

**As Further Amended by House Committee**

**As Amended by House Committee**

Session of 2015

**HOUSE BILL No. 2233**

By Committee on Energy and Environment

2-4

1 AN ACT concerning utilities; relating to electric generating units and  
2 carbon dioxide emission standards; concerning the establishment of  
3 state performance standards; state corporation commission; secretary of  
4 health and environment; amending K.S.A. 2014 Supp. 65-3031 and  
5 repealing the existing section.  
6

7 WHEREAS, The United States environmental protection agency has  
8 proposed a carbon dioxide emission standard that requires the state of  
9 Kansas to comply with a state-wide emission standard rather than  
10 requiring individual utilities to meet a specific emission standard on a  
11 generating unit basis. In determining a carbon dioxide emission  
12 standard for Kansas, the environmental protection agency has elected to  
13 require states to re-dispatch coal-fired electric generating units to  
14 natural gas-fired combined cycle generation units and renewable  
15 generating resources as well as the use of energy efficiency and  
16 demand-side management resources. Because the environmental  
17 protection agency's approach to setting a carbon dioxide emission  
18 standard crosses jurisdictional authorities, and due to the complexity of  
19 re-dispatching the integrated electric system in the state of Kansas  
20 while maintaining reliable electric service and reasonable electric rates  
21 for ratepayers, both the Kansas department of health and environment  
22 and the state corporation commission will need to provide their  
23 respective expertise in order to efficiently and effectively develop a  
24 cost-effective and reliable compliance plan. This act shall be called the  
25 Kansas electric ratepayer protection act.  
26

27 *Be it enacted by the Legislature of the State of Kansas:*

28 Section 1. K.S.A. 2014 Supp. 65-3031 is hereby amended to read as  
29 follows: 65-3031. ~~(a) For all coal-fired and natural gas electric generating~~  
30 ~~units that are affected units pursuant to 42 U.S.C. § 7411, as in effect on~~  
31 ~~the effective date of this act, that have been constructed or have received a~~  
32 ~~prevention of significant deterioration permit by July 1, 2014, in~~  
33 ~~accordance with the requirements of the environmental protection~~  
34 ~~agency's rulemaking pursuant to docket EPA-HQ-OAR-2013-0602,~~

1 the secretary may develop and submit to the environmental protection  
2 agency a state plan for compliance with the regulation of carbon  
3 dioxide from any affected or existing electric generating units  
4 pursuant to 42 U.S.C. § 7411. The secretary of health and environment  
5 may establish separate standards of performance for carbon dioxide  
6 emissions based upon: (1) The best system of emission reduction that has  
7 been adequately demonstrated while considering the cost of achieving  
8 such reduction;  
9 (2) reductions in emissions of carbon dioxide that can reasonably be  
10 achieved through measures taken at each electric generating unit; and  
11 (3) efficiency ~~and~~ other measures that can be undertaken at each  
12 electric generating unit to reduce carbon dioxide emissions without any  
13 requirements for fuel switching, co-firing with other fuels or limiting the  
14 utilization of the unit.  
15 (b) In establishing any standard of performance for any existing  
16 electric generating unit pursuant to this section, the secretary may consider  
17 alternative standards and metrics or may provide alternative compliance  
18 schedules than those provided by federal rules or regulations by  
19 evaluating: (1) Unreasonable costs of achieving an emission limitation due  
20 to plant age, location or the design of an electric generating unit;  
21 (2) any unusual physical or compliance schedule difficulties or  
22 impossibility of implementing emission reduction measures;  
23 (3) the cost of applying the performance standard to an electric  
24 generating unit;  
25 (4) the remaining useful life of an electric generating unit;  
26 (5) any economic or electric transmission and distribution impacts  
27 resulting from closing the electric generating unit if compliance with the  
28 performance standard is not possible; and  
29 (6) the potential for a standard of performance relating to unit  
30 efficiency, including any requirements for a new source review or the  
31 application of a best available control technology emission limitation for  
32 any criteria pollutant as a condition of receiving a permit or authorization  
33 for the project.  
34 (c) The secretary may implement ~~such standards through flexible  
35 regulatory mechanisms, including the averaging of emissions, emissions  
36 trading or other alternative implementation measures~~ **a state plan through**  
37 **regulatory mechanisms that may include administrative regulations,**  
38 **permits, agreements or other flexible regulatory measures** that the  
39 secretary determines to be in the interest of Kansas. The secretary ~~shall  
40 not implement a permit participation in an organized carbon emission  
41 trading mechanism market without first obtaining specific statutory  
42 authority for the mechanism. The secretary may enter into voluntary  
43 agreements with utilities that operate fossil-fuel based electric generating~~

improvements to any affected electric generating unit

such standards through flexible regulatory mechanisms, including the averaging of emissions, emissions trading or other alternative implementation measures

may enter into voluntary agreements with utilities that operate fossil-fuel based electric generating units within Kansas to implement these carbon dioxide emission standards. Such agreements may aggregate the carbon dioxide emissions levels from electric resources in this state, including coal, petroleum, natural gas or renewable energy resources as defined in K.S.A. 66-1257, and amendments thereto, that are owned, operated or utilized by power purchase agreements by utilities for purposes of determining compliance with such carbon dioxide emission standards

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1 units within Kansas to implement these carbon dioxide emission standards.  
2 Such agreements may aggregate the carbon dioxide emissions levels from  
3 electric resources in this state, including coal, petroleum, natural gas or  
4 renewable energy resources as defined in K.S.A. 66-1257, and  
5 amendments thereto, that are owned, operated or utilized by power  
6 purchase agreements by utilities for purposes of determining compliance  
7 with such carbon dioxide emission standards. *Such agreements shall not*  
8 *be effective until the secretary has given notice to the state corporation*  
9 *commission, held a hearing pursuant to K.S.A. 77-501 et seq., and*  
10 *amendments thereto, and issued an order which adopts the state*  
11 *corporation commission's order pursuant to subsection (d). In order to*  
12 **achieve a mass-based or rate-based goal, nothing in this act shall be**  
13 **construed to prohibit a Kansas utility: (1) With multiple affected units**  
14 **in one or more states from sharing, aggregating or purchasing**  
15 **emissions among such utility's units; or**

16 **(2) from sharing, aggregating or purchasing emissions between**  
17 **other Kansas utilities with affected units.**

18 *(d) Before establishing any standard of performance for any affected*  
19 *or existing jurisdictional electric generating unit or flexible regulatory*  
20 *mechanism pursuant to this section, the secretary shall give notice to the*  
21 *state corporation commission and adopt the order of the commission. In*  
22 *making a recommendation to the secretary, the commission shall: (1)*  
23 *Conduct any investigations necessary to determine each jurisdictional*  
24 *utility's re-dispatch options along with the cost of each option;*

25 *(2) conduct any investigations necessary to conduct a joint*  
26 *investigation with the state corporation commission pursuant to*  
27 *K.S.A. 65-3005 and 66-106, and amendments thereto, and hold a joint*  
28 *hearing pursuant to procedures under K.S.A. 77-501 et seq., and*  
29 *amendments thereto, as applied to the state corporation commission.*  
30 **In establishing any standard of performance or flexible regulatory**  
31 **mechanism pursuant to this section, the secretary and the state**  
32 **corporation commission shall: (1) Exercise the secretary's and**  
33 **commission's respective existing statutory authority over the affected**  
34 **utilities;**

35 **(2) determine each utility's re-dispatch options along with the**  
36 **cost of each option;**

37 **(3) determine the lowest possible cost re-dispatch options on a state-**  
38 **wide basis;**

39 **(3) (4) ensure that the recommended options maintain any option**  
40 **selected maintains the reliability of Kansas' integrated electric systems;**

41 **(4) issue an order, within 300 days of receiving notice by the**  
42 **secretary, which provides a detailed explanation of the commission's**  
43 **findings and recommendations. Nothing in this subsection shall preclude**

The secretary and the state corporation commission shall enter into a memorandum of understanding concerning implementation of the requirements and responsibilities under the Kansas air quality act.

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1 ~~all parties and the commission from agreeing to extend the 300-day-~~  
2 ~~period. The commission shall expeditiously conduct any such investigation~~  
3 ~~as covered within this subsection; and~~

4 ~~(5) provide the secretary a copy of the commission's order along with~~  
5 ~~any evidence requested by the secretary.~~

6 ~~(e) In any hearing held pursuant to subsection (c), the commission~~  
7 ~~shall function as an official intervenor and may make application for a~~  
8 ~~rehearing or seek judicial review of any order or decision of the secretary~~  
9 ~~issued pursuant to this act.~~

10 ~~(5) issue a joint final order establishing the compliance goal and~~  
11 ~~defining the regulatory mechanisms for the state plan, which provides~~  
12 ~~a detailed explanation of the joint findings; and~~

13 ~~(6) issue a joint interim order within 180 days of initiation of the~~  
14 ~~joint investigation, if necessary to submit a state plan within any~~  
15 ~~deadline imposed by the environmental protection agency. If a joint~~  
16 ~~interim order is issued, it shall establish the compliance goal and~~  
17 ~~define the regulatory mechanisms for the state plan. The secretary~~  
18 ~~shall may request an extension upon submission of the state plan of~~  
19 ~~the time limit for submitting a state plan, as necessary.~~

20 ~~(e) After issuance of a joint interim order, the secretary shall~~  
21 ~~promulgate and submit a state plan establishing the compliance goal~~  
22 ~~and regulatory mechanisms approved in the joint order. If the findings~~  
23 ~~of a joint final order differ from those of the joint interim order, the~~  
24 ~~secretary shall promulgate and submit modifications to the state plan~~  
25 ~~to the environmental protection agency by the department to~~  
26 ~~incorporate the findings approved in that joint final order.~~

27 ~~(f) The secretary and the state corporation commission shall~~  
28 ~~submit the state plan to the legislature concurrent with the start of the~~  
29 ~~public notice period for the state plan. The state plan will be~~  
30 ~~submitted to the senate committee on utilities and the house of~~  
31 ~~representatives committee on energy and environment committees or~~  
32 ~~other committees designated by the legislative coordinating council for~~  
33 ~~review and approval. If the legislature is not in session when the plan~~  
34 ~~is submitted for review, the legislative coordinating council will~~  
35 ~~designate an alternate joint committee to review the state plan. The~~  
36 ~~committees shall complete their respective reviews within 60 days. The~~  
37 ~~state plan shall be considered approved unless both committees vote to~~  
38 ~~disapprove the plan within the 60-day review period. If a committee~~  
39 ~~votes to disapprove the plan, the committee shall indicate the reasons~~  
40 ~~for such disapproval. The secretary shall make any necessary changes~~  
41 ~~to the proposed state plan and resubmit the plan for approval by the~~  
42 ~~committees. The committees shall each take action to approve or~~  
43 ~~disapprove any resubmitted plan within 30 days of receiving any~~

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(e) (1)  
And by redesignating the  
remaining subsections

clean power plan  
implementation  
study committee

1 ~~resubmitted plan or else the plan will be considered approved as~~  
2 ~~submitted to the senate committee on utilities and the house~~  
3 ~~committee on energy and environment.~~  
4 (A) (1) A plan to investigate, review and develop a state plan no later  
5 than November 1, 2015; and  
6 (B) (2) information on any final rule adopted by the environmental  
7 protection agency under docket EPA-HQ-OAR-2013-0602 no later  
8 than February 1, 2016.  
9 (g) The secretary shall present any proposed ~~interim or final~~ state  
10 plan proposed for submission to the environmental protection agency  
11 to a ~~joint meeting of the senate committee on utilities and the house~~  
12 ~~committee on energy and environment, or an alternate joint~~  
13 ~~committee designated by the legislative coordinating council if the~~  
14 ~~legislature is not in session, for review and input prior to submission of~~  
15 ~~such a plan to the environmental protection agency or any other~~  
16 ~~federal agency. This meeting shall take place at least 45 days prior to~~  
17 ~~the planned submission and the committee shall provide comments to~~  
18 ~~the secretary within 15 days after the meeting. In the event a final rule~~  
19 ~~is not issued by the environmental protection agency pursuant to~~  
20 ~~docket EPA-HQ-OAR-2013-0602, or the issuance of a final rule is~~  
21 ~~delayed, the secretary shall notify the appropriate chairs of the~~  
22 ~~legislative committees.~~  
23 (g) (h) Notwithstanding ~~approval~~ review by the legislature, or by  
24 any legislative committee pursuant to subsection (f), of the submission  
25 of a state implementation plan to the environmental protection agency,  
26 further action by the secretary to implement or enforce the final  
27 approved state implementation plan is dependent upon the final  
28 adoption of the federal emission guidelines. If the federal emission  
29 guidelines are not adopted or are adopted and subsequently  
30 suspended, vacated, in whole or in part, or held to not be in  
31 accordance with the law, the secretary shall suspend or terminate, as  
32 appropriate, further action to implement or enforce the state  
33 implementation plan.  
34 (d) ~~(f)~~ (h) (i) This section shall be part of and supplemental to the  
35 Kansas air quality act.  
36 ~~Sec. 2~~ K.S.A. 2014 Supp. 65-3031 is hereby repealed.  
37 Sec. 3. This act shall take effect and be in force from and after its  
38 publication in the Kansas register.

; and  
(C) any information requested by the chairperson.  
(2) The state corporation commission shall submit  
information to the clean power plan implementation study  
committee concerning:  
(A) Each utility's re-dispatch options along with the cost  
of each option;  
(B) the lowest possible cost re-dispatch options on a  
state-wide basis; and  
(C) the impact of each re-dispatch option on the  
reliability of Kansas' integrated electric systems

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pursuant to section 2, and amendments  
thereto, at least 30 days

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the clean power plan implementation study committee

If a proposed plan is disapproved by the clean power plan  
implementation study committee, the secretary shall resubmit  
a revised plan to the study committee. The secretary may  
submit any proposed plan to the environmental protection  
agency that has been submitted to the study committee and  
that has not been disapproved by the committee within 30  
days of the committee receiving such proposed plan

See Attachment 1 for  
subsections (h) and (i)

clean power plan implementation study committee

See Attachment 2  
for New Section 2

ATTACHMENT 1

- (h) Notwithstanding any other provision of law, prior to submitting any state implementation plan to the environmental protection agency, the secretary shall: (1) Submit such state implementation plan as proposed rules or regulations pursuant to K.S.A. 77-415 et. seq., and amendments thereto. Such submission shall be expedited by any agency reviewing such proposed rules and regulations pursuant to K.S.A. 77-415 et. seq., and amendments thereto;
- (2) request a review of the proposed state implementation plan by the office of the attorney general. The attorney general review may certify to the secretary that the plan will not hinder, undermine or in any way harm the position of the state of Kansas in any current or pending litigation relating to the environmental protection agency docket EPA-HQ-OAR-2013-0602. The attorney general shall also review the proposed state plan concerning any impacts on the protections guaranteed by the constitutions of the United States or the state of Kansas; and
- (3) not submit a state implementation plan if the attorney general review indicates that the proposed plan would adversely impact the state's legal position in any current or pending litigation relating to the environmental protection agency docket EPA-HQ-OAR-2013-0602 or if the attorney general review indicates that the proposed state plan adversely impacts protections guaranteed by the constitutions of the United States or the state of Kansas.
- (i) The secretary shall be responsible for submitting a state implementation plan to the environmental protection agency in a timely manner. Notwithstanding any other provision of this act, the secretary shall prepare and submit a state plan to the environmental protection agency four calendar days prior to the federal submission deadline established by the environmental protection agency if the secretary has previously submitted such plan for review by the clean power plan implementation study committee pursuant to this act.

ATTACHMENT 2

New Sec. 2. (a) (1) There is hereby established the clean power plan implementation study committee. The committee shall hold informational hearings and receive updates from the department of health and environment, the state corporation commission and the attorney general about the implications of the adoption of a state implementation plan pursuant to docket EPA-HQ-OAR-2013-0602 concerning the impact to: (A) Electric ratepayers; (B) electric utilities; (C) the reliability of the electric grid in Kansas; and (D) the overall sovereignty of the state.

(2) Upon development of any state implementation plan pursuant to K.S.A. 65-3031, and amendments thereto, the secretary of health and environment shall submit such plan to the study committee for review. Within 30 days of receiving any proposed state implementation plan, the committee shall hold a committee meeting and review the impact of such plan pursuant to this section and may approve or disapprove the submission of the plan. If the study committee disapproves the submission of such plan, the committee shall provide the secretary the reasons for such disapproval.

(b) (1) The study committee shall be composed of 11 voting members. Five members shall be from the senate committee on utilities as follows: (A) The chairperson, vice-chairperson and ranking minority member; and (B) two members appointed by the president of the senate.

(2) Six members shall be from the house committee on energy and environment as follows: (A) The chairperson, vice-chairperson and ranking minority member; and (B) three members appointed by the speaker of the house of representatives.

(3) A quorum of the clean power plan implementation study committee shall be six members. All actions of the committee shall be taken by a majority of all of the members of the committee. Any vacancy in the membership of the committee shall be filled by appointment in the same manner prescribed by this section for the original appointment.

(c) Members shall be appointed to the study committee on or before July 1, 2015, for a term ending on June 30, 2017. On and after the first day of the regular legislative session in odd-numbered years, the chairperson of the study committee shall be the chairperson of the house committee on energy and environment and the vice-chairperson of the study committee shall be the chairperson of the senate committee on utilities and, after the first day of the regular legislative session in even-numbered years, the chairperson of the study committee shall be the chairperson of the senate committee on utilities and the vice chairperson of the study committee shall be the chairperson of the house committee on energy and environment. The chairperson and vice-chairperson of the study committee shall serve in such capacities until the first day of the regular legislative session in the ensuing year. The vice-chairperson shall exercise all of the powers of the chairperson in the absence of the chairperson. The first meeting of the study committee shall be called by the chairperson of the committee following the conclusion of the 2015 regular session of the Kansas legislature. The committee shall have the authority to meet at any time and at any place within the state on the call of the chairperson.

- (d) The provisions of the acts contained in article 12 of chapter 46 of the Kansas Statutes Annotated, and amendments thereto, applicable to special committees shall apply to the clean power plan implementation study committee to the extent that the same do not conflict with the specific provisions of this act applicable to the study committee.
- (e) Members of the clean power plan implementation study committee shall receive compensation, travel expenses and subsistence expenses as provided in K.S.A. 75-3212, and amendments thereto, when attending meetings of the committee.
- (f) The staff of the office of the revisor of statutes, the legislative research department and the division of legislative administrative services shall provide such assistance as may be requested by the study committee.
- (g) The provisions of this section shall expire on June 30, 2017.