

MINUTES

ELECTRIC GENERATION REVIEW PANEL

October 9, 2007

Room 313-S—Statehouse

Members Present

Representative Carl Holmes, Chairperson
Senator Jay Emler, Vice-Chairperson
Senator Steve Morris
Representative Melvin Neufeld
Representative Eber Phelps

Member Absent

Senator Janis Lee

Staff Present

Mary Galligan, Kansas Legislative Research Department
Raney Gilliland, Kansas Legislative Research Department
Cindy Lash, Kansas Legislative Research Department
Jarod Waltner, Kansas Legislative Research Department
Mike Corrigan, Office of the Revisor of Statutes
Jason Thompson, Office of the Revisor of Statutes
Matt Todd, Office of the Revisor of Statutes
Renaë Hansen, Committee Assistant

There were approximately 41 other people attending including those on the attendance list.

Chairperson Holmes called the meeting to order at approximately 10:10 a.m. The Chairperson recognized Mary Galligan to read the Legislative Coordinating Council's charge to the Panel. The Chairperson thanked the staff members for the rapid preparation for the meeting.

The Chairperson asked Panel members if they would like to make opening remarks. Representative Eber Phelps said that this is an economic development issue for western Kansas. Sunflower Electric has its headquarters in Hays, Kansas that is in his district. He stated his belief that the Panel needs to look at these issues very closely for Western Kansas and the entire State of Kansas. He said that the Panel needs to keep safety issues in mind but also must look at the future needs of the State of Kansas.

Representative Neufeld noted that the Panel is here to do the work of the people by following the facts. The most pressing issue is that the decision regarding this plant affects the lives of 400,000 Kansans who currently pay the highest energy costs in the state. Kansas must have adequate and affordable energy provided in a manner that is environmentally sound. The Panel also must look at the economic impact of this project. Kansas is losing many economic development projects due to the delay of issuance of this permit.

Senator Morris noted that legislation was passed this past year to move some of the energy projects forward. This project is a major economic development issue. Additionally, electric energy is the future for irrigation as natural gas becomes prohibitively expensive.

Chairperson Holmes stated his belief that Kansas and the nation need a balanced energy policy and that no option for energy generation should be taken off the table. The Chairperson noted that on July 23 of this year he drove through the Montezuma wind farm when the temperature was 100 degrees, and not a single wind turbine was turning. In 2001, the Legislature created a property tax exemption for generation. He also reminded the Panel that the House Utilities Committee considered, but did not pass, a bill that would have placed a moratorium on coal-fired electric generation plants. The vote on that bill was 2-18. If the Holcomb units are not built, additional transmission lines will not be built, and the opportunity to create thousands of megawatts of wind energy that can be moved to the eastern and western United States will be gone. The Kansas Electric Transmission Authority (KETA) received testimony that without the Holcomb expansion, KETA will not be able to move forward with its transmission project economically until 2016. He closed by saying that if this permit is turned down, it will affect the entire state.

The Chairperson recognized Roderick Bremby, Secretary, Kansas Department of Health and Environment (KDHE), and Dr. Ron Hammerschmidt, Director of the Division of Environment, to speak about the Holcomb plant permit. The Secretary informed the Panel that Clark Duffy, Mary Masiff, Minnie Bomman, and Tom Gross, KDHE staff who worked on the issue, were in attendance at the meeting.

Secretary Bremby presented information to the Panel regarding the complexity of issues under the Department's purview (Attachment 1). He explained that the air quality permit process involves eight steps. In this instance, a draft permit has been released and public hearings have been held. Comments have been accepted. The Department received the most comments on this draft permit since the state began issuing air quality permits. The Secretary noted that the Department is committed to completing the permitting process by the end of the month.

Dr. Hammerschmidt talked about the Air Quality Analysis process (see also Attachment 1). He noted that this is the first air quality permit requested since the clean air mercury rule was issued. That rule is being applied retroactively and currently permitted plants must make some adjustments to their current emission controls to meet the new requirements.

Dr. Hammerschmidt noted some of the comments made regarding the Holcomb plant suggested the use of other energy sources. Comments also addressed the scrubbing process, carbon monoxide emissions, water use impact, carbon dioxide emissions, and whether the Department's regulations are sufficiently stringent. They also looked at the cost effectiveness of coal technology emission requirements. He commented that if the Department issues a permit it wants to make sure that the permit and the process utilized withstand scrutiny. If the Department denies the permit, it wants to make sure that all the correct data have been gathered supporting the decision.

Transcribed Questions and Responses

Representative Eber Phelps: Thank-you Mr. Chairman, I just have a question on, as you're looking at all the information you are getting, we have our, our state criterion you are looking at as well as the federal. When we hear things as you know what state allows it and another doesn't, what's happening there, is that, is that an opinion entering on that or is it just different state criterion?

Dr. Ron Hammerschmidt: In some cases it's a different state criterion, what I didn't mention is, there is a, another permit that's got lost in the discussion. It's the solid waste permit for this facility. They have one. They've asked for an expansion of that particular case. And in the case of that case, there might be different criterion from one state to the other, there might be recording requirements, downloading law and those types of things. There are also at times a state may impose a more stringent criterion. They can't go below the floor of the federal numbers pretty much set the floor like the mercury reading that's um how the state allocates those mercury is an another one, there are occasions, I don't uh, Most of what we have heard is that we're being less stringent than other states, We don't necessarily believe that?

Representative Eber Phelps: I have got to find some information that was sent to me here just in the last few days since this committee was announced and so forth. One of the pieces of information I had here or have here mentions about a situation we have, in 2006 there were 45 new coal fired projects amounting to 31 billion watts were you know asking for permits and so forth. A number of those have been cancelled. As you're looking at this are you looking at those other states to look at why some of them were permitted and why some of them aren't? I suspect that you probably have some that are clear cut with the technology isn't there.

Dr. Ron Hammerschmidt: In our back analysis we look at the issue permits rather than in the case of Desert Rock permit we can go out and just grab one. And the plant and another state if falls off their map we're not looking at it.

Representative Eber Phelps: Are you looking at the one in New Mexico just because it's the same size or same technology?

Dr. Ron Hammerschmidt: The same technology. Although some of the control technologies are different, and those are critical. They are tied together as far as the technologies. We are watching that one fairly closely.

Representative Eber Phelps: And, is this the only permit that is request by an out of state is Sunflower Electric. You know I mentioned that there were 45 in 2006, and is this the only one?

Dr. Ron Hammerschmidt: There has been some discussion and mostly in the press that Westar talked about another unit at Jeffrey there, we have nothing in the house. We've heard from the board of public utilities in Kansas City that they were looking at replacing and um apply from there do it again and none of those have been submitted. We're as close as we've been planning you know and the planners and the production people looking out at the future plan a thirty years but we just have this one. There was a gas fired peaking plant that went through with the process of, in Lyons County during this period, but those appear too much simpler that went through with last December natural gas and ethanol looking at the mercury emissions and it was a peaking plant rather than ethanol.

Representative Eber Phelps: Thank you, Mr. Chairman

Representative Carl Holmes: I have a follow-up on that one. What did you do on the permit or did you require a permit on Goodland energy center?

Dr. Ron Hammerschmidt: That was the um?

Representative Carl Holmes: Coal fired plant at Goldband.

Dr. Ron Hammerschmidt: Well that's a much smaller coal fired facility. They went through our process. That was the ethanol plant that uses the coal fired

Representative Carl Holmes: No I'm talking about the coal fired plant that's under construction there.

Dr. Ron Hammerschmidt: Well if they are under construction then, maybe we can get you the information on that.

Representative Carl Holmes: I'd like to know the permit process and the time frames for each step in the coal fired plant, at Goldband.

Dr. Ron Hammerschmidt: OK.

Representative Carl Holmes: You have processed that hopefully within the last two years. So I'd like to have all the information on that plant. And if you could get me that.

Senator Steve Morris: I suppose this might be somewhat premature. When you look at all the federal and state requirements of air quality, are you at the point where you can say whether or not this application has met all those requirements?

Secretary Roderick Bremby: That would be premature.

Senator Steve Morris: On the, uh, plant permit in New Mexico, where are they in their application process compared to Sunflower?

Dr. Ron Hammerschmidt: Well actually they are, uh, close to the end, we think. They are at bat at about two years more than their permit process for that one so it's taken them about four years, this ones running at a little less than two. So it's taken them about four years to get to nearly the determination schedule that we are arriving at, at the same time.

Senator Steve Morris: Also I want to see, uh, on the associated file that's here with Sunflower plant: is there a separate application process for that facility?

Dr. Ron Hammerschmidt: Well, yes it will go a little quicker because the ethanol plant process goes a fairly quick, as long as they get their waste water permit. It will probably be something out there. The dairy of course will have its own permitting process as filing and feed operation. We treat those separately except for as we look at the overall big picture since these guys have already triggered the PSD, uh the uhs, steam goes from the proposed Holcomb plant to the ethanol plant, uh, you know it will be easier after the first permit determination is available. Assuming that the, uh, power plant were to be permitted. That's, uh, assuming for the sake of discussion, then when we brought in the ethanol plant then those would move forward.

Senator Steve Morris: My understanding is, significant portion of the carbon dioxide that is generated from this facility would be captured and then reused in this process.

Secretary Roderick Bremby: That's what we, uh, heard, um, rather that's demonstrated or not whether that's been proven or not, we don't have that in hand yet. That's what we've heard and that is one of the covenants that we've heard that sounds encouraging.

Dr. Ron Hammerschmidt: We had that Clara, a representative from Sunflower, actually come and talk to our staff on that footprint thing till we get through to that.

Senator Steve Morris: If that's indeed correct, more power to them. We need the green technology that was brought before us.

Dr. Ron Hammerschmidt: What we've heard suggests that we could be very much at the forefront of the technology capture for our uh, again, we've not seen a demonstration of that of the scale or the magnitude that would be required, but it's very encouraging.

Senator Steve Morris: We hear from time to time a part of the sequestration. I'm not sure where we are nationally with that. Does that come into play with any of your discussions? Do you talk about that at all?

Dr. Ron Hammerschmidt: That discussion has been kept away from the permit process with our staff. But we are trying to keep current on the latest technology although the IGCC technology has not been put into play. Or in any major application unless we know that internationally we've attempted to put that into play. That, just this past week a company in Germany talked about uh, the process where they were getting to commercial, they were formulated. So it's something we are of reviewing in the sphere of the work, that we are reviewing, but that has not bothered, this staff in reviewing for this permit application.

Representative Carl Holmes (Chairman): Chairman Emler.

Senator Jay Emler: Thank you, Mr. Chairman. First I'd like to direct these questions to Dr. Hammerschmidt. I want to make sure that I understand your permitting process. If I understood you correctly, uh from what you said, and what we were provided by staff, there were actually three permits filed, is that correct?

Dr. Ron Hammerschmidt: Well there was application for three.

Senator Jay Emler: Right.

Dr. Ron Hammerschmidt: permits, three burner permits, if you want to put it that way.

Senator Jay Emler: And, again if I understand the information that we've been provided uh, you met with uh Sunflower or Sunflower met with you and those three applications were rolled together. What was the reason for that?

Dr. Ron Hammerschmidt: Well, if you're gonna do all three why have three sets of public meetings why have three separate reviews, etc cetera, etc cetera, particularly if they're all gonna be built at the same time. Now the aggregation of rather they trigger PSD for instance bring one in doesn't quite trigger the level of concern. Then you add in a third one and you add a fourth one that triggers the federal. They are always looking at you know are you just doing it incrementally to avoid someone reporting them.

Senator Jay Emler: I didn't read anything or see anything that that was the case.

Dr. Ron Hammerschmidt: No we never suspected it but it's just for the efficiency of their consulting, you know are you gonna be, again for the equipment, and the department too, and the control technology is gonna be the same and the coal handling and all this stuff was going to be shared. Three proposed plants and three stacks, etcetera.

Senator Jay Emler: What was the delay when Sunflower decided to uh take out uh, the plant number four for application? How much delay do you think that contributed to the process?

Dr. Ron Hammerschmidt: I wouldn't say it was a great deal. You know, it would be difficult to quantify, it wasn't a month or two. I mean it wasn't a huge deal.

Senator Jay Emler: Um, in the public atmosphere you indicated that you um, divided it up and I noticed there's some difference of the locations. And, one location in particular had a great many more participants. And so I wondered if you also categorized the comments that came in by location.

Dr. Ron Hammerschmidt: Well we could probably dig that out for you. We didn't you know uh as you said, you know, holding a public hearing in Lawrence probably did commemorate more weight in that.

Senator Jay Emler: I mentioned no names.

Dr. Ron Hammerschmidt: I did. I have received a number of communications that we should have done more in that location. Then more length of time. And that we were totally inadequate in the amount of time that we allowed them to talk. And so we're getting it from both sides. We'd be if you want to know, I don't know other than the Sunflower plant did show up in Lawrence. Other than that I'm not sure there were very many positive comments made in Lawrence. Similarly to that, I'm not sure there were a lot of negative comments in Garden City too. We could get that for you if you want some kind of thumb nail.

Senator Jay Emler: I just was curious if you'd actually done that.

Dr. Ron Hammerschmidt: Mostly just as I've been involved or staff looked at that, we pretty much just sat it in stacks.

Senator Jay Emler: But, if I understood you correctly, little positive comments came from uh the most eastern people.

Dr. Ron Hammerschmidt: That's my general recollection.

Senator Jay Emler: Do you recall whether the negative comments, the volume of negative comments dealt with any one particular issue? In other words, were there more negative comments about one particular issue or were they just, spread across the 94 or whatever categories there were?

Dr. Ron Hammerschmidt: Again if you'll allow me to fabricate a little bit, the technical comments, the ones that deal with scrubbers and that kind of thing. The negative comments tended to be kind of spread across the board. Uh, in the negative comments that are on the more nontechnical issues: dioxide issues, carbon dioxide, and the generation of carbon monoxide, and any other comments like: this plan is equivalent to X number of cars, uh comments about Mercury: A lot of those kinds of comments about Mercury, because it is kind of a national issue. As well as: this will discourage energy efficiency; this will discourage renewables, and those types of things. Those were the major categories more in the negative category.

Senator Jay Emler: Again, if I understood your testimony correctly, uh, you indicated that you were resolved on the issues of the waste in the class one. They were only in one place as a class one issue.

Dr. Ron Hammerschmidt: Yes

Senator Jay Emler: And, and those have been resolved?

Dr. Ron Hammerschmidt: Yes

Senator Jay Emler: And you indicated that the federal numbers set the floor where there are federal numbers? You also discussed the lawsuits have been filed.

Dr. Ron Hammerschmidt: Yes

Senator Jay Emler: With that I'd like to turn the questions to the secretary. And, Mr. Secretary uh, I'm sure you're well aware of the pressure that's being brought to bear uh, just as Dr. Hammerschmidt just said uh, in the nontechnical areas. And that brought to bear on legislative personnel. And I would assume as well on you based on your testimony. Um, and I want to uh, focus on a couple of areas. I know some of this will probably come out in the testimony this afternoon. But, since we are not going to recall you as a witness, and be able to ask you questions, or at least I hope not. Uh, I am going to ask you questions now. First of all, it's my understanding and we have a copy, that KDHE got the Attorney Generals opinion. And, from reading that, it appears that, in order for KDHE to, make a decision on CO₂ you must make a factual finding about endangerment. Is that your interpretation?

Secretary Roderick Bremby: That is our interpretation of the AG's opinion.

Senator Jay Emler: And at this point no such factual finding has come forth. Is that correct?

Secretary Roderick Bremby: That is correct.

Senator Jay Emler: I want to talk a little bit about the lawsuits that were mentioned, uh. Isn't it true that in the lawsuit that uh, was filed, to try and force you to adopt standards uh, and ah, isn't it true that a lawsuit was filed to force you to adopt standards and also uh, to uh, stop any permitting of power plants?

Secretary Roderick Bremby: Litigation was by the Sierra Club and there was a separate re-issuance by Lonna/Bonnie Hains, of Lawrence. And it was in response to the Massachusetts vs. the EPA. Time that the state referred to that, finding, could in fact regulate harmful emissions, so that was the case we saw.

Senator Jay Emler: And your lawyers did file a response to that. Isn't that true? In those cases I guess I should say.

Secretary Roderick Bremby: I believe they have. Yes.

Senator Jay Emler: Are those responses the official position of the KDHE?

Secretary Roderick Bremby: What we intended to do, of course, is be responsive to what is alleged and we subsequently because we knew that this would be a litigated issue, or litigated permit, sought out the AG's opinion to confirm our opinion about what our standing is. Now the AG's opinion is very clear, as someone said, it's one attorney's opinion, but uh, but that is the attorney who will defend us in court. To say that if there is a finding, a factual finding, then certainly we can step forward and renew it to some extent. I'm sorry, that we could approve, modify, or deny the permit on that basis.

Senator Jay Emler: That started another question before we. But your right, it's one attorney's opinion, and then you have another attorney give another attorneys opinion, and then a lawsuit.

So you're right there. So in the lawsuits, again, hasn't the state taken the position that the regulation of carbon dioxide is a federal and international issue? That's a quote.

Secretary Roderick Bremby: I did not read the brief.

Senator Jay Emler: Well, actually I think that's in your motion to dismiss, not in the brief.

Secretary Roderick Bremby: If it's in the motion, I did not read the motion. You'll have to refer to General Council for that.

Senator Jay Emler: Well I believe also, and of course if you didn't read the motion, then you're not aware that, another allegation in that motion was that until the US Congress and Environmental Protection Agency have set national standards and mandates, then the state would delay making any rules on CO₂.

Secretary Roderick Bremby: Is that in the same motion?

Senator Jay Emler: That's correct.

(long silent pause) 10 or 11 seconds

Senator Jay Emler: Another one of your points of opposition, in the lawsuit, if you know, uh, I'd like you to either confirm or deny. And again a quote, "At this point the EPA is not compelled to promote adoption of regulations on CO₂ unless it makes a finding of endangerment," and so again KDHE proposed, doing the same thing at the state level. (Pause) Not aware?

Secretary Roderick Bremby: Not aware.

Senator Jay Emler: You've already mentioned it would be contentious in quoting a quote, so that was also in the, in the briefing.

Secretary Roderick Bremby: Fortunately that was common sense.

Senator Jay Emler: Correct. Um, you had talked about, uh, the findings of, or, making a factual finding. Would you, uh describe for me what the process of making that factual finding would be?

Secretary Roderick Bremby: I think I would comply with "squads" (undecipherable word) at this time so it would not be indiscriminate.

Senator Jay Emler: Well wouldn't you have to follow the, the Administrative Procedure Act, if you were going to, have input to make that type of a factual finding?

Secretary Roderick Bremby: I don't know. I don't believe so, I don't know.

Senator Jay Emler: Something that, wasn't mentioned here but, but has come to me and so therefore I'm going to ask you. It is my understanding that, that staff has actually made a recommendation to approve the Holcomb air permit. Is that true?

Secretary Roderick Bremby: They uh, may have made a recommendation, but the, permitting process then goes to Dr. Hammerschmidt and then directly to me. And I will make a decision based on that position.

Senator Jay Emler: I guess my question is: Did the staff make the recommendation to approve? That's the information that I have received.

Secretary Roderick Bremby: There is a staff recommendation to approve the permit.

Senator Jay Emler: Is there a staff recommendation to not approve the permit?

Secretary Roderick Bremby: I believe I just answered that in my reply; there is a staff recommendation to approve.

Senator Jay Emler: And there are no other staff recommendations, at this point?

Secretary Roderick Bremby: There are many staff in our agency. There is a staff position to approve the permit; one of our agents.

Senator Jay Emler: Thank you.

(pause)

Senator Jay Emler: I have nothing further. Thank you.

Representative Carl Holmes: I've got a few questions. In your deliberation, in light of the Attorney General's opinion, were you considering CO₂ as a part of rather to approve or disapprove this permit?

Secretary Roderick Bremby: Could you ask the question again, please?

Representative Carl Holmes: In your decision making process for this permit, are you or are you not making CO₂ a requirement in your recommendation, as a decision of this permit?

Secretary Roderick Bremby: It has not been determined. I am taking the user into the council. But that decision has not been made yet.

Representative Carl Holmes: But you are considering making CO₂ then, part of your decision of this permit?

Secretary Roderick Bremby: That has not been determined yet.

Representative Carl Holmes: It's not been determined yet, but it could be?

Secretary Roderick Bremby: It could be. It could not be. It has not been determined.

Representative Carl Holmes: What are the current regulations that you have to administer on CO₂ in regards to air emissions?

Secretary Roderick Bremby: Currently, there is no state regulation for CO₂ emissions with respect to the permit process.

Representative Carl Holmes: Do monitor CO₂ in this state today?

Secretary Roderick Bremby: Do we monitor CO₂ today? We do monitor CO₂ today.

Representative Carl Holmes: And where at?

Dr. Ron Hammerschmidt: Actually, we've been working inventories of various sources like power plants. They do monitor in the stack of carbon monoxide, carbon dioxide.

Representative Carl Holmes: That's true. Is there any other place that you would want to monitor?

Secretary Roderick Bremby: I don't know where.

Representative Carl Holmes: According to your report, the only place you can look at is the stack emissions.

Secretary Roderick Bremby: And that is one of our reports that you're reading from?

Representative Carl Holmes: It says, Kansas Air Quality Report 2005-2006, air radiation, Kansas Department of Health and Environment.

Secretary Roderick Bremby: So that says, that's very clear what we monitor.

Representative Carl Holmes: That you do not monitor CO₂ at that time.

Representative Carl Holmes: Then that report is correct.

Representative Carl Holmes: OK. There have been comments about IGCC and CO₂. On the IGCC and CO₂ discharge of coal fired power plants.

Dr. Ron Hammerschmidt or Secretary Roderick Bremby: That's the intent, but what about technology?

Representative Carl Holmes: Could you explain how, IGCC could help CO₂?

Secretary Roderick Bremby: Let me back up, the technology is designed to capture CO₂, but rather it eliminates it or not, I don't have the technical background to understand what happens to the CO₂ after the capture. I suspect, I don't know. Well, let me just stop there.

Representative Carl Holmes: Do you know of any IGCC plants in the United States today that capture and sequester CO₂?

Secretary Roderick Bremby: I believe I spoke to this earlier that there was not one that I knew of in a commercial application. I know that there are pilots. Like in the state of Ohio and Indiana there is one.

Representative Carl Holmes: Are they capturing and sequestering CO₂ there?

Secretary Roderick Bremby: That will be the intent of the technology.

Representative Carl Holmes: Are they capturing it or sequestering today?

Secretary Roderick Bremby: We can give them a call. I don't know.

Representative Carl Holmes: I have toured the IGCC plant in Florida. The CO₂ is discharged into the air. So what good does it do if you separate it out you can still put it in air? It doesn't mean anything. Is that correct?

Secretary Roderick Bremby: I don't know sir. I didn't visit the one in Florida.

Representative Carl Holmes: Decision?

Secretary Roderick Bremby: Sir?

Representative Carl Holmes: I'd like to have comparison between the Sand Sage application that went through the 2001-2002 compared with and this application in regards to what you looked at in this one compared to what you looked at in the Sand Sage application in 2001-2002. Is that OK?

Secretary Roderick Bremby: We can do that.

Representative Carl Holmes: OK. We talked about how complicated the permit is and rather or not what you have to go through. A year and a half ago you knew the permits were going to go through. Did you make a request for additional funding to help cover the cost of the permits, with the possibility of speeding up the process?

Secretary Roderick Bremby: We've made no such request for additional resources in the budgetary process to put this project on a faster track of moving the permitting process. No sir we did not.

Representative Carl Holmes: Did you consider making, did you consider hiring consultants on this project to help with some of the permit process and if so, did you hire a consultant and for what reason did you use a consultant?

Secretary Roderick Bremby/Dr. Ron Hammerschmidt: Well that's all pretty easy. We didn't consider using consultants. We decided that particularly in the area of modeling we would be better served to use some of our internal staff and get them up to speed. We decided we would be better served if we did it ourselves. We did do some staff corporation and development. We saw this coming and we prepared. We had them attend a number of meetings, those types of things. They were up on the most current information. The funding for this process comes from the air quality fee funds. It's sufficient income for this.

Secretary Roderick Bremby: Going back to the previous question, if we had in believed that we would seek a statutory guideline to speed up this work, that we would have asked for additional funding.

Representative Carl Holmes: I know other agencies that I deal with that speed up the process and also to shorten the time frame by hiring consultants. And also to report the time frame on the front end. We have a quote that you already said, I'd like to get more specific. We talked about the additional computer model, and I'd like to know at the time that we had an attempt to do the computer modeling? And I'd like to know at the same time you were doing the computer model, what else you were doing on the project around application, with the boarding?

Secretary Roderick Bremby: (Indecipherable)

Representative Carl Holmes: When did you decide to make the request from the Attorney General?

Secretary Roderick Bremby: I don't have my calendar but I do know that it was shortly after we were discussing the case, General Council told us to get a letter of opinion about the stand on our position in respect to that litigation.

Representative Carl Holmes: Is this before or after the application to turn it over to you to make the decision?

Secretary Roderick Bremby: It would have been before.

Representative Carl Holmes: It was made before then. Thank you. I have a quote out of a newspaper that's always a dangerous but, "The AG also argues that the regulation of carbon dioxide was discretionary. In any court ordered proof or document can be made in the absence of any national scientific industrial or ____ ____." Would you like to make a comment to that statement?

Secretary Roderick Bremby: I don't know if we made a statement. I don't know the source of the statement. I don't know the time of the statement.

Representative Carl Holmes: I can give you the time frame; it was the second of October of this year. At least that is what is in the paper.

Secretary Roderick Bremby: I don't know.

Representative Carl Holmes: It also quotes the document you filed on the case that it is not a violation of statutes or regulation to delay the regulation of carbon dioxide until standards are set at the federal level because the issue is a federal or national issue.

Secretary Roderick Bremby: Is that in a state document?

Representative Carl Holmes: It is in a newspaper article.

Secretary Roderick Bremby: If you can give us the source we can track that down for you.

Representative Carl Holmes: Mike Horn, Hays Daily News, the second of October 2007.

Representative Carl Holmes: I am looking at another article from the paper. KDHE Secretary Bremby said that ___ reviewed by the ___ today, with a chance to communicate the complex technical legal, public health, environment, and public opinion aspects on reviewing the permit. Is there anything else you'd like to add besides what you have told me and said today in regards to this quote?

Secretary Roderick Bremby: I'm not sure I understand your question. Is there anything to add to the quote that I made?

Representative Carl Holmes: The quote that you made would you welcome the chance today to respond to the complex, technical and legal environmental and public opinion aspects of the public review process. Is there anything else you'd like to add to comment on this statement that you've already made or comment on these various issues?

Secretary Roderick Bremby: Mr. Chairman, um, when I said this morning I said that, we appreciate the opportunity to address the concerns during the time we've spent this morning. That's wide open. I'm here. My staff is here. We're willing to talk about as much as we can talk about, given where we were in the permit process and the litigation

Representative Carl Holmes: I have here a listing of coal fired power plants, across the country ([Attachment 2](#)). They submitted air permits and approval base. And there's at least a dozen here it appears, posted a dozen, that have full time all the way from seven months up to thirteen months, fourteen months. And I guess my question is, the state response is, they're very tough on their environment issues in Wisconsin. It only took seven months to approve their permits. Why is it taking 18 months here?

Secretary Roderick Bremby: I think what we've tried to do is capture the full width of the permitting process here and while statutorily we had 18 months. You can't contrast what we have here in Kansas with Wisconsin. I don't know the size of the facility in Wisconsin. I don't know the technology of the facility in Wisconsin. I don't know the staff size in Wisconsin. I don't know the agency in Wisconsin. There are a lot of functions that I don't know about to be able to contrast what they were able to do in the seven months in Wisconsin that has, to this point taken us 15 months in Kansas but yet well within the time frame. We don't know if Wisconsin has 10 months of a time frame. I don't know their opinion. So there are a lot of things I can't answer about for the comparison. But what I can tell you, is that our staff has done a wonderful job, in a timely fashion, addressing all the concerns and comments that I am almost certain that Wisconsin did not receive.

Representative Carl Holmes: The Wisconsin power plant is 1650 megawatts. So comparable to what Holcomb is. What's new and a little closer to home, like added to, Kansas City Power and Light, nine months? That's 850 Megawatt power plant that's larger than the Kansas Power Plant. They did theirs in nine months. The way I view a time restraint is when the statute says 18 months, it means you will not go over 18 months, but it doesn't mean you have to take the entire 18 months to do it. But in the state of Missouri, it was nine months.

Secretary Roderick Bremby: Let me respond, only by saying that this is the first that we have done. I'm sure with more applications, it would take less time. Again I can't comment directly to the state of Missouri.

Representative Carl Holmes: Looking at the CO₂ pollution problem, are you familiar with how CO₂ emission power plants in Kansas compare to in the state of Massachusetts?

Secretary Roderick Bremby: Yes

Representative Carl Holmes: Which one is the highest emitter per megawatt?

Secretary Roderick Bremby: As for per megawatt I don't have that information.

Someone else: We've looked at the actual total number, but per megawatt we've not looked at it.

Representative Carl Holmes: Lawrence is top in the nation. (has got one of the dirtiest power plants in Kansas) Do you know where Holcomb is?

Secretary Roderick Bremby: Yes, sir.

Representative Carl Holmes: OK, where is it?

Secretary Roderick Bremby: Southwest Kansas.

Representative Carl Holmes: No, where it's at in regards to CO₂ emissions, on the same question?

Secretary Roderick Bremby: In terms of that chart I believe there was a recent study by the EPA that looked at the base emissions of CO₂ and the requirements plants. Holcomb is at the lower end of the spectrum in terms of plants in Kansas per megawatt.

Representative Carl Holmes: That's correct. They are 147th in the nation. So from this I would say it appears to me that Sunflower has done a pretty good job of removing CO₂ compared to the rest of the power plants in the state. Along with CO₂, would you indicate if you might or might

not consider that in the application, in your decision? If you decide to use CO₂ in this power plant, how does that effect the regulation of CO₂ in the balance of power plants in the state of Kansas?

Secretary Roderick Bremby: We've not gotten to that point sir. ____ But hypothetically, if that is an issue then all the other plants would also be affected in some sense.

Representative Carl Holmes: And, let's take it a step further.

Secretary Roderick Bremby: (Indecipherable)

Representative Carl Holmes: And likewise what would you do about CO₂ emissions or requirements

Dr. Ron Hammerschmidt: Mr. Chairman may I answer your questions? One approach that other states are, uh, is to set state wide goals for reductions that's on a certain level the Western Climates had issued a statement that just announced a goal of 15 percent reduction for 2005 level. So that's one way, well you know obviously they are pushing for a cap there. The most prominent international green level is a possession of state wide and then regional wide goals and then set up some kind of cap for instate where the technology would reduce the carbon emissions that are accepted across the board. Or if they can't do that, the technology reduction, then you would buy the emission from someone who could through that business buy a reduction.

Representative Carl Holmes: So, my concern is, you come in and make that CO₂ an issue with this power plant, the next step is you will come in and restrict CO₂ on the rest of the power plants. But you can't stop there. We have a plant in Kansas that uses IGCC technology, energy gasification technology, manufacturing anhydrous ammonia. So the next step would be to come in and regulate CO₂ on that plant. You come in and regulate CO₂ on anhydrous you come in and regulate CO₂ on ethanol plants. Where else? But the point I'm getting at is when you take this cap (CO₂), or whatever you do, you kill economic development because we can no longer expand a hydrogen plant, the plant does not use natural gas so, the rest of the _____ petroleum products to make anhydrous ammonia. You shut them down so they can't expand. You shut down the refinery so it can't expand. The more economic development you shut down gas ____ or gasoline _____. My point is that if you decide to make CO₂ in this application it has a tremendous application for industry in this state as far as expansion. You talk about reduction but what about expansion. You know everybody needs expansion. In the states that do that, and I have a major concern with that. I want to make another point and then I'm going to pass the mic onto another colleague. You know we're kind of in a disadvantage in Southwest Kansas, because what was a good deal at the time is gonna penalize us. There was a surplus to Westar and Jeffrey energy, and as a result, there was an agreement to purchase 174 megawatts from Jeffrey by Mid Kansas Electric, ie. Aquila. That contract expires in 2012. So this is base load power that is dispatchable after the 7th and we don't know if that power is going to be available. You know the wind farm. What are we supposed to shut down in Southwest Kansas to cut that consumption 117 megawatts? Midwest Energy has a contract, same type, for 125 megawatts, that expires in 2010. And what I'm interested in knowing is where we're going to get that 125 megawatts that's not coming from Jeffrey Energy Center that will no longer be available, if this permit is denied? And likewise, going South of the border, a little bit, _____sperod, which is another proposed owner. That power plant has a large contract for electricity, some people call southwest _____ energy. A very large contract to purchase power. And they lose that in 2012 and I'm interested in that because our use in Kansas, the gasoline comes from a pipeline in Southern Texas, which I believe but am not positive _____spread, where are they going to get their electricity to keep their refinery in operation, their pumping stations in operation. Where will we bring that gasoline into Southwest Kansas from? Also, Legislature in the 2006

Session passed legislation putting in place incentives for, natural gas pipelines, bringing a product from Utah and Wyoming into Kansas, and my understanding is that, the pressure stations are going to require electricity to bring that product in to process in Missouri? And Kansas. To deny that permit could kill that whole project that would demand the electricity. The pipeline would bring in the natural gas liquid from Utah. It's not just that it affects the Garden City and Finney County. It's got a tremendous effect in entire western part of the State. And the businesses between Kansas and Oklahoma, and Texas, and Colorado. The energy sources are for Oklahoma State. And with that I'm going to pass the mic. Questions? Representative Phelps.

Representative Eber Phelps: Thank you. Actually I think you may answered this before when you use the word when you talk about modifying or denying. I guess the question I had for you was your decision to have all or nothing and apparently you can actually approve the permit and make modifications. And I was wondering if you would elaborate on what that might entail or maybe what they have done in other states. _____

Secretary Roderick Bremby: Are you talking specifically about CO₂ or are you just talking about it in general?

Representative Eber Phelps: Just in general. I guess what I was looking at to here was perhaps, you know if you're looking at the permits, do you say well you're talking about scrubbers, brush scrubber and that and so forth. As you look at it from there are you making notations or is it possible if you make your recommendations if you do this, this and this, then you will pass it through? Hypothetically I guess.

Dr. Ron Hammerschmidt: We did try to make it very clear to the applicant in the permitting process that there are various factors that we go through after the public hearing, for instance and make changes, because we, uh, there had been some change or further information. So there is we don't necessarily have to go with the permit that goes out to the public. One thing I would point out, that there are other external forces and that the Chairman mentioned the I plan that is an expensive power plant line. Actually negotiated with the Sierra Club. We could do some ____- with that. There are third party negotiations.

Representative Eber Phelps: Thank you

Representative Carl Holmes: Speaker Neufeld.

Representative Melvin Neufeld: Thank you Mr. Chairman. Mr. Secretary, I want to go back to CO₂. In the first place, I believe what you're continuing to say is that it would be possible for you to reject the, uh, permit on the grounds of that and not having the rules and regulations in place for the permit with CO₂.

Secretary Roderick Bremby: My, uh, here in the agency believes that in light of the fact that the permit can be approved, or modified or denied on that basis. The ruling from the AG's office says in the absence of any rules.

Representative Melvin Neufeld: I guess that's pretty troubling to me. The fact that, what you've basically done is that you've discriminated against 400,000 people living in the Western part of the state, not make those apply to anybody else, and deny this permit solely on the fact, without going any further into the issue. And I agree with Chairman Holmes, once we start down this road and trying to regulate that with the state without having federal guidelines I think we're running into more problems than expected or wanted. I'm really afraid Mr. Secretary, you might start to regulate other industries' CO₂ level and I'm not quite ready to go there. What I want to

make clear is your position. Do you believe that you can deny this permit without having CO₂ rules and regulations in place?

Secretary Roderick Bremby: We have taken the Attorney General's ruling under advisement and it's about to go into a decision making process which suggests that this permit can be approved, modified, or denied on the basis of a factual finding without the presence of ____ regulations.

Representative Melvin Neufeld: So it's your opinion then that Attorney General says it's alright to discriminate western Kansas and not do anything in eastern Kansas?

Secretary Roderick Bremby: Mr. Speaker we are not making discrimination.

Representative Melvin Neufeld: I think that's clearly what we have here. Just picking out one area of the State and saying they will not advance technology development in that area will stop, and we're going to do it based on a ruling we don't find anybody else has. I think that's not fair. Thank you, Mr. Chairman.

Representative Carl Holmes: Senator Morris.

Senator Steve Morris: I just have one other quick question. Tell me about the wildlife and you're concerned about the Wichita wildlife area and the fallout there. Is that because when we get up to the stack level of, uh, up to 700 feet and the prevailing winds are North and South instead of East and West, is that why maybe they are concerned about that?

Secretary Roderick Bremby: I'll go back and check on that for you Senator. They were very thorough on the impact on their particular federal lands. But I will check on that.

Representative Carl Holmes: Senator Emler

Senator Jay Emler: Thank you Mr. Chair and Mr. Secretary you will be happy to know that I do not have any questions for you however, Mary I do expect to see you this afternoon and I do have questions for you. Thank you.

Representative Carl Holmes: Are there any other questions from any other members. If not, I want to close with the much the same way I opened. And that is that it's very important to me, and I believe to the state of Kansas, that we have a balance of energy amongst all kinds of generation energy. That we have a balance that includes energy efficiency. I feel very strongly that the state should be an example to the youth in energy efficiency and I hope to have a bill crafted before the end of the year and in our committee that will be acceptable 2008 session that would do that. ____ 2005 legislative session. I have put together legislation that was primary to get transmission in place so that we can push the energy around the state instead of being isolated in one area. It has the opportunity to move this electricity, *i.e.*, renewables, from western Kansas to eastern Kansas and also can be used as a springboard. We've had some success already, with lines already announced. The Holcomb plant is a key for both KETA and WAPA, 1.6 billion dollars potentially could be built. That has the capability of moving wind generated in western Kansas, from San Francisco to New York and any place in between. So if any piece of the puzzle in Holcomb is not allowed to move forward we'd lose that opportunity to move energy from western Kansas to throughout the United States. The WAPA project will not go forward. The WAPA project is a project from Holcomb, to Pueblo, to Yohana to McCoy. The line from Burlington and back to _____. Holcomb is the largest power plant that's been proposed in the State of Kansas. The power line will be capable of 765 Kilovolts. Double anything we have in the State of Kansas today. It will move several thousand megawatts west into the western grid with the proposed converter at Holcomb, if that facility is built. As I said earlier, KETA has the

opportunity to put in place through our cabinet, transmission lines from Axtell, Nebraska, Spearville, (Holcomb), back to Wichita. Those lines being looked at are a minimum of 345 Kilovolts up to 765 kilovolts capacity, and the economics of is dependent on the approval or disapproval of the Holcomb plant. That 1.6 billion dollars of transmission lines and are capable of moving out of western Kansas well over 6,000 megawatts of wind energy electricity, at a minimum at its completion. I don't have anything further. I appreciate you coming and spending time with us today. Depending on how the rest of the day goes, we may be meeting again. We may have some more questions. I appreciate the responses. I appreciate the answers to the questions and we need to go back ____ . Mr. Secretary, Ron, I appreciate very much your coming. For the committee, we will recess until 1:30 p.m.

Afternoon Session

The Chairperson called the meeting back to order after the lunch recess at approximately 1:40 p.m. and recognized Mary Galligan to review the information contained in the members' notebooks.

The following documents were identified:

- A Legislative Research Department memorandum regarding Power Plant Permitting Process and National Ambient Air Quality Standards (Attachment 3).
- A Legislative Research Department memorandum outlining the Holcomb plant permitting process timeline as provided by Sunflower Electric Power Company (Attachment 4).
- A newspaper article describing a request to the EPA to regulate emissions from ships, a description of the U.S. Supreme Court decision in *Massachusetts v. EPA*, and the Court's opinion in that case (Attachment 5).
- The letter from Secretary Roderick Bremby requesting the Attorney General's opinion regarding KSA 65-3012 and the resulting Attorney General Opinion No. 2007-31 (Attachment 6).
- A Legislative Research Department memorandum describing a recent change in the Texas Air Quality Permit Law and a copy of the bill (Attachments 7 and 8).
- A map of the service areas of Sunflower Electric Power Corporation, Mid-West Energy, Golden Spread Electric Cooperative, Inc., and Tri-State Generation and Transmission Association (Attachment 9).
- A chart showing the Holcomb Station's Net Generation from 1984 to 2006 (Attachment 9).
- A table displaying the five-year emission history of large electric generation facilities serving Kansas (Attachment 10).
- A map of Coal Fired Power Plants in Kansas (Attachment 11).

- United States Environmental Protection Agency Region 7 letter to KDHE regarding the Sunflower air quality permit application ([Attachment 12](#)).
- National Coal-Fired Utility New Source Review (NSR) Spreadsheet (July 2007) ([Attachment 13 part 1 and part 2](#)).
- A Revisor of Statutes office memorandum regarding Review of Prevention of Significant Deterioration Construction Air Permit Actions ([Attachment 14](#)).
- A table summarizing information regarding KDHE Division of Environment Facility Permits ([Attachment 15](#)).
- A table listing the Kansas Corporation Commission statutory deadlines for various actions ([Attachment 16](#)).
- State of Kansas Air Quality Statutes ([Attachment 17](#)).
- KDHE Kansas Air Quality Regulations ([Attachment 18](#)).
- Excerpt from Legislative Research Department analysis of KDHE budget for fiscal years 2006, 2007, and 2008 ([Attachment 19](#)).
- KDHE Bureau of Air and Radiation program budget narrative for fiscal years 2007 through 2009 ([Attachment 20](#)).

Verbatim Transcription of Committee Discussion

Representative Carl Holmes: Uh, First off this afternoon we have Mary with the Attorney General's office. Good afternoon and welcome.

Mary Feighny, Deputy Attorney General: You just want to ask me questions or, do you want me to go through the attorney's opinion? I wasn't told what to prepare.

Representative Carl Holmes: Maybe you should kind of go through a brief review of it.

Mary Feighny, Deputy Attorney General: Alright. Secretary Bremby addressed an opinion request on September sixth. A couple of weeks later we issued an opinion. Basically he wanted to know whether a particular statute gave him the authority to deny, modify or stay the issue with a decision on the permit. And the statute is 65-3012. There was no case law on the issue. Nothing that really gave us any kind of guidance, so what we did was relied upon the rules of statutory construction which basically is: you look at the language first and find what it says. And to us, it was very clear that he did have the authority to use the statute to deny or modify a permit, an air quality permit, upon finding, you had to have certain finding. So basically, we put it in the Secretary's lap of him finding, that admission of air pollution presents a substantial measurement. So he had to make those findings, but if he did, he could deny or modify the permit. We decided, in the last paragraph, if he was going to try and find a stay the issuance of a permit until such time that the feds came down with regulations we thought there was not any problems with that. And that's basically the substance of the opinion.

Representative Carl Holmes: Questions? Senator Emler.

Senator Jay Emler: Thank you, Mr. Chairman. Mary, I guess my question deals with the if/then paragraph, and specifically the factual finding. Can you, and I realize you're not the one that did the research and wrote the opinion, but can you give us an idea of what a factual finding, procedure would entail?

Mary Feighny, Deputy Attorney General: Earlier we said something about maybe Administrative Procedure Act applying, but I don't think it would.

Senator Jay Emler: OK

Mary Feighny, Deputy Attorney General: KAPA only applies if the statute says KAPA applies. The Administrative Procedure Act applies only if the Secretary takes certain actions. So, in determining whether status of the ___ seat of information, the admission stands, I mean that would be a question of fact, but there is no procedure set forth in the statute under which he has to take certain actions to make that determination. I don't know how that would happen. It's pretty much under the Secretary's discretion.

Senator Jay Emler: Don't you think there'd be some constitutional issues of due process when you're going to be deprived of a significant opportunity such as this. If you were just, well Jay Emler says that this is going to be injurious to your health then, OK, we find that this is going to be injurious to your health.

Mary Feighny, Deputy Attorney General: Yeah.

Senator Jay Emler: That seems to be deflecting the Constitution here, I think.

Mary Feighny, Deputy Attorney General: I guess it would depend if he kind of rolls this finding into the whole permit denial scheme of things, or if he completely keeps it separate, and just simply make a finding that carbon dioxide is a substantial endangerment to health. There may be some due process issues involved in making that determination. It's just that the statute's so formless, in telling him how he has to proceed. But I would think there would be a due process issues.

Senator Jay Emler: And I guess I want to clarify just a little bit because you said if it were kept separate, but with the way I read the opinion, in order to deny it can't be separate, it's got to be a finding that, if, then that's the way I read the opinion. Am I reading it incorrectly?

Mary Feighny, Deputy Attorney General: No. I agree, if there were a substantial endangerment, then that would trigger his denial on that.

Senator Jay Emler: So it's very closely intertwined?

Mary Feighny, Deputy Attorney General: Yeah, I agree with you

Senator Jay Emler: That's where I think you have the due process if you don't have the right to present evidence, and ___

Mary Feighny, Deputy Attorney General: I agree with you. I think there should be the opportunity to present evidence on both sides. So basically, it will be a war of experts when the Secretary makes his determination.

Senator Jay Emler: That was my interpretation of this too. I think you're probably right as far as the Administrative Procedures Act.

Mary Feighny, Deputy Attorney General: I agree with you.

Senator Jay Emler: And you obviously think there would be some things to take a look at?

Mary Feighny, Deputy Attorney General: Yes

Senator Jay Emler: Thank you.

Representative Carl Holmes: Further questions? Speaker Neufeld.

Representative Melvin Neufeld: Thank you, Mr. Chairman. Remember when this morning, uh, we heard the Secretary tell this Committee, that he believes that he could use this to deny the permit, and put the affects of anybody else and put the policy forward. Given that, my question is do you think that was the AG's intent, to allow___against a particular permit?

Mary Feighny, Deputy Attorney General: And your, And your question is?

Representative Melvin Neufeld: Is that the AG's opinion that, is that what the AG's proposing here that, target certain people in the permit?

Mary Feighny, Deputy Attorney General: No there's, no it wasn't the intent. We were asked a question of law. It's an interpretation in the statute. What the ramifications of that, I don't see how we are involved in that.

Representative Melvin Neufeld: You gave the right answer there. So then, I want to go to the ramifications. If, this permit is denied, on a basis that is an opinion, that no law or no real

authority will make the opinion. Then does that give the applicant standing for taking under the law?

Mary Feighny, Deputy Attorney General: I'm not following you. We're saying if the Secretary proceeds with this?

Representative Melvin Neufeld: This permit application is of value. If the value is, uh, taken from the applicant, based on something that is not law, and it's not enforce the law of rules and regs, then does that become takings by the ___?

Mary Feighny, Deputy Attorney General: So, if the applicant is denied a permit, the applicant would then argue that that was a taking? Is that?

Representative Melvin Neufeld: Well it's clearly then a taking, if you don't have a legal reason, you know under law, to deny a permit, and the permit is of value. I would fully expect that the applicants would then come and claim and ask for reimbursement of expenses.

Mary Feighny, Deputy Attorney General: I don't think they would be successful. I don't know that there is a takings claim here. I haven't researched it though. It certainly doesn't have a takings clause ____.

Representative Melvin Neufeld: It may be the law is written to protect citizens from undue injury from the government, and if there's not I guess my question is, if there is not a statute, if there is not a rule and regulation asking for the law, apply to that, it's simply an opinion by the, Attorney General, by the Secretary, probably amounts to a taking. There's no, no real fact, to make sure you are taking value away from them. In this case, 400,000 citizens of Kansas.

Mary Feighny, Deputy Attorney General: I don't see a takings clause here, but I could be wrong, I haven't researched it.

Representative Melvin Neufeld: I haven't either but, it just seems like you can have a debate on the takings law. It looks like, one of the things that we would get under that, debate. Thank you.

Representative Carl Holmes: I've got a question, too. When we go through the, uh, current statutes, they talk about pollutants, but it does not mention CO₂.

Mary Feighny, Deputy Attorney General: We talk about sir, what?

Representative Carl Holmes: Pollutants. Air pollutants, it does not talk about CO₂. And, uh, looking at the rules and regs, the only place I can find CO₂ is in the statute. What with the CO₂ being is that option? With not having rules and regs addressing CO₂, how can the Secretary come in and all of a sudden inject CO₂ into the permit process, when it's not specifically in the statute, and not addressed specifically in rules and regs? Unless, we've given them guidelines, or standards, that nobody knows what they are, or even if they exist. And the _____ finds a rule on a permit based on CO₂ that's not mentioned in statute, or mentioned in rules and regs.

Mary Feighny, Deputy Attorney General: But the statute doesn't require rules and regulations.

Representative Carl Holmes: But they do have rules and regs in place for NO_x and SO_x. They're monitoring carbon monoxide, but they do not have anything in place except, they are monitoring the stacks for CO₂, so how can they regulate CO₂? Help me out on that, can you judge a permit on CO₂ when there's nothing in the statutes?

Mary Feighny, Deputy Attorney General: Because the statute says that all the Secretary has to do, is find emission of pollution as a _____. No regulations are necessary. This gives them a great deal of power to make that determination. So yes, he can make that determination without regs and rules.

Representative Carl Holmes: Then why do we do rules and regulations?

Mary Feighny, Deputy Attorney General: Why do you do rules and regulations? The agency looks forward to do so, and in the statute. They are not required to make this entitlement determination.

Representative Carl Holmes: But how does the general public know what the rules are, if they're doing something that's done by some policy that's not in print?

Mary Feighny, Deputy Attorney General: Well it wouldn't be a policy. The Secretary would have some kind of, have a hearing and have some experts, to have a determination concerning whether it's substantial in nature. He, he would make a decision based upon receiving to determine rather CO₂ is a substantial emission.

Representative Carl Holmes: You know if the Secretary has had investigative proceedings concerning CO₂?

Mary Feighny, Deputy Attorney General: No, I'm not aware of that.

Representative Carl Holmes: OK, um, I'm looking at page 2 of the opinion. And the page number may not be the same. It starts on the, uh, the paragraph starts with the word, "based".

Mary Feighny, Deputy Attorney General: Based upon the language?

Representative Carl Holmes: Based upon the language of 65-3012 it appears that the statute _____ as well as _____ action _____ before the Secretary _____. So are you saying in this opinion, if the secretary rules on CO₂ on this permit, then they can take action against any other emitter, emitters, I'm sorry, in the State?

Mary Feighny, Deputy Attorney General: Yes.

Representative Carl Holmes: So, they could not be arbitrary, but they would have to apply the same standards to all the emitters, is that correct?

Mary Feighny, Deputy Attorney General: I would agree with that.

Representative Carl Holmes: Thank you. Are there any other questions? Chairman Emler.

Senator Jay Emler: Thank you Mr. Chairman. Mary, in, as the Chairman was asking about the, the various places in statute and reg where CO₂ is specifically mentioned, it occurred to me that there's, a doctrine where the court looks at what that statute and says that. Well we want to read this so that it doesn't conflict with the other existing statutes, and, regulations, and that it's specifically interpreted as, as to the legislative intent, where the legislature speaks to an issue. So, with that as a background, if the Legislature has spoken to CO₂ in two places, but has left it out as a pollutant, doesn't that indicate clear legislative intent that CO₂ is not to be considered?

Mary Feighny, Deputy Attorney General: It's not to be considered as what, air pollution?

Senator Jay Emler: As a pollutant for which the permit could be denied? Which you've specifically talked about it in two areas of law: statutes and regulations. But you have not specifically addressed the issue under the particular statute that an opinion is written on. So then, your opinion, not yours, the AG opinion, does not reference other statutes that are very clear that this is where CO₂ is in line with, or what CO₂ is in line with in terms of the regulations, but clearly takes it out of the one that does give the Secretary discretion. And it doesn't put anything in there, but if we specifically addressed it over here, can't you, wouldn't the court that is, anybody's guess, but wouldn't the court, take a look at that and say, well there's pretty clear legislative intent here, so they must not have meant to put it in here or they'd have said it?

Mary Feighny, Deputy Attorney General: I don't know that. That's statute's pretty broad. The emission of any air pollutant with a substantial endangerment. So you're saying that the court would say that there are certain statutes that find that carbon dioxide is not_____?

Senator Jay Emler: No, no what I'm saying is, they would have to read this section that's really broad, if there is a question, we'd have to look at all the statutes and read them together.

Mary Feighny, Deputy Attorney General: Read them in harmony?

Senator Jay Emler: Exactly. And, if this decision is that CO₂ is a pollutant, it's not being read in harmony with this one over here, that basically indicates it's not a pollutant.

Mary Feighny, Deputy Attorney General: Maybe that could be an argument. So, I suppose if it goes to court they could say that.

Senator Jay Emler: That that just occurred to me while he was asking these questions.

Mary Feighny, Deputy Attorney General: So the Department could say that the intent of the legislature with CO₂ is, uh, not a pollutant. That, that is a good argument.

Senator Jay Emler: You and I both know that not in every instance is everything considered so, rather that's right or not, I don't know but, that just occurred to me. The court would certainly have to hear that argument and to read those in harmony.

Mary Feighny, Deputy Attorney General: Yes.

Senator Jay Emler: And there are many cases that are decided on that, when there is some ambiguity.

Mary Feighny, Deputy Attorney General: (nodding yes)

Senator Jay Emler: Thank you.

Representative Carl Holmes: Are there any more questions? I don't see any further questions, thank you very much, Mary. I'll see you tomorrow morning at eight o'clock.

Mary Feighny, Deputy Attorney General: Yes.

Representative Carl Holmes: OK we're in the afternoon schedule.

End verbatim material.

Continuation of Afternoon Testimony

The Chairperson recognized Clare Gustin, Vice-President, Member Services and External Affairs, and Wayne Penrod, Executive Manager, Environmental Policy for Sunflower Electric Corporation, who described the organization of the corporation and how it was formed ([Attachment 21](#)). Ms. Gustin explained that the nature of the company makes it concerned about the cost of services for its members because approximately 100,000 people in the company's service footprint are either retired or have incomes below poverty level. The expansion project evolved so that everyone can benefit from it. Mr. Penrod noted that electricity is generated from 70 percent coal, 25 percent nuclear, and 5 percent other fuel sources currently in Kansas. The conferees also noted the need for 25 megawatts of additional electricity in the Sunflower service area to serve new ethanol plants. Sunflower looked at wind energy as an option for meeting that need and the fact that it only blows 35 percent of the time made it impractical. The company also looked at adding integrated gasification combined-cycle (IGCC) technology and its ability to capture CO₂. Mr. Penrod noted that there will be no increased emissions from the existing plant when all three plants are on line. They noted the new plants will literally be "coal done right." Additionally, Mr. Penrod showed posters displaying the locations of all their energy production plants and where all the coal fired plants are in Kansas.

Representative Phelps asked for a comment on the current Holcolmb plant and whether an EPA report is available. Mr. Penrod answered that they believe the existing plant is very low in emissions compared to other plants in the nation. Representative Phelps asked what inspections were done and who administers them and how often reports must be submitted. Mr. Penrod noted that Sunflower is required to report its emissions routinely and, in addition, any deviation from emission levels permitted. The inspecting agency sends representatives from the Dodge City office on a regular basis to inspect how Sunflower is running its plant.

Senator Morris asked about water usage. Mr. Penrod responded that the water usage was reduced by 40 percent using the new power plant footprint.

Senator Emler commented that the current Holcolmb plant is the lowest emitter of carbon in the state and that the new ones are even lower or cleaner per megawatt hour. He asked whether wind power facilities would be able to pay for the transmission lines needed to open up the power grid to move wind energy and asked everyone whether wind power would be more expensive if there were no other power sources using the transmission lines.

Chairperson Holmes noted that all of western Kansas, which is half the land mass of the state, is affected by this energy cooperative. He asked the Panel to look at all the CO₂ emitters in the state and note the low emissions per megawatt that would be produced by this proposed plant.

Senator Morris asked the Panel and concerned parties to consider how the power currently purchased from other areas and used in western Kansas would be replaced when existing contracts expire. He noted that they would either have to buy the power from somewhere else or build new energy production plants.

The Chairperson recognized Trevor McKeeman, Director of Business Development, National Institute for Strategic Technology Acquisition and Commercialization. Mr. McKeeman, representing Sunflower Integrated Bio-energy, LLC, NISTAC, and Sunflower Electric Power Corporation, presented information on the Sunflower Integrated Bio-energy Center ([Attachment 22](#)). The businesses decided that it might be better to connect many forms of energy producing entities in one location rather than have individual stand alone units. They have developed a partnership with the Kansas Bioscience Authority for the technology of the facility. He distributed to the Panel an article about transmission line replacement, and an overview of the Holcolmb station expansion project

(Attachments 23 and 24). He noted that the algae that would be produced would sequester carbon dioxide and has the ability to produce two benefits: CO₂ diversion from the air and production of biodiesel.

Representative Phelps commented that the idea of an integrated system is wonderful noting that Russell has an integrated plant. He wondered if the whole algae portion of the plant was done in conjunction with a coal fired plant anywhere in the country. Mr. McKeeman noted that when the plant is operational it will be the first commercial facility of its kind.

Senator Morris commended the Bioscience Authority's work and involvement in such an innovative project.

Chairperson Holmes noted that this project has received the attention of Washington D.C.

Representative Phelps asked about the potential employment figures of the Holcomb plant and the bio-energy center together. Mr. McKeeman noted that it is a \$400,000,000 project total with a huge construction project involved for the economy of the state. He also commented that bio-fuels production tends to be cyclical, and it is harder to obtain financing for those projects. Because this project is both economically and environmentally sound, it might be easier to obtain financing. He noted that when there are dips in the energy market it can weather the storm.

Chairperson Holmes informed the Panel that the next meeting is scheduled for November 6, 2007.

The meeting was adjourned.

Prepared by Renae Hansen

Approved by Panel on:

December 3, 2007

(Date)