

MINUTES OF THE HOUSE ENERGY AND UTILITIES COMMITTEE

The meeting was called to order by Chairman Carl Holmes at 9:00 A.M. on February 8, 2011, in Room 785 of the Docking State Office Building.

All members were present except:

Representative Stephen Alford-excused
Representative Phil Hermanson-excused
Representative Joe Seiwert-excused
Representative Mike Slattery-excused

Committee staff present:

Matt Sterling, Office of the Revisor of Statutes
Cindy Lash, Kansas Legislative Research Department
Corey Carnahan, Kansas Legislative Research Department
Renaë Hansen, Committee Assistant

Conferees Appearing Before the Committee:

Paul Sadler, Wind Coalition
Jason, Fizell, Kansas Land Trust

Others Attending:

Thirty-Seven including the attached list.

Representative Richard Proehl introduced his shadow, Mariah Day from Aldamont, Kansas.

Hearing on:

HB 2141-Concerning property; requiring wind and solar agreements to run with surface estate.

Matt Sterling (Attachment 1) gave a brief explanation of **HB 2141**.

Neutral:

Paul Sadler, Executive Director of Wind Coalition, (Attachment 2) spoke on **HB 2141** from a neutral position in that they do not want to state a position on property rights in Kansas although they are in support of the legislation.

Neutral Written Testimony:

- NextEra, (Attachment 3)
- Southwest Kansas Royalty Owners Association (Attachment 4)

Opponents:

Jason Fizell, Executive Director, Kansas Land Trust, (Attachment 5) spoke in opposition to **HB 2141** because they believe the bill would have unintended consequences.

Written Opponents:

Patrick Hughes, Tallgrass Ranchers, (Attachment 6), offered written testimony in opposition to **HB 2141**.

Questions were asked and comments made by Representatives: Stan Frownfelter, Annie Kuether, Tom Sloan, Don Hineman, Carl Holmes, and Vern Swanson.

Carol McDowell and Kimberly Gencur-Svaty helped to answer questions posed by the committee.

Representative Carl Holmes gave some background into why he proposed this bill.

The hearing on **HB 2141** was closed.

CONTINUATION SHEET

The minutes of the House Energy and Utilities Committee at 9:00 A.M. on February 8, 2011, in Room 785 of the Docking State Office Building.

Informational hearing on:

RICE (Reciprocating Internal Combustion Engine) NESHAP (National Emission Standards for Hazardous Air Pollutants) Municipal Generation Project Update.

Colin Hansen, Executive Director of KMU, (Attachment 7) presented information on the RICE NESHAP rule. His testimony included an explanation of acronyms. Additionally, he talked about the background for this rule. His testimony focused on the effects of the rule for municipal utilities. Mr. Hansen presented a couple of case studies in Kansas and how those communities are being affected by the RICE rule. Mr. Hansen also spoke to the committee on a generation plant update for the municipalities. He noted that there would be 365 Megawatt of growth of load between 2010 and 2029. His charts showed how with their current production they would be short of needed power and spent time talking about how they would work to rectify those deficiencies.

Questions were asked and comments made by Representatives: Nile Dillmore, Annie Kuether, Tom Sloan, and Carl Holmes.

Mr. Darrell Dorsey, BPU and Mr. Bob Poehling, Kansas Municipal Energy Agency, also helped answer committee questions.

Representative Carl Holmes spoke about the rolling black out incident in Texas during the February 2 and 3, 2011 snow storm that hit most of the country.

The next meeting is scheduled for February 9, 2011.

The meeting was adjourned at 10:09 A.M.

HOUSE ENERGY AND UTILITIES COMMITTEE

GUEST LIST

DATE: February 8, 2011

| NAME | REPRESENTING |
|-----------------|-----------------------------|
| Joe Dick | KCBPU |
| Carol McDowell | Tallgrass Ranchers |
| Dave Holthaus | KEC |
| Ben Hufsch | KEC |
| Michael Dwyer | KCC |
| Phil Wages | KEPCo |
| Larry Bell | MIDWEST ENERGY |
| JUDITH GAO | CAPITOL ADVANTAGE |
| Doug Smith | Pinegar, Smith & Associates |
| Rick Brunetti | KDHE |
| Jeremy Duis | KDHE |
| Mike Mernay | Next Era Energy |
| Kevin Jorsey | KCKs BPU |
| Lon Stanton | Northern Natural Gas |
| Bob Poehling | KMEA |
| Mike Beam | KS LUSTIC ASSN |
| Kimberly Slaty | Wind Coalition |
| Dustin Bradley | KDOT |
| Jason Fizell | KS Land Trust |
| George Stefford | Clean Line |

HOUSE ENERGY AND UTILITIES COMMITTEE

GUEST LIST

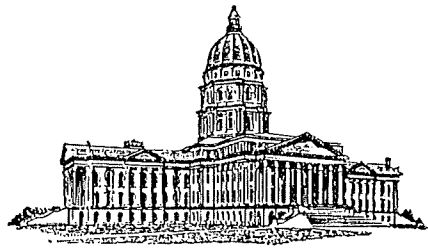
DATE: February 8, 2011

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ANN TORRENCE, ATTORNEY
REVISOR OF STATUTES

JAMES A. WILSON III, ATTORNEY
FIRST ASSISTANT REVISOR

GORDON L. SELF, ATTORNEY
FIRST ASSISTANT REVISOR



OFFICE OF REVISOR OF STATUTES
KANSAS LEGISLATURE

Legal Consultation—
Legislative Committees and Legislators
Legislative Bill Drafting
Legislative Committee Staff
Secretary—
Legislative Coordinating Council
Kansas Commission on
Interstate Cooperation
Kansas Statutes Annotated
Editing and Publication
Legislative Information System

MEMORANDUM

To: Chairman Holmes and members of the House Energy and Utilities Committee
From: Matt Sterling, Assistant Revisor of Statutes
Date: February 8, 2011
Subject: House Bill 2141

HB 2141 amends K.S.A. 58-2221 concerning conveyance of real estate. Under current law, any conveyance involving wind resources requires that a conveying instrument include a description of the property subject to the easement, a description of the property benefitting from the conveyance, a description of the vertical and horizontal angles and distances from the site in which an obstruction to the power system is restricted, all terms of the lease except compensation and any other provision necessary to execute the instrument. The bill would add these same requirements for any conveyance for solar resources.

New subsection (b) would prohibit the severance of any interest in a tract of land solely associated with the production or potential production of wind or solar-generated energy. Leases for development of wind or solar resources would be permissible only with the owner of the surface estate. The bill would not apply to any tracts of land that had been severed prior to enactment of the bill.

HOUSE ENERGY AND UTILITIES

300 SW TENTH AVE - STE 010-E, Statehouse—TOPEKA,
PHONE (785) 296-2321 FAX (785) 296-6668 E-mail:

DATE: 2/8/2011

ATTACHMENT 1



The Wind Coalition

Testimony Provided to the

House Energy and Utilities Committee February 8, 2011

Kimberly Svaty, Representing The Wind Coalition

House Bill 2141

Chairman Holmes and Members of the Committee,

My name is Kimberly Svaty and I stand before you to take a neutral yet supportive position of HB 2141.

As an industry, we have generally not weighed in on legislative matters relating to wind and surface rights as that is more of a landowner issue.

Wind and surface rights are at the crux of the private property right debate. When the wind rights are tied to the surface, the landowner has ultimate control over the use of his/her land going forward. When the rights are severed the landowner can lose control over what will or will not occur on his/her land both now and in the future.

The wind industry works hand and hand with our landowners in order to responsibly develop and site wind projects that have broad community support. As such, we try to look out for the best interest of our landowners. We believe that HB 2141 provides landowners with the ultimate control over their land from a surface and wind rights vantage point.

Thank you very much for the opportunity to provide neutral, yet supportive comments of HB 2141.

HOUSE ENERGY AND UTILITIES

DATE: 2/8/2011

ATTACHMENT 2

Before the House Energy and Utilities Committee

HB 2141

**Mike Murray, Capitol Advantage LLC
on behalf of NextEra Energy Resources LLC
February 8, 2011**

Mr. Chairman and Members of the Committee:

NextEra Energy Resources LLC is the developer of the Gray County Wind Farm near Montezuma.

As such, NextEra supports the provisions of HB 2141 and urges the Committee to vote AYE on the bill.

ATTACHMENT

HOUSE ENERGY AND UTILITIES

DATE: 2/8/2011

ATTACHMENT 3

SWKROA

SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION

209 East Sixth Street
Hugoton, Kansas 67951

Telephone: 620-544-4333
Email: erickn@pld.com

Testimony before the House Committee on Energy and Utilities
HB 2141 – an act relating to instruments conveying interests in wind or solar resources

February 8, 2011

Chairman Holmes and Members of the Committee:

My name is Erick Nordling. I would like to submit written testimony on behalf of SWKROA in regard to HB 2141. I am from Hugoton and serve as the Executive Secretary of SWKROA. I also am an attorney with the law firm of Kramer, Nordling, and Nordling, LLC. In my law practice, and as Secretary for the Association, I regularly advise mineral and royalty interest owners, as well as surface owners and farm tenants, with regard to issues relating to access to their lands for oil and gas operations and from damages resulting from such access and use of the land for oil and gas operations. In my practice, I have also reviewed a number of wind lease agreements for several wind farm projects. I have prepared deeds severing and reserving the (undeveloped) wind rights for owners who sold their surface rights. However, we haven't had much experience on the development of solar rights.

While the development of wind and solar resources in Kansas is still in its infancy, the right to own, lease and transfer such rights is essentially the same as being able to own, lease and transfer oil and gas water rights. When such resources are initially developed, the same person generally owns the 'whole bundle of sticks,' meaning that the owner owns the land, and all that is in, under, or above the land, including oil and gas, wind, as well as the surface rights. As 'value' is discovered and developed from the exploitation of such oil, gas, water, wind or solar rights, it is fairly commonplace for such interests to be carved away from or severed from the surface estate. In our area, mineral rights have been severed from the surface estate and transferred from one generation to the next generation by deed or probate proceedings. It seems that the development of the wind rights could effectively be severed from the surface estate just as effectively, and subsections (b) and (c) of HB2141 are unnecessary and would change our common law right to be able to transfer such rights freely. It doesn't appear there is anything 'broken' which needs to be fixed.

It is not clear whether Subsection (c) of the bill, as drafted, is intended to prohibit wind development for agricultural uses too.

We would respectfully suggest that lines 17-20 of Section 1(a)(3) of the bill be revised as follows: "granted or may be terminated, ~~except that if the instrument is recorded under K.S.A. 58-2221, and amendments thereto, any compensation received by the owner of the real property~~

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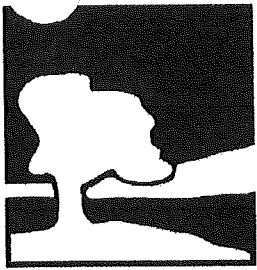
ATTACHMENT 4-1

~~may be excluded; and~~". K.S.A. 58-2221 should also be amended to require wind and solar leases or easements, as well as oil and gas leases to be filed of record with the local Register of Deeds.

Thank you, for your consideration of our remarks.

Respectfully submitted,

Erick E. Nordling
Executive Secretary, SWKROA



Kansas Land Trust

*Protecting & preserving
lands of ecological,
agricultural, scenic,
historic & recreational
significance in Kansas.*

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**We help people
protect their land.**

House Energy & Utilities Committee

February 8, 2011

House Bill 2141

Testimony on behalf of the Kansas Land Trust (KLT)

Jason Fizell, Executive Director

KLT works with *willing, private landowners* who wish to *voluntarily donate or sell* a conservation easement (CE) on their land. In doing so:

*Landowners retain legal title to the property and reserve certain rights:
current agricultural and related land uses are maintained.*

*KLT holds other rights in trust: future development and non-agricultural
commercial uses are limited.*

Since the 1992 passage of K.S.A. § 58-3810, the *Kansas Uniform Conservation Easement Act*, KLT has protected 45 properties totaling over 16,000 acres in Kansas.

KLT does not take a position on wind development generally. In fact, we often work with landowners who wish to reserve the right to build or maintain non-commercial wind turbines on their protected property for on-farm or residential use.

However, other landowners—particularly on properties with certain site and ecological considerations—do choose to limit future wind development. An example is the nearly 7,000 acre Moyer Ranch southeast of Fort Riley's Marshall Army Airfield, southwest of the Konza Prairie, and prominently viewed from I-70.

Fort Riley was concerned that a proposed 100-turbine wind farm on this property would interfere with its new radar system and ongoing training mission. Instead, KLT worked with the landowner, using *Army Compatible Use Buffer (ACUB) program* funds, to purchase a conservation easement as a win-win alternative. The landowner was compensated, Army mission maintained, and beautiful native prairie habitat and working agricultural ranchland in the heart of the Flint Hills protected.

Our concern is the potential for an overly broad interpretation of H.B. 2141, which states in part: "No interest in any resource located on a tract of land and solely associated with the production or potential production of wind or solar generated energy on the tract of land may be severed from the surface." (emphasis mine)

In very broad legal terms, conservation easements can be considered to have severed such development rights from the property—to be held by a land trust—and therefore it seems language in this bill may interfere with future easements.

We suggest clarifying that it is not the intent to affect conservation easements under this legislation, perhaps by adding language similar to that found in K.S.A. 58-3814 (c): "*This act does not invalidate any interest, whether designated as a conservation or preservation easement or as a covenant, equitable servitude, restriction, easement or otherwise, that is enforceable under other law of this state.*"

HOUSE ENERGY AND UTILITIES

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ATTACHMENT

5



LAW FIRM, P.A.

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HOUSE ENERGY & UTILITIES COMMITTEE
KANSAS LEGISLATURE

House Bill 2141

Testimony on behalf of the Tallgrass Ranchers
By Patrick B. Hughes, Counsel to the Tallgrass Ranchers

February 8, 2011

Chairman Holmes and Members of the Committee,

This is submitted on behalf of the Tallgrass Ranchers, a group of Kansas land owners who oppose H.B. 2141. The bill threatens to destroy the use of conservation easements to allow private landowners to protect the Kansas environment in the long term by making the enforceability of such easements subject to attack. H.B. 2141 would prohibit the severance (from the surface estate of land) of any body of rights in some resource "solely associated with the production or potential production of wind or solar-generated energy." While it would require litigation and a court decision to ascertain the effect (and legality) of this language, conservation easements that protect sensitive lands from the effects of industrial wind turbine developments could arguably fit within its prohibitions.

H.B. 2141 would impede important ongoing initiatives and as an unintended consequence threaten private land ownership.

Weakening conservation easements in this way would conflict with the initiatives of the United States Fish and Wildlife Service to acquire conservation easements in the Kansas Flint Hills Legacy Conservation Area (extending over a large portion of the Kansas Flint Hills) and prevent future protective measures like the U.S. Army's recent purchase of conservation easements to create a buffer around Fort Riley. In the Kansas Flint Hills, private conservation easements, the USF&W conservation easement program, and the U.S. Army's conservation easements all prohibit industrial wind development through easements dealing with the potential production of wind-generated energy. Without private conservation easements, any program to protect natural habitat from the impacts of industrial scale wind turbine developments would

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require the expansion of public ownership of Kansas rangeland. This would not only remove land from private control but could involve significant costs to taxpayers.

H.B. 2141 would favor foreign interests over Kansas landowners.

It is important to consider who would benefit by bringing into question a landowner's ability to use conservation easements to protect his land from inappropriate development. It would not be Kansans. Kansans like the Tallgrass Ranchers are benefited when they have the freedom to grant conservation easements if they choose, and to withhold such easements if they prefer. Limiting that freedom benefits those European companies who are not regulated by the KCC and are exempt from property taxes on their projects, and who seek to build and operate industrial wind projects in the Kansas Flint Hills to generate electricity to be sold outside of Kansas. Kansas landowners should have the freedom to grant conservation easements free from any question of whether H.B. 2141 has impaired the ability to use those easements to protect against industrialization of native prairie lands through wind turbine developments.

H.B. 2141 is unnecessary even if it is determined not to apply to conservation easements.

Regardless of its effect on conservation easements, H.B. 2141 would prevent separating a body of rights from the surface estate solely related to wind energy generation, other than through a lease or an easement of definite duration. Under the law today, H.B. 2141 is unnecessary for this purpose: ***the law does not recognize any such body of severable rights***. Just as a law outlawing moose hunting would be operative only if there were moose in Kansas to hunt, the prohibition in H.B. 2141 would be operative only if there was a right to sever from the surface estate resources solely associated with the production of wind or solar energy in Kansas. Neither Kansas court decisions nor Kansas statutes create or recognize any such right. To the contrary, under the law today, the property rights used for wind turbines or solar arrays are the same sort of property rights that are the subject of leases or easements to use the surface estate of land for any other purpose. Such leases and easements do not sever an estate of a different type or character from a surface estate, whether the purpose of the lease or easement is the placement of a wind turbine or an office building. H.B. 2141 prohibits something that is already not allowed. It is equally clear that wind development in Kansas does not depend on H.B. 2141: Complexes using wind turbines to produce electricity exist in several places in Kansas today.

A response to *Zimmerman v. Board of County Commissioners of Wabaunsee County* should await the Kansas Supreme Court's decision.

What H.B. 2141 does other than threatening conservation easements is to guard against a significant problem that the Kansas Supreme Court could conceivably create by its decision in the pending case of *Zimmerman v. Board of County Commissioners of*

Wabaunsee County, Kansas, if it creates severable private rights to some type of wind "resource." Certain parties in that case have argued that the Court should recognize a new principle that a landowner can convey and sever from the surface estate some vaguely articulated ownership of wind that is something different from a right to use a property's airspace for erecting a wind turbine. If this argument were to prevail it would create havoc. For example, one could envision a situation in which a person might own the dirt on a tract of land but not have any right to use the air above it for any purpose. That would obviously be untenable and could easily render land valueless and permanently unproductive. However, the Court has not yet ruled in that matter and there are substantial reasons to expect it will not create the problem H.B. 2141 addresses. Any legislative response to *Zimmerman v. Board of County Commissioners of Wabaunsee County* should await the decision of the Court so that it responds to what the Court actually does instead of what it might possibly do.

Adopting H.B. 2141 would merely create uncertainty, foster litigation, and impair the value of agricultural property.

Adopting H.B. 2141 at a point when the established law of Kansas does not recognize any severed rights of the type H.B. 2141 prohibits is bound to create confusion, which is the enemy of certainty. It would create confusion because it will be permanently in the statute books divorced from the context that explains what it meant to accomplish, particularly if the Kansas Supreme Court rules that that the rights a landowner has with respect to wind development consists of a right to use the surface estate for the purpose of erecting a wind turbine or similar equipment and that there is no separate severable right in wind or solar "resources." Uncertainty in the area of property law fosters litigation between neighbors and impairs property value for all property owners.

While supposedly curing a problem that does not exist today and may never materialize, H.B. 2141 will invite confusion and potentially preclude the use of private conservation easements as an alternative to the public acquisition of wildlife habitat and sensitive lands. Tallgrass Ranchers believe that the better approach is for the Legislature to act only if the Court creates a problem that must be fixed.

Respectfully Submitted,



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RICE NESHAP & Municipal Generation Project Update

House Energy & Utilities Committee

► February 8, 2011

Colin Hansen, Executive Director

Kansas Municipal Utilities (KMU)

- Statewide Trade Association for Municipal Utilities
 - Electric
 - Natural Gas
 - Water
 - Wastewater
 - Telecommunications
- 171 Communities Operating One or More Municipal Utilities
- Established in 1928
- Seven Fulltime Employees
- Headquartered in McPherson



House Energy & Utilities Committee

HOUSE ENERGY AND UTILITIES

DATE: 2/8/2011

ATTACHMENT 7-1

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.....

- Overview

- Formed in 1980
- 76 Members
- Overland Park, Kansas

- Projects

- Energy Management Projects
- Nearman Project
- GRDA
- WAPA / SWPA
- Transmission Services
- Municipal Gas Agency

- Bob Poehling, General Manager



Kansas Power Pool (KPP)

- Overview
 - Formed in 2005
 - 41 Members
 - Current KPP Demand = 368 MW
 - Wichita, Kansas
- Generation Resources
 - Greensburg Wind Farm
 - Bowersock Hydropower
 - Jeffrey Energy Center (50MW)
 - City-Owned Generation (375 MW)
- Colin Whitley, General Manager



House Energy & Utilities Committee

Kansas City BPU

- Electric Utility Formed in 1912
 - Wyandotte County
- Customers
 - 69,336 Electric Meters
 - 56,809 Water Meters
- Generation Resources
 - Nearman Power Plant
 - Quindaro
 - Smoky Hills Wind Farm
- Smart Meter Project
- Darrell Dorsey, Manager of Electric Production and Supply



House Energy & Utilities Committee

RICE NESHAP



House Energy & Utilities Committee

Municipal Electric Utilities

- **119** Municipal Electric Utilities in Kansas
 - "Public Power"
 - 4th Most Public Power Systems
 - Iowa (**137**), Minnesota (**125**) & Nebraska (**121**)
 - **Largest:** Kansas City BPU
 - 65,000 meters
 - **Smallest:** City of Radium
 - 23 meters
- **Median: 882** Customers
 - Examples:
 - Moundridge
 - Arma
 - Greensburg
 - St. John
 - La Crosse
 - Primarily **Rural** Communities
 - Only **Eight** of 119 Public Power Systems Serve In Excess of 5,000 Customers
 - Approximately **17%** of Kansas Citizens Served by a Municipal Electric Utility

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Local Generation

- 60 Municipal Utilities Have Local Generating Facilities
- Baseload: Kansas City BPU
Nearman Plant (235 MW)
- Reliability & Peaking: 60 Municipal Power Plants
 - McPherson BPU: **239 MW**
 - Coffeyville: **47.5 MW**
 - Winfield: **41 MW**
- EPA RICE NESHAP Rule
 - New EPA Ruling to Have Significant Impact on 56 Kansas Municipal Power Plants



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Acronyms

RICE

Reciprocating Internal Combustion Engine

NESHAP

National Emission Standards for
Hazardous Air Pollutants

House Energy & Utilities Committee

Acronyms

CI

Compression Ignition (Diesel)

SI

Spark Ignition (Gasoline)

House Energy & Utilities Committee

Background

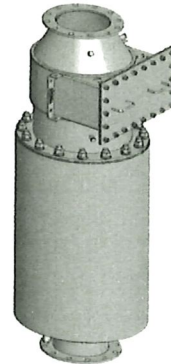
- March 3, 2010 – Final Emissions Standards for CI
 - 40 CFR Part 63, Subpart ZZZZ
 - Existing Engines (Previously on New Engines)
 - Judicial Consent Decree Between EPA, Sierra Club & Environmental Defense Fund
- August 10, 2010 – Final Emissions Standards for SI



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Compliance

- Catalytic Converters
 - Decreased Operational Efficiency (Increase in Gas Usage)
 - Some Units Cannot Be Brought Into Compliance (Exhaust Temperatures Too Low)
- Startup, Shutdown & Malfunction Requirements
- Emissions Monitoring & Reporting
- Retire Units
 - Firm Energy from Existing Power Suppliers
 - More Generation from Coal Plants, Ironically



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The Problem

- Existing Transmission System Serving Small Municipal Communities in Kansas Not Designed to Support Reliable Electric Service Absence Reliance on RICE Engines
 - Transmission Interruptions
 - Transmission Lines Reach Capacity & Voltage Drops
 - Scheduled Maintenance
 - Weather Events
- KMU Members Actually Prefer Less Reliance on RICE Engines
 - Very Costly to Operate
 - Ongoing Maintenance & Power Plant Staffing
- Unrealistic Deadline: May 3, 2013



House Energy & Utilities Committee

Estimated Impact (Midwest)

| | Cities | Municipal Units | Municipal Capacity (MW) | Total Capacity (All IC Units) |
|-----------|--------|-----------------|-------------------------|-------------------------------|
| Kansas | 56 | 306 | 603 | |
| Iowa | 67 | 252 | 455.4 | 604.1 |
| Minnesota | 44 | 182 | 385.3 | 328.8 |
| Missouri | 44 | 201 | 387.8 | 340.9 |
| Nebraska | 34 | 100 | 119.8 | 120.3 |
| Wisconsin | 13 | 47 | 181.8 | 199.9 |
| | 258 | 1088 | 2133.1 | 1594 |

House Energy & Utilities Committee

Dual Fuel Engines

- 246 of 306 Units = "Dual Fuel"
- Dual Fuel Engines
 - Operate on Combination of Natural Gas & Diesel
 - Can Run on 100% Diesel (Gas Curtailment)
 - Typical Operation
 - Older, "Rich Burn" Units
 - 90-95% of Heat Input = Natural Gas
 - Newer "Lean Burn" Units
 - 99% of Heat Input = Natural Gas
 - Diesel = Ignition Source

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Very Difficult Timing

- 51 of 56 Cities Have Declining Population
 - Median Rate = -8.7% from 2000 to 2009
 - Some Lost More Than Fifteen Percent
- Economic Conditions
- Aging Population
- Low-Income
- Small Communities Ill-Equipped to Bear the Costs of Retrofitting Units, Particularly for Very Questionable Environmental Benefits

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Emergency Designation

- Can Designate Units as "Emergency Engines" and Not Have to Install Catalytic Converters
 - The Catch:
 - Must Operate Less Than 100 Hours Per Year
 - Cannot Be Used for Peak Shaving
 - Cannot Generate Income to Supply Power to Grid
 - Voltage Support
 - Planned Maintenance
- Emergency Demand Response (DR) Programs
 - The Catch
 - Must Operate Less Than 15 Hours Per Year for DR
 - Behind-the-Meter Generation (Not "Seen" By SPP)

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EPA Reconsideration

- Very Narrow Reconsideration of Final Rulemaking
 - Number of Hours Used for Emergency Generation
 - Conditions or Operations That Would Qualify for Emergency Use
- Public Hearing – January 13, 2011
 - Research Triangle Park, North Carolina



House Energy & Utilities Committee

Attica

- Population: 620
- All City & Utility Services Provided by City Superintendent and Four Employees
 - Four Utilities (Electric, Gas, Water, Wastewater)
 - Streets Department, Parks, Animal Control, ...
- Cost to Operate RICE Units = \$200 / MWh
 - Normal Power Supply Cost = \$50 / MWh
- Operated 4 RICE Units for Total of 29 Hours in 2010
 - Scheduled Maintenance on Nearby Substation
 - Thunderstorm
 - Unknown Reason (Day Following Thunderstorm)
- Estimated Cost to Retrofit = \$240,000+
 - Net Revenue for Entire Electric Dept. in 2010 = \$35,000
 - Simple Payback Based on Capacity Payments = 21 Years

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Iola

- Population: 5,500
- Historical Maximum Load = 24 MW
 - Not Reached Every Year
- After 17 MW Reached, RICE Units Needed for Voltage Support
 - Otherwise, Retail Customers Cannot Be Served
- Weather is Huge Variable
 - 2008 – Mild Summer
 - No Need for Voltage Support
 - 2010 – Hot Summer
 - RICE Units Operated for 413 Hours for Voltage Support

House Energy & Utilities Committee

Municipal Response

- Regulatory - EPA Reconsideration
 - Public Hearing
 - Written Comments (Due February 14)
 - Modify Definition of Emergency to Include Localized Voltage Support Events
 - Modify Number of Hours Units May Run Under Emergency Conditions
- Legislative - Potential Congressional Action
 - Senator Jerry Moran
- Joint Action with Fellow Midwest Public Power Systems & American Public Power Association

House Energy & Utilities Committee

Generation Project



House Energy & Utilities Committee

Background

- Study Power Supply Needs of Kansas Public Power Utilities
- Began with Conversation in June 2008 at American Public Power Association (APPA) Conference
- Preliminary Screening (December 2008)
 - Sawvel & Associates
- RFP Process
 - Burns & McDonnell Retained (November 2009)
- Active Project Participants
 - Kansas Municipal Utilities (KMU)
 - Board of Public Utilities of Kansas City (KCKBPU)
 - Kansas Municipal Energy Agency (KMEA)
 - Kansas Power Pool KPP)

House Energy & Utilities Committee

Study Results

Assumptions:

- **1%** Growth Rate (Unless Otherwise Provided)
- **5%** Savings Through Demand-Side Management & Energy Efficiency by 2029
- **15%** Renewable Energy by 2029

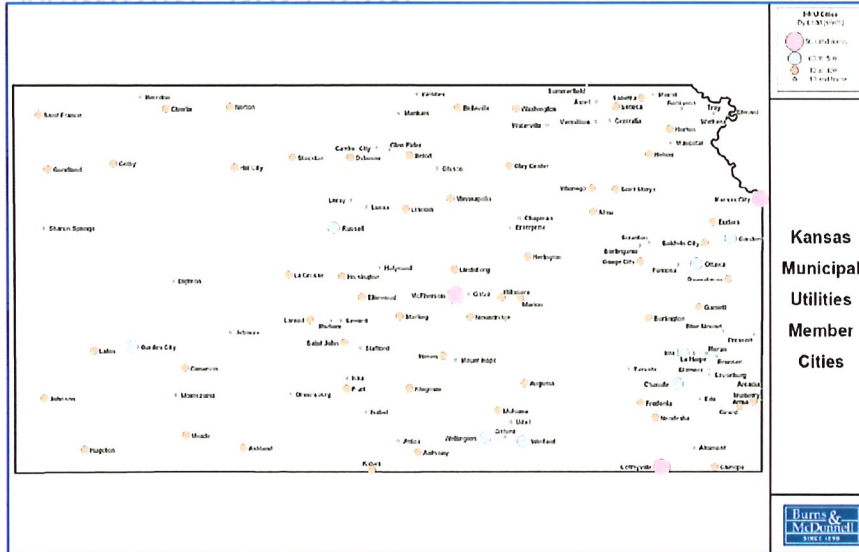
House Energy & Utilities Committee

Participating Members

| Members | |
|---------------------|-----|
| KMU Total | 108 |
| KCKBPU | 1 |
| KPP | 34 |
| KMEA | 27 |
| KCPL | 6 |
| MKEC | 9 |
| MWE | 5 |
| WRI | 3 |
| SEC | 4 |
| KMU ONLY | 46 |
| <i>Not in Study</i> | 11 |
| ANTHONY | |
| BELLEVILLE | |
| CHETOPS | |
| GALVA | |
| IUKA | |
| KIOWA | |
| McPHERSON | |
| MEADE | |
| MOUNDRIDGE | |
| SUMMERFIELD | |
| WEBBER | |

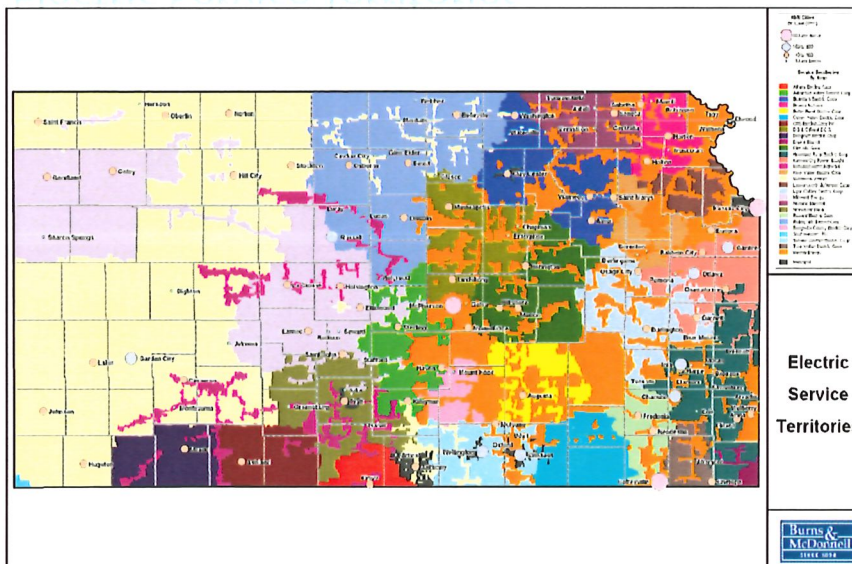
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Members and Loads



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Electric Service Territories



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System Resources

Existing/Planned Resources

| | | |
|----------------------|-------------|----------------|
| Nearman Creek 1 | KCKBPU | ST Coal |
| Quindaro 1 | KCKBPU | ST Coal |
| Quindaro 2 | KCKBPU | ST Coal/Gas |
| Holcomb 2 | KMEA (MKEC) | ST Coal |
| CT 1 | KCKBPU | CT Gas/Oil |
| CT 2 | KCKBPU | CT Oil |
| CT 3 | KCKBPU | CT Oil |
| CT 4 | KCKBPU | CT Gas |
| Municipal Generation | | IC, CT Gas/Oil |

Existing/Planned Purchases

| | | |
|--------------------|--------|--------------|
| SWPA | | PPA |
| WAPA | | PPA |
| GRDA | | PPA |
| OMPA | | PPA |
| Nearman | | PPA |
| KCPL | | PPA |
| MKEC | | PPA |
| OPPD | | PPA |
| Oak Grove | KCKBPU | Landfill Gas |
| Bowersock | KPP | Hydro |
| Greensburg Wind | KPP | Wind |
| Smoky Hill Phase I | KCKBPU | Wind |
| Generic Renewables | | Wind |

Future Resources

| | | |
|---------------------|--|----------------|
| Future Peaking | | IC, CT Gas/Oil |
| Future Intermediate | | CC Gas |
| Future Baseload | | ST Coal |
| Future RPS Req's | | KS Wind |
| RPS Wind Schedule | | KS Wind |

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Native Peak Load

| Planning Groups | | 2010 | 2020 | 2029 | Rate 2010-2029 | Delta ⁺ 2010-2029 |
|---------------------------|----|-------|-------|-------|-------------------|---------------------------------|
| KMU Total | MW | 1,611 | 1,696 | 1,876 | 1.1% | 364 |
| KCKBPU | MW | 513 | 535 | 555 | 0.4% | 42 |
| KPP | MW | 393 | 467 | 536 | 1.6% | 143 |
| KMEA | MW | 275 | 335 | 400 | 2.0% | 126 |
| KCPL | MW | 108 | 131 | 167 | 2.0% | 49 |
| MKEC | MW | 88 | 107 | 128 | 2.0% | 40 |
| MVE | MW | 39 | 48 | 57 | 2.0% | 18 |
| WRI | MW | 25 | 30 | 36 | 2.0% | 11 |
| SEC | MW | 16 | 19 | 23 | 2.0% | 7 |
| KMU Only | MW | 330 | 359 | 383 | 0.8% | 53 |
| Top 25 Members | MW | 1,221 | 1,361 | 1,493 | 1.1% | 273 |
| Balance of Members | MW | 290 | 335 | 381 | 1.4% | 91 |
| Top 25 % of Total | % | 81% | 80% | 80% | | |

Notes: All Loads Exclude Potential DSM Impacts

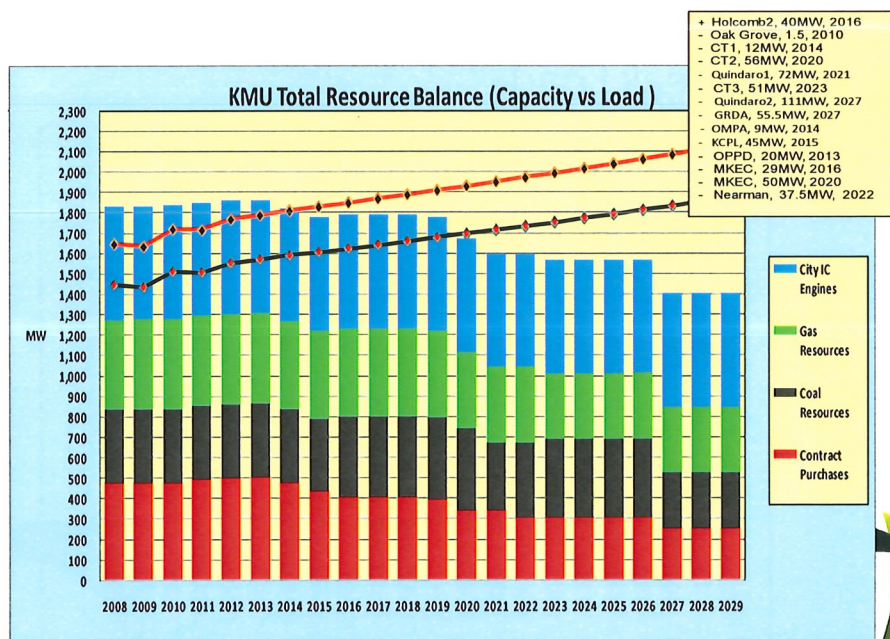
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Capacity Responsibility

| Planning Groups | | 2010 | 2020 | 2029 | Rate 2010-2029 | Delta** 2010-2029 |
|---------------------------|----|-------|-------|-------|-------------------|----------------------|
| KMU Total | MW | 1,717 | 1,927 | 2,130 | 1.1% | 413 |
| KCKBPU | MW | 583 | 608 | 631 | 0.4% | 48 |
| KPP | MW | 447 | 630 | 610 | 1.6% | 163 |
| KMEA | MW | 312 | 381 | 466 | 2.0% | 143 |
| KCPL | MW | 122 | 149 | 178 | 2.0% | 56 |
| MKEC | MW | 100 | 121 | 146 | 2.0% | 46 |
| MWE | MW | 45 | 54 | 65 | 2.0% | 20 |
| WRI | MW | 28 | 34 | 41 | 2.0% | 13 |
| SEC | MW | 18 | 22 | 26 | 2.0% | 8 |
| KMU Only | MW | 376 | 408 | 436 | 0.8% | 60 |
| Top 25 Members | MW | 1,387 | 1,647 | 1,697 | 1.1% | 310 |
| Balance of Members | MW | 330 | 381 | 433 | 1.4% | 104 |
| Top 25 % of Total | % | 81% | 80% | 80% | | |

Notes: All Loads Exclude Potential DSM Impacts

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Key Modeling Assumptions

- Planning Period: 2010-2029
- Maintain 12% Capacity Planning Margin
- Modeled Futures and Sensitivities
 - Base
 - Natural Gas Prices
 - Load Growth
 - Carbon Tax
 - No New Coal
 - Stricter Environmental Regs. (e.g. RICE Rule)
 - Future RPS

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Potential New Resources

- Renewable Resources
 - Wind
- Peaking Resources
 - Heavy Duty Frame
 - Aeroderivatives (LM6000)
 - Reciprocating Engines (Wartsila)
- Baseload & Intermediate
 - Supercritical Pulverized Coal
 - Subcritical Pulverized Coal
 - 1x1 7FA.05
 - 1x1 7EA

Cost,
Performance &
Timeline
Considered for
Each New
Resource

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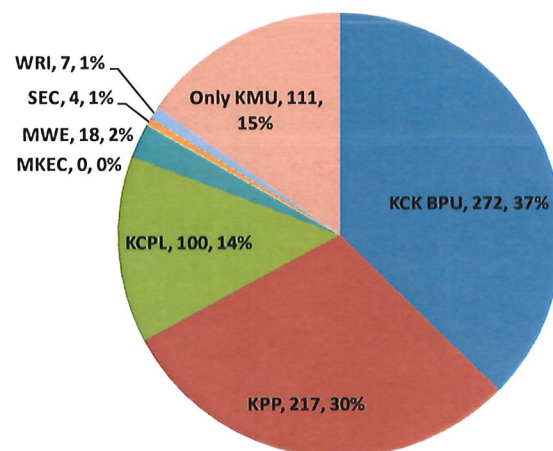
Resource Considerations

- **Incr. Capacity Need = ~730 MW**
 - Retirements = 205 MW
 - Expired PPAs = 223 MW
- **Near Term Resource Selection**
 - ~200 MW Baseload in 2016
- **Medium Term Resource Selection**
 - Q1 Retired end of 2020
 - ~400 MW Intermediate in 2021
- **Long Term Resource Selection**
 - GRDA PPA's expiring end of 2026
 - ~200 MW Baseload in 2027

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Challenges Remain

KMU Members, by Incremental 2029 Capacity Need



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