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

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

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

Section 1. K.S.A. 2014 Supp. 65-3031 is hereby amended to read as follows: 65-3031. (a) For all coal-fired and natural gas electric generating units that are affected units pursuant to 42 U.S.C. § 7411, as in effect on the effective date of this act, that have been constructed or have received a prevention of significant deterioration permit by July 1, 2014, the secretary of health and environment may establish separate standards of performance for carbon dioxide emissions based upon: (1) The best system of emission reduction that has been adequately demonstrated while considering the cost of achieving such reduction;
(2) reductions in emissions of carbon dioxide that can reasonably be
achieved through measures taken at each electric generating unit; and
(3) efficiency and other measures that can be undertaken at each
electric generating unit to reduce carbon dioxide emissions without any
requirements for fuel switching, co-firing with other fuels or limiting the
utilization of the unit.
(b) In establishing any standard of performance for any existing
electric generating unit pursuant to this section, the secretary may consider
alternative standards and metrics or may provide alternative compliance
schedules than those provided by federal rules or regulations by
evaluating: (1) Unreasonable costs of achieving an emission limitation due
to plant age, location or the design of an electric generating unit;
(2) any unusual physical or compliance schedule difficulties or
impossibility of implementing emission reduction measures;
(3) the cost of applying the performance standard to an electric
generating unit;
(4) the remaining useful life of an electric generating unit;
(5) any economic or electric transmission and distribution impacts
resulting from closing the electric generating unit if compliance with the
performance standard is not possible; and
(6) the potential for a standard of performance relating to unit
efficiency, including any requirements for a new source review or the
application of a best available control technology emission limitation for
any criteria pollutant as a condition of receiving a permit or authorization
for the project.
(c) The secretary may implement such standards through flexible
regulatory mechanisms, including the averaging of emissions, emissions-
trading or other alternative implementation measures that the secretary
determines to be in the interest of Kansas. The secretary shall not
implement a carbon emission trading mechanism without first obtaining
specific statutory authority for the mechanism. The secretary 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. Such
agreements shall not be effective until the secretary has given notice to the
state corporation commission, held a hearing pursuant to K.S.A. 77-501 et
seq., and amendments thereto, and issued an order which adopts the state
corporation commission's order pursuant to subsection (d).
(d) Before establishing any standard of performance for any existing
electric generating unit or flexible regulatory mechanism pursuant to this
section, the secretary shall give notice to the state corporation commission
and adopt the order of the commission. In making a recommendation to
the secretary, the commission shall: (1) Conduct any investigations
necessary to determine each jurisdictional utility's re-dispatch options
along with the cost of each option;
(2) conduct any investigations necessary to determine the lowest
possible cost re-dispatch options on a state-wide basis;
(3) ensure that the recommended options maintain the reliability of
Kansas' integrated electric systems;
(4) issue an order, within 300 days of receiving notice by the
secretary, which provides a detailed explanation of the commission's
findings and recommendations. Nothing in this subsection shall preclude
all parties and the commission from agreeing to extend the 300-day
period. The commission shall expeditiously conduct any such investigation
as covered within this subsection; and
(5) provide the secretary a copy of the commission's order along with
any evidence requested by the secretary.
(e) In any hearing held pursuant to subsection (c), the commission
shall function as an official intervenor and may make application for a
rehearing or seek judicial review of any order or decision of the secretary
issued pursuant to this act.
(f) This section shall be part of and supplemental to the Kansas air
quality act.
Sec. 2. K.S.A. 2014 Supp. 65-3031 is hereby repealed.
Sec. 3. This act shall take effect and be in force from and after its
publication in the Kansas register.