

HOUSE BILL No. 2233

AN ACT concerning utilities; relating to electric generating units and carbon dioxide emission standards; concerning the establishment of state performance standards, legislative review; state corporation commission; secretary of health and environment; creating the clean power plan implementation study committee; 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, In accordance with the requirements of the environmental protection agency's rulemaking pursuant to docket EPA-HQ-OAR-2013-0602, the secretary may develop and submit to the environmental protection agency a state plan for compliance with the regulation of carbon dioxide from any affected or existing electric generating units pursuant to 42 U.S.C. § 7411.~~ 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 *improvements to any affected electric generating unit* 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 de-

termines to be in the interest of Kansas. The secretary may enter into voluntary agreements with utilities that operate fossil-fuel based electric generating units within Kansas to implement ~~these~~ *such* 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. 2014 Supp. 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.

(d) *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.*

(e) (1) *The secretary shall submit to the clean power plan implementation study committee:*

(A) *A plan to investigate, review and develop a state plan no later than the first week of November 2015;*

(B) *information on any final rule adopted by the environmental protection agency under docket EPA-HQ-OAR-2013-0602 no later than February 1, 2016; 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.*

(f) *The secretary shall present any proposed state plan proposed for submission to the environmental protection agency to the clean power plan implementation study committee for review and input pursuant to section 2, and amendments thereto, at least 30 days prior to submission of such a plan to the environmental protection agency or any other federal agency. 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.*

(g) *Notwithstanding review by the clean power plan implementation study committee of the submission of a state plan to the environmental protection agency, further action by the secretary to implement or enforce the final approved state plan is dependent upon the final adoption of the federal emission guidelines. If the federal emission guidelines are not adopted or are adopted and subsequently suspended, vacated, in whole or in part, or held to not be in accordance with the law, the secretary shall suspend or terminate, as appropriate, further action to implement or enforce the state plan.*

(h) *Notwithstanding any other provision of law, prior to submitting any state plan to the environmental protection agency, the secretary shall:*

(1) *Submit such state plan as proposed rules and 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 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 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 protec-*

tions guaranteed by the constitutions of the United States or the state of Kansas.

(i) *The secretary shall be responsible for submitting a state plan to the environmental protection agency in a timely manner. Notwithstanding any other provision of this act, the secretary shall prepare and submit any request for an extension of time to file a state plan, if necessary, an interim state plan or a final state plan to the environmental protection agency. Any interim or final state plan shall be submitted by the secretary no less than four calendar days prior to the federal submission deadline, or extended submission deadline, established by the environmental protection agency. Any final state plan submitted to the environmental protection agency may only be submitted if the secretary has previously submitted such plan for review by the clean power plan implementation study committee pursuant to this act.*

~~(d)~~(j) This section shall be part of and supplemental to the Kansas air quality act.

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 plan pursuant to docket EPA-HQ-OAR-2013-0602 concerning the impact to: (A) Electric rate-payers; (B) electric utilities; (C) the reliability of the electric grid in Kansas; and (D) the overall sovereignty of the state.

(2) Upon development of a state plan pursuant to K.S.A. 2014 Supp. 65-3031, and amendments thereto, the secretary of health and environment shall submit the plan to the study committee for review. Within 30 days of receiving any proposed state plan, the committee shall hold a committee meeting and review the impact of the plan pursuant to this section and may approve or disapprove the submission of the plan. If the study committee disapproves the submission of the 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 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.

Sec. 3. K.S.A. 2014 Supp. 65-3031 is hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the HOUSE, and was adopted by that body

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.