifically said emergency powers?

KDHE Counsel: I don't believe it's 1967. These statutes were revised, were they not?

Senator Jay Emler: I'm sorry, I couldn't hear you.

KDHE Counsel: I think these statutes were all revised in like 1991.

Senator Jay Emler: Well.

KDHE Counsel: I was there.

Senator Jay Emler: 1993 there was an amendment to the statute, but originally it came in, in '67 and was amended in '89 and then was amended again in '93 but, there have been no amendments since '93. Is that correct?

KDHE Counsel: Um, I think there were some, but not in that particular statute.

Senator Jay Emler: And I'm only talking about that particular statute. So, in 1993 are you aware Mr. Secretary that Charles Jones testified in support of the amendments to 3012?

Secretary Roderick Bremby: No, sir.

Senator Jay Emler: And let me just tell you what his testimony was, in section 12, amends section KSA 3012, this is section 12 of senate bill 29, amends 6532, I'm sorry amends 65-3012 to "provide an update to the Secretary's emergency authority, to replace outdated language. The specific language was patterned after the Kansas Hazardous Waste Statute." Now that is from the record of the Senate from January 12th, I'm sorry 21st, and from the House on February 24th. And I'll get back to that. So that statute was introduced and has never been changed dealing with the emergency authority. The word emergency was removed, but your own agency testified in support of that amendment, that it still dealt with emergency powers of the Secretary. I'd ask you, Mr. Secretary, have you or any of the previous secretaries to your knowledge ever used your emergency authority, pursuant to 3012?

Secretary Roderick Bremby: (Shakes head no)

Senator Jay Emler: That takes out of a whole bunch of questions.

KDHE Counsel: Well, and all that legislation was provided to the office of the Attorney General. They had all of that; in fact I think they even cited it, the statutory being based on the waste act in their opinion.

Senator Jay Emler: Yes, they did say that, they talked about that. However, they did not bother to mention that it dealt strictly with the emergency regulation. And that's what the agency believed.

And to go a little bit further on that, I guess, the administrative regulations have been in place, well they came in, it looks like in 72. Or 71, the bottom line is, in 1993, or since 1993, these regulations have never been changed. And do you know the only place in the regulations that KSA 65-3012 is mentioned? (pause) I take it from your look; you don't know the only place. It's in the emergency regulations regarding your emergency power, in the regulations regarding your emergency powers. Did you ever declare an emergency regarding the Holcomb plant?

Secretary Roderick Bremby: I have not done so.

Senator Jay Emler: Nor is there one, is there? It's something that hasn't even been built yet.

Secretary Roderick Bremby: That is correct. It's not been built yet.

Senator Jay Emler: And in fact, in the statute it says, "The action the Secretary may take, pursuant to subsection (a)", which is talking about emergency authority, albeit, the word emergency has been removed in '93, "includes, but is not limited to, issuing an order directed at the owner or operator to take such steps as necessary to prevent the act or eliminate the practice. Eliminate the practice, that's something that is ongoing." It also states, "Commencing an action to enjoin acts or practices specified in subsection (a), or requesting the Attorney General" to do that. Now that indicates to me that there is something going on that has to be stopped. And as you just said, "There's nothing going on." That's what 3012 says.

KDHE Counsel: I might add that there is case law that says that, and I think the Attorney General stated that in the letter, in the opinion, that it doesn't have to be an existing matter: that the canceling agent could prove prevention.

Senator Jay Emler: But not under the emergency powers. This only gives him, 3012 only applies to the Secretary's emergency authority. And there is no emergency, so you cannot deny it, based on an emergency that doesn't exist. That's my point.

KDHE Counsel: I think you're. You have your point, but I think that you should know that the Secretary did approach the office of the Attorney General and ask for an interpretation on this. This is something he contemplated the agenda, he asked for an interpretation, on this.

Senator Jay Emler: And did you provide to the Attorney General's office their regulation, their, number nine, their, just a minute.... Attorney General's Statement of Policy relating to the furnishing of written opinions, Number Nine, wherein you as General Counsel for the requesting agency, have to provide to the Attorney General all your back up documentation and your conclusions.

KDHE Counsel: No, I did not. All I provided was a copy of what we had for legislative research and I just sent my clerk over. She ran it off and the legislative research and if they did any other research on it, they did it on their own.

Senator Jay Emler: So, if my reading of the opinion, the statement of policy is correct, you did not provide your conclusions, as they would require you to do. Maybe I'm interpreting that wrong, but my understanding was, that you had to provide your conclusions, and then they would review your conclusions.

KDHE Counsel: No.

Senator Jay Emler: OK.

KDHE Counsel: We asked for an independent decision.

Senator Jay Emler: Earlier today, Mr. Secretary, I asked the question of Sunflower that absent any court action, or you being overturned, by either the court, or the legislature, what was the effect of your decision, the Secretary's decision on the project? And it is, that it is permanently terminated. Are you aware that the original request in the legislation was that you have the ability to permanently stop a project? But specifically, in the House of Representatives, that authority was removed from the bill, and you could no longer permanently stop an action. You could only temporarily stop it.

KDHE Counsel: Right now, the posture of this particular situation is we have two requests for hearings. And the hearings are pending on this issue. So, what apparently we are doing here, is trying to litigate the issue, when in fact Sunflower has a full opportunity to do that.

Senator Jay Emler: No, counsel that's not what we're doing. What we are doing here, is trying to determine why the Secretary, and for that matter the Attorney General, relied on a statute that specifically applies to emergency authority, instead of actually reviewing the process on something that's going to happen in the future. And the fact is that by relying on that, he did exactly what he was forbidden to do, by what was deleted from the bill in 1993, which was permanently stop this. And remember my question was, absent the legislature or the court taking any further action. So, what we're talking about is using the wrong statute to try and accomplish something, which shouldn't have been done under that statute.

(Pause)

Senator Jay Emler: And Mr. Secretary, in your letter, and I think you just kind of referred to it, if I'm not mistaken when you were answering Senator Lee's questions, you indicated that you relied on information in the application. But you also relied on information that was not limited to what was essentially in the record. Was that the correct interpretation of that sentence that you were reading?

Secretary Roderick Bremby: I read the third sentence to Senator Lee's question.

Senator Jay Emler: Let's see if I have it underlined. "I have given due consideration to the scientific and technical information relating to carbon dioxide including but not limited to, many oral and written comments submitted in the public hearing and comment period." So, that's what I'm saying the record is. The information provided in the application and then in the comments. So, are you saying that you relied on information other than what was actually, and what we'll call the record?

Secretary Roderick Bremby: Senator this matter will be litigated. We will find the answers that you're seeking. I don't believe that I'm going to provide that comfort today.

Senator Jay Emler: Alright. Now isn't it true Deputy Attorney General Feeny said that she believed that in order for you to make a factual determination you would have to hold a due process hearing?

Secretary Roderick Bremby: Could you please repeat that question?

Senator Jay Emler: Isn't it true that Deputy General Attorney Feeny stated, when I asked her about the due process issues.

Secretary Roderick Bremby: When you asked her?

Senator Jay Emler: Yes, when I asked her, “Does that mean there should be a due process hearing, or absent that there were constitutional issues?” She said she believed that there should be a due process hearing or there would be consequences to some issues. Do you recall that?

Secretary Roderick Bremby: I do recall that question. And I do recall her response. But I also recall her saying that she did not write the opinion.

Senator Jay Emler: That is true. Did you ever hold a due process hearing?

Secretary Roderick Bremby: That was the opinion of an Attorney General that did not write the opinion that helped to guide my actions.

Senator Jay Emler: Did you hold a due process hearing?

Secretary Roderick Bremby: No due process hearing was held on that specific issue, although we did have public hearings about the permit. And in the permitting process there, I don’t have the number off the top of my head, dozens of comments, questions, responses, that pertained to CO₂ in the record.

Senator Jay Emler: Since you issued the opinion that CO₂ levels are hazardous to the public health, how high does the CO₂ level have to be in parts per million to endanger a person?

Secretary Roderick Bremby: To, to injure one human being in a contained environment?

Senator Jay Emler: No, I don’t think that it’s a contained environment.

Secretary Roderick Bremby: I’m just trying to get the, let me get you the, I don’t know.

Senator Jay Emler: OK.

Secretary Roderick Bremby: Not knowing the amount of CO₂ that is harmful for one human being, does not negate the fact that CO₂ contributes to climate change, which contributes to global warming, which is harmful to all human beings.

Senator Jay Emler: I understand that there is a school of thought that believes that. I also understand that there is a school of thought that doesn’t believe that. And I’m not here to litigate that issue and decide that today, and I don’t think you want to do that either, since the air conditioning shut off 20 minutes ago, we’re all ready to get out of here. Uhm.

Secretary Roderick Bremby: Sir, it was a lot warmer when I walked in.

(laughter)

Senator Jay Emler: Um. I think most of the rest of my questions have been, have been asked. Thank you, Mr. Chairman.

Representative Carl Holmes: Senator Lee.

Senator Janis Lee: Yes, now that you have made the determination that we are gonna somehow look at CO₂ emissions, what technology has KDHE approved for carbon capture, or for carbon mitigation?

Secretary Roderick Bremby: Approved? There has not been a request for carbon capture or carbon mitigation. But we do know that there are techniques available. There is ways to mitigate the offset the carbon. So, their in the....

Senator Janis Lee: These plants that are coming up that use_____ I'm not talking about Sunflower, but these other generation facilities whose permits are coming up in the next couple of years, obviously they have to be concerned, because since your announcement today that they would begin looking at CO₂. So they need, probably I would think, in determining where are they gonna go to hopefully make, to slide through the permit process again. So what do they need to look at in terms of mitigation, in terms of carbon capture? What does KDHE have in place, right now, for these other utilities to begin to look at , to be able to be certain, cause obviously these things won't happen over night. These plans aren't going to be done over night. These strategies are not going to be put in place over night. And they obviously are probably going to cost several million dollars. So I'm assuming that KDHE has in place what is necessary, what they can do in order to be able to meet your new standard.

Secretary Roderick Bremby: Senator, I will only point to one of our clients, KCP&L that has done a wonderful job of voluntarily mitigating CO₂ emissions, and I believe it did so voluntarily in light of a Missouri project. There are_____

Senator Janis Lee: And how did they do that?

Secretary Roderick Bremby: It probably would be best for KCP&L to discuss that.

Senator Janis Lee: I saw some of their stuff. But I didn't see any, I saw a fluff. I didn't see any real hard core, "This is the technology that we're using."

Secretary Roderick Bremby: We will have a year to have conversations with our industry to reach a level, I believe, of comfort in reducing CO₂ emissions through mitigation strategies and procedures.

Senator Janis Lee: So then, if Sunflower, if they should decide to, not looking at the processes, If they should decide to come back through processes, I would think that they would be allowed to use those mitigation strategies and to look at them.

Secretary Roderick Bremby: I would not pre-judge any future applications. But I do believe that KCP&L is a good model of voluntary mitigation of CO₂.

Senator Janis Lee: So just get the Sierra Club to crawl in bed with you and then you can

Secretary Roderick Bremby: That's not exactly what I said, Senator.

Senator Janis Lee: There has been a number of remarks made in terms of that we should go to natural gas instead of coal, would you agree with that Secretary, that natural gas is a cleaner fuel?

Secretary Roderick Bremby: It is not my position to direct anyone to natural gas vs. coal. I considered a permit that was before me as Secretary of Health and Environment. I'm not the energy Czar. I'm not the Secretary of Energy. I only have purview over air emissions, in this context. Also some waste. But I will not respond to that, Senator.

Senator Janis Lee: Then how are utilities supposed to move forward when you understand that it costs millions to do studies to come forward to even go through the process? I mean, that's a tremendous burden you're putting on the utility customers of this state, since your agency has made

the determination to no longer allow coal to be part of the mix in this state, utilities have to have some sort of guidelines, or they're going to have to waste millions of dollars of utility customers' energy dollars. And I, you know when I got home last night, late last night, so I could pack and leave by 7 o'clock this morning, I had a call from a retired gentleman whose on a fixed income, and what he said is, "Senator I've talked to you a number of times, and I tend to be a very reasonable person, and I want to talk to you about what the State's going to do to control the cost of coal and gas so that my utility bills aren't going to go up?" Well now you and I know what the answer to that is. We don't control the cost of coal and gas, but we do have some affect on the cost of the generation that he's gonna have to purchase. And if we don't have any guidelines out there that say, look we no longer can use coal, but here's an alternative for base load. What are they to do?

Secretary Roderick Bremby: Senator, you're asking me to respond to some questions that we've not engaged in a dialogue with the industry about. We fully engage. We fully intend to engage in having that dialogue with the industry and I believe we will be successful in responding to a reduction of CO₂ emissions.

Senator Janis Lee: Then why wasn't that discussion 2 years ago, before a decision like this?

Secretary Roderick Bremby: That's an excellent question. That's an excellent question.

Senator Janis Lee: 'Cause we ended up wasting a whole lot of my money, as a user of the electricity provided by this company that they are not able to move forward.

Secretary Roderick Bremby: That's an excellent question. I don't know why the State has not moved forward with a climate change action strategy following some 35 other states. Some as early as the late 90's when the EPA offered grants to begin to look at that. I don't know why that didn't happen.

Senator Janis Lee: How long have you been Secretary of Health and Environment?

Secretary Roderick Bremby: Senator, I have had the pleasure of serving Kansas as Secretary of Health and Environment longer than any other person. Again, I say that I am not Secretary of Environment. I'm not Secretary of Economic Development, but Health and Environment. Only one, but one attribute.

Senator Janis Lee: But you're gonna have discussions now. Why didn't you initiate those discussions 5 years ago?

Secretary Roderick Bremby: Senator, with all due respect, the conversation about climate change action plans was before the energy commission this very year. Why that group, why that council chose to table the discussion I do not know. It would have been a great opportunity to begin that dialogue.

Senator Janis Lee: You're a member of that council, correct?

Secretary Roderick Bremby: Senator, I am a member of that council, and I stepped off of that council to allow my Director of Environment to serve in my place while this permit was moving through the process.

Senator Janis Lee: And has your Director been at every meeting?

Secretary Roderick Bremby: He has. And in fact, he has communicated and provided presentations on this very matter.

Senator Janis Lee: But that's only an advisory agency that advises to the Governor. That's not an agency that has standing_____.

Secretary Roderick Bremby: That is an advisory council also represented by legislators on that council.

Senator Janis Lee: And that's a council that does not, at least a number of members on that council, do not support the decision that you have made. I can't say rather the whole council does or the whole council doesn't. As you know, it is a council that would be very divided on this issue.

Secretary Roderick Bremby: I understand that the decision was not popular. And I understand that a lot of people are against the decision. I also understand that people are supportive of the decision. This decision will get fully vetted out in court. I apologize for taking up your time this afternoon. I don't mean to be argumentative or defensive. But I am trying to provide as direct a response as I can about the decision.

Chairman Holmes: Well, since you stepped on my toes. I'm the one who made the motion to table the green house gas.

Secretary Roderick Bremby: That I didn't know, but sorry.

Chairman Holmes: And, I can tell you why I made the motion to table it. The timing wasn't right. The facts weren't there yet. I just did not feel it was right to move forward, and the majority of the Kansas Energy Council voted with me. As you know that's not, a table is not a debatable motion. I want to go back to CO₂ and electric power plants, touch on that just a little bit. Are you aware of any commercial operation today that captures CO₂ from electric power plants in the nation?

Secretary Roderick Bremby: Sir, I believe the last time I was before you, you asked that question of me, and I said that the IGC technology was immature. And you responded that you had attended or, had a walk through of a plant in Florida, if I'm not mistaken, and their experience was not good. Was that my recollection?

Chairman Holmes: That's correct. Now, I was down there last week. And they're still venting all CO₂ in the atmosphere at both plants that Kemp electric company has. They're making no attempt to capture that CO₂. And I'm not aware of any power plant in the nation, that's using any commercial technology for capturing CO₂. And you talked about, that we had information earlier today about the Springfield plant that is a pilot program, and we don't even get that opportunity at Holcomb, because they proposed an algae reactor and you turned the permit down. So that process has failed, we don't even get to test it in Kansas. Are you aware of the Carnegie Mellon study dealing with comparison of carbon emissions between coal fired power plants and LNG, brought into this country and used to generate electricity?

Secretary Roderick Bremby: I am not familiar with the Carnegie Mellon study which you're citing.

Chairman Holmes: I would recommend that you take a look at the Carnegie Mellon study ([Attachment 18](#)). It will show you that the carbon emissions from LNG (liquid natural gas) that's used in power plants to generate electricity is equal to or more than, the carbon emissions and CO₂ from coal fired, from advance coal technology. And what we're faced with here today is that you have turned down the permit for carbon, for the pulverized coal fired plant at Holcomb. You've indicated

that you're going to apply some standards of some sort to the existing plants in the state of Kansas when they come back up for renewal starting next year. The alternative is to go to natural gas. The United States peaked out on natural gas production many years ago. The last six years, the North American continent has not increased natural gas production, therefore, any increase in natural gas usage for generation, will come, directly or indirectly from LNG. And when you look at the Carnegie Mellon study, the carbon emissions are equal or greater than from the technology proposed at Holcomb. So we do nothing to accomplish what you're trying to do with CO₂ by denying this permit, that forces natural gas. We don't reduce CO₂ one iota when you take a look at the life cycle of going through for the production of LNG compared to the gasification and emissions.

Secretary Roderick Bremby: Mr. Chairman, I

Chairman Holmes: I just recommend that you take a look at the Carnegie Mellon study that came out in the last month.

Secretary Roderick Bremby: I appreciate that. I will capture that study, and I will read that. It's not my place to pit one type of energy against another. But the other conversation that we've not discussed or had here today is one about wind or other renewables, that, you know, we can minimize the affects of CO₂, to, so there are other ways to get energy and I understand, you know, that that's another issue, for another day, and perhaps another committee. But I didn't want to walk away not saying that there's still some other alternatives.

Chairman Holmes: Well, earlier today we heard testimony, before this Committee, on the situation with wind. And my point is that you weren't here, to hear that testimony. And the problems we had with wind as a substitute for electric generation of power. Are there any other questions or comments from anybody? I appreciate you, Secretary, coming over today and responding to the questions. Thank you very much.

Secretary Roderick Bremby: Thank you.

[End verbatim transcription.]

Chairman Holmes noted that additional background information for Committee members had been distributed, including:

- All Construction Documents Pending or Voided 10/22/07 through 11/2/07 (Attachment 19);
- All Operating Permits Pending or Voided 10/15/07 through 11/2/07 (Attachment 20);
- Average Retail Prices of Electricity by Utility, 2005 Comparison of Eastern and Western Kansas, as subsequently corrected (Attachment 21); and
- Excerpt from National Coal-Fired Utility New Source Review (NSR) Spreadsheet (July '07), (Attachment 22).

Chairman Holmes noted that minutes from the previous meeting would be distributed for approval and that the Chairman and Vice-Chairman would decide how to proceed with the work of the Panel.

The meeting was adjourned at approximately 6:00 p.m.

Prepared by Renae Hansen
Edited by Mary Galligan

Approved by Panel on:

January 7, 2008
(date)