

Revisor of Statutes Office

300 S.W. 10th Street, Ste. 010-E
Topeka, KS 66612-1592
Telephone 785-296-2321 Fax 785-296-6668

MEMORANDUM

To: Chairman Hedke and members of the Energy and Environment Committee
From: Matt Sterling, Assistant Revisor of Statutes
Date: February 5, 2013
Subject: 2009 Comprehensive Energy Bill

In 2009, the legislature passed Senate Sub. for HB 2369. The comprehensive energy legislation enacted the renewable energy standards act, the net metering and easy connection act, and the compressed air energy storage act. The bill also amended the Kansas air quality act, the parallel generation act, and the Kansas electric transmission authority act. Lastly, the legislation required the Secretary of Health and Environment to comply with the settlement reached between Sunflower Electric and the State, required the Secretary of Administration to develop rules and regulations to improve fuel efficiency for state-owned motor vehicles and increase the energy efficiency of state-owned and leased space, required any new coal-fired generating plant to purchase Kansas coal, and directed the Joint Committee on Energy and Environmental Policy to study the use of federal stimulus funds allocated for energy issues.

RENEWABLE ENERGY STANDARDS ACT

The renewable energy standards act requires that a certain percentage of an electric utility's energy portfolio include energy generated from renewable resources.

Definitions

K.S.A. 66-1257 provides definitions for the terms used in the act, some of which include:

- (a) "Affected utility" means any electric public utility, as defined in K.S.A. 66-101a, and amendments thereto, but does not include any portion of any municipally owned or operated electric utility.
- (c) "Net renewable generation capacity" means the gross generation capacity of the renewable energy resource over a four-hour period when not limited by ambient conditions, equipment, operating or regulatory restrictions less auxiliary power required to operate the resource, and refers to resources located in the state or resources serving ratepayers in the state.
- (d) "Peak demand" means the demand imposed by the affected utility's retail load in the state.
- (e) "Renewable energy credit" means a credit representing energy produced by renewable energy resources issued as part of a program that has been approved by the state corporation commission.

Renewable Portfolio Requirements

K.S.A. 66-1258 requires the Kansas Corporation Commission to establish a portfolio requirement, by rules and regulations, for all affected utilities to generate or purchase electricity generated from renewable energy resources or purchase renewable energy credits. Such portfolio requirement requires net renewable generation capacity of at least 10% of the affected utility's peak

demand by 2011, at least 15% by 2016, and at least 20% by 2020¹. The affected utility uses its actual capacity factor from its owned renewable generation² from the immediately previous calendar year. Renewable energy credits may only be used to meet a portion of an affected utility's portfolio requirements for the years 2011, 2016 and 2020, unless otherwise allowed by the commission.

The renewable portfolio requirements apply to all power sold to Kansas retail consumers whether the power is self-generated or purchased from another source in or outside of the state. The capacity of all net metering systems interconnected with the affected utilities under the net metering and easy connection act in K.S.A. 2012 Supp. 66-1263 *et seq.*³ count toward compliance.

Cost Recovery

K.S.A. 66-1259 permits the commission to allow affected utilities to recover reasonable costs incurred to meet the new renewable energy resource requirements required in the renewable energy standards act.

Annual Reporting

K.S.A. 66-1260 requires the commission to determine the annual statewide retail rate impact resulting from investment in renewable energy resources required to meet the renewable portfolio requirements and whether such investment causes any affected utility's total revenue requirement to increase by more than one percent. The commission is required to submit an annual report of the statewide retail rate impact to the governor, the senate committee on utilities and the house committee on energy and utilities.

Administration and Penalties

K.S.A. 66-1261 requires the commission to establish rules and regulations for the administration of the renewable energy standards act⁴, including reporting and enforcement mechanisms necessary to ensure that each affected utility complies with the portfolio requirement⁵. The commission is required to exempt an affected utility from administrative penalties for an individual compliance year if the utility demonstrates that the retail rate impact described in K.S.A. 66-1260 has

1 Determination of a utility's peak demand is based on the average demand of the prior three years of requirements.

2 "Capacity from generation" means the net capacity of renewable generation resources owned or leased by a utility. Net capacity is the gross capacity minus auxiliary power required to operate the resource as determined in a test conducted as soon as possible after commercial operation begins. This test shall reflect operation of the resource over a four-hour period under conditions that do not limit performance due to ambient conditions, equipment, or operating or regulatory restrictions. The determination for a multiunit resource, including a wind farm, may be made through tests for a representative sample of at least 10% of the units. If the tests specified in this subsection are not practicable, the nameplate capacity of the resource minus the associated auxiliary power may be used as the net capacity unless there are factors that would prevent the resource from achieving nameplate capacity, other than ambient conditions, equipment, or operating or regulatory restrictions. K.A.R. 82-16-1(c).

"Nameplate capacity" means the maximum rated output of a generator under specific conditions designated by the manufacturer, generally indicated in units of kilowatts (kW) on a nameplate attached to the generator. K.A.R. 82-16-1(j).

3 An affected utility is required to make net metering available to customer-generators on a first-come, first-served basis, until the total rated generating capacity of all net metered systems equals or exceeds one percent of the utility's peak demand during the previous year. K.S.A. 66-1265(a).

4 Electric Utility Renewable Energy Standards, K.A.R. 82-16-1 *et seq.*

5 The standard minimum penalty shall be equal to two times the market value during the calendar year of sufficient Renewable Energy Credits to have met the portfolio requirement. The penalty may be set by the commission above or below the standard minimum based on consideration of: The reasons for noncompliance, the degree of noncompliance, plans to achieve compliance, the impact of noncompliance on utility costs and revenues, and the impact of noncompliance on the environment. K.A.R. 82-16-3(a) and (b).

been reached or exceeded and the utility has not achieved full compliance with the portfolio requirement. The commission has discretion to consider mitigating circumstances in imposing penalties. A utility is prohibited from recovering the costs of administrative penalties from the utility's Kansas retail customers.

Certification of Renewable Energy Resources

K.S.A. 66-1262 requires the commission to establish rules and regulations for the certification process for use of renewable energy resources for the purposes of fulfilling the portfolio requirements.

NET METERING AND EASY CONNECTION ACT

The act requires investor-owned electric utilities to make net metering available to customer-generators. The maximum capacity of generating equipment allowed for use by customer-generators is 25 kilowatts for residential customers and 200 kilowatts for other customers.

Under the act, electric companies measure, using a bidirectional meter provided for free, the net power produced and consumed by the customer-generator during a billing period. If the company provides more electricity than the customer-generator generates, then the customer is billed for the difference. If the amount of electricity generated by the customer generates more electricity than the utility provides, the net excess would be carried forward from month to month and credited against the customer's energy consumption. Credits remaining at the end of the calendar year would expire. Electric companies are able to recover in their rates those costs incurred under the act.

The maximum amount of net generation capacity that a supplier must accept on its system is 1% of the utility's peak demand during the prior year. Customer-generators are permitted to utilize either the net metering act or the parallel generation act.

COMPRESSED AIR ENERGY STORAGE ACT

The bill established a system of regulation for the injection of compressed air into storage wells and the maintenance of underground storage of compressed air. The KCC was required to adopt rules and regulations addressing site selection, design, and operation criteria; requirements for monitoring, safety and closure; and establishing fees for permitting, monitoring, and inspecting compressed air storage facility operators.

ENERGY EFFICIENCY

The bill required the Secretary of Administration to adopt rules and regulations:

- Requiring the average fuel efficiency for state-owned vehicles purchased during 2011 to be at least 10% higher than those purchased in 2008;
- establishing energy efficiency guidelines for state agencies for the purchase of products and equipment;
- establishing energy efficiency performance standards for state-owned and leased property and requiring state agencies to conduct an energy audit every five years; and
- prescribing energy efficiency performance standards for construction of state buildings.

The bill also required the Energy Office of the KCC to develop and increase participation of school districts and local governments in the Facility Conservation Improvement Program.

KANSAS AIR QUALITY ACT

The bill prohibited the Secretary of KDHE from promulgating any rules and regulations that are more stringent than or pursuant to the federal clean air act unless authorized by the legislature. The bill prohibited rules and regulations under the Kansas air quality act from being enforced prior to when they were required under the federal act. The bill prohibited counties from utilizing home rule authority to create exemptions from the Kansas act. Finally, the bill also prohibited the Secretary from denying or delaying issuance of a permit required under the state air quality act if the requirements of that act have been met by the applicant.

The bill established a procedure in K.S.A. 65-3012 for addressing air pollution emissions that pose an imminent and substantial danger to public health or welfare or to the environment. The bill gave the Secretary the authority to issue a temporary order, not to last longer than seven days, directing the owner or operator of the pollution source to take steps necessary to mitigate the source of the pollution.

The bill also required the Secretary to approve a prevention of significant deterioration permit (air quality permit) for Sunflower electric's proposed new facility at Holcomb consistent with the settlement agreement executed May 4, 2009 between Sunflower and the State of Kansas.

MISCELLANEOUS PROVISIONS

The bill required any new coal-fired electricity generation facility in Kansas that was constructed after the effective date of the act would be required to purchase at least five percent of its coal from Kansas coal mines. The requirement would apply only if the Kansas coal is cost-competitive to out-of-state coal, is sold on comparable terms and specifications, and is of an acceptable quality for use in the facility. The requirement would not apply if it would cause the facility to violate its air permit or a contractual obligation.

The bill required the Joint Committee on Energy and Environmental Policy to study and make recommendations for the use of moneys received under the American Recovery and Reinvestment Act of 2009 for energy efficiency, conservation, and state energy programs.

The bill authorized the Kansas electric transmission authority to establish and charge reasonable fees for use of facilities or services provided by KETA, provided that such costs are not recoverable through tariffs authorized by the Southwest Power Pool or the KCC. Such fees can only be charged to entities that request services from KETA. The bill also clarified that KETA's powers extend to electric transmission lines that have been deemed compatible with plans adopted by the SPP.

The bill gave the option to deregulate to electric cooperatives with more than 15,000 members, companies owned by at least four electric cooperatives providing retail service in Kansas, or any member-owned corporation formed prior to 2004.

RENEWABLE ENERGY STANDARDS ACT

66-1256. Renewable energy standards act. K.S.A. 2011 Supp. 66-1256 through 66-1262, and amendments thereto, shall be known and may be cited as the renewable energy standards act.

History: L. 2009, ch. 141, § 1; May 28.

66-1257. Same; definitions. As used in the renewable energy standards act:

- (a) “Affected utility” means any electric public utility, as defined in K.S.A. 66-101a, and amendments thereto, but does not include any portion of any municipally owned or operated electric utility.
- (b) “Commission” means the state corporation commission.
- (c) “Net renewable generation capacity” means the gross generation capacity of the renewable energy resource over a four-hour period when not limited by ambient conditions, equipment, operating or regulatory restrictions less auxiliary power required to operate the resource, and refers to resources located in the state or resources serving ratepayers in the state.
- (d) “Peak demand” means the demand imposed by the affected utility’s retail load in the state.
- (e) “Renewable energy credit” means a credit representing energy produced by renewable energy resources issued as part of a program that has been approved by the state corporation commission.
- (f) “Renewable energy resources” means net renewable generation capacity from:
 - (1) Wind;
 - (2) solar thermal sources;
 - (3) photovoltaic cells and panels;
 - (4) dedicated crops grown for energy production;
 - (5) cellulosic agricultural residues;
 - (6) plant residues;
 - (7) methane from landfills or from wastewater treatment;
 - (8) clean and untreated wood products such as pallets;
 - (9) (A) existing hydropower; (B) new hydropower;
 - (10) fuel cells using hydrogen produced by one of the above-named renewable energy resources;
 - (11) energy storage that is connected to any renewable generation by means of energy storage equipment including, but not limited to, batteries, fly wheels, compressed air storage and pumped hydro; and
 - (12) other sources of energy, not including nuclear power, that become available after the effective date of this section, and that are certified as renewable by rules and regulations established by the commission pursuant to K.S.A. 2011 Supp. 66-1262, and amendments thereto.

History: L. 2009, ch. 141, § 2; May 28; L. 2012, ch. 101, § 3; July 1.

66-1258. Same; renewable energy portfolio standards; rules and regulations. (a) The commission shall establish by rules and regulations a portfolio requirement for all affected utilities to generate or purchase electricity generated from renewable energy resources or purchase renewable energy credits. For the purposes of calculating the capacity from renewable energy credit purchases, the affected utility shall use its actual capacity factor from its owned renewable generation from the immediately previous calendar year. Renewable energy credits may only be used to meet a portion of portfolio requirements for the years 2011, 2016 and 2020, unless otherwise allowed by the commission. Such portfolio requirement shall provide net renewable generation capacity that shall constitute the following portion of each affected utility's peak demand:

- (1) Not less than 10% of the affected utility's peak demand for calendar years 2011 through 2015, based on the average demand of the prior three years of each year's requirement;
 - (2) not less than 15% of the affected utility's peak demand for calendar years 2016 through 2019, based on the average demand of the prior three years of each year's requirements; and
 - (3) not less than 20% of the affected utility's peak demand for each calendar year beginning in 2020, based on the average demand of the prior three years of each year's requirement.
- (b) The portfolio requirements described in subsection (a) shall apply to all power sold to Kansas retail consumers whether such power is self-generated or purchased from another source in or outside of the state. The capacity of all net metering systems interconnected with the affected utilities under the net metering and easy connection act in K.S.A. 2011 Supp. 66-1263 et seq., and amendments thereto, shall count toward compliance.
- (c) Each megawatt of eligible capacity in Kansas installed after January 1, 2000, shall count as 1.10 megawatts for purposes of compliance.
- (d) The commission shall establish rules and regulations required in this section within 12 months of the effective date of this act.

History: L. 2009, ch. 141, § 3; May 28.

66-1259. Same; renewable energy resource requirements; recovery of costs by affected utilities.

The commission shall allow affected utilities to recover reasonable costs incurred to meet the new renewable energy resource requirements required in the renewable energy standards act.

History: L. 2009, ch. 141, § 4; May 28.

66-1260. Same; renewable energy resource investment by affected utilities; calculation by commission. (a)(1) For each affected utility, the commission shall determine whether investment in renewable energy resources required to meet the renewable portfolio requirement, as required by K.S.A. 2012 Supp. 66-1258, and amendments thereto, causes the affected utility's total

revenue requirement to increase one percent or greater.

(2) The commission shall annually determine the annual statewide retail rate impact resulting from affected utilities meeting the renewable portfolio requirement.

(b) Submission of information pertaining to an affected utility's portfolio requirement shall be determined by rules and regulations promulgated by the commission or by order of the commission.

(c) Beginning in 2013, on or before March 1 of each year, the commission shall submit a report of the annual statewide retail rate impact for the previous year to the governor, the senate committee on utilities and the house committee on energy and utilities.

History: L. 2009, ch. 141, § 5; May 28; L. 2012, ch. 101, § 4; July 1.

66-1261. Same; rules and regulations; violations; penalties; exceptions. (a) The commission shall establish rules and regulations for the administration of the renewable energy standards act, including reporting and enforcement mechanisms necessary to ensure that each affected utility complies with this standard and other provisions governing the imposition of administrative penalties assessed after a hearing held by the commission. Administrative penalties should be set at a level that will promote compliance with the renewable energy standards act, and shall not be limited to penalties set forth in K.S.A 66-138 and 66-177, and amendments thereto.

(b) For the calendar years 2011 and 2012, the commission is not required to assess penalties if the affected utility can demonstrate it made a good faith effort to comply with the portfolio standards requirement. The commission shall exempt an affected utility from administrative penalties for an individual compliance year if the utility demonstrates that the retail rate impact described in K.S.A. 2011 Supp. 66-1260, and amendments thereto, has been reached or exceeded and the utility has not achieved full compliance with K.S.A. 2011 Supp. 66-1258, and amendments thereto. In imposing penalties, the commission shall have discretion to consider mitigating circumstances. Under no circumstances shall the costs of administrative penalties be recovered from Kansas retail customers.

(c) The commission shall establish rules and regulations required in this section within 12 months of the effective date of this act.

History: L. 2009, ch. 141, § 6; May 28.

66-1262. Same; certification of renewable energy resources; rules and regulations. (a) The commission shall establish rules and regulations for the administration of a certification process for use of renewable energy resources described in subsection (f)(11) of K.S.A. 2012 Supp. 66-1257, and amendments thereto, for purposes of fulfilling the requirements of K.S.A. 2012 Supp. 66-1258, and amendments thereto. Criteria for the certification process shall be determined by factors that include, but are not limited to: Fuel type, technology and the environmental impacts of renewable energy resources described in subsection (f)(11) of K.S.A. 2012 Supp. 66-1257, and amendments thereto. Use of renewable energy resources described in subsection (f)(11) of K.S.A. 2012 Supp. 66-1257, and amendments thereto, shall not cause undue or adverse air, water or land use impacts.

(b) The commission shall establish rules and regulations required in this section within 12 months of the effective date of this act.

History: L. 2009, ch. 141, § 7; May 28.