Kansas Energy Council
Minutes, November 23, 2004

The meeting was called to order at 10:02 a.m., Tuesday, November 23, 2004, at the KCC First Floor Hearing Room, Topeka, by Vice Chair Brian Moline.

KEC members present:

Lee Allison, KEC Chair
Brian Moline, KEC Vice Chair
Patty Clark
Sarah Dean
David Dayvault
Steve Dillard
Colin Hansen
Mike Hayden
Greg Krissek
Donna Johnson
Stuart Lowry
Galen Menard
Gene Merry
Richard Nelson
Dave Phelps
Adrian Polansky
Bruce Snead
David Springe
Tracy Streeter
Michael Volker
Curt Wright

Opening comments

Moline thanked Rosemary Foreman, KCC, for taking the minutes, and asked KEC members and audience to introduce themselves.

Approval of minutes

Moline asked for approval of minutes from the October meeting. Liz Brosius noted two corrections; Curt Wright moved that minutes be approved, Donna Johnson seconded the motion, and minutes were unanimously approved.

Update on Governor's wind and prairie strategy and discussion

Mike Hayden gave an overview, noting that the Governor wanted two things: wind production maximized and ecologically sensitive areas protected. The Governor asked the Sub-cabinet to define these areas. Hayden, as chair of the Sub-cabinet, asked the KDHE to head up a working group that met with a variety of interested parties throughout the Flint Hills and reported back their findings to the Sub-cabinet. The Sub-cabinet endorsed the Heart of the Flint Hills concept and sent this recommendation to the Governor for her consideration.

Hayden noted that the Governor wants counties to develop local regulations for siting of wind-energy projects. So far, Butler, Wabaunsee, and Riley counties have such guidelines. Butler Co. approved the Elk River project; Wabaunsee Co. decided to have no wind energy development; and Riley Co. recently approved zoning regulations for wind energy development. Other counties have not developed guidelines; thus, until a balanced approach with local representation is a reality, the Governor has asked for voluntary restraint in the Heart of Flint Hills area, until local regulations are in place and until the tourism study is completed.

Chair Lee Allison joined group and passed out chronology of Wind/Prairie policy development, and outlines the process. The Wind and Prairie Task Force, established in December 2004, was asked to develop "best practices" and submitted 10 broad recommendations and two distinct options to Governor in their final report. One option called for state wind monitoring of wind development, while the other called for local representation. The Governor directed the KEC to undertake production of detailed maps of tallgrass prairie, and KEC contracted with the KBS to do these maps, which were completed in October and presented to Governor. Also in October, Allison outlined the Governor's ideas at the renewable energy conference in Topeka: no repeal of the permanent property tax exemption; extension of Federal PTC (extended to end of 2005). The Governor asked for a recommendation from the Sub-Cabinet by Nov. 9. At the same time, the KEC Renewable Energy Incentives Working Group was putting together a package of incentives for wind and other renewable energy. At today's meeting, the KEC will finalize its recommendations for 2005.

The Governor released a letter and comments yesterday on the proposed Heart of the Flint Hills (HFHA). Allison acknowledged that wind developers are under a tremendous amount of pressure, given the expiration of the federal PTC at the end of 2005. He noted that the Governor has affirmed that the boundary of HFHA will not get larger. She is waiting on outcome of KEC meeting before making final decision. Allison also reiterated the Governor's desire for counties to adopt siting guidelines and noted that the Commerce study on economic development in the Flint Hills will be completed by summer.

Allison also noted that the Sub-cabinet is working on the development of a plan to fund conservation easements in Kansas. This will be very expensive; they're looking for funding sources, probably a mixture of federal, state, and private. Governor hopes to have her final recommendations ready shortly after Thanksgiving. She's asked the KEC to assist with aggressive development of wind.

Donna Johnson said that the request for an additional six months of restraint essentially kills all projects in the Flint Hills. She raised questions about the viewscape being such an important criterion, when in the past it seemed that the ecological issues (tilled versus untilled tallgrass prairie) were what was emphasized. What do we say to developers now that untilled prairie is not the issue? Developers are asking whether they want to do business in Kansas.

Allison said that viewscape had always been an issue. Johnson asked then why not address all other development—cell towers, etc.?

Johnson also asked, on behalf of wind developers, if counties adopt siting guidelines (such as the ones put forward by KWREG), do developers have to wait until the Commerce report comes out? Allison said the Governor doesn't want to interfere with local government, and that she hasn't accepted any recommendations yet.

Johnson noted that developers feel as though they're playing with changing rules, that they've tried to be good corporate citizens and are being punished.

Allison said the Governor's message has been clear and consistent; she is only asking for temporary restraint.

Hayden noted that the Sub-cabinet is trying to take the long-term view, address the real question of what should public policy be for the long term? Sub-cabinet recommended that the Governor look to the future, what's good for Kansas in the long term, and not go for the short-term fix.

Adrian Polansky quoted from the Sub-cabinet letter to the Governor, endorsing rigorous local process.

Johnson asked if all three recommendations needed to be adopted?

Sarah Dean asked if a county decides to go through this process, then would they be eligible to develop wind?

Hayden said the Governor wants to respect the counties that have process in place. This is only a recommendation; it has not been adopted. Hayden also said getting more conservation easements will take a lot of work and will be controversial.

Dean asked Allison what will happen if SPP wants to put more transmission lines through the HFHA? Allison said transmission is approved and granted by the KCC, after federal approval. Dean said she was wondering if transmission issues will be incorporated in current recommendations, and Allison said they were larger than the local processes.

Jennifer States, J-W Prairie Windpower, said her company had a project in the HFHA. She noted that they'd sited the project on plowed ground, with 30 different landowners, and that they'd done everything they could to be good environmental stewards. Their project is not sited on tallgrass prairie or rangeland; they've done all the studies that were done in zoned counties. If Morris County adopted siting guidelines, could their project go forward? States asked what the Council thought about the tallgrass maps and what recommendations did they want to see?

Colleen Anderson, Morris County citizen, said that Morris County had a local, non-bureaucratic process, made decisions based on local opinion. She urged KEC to recommend wind development in non-prairie areas. She stressed that wind development would boost the local economy, noting that every dollar spent locally goes around 7 times, and asked that this opportunity not be taken away. Allison encouraged her to write a letter to the Governor.

Michael Stubbs, a Wabaunsee County landowner, urged people to consider Hayden's go-slow approach. He said Wabaunsee County had studies the issue and had stressed tourism potential. He reminded people that this is the last 3% of tallgrass prairie.

Ron Klataske, Audubon of Kansas, complimented the Sub-cabinet on their recommendation and asked if their were going to be recommendations to other local entities about protecting landscapes outside the Flint Hills? Allison said the Sub-cabinet encouraged all counties to develop siting guidelines and that KDHE is considering a statewide mapping project.

Hayden said he could provide a list of the meetings held by the KDHE working group in the Flint Hills region.

Allison explained KEC responsibilities and roles. Richard Nelson asked if there was a KEC action item in response to the Heart of the Flint Hills proposal. Allison said that this was just an informational briefing, that Governor has not asked for a KEC recommendation on this policy.

2005 KEC recommendations—Brief presentations and Q and A
Allison asked KEC standing committee chairs to give brief background information about the recommendations brought forward by their committees. A handout listing the proposed recommendations, along with explanatory material, was distributed. [Proposed recommendations listed in italics below.]

Steve Dillard talked about the recommendations from the Petroleum and Natural Gas Committee.

[The Legislature should amend Article 9 of the Uniform Commercial Code to restore a priority creditor status for sellers of oil and gas production when a purchaser is in bankruptcy. Such an amendment would follow the language of the former K.S.A. 84-9-319, which was repealed in 2000.] Dillard discussed the limited options for oil and gas producers, that there are very few purchasers of their products and that they are very vulnerable in the event that the purchaser declares bankruptcy. This recommendation was put forward in the 2004 legislative session as HB 2382. Dave Dayvault explained that last year it took a long time to get the language for this bill finalized; he said the prospects were probably better for passage if they follow up early in the session.

[Encourage producers and the Kansas Department of Revenue to study the advantages of changing the basis for the Severance Tax exemption on natural gas production from a dollar-based exemption level to a volume-based exemption level.] Dillard said that the dollar-based exemption made sense in the past, but currently, volume-based exemption makes more sense.

Allison asked if this would be revenue neutral? Dillard said it would probably would have to be.

[The Kansas Development Finance Authority (KDFA) may, as authority permits, and as determined appropriate, assist refiners in obtaining financing for refinery modifications in compliance with EPA requirements.] Dillard noted that compliance with EPA

regulations was expensive, and that refiners are having difficulty obtaining financing. He said the KDFA supported this proposal to have state assist with financing. Dillard said he didn't believe KDFA needed additional statutory authority.

[Encourage the development of a Memorandum of Understanding to improve regulatory cooperation among state regulatory agencies and the U.S. Environmental Protection Agency in a manner that promotes protection of the environment in a cost-effective manner, minimizes regulatory duplication between the state and national levels of government, and increases efficiencies and communication.] Dillard noted that such MOUs are already being developed for the upstream industry, under the leadership of KCC Commissioner Krehbiel.

Allison discussed the fifth recommendation. *[The Legislature should authorize the Kansas Development Finance Authority (KDFA) to offer revenue bonds to finance Kansas wind-energy projects.]* Allison outlined benefits of funding wind projects through KDFA, noting that it lowers costs and keeps financing in state (many U.S. projects are foreign funded). KDFA feels wind is sufficiently different from other projects they're authorized to finance that it needs specific statutory authorization.

Gene Merry asked if there was a bond authority limit? Allison said he wasn't aware of any limits, particularly for revenue bonds.

Dave Springe said he hadn't heard of developers having difficulty getting financing. Allison said that when first proposed at the end of last year's legislative session, some developers were having trouble getting financing.

Patty Clark said there was no limit to bond amount. KDFA will look at wind energy like anything else.

Allison said he understood that these are industrial revenue bonds, not intended to be tax free, just a route for financing.

Johnson said she agreed with Springe that developers had not brought up financing as a problem for them.

Johnson discussed background for the recommendations brought forward by the Renewable Energy Incentives Working Group.

[The Legislature should adopt a statewide tax to replace the property tax on utility-scale wind-energy development. For projects larger than 20 MW, we recommend a base rate of $2,400 per installed MW per year, with $2,000 per installed MW per year going to the county and $400 per installed MW per year going to the State to fund wind-prairie mitigation strategies or a specific program that would benefit wind development in the state. Projects 20 MW and smaller would be exempt from this replacement tax. Any wind development company that currently has an agreement in place with the local community for payments in lieu of taxes should not be obligated to meet this new tax requirement.]

Johnson noted that she'd heard feedback from developers saying that this proposed tax is too high. It was intended to help counties.

Greg Krissek outlined background for the ethanol labeling recommendation. *[The Legislature should rescind Subsection b of Kansas Statute No. 79-3408, which currently requires that retail gasoline pumps with ethanol blends be labeled. Remove ethanol labeling at the gas pump.]* Krissek said that the labeling requirement was created 30 years ago, that labeling limits the sales of ethanol blends. Currently 5% of gasoline in Kansas is an ethanol blend, and it's estimated that consumption would go up to 10% if labeling requirement was removed. This recommendation would have no impact on E-85, which is governed by federal law and would continue to be labeled at pump. Noted that this draft did not include an equipment incentive, but that their group was supportive of this incentive as well.

[The Legislature should adopt a $0.005/kwh production tax credit for renewable energy facilities, including wind, hydro, solar and biomass. This credit should be for the first 10 years of the facilities' operation, be tradable to allow benefit to non-taxable entities, and designed in such a way that it is transparent who claims these and how much they claim.] Johnson explained the transparency issue, that transparent means you know who buys, where the tax credit goes. She noted that wind developers didn't like transparency.

Richard Cram, Department of Revenue, said there were currently no transparent tax credits in the state.

[The KEC Chair and Council should immediately direct a team to implement and oversee a study of the economic, environmental, and energetic effects of enacting a Renewable Portfolio Standard with Tradable Renewable Energy Credits.] Johnson noted that during the joint meeting of the Renewables and Utilities committees, they agreed that they didn't have enough information about the actual impacts of a REC and that a thorough study was needed. Johnson said she hoped that next year they might bring forward a RPS recommendation.

Allison said the RECs could be traded, were market driven, and that state reciprocity might be needed.

Springe raised questions about the scope of the study. What are the implications of the state producing, say, 500 additional MW of electricity? What are the impacts on transmission? Could a RPS have a negative impact on state?

Richard Nelson said he thought RPS was a springboard for development and expansion of all renewable resources.

Michael Volker said there was enough information to make a holistic approach to this study.

Allison proposed they discuss the PBF recommendation after lunch.

Break for lunch at 12:00.

Meeting resumed at 12:55.

2005 KEC recommendations, continued
Bruce Snead presented the background on the PBF recommendation. *[The KCC should create a Public Benefits Fund (PBF) through rate-making action to fund (a) staffing and support of the Kansas Energy Council, and (b) other energy-related programs and activities. A mechanism to collect from unregulated municipals and Rural Electric Cooperatives needs to be created for equitable assessment of costs and receipt of benefits. The PBF can be funded by means of a small surcharge on customers' electric and natural gas utility bills.]* Snead noted that the KEC can't do much if they don't have funds. Two basic questions with the PBF: how to create and how to administer? Snead outlined the different organizational options, saying that he thought the most efficient way was through KCC action. He said that munis and coops could opt in or out on certain issues. Snead emphasized the need to consolidate energy programs within the state.

Moline commented that this raises a lot of questions if PBF were done by KCC action, not sure that's within their statutory authority. Moline said he wanted the record to show that he did not take part in either discussion or approval of PBF.

Nelson said the question was what was the best mechanism for a PBF? He noted that he cut off most cost estimates at 5 years.

Nelson and Snead discussed specifics of the other energy-related programs and projects that could be funded by the PBF. Snead said that 1/10 of a mil on investor-owned utilities would generate just under $2 million.

Springe asked if we were recommending the Legislature or the KCC do something here? What are we asking who to do?

Snead said the KCC has jurisdiction over IOUs; legislature has jurisdiction over munis and RECs. If agreement could be reached that would be great.

Dayvault said that an alternative would be to ask for funding out of general funds, and Snead agreed.

Springe questioned the organizational options. Is it creation of an office? Is KEC moving from policy recommender to implementer?

Clark asked if there'd been discussion of outcomes-based reporting, and Snead said not specifically, but agreed that there'd need to be monitoring of how the funds were spent.

Moline gave some background (since not yet discussing the merits of the PBF), noting that they were discussing funding KEC activities through electric ratepayers and there were legal issues to be addressed.

Springe asked if they were not going to discuss petroleum industry in the context of state energy funding? Allison said the gasoline tax used to fund highways was an example of a PBF.

Discussion and voting on recommendations
Allison suggested that they begin with Recommendation #8, the state production tax credit, and opened it up for discussion before the vote. [Note: Streeter and Hayden not present for the vote.]

Recommendation #8
Colin Hansen invited Utilities Committee members to bring discussion to the table.

Michael Volker said there some advantage to utilities to have tradability.

Clark said there were two tradability issues: (1) who's claiming and (2) assuring that they're not being used fraudulently.

Dayvault raised question of how difficult would it be for Dept. of Revenue to track these credits. Clark noted that this proposal would not be revenue neutral to Dept. of Revenue, since they'd have to pay staff to handle paperwork, oversee process.

Allison called for the vote (voice vote) and recommendation passes with 1 opposed (Dayvault).

Recommendation #1
Springe objects to this recommendation, saying he's not sure the KEC should be recommending changes to the UCC, that it's not in their purview.

Merry (or Dillard?) said that it was similar to protections provided for sale barns, grain elevators.

Phelps agreed with Springe, said the KEC shouldn't take up changes to UCC.

Dillard said without this change, it's a deterrent to oil exploration.

Clark said she saw it as consistent with long-term goals of the KEC.

Spring suggests a motion to provide this protection to include biomass, wind, and all other industries. Motion failed because of lack of a second.

Allison called for a vote by show of hands: recommendation approved with 11 in favor, 5 opposed.

Recommendation #2
Allison provided overview of the recommendation, and it was approved unanimously.

Recommendation #3
Allison gave overview of recommendation.

Phelps suggested adding additional language to allow utilities to receive similar financing, if needed for compliance with federal regulations.

Dillard said he preferred to keep it specific to refiners.

Motion to amend recommendation to include utilities was seconded by Moline and approved by council.

Following additional discussion of how specific or broad the definition needed to be, the amended recommendation was unanimously approved ("Encourage the KEFA, as authority permits, and as determined appropriate, to assist refiners and utilities in obtaining financing for refinery and utility modifications in compliance with EPA requirements").

Recommendation #4
Allison summarized recommendation. Dean asked for additional explanation about the MOU, which Allison provided. Recommendation approved unanimously.

Recommendation #5
Allison opened discussion of this recommendation. Snead suggested that it be expanded to include other energy projects besides wind energy. Snead, Merry, and Clark discussed KDFA authority. Snead made a motion to strike "wind" from the recommendation; Nelson seconded. Motion approved and amended recommendation unanimously approved.

Recommendation #6
Allison asked for discussion on this recommendation.

Clark asked if there was a better way to address the dilemma of the perceived bribe, the perception that the payments in lieu of taxes were somehow done under the table.

Johnson said that developers feel the amount specified in this recommendation is too high, that payments currently range from $1,500 per MW to $2,700 per MW (from FPL, the industry leader). Johnson said $2,400 is too high for many developers, although developers are generally OK with this tax, since it frees them up from having to do negotiations and levels the playing field.

Scott White asked whether the council wanted to add a sunset on this recommendation?

Phelps said the proposed would not eliminate the privately negotiated incentives for wind projects.

Moline suggested that crating a level playing field might not be in the best interest of local communities, that they might do better by negotiating with wind developers for whatever they can. Polansky and Merry agree.

Allison asked for motion to amend. Springe suggested language recognizing that negotiations of payments in lieu of taxes are legal: "Negotiation of payments in lieu of taxes between wind-energy developers and appropriate local governments shall be deemed legal." Amended recommendation unanimously adopted.

<u>Recommendation #7</u>
Krissek gave overview of the ethanol labeling recommendation. It's estimated that approximately 30% of all gasoline includes ethanol. Missouri changed labeling law and increased consumption of blended gasoline by 300%. Nationally, the gap between demand and current refinery capacity is being filled by imported gasoline and that ethanol could play a role. He said regulatory labeling is a detractor for blenders, and affirmed that ethanol did not cause engine performance problems.

Curt Wright said that consumers have a right to know what they are buying. He said during a statewide meeting of retailers and marketers, no one was in favor of removing the labeling requirement.

Polansky, Clark said that retailers could still chose to label pumps containing ethanol blends, that other additives are not fully disclosed. Moline noted that full disclosure was important.

Corn growers representative said the archaic label limits consumption of ethanol.

Marketers representative said there's a lot of differing opinion about the effects of ethanol on small engines; that only 2 out of 24 members of their statewide board favor removal of the label.

Menard supported keeping the label, noting that federal law requires that ethanol be tracked throughout the supply line.

Following additional, lively discussion, Allison called for a vote by show of hands. The recommendation was approved, with 11 in favor and 6 opposed.

<u>Recommendation #9</u>
Allison opened up discussion of the recommendation to study the impacts of a statewide RPS.

Clark distinguished between two ongoing Dept. of Commerce studies: one that is essentially a precursor to the current recommendation (which they'd contracted with Nelson to undertake), and one focused on the Flint Hills.

Nelson proposed changing the language of the recommendation to broaden scope of study to include other renewable energy beside wind-generated electricity: "The KEC Chair and Council should immediately direct a team to enact a study of the economic, environmental, and energetic effects association with the potential development of a Kansas-based Renewable Portfolio with Tradable Energy and Environmental Credits."

Moline questioned how the council could accomplish this?

Dean said she wasn't clear what this study actually would entail? Nelson said it overlapped with the long-range planning effort under consideration. Lowry raised the question of how the full council would be involved in this study.

Recommendation approved by unanimous vote.

<u>Recommendation #10</u>
Allison invited discussion of the PBF recommendation.

Hansen said that utilities had a fair amount of heartburn over this recommendation. Their concerns include a lot of sticky legal issues, plus the fact that it targets only electricity, is not inclusive of municipals and RECs. He recognized the hard work that Nelson and Snead put in to this recommendation, but suggested tabling PBF issue and focusing on how to fund the KEC in 2005?

Clark agreed that they should probably table the proposal, though she was supportive of a PBF. She said they needed more time to fully develop the proposal.

Snead asked for suggestions for a funding source.

Hansen pointed to the current funding method—the $150,000 paid by utilities and oil and gas through the KCC.

Susan Duffy, KCC Executive Director, clarified that another $150,000 in support of KEC had been added to the KCC budget by the Governor's budget director.

Springe said that if the council's work is of benefit to the state, it should be funded out the general fund (or through the KCC).

Allison suggested splitting the recommendations into two pieces (funding only the KEC through a PBF), but there was little support. He noted that the legal questions arise regardless of the amount of money.

Allison asked for a motion to table the recommendation; motion was made and seconded; and the recommendation was table by unanimous voice vote, except for one abstention (Moline).

Following tabling of this recommendation, council continued to discuss need for additional funding if KEC is to fulfill the tasks it is charged with.

Brosius said that she and Scott had done a quick projected budget with Lee and concluded that $500,000 was needed to adequately staff and support the KEC in the fulfillment of its charge. She noted that she would be stepping down from her role with KEC on January 1, 2005.

Springe questioned whether the KEC really needed that much money; said he'd be more comfortable hiring consultants than creating full-time staff positions. Allison said they'd continue the discussion on funding options in January.

Allison asked if the council wanted to take an official position on the Governor's release about the Heart of the Flint Hills area. He suggested that members send him their comments, and he would pass them along to Governor.

Allison also discussed the importance and value of county siting guidelines.

2005 Kansas Energy Report—General outline, timeline, assignments
Brosius distributed outline of draft energy report, saying she welcomed input from council members. In order to meet the earlier deadline of Dec. 20, 2004, she acknowledged the ambitious timeline. Lowry objected to only having 2 days to review the final draft report, and Brosius said she'd see if there was a way to allow more time, or at least get out portions of the draft report in advance of the schedule.

Adjourned at 4:30 p.m.