



Testimony of the Kansas City Board of Public Utilities
Senate Bill 151
Presented to the Kansas Legislature Senate Utilities Committee
February 17, 2015

Chairman Olson and members of the Committee, thank you for this opportunity to present written testimony on Senate Bill 151: "The Kansas Electric Ratepayer Protection Act" amending the Kansas Air Quality Act.

The BPU believes it is critical that any action taken by the Kansas Legislature and the Kansas Department of Health and Environment (KDHE) maximize opportunities that the State of Kansas has pursuant to the federal Clean Air Act, to develop and implement a State Implementation Plan (SIP) for EPA's *Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units*, 79 Fed. Reg. 34,830 (June 18, 2014) (Carbon Rule). The Carbon Rule is in response to the President's Clean Power Plan and is expected to be a final rule in August 2015. BPU is in agreement with the information in the February 11, 2015 presentation of Chief Deputy Attorney General Jeff Chanay to this Committee. That information is key to understanding the underpinnings for and controversies associated with the Carbon Rule and with the Clean Power Plan. No doubt there will be litigation challenging the Carbon Rule. But while that litigation is pending the provision of electricity and compliance with the Carbon Rule will be the task of the BPU and other utilities subject to the Carbon Rule. This testimony is to urge the Committee not to take any action that threatens to or effectively will relinquish to EPA all control in implementing the Carbon Rule in the State of Kansas.

The federal Clean Air Act (CAA) sets forth the options and opportunities for state response to EPA rules such as the Carbon Rule. Briefly the options for Kansas are:

1. Kansas may submit to EPA a State Implementation Plan containing the substantive elements required under the applicable EPA regulations (here the Carbon Rule) within the time prescribed by the CAA or by EPA in the applicable regulation.
2. Kansas can fail to submit a SIP on time or fail to submit an "approvable" SIP (one that has the required substantive elements) in which case EPA must under the CAA prepare a Federal Implementation Plan (FIP) for Kansas.

While the issues raised through the language in SB 151 are very real and of real concern to the BPU, the more immediate concern, and one that this Committee, the Legislature, KCC, and KDHE can effectively address is the need to ensure that Kansas through the KDHE has full opportunity to submit an approvable SIP in a timely manner and avoid a FIP.

Under the Carbon Rule, Kansas has three opportunities to submit an approvable SIP:¹

1. June 16, 2016 submit a full SIP with all required elements; or
2. June 16, 2016 submit a initial SIP with request for extension to submit the remainder no later than June 30, 2017; or
3. June 30, 2016 submit the same initial SIP as in number 2 above together with a request for permission to prepare and submit a multi-state SIP no later than June 30, 2018.

If Kansas fails to submit an approvable initial or full SIP within the times above, the CAA mandates that EPA prepare a FIP for Kansas. If that occurs, then the opportunity for Kansas-specific refinements and additions to the substantive SIP requirements are lost until such time that Kansas might later prepare and submit an approvable SIP to replace the FIP.

The timelines above make it clear that there is not time to embark on state proceedings beyond the public notice, comment, and hearing before KDHE that are required for SIP development. To the knowledge of the BPU, KDHE to date has not prepared a SIP in which KDHE did not seek and harken to the comments and needs of all interested stakeholders. There is nothing to suggest that KDHE's SIP development will change for the Carbon Rule SIP. Time is short, funding and resources are needed to empower KDHE to prepare an approvable SIP or partial SIP and timely submit the same. BPU encourages this Committee to refrain from action that would hinder KDHE from doing so and BPU encourages this Committee to empower the KDHE with funding and resources needed to best serve Kansas in response to the Carbon Rule.

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¹ EPA has indicated that the June deadlines below may be extended to "summer" of the respective years to compensate for EPA's anticipated delays in promulgating the final Carbon Rule and FIP.