

**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)
regarding the U.S. Environmental Protection)
Agency's Final Rule on Carbon Pollution) Docket No. 16-GIME-242-GIE
Emission Guidelines for Existing Stationary)
Sources: Electric Utility Generating Units.)

ORDER OPENING GENERAL INVESTIGATION

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission and KCC) 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. Commission Staff (Staff) has submitted a Report and Recommendation (R&R) recommending the Commission open a general investigation regarding the U.S. Environmental Protection Agency's (EPA's) Final Rule on Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units (Clean Power Plan).¹ As identified in Staff's R&R, the goal of such docket would be to identify viable least-cost compliance options that maintain reliable electric service by conducting a comprehensive review of generation re-dispatch options. Staff's R&R, dated October 26, 2015, is attached hereto and made a part hereof by reference.

2. In its R&R, Staff notes that the 2015 Kansas Legislature enacted HB 2233 as an amendment to K.S.A. 2014 Supp. 65-3031. Under this legislation, the Commission is required to

¹ Staff Report & Recommendation, October 26, 2015, p. 2. (Staff R&R, p. 1.)

develop and provide the following information to the legislature's Clean Power Plan Implementation Study Committee:

- Each utility's re-dispatch options along with the cost of each option;
- The lowest possible cost re-dispatch options on a state-wide basis; and
- The impacts of each re-dispatch option on the reliability of Kansas' integrated electric systems.²

3. To study and identify the information requested above, Staff will engage a consulting firm, with the necessary experience and modeling programs to run re-dispatch and power flow models, as outlined in Staff's R&R.³ Staff further notes that a general investigation docket will help facilitate such analysis.⁴

4. Finally, aside from opening this investigation, Staff recommends the Commission include a number of specific procedural items in this initial order. Staff recommends the Commission take the following actions:

- Open the general investigation;
- Establish a procedure that allows interested parties an opportunity to participate, comment, and provide relevant data in the general investigation;
- Appoint a Prehearing Officer;
- Issue standard Discovery and Protective Orders, which will allow Staff and its Consultant to obtain necessary data from participating utilities;
- Require Staff and its Consultant, with input from all stakeholders, to provide an initial timeline of the steps involved in the KCC's evaluation of re-dispatch options and reliability;
- Require the Utilities Division and the Public Affairs and Consumer Protection Division to coordinate on the submittal and tracking of public comments; and
- Provide guidance to all parties regarding what educational format and questions the Commissioners would like addressed within this General Investigation.

² K.S.A. 65-3031(e)(2).

³ Staff R&R, pp. 4-7.

⁴ Staff R&R, p. 2.

II. Findings and Conclusions

5. The Commission agrees with Staff's recommendation to open a general investigation of the EPA's Clean Power Plan. The Commission finds that to adequately advise the legislature vast amounts of data must be gathered and analyzed in a relatively short time period. Furthermore, the Commission finds that though it is statutorily obligated to provide the required information to the legislature its report will not directly determine the legal rights, duties, privileges, immunities or other legal interests of any specific person. Therefore, the Commission finds that a non-KAPA general investigation docket provides an appropriate forum to develop such information.⁵ To ensure an organized procedure that is accessible both to the public and parties, the Commission will hold educational sessions, convene legislative-style hearings, and allow the public and parties to submit comments. Staff and its Consultant, with input from all parties, shall submit an initial timeline of the steps involved in the KCC's evaluation of re-dispatch options and reliability by January 30, 2016. The Commission shall then utilize that initial timeline to issue a scheduling order setting a time and place for the educational sessions and legislative-style hearings.

a. Comments

6. The Commission will accept Comments and supporting documentation from both parties and the general public. The written comment period will run from the opening of this docket until the day of the final hearing. Interested stakeholders wishing to be considered parties must note their participation in the docket by following the intervention guidelines below and must file their comments in the docket. Members of the general public wishing to submit a comment may:

⁵ K.S.A 66-101d (For the purposes of this docket hearings shall not be conducted in accordance with the provisions of the Kansas Administrative Procedure Act).

1) Go to the Commission's website: www.kcc.ks.gov to submit a comment. Click on the link under *Your Opinion Matters*.

2) Send a written letter to the Kansas Corporation Commission, Office of Public Affairs and Consumer Protection, 1500 SW Arrowhead Road, Topeka, Kansas 66604. Be sure to reference Docket No. 16-GIME-242-GIE.

3) Call the Commission's Public Affairs office at 1-800-662-0027 or (785) 271-3140.

b. Educational sessions

7. The Commission will hold a special educational session where it will invite representatives from Staff, the Kansas Department of Health and Environment, and the Attorney General's Office to offer presentations on issues relevant to the Commission's investigation. The educational session will be held in the First Floor Hearing Room of the Commission's Offices located at 1500 SW Arrowhead Road, Topeka, Kansas 66604. The educational session will begin immediately following the Commission's regularly scheduled January 12, 2016, Commission Meeting and will be open to the public. Accordingly, presenters will refrain from including confidential information in their presentations. The Commission, at its discretion, may hold additional special educational sessions and will provide notice for such meetings.

c. Hearings

8. The Commission shall hold multiple legislative style hearings to allow parties an opportunity to present oral comments in support of their positions. The Commission will also hold a specific hearing to allow the general public to make oral comments. The Commission will provide additional guidance regarding the format of these proceedings in a future order.

d. Intervention

9. An interested person may petition the Commission to participate in this docket and to be placed on the official service list. Petitions for intervention should be filed by January 30, 2016, but petitions filed after that date will be considered. Parties granted intervention shall be limited to making written and oral comments and inclusion on the service list, which will assure receipt of copies of comments and other pleadings deemed non-confidential. Parties granted intervention will not be granted the right to issue discovery but will be able to review the non-confidential responses to Staff's data requests.⁶

III. Order Designating Prehearing Officer

10. The Commission may designate a prehearing officer to conduct prehearing conferences to address any matters appropriately considered in a prehearing conference. Accordingly, the Commission designates Samuel Feather, Deputy General Counsel, 1500 SW Arrowhead Road, Topeka, KS 66604, whose telephone number and email address are (785) 271-3240, and s.feather@kcc.ks.gov, to serve as Prehearing Officer in this proceeding. The Commission may designate other staff members to serve in this capacity.

IV. Discovery Order

11. The Commission finds that formalizing discovery procedures and clarifying the obligations of the parties will help ensure a full and efficient investigation of the issues in this docket. This Discovery Order will govern the conduct of discovery until further order of the Commission. Parties may request modified or additional discovery procedures or may request that the Commission schedule a discovery pre-hearing conference.

⁶ The Commission recognizes that the Kansas Department of Health and Environment (KDHE) has a vested interest in the outcome of this investigation and may seek to participate at its discretion. In the event that KDHE seeks to participate it shall be treated the same as Commission Staff with the exception that KDHE Staff shall be required to read the protective order found below and sign and file the non-disclosure agreement attached hereto.

12. General procedures. Discovery in this General Investigation is limited to matters that are “clearly relevant”⁷ and because of the legislative nature of the inquiry, discovery rights are granted only to Staff at this time. After a docket is opened, Staff may serve upon any jurisdictional utility written discovery or data requests.⁸ These data requests shall identify with reasonable particularity the information or documents sought. Data requests must be designed to elicit material facts within the knowledge of the parties. Data requests that require conclusions of law or answers to hypothetical questions are generally not permitted. Cross-examination through the use of data requests is not appropriate. Data requests and responses may be served by facsimile transmittal or electronic mail if agreed to by the parties. Data requests that are sent by a party after 3:00 p.m. shall be deemed to have been received the following business day.

13. Data Request Responses. Responses to Staff data requests are due within seven days.⁹ In computing the period of time for responding, the day on which the data request was issued is not counted. Staff may agree to extensions or reductions of time in which to respond or object to a data request. Responses to data requests shall be verified and shall identify the person(s) who actually prepared the response and can answer additional questions relating to the response. Each data request shall be answered separately and preceded by the request to which the answer pertains. Responses shall be clearly identified and, if consisting of several pages, shall be labeled and organized in a manner that makes review of the pages convenient. Parties are under a continuing duty to supplement their discovery responses upon learning that the information disclosed is incomplete or incorrect in any material respect. If a response to a data

⁷ K.A.R. 82-1-234a(a).

⁸ Nothing herein shall prohibit Staff from requesting or considering data provided from a non-jurisdictional utility that seeks to participate with the Commission’s investigation.

⁹ Per K.A.R. 82-1-217, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday.”

request requires the duplication of voluminous material or of material that is not easily copied because of its binding or size, a party may not require that Commission Staff review the voluminous material on its own premises. Responses to data requests shall be served upon the service list and filed into the docket, unless a party designates data included as confidential.

14. Objections to Data Requests. If a party objects to answering a particular data request and the parties have agreed to electronic service, the answering party shall object in writing to Staff within five days of the data request.¹⁰ If a party objects to answering a particular data request and the parties have not agreed to electronic service, the answering party shall object in writing to Staff within five working days after service, plus three days if service is by mail. The written objection shall specifically explain all grounds relied upon for objecting to each data request. Any objections not made as set forth above shall be considered waived. If an objection pertains only to part of a question, that part shall be clearly identified and the responding party shall provide any non-objectionable information covered by the remainder of the data request. Parties shall negotiate in good faith to resolve discovery disputes. If resolution is not possible, the Staff may file a motion to compel with the Commission. Motions to compel must have the data request and response at issue attached. Motions to compel are required to be served by hand delivery, facsimile, or next-day delivery service. Responses to motions to compel are to be filed within three days after the motion is received, not counting intermediate Sundays, or legal holidays. The Commission may act immediately on motions to compel if necessitated by time constraints or the procedural schedule in the docket.

15. Limitations on Discovery. The Commission may limit discovery to protect a party against unreasonable, cumulative, or duplicative discovery requests; to prevent undue delay in

¹⁰ Per K.A.R. 82-1-217, the designated time begins to run the day after service. When the period of time prescribed or allowed is less than seven days, intermediate Sundays and holidays shall be excluded in the computation. A legal holiday includes any day designated as a holiday by either the United States Congress or the Kansas Legislature.

the proceeding; to avoid unnecessary burden, expense, or harassment; or to otherwise maintain the orderly and efficient progress of the proceeding. Discovery is limited to Staff and Staff's consultants and experts.

16. Sanctions. A motion for sanctions for discovery violations may be filed at any time during the proceeding or may be initiated by the Commission. A motion is to contain sufficient factual allegations to detail the violation and must specify the relief requested. Motions for sanctions are required to be served by hand delivery, facsimile, or next-day delivery service. Responses to motions for sanctions are to be filed within 10 days, not counting Saturdays, Sundays, or legal holidays.

- a. The Commission will consider any relevant factors when reviewing a motion for sanctions, including whether discovery has been conducted in bad faith or for an improper purpose such as causing unnecessary delay or needless increase in the cost of the proceeding; whether the discovery process has been abused in seeking or resisting discovery; and whether parties have failed to obey Commission Orders.
- b. Sanctions imposed by the Commission may include limiting or disallowing further discovery; holding that designated facts be deemed admitted for purposes of the proceeding; refusing to allow a party to support or oppose a claim or defense or prohibiting the party from introducing designated matters in evidence; disallowing in whole or in part requests for relief by the offending party and excluding evidence in support of such requests; striking pleadings or testimony; staying further proceedings until an order is obeyed; disallowing a party's participation in the proceeding; dismissing the application or filing with or without prejudice; requiring the offending party to pay the reasonable expenses, including attorney's fees, incurred by other parties because of the sanctionable behavior; and imposing any other sanction or remedy available to the Commission by law.

V. Protective Order

17. K.S.A. 66-1220a and K.A.R. 82-1-221a set forth requirements for the designation and treatment of information deemed confidential in Commission proceedings. The Commission

finds it appropriate to issue this Protective Order to establish procedures relating to confidential data and information.

18. K.S.A. 66-1220a limits disclosure of trade secrets or confidential commercial information of regulated utilities.¹¹ Under K.S.A. 66-1220a(a)(4), the Commission is to consider alternatives to disclosure that will serve the public interest and protect the regulated entity. This Protective Order provides an interim procedure under K.S.A. 66-1220a(a)(4) to facilitate the prompt and orderly conduct of this case. This Protective Order will govern the treatment and handling of confidential information until further order of the Commission.

19. A party may designate as confidential any information that it believes, in good faith, to be a trade secret or other confidential commercial information. The party designating the information as confidential must provide a written statement of the specific grounds for the designation at the time the designation is made.¹² The party claiming confidentiality has the burden of proving the confidential status of the information. Designating information as confidential does not establish that the information will not be subject to disclosure after review by the Commission.¹³

20. This Protective Order applies to all parties in this proceeding, unless specifically stated otherwise. The provisions of the Protective Order apply to Staff, except that Staff is not required to sign nondisclosure certificates¹⁴ or view voluminous materials on site and is not required to return or destroy confidential information upon request at the conclusion of a proceeding. Outside experts and consultants used by Staff shall have access to information and

¹¹ Non-regulated utilities seeking to participate in the Commission's investigation may also mark data and information confidential. Data and information so marked will not be disclosed to anyone other than Staff, Staff's outside experts and consultants unless written authority is provided by the non-regulated utility.

¹² K.A.R. 82-1-221a(a)(5).

¹³ See K.S.A. 66-1220a.

¹⁴ Non-regulated utilities providing confidential information may require Staff to sign the non-disclosure certificate attached below.

voluminous materials on the same basis as Staff, except that outside Staff experts and consultants are required to read this Protective Order and to sign the nondisclosure certificates as contained in Appendix A.

21. The following definitions shall apply:

Information: “Information” refers to all documents, data, including electronic data, studies and other materials furnished pursuant to requests for information or other modes of discovery, or any other information or documents that are otherwise a part of the Commission record.

Confidential Information: “Confidential information” refers to information which, if disclosed, would likely result in harm to a party’s economic or competitive interests or which would result in harm to the public interest, generally, and which is not otherwise available from public sources. “Confidential information” may include, but is not limited to: (1) material or documents that contain information relating directly to specific customers; (2) employee-sensitive information; (3) marketing analyses or other market-specific information relating to services offered in competition with others; (4) reports, work papers or other documentation related to work produced by internal or external auditors or consultants; (5) strategies employed, to be employed, or under consideration; (6) contract negotiations; and, (7) information concerning trade secrets, as well as private technical, financial, and business information.

22. A party designating information as confidential shall make the confidential information available only to Staff, outside Staff experts and consultants under the restrictions in this Protective Order, if such disclosure is not otherwise privileged or objectionable on other evidentiary grounds. Disclosure of confidential information shall be made to Commission Staff attorneys of record and to authorized representatives, including Staff’s outside experts and consultants. The nondisclosure certificate shall contain the signatory’s name, permanent address, title or position, date signed, and an affirmation that the signer is acting on behalf Commission Staff in this proceeding. The nondisclosure certificate shall be filed in the docket.

23. A party may designate written comments and supporting documents as confidential pursuant to this Protective Order. The specific grounds for the confidential designation shall be stated in writing at the time the designation is made or the testimony filed. Any party obtaining confidential information may use or refer to such information in written or oral comments provided that the confidentiality is maintained, unless otherwise ordered by the Commission.

24. If information that a party intends to use in this proceeding or that would be disclosed in response to a data request contains confidential information obtained from a source outside of this proceeding, the party intending to use or provide the confidential information must notify the original source which claimed confidential status to allow that entity to decide whether to claim confidentiality in this proceeding.

25. When prefiled comments or exhibits include confidential information, the parties are to follow these procedures:

- a. File seven copies of the complete document, including all confidential information. The cover is to clearly state "CONFIDENTIAL VERSION." Confidential pages shall be stamped "CONFIDENTIAL," and the specific confidential information shall be identified by being underlined.
- b. File one copy with the confidential portions redacted, for use as a public document. The cover is to clearly state "PUBLIC VERSION."
- c. File one copy of the pages that contain confidential information in a separate envelope marked "CONFIDENTIAL." This filing will be maintained in the docket room file under seal. If there are multiple pages with confidential information and it is impracticable to separate the pages with the confidential information, the party may file instead one copy of the entire document that is stamped "CONFIDENTIAL."

26. Comments containing Confidential information may be offered or subject to Commissioners' questions at hearings. Confidential information that is filed into the docket will

be kept under seal. Confidential information shall be discussed only after the hearing is closed to all persons except the Commission, its Staff, court reporters, attorneys of record and individuals to whom the designated information is available under the terms of this Protective Order. Parties shall make every effort at hearings to answer Commission questions in such a way as to preserve the confidentiality of the information without the need to close the hearing. The transcript of live testimony or oral argument disclosing confidential information shall be kept under seal and copies provided only to persons entitled to access to confidential information. Commission Staff, their consultants or experts shall not disclose or provide copies of the contents of such transcripts to anyone other than those who may have access to the designated information under the terms of this Protective Order.

27. If a party disagrees with a claim that information is confidential or should not be disclosed, the parties shall first attempt to resolve the dispute on an informal basis. If the parties cannot resolve the dispute informally, the party contesting the confidential treatment may file a motion with the Commission. Staff should also be prepared to challenge a confidential designation when Staff believes that the information does not meet the definition of confidential information. When a dispute concerning the confidentiality is brought before the Commission, the Commission will review the matter to determine (1) if the party claiming confidentiality has met its burden of establishing the confidential designation is proper, and (2) whether disclosure is warranted under K.S.A. 66-1220a. The contested information shall not be disclosed pending the Commission's ruling.

28. All persons who are afforded access to confidential information under the terms of this Protective Order shall neither use nor disclose such information for purposes of business or competition or any other purpose other than the purpose of preparation for and litigation of

this proceeding. During the course of this proceeding, parties shall keep confidential information secure in accordance with the purposes and intent of this order. At the conclusion of this proceeding, including judicial review, a party claiming that information was confidential may require that other persons in possession of its confidential information return or destroy all such confidential information and all notes, tapes, documents, and any other medium containing, summarizing, or otherwise embodying such confidential information. If the party claiming confidentiality requests destruction, the person destroying the information shall certify its destruction. Counsel shall be entitled to retain memoranda or pleadings including or embodying confidential information to the extent reasonably necessary to preserve a file on this proceeding.

VI. ASSESSMENT ORDER

29. Pursuant to K.S.A. 66-1502, the Commission finds that expenses reasonably attributable to this investigation will exceed \$100 and hereby assesses the expenses against all jurisdictional electric utilities. These expenses shall be assessed beginning three business days after the Commission gives the utilities notice of the assessment through service of this Order by United States Mail. These public utilities are hereby notified that they have an opportunity to request a hearing on this assessment in accordance with the provisions of the Kansas Administrative Procedure Act, K.S.A. 77-501 *et. seq.*

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. A general investigation docket shall be opened to investigate the EPA's Clean Power Plan, pursuant to the provisions of K.S.A. 2015 Supp. 65-3031.

B. Samuel Feather is designated as Prehearing Officer in this proceeding.

C. The Protective and Discovery orders, as provided herein, shall apply to this general investigation docket.

D. The Assessment order, as provided herein, shall apply to this general investigation docket.

E. Staff and its Consultant, with input from all parties, shall submit an initial timeline of the steps involved in the Commission's evaluation of re-dispatch options and reliability by January 30, 2016.


F. The Commission's Utilities Division and the Public Affairs and Consumer Protection Division shall coordinate on the submittal and tracking of any public comments related to this proceeding and the EPA's Clean Power Plan, in general.

G. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further order, or orders, as it may deem necessary and proper.

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Apple, Commissioner

Dated: DEC 03 2015



Amy L. Green
Secretary to the Commission

APPENDIX A

DOCKET NO. 16-GIME-242-GIE
THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

NONDISCLOSURE CERTIFICATE

I, _____, have been presented with a copy of the Protective Order issued in Docket No. 16-GIME-242-GIE.

I have requested review of confidential information produced in the above-mentioned docket on behalf of _____.

I hereby certify that I have read the above-mentioned Protective Order and agree to abide by its terms and conditions.

Dated this _____ day of _____, 20 .

Printed Name and Title

Signature

Party/Employer

Address (City, State and Zip)

Telephone

Facsimile

**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

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

FROM: Lana Ellis, Deputy Chief of Economics and Rates
Bob Glass, Chief of Economics and Rates
Jeff McClanahan, Director Utilities Division

DATE: October 26, 2015

SUBJECT: Request to Open a General Investigation into the *U.S. Environmental Protection Agency's Final Rule on Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units*

EXECUTIVE SUMMARY:

On August 3, 2015, the United States Environmental Protection Agency (EPA) made public its final rule on *Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units* (Clean Power Plan or CPP). This final rule is effective 60 days after publication in the Federal Register. The EPA is expected to publish the rule in the Federal Register in late October, which would establish an effective date of late December 2015.

The EPA's summary of the Clean Power Plan describes the intent of the rule as follows:

In this action, the Environmental Protection Agency (EPA) is establishing final emission guidelines for states to follow in developing plans to reduce greenhouse gas (GHG) emissions from existing fossil fuel-fired electric generating units (EGUs). Specifically, the EPA is establishing: 1) carbon dioxide (CO₂) emission performance rates representing the best system of emission reduction (BSER) for two subcategories of existing fossil fuel-fired EGUs – fossil fuel-fired electric utility steam generating units and stationary combustion turbines, 2) state-specific CO₂ goals reflecting the CO₂ emission performance rates, and 3) guidelines for the development, submittal and implementation of state plans that establish emission standards or other measures to implement the CO₂ emission performance rates, which may be accomplished by meeting the state goals. This final rule will continue progress already underway in the U.S. to reduce CO₂ emissions from the utility power sector.¹

¹ The final rule is not yet published in the Federal Register. However, it can be accessed on the EPA's website at: <http://www3.epa.gov/airquality/cpp/cpp-final-rule.pdf>.

Because the EPA's approach to setting a carbon emission standard requires re-dispatch of a state's generation resources, the EPA has created a rule that overlaps the jurisdictional authorities of the Kansas Department of Health and Environment (KDHE) and the Kansas Corporation Commission (KCC). In order to reconcile the respective jurisdictional authorities of the KDHE and the KCC and employ each agency's respective expertise, the KCC introduced legislation during the 2015 Legislative Session. HB 2233², enacted by the 2015 Kansas Legislature as an amendment to K.S.A. 2014 Supp. 65-3031, instructs KDHE and the KCC to enter into a memorandum of understanding (MOU)³ concerning implementation of the requirements and responsibilities under the Kansas Air Quality Act and, specifically, to minimize the impact to utility rate payers. HB 2233 also outlines explicit criteria KDHE and KCC must use to establish the standards of performance for carbon emissions.

In order to accomplish the statutory requirements contained within HB 2233, Staff recommends opening a General Investigation Docket to conduct 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 viable least-cost compliance options that maintain reliable electric service. The KCC's General Investigation Docket will be an open proceeding in which affected parties may petition to intervene and submit comments. The KCC will directly contact and encourage all affected non-jurisdictional utilities to intervene and participate in the KCC's investigation.⁴ Per the terms of the MOU entered into between KDHE and the KCC, KDHE will participate in the KCC's investigation and will provide the carbon emission standard that will establish the re-dispatch goal for CPP compliance. Upon the conclusion of its investigation, the KCC will issue an Order identifying and recommending one or more compliance options that will ensure reliable electric service at just and reasonable rates.

BACKGROUND:

Beginning in late 2013, the KDHE and the KCC began discussions regarding the possible technical details of EPA's proposed carbon reduction plan scheduled for publication in June of 2014. During these discussions, it became apparent that the EPA's proposed rule would require the expertise of both agencies. As a consequence, KDHE and KCC continued to have a number of meetings in order to coordinate each Agency's role and discuss potential comments to EPA once the carbon reduction plan was issued in June of 2014.

Once EPA's proposed rule was issued in June of 2014, KDHE and KCC continued to meet and discuss the proposed rule. The proposed rule set a carbon emission limit for each state and set out four "building blocks" that, when combined, constituted the EPA's "best system of emission reduction" (BSER). The building blocks in the proposed rule were:

² HB 2233 is attached as Exhibit 1.

³ The MOU between KDHE and KCC is attached as Exhibit 2.

⁴ Kansas City Board of Public Utilities, Sunflower Electric, Mid-Kansas Electric, Coffeyville Municipal System, and Winfield Municipal System.

1. Heat rate improvements on affected coal units.
2. Increased use of natural gas-fired combined cycle plants.
3. Increased use of renewable generation.
4. Increased use of demand-side management and energy efficiency.

The KCC quickly identified that the EPA's prescribed use of the four building blocks would require the re-dispatch of Kansas' affected EGUs to natural gas combined cycle, renewable generation, and demand-side management and energy efficiency.

As a result of the KDHE's and the KCC's discussions of the proposed plan, it was mutually agreed that each agency would file separate comments focused on the respective expertise of each agency. As a result, the KCC Staff filed comments on its concerns regarding jurisdictional authority, cost, and reliability.⁵

Because the EPA's proposed rule primarily relied on the re-dispatch of generation resources, KCC Staff determined that, to ensure reliable and affordable electric service, the Commission needed to be directly involved in formulation of a State Plan to implement the proposed carbon reduction plan. As noted above, in order to reconcile the respective jurisdictional authorities of the KDHE and the KCC and employ each agency's respective expertise, the KCC introduced legislation during the 2015 legislative session. The Commission worked directly with KDHE and the affected utilities to develop and modify HB 2233⁶. HB 2233 was enacted by the 2015 Kansas Legislature as an amendment to K.S.A. 2014 Supp. 65-3031. HB 2233 requires a MOU between the KDHE and the KCC. The statute also defines the KCC's role in developing a State Plan as follows:

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

- Each utility's re-dispatch options along with the cost of each option;
- The lowest possible cost re-dispatch options on a state-wide basis; and
- The impacts of each re-dispatch option on the reliability of Kansas' integrated electric systems.

On August 3, 2015, the EPA issued its final rule titled *Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generation Units*. This final rule is still referred to as the Clean Power Plan or CPP.⁷ An overview of the significant changes between the proposed CPP and the final CPP is attached as Exhibit 1. One of the

⁵ Staff's "Comments of the Staff of the Kansas Corporation Commission on the Proposed Clean Power Plan" filed with the EPA on October 29, 2014, were filed in Docket No. 13-GIMX-150-GIV on October 30, 2014.

⁶ HB 2233 is attached.

⁷ See attached Exhibit 1, which provides an overview of the significant changes between the proposed CPP and the final CPP.

more important changes is that the timeline for submitting a State Plan has expanded. The final rule requires a State Plan be filed by September 6, 2016, or states may request a two-year extension of the plan submission deadline until September 6, 2018. Any extension request must be submitted by September 6, 2016, and the request must contain the following:

- Identify a final plan approach or approaches that are under consideration;
- Provide an explanation for why the state needs additional time to complete a final plan; and
- Include a demonstration of how the state has been engaging with the public and will engage with community stakeholders during the additional time for development of a final plan.

States whose extension requests are granted are required to submit an update by September 6, 2017, and submit a final state plan by September 6, 2018.

While all stakeholders are still in the process of reviewing the many changes to the proposed rule, the KCC is obligated under HB 2233 to study the re-dispatch options, cost of the options, and potential impacts on reliability.

ANALYSIS:

As discussed earlier, HB 2233 requires the Commission to determine the lowest cost re-dispatch option(s) for each utility, as well as on a state-wide basis to achieve compliance with the CPP. HB 2233 also requires the Commission to determine the impact of each re-dispatch option on the reliability of Kansas' integrated electric systems. In order to fully evaluate the re-dispatch options available to Kansas and determine the impact of each re-dispatch option, Staff has issued a Request for Proposal (RFP) to engage a consulting firm with the necessary experience and modeling programs to run re-dispatch and power flow models. To issue the RFP, Staff outlined the scope of work that we anticipate will be needed in order to accomplish the Commission's directives under HB 2233. Noted below is the scope of work contained within the RFP.

Preliminary Work: Identification and Definition of Compliance Requirements Included in EPA's Final CPP

1. KDHE, KCC, and Consultant will evaluate EPA's final CPP and identify and define all compliance requirements applicable to the State of Kansas.
2. KDHE – in consultation with Attorney General, Consultant, KCC, and affected utilities – will establish the carbon emission standard that will be applicable to Kansas.
3. KCC and Consultant – in consultation with KDHE and affected utilities – will establish the specific criteria to be used to evaluate the range of options. The criteria will primarily be based on the following:
 - a. Per HB 2233, KDHE is charged with establishing separate standards of performance for carbon dioxide based upon:

- i. The best system of emission reduction that has been adequately demonstrated while considering the cost of achieving such reduction;
- ii. Reductions in emissions of carbon dioxide that can reasonably be achieved through measures taken at each electric generating unit; and
- iii. Efficiency improvements to any affected electric generating unit and other measures that can be undertaken at each electric generating unit to reduce carbon dioxide emissions without any requirements for fuel switching, co-firing with other fuels, or limiting the utilization of the unit.

The Consultant may be asked to provide input to KDHE and KCC on the above issues.

- b. In establishing any standard of performance for any existing electric generating unit pursuant to HB 2233, KDHE may consider alternative standards and metrics or may provide alternative compliance schedules than those provided by federal rules or regulations by evaluating:
 - i. Unreasonable costs of achieving an emission limitation due to plant age, location, or the design of an electric generating unit;
 - ii. any unusual physical or compliance schedule difficulties or impossibility of implementing emission reduction measures;
 - iii. the cost of applying the performance standard to an electric generating unit;
 - iv. the remaining useful life of an electric generating unit;
 - v. any economic or electric transmission and distribution impacts resulting from closing the electric generating unit, if compliance with the performance standard is not possible; and
 - vi. the potential for a standard of performance relating to unit efficiency, including any requirements for a new source review or the application of a best available control technology emission limitation for any criteria pollutant as a condition of receiving a permit or authorization for the project.

The Consultant may be asked to provide input to KDHE and KCC on the above issues.

- c. Per HB 2233, the KCC is required to determine the following:
 - i. Each utility's re-dispatch options along with the cost of each option;
 - ii. The lowest possible cost re-dispatch options on a state-wide basis; and

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

The Consultant will be primarily tasked with evaluating the issues in this section.

Study of Utility Specific Options: In order to evaluate utility specific options, the following will be performed:

1. Affected utilities will define the full range of options each individual utility believes it has available that are capable of complying with the carbon emission standard established by KDHE for Kansas.
2. Consultant will meet with individual affected utilities to investigate each utility's model(s), assumptions, and options for reasonableness.
3. KDHE, KCC, and the Consultant may request affected utilities to run their respective models based on different options and assumptions.

Study of State-Wide Options: In order to evaluate state-wide options, the following will be performed:

1. KDHE, KCC, Consultant, and affected utilities will narrow the full range of options to five or less. This step is required to ensure that the time intensive modeling required to evaluate re-dispatch and reliability impacts can be accomplished within a time-frame consistent with the State Plan process.
2. The Consultant will utilize its own model(s) to evaluate the options identified in Step No. 1 above using the specific criteria developed by KCC and the Consultant. The Consultant's modeling will encompass a fleet-wide evaluation of all generation assets used by the affected utilities, as well as a power flow analysis, to verify reliability. In addition, the Consultant will specifically use and/or consider the specific criteria established to evaluate the range of options.
3. KDHE, KCC, and the Consultant will coordinate with the Southwest Power Pool (SPP) by providing the results of the Consultant's models so that SPP can evaluate Kansas' impact on the SPP region as a whole.

Study of Region-Wide Option: In order to evaluate region-wide options, the following will be performed:

1. Coordinate with KDHE, KCC, SPP, and other states to determine what region-wide options are available and viable.
2. Consultant will meet with SPP to review and test SPP's model(s) and assumptions used to derive the range of options for reasonableness and to evaluate the impact on Kansas for each region-wide option.

Other Duties: Reports, Coordination, and Drafting of State Plan

1. In consultation with the KCC, the Consultant will produce an interim report regarding the results of evaluations, as well as the process and inputs used. The timing of the interim report has not been decided. The interim report will be reviewed and commented on by KDHE and affected utilities prior to issuance.

2. The Consultant may be requested to provide the interim report to the EPA and solicit feedback from the EPA.
3. In consultation with KCC, the Consultant will produce a final report recommending in rank order the lowest cost options that ensure reliability to the Commission for its review and approval. The final report will be reviewed and commented on by KDHE and affected utilities prior to issuance.
4. The Consultant will appear before the Commission to testify and support all conclusions and recommendations in the final report.
5. The Consultant will use either the interim report and/or final report to reach out to SPP and other states to determine if a regional approach is viable.
6. The Consultant will assist in drafting the State Plan.
7. The Consultant may be asked to facilitate or participate in stakeholder reviews and public hearings.

It should be noted that the scope of work identified above was developed based on EPA's proposed rule rather than the final rule. However, Staff believes the scope of work is still generally applicable to the final rule despite the changes EPA has made to the final rule.

RECOMMENDATION:

As noted above, in order to accomplish the statutory requirements contained within HB 2233, Staff recommends opening a General Investigation Docket to conduct 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 should be an open proceeding in which affected parties may petition to intervene and submit comments. The KCC will directly contact and encourage all affected non-jurisdictional utilities to intervene and participate in the KCC's investigation. Per the terms of the MOU entered into between KDHE and KCC, KDHE will participate in the KCC's investigation and will provide the carbon emission standard that will establish the re-dispatch goal for CPP compliance. Upon the conclusion of its investigation, the Commission should issue an Order consistent with the requirements of HB 2233 that will provide information to the Clean Power Plan Implementation Study committee concerning:

- Each utility's re-dispatch options along with the cost of each option;
- The lowest possible cost re-dispatch options on a state-wide basis;
- The impacts of each re-dispatch option on the reliability of Kansas' integrated electric systems; and
- The viability of each option.

As the first steps in this general investigation, Staff specifically recommends the Commission order the following:

- Open the general investigation;
- Establish a procedure that allows interested parties an opportunity to participate, comment, and provide relevant data in the general investigation;
- Appoint a Prehearing Officer;
- Issue standard Discovery and Protective Orders, which will allow Staff and its Consultant to obtain necessary data from participating utilities;
- Require Staff and its Consultant, with input from all stakeholders, to provide an initial timeline of the steps involved in the KCC's evaluation of re-dispatch options and reliability;
- Require the Utilities Division and the Public Affairs and Consumer Protection Division to coordinate on the submittal and tracking of public comments; and
- Provide guidance to all parties regarding what educational format and questions the Commissioners would like addressed within this General Investigation.

EXHIBIT 1

The overview below of the significant changes between the proposed rule and the final rule is a direct quote from the Client Alert White Paper produced by Latham & Watkins⁸ on August 18, 2015. The summary provides an overview of the significant changes between the proposed rule and the final rule.

- ***Coal and Gas Emission Standards:*** The Final CPP established nationally uniform interim and final emission performance rate standards for two subcategories of affected EGUs (steam boilers and combustion turbines). The Final CPP set statewide emission reduction goals by applying the EGU emission performance rates to each state's mix of affected EGUs. The Proposed CPP set rate-based state-specific emission reduction targets that reflected the EPA's assessment of the potential for CO₂ reductions in each such state but did not set source-specific emission performance rates.
- ***Changes in the Calculation of State Emission Reduction Goals:*** There are three major differences in how EPA calculated state emission reduction goals in the Final CPP relative to the Proposed CPP.
 - ***Removal of Building Block 4:*** In the Proposed CPP, EPA included demand-side energy efficiency (EE) measures in its best system of emission reduction (BSER) "Building Block 4" as a factor to calculate state emission reduction goals. Under EPA's analysis, Building Block 4 EE measures contributed approximately 15% of the total CO₂ emission reduction goals. In the Final CPP, EPA dropped Building Block 4, meaning that EPA no longer takes into account potential EE reductions in setting the state targets. Even though EE is not included in the calculation of the goals, states (and sources, upon appropriate EE protocol development) can utilize EE as a voluntary compliance measure to meet their Final CPP.
 - ***Removal of In-Construction Nuclear from Building Block 3:*** EPA also removed under-construction nuclear plants from consideration in the calculation of state goals under Building Block 3. EPA clarified that generation from any new or uprated nuclear plant can be relied on for compliance purposes.
 - ***Regional BSER Evaluation:*** EPA applied the three remaining BSER "Building Blocks" to all coal and natural gas power plants in three regions: the Western Interconnection, the Eastern Interconnection and the Electric Reliability Council of Texas

⁸ Latham & Watkins, LLP is a legal firm with a number of specializations including the energy power industry and air quality and climate change. The full report can be found at: <https://lw.com/thoughtLeadership/lw-epa-issues-final-ghg-rules>

interconnection (ERCOT). The Final CPP's BSER was calculated in steps for each of the Building Blocks for each region and EPA then chose the most easily achievable rate for each category among the regions to determine the uniform CO₂ emission performance rates for the country as a whole.

- ***Compliance Date and Interim Goals:*** The Final CPP extends the initial compliance deadline from 2020 to 2022 and establishes a “glide-path” for state emission reductions. Interim goals are phased-in over three “steps” from 2022-2029.
- ***Form of Emission Goal and Conversion of State Goals from Rate- to Mass-Based:*** The Proposed CPP included only rate-based emission reduction goals for states but allowed states to convert their goals into mass goals. Mass-based goals are necessary if a state wants to implement a cap-and-trade program to comply with the Final CPP. The Final CPP provides equivalent mass-based and rate-based goals for each state.
- ***State Implementation Option: Rate- or Mass-Based Approach:*** Although the form of the state goal — mass- or rate-based — is not intended to impact the stringency of a state program, there are a number of key differences in the implementation options available to states under each approach that will impact the compliance options available to EGUs. For example, whereas states implementing a mass-based program have the option to expand their cap-and-trade program to new units (*e.g.*, Northeast Regional Greenhouse Gas Initiative (RGGI) states) or to non-power sectors of the economy (*e.g.* California's cap-and-trade program), this option is not available to states relying on a rate-based approach. Other differences between the two approaches include leakage risk, market size, market liquidity and program complexity. To the extent that one approach is more efficient than another, the compliance costs will be different also for each approach.
- ***“Trading Ready” and “Ready-for-Interstate Trading” Programs:*** The Final CPP gives states the option to develop “Intrastate Trading Ready” and “Ready-for-Interstate-Trading” plans that will allow EGUs to trade compliance instrument rights immediately. Conditions include meeting certain requirements set forth in the Final CPP and, for interstate trading, using some common market architecture elements such as a registry. EGUs in states that do not implement a plan that is “ready” under the Final CPP may still be able to trade, but the trading components of the relevant state plan need to be approved first by EPA before trading can start.
- ***Federal Implementation Plan:*** EPA issued a Proposed FIP and rate- and mass-based model state plans in conjunction with the Final CPP. EPA will implement the Proposed FIP if a state does not submit a state plan or otherwise implement the Final CPP in a timely manner. The Proposed FIP serves as a model state plan that could be adopted wholesale or in parts. The Proposed FIP describes in detail how the rate- and mass-based programs would work and clarifies EPA's language in the Final CPP. The Proposed

FIP identifies several key areas open for public comment, including whether the model rule should use a rate-based or a mass-based approach.

- ***Clean Energy Incentive Program (CEIP)***: The Final CPP includes an early action credit program not included in the Proposed CPP. The CEIP would apply to certain solar, wind and low-income community EE projects generating or saving megawatt-hours (MWh) in 2020 and/or 2021. EPA is seeking comment on the CEIP in the proposed Federal Implementation Plan rulemaking.

- ***Reliability Safety Valve***: The Final CPP includes several features designed to ensure that the Final CPP does not interfere with the electric industry's ability to maintain the reliability of the nation's electricity supply, including a mechanism to allow states to seek revisions to their plans to address unforeseen reliability impacts and a safety mechanism to address emergency situations that threaten reliability.

CERTIFICATE OF SERVICE

16-GIME-242-GIE

I, the undersigned, certify that a true copy of the attached Order has been served to the following parties by means of first class mail/hand delivered on DEC 03 2015.

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