

Approved 6-27-90  
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Richard Rock at  
~~xxxxxxx~~

10:00 a.m./~~pm~~ on April 2, 19 90 in room 514-S of the Capitol.

All members were present except: Senators Yost, Moran, Gaines, Kerr and Parrish  
who were excused

Committee staff present:

Mike Heim, Legislative Research Department  
Jerry Donaldson, Legislative Research Department  
Gordon Self, Office of Revisor of Statutes  
Judy Crapser, Secretary to the Committee

Conferees appearing before the committee:

Mark Vining, Kansas Gas and Electric Company  
Ed Schaub, KPL Gas Service  
Bob Frey, Kansas Trial Lawyers Association  
Dr. Mani Lee, Kansas Department of Social and Rehabilitation Services  
Joan Strickler, Kansas Advocacy and Protective Services

Senator Rock called the meeting to order by opening the hearing for HB 3086.

HB 3086 - establishing the overhead power line accident prevention act.

Mark Vining, Kansas Gas and Electric Company, testified in support of HB 3086.  
(ATTACHMENT I)

Ed Schaub, KPL Gas Service, testified in support of HB 3086. (ATTACHMENT II)

Bob Frey, Kansas Trial Lawyers Association, testified in opposition of HB 3086. He offered  
a suggested amendment if the committee chose to pass the legislation. (ATTACHMENT III)

As no other conferees appeared, this concluded the hearing for HB 3086.

Chairman Winter opened the hearing for HB 3099.

HB 3099 - concerning the treatment act for mentally ill persons; relating to notice  
of application for determination of mental illness.

Dr. Mani Lee, Kansas Department of Social and Rehabilitation Services Division of Mental  
Health and Retardation, testified in support of HB 3099. Dr. Lee stated that this bill  
clarifies something already implied; making hearings accessible to guardians. Currently  
guardians are not always notified of hearing dates for their wards, HB 3099 would correct  
that situation.

Joan Strickler, Kansas Advocacy and Protective Services, addressed the committee in support  
of HB 3099. She stated that problems have existed for guardians who were not made aware  
of the status of their wards and HB 3099 would solve those problems.

As no other conferees appeared, this concluded the hearing for HB 3099.

Chairman Winter noted that the two bills heard on this date were not affected by the  
deadline cut-off date; time remained to address the topics at a future meeting.

The meeting was adjourned.

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
<del>Chip</del> Chip Knighton	4009 W <sup>Overland Park, KS</sup> 101 terr	Page
Angie Knighton	" " "	<del>Page</del> Page
Doug Bowman	Topeka	Children & Youth Advisory
ED SCHAUER	Topeka	KPL GAS SERVICE
Dave Mudvilk	Topeka	KPL Gas Service
Jerry Conrad	Law	KG & E
Jim Ludwig	TOPEKA	KPL Gas Service
Wendell Woodman	HCMO	HC PL
James P. Chat	Topeka	Youth Services
Mani Lee	Topeka	SRS / MHR
Jason Strubley	Marquette	KAPS
Ed De Fozznie	Topeka	Ks. Contractors Assoc.
RD Drey	"	KTLA

TESTIMONY BEFORE  
SENATE JUDICIARY COMMITTEE  
HOUSE BILL 3086  
OVERHEAD POWER LINE ACCIDENT PREVENTION ACT  
BY MARK A VINING  
KANSAS GAS AND ELECTRIC COMPANY  
CORPORATE ATTORNEY  
APRIL 2, 1990

KG&E actively supports House Bill 3086 and urges its passage by the Legislature. This law, if enacted, will benefit not only utility companies but also Kansans in general. Most importantly, the bill will provide a means to protect employees who are required by the nature of their jobs to work near high voltage overhead power lines. Adherence to the requirements in the act will also help reduce damage to utility and contractors' property, damage to third parties and the inconvenience resulting from interruption of electric service.

At a recent meeting of the Claims Committee of the Edison Electric Institute (an association of electric companies), a presentation was made about recent court decisions affecting electric utilities. I would like to share with you three of the reported cases.

In one case a painter's aluminum ladder came in contact with a utility's overhead line. The line met all NESC clearances, and the painter was aware of the line and the fact that it was energized. The painter's expert witness testified that the utility should have been aware of painting in the area and should have moved its line. A jury returned a verdict of

*Senate Judiciary Committee*  
4-2-90  
*Attachment I page 1 of 7*

\$1,500,000 in favor of the painter. Fortunately, the trial court set aside the verdict and found in favor of the utility and this was affirmed on appeal by the Virginia Supreme Court. Kelly v. Virginia Electric and Power Company, 381 S.E.2d 219 (Va. 1989).

In another case closer to home, two bridge construction ironworkers were injured when rebar they were handling came in contact with the utility's line. The lines exceeded NESC clearance standards. The plaintiffs knew that the lines were energized, having been told repeatedly by the utility representatives of that fact. The plaintiffs contended that the line was maintained too close to the bridge on which they were working. Summary judgement was entered for the utility by District Court Judge Saffels. Slater v. Board of Public Utilities, 703F.Supp.893 (D.Kan.1988).

The case Trett v. Oklahoma Gas and Electric Company, 775 P.2d 275 (Okla. 1989) was also discussed. In that case, a worker was injured when machinery came in contact with overhead high voltage lines. The worker sued the electric utility and won a \$350,000 jury verdict. The line met all NESC clearance standards and the worker's employer knew that the line was energized. In fact, OG&E and the employer had met pursuant to Oklahoma's "six foot rule" (63 O.S. 1981 Section 981-987) which required notification of the operator of a high voltage conductor whenever workers or materials would come within six

feet of the line. The utility and the contractor had agreed on a course of action to prevent injury but the construction work was begun prior to the utility's scheduled corrective action. The workers alleged in their lawsuit that OG&E should have been aware that they had begun work prior to the date OG&E was to take the precautionary measures. The Oklahoma Supreme Court reversed the jury verdict and entered judgement for OG&E.

The cases cited above are only a handful of those reported during the EEI meeting, but they are helpful in considering the impact of the House Bill before you. House Bill 3036 will not guarantee that Kansans will no longer be injured when working near overhead power lines. The Oklahoma case proves that the law will not guarantee that everything will operate as expected. The three cases cited do, however, suggest that House Bill 3086 can provide a means to prevent these types of accidents from happening. On examining the facts in each of those cases, the basic premise cited by the plaintiffs in trying to establish that the utility was responsible for the accident was that the utility should have been aware of the activity in the area and should have done something on its own volition to prevent the accident. In each of the cases, the utility was successful in shielding itself from liability. The utility was successful because the facts failed to show that it had any knowledge which would require it to act. This is also true in the Oklahoma case, which had a notice rule similar to

one which would be established by House Bill 3086. Each of the cases turned on the failure to show that a reasonable power company would have taken the added precautions suggested in the lawsuit. House Bill 3086 will provide a means for the utility to get notice and take steps, in conjunction with the work to be performed, to protect the worker from injury.

The cases are illustrative of another important aspect. People perceive utility companies as having deep pockets. Plaintiff's lawyers are anxious to name utility companies as defendants and juries seem more than willing, even absent proper facts, to find the utility has violated some standard. Utilities are assumed to have crystal ball powers to know about every construction project or activity happening in its jurisdiction close to its utility lines. There are tens of thousands of miles of overhead electric lines throughout the State of Kansas. House Bill 3086 will assist the utilities in monitoring activities around its facilities. Then steps can be taken with the person coordinating the work to protect against accidental contact with those facilities. If these procedures are followed accidents will be prevented, lives can be saved, and property damage will be avoided.

The Kansas Supreme Court in Wilson v Kansas Power and Light Company, 232 Kan. 506 (1983), and Judge Saifels in the Slater case (cited above) recognized that "the transmission of electricity is a necessary fact of modern life." The mere

maintenance of high voltage lines is not wrongful. A particular use of metal irrigation pipe or construction material or equipment, in or of itself, does not mandate alteration of existing electrical lines otherwise satisfactorily designed and maintained. As the courts noted:

"To hold that usage of irrigation pipe (or construction of a bridge) alone creates a duty on a power company to raise, bury, relocate or coat its lines would place an unreasonable and unrealistic burden on power companies. This obviously could not be complied with and would, in essence, elevate the power company to the status of an insurer. This has not been and is not now the law of Kansas." (See Wilson, supra, at 514; and Slater, supra, at 897.)

This bill does not relieve the utility of its duty to use the highest degree of care to protect the public from danger. It does provide some balance to the equation by making those persons working around high power lines share responsibility by establishing a reasonable action on their part to prevent injuries.

House Bill 3086 also would assist in protection of utility equipment and the equitable allocation of costs. The person or persons requesting temporary clearances or other safety precautions is to be responsible for the payment of the costs incurred by the utility. A utility has invested a great deal in placing its transmission and distribution lines along rights-of-way, both public and private. Requiring the person contracting to perform work around electric lines to pay for

the cost of protecting the workers who perform the work and the utility's equipment more fairly distributes the costs associated with these precautionary measures. It is unfair to electric customers in the State of Kansas to require a utility to recover through its rates the costs associated with performing services for a specific individual or business to facilitate their operations. The proposed legislation also provides for a procedure to determine if those charges are fairly set so that the utility is not unjustly enriched when performing these services.

Note that the bill requires the utility, unless other arrangements have been agreed to or circumstances require longer periods of time, to commence work on the safety precautions within 3 working days after arrangements have been made in accordance with Section 4(a) of the Bill. I believe this is a reasonable provision and I have no reason to believe it is onerous to either the utility or to those persons requesting the utility's services. Quite frankly in many instances this will not be an issue and service could be provided before the end of the 3-day time period. Other instances involving particularly high voltages or distribution and transmission lines affecting large customers may require more advance planning and preparatory work. I note that in K.S.A. 17-1916, a person intending to move buildings or structures on streets, alleys, roads and highways is required



to provide not less than 15 days written notice to the utility so that precautions can be made to prevent damage to utility lines. Surely, the protection of workers who may come in contact with these lines is not any less important. The proposed legislation properly balances the utility's interests and those of the individual who is interested in performing work in a timely manner.

One final observation is worth noting, in my opinion. Electricity is a necessary fact of modern day life. KG&E is celebrating its 80th birthday this year. On March 1, 1910, KG&E began providing electric service to Southeast and South Central Kansas. Our lives are dependant upon electricity, both at home and at work, for many conveniences we take for granted. Interruptions to that convenience caused by a crane in an overhead conductor, or a bucket truck that inadvertently downs a transmission line, are not appreciated. The loss of business, computer input, profits or other inconvenience associated with power outages should enter the deliberations when considering House Bill 3086. When proper precautions are taken, continuity of service is provided, the health and safety of workers is increased, damage to equipment and facilities of both the contractor and the utility is prevented, and all Kansans are benefited. I urge you to adopt House Bill 3086. I thank you for your consideration of this proposed legislation.



TESTIMONY

TO

SENATE JUDICIARY COMMITTEE

HOUSE BILL 3086

APRIL 2, 1990

BY ED SCHAUB, KPL GAS SERVICE

Mr. Chairman, Members of the Committee:

KPL Gas Service asked for House Bill 3086 to be introduced. We believe it will help prevent accidents, injuries, deaths and subsequent lawsuits.

House Bill 3086 provides:

- 1) Persons who need to work within the 10 foot clearance are required to notify the public utility that owns the line.
- 2) Unless precaution is taken against contact with a high voltage overhead power line (over 600 volts), no person, tools or equipment are to come within 10 feet of the line, (10 feet is the OSHA standard and the standard in most of the other 21 states that have overhead laws.)
- 3) After being notified of planned work near such a line, the utility must then make the area safe.

Twenty-one states have overhead power laws (exhibit attached). Three states -- Oregon, Virginia and Wyoming -- passed laws just last year. The electric utilities supported a bill in Kansas last year which passed the Senate. However, questions were raised on the House floor about the liability.

-more-

issue. Some legislators were concerned the bill might remove all liability from the utility company. That has never been our intent.

This year during floor debate, the House deleted language which might have been interpreted as providing utilities protection from liabilities. This bill does not give any kind of blanket immunity to utility companies. We have based all of the factors in this bill -- distance, notification requirements, response times, etc. -- on the most common standards found in the laws of those other 21 states. We accept the House floor amendments.

Under this proposed legislation, the utility company is responsible for responding quickly to a contractor's call. It would not be fair for us to keep work crews standing around while they wait for us to come out and make a line safe. The contractor will know ahead of time when workers will be around a line, and in most cases prior arrangements will be made between the utility and the contractor.

Usually, the utility can simply put a rubber insulating blanket over a line (we cannot charge for such protection) or provide temporary deenergization and grounding of conductors. The only time charges to the contractor might be involved are when electricity must be re-routed or lines must be temporarily relocated. This would be a very rare instance. If the utility and the contractor disagree on the cost, they can utilize the state's binding arbitration procedures. The job could go ahead while final payment was being determined. No one would be held up from working on their project. We like the arbitration section in the bill as a means to protect all parties.

4-2-90  
II 7/8

There is a section in the bill that says equipment likely to operate close to high voltage lines must bear a sign stating it is unlawful to operate within 10 feet of a line unless precautions have been taken. This is strictly a worker safety provision and it would not cost equipment owners anything. We will furnish such decals free.

There are several exemptions to the act:

- Highway and agricultural equipment which incidentally pass within the clearances;
- Equipment on railroad cars;
- Governmental vehicles responding to emergencies;
- Persons moving buildings (which is already covered by another state law);
- Home owners cleaning leaves out of the gutter (because the drop line from the transformer to the house is a low voltage line not covered by this act);
- "Authorized" persons, such as other public utility workers and cable TV or telephone workers, do not need to let us know first because they are normally around such lines and are trained to work around them.

In summary, what this bill does is put a burden on a contractor or worker to tell us when they know they are going to be working around a high voltage line. They must tell us. We don't know they're around our lines otherwise. Then it puts the burden on us to do something to make the line safe for the workers to be around. It simply makes people -- whether they're the workers or the utility company -- responsible for their own actions. It helps eliminate a cause of lawsuits. And,

4-2-90  
II 3/8

underlying all of the legal wording, it is intended to help protect life and property.

Let me be very clear. If KPL Gas Service is negligent -- if we have a line in the wrong place or if we don't respond when someone calls to change a line -- then we should be responsible and liable for any damage. This proposed bill does absolutely nothing to change Kansas comparative negligence laws.

One the other hand, just like utility companies and other businesses, individuals should also be responsible for their own actions. If someone is going to be working around a high voltage line, all they have to do is make a telephone call. We will go out and reroute the electricity or deaden the line, so the workers will be safe around the line. If someone works around our lines and doesn't let us know, we are unable to safeguard the workers. The proposed bill is at its heart, a safety bill; in fact, in most states that have similar laws, they are codified in the sections dealing with worker safety.

4-2-90  
II 4/8

Overhead Powerline Safety  
Comparative Statutes

<u>Date of Statute/State</u>	<u>1947 California</u>	<u>1955 Tennessee</u>	<u>1960 Georgia</u>	<u>1963 Arkansas</u>	<u>1963 Oklahoma</u>	<u>1966 New Jersey</u>
High Voltage Threshold	750 volts	750 volts	750 volts	440 volts	750 volts	750 volts
Distance Threshold	6 feet	6 feet	8 feet	10 feet	6 feet	6 feet
Civil Penalty/Criminal Penalty	Criminal	Criminal	Criminal	Criminal	Criminal	Civil
Civil Liability for Damages	No	No	No	Yes*	Yes	No
Temporary Clearance/ Costs	No	Yes	Yes	Yes	Yes	Yes
Mandatory Warning Signs	Yes	Yes	Yes	Yes	Yes	Yes
Exemptions For:						
Highway Vehicles	No	No	No	No	No	Yes
Agric. Equipment	No	No	No	No	No	No
Railroad Activities	Yes	Yes	Yes	Yes	Yes	Yes
Government Emergency Responders	No	No	No	No	No	No
Storage or Maintenance of Equipment Near Line Prohibited	Yes	Yes	Yes	Yes	Yes	Yes

\*Amended in 1989. Original bill did not provide for civil liability.

8/5 II  
06-e-h

Overhead Powerline Safety  
Comparative Statutes

<u>Date of Statute/State</u>	1967 <u>Alabama</u>	1968 <u>Maryland</u>	1969 <u>Massachusetts</u>	1969 <u>Nebraska</u>	1971 <u>Texas</u>	1972 <u>Alaska</u>
High Voltage Threshold	750 volts	750 volts	440 volts	750 volts	600 volts	750 volts
Distance Threshold	6 feet	10 feet	6 feet	10 feet	10 feet	10 feet
Civil Penalty/Criminal Penalty	Criminal	Criminal	Criminal	Criminal & Civil	Criminal	Criminal
Civil Liability for Damages	No	No	No	No	Yes	Yes
Temporary Clearance/ Costs	Yes	Yes	Yes	Yes	Yes	Yes
Mandatory Warning Signs	Yes	Yes	Yes	Yes	Yes	Yes
Exemptions For:						
Highway Vehicles	No	No	No	No	No	No
Agric. Equipment	No	No	No	Yes	No	No
Railroad Activities	Yes	No	Yes	No	No	Yes
Government Emergency Responders	No	No	No	No	No	Yes
Storage or Maintenance of Equipment Near Line Prohibited	Yes	Yes	Yes	Yes	Yes	Yes

8/9 II  
4-2-90  
06-e-7

Overhead Powerline Safety  
Comparative Statutes

<u>Date of Statute/State</u>	1973 <u>S. Dakota</u>	1977 <u>N. Dakota</u>	1980 <u>Arizona</u>	1983 <u>Colorado</u>	1988 <u>Mississippi</u>	1988 <u>Utah</u>
High Voltage Threshold	750 volts	600 volts	600 volts	600 volts	600 volts	600 volts
Distance Threshold	6 feet	10 feet	6 feet	10 feet	10 feet	10 feet
Civil Penalty/Criminal Penalty	Criminal	Civil	Civil	Civil	Civil	Civil
Civil Liability for Damages	Yes	No	Yes	Yes	Yes	Yes
Temporary Clearance/ Costs	Yes	Yes	Yes	Yes	Yes	Yes
Mandatory Warning Signs	Yes	No	No	No	Yes	No
Exemptions For:						
Highway Vehicles	No	Yes	No	Yes	No	No
Agric. Equipment	No	Yes	No	Yes	Yes	No
Railroad Activities	Yes	Yes	No	No	No	No
Government Emergency Responders	No	Yes	No	Yes	No	No
Storage or Maintenance of Equipment Near Line Prohibited	Yes	Yes	Yes	Yes	Yes	Yes

8/14 II  
06-2-90  
4-2-7



Overhead Powerline Safety  
Comparative Statutes

<u>Date of Statute/State</u>	1989 <u>Oregon</u>	1989 <u>Virginia</u>	1989 <u>Wyoming</u>	21 State <u>Summary</u>	Proposed Kansas <u>Legislation</u>
High Voltage Threshold	600 volts	600 volts	600 volts	440 volts - 2 600 volts - 9 750 volts - 10	600 volts
Distance Threshold	10 feet	10 feet	10 feet	6 feet - 8 10 feet - 12 8 feet - 1	10 feet
Civil Penalty/Criminal Penalty	Civil	Civil	Neither	Civil - 8 Criminal - 11 Neither - 1	Civil
Civil Liability for Damages	Yes	Yes	Yes	Yes - 12 No - 9	No
Temporary Clearance/ Costs	Yes	Yes	Yes	Yes - 20 No - 1	Yes
Mandatory Warning Signs	No	Yes	No	Yes - 15 No - 6	Yes
Exemptions For:					
Highway Vehicles	No	Yes	No	Y-4 N-17	Yes
Agric. Equipment	No	No	Yes	Y-5 N-16	Yes
Railroad Activities	No	Yes	No	Y-12 N-9	Yes
Government Emergency Responders	Yes	No	No	Y-4 N-17	Yes
Storage or Maintenance of Equipment Near Line Prohibited	Yes	Yes	Yes	Yes - 21	Yes

8/8 II  
06-c-7



# KANSAS TRIAL LAWYERS ASSOCIATION

Jayhawk Tower, 700 S.W. Jackson, Suite 706, Topeka, Kansas 66603  
(913) 232-7756 FAX (913) 232-7730

1989-90 EXECUTIVE  
 JOHN W. JOHNSON, President  
 EDWARD HUND, JR., Wichita, President-Elect  
 DAN LYKINS, Topeka, Vice President for Membership  
 DENNIS CLYDE, Overland Park, Vice President for Education  
 TIMOTHY ALVAREZ, Kansas City, Vice President for Legislation  
 RUTH BENIEN, Overland Park, Vice President for Public Affairs  
 M. JOHN CARPENTER, Great Bend, Treasurer  
 MICHAEL HELBERT, Emporia, Secretary  
 PEDRO IRIGONEGARAY, Topeka, Parliamentarian  
 GARY McALLISTER, Topeka, Immediate Past President  
 BRUCE BARRY, Junction City, Elizabeth Kaplan, Overland Park, John L. White, Leavenworth, Members-at-Large  
 LYNN R. JOHNSON, Overland Park, At-Large Governor  
 THOMAS E. SULLIVAN, Overland Park, At-Large Governor  
 DENNIS L. HORNER, Kansas City, At-Large Delegate  
 SHANNON KRYSL, Wichita, At-Large Delegate

1989-90 BOARD OF GOVERNORS  
 DONALD S. ANDERSEN, Wichita, Marvin Appling, Wichita, Ernest C. Ballweg, Leawood, James M. Barnett, Kansas City, Terry E. Beck, Topeka, Victor A. Bergman, Overland Park, Arden J. Bradshaw, Wichita, Lelyn J. Braun, Garden City, Lloyd Burke Bronston, Overland Park, Phillip Burdick, Hawatha, Michael E. Callen, Kansas City, David P. Calvert, Wichita, Gail Carpenter, Great Bend, Philip Carson, Kansas City, Phil M. Cartmell, Jr., Overland Park, William A. Cleaver, Overland Park, Bryson R. Cloon, Overland Park, Richard Cordry, Wichita, Dwight Corrin, Wichita, James Crabtree, Overland Park, Michael Crow, Leavenworth, Lavone A. Daily, Kansas City, Steven L. Davis, Emporia, Stephen G. Dickerson, Kansas City, Steven M. Dickson, Topeka, Edgar W. Dwire, Wichita, Gerald T. Elliott, Lenexa, J. David Farris, Atchison, Randall J. Forbes, Topeka, Thomas E. Foster, Overland Park, Lawrence C. Gates, Overland Park, Harold K. Greenleaf, Jr., Liberal, Larry E. Gregg, Topeka, William Grimsbah, Olathe, Randall D. Grissell, Garden City, David Hall, Anthony, John R. Hamilton, Topeka, Tom E. Hammond, Wichita, Keith R. Henry, Junction City, Michael D. Herpel, Wichita, Michael L. Hodges, Overland Park, J. Roy Holliday, Jr., Olathe, Laurence R. Hollis, Wichita, Steven L. Hornbaker, Junction City, Andrew W. Hutton, Wichita, Mark B. Hutton, Wichita, William W. Hutton, Kansas City, Norman M. Iverson, Arkansas City, N. M. Iverson, Jr., Arkansas City, Arvid "Vic" Jacobson, Junction City, Susan C. Jacobson, Junction City, Mark Johnson, Overland Park, Kelly William Johnson, Wichita, Robert S. Jones, Salina, Gary L. Jordan, Olathe, Albert L. Kamias, Wichita, Tom Kelley, Topeka, E. L. Lee Kinch, Wichita, Ruben Jorge Krisztal, Overland Park, Charles D. Kugler, Kansas City, Gerald D. Lasswell, Wichita, Robert R. Lee, Wichita, Robert Levy, Garden City, Donna Long, Clay Center, S. W. Longan III, Overland Park, George E. Mallon, Kansas City, Marlys Marshall, Wichita, David L. McLane, Pittsburg, C. A. Menghini, Pittsburg, Gerald L. Michaud, Wichita, David R. Morris, Overland Park, Robert Nicklin, Wichita, Diane A. Nygaard, Overland Park, Julie Orr, Wichita, Jerry R. Palmer, Topeka, Timothy Pickell, Westwood, Judy Pope, Topeka, Ronald Pope, Topeka, Blake A. Post, Topeka, Bradley Post, Wichita, Bradley J. Prochaska, Wichita, Eugene Ralston, Topeka, Randall K. Rathbun, Wichita, Gordon M. Rock, Jr., Olathe, Tim Ryan, Clay Center, Mark J. Sachse, Kansas City, Richard Sanborn, Wichita, Gene E. Schroder, Topeka, S. A. Scimeca, Wichita, Gerald W. Scott, Wichita, K. Gary Sebelius, Topeka, Daniel Seivart, Wichita, Michael L. Sexton, Kansas City, Ronald Shalz, Colby, John Elliott Shamburger, Overland Park, Karen L. Shelor, Kansas City, James R. Shtelar, Overland Park, Timothy Short, Pittsburg, Craig Schultz, Wichita, Donald E. Shultz, Dodge City, Michael Simpson, Leavenworth, Dan L. Smith, Overland Park, Brock Snyder, Topeka, Marty Snyder, Topeka, Fred Spigarelli, Pittsburg, Dianna K. Stapleton, Kansas City, Daniel J. Strausbaugh, Overland Park, M. William Syrios, Wichita, Lee H. Tetmeyer, Paola, Jay Thomas, Overland Park, Robert Tilton, Topeka, David P. Troup, Junction City, Philip W. Unruh, Harper, Donald W. Vasos, Kansas City, Artie E. Vaughn, Wichita, Michael Wallace, Overland Park, Wes Weathers, Topeka, Robert V. Wells, Kansas City, Samuel Wells, Kansas City, T. Michael Wilson, Wichita, W. Fredrick Zimmerman, Kansas City, James B. Zongker, Wichita

TESTIMONY  
 of the  
 KANSAS TRIAL LAWYERS ASSOCIATION  
 before the  
 SENATE JUDICIARY COMMITTEE

April 2, 1990

## HB 3086 - Overhead Power Line Accident Prevention Act

The Kansas Trial Lawyers Association opposes HB 3086 and urges the Committee to reject it.

Last year's version of this bill was defeated on the floor of the House. Earlier this session, the full House once again rejected this concept, and it was then re-introduced through the Appropriations Committee a few days later. There continues to be good reason for the legislature to question the need for this bill:

1. The sponsors say their goal is safety and accident prevention. Safety measurers which prevent accidents may be implemented by the power companies without the need for a law mandating such action.
2. The real purpose of this bill is to provide a statutory defense to utilities who negligently cause injuries to Kansans.
3. The power companies' fear of lawsuits is blown out of proportion. By their own testimony, KPL estimates it has 50 electrical accidents per year, with 1-3 resulting in litigation. KG&E indicated their experience was the same. Both said their accident rates have either been stable, or have gone down in recent years.

We have attached additional testimony explaining some of the legal duties of utilities and the inherent danger of electricity.

In summary, HB 3086 attempts to solve a liability problem that doesn't exist. The utilities are free to implement safety programs at their own initiative. HB 3086 should be defeated.

RICHARD H. MASON  
EXECUTIVE DIRECTOR

*Senate Judiciary Committee*  
 4-2-90  
*Attachment III*  
 page 1 of 11

SUPPLEMENTAL TESTIMONY

of the

KANSAS TRIAL LAWYERS ASSOCIATION

before the

SENATE JUDICIARY COMMITTEE

April 2, 1990

HB 3086 - Overhead Power Line Accident Prevention Act

I. THE HAZARDS OF HIGH VOLTAGE ELECTRICITY

Insulation is required largely because the uncovered high voltage wires are a menace to the public through contacts of an accidental character or by the thoughtless action of third parties or through the acts of children ... current may be carried from these high voltage wires not only by wire or metal appliances of various kinds, but if the limb of a tree, the string of a kite and certain wooden appliances are wet they, too, will serve to conduct the destructive current to the ground and imperil those who come within reach of such things. Boys may be subjected to the peril of the deadly agency while climbing trees or upon buildings which stand near where such wires are placed and thus get into the danger zone. Because these and like contacts happen frequently and are so likely to occur with serious resulting injuries the law requires the covering of the dangerous wires even though they may be strung high and cannot be reached except through the acts of other parties or some other intervening agencies. Whether or not the company should have anticipated such contacts with its uninsulated wires was fairly a question for the determination of the jury. (emphasis added).

Snyder v. Light Co., 98 Kan. 157, 157 P.2D 442 (1916)

The utility distributes electricity throughout populated urban areas over bare metal conductors at voltages of 7,200 volts.

4-2-90  
III 2/11

An energized wire is a deadly, silent hazard. One cannot use his or her senses of sight, smell or hearing to determine whether an overhead wire is energized.

The same wire used for construction of the phase (hot) wire is used for the neutral. They are identical, and the ordinary lay person has no way of identifying which of the lines is energized.

Even if the line is known to be energized, there is no way for the lay person to know the voltage of the energized overhead line.

Electricity travels over metal conductors at the approximate speed of light, certainly faster than the ability of any human being to react before injury.

The slightest, unintended brush contact with an energized overhead wire is virtually certain to result in instantaneous serious injury or death. There is no second chance - no ability to react.

Because of this, courts of virtually all states, including Kansas, have recognized that electricity is one of the most dangerous instrumentalities known to man, which requires the electric utility to exercise the utmost or highest degree of care to protect the public from danger.

## II. RIGHTS AND DUTIES OF AN ELECTRIC UTILITY.

Consistent with lawful rules and regulations of the KCC, applicable National Electrical Safety Code (NESC) standards, and municipal ordinances, the utility has sole control over the design, maintenance and construction of its overhead distribution system. The consumer has no realistic control over such decisions. Only the utility has the training, personnel and equipment required to build and maintain overhead wires. In that regard, only the utility (to the exclusion of all other persons), has the right to:

- (a) select the point of service to the customer's premises;
- (b) repair or maintain its lines;
- (c) relocate, bury, isolate, or barricade its lines;
- (d) energize or de-energize its lines.

Because of the peculiarly hazardous conditions involved in cases of electrical injury, courts have ununiformly held that the duty to exercise the highest degree of care includes the following:

### A. Duty to Anticipate Uses or Acts Around Lines.

In Murphy v. Central States Electric Cooperative Ass'n., 178 Kan. 210, 215, 284 P.2d 591 (1955), the court recognized that the high degree of care required of distributors of electricity mandates that care be commensurate with the danger, and "provide such protection as will safely guard against any contingency that

is reasonably to be anticipated." The act or use to be anticipated is not given a narrow or restricted meaning, and includes acts or uses made by persons "while engaged in any of the duties of life in that section or community." Logan v. Electric Co., supra, 99 Kan. 381, 385 (1916).

Thus, the duty to anticipate is based not upon actual knowledge of the specific use which does result in injury, but from the stringing, operating and maintaining of the dangerous wires themselves. Because the wires contain lethal voltages, the utility must anticipate legitimate uses, inspect for hazardous conditions, and take appropriate corrective action, i.e., insulate the wires, place them out of reach of contact, provide warning signs or discontinue service. Miller v. Leavenworth-Jefferson Elec. Corp., 653 F.2d 1378, 1384 (10th Cir. 1981).

**B. Duty to Insulate or Isolate Lines.**

In Henderson v. Kansas Power & Light Co., 184 Kan. 691 (1959), the court stated:

Courts generally, if not universally, hold that the duty to exercise the highest degree of care in the maintenance of high-voltage power lines over private property or streets and highways requires the power company to insulate its wires carefully and properly at all places where others have the right to go, either for work, pleasure or business, or where there is a reasonable probability of contact with them, but the duty to insulate is not absolute and if the company maintains its wires at such height above ground that there is no reason to anticipate that contact will be made with such wires, then insulation is not required. The wire must either be insulated or placed beyond the

danger line of contact at places where contact is reasonably to be anticipated. 184 Kan. at p. 698 (Emphasis added).

C. Duty to Inspect.

An electric utility must make "frequent and careful inspections" of its equipment. Moseley v. Garden City Irr. Power Co., 159 Kan. 194, 152 P.2d 799 (1944).

D. Duty to Warn.

In Worley v. Kansas Electric Power Co., 138 Kan. 69, 23 P.2d 494 (1933), the defendant power company extended its high-voltage line over private property. Following construction of the line, a tenant of the property owner built a silo in close proximity to the defendant's line. The height of the wire was 20 feet, and the top of the silo 18 feet, above grade. Decedent, an employee of the tenant, was killed when he came in contact with the line while tramping ensilage in the top of the silo. Suit was brought against the power company for negligence in failing to post signs or give other warnings of the dangerous voltage. The court affirmed a verdict for the plaintiff, stating:

We think it is not an unreasonable requirement that such a company should place warning signs of danger for the protection of those coming within the danger zone. 138 Kan. at p. 74.

In its Employee Safety Manual, KPL acknowledges it has such a duty:

d. Should an employee notice some particularly dangerous place where there is no warning sign, he shall report the condition at once in order that an appropriate sign may be placed or the dangerous

condition eliminated if possible. (Pl. Exh. 62; Vol. VI).

**E. Duty to Terminate Service.**

The KCC grants each utility express authority to de-energize a line at any time a dangerous condition on a customer's premises is observed. (See e. g., KCC Electric Rules and Regulations 5.08.01). A utility is required to terminate service where clear hazards are discovered. Followill v. Gas & Electric Co., 118 Kan. 290 (1923).

**III. THE PROPOSAL IMPOSES GREATER BURDENS ON PERSONS INJURED IN KANSAS BY FOREIGN UTILITIES.**

For Kansans served by foreign utilities, the proposal will impose burdens not shared by out of state customers. A substantial portion of eastern Kansas is served by KCP&L, a Missouri corporation. In the event H.B. 3086 is enacted, it will only govern the rights of persons injured or killed in Kansas. It will have no effect on the rights or obligations of Missouri residents served by the same utility. Thus, a Missouri resident injured in Missouri by the negligence of KCP&L will have greater protection than would a Kansan injured in his own state. However, if he happens to sustain an injury in Missouri, he would not be subject to the burdens of H.B. 3086, and would be afforded the greater protections afforded by Missouri law. Surely, such an anomaly should not be permitted.



**IV. INNOCENT USERS ARE PENALIZED FOR HAZARDS CREATED BY THE ELECTRIC UTILITY.**

NESC Table 234-1 permits a utility to run a bare conductor, energized with 8,700 volts, within 5 feet of a building, including a dwelling. Until a 1977 NESC rules change, the permitted clearance was 3 feet. There is no current NESC rule that requires that lines installed under the old rule be upgraded to the new standard. Under either standard, the minute the homeowner or farmer places a ladder against the wall of his 2 story frame dwelling for needed painting, repair or maintenance, he or she is in violation of the proposed 10 foot rule. In instances where the utility failed to maintain even a 5 foot clearance, an injured person or his survivors are nevertheless burdened with yet another defense, even though it was the utility, not the customer, that placed the line so close to the dwelling.

Before H.B. 3086 is even considered, KPL and other utilities should give some assurance that it will be able to relocate lines adjacent to buildings and other objects, to maintain the required clearance of at least 10 feet, plus any additional clearance to accommodate foreseeable activity that will occur adjacent to the wires.

**V. THERE IS NO EVIDENCE THAT THE PROPOSAL HAS BEEN COORDINATED WITH THE NESC AND KCC, OR THAT IT WILL NOT CONFLICT WITH EXISTING SAFETY STANDARDS.**

In Kansas, the electric utility industry is subject to regulation by the KCC. We have been advised that the KCC does not oppose or favor H.B. 3086, and has not yet finally resolved its effect on the existing regulatory scheme. Moreover, all utilities are required to comply with the standards of the National Electrical Safety Code (NESC) promulgated by the Institute of Electrical and Electronic Engineers. The utilities governed by the NESC are substantial contributors to standards making organizations. I. e., they assist in making the rules by which they are governed. Electric Cooperatives funded by the REA are also governed by separate federal regulations, rules and bulletins, unique to the REA.

Electric utilities should be required to give the legislature assurance that H.B. 3086 will not adversely affect the existing regulatory mechanism. Certainly, where conflict or impairment exists, a thorough study first be conducted to determine its effect on public safety.

**VI. THE PROPOSAL IMPOSES UNREASONABLE BURDENS ON PERSONS INJURED OR KILLED BY HAZARDOUS OVERHEAD WIRES.**

The bill imposes the following burdens:

a. permits the utility to delay implementation of safety measures until it is paid, or the matter of payments has been decided by arbitration;

b. leaves the decision as to the level of protection to be afforded to the utility.

And, even if the utility violates the clearance requirements of the NESC, and a person is thereby injured or killed as a result of the line contact, the bill imposes on the victim a civil penalty of \$1,000.00.

#### VII. CONCLUSION.

H.B. 3086 is euphemistically titled "the Overhead Power Line Accident Prevention Act." It is in reality the overhead power line immunity act. Its obvious purpose is to provide utility defense attorneys with yet another defense, even in those cases involving negligence by the utility. E. g., if accident prevention were indeed the objective of the bill, why should a utility be permitted to withhold "safety precautions" until it is paid. Payment of expense has no relationship to whether the utility, with the duty to exercise the highest degree of care, is adequately protecting the public safety.

The degree of care required to protect people from this devastating element is no less than that required to prevent poisonous reptiles from breaking loose from their restraining enclosures. As a proprietor of ferocious beasts may not, by pleading excessive cost of confining them, escape liability for the loss of life occasioned by his savage wards, so also the owner of high voltage machinery may not avoid the responsibility of the devastation caused through his failure to adequately guard such uninhibited devices.

Densler v. Metropolitan Edison Co., 345 A.2d 758 (Pa. Super. 1975).

AMENDMENT TO HB 3086

Add a new subsection after line 11 on page 4 to read as follows:

"—; (f) any claim for personal injury or death caused by contact with any high voltage overhead line where the pole, transformer, security fence or substation to which said line is attached to which said line is attached fails to include the following durable warning sign, legible at 12 feet: It is unlawful to work within ten feet of this power line. The (name of utility owning the line) will provide guarding or insulation of electric conductors at your request."

4-2-90  
III 1/11