

Before the Senate Standing Committee on Utilities
February 19, 2015

Neutral Testimony
On Senate Bill 170

Submitted By Jeff McClanahan, Director, Utilities Division
On Behalf of
The Staff of the Kansas Corporation Commission

Chair Olsen, Vice Chair Petersen, Ranking Minority Member Francisco, and members of the committee, thank you for the opportunity to appear before your committee today on behalf of the Kansas Corporation Commission (Commission). My name is Jeff McClanahan and I am the Director of the Utilities Division.

The Staff of the Commission is neutral on SB 170, but we do have some concerns with the bill as proposed. Staff's concerns are as follows:

- While the state corporation commission (commission) and the secretary of health and environment (KDHE) may examine the implications of preparing and implementing any rule proposed under the EPA's Clean Power Plan (CPP), SB 170 does not allow either agency to prepare, draft, submit, or implement any implementation plan or expend any funds to develop an implementation plan until the completion of judicial review. Staff believes the language included in SB 170 is unclear as to how far the commission and KDHE may go in examining the implications of preparing and implementing any proposed rule without violating the clear prohibition against preparing a plan or expending funds to develop a plan.
- SB 170 requires KDHE to review the impact of the plan and the implementation of EPA's proposed rule on the affordability and reliability of the electric system for Kansas ratepayers. SB 170 further requires the commission and the Federal

Energy Regulatory Commission (FERC) to certify that implementation of the proposed rule will still meet reliability standards established by FERC. The language is problematic because KDHE does not have the expertise to review the impact on affordability and reliability, while the agency that does – the commission – is relegated to certifying reliability. Moreover, while the commission has the expertise to review the impact on reliability, it does not have the expertise to certify reliability. In addition, FERC has not indicated that it intends to certify reliability impacts of state compliance plans and it is not clear that FERC can be compelled by a state law to certify reliability should it choose not to do so.

- SB 170 requires that non-fuel rate increases associated with greenhouse gas regulations be capped at 1.5%. Any investments made by a utility to conform to a state compliance plan designed to meet the requirements of the CPP are essentially mandated by both the state and federal governments. Therefore, a utility must comply by making investments in the required infrastructure. When a utility invests in infrastructure, its shareholders are entitled to a “just and reasonable” return on their investment according to the federal constitution. Thus, to place a limit on the amount of the investment that can be recovered could harm a utility financially and could be unconstitutional.

Thank you for your consideration of these comments.