

As Further Amended by House Committee

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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~~

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-~~

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**

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 (1) A plan to investigate, review and develop a state plan no later
5 than November 1, 2015; and

6 (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.