


Approved: March 28, 2003   
Date

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairman Carl D. Holmes at 9:08 a.m. on February 5, 2003 in Room 526-S of the Capitol.

All members were present except: Representative Annie Kuether  
Representative Roger Reitz

Committee staff present: Mary Galligan, Legislative Research  
Dennis Hodgins, Legislative Research  
Mary Torrence, Revisor of Statutes  
Jo Cook, Administrative Assistant

Conferees appearing before the committee:  
Mark Schreiber, Westar Energy  
Mike Apprill, Aquila, Inc.  
Tim Rush, Great Plains Energy  
Kyle Wetzel, Kansas Renewable Energy Working Group  
Larry Holloway, Kansas Corporation Commission  
David Springe, Citizens' Utility Ratepayer Board

Others attending: See Attached List

**HB 2130 - Encouragement of increased electric transmission capacity; facility siting; pass-through of costs**

Chairman Holmes opened the hearing on **HB 2130**.

Mark Schreiber, Senior Manager Government Affairs for Westar Energy, offered testimony in support of **HB 2130 (Attachment 1)**. Mr. Schreiber stated they believe the bill will benefit the Kansas economy by facilitating the expansion and improvement of our transmission system by allowing the Corporation Commission to consider the benefits of investment in the transmission system that will be realized by out of state users and enabling the Commission to consider the regional picture in making the transmission systems more cost effective.

Mike Apprill, Vice President of Resource Management for Aquila, appeared in support of **HB 2130 (Attachment 2)**. Mr. Apprill outlined three advantages of this proposed legislation. They include 1) allowing the Commission to take into account certain benefits and allow siting for transmission to be approved; 2) flexibility of more frequent price adjustments as transmission facilities are utilized for more wholesale transactions resulting in more delivery charges being picked up by wholesale customers; and 3) recognition that transmission will continue to be regulated and the states are expected to be fully involved in the transmission plans process and approval of siting of major facilities.

Tim Rush, Director of Regulatory Affairs for Kansas City Power & Light, testified as a proponent of **HB 2130 (Attachment 3)**. Mr. Rush told the committee that they support this bill as it supports the national movement of the industry to more competitive and open wholesale energy markets.

Kyle Wetzel, appearing on behalf of the Kansas Renewable Energy Working Group, presented testimony in support **HB 2130 (Attachment 4)**. Mr. Wetzel stated that the bill would vest in the Corporation Commission the authority to recognize the potential for and importance of exporting power from the state when approving the siting of transmission. It is particularly important for the development of wind energy in Kansas.

Larry Holloway, Chief of Energy Operations for the Kansas Corporation Commission, appeared as an opponent to **HB 2130 (Attachment 5)**. Mr. Holloway told the committee that the Commission already has the authority to establish a pass through mechanism for a utility's transmission costs and believes that the language of the bill could easily be misinterpreted. He stated that the Commission has been actively following many of the issues in developing regional transmission tariffs for network service and suggests that, instead of legislation, a generic docket be opened to investigate establishing a surcharge allowing the utility to pass through its regional transmission tariff charges.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES, Room 526-S Statehouse, at 9:08 a.m. on February 5, 2003.

David Springe, Consumer Counsel for the Citizens' Utility Ratepayer Board, testified in opposition to **HB 2130** (Attachment 6). Mr. Springe told the committee that the changes this bill is requesting can be accomplished within the existing Commission process. Additionally, he stated that if the committee chose to pass the bill out, they recommend that the bill be more narrowly crafted to include only those charges that are based on a FERC transmission tariff.

The conferees responded to questions from the committee. Additionally, Dick Dixon, Senior Vice President Customer Operations for Westar Energy, responded to committee questions.

Chairman Holmes closed the hearing on **HB 2130**.

**HB 2037 - Repeal of sunsets on recovery of certain utility costs for use of public rights-of-way and for security**

Chairman Holmes opened the debate on **HB 2037**. Representative Sloan moved to amend line 17 by removing 'June 30, 2003' and replacing it with 'June 30, 2004, inclusive' and to amend line 20 by removing 'June 30, 2003' and replacing it with 'June 30, 2004.' Representative P. Long seconded the motion. The motion carried. Representatives Carter and Dillmore requested to have their 'no' votes on the amendment be recorded. Representative Sloan moved to recommend **HB 2037**, as amended, favorable for passage. Representative P. Long seconded the motion. The motion carried. Representative Carter will carry the bill.

The meeting adjourned at 10:57 a.m.

The next meeting will be Thursday, February 6, 2003 at 9:00 a.m.

# HOUSE UTILITIES COMMITTEE GUEST LIST

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NAME	REPRESENTING
JC Long	Aquila Inc.
Mike Appell	" "
David Spryng	Curb
Kyle Wetzel	Kansas Renewable Energy Working Group
Dick Dixon	Westar Energy, Inc.
Tim Rush	Kansas City Power & Light Company
MARK SCHREIBER	Westar Energy
Cynthia Smith	GPE
<del>XXXXXXXXXXXXXXXXXXXX</del>	KCC
Bruce Graham	KEPCO
Dave Holtzhaus	KEC
Larry Hollaway	KCC
Amy Campbell	Midwest Energy
LES EVANS	WINDPOWER, INC
RON GACHES	CBBA
Tom Day	KCC
Steve Johnson	Ks. Gas Service

**Testimony before the  
House Utilities Committee**

**By  
Mark Schreiber, Senior Manager, Government Affairs  
Westar Energy  
February 5, 2003**

Chairman Holmes and members of the committee, I am Mark Schreiber, senior manager, government affairs for Westar Energy.

Westar Energy offers its support of House Bill 2130. We appreciate the Legislature's effort to encourage transmission construction.

As an electric energy provider, we are well aware of the bottlenecks that can occur in Kansas' transmission system and the effect of those bottlenecks on the state's economic development. It is important that a remedy to this problem is found.

Adding transmission capacity to a system is a challenging proposition. First, access to the money to invest in upgrades is limited. Second, often those who benefit most from the improvements are not those who bear the cost.

Westar Energy believes in the importance of utilities participating through Regional Transmission Organizations in expansion of the transmission infrastructure and in determining a fair way to pay for that expansion.

H.B. 2130 accomplishes some important things. First, it allows the Kansas Corporation Commission to consider the benefits of investment in the transmission system that will be realized by out-of-state users. Enabling the commission to consider the regional picture will make the transmission system as whole more cost effective.

Second, Section 2 of the bill permits utilities to pass on transmission costs to customers through a line item on their bill. FERC's regulation of transmission service will provide oversight; this oversight should be sufficient to allow utilities to pass on these costs without the burden and expense of a full rate case.

Westar Energy believes House Bill 2130 will benefit the Kansas and Midwest economies by facilitating the expansion and improvement of our transmission system. I urge you to support this bill.

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ATTACHMENT 1

## House Utilities Committee

Testimony in Favor of HB No. 2130

By

Mike Apprill, Vice President – Resource Management Aquila, Inc.

*Mr. Chairman and members of the Committee:*

My name is Mike Apprill and I am Vice President of Resource Management for the Aquila Networks in Kansas, Colorado and Missouri. Our WestPlains Energy division has 70,000 electric customers in central and western Kansas serving both retail and wholesale power. I am here today on behalf of Aquila in support of HB 2130.

The Bill provides for modifications to the siting of certain proposed transmission lines to require the Commission to consider economic development benefits in Kansas and to consider benefits for consumers both inside and outside the State of Kansas. In addition, the Bill adds a provision to allow utilities to recover transmission related costs through separate delivery charges on retail customers' bills.

The advantages of these new provisions are:

1. The State of Kansas is ideally situated to be a major producer and exporter of renewable wind energy into other states. But without the construction of additional transmission facilities, it will be impossible to export, and therefore the incremental potential above Kansas' own needs will not be realized, to the detriment of property owners and taxpayers in Kansas. The proposed changes to the siting provisions will allow the Commission to take into account those benefits and allow siting for the transmission to be approved.
2. The utilities in the State of Kansas will likely join a Regional Transmission Organization (RTO) such as the Midwest Independent System Operator (Midwest ISO) during 2003 due to requirements by FERC. The advantage of a large RTO is that it will allow utilities across 20 states to buy and sell power at a single price and avoid the excess cost of transmission pancaking. The Midwest ISO will also manage the use of lines to avoid overloads and to insure all participants have access to the wholesale market. How does this impact HB 2130 which allows Kansas utilities to separate and adjust transmission delivery charges on customers' bills? The key benefit seen by customers will be the flexibility of more frequent price adjustments as the transmission facilities are utilized for more wholesale transactions, resulting in more of the delivery charges being picked up by those wholesale customers. As an example, suppose a

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wind farm developer builds a 100MW wind farm and has a contract to sell the output to customers in Missouri. The developer will need to purchase transmission to do so. To the extent they use and pay for existing transmission facilities, the retail customers will be relieved of that cost which will pass through and be reflected in the separate transmission delivery charge. Similar benefits will be realized as the RTO efficiencies are realized with access to larger markets.

3. It is important to recognize that transmission will continue to be regulated and that the states' are expected to be fully involved in the transmission planning process and, of course, in approval of siting of major facilities.

Thank you, Mr. Chairman, for the opportunity to appear before you today in support of HB 2130. I would be glad to try and answer any questions you may have.

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**Testimony before the House Utilities Committee  
In Support of House Bill No. 2130**

**Tim M. Rush  
Director, Regulatory Affairs  
Kansas City Power & Light Company  
February 5, 2003**

Kansas City Power & Light Company supports House Bill No. 2130 concerning transmission siting and cost recovery as it supports the national movement of our industry to more competitive and open wholesale energy markets. KCP&L supports both the changes in state siting requirements and the measures for ensuring recovery of transmission related costs.

Transmission Siting

Under current law, the Kansas Corporation Commission ("KCC") must determine the necessity for and the reasonableness of the location of proposed transmission facilities. Depending upon the interpretation of the term "necessity", the current statute could effectively block the construction of new transmission facilities that benefit the broader region, but may not be necessary for directly serving Kansas retail electric consumers. As such, the changes proposed in this bill allow the KCC to take into consideration the benefits to consumers outside of the state. This broadens the issues that the KCC will consider when approving transmission siting and should ease the ability to site new transmission facilities that benefit the all customers within this region..

Transmission Cost Recovery

While the provisions in this bill related to recovery of transmission related costs are supported by KCP&L, we do not intend to take advantage of these provisions for a number of years. As part of a negotiated settlement reached in 2002 with the KCC to reduce KCP&L's retail rates by 3.237%, effective January 1, 2003, KCP&L and the KCC Staff agreed not to file any case requesting a general increase or decrease in KCP&L's retail electric rates until approximately May 2006. KCP&L could elect to unbundled the costs associated with the provision of transmission service at that time.

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ATTACHMENT **3**

Comments to the  
**Kansas House Utilities Committee**  
by  
**Kyle K. Wetzel**  
on behalf of the  
**Kansas Renewable Energy Working Group**  
in Support of  
**HB 2130**  
Encouragement of increased electric transmission capacity

**February 5, 2003**

The Kansas Renewable Energy Working Group supports HB2130. This bill would vest in the Corporation Commission the authority to recognize the potential for and importance of exporting power from our state when approving the siting of transmission. This is particularly important for the development of wind energy in Kansas.

Public Interest Research Group released a report last year which ranked Kansas as first among the lower 48 states in terms of harnessable wind energy resource. It is not unrealistic to think that more than 2,000 MW of wind power could be installed in our state in the next decade in both western Kansas and the Flint Hills. Sunflower Electric announced Monday a new 30-MW wind farm to be installed this year near Leoti, and eventually expanded to 100 MW. FPL Energy is planning additions in Gray County which would be larger than their existing project. The 100-MW Elk River Windfarm was approved last week by the Butler County Commission. And numerous other projects are in the works.

However, not all of this wind could be used here in Kansas. Kansas' electricity consumption is growing at the rate of approximately 3% per year, or 1 billion kilowatt-hours annually. This is approximately the amount of energy which is produced in a year by 300 MW of windpower. In other words, in order to satisfy the growing need for electricity in our state, we would have to add 300 MW of wind power every year. However, since wind is not dispatchable, it is unrealistic for us to expect utilities and coops to rely on wind for 100% of our new capacity needs. A more realistic – if aggressive – goal might be 30% to 50% from wind energy, with the rest of our new base requirement being satisfied by conventional resources.

This means that if wind turbines are being planted in our state at the rate of 200-300 MW per year over the next decade, anywhere from 30% to 50% of the energy produced by those turbines will need to be exported from Kansas. This is good, however. The Kansas Energy Plan 2003 released recently by the State Energy Resources Coordination Council notes that Kansas has become a net importer of energy. Kansas will regain its status as an energy exporter only by developing its relatively untapped renewable energy resources and exporting that power.

But the most serious challenge to this model is transmission constraint. If one takes a map of Kansas wind energy resource and overlays on it the 345 kV transmission lines in Kansas, the

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challenge of transmitting Kansas wind power out of southwest Kansas immediately becomes obvious. The 345 kV lines run north, south, east, and soon west from the power plant at Holcomb – south to Amarillo, west to Spearville, north to Nebraska, and eventually west to Lamar, Colorado. The problem is that there is not much load in Nebraska to absorb western Kansas wind power. The line from Holcomb to Lamar must go through an AC-DC-AC link which is presently planned to have a capacity limit of approximately 200 MW. And the line to Amarillo is going to be very popular with wind farms in the panhandles of Oklahoma and Texas.

As for the line going eastward, the termination of the 345 kV line at Spearville is connected back to Great Bend, Hutchinson, and Salina only through a 230 kV line. For all practical purposes, western Kansas is electrically disconnected from eastern Kansas.

Making reasonable assumptions about other demands already placed on the existing lines, no more than approximately 400 MW of wind power can be exported from western Kansas, including the 100 MW already installed at Montezuma. This number is probably optimistic. This assumes limited development of wind power in the panhandles of Oklahoma and Texas. If several hundred megawatts of wind turbines are installed there, the ability to get wind power out of southwest Kansas could be minimal.

Upgrading the existing 115/138 kV line running from Dodge City to Barber and Harper Counties and back to Wichita to 500 kV would allow for an additional 1,250 MW of wind power to be exported from southwest Kansas back to eastern Kansas and even further on to load centers such as St. Louis and Chicago. Further upgrades or new construction of transmission in eastern Kansas might further expand our ability to export power back east. New lines in western Kansas, constructed in cooperation with similar activity in Colorado, might allow for exporting power to the growing load centers along the front range of the Rockies.

HB 2130 would authorize the Corporation Commission to examine such considerations in their decision making.

**BEFORE THE HOUSE UTILITIES COMMITTEE  
PRESENTATION OF THE  
KANSAS CORPORATION COMMISSION  
February 5, 2003  
HB 2130**

Thank you Chairman and members of the Committee. I am Larry Holloway, Chief of Energy Operations for the Kansas Corporation Commission. I appreciate the opportunity to be here today to testify for the Commission on HB 2130.

The purpose of my testimony is to provide information and perspective on HB 2130. This legislation proposes a pass through mechanism to retail utility customers for all transmission costs that are not currently covered in a utility's rates. The Commission does not support HB 2130. The Commission is well aware of increasing transmission costs that utilities are facing as they struggle to adopt regional transmission tariffs and to develop working regional transmission operators. Furthermore the Commission is concerned that these costs may be preventing necessary transmission investment and utility participation in regional transmission entities, which could affect the reliability of Kansas electric transmission service. Nonetheless, the Commission believes that this legislation is unnecessary and could be easily misinterpreted and abused.

First, the Commission already has the authority to establish a pass through mechanism for a utility's transmission costs. A good example is the action the Commission has taken regarding gas transportation costs, which are somewhat analogous to electric transmission costs. Gas transportation costs are currently a part of the purchased gas adjustment, or PGA, used by most of our natural gas utilities. It is important to note that the development of the current PGA mechanism did not occur overnight and that this mechanism has evolved over the years, much as the natural gas industry itself has evolved, to address changes in federal and state regulation and policy. Nonetheless the Commission has successfully addressed these changes and modified the PGA mechanism as appropriate to recover the costs, even as the business has evolved. The

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Commission was able to make these changes to address an evolving industry without the limitations of overly specific statutory language.

The federal and state regulation of electric transmission is currently in the same stage of rapid evolution as gas transportation costs were fifteen years ago. The Commission needs similar flexibility to address electric transmission costs and charges as the industry rapidly evolves. It would be difficult, if not impossible, to craft statutory language that would follow these changes.

Second, the language of the bill could easily be misinterpreted. For example the bill talks about “any and all costs associated with the transmission of electric power and energy to retail customers”. This presents several problems. Does this include distribution costs? Certainly distribution is transmission of electric power and energy to retail customers. Arguably a utility could submit distribution costs under this statute.

Unfortunately, the confusion is not as simple as this mere illustration. The definition of electric transmission, and how it differs from distribution and generation, is increasingly part of the national debate regarding wholesale electric markets. For example, when the Federal Energy Regulatory Commission (the FERC) adopted its open access transmission requirements in Order 888, it referred to certain “ancillary transmission services” that were clearly generation related, such as line losses, frequency control, etc. As another example, consider two power purchases. In the first case the power seller delivers the power to the utility with no transmission charge. In the second case the power seller requires the utility to pay the transmission charge. Is this a transmission cost or merely part of the purchase power costs?

The Commission has been actively following many of the issues, now being debated nationally, in developing regional transmission tariffs for network service. A regional transmission tariff for network service essentially ensures that wholesale transmission customers, as well as retail customers of a transmission owning utility, pay the same price for the same transmission service. As in the natural gas business several years ago, these transmission costs

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and charges are still evolving. It is difficult to contemplate any language that could be corrected in the bill that would correctly craft legislation that could evolve with the industry.

Instead of legislation, the Commission suggests a generic docket and investigation establishing a surcharge allowing the utility to pass through its regional transmission tariff charges. This proceeding could fully develop the issues and allow policymakers to put in place a mechanism that would address the legislature's concerns without prescriptive legislation that could not evolve as the industry evolves. The goal would be to develop this mechanism by January 1, 2004. The intent would be to allow recovery that would encourage Kansas utilities to not only construct and build necessary transmission, but to participate in regional transmission entities. The hope would be that the resulting reliability and transmission access would benefit not only the transmission owners, but also their retail and wholesale customers.

# Citizens' Utility Ratepayer Board

## Board Members:

Gene Merry, Chair  
A.W. Dirks, Vice-Chair  
Frank Weimer, Member  
Francis X. Thorne, Member  
Nancy Wilkens, Member  
David Springe, Consumer Counsel



**State of Kansas**  
*Kathleen Sebelius, Governor*

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## HOUSE UTILITIES COMMITTEE H.B. 2130

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

Chairman Holmes and members of the committee:

Thank you for this opportunity to appear before you today and offer testimony on H.B. 2130. The Citizens' Utility Ratepayer Board is opposed to this bill for the following reasons:

1) This bill adds three new tests to the existing statutory scheme. The existing statutory scheme requires the KCC to consider "necessity" and "reasonableness of location" when deciding whether to issue a site permit for a proposed transmission line. The bill now requires the Commission to also consider a) benefit to customers in Kansas, b) benefit to customers outside of Kansas, and c) economic development benefits in Kansas. These three additional requirements are nebulous and difficult to define at best. While I am not a transmission engineer, I do understand that building a transmission line in Kansas may have unknown impacts on other transmission lines, both in Kansas and outside of Kansas, by changing line flows. Attempting to evaluate these impacts in reference to the benefits to customers, both in Kansas and outside of Kansas, and on economic development would be difficult, and quite possibly contentious.

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2) This bill allows an electric utility, at its option, to create a line item on the consumer bill for transmission delivery charges. While CURB is not necessarily opposed to deconsolidating electric retail rates into component parts, such as a transmission delivery charge, CURB does not believe this bill is necessary to accomplish this task. Any utility can propose this same measure by filing an application at the Commission. In fact, Midwest Energy has deconsolidated its customer electric bills through this KCC process. CURB is concerned that deconsolidating electric bills into component parts may cause some confusion among consumers initially.

3) New Section 2(a) If a electric utility, pursuant to this bill, chooses to create a separate transmission delivery charge, this bill does require, at least initially, that the cost of transmission be removed from existing retail rates such that the sum of the revenue recovered from retail rates and the initial transmission delivery charge is “no lower” than the revenue recovered from retail rates prior to institution of the transmission delivery charge. This language does leave open the possibility that revenue can be higher than the revenue derived from retail rates prior to instituting the transmission delivery charge. Further, after this initial deconsolidation, the bill later specifically precludes a rate review based on the linkage between retail rates and a change in the transmission delivery charge.

4) New Section 2(a) This bill allows the transmission delivery charge to recover “any and all” costs associated with transmission of electric power to retail customers. Transmission costs come in many forms, from pure tariff rates, to ancillary services

charges, to transmission costs included in a power purchase contract, to back office staffing costs related to transmission engineering and billing, to regulatory costs for transmission related filings, to dues from participation in power pools and retail transmission organizations, to computers and software to tracking transmission flows, and so on. Administering what cost is transmission related, and appropriate for inclusion in the transmission charge, verses what costs are not transmission related and therefore appropriate for inclusion in retail rates will be a difficult task going forward. Clearly we would want to guard against costs being included in the transmission delivery charge and then also included in retail rates, for instance personnel costs related to transmission planning. Personnel costs at the local utility level are generally included in retail rates as an expense. Would they now be placed in the transmission delivery charge? Providing more specific guidance as to what costs may be included in the transmission delivery charge would be preferable. For example, only specifically identified tariff charges would be included, but not all miscellaneous charges. Providing specific guidance on a limited set of charges that would be appropriate for inclusion in the transmission delivery charge will also create consistency between electric utilities that choose to implement this type of charge. Again, since I am not a transmission engineer, clearly identifying what specific costs to include is a challenge, but the this challenge is preferable to leaving it open to “any and all” costs.

5) New Section 2(b) The bill states that transmission related costs that result from and order of a regulatory authority having legal jurisdiction over transmission matters “shall be conclusively presumed prudent”. (I presume this is reference to the Federal

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Energy Regulatory Commission) The bill allows electric utilities to summarily change their transmission delivery charge accordingly and notify the Commission only after they have done so. CURB has several concerns related to this portion of the bill. First, it is unprecedented that a utility can summarily change rates to retail customers prior to notifying the Commission. Even if “conclusively presumed prudent” this section removes any ability of the KCC or CURB to review how any cost changes were implemented for tariff purposes. Second, since the bill appears to leave the decision to change rates in the hands of the utilities, it is unclear whether the KCC or CURB have the ability to require a price change in instances where transmission costs might decrease, whether from a FERC ordered change, or simply from a change in how the electric utility is purchasing transmission to serve retail customers. Further, it is unclear whether the KCC or CURB have any ability to review the actual purchase decisions of the electric utility. It is possible, even where there may be a lower cost equally reliable transmission option to serve retail customers, that the electric utility may choose a more expensive transmission option for purposes other than the benefit of retail customers. Creating a conclusive presumption of prudence and allowing a utility to summarily change rates removes customary oversight authority over utility decisions. Third, as noted above in point (4), the authority granted in this section only makes sense if the costs allowed under a transmission delivery charge are limited to those areas that could be addressed by a “regulatory authority having jurisdiction over transmission matters”, i.e., FERC tariff charges. If the FERC, after review, changes a FERC transmission tariff (i.e. a network tariff rate), and FERC tariff rates are all that is included in the transmission delivery charge, while not eliminating CURB’s concern about oversight, the section would at least

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be internally consistent. However, with the “any and all” transmission costs language included in New Section 2(a) CURB believes the bill as drafted is too broad and vague, and will be detrimental to residential and small commercial customers who will be responsible for paying the transmission delivery charges.

In summary, CURB does not believe that this is an appropriate area for legislation. Changes proposed within this bill can be accomplished within the existing KCC process. The language that allows an electric utility to include “any and all” transmission costs in a transmission delivery charge, when read with the “conclusively presumed to be prudent” language in the bill causes great concern about the ability to provide oversight of charges that residential and small commercial customers will pay on their electric bill. If it is the legislature’s pleasure to move forward with the statutory scheme represented in this bill, CURB recommends that the bill be more narrowly crafted to include only those charges that are based on a FERC transmission tariff. Narrowing the scope of this bill will provide more clear guidance as to what can be included in a transmission delivery charge, and will provide some internal consistency between the different electric utilities as to what is included in each utilities transmission delivery charge.

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