

MINUTES OF THE HOUSE ENERGY AND UTILITIES COMMITTEE

The meeting was called to order by Chair Carl Holmes at 9:00 A.M. on February 17, 2011, in Room 785 of the Docking State Office Building.

All members were present except:

Representative Stan Frownfelter-excused  
Representative Phil Hermanson-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:

Dave Springe, CURB  
Dick Rohlf, Westar  
Mark Lawlor, Clean Line  
Kimberly Gencur-Svaty-ITC  
Mark Schreiber, Westar

Others Attending:

Forty Eight including the attached list.

Continued Hearing on:

**HB 2303-Utilities; rate-making and variable time-of-day pricing.**

Questions were asked and comments made by Representatives: Forrest Knox, and Reynaldo Mesa.

Responses to the committees questions were answered by Dave Springe and Dick Rohlf. It was noted again the thought behind the bill is appropriate but the way the bill proposes to accomplish this is inappropriate and that there is a timing issue in implementing this idea. Additionally, it was noted that historically when a customer was charged by the hourly rate in the past there was a customer that literally went bankrupt when they had to pay the hourly rate as the price for that energy skyrocketed.

The hearing on **HB 2303** was closed.

Hearing on:

**HB 2181-Utilities; transmission lines and easements.**

Matt Sterling, Revisor of Statute, spoke to the committee regarding **HB 2181**, (Attachment 1).

Questions were asked and comments made by Representative Nile Dillmore.

Proponents:

Representative Carl Holmes gave the committee a background on **HB 2181**. He noted that someone from the SPP and KCC commented that they thought there should be an additional 50 feet easement right of way when there was a purchase of land for transmission lines for a total of 200 feet. Representative Holmes commented that this bill is a way to look way out in the future. He noted the area most sensitive environmentally is going through the Flint Hills. He commented that if there are no transmission lines through the Flint Hills that the lines will be built in Nebraska and they will come down into Western Kansas rather than directly across the state. This bill would allow the expansion of wind transmission far into the future.

Opponents:

Dave Springe, CURB, (Attachment 2) presented testimony in opposition to **HB 2181**. He commented

## CONTINUATION SHEET

The minutes of the House Energy and Utilities Committee at 9:00 A.M. on February 17, 2011, in Room 785 of the Docking State Office Building.

that on every piece of land purchased you will increase the price for right of way purchase by 33%. He noted that realistically a 345 kW line would never be taken down to put up a 765 kW line. He believes the transmission line easement purchase would be spending money for something one would never use.

Questions were asked and comments made by Representatives: Forrest Knox, Vern Swanson, Tom Sloan, and Carl Holmes.

Neutral:

Mark Lawlor, Clean Line Energy Partners, (Attachment 3), offered testimony for **HB 2181** and offered some language change for the bill.

Kimberly Gencur-Svaty, ITC, (Attachment 4) presented testimony concerning **HB 2181** from a neutral standpoint. She noted that this bill takes a forward look into the right of way acquisition of land for the construction of transmission lines.

Mark Schreiber, Westar, (Attachment 5), offered neutral testimony for **HB 2181**. Westar makes a suggestion of working with the land owners at the time conservation easements are written, to include the ability for the easements to be used for transmission lines into the easement documents.

Neutral Written:

Written testimony was presented to the committee in regards to **HB 2181** from a neutral position as follows:

- Hartman Oil (Attachment 6)
- Kansas Farm Bureau (Attachment 7)

Questions were asked and comments made by Representatives: Tom Sloan, Don Hineman, and Carl Holmes.

The hearing on **HB 2181** was closed.

The next meeting is scheduled for February 18, 2011.

The meeting was adjourned at 10:23 A.M.

# HOUSE ENERGY AND UTILITIES COMMITTEE

## GUEST LIST

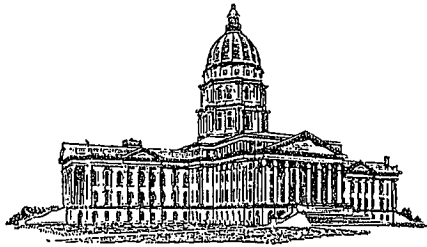
DATE: February 17, 2011

NAME	REPRESENTING
Matt O'Dell	Westar
Mike Bowers	Westar
JOHN KELLY	WESTAR
Joe Lackey	WESTAR
Reta Beggs	Westar
Stephen Loczy	Westar
Suzanne Cain	Westar
Kim Browniger	Westar
Lisa Doty	Westar
Tom Dortch	"
Mark O'Dell	Westar
Tom Sgh	Westar
Kevin Frick	Westar
Bob Davis	Westar
Raphael Dorman	Westar
BRAD HARRELSON	KFB
Lan STANTON	Northern Natural Gas
Mike Beam	Ks LUSTK ASSN.

MARY 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

MEMORANDUM

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

To: Chairman Holmes and members of the House Energy and Utilities Committee  
From: Matt Sterling, Assistant Revisor of Statutes  
Date: February 17, 2011  
Subject: House Bill 2181

HB 2181 would require that prior to the construction of any transmission line with an operating voltage of 300 kilovolts or higher, an electric utility would have to obtain a right-of-way easement of at least 200 feet in width for the entire length of the proposed transmission line.

The bill defines electric utility as “any public utility, as defined by K.S.A. 66-104, and amendments thereto, which owns, controls, operates or manages any equipment, plant or generating machinery for the production, transmission, delivery or furnishing of electricity or electric power.”

HOUSE ENERGY AND UTILITIES

DATE: 2/17/2011

ATTACHMENT 1

# Citizens' Utility Ratepayer Board

## Board Members:

Nancy Jackson, Chair  
A. W. Dirks, Vice-Chair  
Carol I. Faucher, Member  
Stephanie Kelton, Member  
Kenneth Baker, Member



State of Kansas  
Sam Brownback, Governor

David Springe, Consumer Counsel  
1500 S.W. Arrowhead Road  
Topeka, Kansas 66604-4027  
Phone: (785) 271-3200  
Fax: (785) 271-3116  
<http://curb.kansas.gov>

## HOUSE UTILITIES COMMITTEE H.B. 2181

Testimony on Behalf of the Citizens' Utility Ratepayer Board  
By David Springe, Consumer Counsel  
February 17, 2011

Chairman Holmes and members of the committee:

Thank you for this opportunity to offer testimony on H.B. 2181. The Citizens' Utility Ratepayer Board is opposed to this bill for the following reasons:

H.B. 2181 will require an electric utility, prior to constructing any new high voltage electric transmission line (300 kilovolts or higher and at least 5 miles in length) more than five miles from a corporate city boundary to obtain a right of way easement of at least 200 feet in width for the entire length of the line. The cost incurred by the utility for purchasing this additional right-of-way shall be "deemed" prudent unless the costs are "manifestly and unquestionably unreasonable".

Since this bill applies to transmission lines built after January 1, 2014, the bill will apply only to brand new lines. The standard "over 300 kilovolt" is a 345 kilovolt line. The standard right-of-way easement for a 345 kilovolt line is 150 feet. An additional 50 feet of right-of-way is too small an area to build a second transmission line, so the additional 50 feet provides no actual gain in service for customers on a 345 kilovolt line.

In theory, a utility might be able to build a 765 kilovolt line in a 200 foot right-of-way corridor. However, building a 765 kilovolt line in the 200 foot right-of-way of an existing 345 kilovolt line will require removing the existing 345 kilovolt line. Under no circumstance can CURB think of a reason why a brand new 345 kilovolt line, built after 2014, would be torn down and completely replaced with a 765 kilovolt line. In fact, it is far more likely that if a 765 kilovolt line is proposed, it will be run in its own corridor, and be added to the existing 345 kilovolt system. Adding the additional 50 feet of right-of-way to a 345 kilovolt line corridor adds no value if your ultimate goal is to have a 765 kilovolt line.

This bill will increase the right-of-way costs of every 300 kilovolt and above transmission project built after January 1, 2014 and charged to customers but add no actual value for customer. By definition, adding costs without adding value is "manifestly and unquestionably unreasonable". By definition, adding the costs contemplated by this bill to all transmission projects would not be a prudent use of customer money. CURB recommends the committee not pass this bill.

HOUSE ENERGY AND UTILITIES

DATE: 2/17/2011

ATTACHMENT 2

February 17, 2011

Re: HB 2181

Hon. Chairman Holmes and Members of the House Energy and Utilities Committee:

On behalf of Clean Line Energy Partners and Grain Belt Express Clean Line I would like to thank you for the opportunity to speak in on HB 2181. Clean Line is currently developing the Grain Belt Express Clean Line, a 3,500 MW high voltage direct current transmission line, which will enable Kansas to access new markets for our abundant wind energy resource. This project will generate hundreds of jobs and bring hundreds of millions of dollars to the Kansas economy.

We would like to respectfully offer an amendment to HB 2181 to ensure the viability of the Grain Belt Express project. We ask for the attached amendment to be included in HB 2181 for the following reasons.

The Grain Belt Express will not be subject to future voltage upgrades. This project will be either 500kV or 600kV. This determination will be determined by ongoing engineering studies and will be finalized prior to construction. There will not be a need for future upgrades to either the voltage level or structures, thus eliminating the need for additional right-of-way.

Requiring the Grain Belt Express to acquire additional right-of-way would be cost prohibitive and not serve any future benefit.

For technical reasons it will not be possible to locate additional transmission lines in such close proximity to this project.

As a merchant transmission project, the Grain Belt Express is not developed and planned by the Southwest Power Pool. As such, the prudence and cost recovery mechanisms will not apply to this project.

For these reasons, we respectfully request the attached amendment be considered by this Committee. Thank you for your consideration of this matter.



Sincerely,

Mark Lawlor  
Director of Development  
Clean Line Energy Partners  
16332 Nieman Rd.  
Overland Park, KS 66062  
913-302-3990  
mlawlor@cleanlineenergy.com

Attachments:

- I. Proposed amendment to HB 2181

Proposed Amendment to HB 2181

“Merchant direct current transmission facilities not designated by the Southwest Power Pool, or relevant transmission planning entity, shall be exempted from the requirements of this section.



# ITC Great Plains

## Neutral Testimony on HB 2181

### February 17, 2011

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Respectfully Submitted by: Kimberly Svaty

Good morning Mr. Chairman and members of the Committee,

I appear before you this morning representing ITC Great Plains, the nation's only independent electric transmission utility. ITC is currently developing approximately 300 new miles of high voltage electric transmission lines throughout central and western Kansas.

Specifically, ITC has commenced construction on a 210-mile, 345 kV transmission line beginning in Spearville, KS, running northeast of Hays and ending at the Kansas/Nebraska border where NPPD will carry the line into Axtell, Nebraska. This project is referred to as the KETA line because the project was put forth by the Kansas Electric Transmission Authority (KETA). ITC is also working to construct half of the Kansas V-Plan. ITC's segment will run from Spearville, KS to a substation in northeast Clark County to Medicine Lodge. The project will also be constructed at 345 kV. ITC recently held public open houses on the V-Plan route and will be submitting a proposed route to the Kansas Corporation Commission (KCC) in the coming weeks for their consideration and final line route approval. ITC is deep into the right-of-way acquisition process for the KETA line, but has yet to begin ROW acquisition on the V-Plan. That will not occur until several months after the KCC issues an order on the final route for the V-Plan.

Fortunately, ITC has not had difficulty working with land owners to acquire the necessary ROW for the KETA line and we are hopeful to have such good fortune for the V-Plan.

The Chairman, as always, is taking a forward-looking, proactive approach to legislation which is appreciated. In this case, the bill may be premature as Southwest Power Pool (SPP) is not considering EHV projects now or in the foreseeable future. But in the future as the ability to acquire sufficient ROW for all types of infrastructure projects could be of concern.

ITC is taking a neutral position on HB 2181 for the reasons noted below:

1. HB 2181 as drafted will provide adequate ROW for most 300 kV and above transmission lines but does not ensure there is adequate ROW for adjacent future EHV lines;
2. SPP is currently debating design standards and project cost estimating, including the cost of proactively acquiring sufficient ROW for EHV facilities which for 765 kV is 280 feet of ROW or establishing ROW corridors.
3. SPP is becoming increasingly sensitive to transmission costs as a whole. ROW acquisition can cause increases in project costs;

We appreciate the opportunity to stand before you and I am happy to stand for questions at the appropriate time.

HOUSE ENERGY AND UTILITIES

DATE:

2/17/2011

ATTACHMENT

4



MARK A. SCHREIBER  
Director, Public Affairs

**Testimony of Mark Schreiber  
Westar Energy  
Before the House Energy and Utilities Committee  
On HB 2181  
February 17, 2011**

Good morning Chairman Holmes and members of the committee. Thank you for the opportunity to testify as a neutral party on HB 2181.

We believe the goal of this bill is to ensure the future development of the state's utilities' transmission systems. Utilities strive hard to design a route with the least impact on the landowners and least cost to the customer. We have been the primary builder of high voltage transmission in the state over the last several years and recognize the importance of working with landowners in right-of-way negotiations.

A typical 345 kV transmission line requires 150 feet right-of-way. This width is set by the National Electric Safety Code (NESC). Higher voltages require more right-of-way, with 765 kV transmission requiring 200 feet. Beginning after January 1, 2014, HB 2181 would require any utility building new high voltage transmission lines to acquire at least 200 foot rights-of-way. We believe the intent is to ensure appropriate rights-of-way if a transmission line is reconstructed to a higher voltage. By procuring the right-of-way now, the bill suggests it decreases the chance other developments could prevent the expansion of the right-of-way.

To give you some perspective on costs, we recently completed a new 96 mile, 345 kV transmission line from Wichita to Hutchinson to Salina. If that line was built according to HB 2181, we would have spent approximately \$1.1 million more than we did. Even though HB 2181 deems those expenses prudent for purposes of cost recovery, the Federal Energy Regulatory Commission (FERC) establishes which costs can be recovered. Our concern is that even though the goal is admirable, those costs may not be seen by FERC as needed, since it is wider than the code requires, and thus disallowed for recovery through the tariff. In that case, Westar would pay those additional costs.

We would suggest a slightly different focus.

In the future, transmission lines will need to be upgraded or built across the Flint Hills. The U.S. Fish and Wildlife Service (USFWS) has been working with landowners in the Flint Hills on a conservation easement program. Conservation easements, once in place, prevent any change in the use of the land or future building on the land, except as stated in the easement document. State law could not override those easements.

If a process could be developed to work with landowners, USFWS and the utilities at the time a conservation easement is being considered to identify a way to ensure existing transmission easements could be expanded or new easements acquired prior to the completion of the conservation easement document, a pathway across the Flint Hills would be assured.

In summary, we are neutral on HB 2181. Its goal is worthy of investigation, but we believe the focus could be narrowed to the Flint Hills and the use of conservation easements.

Thank you again for the opportunity to testify on HB 2181 this morning.

**Attn:** House Energy and Utility Committee  
**Re:** Amendment to House Bill 2181  
**From:** Scott Paradise, Hartman Oil Co., Inc.  
(913) 485 – 9266  
sparadise@hartmanoil.com

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Mr. Chairman and members of the Committee – thank you for the opportunity to present this testimony.

Hartman Oil Co., Inc., (“HOC”) founded in 1920 and headquartered in Wichita, KS, is an independent oil and gas company engaged in the development, acquisition and operation of oil and gas properties in the mid-continent region. HOC’s many employees are spread throughout South-Central and Western Kansas.

HOC is not opposed to House Bill 2181 (“HB 2181”) if its intent is to afford to utility companies the space necessary to construct high-voltage electric lines. HOC’s concern is the impact of HB 2181 on the long established right of mineral rights holders and oil and/or gas lessees to reasonable use of the surface. As written, HB2181 could make it perfectly legal for utility companies to infringe upon the rights appurtenant to the dominant estate while providing absolutely no compensation for such infringement. Such an outcome would amount to an unconstitutional taking. Consequently, HOC requests that this committee amend HB 2181 with the attached language, ensuring the protection of mineral rights holders and/or oil and/or gas lessees, safeguarding them from the evisceration of their ability to produce the mineral resources.

If the committee declines to accept the amendment, HB 2181 could shut down wells that are currently producing oil and/or gas and which have the potential of continuing to do so for many years. Such an outcome would no doubt have a *significant* financial impact to the State of Kansas. In that event, HOC would respectfully suggest the development of a fiscal note for HB 2181 prior to passage in order to determine the impact on Kansas taxpayers.

HOC believes that the requested amendment does not harm the integrity of House Bill 2181 but rather strengthens the legislation by protecting the property and mineral rights of Kansans.

Thank you for your time and your efforts to strengthen this legislation for all affected parties.

(3) A "right-of-way easement" shall mean an easement for the purpose of installing and/or maintaining a high-voltage electric transmission line; however, a right-of-way easement shall not permit the holder of any such right-of-way easement to prohibit, exclude, abridge, or infringe upon in any way the right of a mineral rights holder or an oil and/or gas lessee from their right of reasonable use of the surface, including the surface within any such right-of way easement.

HOUSE ENERGY AND UTILITIES

DATE: 2/17/2011

ATTACHMENT 6



KANSAS FARM BUREAU  
The Voice of Agriculture

2627 KFB Plaza, Manhattan, Kansas 66503-8508 • 785-587-6000 • Fax 785-587-6914 • www.kfb.org  
800 SW Jackson St., Suite 1300, Topeka, Kansas 66612-1219 • 785-234-4535 • Fax 785-234-0278

*PUBLIC POLICY STATEMENT*

HOUSE COMMITTEE ON ENERGY AND UTILITIES

Re: HB 2181; Utilities; Transmission Lines and Easements.

**February 17, 2011  
Topeka, Kansas**

**Written Testimony Provided by:  
Michael D. Irvin  
Kansas Farm Bureau**

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Chairman Holmes and members of the House Energy & Utilities Committee, thank you for the opportunity to share our thoughts on HB 2181 which would allow all electric utilities the ability to obtain a right-of-way easement of at least 200 feet in width for the entire length of the proposed high-voltage electric transmission line.

As you know KFB is the state's largest general farm organization representing more than 40,000 farm and ranch families through our 105 county Farm Bureau Associations. Our members, who are directly engaged in agricultural pursuits, have a substantial economic and legal interest in this matter, since it could significantly impact their farming and ranching operations.

It is important to understand that our member-adopted policy is committed to the concept of the expansion and development of transmission capacity to create opportunities for the development of alternative energy resources across the state. But we also vigorously support landowners' rights and have significant concerns with any legislation that will create or enhance the burdens or liabilities imposed on owners of land and livestock.

Currently, there are three public and two private transmission line projects with proposed development in separate areas of the State of Kansas. Each of these companies has proposed a new, expanded altered right-of-way that would traverse the land of our members. We are not aware of any of high-voltage electric transmission line projects requesting over 150 feet for the right-of-way easement.

HOUSE ENERGY AND UTILITIES

DATE: 2/17/2011

ATTACHMENT 7-1

Simply put, we are opposed to any additional burdens placed on landowners that are not needed.

Thank you for the opportunity to share the policy of our members. We stand ready to assist as you discuss this important topic.

*Kansas Farm Bureau represents grass roots agriculture. Established in 1919, this non-profit advocacy organization supports farm families who earn their living in a changing industry.*