

SENATE BILL No. 151

By Committee on Utilities

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; **creating the clean power plan**
5 **implementation study committee**; amending K.S.A. 2014 Supp. 65-
6 3031 and repealing the existing section.

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

1 *from affected or existing electric generating units pursuant to 42 U.S.C.*

2 **§ 7411.** The secretary of health and environment may establish separate
3 standards of performance for carbon dioxide emissions based upon: (1)
4 The best system of emission reduction that has been adequately
5 demonstrated while considering the cost of achieving such reduction;

6 (2) reductions in emissions of carbon dioxide that can reasonably be
7 achieved through measures taken at each electric generating unit; and

8 (3) efficiency and other measures that can be undertaken at each
9 electric generating unit to reduce carbon dioxide emissions without any
10 requirements for fuel switching, co-firing with other fuels or limiting the
11 utilization of the unit.

12 (b) In establishing any standard of performance for any existing
13 electric generating unit pursuant to this section, the secretary may consider
14 alternative standards and metrics or may provide alternative compliance
15 schedules than those provided by federal rules or regulations by
16 evaluating: (1) Unreasonable costs of achieving an emission limitation due
17 to plant age, location or the design of an electric generating unit;

18 (2) any unusual physical or compliance schedule difficulties or
19 impossibility of implementing emission reduction measures;

20 (3) the cost of applying the performance standard to an electric
21 generating unit;

22 (4) the remaining useful life of an electric generating unit;

23 (5) any economic or electric transmission and distribution impacts
24 resulting from closing the electric generating unit if compliance with the
25 performance standard is not possible; and

26 (6) the potential for a standard of performance relating to unit
27 efficiency, including any requirements for a new source review or the
28 application of a best available control technology emission limitation for
29 any criteria pollutant as a condition of receiving a permit or authorization
30 for the project.

31 (c) ~~The secretary may implement such standards through flexible~~
32 ~~regulatory mechanisms, including the averaging of emissions, emissions~~
33 ~~trading or other alternative implementation measures~~ **a state plan through**
34 **regulatory mechanisms that may include administrative regulations,**
35 **permits, agreements or other flexible regulatory measures** that the
36 secretary determines to be in the interest of Kansas. The secretary *shall*
37 *not implement a permit participation in an organized carbon emission*
38 *trading mechanism market without first obtaining specific statutory*
39 *authority for the mechanism. The secretary may enter into voluntary*
40 *agreements with utilities that operate fossil-fuel based electric generating*
41 *units within Kansas to implement these carbon dioxide emission standards.*
42 *Such agreements may aggregate the carbon dioxide emissions levels from*
43 *electric resources in this state, including coal, petroleum, natural gas or*

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

13 ~~(2) from sharing, aggregating or purchasing emissions between~~
14 ~~other Kansas utilities with affected units.~~

15 ~~(d) Before establishing any standard of performance for any affected~~
16 ~~or existing jurisdictional electric generating unit or flexible regulatory~~
17 ~~mechanism pursuant to this section, the secretary shall give notice to the~~
18 ~~state corporation commission and adopt the order of the commission. In~~
19 ~~making a recommendation to the secretary, the commission shall: (1)~~
20 ~~Conduct any investigations necessary to conduct a joint investigation~~
21 ~~with the state corporation commission pursuant to K.S.A. 65-3005 and~~
22 ~~66-106, and amendments thereto, and hold a joint hearing pursuant to~~
23 ~~procedures under K.S.A. 77-501 et seq., and amendments thereto, as~~
24 ~~applied to the state corporation commission. In establishing any~~
25 ~~standard of performance or flexible regulatory mechanism pursuant to~~
26 ~~this section, the secretary and the state corporation commission shall:~~
27 ~~(1) Exercise the secretary's and commission's respective existing~~
28 ~~statutory authority over the affected utilities;~~

29 ~~(2) determine each jurisdictional utility's re-dispatch options along~~
30 ~~with the cost of each option;~~

31 ~~(2) conduct any investigations necessary to~~

32 ~~(3) determine the lowest possible cost re-dispatch options on a state-~~
33 ~~wide basis;~~

34 ~~(3) (4) ensure that the recommended options maintain any option~~
35 ~~selected maintains the reliability of Kansas' integrated electric systems;~~

36 ~~(4) issue an order, within 300 days of receiving notice by the~~
37 ~~secretary, which provides a detailed explanation of the commission's~~
38 ~~findings and recommendations. Nothing in this subsection shall preclude~~
39 ~~all parties and the commission from agreeing to extend the 300-day~~
40 ~~period. The commission shall expeditiously conduct any such investigation~~
41 ~~as covered within this subsection; and~~

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

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

5 (5) *issue a joint final order establishing the compliance goal and*
6 *defining the regulatory mechanisms for the state plan, which provides a*
7 *detailed explanation of the joint findings; and*

8 (6) *issue a joint interim order within 180 days of initiation of the*
9 *joint investigation, if necessary to submit a state plan within any*
10 *deadline imposed by the environmental protection agency. If a joint*
11 *interim order is issued, it shall establish the compliance goal and define*
12 *the regulatory mechanisms for the state plan. The secretary shall request*
13 *an extension upon submission of the state plan.*

14 (e) *After issuance of a joint interim order, the secretary shall*
15 *promulgate and submit a state plan establishing the compliance goal*
16 *and regulatory mechanisms approved in the joint order. If the findings*
17 *of a joint final order differ from those of the joint interim order, the*
18 *secretary shall promulgate and submit modifications to the state plan to*
19 *the environmental protection agency by the department to incorporate*
20 *the findings approved in that joint final order.*

21 (f) *The secretary shall submit the state plan to the clean power plan*
22 *implementation study committee for review and approval pursuant to*
23 *section 2, and amendments thereto, concurrent with the start of the*
24 *public notice period for the state plan.*

25 ~~(g)~~ (g) *This section shall be part of and supplemental to the Kansas*
26 *air quality act.*

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

36 (2) *Upon development of a state implementation plan pursuant to*
37 *K.S.A. 65-3031, and amendments thereto, the secretary of health and*
38 *environment shall submit the plan to the study committee for review.*
39 *After reviewing the impact of the plan pursuant to this section, the*
40 *committee may approve or disapprove the submission of the plan. If the*
41 *study committee approves the plan, the secretary may submit the plan to*
42 *the environmental protection agency. If the committee disapproves the*
43 *plan, the chairperson of the committee shall submit a petition for the*

1 *calling of a special session pursuant to K.S.A. 46-1401, and amendments*
2 *thereto, for the legislature to review the submission of the plan. If the*
3 *legislature fails to convene a special session or fails to adopt a*
4 *concurrent resolution disapproving of the submission of the plan within*
5 *60 days of the chairperson submitting a petition for the calling of a*
6 *special session, the secretary may submit the plan to the environment*
7 *protection agency.*

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

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

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

21 *(c) Members shall be appointed to the study committee on or before*
22 *July 1, 2015, for a term ending on June 30, 2017. On and after the first*
23 *day of the regular legislative session in odd-numbered years, the*
24 *chairperson of the special committee shall be the chairperson of the*
25 *senate committee on utilities and the vice-chairperson of the special*
26 *committee shall be the chairperson of the house of representatives*
27 *committee on energy and environment and, after the first day of the*
28 *regular legislative session in even-numbered years, the chairperson of*
29 *the special committee shall be the chairperson of the house of*
30 *representatives committee on energy and environment and the vice-*
31 *chairperson of the special committee shall be the chairperson of the*
32 *senate committee on utilities. The chairperson and vice-chairperson of*
33 *the special committee shall serve in such capacities until the first day of*
34 *the regular legislative session in the ensuing year. The vice-chairperson*
35 *shall exercise all of the powers of the chairperson in the absence of the*
36 *chairperson. The first meeting of the study committee shall be called by*
37 *the chairperson of the committee following the conclusion of the 2015*
38 *regular session of the Kansas legislature. The committee shall have the*
39 *authority to meet at any time and at any place within the state on the call*
40 *of the chairperson.*

41 *(d) The provisions of the acts contained in article 12 of chapter 46*
42 *of the Kansas Statutes Annotated, and amendments thereto, applicable*
43 *to special committees shall apply to the clean power plan implementation*

1 *study committee to the extent that the same do not conflict with the*
2 *specific provisions of this act applicable to the study committee.*

3 *(e) Members of the clean power plan implementation study*
4 *committee shall receive compensation, travel expenses and subsistence*
5 *expenses as provided in K.S.A. 75-3212, and amendments thereto, when*
6 *attending meetings of the committee.*

7 *(f) The staff of the office of the revisor of statutes, the legislative*
8 *research department and the division of legislative administrative*
9 *services shall provide such assistance as may be requested by the study*
10 *committee.*

11 *(g) The provisions of this section shall expire on June 30, 2017.*

12 ~~Sec.-2: 3.~~ K.S.A. 2014 Supp. 65-3031 is hereby repealed.

13 ~~Sec.-3: 4.~~ This act shall take effect and be in force from and after its
14 publication in the Kansas register.