Minutes
Kansas Energy Council
August 30, 2006, 10:00 a.m. to 4:00 p.m.

KEC Members Attending:

Ken Frahm, Chair
Tim Carr
Patty Clark
David Dayvault
Sarah Dean
Joe Dick
Steve Dillard
Jay Emler
Ron Hammerschmidt
[for Roderick Bremby]
Carl Holmes
Carole Jordan
[for Adrian Polansky]
Jeff Kennedy
Greg Krissek
Janis Lee
Stuart Lowry
Galen B. Menard
Gene Merry
Deb Miller
Brian Moline
Richard Nelson
Mark Schreiber
Tom Sloan
Bruce Snead
Dave Springe
Josh Svaty
Mark Taddiken
Michael Volker
Steve Weatherford
Curt Wright

Opening remarks
KEC Chair Ken Frahm convened the meeting at 10:10 a.m. and introduced Michael Volker and Brian Dreiling from Midwest Energy.

Midwest Energy's Energy Services Program
Brian Dreiling and Mike Volker of Midwest Energy made a presentation on their company's Energy Services Program. They described the services offered, safety issues that prompted the City of Hays to require blower door tests on all new residences, and the company's conclusions that providing these services not only improves their customer's structures but increases customer satisfaction (the powerpoint presentation is available on the KEC web site: **www.kec.kansas.gov/meetings.htm**).

Brian Moline observed that the policy of charging all customers for services that only a limited number of customers benefit from was contrary to traditional regulatory norms and practices.

David Springe discussed the number of people using the program in relation to the number of residential customers, asked what it would cost to do audits for all of their customers.

Dreiling said that their program currently reaches approximately 1,000 customers a year. Some programs charge directly the customer. Midwest Energy employs three full-time employees to run this program.

Springe asked how MWE envisions expanding the program to achieve more customers using the program. With approximately 40,000 customers, it would take 40 years to achieve full participation in the program.

Janis Lee asked how the program addresses renters in the program.

Volker noted that their job is to point out the problem areas in a home, not to actually fix them.

Moline asked how the mandate for an energy audit became a service of the utility rather than a requirement of the homebuilder.

Volker noted that the relationship between Midwest Energy and the City of Hays, as well as the utility's expertise, led to the decision to allow them to create the program. Drieling noted that when the utility can hold up the connection of the meter, it stops problems before it is too late.

Carl Holmes asked how to reach the older homes in the market – especially those that are rentals owned by "slumlords." Volker noted that Midwest Energy does not proactively seek out these homes, but these homes are able to receive services if they request them.

Moline asked what benefits accrue to customers if everything else remains constant and rates increase to cover increased cost and approved return on investment. Volker responded that since the cost of the gas commodity itself is 80% of the consumer's bill, an increase in delivery rates (the remaining 20% of the bill) will not offset much of the savings on the cost of the gas commodity—the big part of the bill."

Springe suggested that operating a program outside the utilities would be more efficient than allowing each individual utility to establish their own program with differing rules, services, rate design, etc. Volker suggested that the connection with the customer that the utility has is strong and provides a better link with the customer than an outside source.

Moline noted that an energy efficiency program would require a remaking of rate design in order to allow utility companies to remain profitable. Customer charges will have to be increased to allow the utility to recover costs.

Draft Plan for Statewide Energy Conservation Program

Liz Brosius presented the staff's plan (excerpted below) for a statewide conservation program, which consists of a base program modeled on Midwest Energy's successful program and additional components, including a Pay-As-You-Save-type program that would allow for easy financing of needed conservation measures.

Policy / Program Proposal

1. **Establish Statewide Utility-operated Energy Conservation Program**

   a. **Description**

   The demonstrated successes of the City of Hays / Midwest Energy program—increased safety and comfort of new and existing houses, increased education of customers and homebuilders about energy conservation opportunities, and increased customer satisfaction—is worthy of emulation on a larger scale. The statewide, utility-operated program recommended herein is therefore modeled on the City of Hays/Midwest Energy program. The key elements of the proposed program are (1) that it is operated by all Kansas natural gas and electric utilities, (2) that the energy audits conducted by the utilities are tied to the cost-effective measures listed in the Energy Efficiency Disclosure Form (see Attachment A), and (3) that customers receiving services through the program pay either a fee that covers the cost of services rendered or, at minimum, a nominal fee.

Base Program Components

The City of Hays / Midwest Energy Program consists of the following energy information services: (1) blower door tests, (2) residential energy ratings, (3) independent guidance on proper HVAC (Heating, Ventilation, and Air Conditioning) sizing, (4) infrared scanning, (5) commercial energy audits, (6) guidance on lighting design, and (7) walk-through inspections. The Base Program recommended here would include all of these services and would be available to all customer classes.

Additional Program Components

- **Municipal codes** – Encourage municipalities with building codes to adopt ordinances that require new and existing residences to meet State minimum energy efficiency standards before residence can be occupied. A task force with representatives from the KCC, utilities, and municipalities would be convened to develop a model city code.

- **Rate design Issues** – The Kansas Corporation Commission should open a generic docket to examine the relationship between rate design and the resultant incentives for ratepayers to conserve energy and utilities to provide energy conservation programs. Rate design issues that could be examined include “decoupling,” time-of-use pricing, and real-time pricing and metering.

- **Implementation of Pay-As-You-Save (PAYS) type conservation programs** – PAYS® offers building owners and tenants an innovative means of financing their purchase and installation of energy efficiency products with no upfront payment or debt obligation. Through the provisions of a filed tariff, the program participant is assessed a tariffed charge, which is based on the useful life of and savings attributable to specific energy efficiency measures, that appears on monthly utility bills for a prescribed period of time. The tariff charge effectively stays with the meter for that length of time. By design, the expected savings from the conservation measures would exceed the “tariff charge” appearing on the utility bill. If and when occupancy ends, the charge is passed on to the next owner/tenant if transfer of ownership occurs prior to the end of the allowed time period. There are various conditions and requirements that apply to the selection of conservation measures and the allowed “tariff charge.” PAYS®-based tariffs would require regulatory approval. Although the State could finance the PAYS program, private funding may be preferred.

  To qualify for PAYS, a qualified utility-sponsored energy audit must be performed and all proposed conservation projects are subject to inspection prior to initiation of PAYS financing. Only permanent conservation measures (e.g, insulation, HVAC, windows and doors) qualify for PAYS funding.

- **Disclosure Form** – In 2003, the Kansas Legislature passed KSA 66-1227 and 66-1228, which requires the person selling a previously unoccupied new

> residential structure to disclose to the buyer or prospective buyer, prior to closing or upon request, information regarding the thermal efficiency of the structure (single or multifamily units, three floors and under). These laws need to be amended to ensure that information about the energy efficiency of new housing is disclosed when the house is listed in order to provide the consumer with timely information, whether explicitly requested or not. The laws also need to authorize the KCC to update the disclosure form whenever IECC standards are updated to ensure that consumers receive useful, quantitative data about the energy performance of the house (see Attachment A for a sample disclosure form).

> This recommended program should include all of the components outlined above; however, it is possible to phase the implementation of this program without adopting all of the recommended components simultaneously. It should be noted that the combination of the Base Program and the PAYS program can help "close the loop" between problem identification and actual implementation of solutions.

Deb Miller asked who pays for the improvements. The PAYS-like component of the plan allows for qualified improvements to be financed on the utility bill.

Staff noted that the program has not been finalized and many questions are still left to be answered. In particular, rentals may be a difficult area.

Steve Weatherford noted that low-income customers are able to utilize the Weatherization Program to improve their homes. The legislature provided more funds for the program and allows further targeting of more homes.

The Kansas Housing Resources Corporation received funds from the legislature to create a low-interest loan program. There are startup difficulties in finding lenders willing to participate in the program. KHRC needs assistance in encouraging banking institutions to participate in the program. The funds in the loan program would subsidize the interest rate.

In a landlord-tenant relationship, a landlord may be unwilling to make investments to save energy for a renter that is paying the utility bills. Joe Harkins suggested that highly efficient rental units can serve as a marketing opportunity.

Mark Schreiber noted that a PAYS program would require utilities to rework billing system as they work on a customer basis not a meter basis.

Springe also pointed out there will have to be an interesting set of rules to determine who gets the money if there is a delinquent payment.

Staff noted that the combination of all of these programs will help to close any gaps created by one particular component.

Holmes recommended that the Efficiency Disclosure Form be presented at the first point of contact during sale of new home. Bruce Snead suggested it would be logical for the information to be made available in the same method as permits are to be displayed. Previously owned homes are not to be included in the proposed disclosure requirements.

Lee moves, seconded by Krissek, to release for public comment the plan draft for the disclosure form. Passed with no opposition.

Snead suggested that on a PAYS program, utilities are best positioned to provide an energy conservation/efficiency program. The program must be coordinated through a regulatory body in order to ensure that there is consistency throughout the state. Inconsistent programs without coordination will likely cause there to be less success for the program.

Lee asked if utilities are helped through not having to increase peaking capacity due to lower use of fuel. Volker noted that non-peak times are more impacted than peak use times. Load management programs would be more equipped to decrease peak use. Sen. Lee suggested that paying for a conservation program would be similar to an insurance policy, and that there is a greater good served through conservation whether an individual uses it or not.

Volker suggested that if some choose not to use the program, those individuals aren't losing any funds; the large capital outlay comes from those that actually use the PAYS program.

Holmes recommends inclusions of 3rd class cities on proposed Planning Task Force. Harkins noted that staff will work with the League of Kansas Municipalities through the Planning Task Force.

Springe suggested that the public may not understand the details of the programs if we do not provide the intricate details. Harkins responded that if the council were to send out the intricate details of the program, there would be little value. But homebuilders, utilities, and other interest-groups and vested entities would respond with valuable information as to how the council should proceed.

A question was raised about the public comment process (and it was agreed to move that discussion up from later in the agenda). Harkins summarized the process, noting that public comment would need to be written. Draft plans will be posted on the Energy Council website and geographically targeted press releases will be made. Staff will also participate in KEC forums at the Kansas Renewable Energy and Energy Efficiency Conference. The goal is to receive thoughtful written response from the public. There will be no formal oral hearing as there is no capacity for the council to do that.

Holmes suggested that oral hearings be held in the Supreme Court chambers to allow the lobbying organizations in the state as well as interested members of the public to be heard by the Council. This may be more meaningful to the Council than written response. Staff agreed this would be helpful, if the chambers are available.

Stuart Lowry questioned the lack of details in the document and the ability of stakeholders to comment on the proposal. Staff noted that the goal of public comment is to receive the questions that the public would have, and help narrow the scope of the proposal through using the public input and dialogue that was created through release of the document.

Sloan moved to recommend the Statewide Energy Conservation Plan for public release. Snead seconded. The motion passed, with 3 opposing. Moline took no part in discussion nor voted on this matter.

Administrative Actions for Transportation Efficiency
Frahm reconvened the meeting at 12:50 p.m. Brosius presented the recommendations for administrative action (excerpted below), noting that KEC contracted with KU Transportation Center to assist with the development of the topics approved at the June meeting.

Transportation Efficiency Goal: To reduce fuel consumed, unnecessary miles traveled, and emissions in the transportation sector.

1. Proposed administrative actions not requiring legislation:

    - Cooperation between the Kansas Department of Transportation and the trucking industry to implement legislation that would result in the reduction of idling time by trucks in Kansas.
    - The Department of Revenue should revise the Kansas driver education handbook to include items on energy efficiency.
    - Conduct a planning conference to educate the state's transportation and city planners on opportunities to reduce vehicle miles traveled.
    - Establish a state commuter information office that provides comprehensive information to employees and technical assistance and training to employees in developing vanpools, ridesharing and park-and-ride programs, and other commuter alternatives.
    - Establish an advisory committee and fund a study to (1) develop a rank-ordered list of strategic park-and-ride locations on the State highway system, (2) develop a cost estimate, and (3) propose funding options.

Harkins noted that KDOT is working with the trucking industry on legislation to modify the 400-pound exemption to accommodate onboard technologies to reduce idling.

Miller said that KDOT is in the process of developing a long-range transportation plan for the state and that it would be logical to include the recommendations (especially those dealing with the planning conference, establishment of a state commuter information office, and establishment of an advisory committee) under the umbrella of this effort.

There was also discussion of the work being done in the K.C. Metro Area by MARC and others to reduce idling as part of effort to address air quality issues.

Administrative Actions for Agricultural Efficiency

Harkins presented the two administrative actions (excerpted from handouts below) being recommended to encourage the adoption of no-till agriculture.

Agricultural Efficiency Goal: To reduce the amount of diesel fuel consumed in agricultural practices and increase carbon sequestration associated with agricultural land.

1. Proposed administrative actions not requiring legislation:

    - Encourage all state and federal agricultural programs that include practices that result in energy savings and/or carbon sequestration to emphasize these benefits in addition to those that they were originally designed to achieve.

    - Encourage state and federal program managers associated with the Conservation Reserve Program (CRP) to urge operators that choose to place land back into cultivation to consider adopting no-till practices.

Regarding the first proposal, Harkins noted that it will be important to work with KLA and Farm Bureau to help deliver the idea of additional benefits.

Frahm commented that he likes these recommendations and noted that this is the 20th anniversary of CRP.

Patty Clark recommends that the KEC send a letter to the Kansas Congressional delegation regarding the issue of dual usage for CRP lands, and she and Carole Jordan agree to draft a letter for Council approval.

Taddiken mentioned that he wasn't sure if there needed to be specifics on what programs were available. Frahm mentioned that one of the benefits of minimum till is that he uses less diesel.

Sloan referred back to the earlier discussion of transportation efficiency and brought up the issue of reducing idling in the railroad industry. He also mentioned that if there were four times as many highway troopers on the road that he would have to cut his speed drastically, though he wasn't necessarily advocating this.

Taddiken asked Miller if KDOT had any suggestions on people working 4 ten-hour days rather than 5 eight-hour days. Miller said that it is an option for their staff.

Draft Plan for the Development of Wind Energy

Harkins presented the staff's plan to encourage wind and Community Wind development (excerpted below), noting that staff focused on trying to overcome the market barrier for wind energy in Kansas. The plan incorporates the analysis conducted by the KCC staff that indicates, in most cases, coal-fired electricity is less expensive than wind generation.

C. Policy/Program Proposal

1. Enact legislation that would grant the Kansas Corporation Commission the authority to consider possible avoided external costs, in addition to the known and measurable costs, when evaluating wind-based purchase power agreements submitted by jurisdictional utilities for approval. This legislation would enable the KCC to approve, subject to certain limitations, up to a total of 200MW worth of contracted wind capacity with up to half of the allowed total dedicated to contracts with community wind developers.

a. Description

This legislation would allow the KCC to consider the possible avoided pollution costs attributable to wind-based purchase power agreements (PPAs). It is recognized that, absent this consideration, wind-based PPAs may not be cost effective relative to conventional sources of generation. That is, by using the known and measurable costs of conventional generation as a benchmark for evaluating wind contracts/projects, many wind projects are unlikely to be cost competitive. This legislation would simply allow the KCC to apply a different cost benchmark, one that captures possible external cost savings. The KCC could apply other conditions to assure that all wind contracts approved are consistent with the public interest. For instance, the KCC could require all wind contracts submitted for approval be the result of an open, competitive bidding/RFP process employed by the purchasing utility.

The legislation would sunset after 3 years.

In addition to the potential need for new legislation, there are other elements of this program, basically safeguard elements, that need full development by KCC. These include:

i. **Geographic Dispersion of Wind Capacity**
In order to assure a reasonable geographic dispersion of both the costs and benefits of this legislation, the KCC will develop and present a proposed allocation of wind-contract approval amounts among its jurisdictional utilities. This will allow geographic diversity among community wind projects that are approved, also serving to mitigate potential transmission capacity issues. For example, it may be reasonable to limit community wind development in MidWest Energy's service territory to no more than 40MWs. Similar bounds can be established for each of the jurisdictional utilities.

ii. **Need to Coordinate Developers and Investors**
It is understood that fulfilling the practical implications of such legislation is complex. In the first stage of development, potential investors and interested developers must get together to exchange information, share expectations, identify all relevant risks (to both sides) and discuss core financial requirements (such as the developer's expected capital structure). There would also be a need to bring in information regarding experiences related to existing wind projects in both Kansas and elsewhere. There may be a need for the

Department of Commerce to establish a clearinghouse on wind energy issues and play a market making role by fostering interaction between potential developers and investors. One element of basic information that will need to be provided is the Community Wind Toolkit, currently under development by the Department of Commerce. To streamline this process, and to streamline the KCC's contract review process, it may be necessary to provide standardized wind contracts.

iii. **Site Requirements/Permits and Getting Community Input**
There may be a need for a citing process. If so, then it may reasonable to establish a standardized process for the purpose of gaining site approval. All of this would require coordination with the relevant community governments, land owners, etc. No projects will be eligible for this program within the boundaries of the Heart of the Flint Hills, as designated by the Governor's Natural Resources Sub-Cabinet.

iv. **Decommissioning**
Wind projects will not last indefinitely. Perhaps tied to the siting process or as a standalone requirement, for public safety purposes there is a need to establish and enforce decommissioning requirements.

v. **KCC Wind Contract Approval Standards**
If and when developers and investor can establish a business plan that results in purchase power contracts being offered to jurisdictional utilities as potential buyers, there is a need for the KCC to apply a reasonable review process which may include, in addition to consideration of external cost savings, requiring the utilities to use competitive bidding to select among the potential wind projects. A process may be required in order to solicit competition among the *largest* possible number of wind projects.

vi. **Other Important Cost Considerations**
A process may be developed for dealing with integration costs and the potential need for transmission upgrades to accommodate wind development. Arguably, the utility's consideration of these two factors could assist its choice of wind PPAs selected for KCC approval.

vii. Monitoring Projects Over Time
Finally, because wind projects are expected to be long-lived, there needs to be a framework that supports their long-term economic viability. In part, this will require a clear specification of responsibilities for operations and maintenance, including equipment failure contingencies and acquiring warrantees. There are also concerns of the long-term financial viability of wind developer LLCs. What recourse exists when bankruptcy occurs? These and other related questions will need to be examined.

With this program, the State recognizes the potential benefit to Kansans of reduced pollutants and greenhouse gas emissions attributable to wind development and declares that it is appropriate for the Kansas Corporation Commission to approve rates for

> electricity generated by clean and renewable sources, even if those rates are higher than what they would have been with full reliance on conventional generation technologies.

Harkins explained that the recommendation is limited to 200 MW of new wind development, 100 MW of which would be dedicated to Community Wind generation. Window should be left open for three years to get the project off the ground. This would be in addition to all the other subsidies for wind development.

Frahm commends Harkins and Brosius on their comprehensive plan opens the floor for questions.

Taddiken asks about the use of externalities (cost of health care for those who breathe in toxins from coal). Brosius mentioned that Taddiken was right in that there were not a lot of studies that deal with externalities, but that the EPA Clean Skies study suggests that health costs attributable to emissions from coal generation are significant, and that a benefit of wind is that it is clean.

Sloan suggests removing the three-year sunset.

Clark mentioned that this is a step in the right direction especially in terms of what other states have done and characterized it as essentially a pilot program.

Volker said he likes the staff's study. He did have a problem with only the negative externalities being included. He also noted that though he likes the idea of small-scale, locally owned wind projects, they aren't cost competitive with the larger wind farms.

Harkins said that economies of scale was something that they looked at.

Snead asked why a 3-year window, not a 5-year or longer?

Holmes asked Moline what the Commission would think about including externalities in their consideration. Moline said that it goes back to legislature.

Holmes also noted that the federal PTC is slated to expire in December 07.

Lee said that her problem is that big wind farm profits go out of state whereas the Community Wind farm monies stay in state.

Volker questioned whether it is good to charge all ratepayers more for Community Wind when it may be cheaper to use big wind even if some profits go out of state.

Sarah Dean wanted to know how the proposal moved away from the idea of having the State finance 150 MW of wind (e.g., the equivalent of the State's usage) to the proposal discussed today. Harkins said that there were good reasons, that staff considered several strategies that they were not satisfied with, and then returned to the basic goal—to promote the development of wind energy in general and Community Wind in particular.

And this proposal seemed to get at the central problem: that currently wind generation is not cost competitive with coal-fired electricity.

Dean asked if staff foresaw a community coming to them with a plan on wind?

Frahm noted he like the change in direction from state purchased wind to the plan proposed by the staff today.

Holmes pointed out the language regarding the Flint Hills on page 4 of the handout, noting that this policy has not been legislatively established.

Lowry suggested omitting the language related to external costs altogether. He pointed out that coal does not equal wind; that they are two different resources.
Springe said that the KCC does not need permission to approve wind projects, even at a higher price. Moline replied that as soon as they do something that isn't clearly authorized, they will get taken to court. It would be better if it was set out clearly what the public policy is. Springe mentions that recently the court said that the KCC has authority to do all things necessary.

Harkins points out that this does not give the KCC to authority to use poor judgment—that costs would still be a consideration.

Frahm wondered if they should build in the $0.02 cent/kWh cost (from the EPA study), but it was noted that this would only ensure that all bids would come in at 2 cents a kilowatt-hour higher.

Jennifer States, from the audience, mentioned that, with respect to Community Wind, her company can only get the lowest price when they work with corporations. She says that the flip model worked best for them. Harkins said this input is helpful.

Sloan made a motion to change the language in several parts of the draft before approving for release for public comment. These changes were: (1) to change the phrase "possible avoided external costs" to "possible external costs and benefits," (2) add language that says that this policy applies only if the federal PTC is still in place, (3) add language that would allow the KCC to consider the same things when evaluating "clean energy technologies (i.e., non-airborne-emitting), (4) remove three year sunset provision.

Svaty suggested adding to the motion the removal of the Heart of the Flint Hills restriction, and seconded the motion.

Patricia Clark suggests splitting out the individual parts of the motion for voting, and Council concurs.

Dean pointed out that the addition of fossil fuel to the Wind Energy proposal seemed out of place.

Moline suggested that all the amendments be rejected because it seemed like Council was trying to write specific legislative proposals rather than produce a broad policy statement.

Council votes on the five amendments to the draft and all pass.

Sloan also suggests adding language to definition of Community Wind stating that 100% of ownership should be local. This change was accepted with no opposition.
Motion to release the amended draft for public comment with passed, with 4 opposed. Moline abstained.

Other Business

Since public comment process was discussed earlier in the meeting, staff noted that the period will be for about 2 months (early September through October).

Lee suggested establishing a date for the public hearing date and Friday, October 13th is tentatively selected, pending availability of the old Supreme Court chambers.

Staff updated council on the Renewable Energy Conference. KEC staff will be moderating breakout sessions at the conference that will include presentations by background study authors as well as a discussion of the KEC proposed policies in the four priority areas: agricultural efficiency, transportation efficiency, RPS (Wind Energy), and Energy Conservation. The conference will be held September 26-27 at the Downtown Ramada Inn.

The meeting was adjourned at 2:45 p.m.