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**Before the Senate Utilities Committee
Comments by the
Staff of the Kansas Corporation Commission
February 13, 2007**

Senate Bill 326

Thank you Mr. Chair and members of the Committee. I am Leo Haynos, Chief of Gas Operations and Pipeline Safety for the Kansas Corporation Commission. I am appearing today on behalf of the KCC Staff in support of SB 326 which amends K.S.A. 74-616, 74-619, and 74-620 and deletes 74-618. This group of statutes can be described as the laws that require the Corporation Commission to develop a comprehensive state energy conservation plan in accordance with federal requirements. The administration of these laws became the duty of the Commission in 1983 when the legislature enacted K.S.A. 74-622 which abolished the Kansas Energy Office and assigned its functions to the KCC. For the most part, the requirements of K.S.A. 74-616 through 74-621 remain relevant, appropriate law. In fact, this body of law provides the statutory authority for the KCC to establish and operate the Energy Office which supplies much needed assistance and expertise in the area of conservation and energy efficiency. A full discussion of the history of this requirement is attached to my testimony. Staff believes it is appropriate to update the existing statutory framework to provide clarity and prevent conflicts with more recent Kansas law.

K.S.A. 74-616(f) requires the KCC to establish an energy resources emergency management plan for adoption during any energy emergency declared under specific provisions outlined in K.S.A. 74-619. K.S.A. 74-616(f) requires the emergency plan to include a system of energy allocation and curtailment priorities for energy resources. Further, energy resources

is defined in K.S.A. 74-618 as any recognized substance or process that can be utilized to obtain energy, and specifically includes propane, butane, gasoline, kerosene, home heating oil, diesel fuel, other middle distillates, aviation gasoline, kerosene type jet fuel, naphtha type jet fuel, residual fuels, crude oil, and other petroleum products and hydrocarbons as may be determined by the state corporation commission. In short, the language incorporated into the KCC's functions and responsibilities from the energy office statutes requires data collection, analysis, monitoring, and emergency planning related to many fuel types beyond the ordinary purview of the KCC.

K.S.A. 74-619 currently provides for the declaration of energy emergencies and outlines steps taken to declare an energy emergency within the state. However, in September 2006, Governor Kathleen Sebelius, consistent with the National Response Plan (NRP), signed the Kansas Response Plan (KRP), which follows the template of the National Incident Management System (NIMS). The KRP was designed to streamline federal and state interaction during emergency response to any specific threat or incident.

K.S.A. 74-616 et seq. needs to be amended as proposed by SB 326 to more accurately reflect the current abilities, functions, and expertise of the KCC, and eliminate any confusion stemming from the existing language in the definition of "energy resources" which includes fuels beyond the regulatory scope of the KCC. The proposed changes will limit KCC management of emergency plans to energy sources over which we have jurisdiction; namely, natural gas and electricity. With this change, there is no longer a need for K.S.A. 74-618 which defines energy resources, therefore we suggest in SB 326 that 74-618 be repealed. The deletion of the term "energy resources" does not leave a gap in regulatory oversight of emergency preparedness for the other types of fuels mentioned above. It simply recognizes the capabilities and jurisdictional restraints of the KCC. The oversight and monitoring of the other fuel sources remains a function of the U.S. Department of Energy, Energy Information

Administration.

SB 326 strikes language that refers to an energy emergency proclamation by the governor under K.S.A. 74-619 and instead provides for an emergency management plan for natural gas and electric energy to be adopted when the Emergency Support Function 12 of the Kansas Response Plan is activated. Similarly, due to the adoption of the Kansas Response Plan and the framework of responsiveness outlined in that document, 74-616(g), (h) and (i) are no longer necessary as those responsibilities now rest with the Kansas Department of Emergency Management (KDEM) in accordance with federal and state emergency policy. K.S.A. 74-619 as amended would reference a “state of disaster” emergency declared by the governor in accordance with K.S.A. 48-924 et. seq. which is appropriately the body of Kansas law that now governs any emergencies occurring in the state. With the reference to K.S.A. 48-924 and the adoption of the KRP, it is unnecessary for the emergency declaration provisions contained in 74-619 to exist. As it is written today, we believe 74-619 may create a conflict with the assignment of emergency duties to KDEM.

In sum, we support SB 326 because it updates the law to reflect the Commission’s current capabilities. The proposed revision to the statute would still require the KCC to develop an emergency management plan but would limit the scope of the plan to natural gas and electricity. The proposed revision will also align the activation of emergency response with the emergency response structure now in place and adopted by the governor.

This concludes my testimony and I would be happy to answer any questions you may have.

ATTACHMENT

Historical background and Purpose of State Energy Policy

To better understand the evolution of the definitions and functions of this group of statutes, it is helpful to begin with the creation of the Kansas Energy Office. Created originally as a state agency separate and independent of the KCC, the Kansas Energy office sprang up in the mid-1970s in the wake of the Arab oil embargo and national policies that ensued. The first piece of federal legislation that drove the shape that state energy offices began to take as they were created was the federal Emergency Petroleum Allocation Act of 1973 (EPAA). As the U.S. was forced to rely on its own oil production and reserves, The Department of Energy and the EPAA created the initial framework through which the government could begin to extensively survey and analyze supply and demand for petroleum fuel products as well as implement sweeping strategies for allocating limited resources. In 1973, the President and Congress decided to involve the states in the allocation process by setting aside a percentage of the fuels going to a state to be distributed by the state government on an emergency basis.¹ This period for states was rife with confusion as start-up agencies funded by a combination of state and federal dollars struggled to administratively carry out the functions required in many cases in order to continue to receive funding. There was no template for creating energy offices, and many of those federal initiatives came with federal grant monies in exchange for programs carrying out specific functionalities essential to the purpose of the federal body of law in place at the time.² With the federal laws reflecting the shift in federal energy policy focus as the U.S. emerged from the embargo era, many states were left again struggling with what was a meaningful and appropriate role for a state energy office when petroleum fuel supply scarcity was no longer perceived as serious a threat as before. The EPAA was repealed in 1981, along with the myriad of laws that were created in the wake of

¹ Alfred R. Light, "Federalism and the Energy Crisis: A View from the States," *Publius* 6, no. 1 (Winter 1976): 81-96, 83.

² *Id.*, p 86.

the onset of the embargo, and the federal funding that had been earmarked by Congress to carryout the functions of state energy offices also went away. Many state energy offices, while clearly not going away entirely, were forced to restructure.

It seems Kansas was typical of other states creating energy offices in the 1970s, and that many of the issues that drove restructure and refocus of those offices after the embargo scare was over were issues considered in Kansas as well. It seems that the language carried forward in K.S.A. 74-616 et. seq. when the Kansas Energy Office became a part of the Kansas Corporation Commission as part of a restructure, has definitely departed from the purpose it originally served, but now may also no longer fit into the emergency plans and preparedness policies that are evolving at both the federal and state levels. The ability of the KCC to monitor and plan for emergencies for all of the fuel types defined in K.S.A. 74-618 is not practical, and even the term “emergency” means something very different than the term “emergency” as used to create this language in the 1970s. Emergency at that time related to embargo related fuel shortages. “Emergency” as anticipated by today’s emergency plans are different than supply and demand issues considered in the 1970s.

“Energy Resources” and the Kansas Emergency Plan

In September 2006, Governor Kathleen Sebelius, consistent with the National Response Plan (NRP), signed the Kansas Response Plan (KRP), built on the template of the National Incident Management System (NIMS). As stated in the preface of the plan, the KRP was designed to support Kansas law and aid decision making entities during the response to any specific threat or incident. K.S.A. 74-616 et seq. appears to be in conflict with the KRP in designating the process for declaring an energy emergency within the state.

Since the 1970s and since the deregulation of petroleum industries, many states today interact with a variety of federal and regional agencies to help protect citizens during energy

emergencies. Currently, the Department of Energy (DOE) gathers much of the information available regarding petroleum, specifically through the Energy Information Administration (EIA). The EIA provides energy data, statistics, and analysis. The DOE is the lead federal agency when federal emergency plans are activated. Under the Emergency Support Function of the federal plan the DOE is the primary federal agency responsible for:

- Forecasting energy supply and demand, and estimating system damage;
- Advising local authorities on energy restoration, assistance and supply priorities;
- Providing a single point of access for departmental assets and expertise;
- Assisting in the provision of temporary fuel supply
- Serving as an information clearinghouse on recovery assistance, funding, and emergency response resources and organizations for the energy sector.

To date, according to the National Association of State Energy Offices (NASEO), despite all 50 states having energy offices, only 3 states actually attempt the full array of functionalities essential to collect accurate and meaningful data, record maintenance, analysis and forecasting of fuel supply and usage.³

³ New York, Hawaii, California.