

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Shari Feist Albrecht, Chair
 Jay Scott Emler
 Pat Apple

In the Matter of the General Investigation)
to Examine the Effect of Kansas Senate) Docket No. 16-GIME-258-GIE
Bill No. 91 Regarding Renewable Energy)
Standards.)

ORDER OPENING DOCKET

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (“Commission”) for consideration and decision. Having reviewed its files and records and being duly advised in the premises, the Commission makes the following findings:

I. BACKGROUND

1. On May 22, 2009, the Renewable Energy Standards Act (RESA), part of Kansas House Bill 2369, became law. It established a renewable energy standard for the state. RESA authorized and required the Commission to formulate regulations relevant to the established renewable energy standard.

2. On May 28, 2015, Kansas Senate Bill No. 91 (SB 91) was signed into law. SB 91 repeals and amends sections of RESA which, in turn, affects the Commission’s regulations that were authorized and required by RESA.

3. On December 11, 2015, Commission Staff (Staff) filed a Motion to Open Docket along with Staff’s Report and Recommendation requesting the Commission open a general investigation docket to allow Staff to evaluate the impact of SB 91 upon the Commission’s rules and regulations. Specifically, Staff recommended the Commission direct Staff to investigate the

impact of SB 91 on the Commission regulations and then file a subsequent Report and Recommendation that advises on that impact and outlines Staff's recommended course of action. Staff's Report and Recommendation is attached hereto and is hereby incorporated by reference.

II. FINDINGS AND CONCLUSIONS

4. Upon review of Staff's Report and Recommendation, the Commission adopts Staff's Report and Recommendation and finds that a non-KAPA¹ general investigation evaluating the impact of SB 91 upon the Commission's rules and regulations should be opened.

5. Procedural Schedule. The Rules and Regulations Filing Act² shall govern the procedure for any amendments to existing regulations or the promulgation of a new regulation or regulations. This docket will facilitate Staff's investigation of the impact of SB 91 on the Commission's rules and regulations. Further, it will function as a repository for information relevant to Staff's investigation, including comments and Staff's subsequent Report and Recommendation, and will keep the public informed and updated on the issues investigated in this docket. Staff shall submit its subsequent Report and Recommendation outlining its recommended course of action no later than February 15, 2016. If the Commission proceeds with authorizing proposed changes to its rules and regulations, this docket shall remain open to serve as a repository for comments received pursuant to the Rules and Regulations Filing Act, as well as to keep the general public informed of the progress of the proposed rules and regulations.

6. Intervention. Any interested person may petition the Commission to participate in this docket as a party. Parties granted intervention will be placed on the official service list, and shall be limited to making written comments filed in this docket. All persons wishing to participate in this docket as a party must file a petition for intervention no later than January 29,

¹ Kansas Administrative Procedures Act, K.S.A. 77-501 through 77-566.

² K.S.A. 77-415 through 77-438.

2016. If the Commission proceeds with authorizing proposed changes to its rules and regulations, the general public will not need to petition the Commission for intervention, but may offer comments either orally or in writing in accordance with the Rules and Regulations Filing Act.

7. Discovery. Due to the nature of this investigation, discovery is not necessary and therefore will not be used in this investigation. No party granted intervention in this investigation will be granted discovery rights.

8. Comments. Any party granted intervention in this docket may file comments in response to Staff's subsequent Report and Recommendation until 15 days following Staff's subsequent Report and Recommendation advising on the impact of SB 91 and recommending a course of action. If Staff's subsequent Report and Recommendation proposes amendments to existing regulations or the promulgation of a new regulation or regulations, comments will be accepted from the parties as well as the general public. Parties and the general public will receive an additional 60-day notice and public comment period in accordance with K.S.A. 77-421.

9. Hearing. Upon recommendation from Staff that amendments to the Commission's Rules and Regulations are necessary, or a new regulation or regulations should be promulgated, a public hearing shall be held in accordance with the provisions of the Rules and Regulations Filing Act. If Staff's subsequent Report and Recommendation advises no change to the Commission's Rules and Regulations are necessary, there shall be no hearing in this docket.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

- A. A general investigation docket shall be opened to evaluate the impact of SB 91 upon the Commission's rules and regulations.
- B. Staff is directed to file a subsequent Report and Recommendation that advises on the impact of SB 91 and outlines Staff's recommended course of action.
- C. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Apple, Commissioner

Dated: JAN 05 2016



Amy L. Green
Secretary to the Commission

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**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

TO: Chair Shari Feist Albrecht
Commissioner Jay Scott Emler
Commissioner Pat Apple

FROM: Josh Frantz, Research Economist
Lana Ellis, Economics and Rates Deputy Chief
Robert Glass, Economics and Rates Chief
Jeff McClanahan, Director of Utilities

DATE: November 19, 2015

SUBJECT: Request to Open a General Investigation to Examine the Effect of Kansas Senate Bill No. 91 Regarding Renewable Energy Standards

EXECUTIVE SUMMARY:

The Renewable Energy Standards Act (RESA), part of Kansas House Bill 2369 which became law on May 22, 2009, established a renewable energy standard for the state. RESA authorized and required the Commission to formulate regulations in regards to the established renewable energy standard. Kansas Senate Bill No. 91 (SB 91), which was signed into law May 28, 2015, repeals and amends sections of RESA which, in turn, affects the Commission's regulations that were authorized and required by RESA. Therefore, Staff recommends the Commission order the opening of a general investigation to examine the effect of SB 91 upon the Commission's rules and regulations regarding renewable energy standards and determine a course of action in response to the changes caused by SB 91.

BACKGROUND:

RESA was part of Kansas House Bill 2369, which became law on May 22, 2009.¹ The Kansas legislature declared that it is in the public interest to promote renewable energy development; thus, RESA established a renewable energy standard for the state. RESA authorized and required the Commission to formulate regulations in regards to the established renewable energy standard. SB 91 was signed into law May 28, 2015. Under SB 91, certain sections of RESA were repealed effective July 1, 2015, and certain sections will be repealed effective January 1, 2016.²

¹ K.S.A. 2014 Supp. 66-1256, *et seq.*

² Pursuant to §§ 8 and 9 of SB 91, K.S.A. 2014 Supp. 66-1259, 66-1260, 66-1261, and 66-1262 were repealed July 1, 2015. K.S.A. 2014 Supp. 66-1256, 66-1257, and 66-1258 will be repealed January 1, 2016. Further, K.S.A. 2014 Supp. 66-1256, 66-1257, and 66-1259 are also amended effective the date they are repealed.

ANALYSIS:

Prior to the passage of SB 91, RESA either specifically authorized or required the Commission to formulate the following regulations:

- Establish a portfolio requirement for all affected utilities to generate or purchase electricity generated from renewable energy resources or purchase renewable energy credits;³
- Establish rules for the administration of RESA, including reporting and enforcement mechanisms;⁴ and
- Establish rules for administration of a certification process for use of renewable energy resources.⁵

Each of the sections requiring the rules and regulations described above were repealed with the passage of SB 91, including the section regarding the annual reporting requirement. However, the Commission is still required to allow recovery of reasonable costs incurred to meet the renewable energy resource goal or past RESA requirements.⁶ Also, SB 91 states that all rules and regulations and Orders relating to recovery of such costs shall continue to be effective.

Because of these statutory changes, the Commission will need to reevaluate its rules and regulations regarding renewable energy standards.⁷ Therefore, Staff recommends a general investigation be opened to analyze the effects of SB 91 upon the Commission's rules and regulations for renewable energy standards and to determine a course of action in response to the changes authorized by SB 91.

RECOMMENDATION:

Because SB 91 amends and repeals sections of RESA that directly affect the Commission's regulatory policy, Staff recommends the Commission order the opening of a general investigation that will evaluate SB 91's impact upon the Commission's rules and regulations. Specifically, Staff recommends the Commission direct Staff to investigate the impact of SB 91 on the Commission regulations and then file a Report and Recommendation that advises on that impact and outlines Staff's recommended course of action.

³ K.S.A. 2014 Supp. 66-1258(a).

⁴ K.S.A. 2014 Supp. 66-1261.

⁵ K.S.A. 2014 Supp. 66-1262.

⁶ SB 91, § 3, Amended K.S.A. 2014 Supp. 66-1259.

⁷ Regulations promulgated in response to RESA are found at K.A.R. 82-16-1 through 82-16-5.

CERTIFICATE OF SERVICE

16-GIME-258-GIE

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of
JAN 05 2016
first class mail/hand delivered on _____.

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/S/ DeeAnn Shupe

DeeAnn Shupe