



MEMORANDUM OF UNDERSTANDING

BETWEEN THE

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT AND THE KANSAS CORPORATION COMMISSION

CLEAN AIR ACT SECTION 111(d) STATE PLAN

I. Purpose of Agreement

HB 2233, enacted by the 2015 Kansas Legislature as an amendment to K.S.A. 2014 Supp. 65-3031, instructs the Kansas Department of Health and Environment ("KDHE") and the Kansas Corporation Commission ("KCC") to enter into a memorandum of understanding ("MOU") concerning implementation of the requirements and responsibilities under the Kansas air quality act and specifically to minimize impact to utility rate payers. HB 2233 addresses the Environmental Protection Agency's ("EPA's") proposed Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 79 F.R. 64543, Docket ID No. EPA-HQ-OAR-2013-0602 ("Rule" or "Clean Power Plan"). The Rule is projected to be issued as a Final Rule late summer or early fall 2015.

Under EPA's Clean Power Plan, the state of Kansas may submit a State Plan to the EPA. HB 2233 delegates authority for submitting the State Plan to the secretary of the health and environment. The State Plan must outline its choice of enforceable mechanisms for achieving a rate-based or mass-based goal based on the Best System of Emission Reduction Adequately Demonstrated ("BSER") by EPA. EPA's BSER is comprised of four building blocks: improved heat rate efficiency at coal-fired units, substitution of energy generated by natural gas combined cycle units for energy generated by coal-fired units, increased reliance on renewable energy sources, and a reduction in the use of electricity through demand-side management programs.

Certain elements of these building blocks are jurisdictional to either the KCC or KDHE depending upon the building block and the units subject to the Rule. This MOU addresses these jurisdictional issues and outlines a process for development and implementation of the State Plan.

II. Defined Agency Responsibilities and Authorities

A. KDHE

The responsibility for air quality conservation and control of air pollution rests with KDHE pursuant to K.S.A. 65-3003. KDHE has authority under K.S.A. 65-3005 to promulgate rules and regulations to establish standards to ensure that the state is in compliance with the federal clean air act. KDHE is the agency tasked by the state of Kansas with fulfillment of the federal clean air act through the implementation of state plans and other regulatory measures.

B. KCC

The KCC is given full power, authority and jurisdiction to supervise and control the electric public utilities, as defined in K.S.A. 66-101a, doing business in Kansas, and is empowered to do all things necessary and

convenient for the exercise of such power, authority and jurisdiction.¹ Further, the KCC has the power to require all electric public utilities to establish and maintain just and reasonable rates when the same are reasonably necessary in order to maintain reasonably sufficient and efficient service from such electric public utilities.² The provisions of the Kansas Public Utility Act and all grants of power, authority, and jurisdiction to the KCC shall be liberally construed, and all incidental powers necessary to carry into effect the provisions of the act are expressly granted to and conferred upon the KCC.³

III. Development and Implementation of the State Plan

A. Interagency meetings

The Agencies will meet no less than twice per month. Conference calls or in-person meetings can be used as determined jointly by KDHE and KCC.

B. KCC Investigation

KCC will open a general investigation docket to facilitate a comprehensive review of generation re-dispatch options to facilitate compliance with KDHE's state carbon emission standard. The goal of this investigation will be to identify least-cost compliance options that maintain reliable electric service. The KCC's general investigation docket will be an open proceeding in which interested parties may petition to intervene and submit comments. KCC will directly contact and encourage all affected non-jurisdictional utilities to intervene and participate in the KCC's investigation. KDHE will participate in the KCC's investigation. Upon the conclusion of its investigation, KCC will issue an order identifying and recommending one or more compliance options that will maintain sufficient and efficient service at just and reasonable rates.

C. KDHE Process

1. KDHE will continue to meet with affected utilities prior to final Rule issuance, which is expected in late summer 2015.
2. KDHE will begin thorough evaluation of the Rule and any federal plan proposal upon issuance. KDHE will prepare a Kansas impact summary of the Rule.
3. KDHE will submit to the Kansas Legislature's Clean Power Plan Implementation Study ("CPPIS") Committee a plan to investigate, review, and develop the state plan (or a "plan to plan") by November 1, 2015.
4. KDHE will undertake a tiered public outreach process.
 - a. KDHE will conduct three initial post-Final-Rule meetings: one with affected utilities (direct and indirect), one with stakeholders or other interest groups, and one for the general public. KCC participation will be invited to all three.
 - b. KDHE will conduct a second set of outreach meetings within six months of the first with the same groups. KCC participation will be invited to all three.

¹ K.S.A. 66-101.

² K.S.A. 66-101b.

³ K.S.A. 66-101g.

- c. KDHE will conduct additional meetings with the affected utilities and stakeholders as deemed necessary. KCC participation will be invited.
5. KDHE will submit to the CPPIS Committee an outline of the Rule requirements by February 1, 2016.
6. KDHE will prepare draft regulation(s), agreements, and other state plan documentation.
7. KDHE may request a one-year extension as soon as it is plausible to do so.
8. KDHE will submit draft regulations to the Department of Administration and the Attorney General for review and approval.
9. Upon approval of the draft regulations, KDHE will commence a public notice and comment period for the complete state plan.
10. Concurrently with the commencement of the public notice and comment period, KDHE will submit the complete state plan to the CPPIS Committee and to the Attorney General for review.
11. KDHE will conduct a public hearing during the public notice and comment period as specified at the time of the public notice.
12. KDHE will evaluate, consider, and appropriately respond to all comments submitted during the public comment period.
13. Unless disallowed by the CPPIS Committee or Attorney General, the Secretary of KDHE will sign a letter certifying adoption of the state plan and will submit a state plan to EPA no later than four calendar days prior to the federal submission deadline or extended deadline.

D. Legislative Reporting Responsibilities

KDHE and KCC will independently report to the legislature as envisioned in HB2233.

The secretary shall submit to the clean power plan implementation study committee:

1. A plan to investigate, review and develop a state plan no later than the first week of November 2015;
2. Information on any final rule adopted by the environmental protection agency under docket EPA-HQ-OAR-2013-0602 no later than February 1, 2016; and
3. Any information requested by the chairperson.

The state corporation commission shall submit information to the clean power plan implementation study committee concerning:

1. Each utility's re-dispatch options along with the cost of each option;
2. The lowest possible cost re-dispatch options on a state-wide basis;

And

3. The impact of each re-dispatch option on the reliability of Kansas' integrated electric systems.

E. Agreed-Upon Timeline

KDHE and KCC will jointly develop and agree to individual agency deadlines. The purpose of the agreed upon timeline is to establish the sequence of the individual steps required by each agency to complete a State Plan and establish a deadline for each step such that a State Plan is completed within the deadline(s) established by EPA. Each agency will make its best efforts to meet each established deadline. Should an agency determine that it may not meet an established deadline; the agency shall communicate such to the other agency as soon as possible so that both agencies can jointly determine how to complete the State Plan within EPA's deadline. HB 2233 directs the secretary of KDHE to submit the State Plan in a timely manner.

IV. Effect of a Stay

If a stay is granted by a court of competent jurisdiction delaying implementation of the Clean Power Plan, the agencies will continue work but KDHE will not submit a State Plan until the stay is resolved and the plan becomes due.

V. Substantive Considerations

HB 2233 states as follows:

Because the environmental protection agency's approach to setting a carbon dioxide emission standard crosses jurisdictional authorities, and due to the complexity of re-dispatching the integrated electric system in the state of Kansas while maintaining reliable electric service and reasonable electric rates for ratepayers, both the Kansas department of health and environment and the state corporation commission will need to provide their respective expertise in order to efficiently and effectively develop a cost-effective and reliable compliance plan.

To solicit each agency's expertise, the legislature has tasked each agency with certain responsibilities and areas of study.

KDHE is explicitly granted authority to develop and submit a state plan for compliance with the EPA's Clean Power Plan subject to the following guidance:

1. Ensure that the state plan minimizes the regulatory burden on affected units;
2. Ensure that a comprehensive state plan is submitted on time and that the state of Kansas is not subjected to a federal plan under this Rule;
3. Review and consider the KCC order and technical and other expertise in crafting regulations in the best interest of the state of Kansas.

As stated above, the KCC's investigation will identify and recommend one or more compliance options that will maintain sufficient and efficient service at just and reasonable rates. To accomplish this objective, HB 2233 more specifically tasks the KCC with studying and identifying the following items:

1. Each utility's re-dispatch options along with the cost of each option;

2. The lowest possible cost re-dispatch options on a state-wide basis; and
3. The impact of each re-dispatch option on the reliability of Kansas' integrated electric systems.

Further, the agencies will support each other by providing technical expertise on request when circumstances require such assistance.

VI. Term

This MOU shall be in effect from the date of execution by both parties and remain in full force until such time as (1) it is nullified by written agreement of both agencies; (2) KDHE submits and EPA approves the State Plan and the Agencies agree to terminate the MOU; or (3) the Rule is vacated by a court of competent jurisdiction.

This agreement may be modified upon request by either party and after both parties mutually agree to new terms.

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT



Susan Mosier, MD
Secretary

6/29/15

Date

KANSAS CORPORATION COMMISSION



Shari Feist Albrecht
Chair

7/14/15

Date



Jay Scott Emler
Commissioner

7/14/15

Date



Pat Apple
Commissioner

7/14/15

Date