

Approved: April 29, 2005 *Carl D. Holmes*
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 March 9, 2005 in Room 231-N of the Capitol.

All members were present except: Representative Bonnie Huy - Excused

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:

Allie Devine, Kansas Livestock Association, Topeka, KS
Terry Holdren, Kansas Farm Bureau, Topeka, KS
Whitney Damron, Empire District Electric, Topeka, KS
John Grimwade, Kansas City Power & Light, Kansas City, MO
Mark Schreiber, Westar Energy, Topeka, KS
Charles Benjamin, Sierra Club, Lawrence, KS

Others attending: See Attached List

Chairman Holmes asked for bill introductions. Representative Sloan moved to introduce a committee bill that would address the consolidation of Kan-Ren and Kan-Win in relationship to Kan-Ed. Representative Krehbiel seconded the motion. The motion carried. Representative Knox moved to introduce a committee bill that addresses the annexation concerns regarding utility issues. Representative Oharah seconded the motion. The motion carried.

Mark Schreiber, Westar Energy, shared information on the upcoming tour of the Wolf Creek Nuclear Power Plant.

SB 93 - Eminent domain for wind energy projects

Chairman Holmes opened the hearing on **SB 93**.

Allie Devine, Vice President and General Counsel for the Kansas Livestock Association, addressed the committee as a proponent of **SB 93 (Attachment 1)**. Ms. Devine stated that the Association had requested the bill after concerns were raised among their members on the advancement of wind energy. The members believe that the power of eminent domain should not be granted to utilities or wind developers for the purpose of taking private property for wind energy development. Ms Devine included a copy of a Certificate issued by the Kansas Corporation Commission regarding the of application of the Elk River Windfarm LLC.

Terry Holdren, Kansas Farm Bureau Governmental Relations Local Affairs Director, appeared in support of **HB SB 93 (Attachment 2)**. Mr. Holdren stated that the bill provides protection for landowners in areas targeted by wind farm developers.

Whitney Damron, on behalf of The Empire District Electric Company, testified in opposition to **SB 93 (Attachment 3)**. The bill, as amended, insures a public utility can continue to have the ability to utilize eminent domain authority for construction of transmission lines. This is acceptable to the company, however, other portions of the bill which create different classes of public utilities may result in unintended consequences..

John Grimwade, Manager Energy Resource management for Kansas City Power and Light, appeared as an opponent to **SB 93 (Attachment 4)**. Mr. Grimwade stated that the bill eliminates a valuable tool in the state's law on eminent domain and restricts the ability to build and transmit electricity generated from wind farms.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES, Room 231-N, Statehouse, at 9:08 a.m. on March 9, 2005

Mark Schreiber, Manager Government Affairs for Westar Energy, addressed the committee in opposition to **SB 93 (Attachment 5)**. Mr. Schreiber said that eminent domain is used only as a last resort, but it does allow the completion of energy projects that can benefit large regions of the state.

Charles Benjamin, appearing on behalf of the Kansas Chapter of Sierra Club, offered neutral testimony on **SB 93 (Attachment 6)**. Mr. Benjamin said they are concerned that the legislation singles out the wind energy industry and could be sending a hostile message to developers.

The conferees responded to questions from the committee. Additionally, Tom Day of the Corporation Commission and Steve Johnson of Kansas Gas Service responded to questions.

Chairman Holmes closed the hearing on **SB 93**.

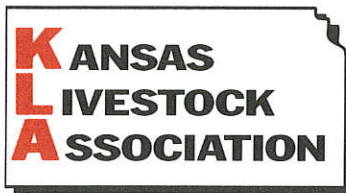
The meeting adjourned at 10:28 a.m.

The next meeting will be Friday, March 11, 2005 at 9:00 a.m.

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: March 9, 2005

NAME	REPRESENTING
Mark Schreiber	Westar Energy
Whitney Samron	Empire District Electric Co.
CARRY MARILL	KANSAS CITY POWER LIGHT
John Grimwade	Kansas City Power & Light
Robin Tenuison	Tall Grass Ranchers
Tina Grackner	SBC
Shy Adams	KDWP
Lucas Bell	Kearney and Associates
Allie Derrin	Ks Livestock Association
Brent Haden	KS Livestock Assoc.
BRUCE GRAHAM	KEPCo
Dave Holthaus	KEC.
LARRY BOEB	MIDWEST ENERGY
Tom DAY	KCC
STEVE JOHNSON	KANSAS Gas Service
Charles Benjamin	KS Sierra Club



Since 1894

TESTIMONY

To: House Utilities Committee
Representative Carl Holmes, Chairman

From: Allie Devine, Vice President and General Counsel
Kansas Livestock Association

Date: March 9, 2005

Re: SB 93, Eminent Domain Powers

The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing over 6,000 members on legislative and regulatory issues. KLA members are involved in many aspects of the livestock industry, including seed stock, cow-calf and stocker production, cattle feeding, grazing land management and diversified farming operations.

Good Morning, my name is Allie Devine, I am Vice President and General Counsel for the Kansas Livestock Association. I am here today representing KLA and asking for your support and passage of SB 93.

KLA requested that SB 93 be introduced after a series of discussions about wind energy among our members. Over the past several years, our members have debated what role the state and our association should play in the development of policy for the advancement of wind energy. As you may already know, we have members who strongly support and those who strongly oppose the development of wind energy.

Last fall, KLA formed a special working group of KLA members to review the recommendations of the Governor's Task Force on Wind Energy and various pending county regulatory proposals. Despite our differences of opinion, KLA members agreed that the power of eminent domain should not be granted to utilities or wind developers to take private property for wind development.

Today, landowners and wind development companies negotiate easements for the placement of towers. Easements may also restrict uses of the property so as to not interfere with normal agricultural activities or with wind generation. These easements are VOLUNTARY. The parties negotiate and agree to terms. It is this voluntary siting of wind generation facilities that our members want to preserve. If a landowner wants

HOUSE UTILITIES

DATE: 3-9-05

wind turbines or wind infrastructure equipment on his/her property then they should be allowed to negotiate for it. If they do not want such equipment, they should not be forced upon their land.

The fundamental issue here is preservation of private property rights. The Fifth Amendment (Takings Clause) of the United States Constitution provides that private property shall not be taken or damaged for public use without compensation. The state has the ultimate power of eminent domain but may delegate that authority to other public authorities within Constitutional restraints. In Concerned Citizens, United, Inc. v. Kansas Power and Light Company 215 Kan. 218, 523 P.2d. 755. The Court noted that the legislature “has the inherent power of eminent domain limited only by Constitutional restrictions. Such power may be delegated by the legislature to any public authority to be exercised as directed.” (See generally Heim, *Eminent Domain and the Kansas Eminent Domain Procedures Act*, Kansas Legislative Research Department, October 6, 2004)

K.S.A. 17-618 is one of the statutes that delegates the power of eminent domain to various entities for a variety of purposes including the generation of electrical currents. SB 93 proposes to restrict the use of the power of eminent domain for the siting and construction of wind powered electrical generators or turbines. The bill was amended by the Senate to remove any limitation on use of eminent domain for siting of transmission lines, making the bill more acceptable.

Many citizens believe that wind developers do not have the power of eminent domain, as these entities are generally not classified as utilities. However, K.S.A 66-131 provides that a wind development company may seek a certificate of convenience from the Kansas Corporation Commission. Once granted, the certificate under K.S.A. 17-618, allows the company the power of eminent domain. These certificates are limited to a specific geographic location. This opens the door to the use of eminent domain. We are asking the legislature withdraw this delegation of authority by passing SB 93 and remove the threat of eminent domain from the wind debate.

We look forward to working with you. Thank you for your consideration.

1-2

2004.12.20 16:45:59
Kansas Corporation Commission
20/ Susan K. Dufre

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: Brian J. Moline, Chair
Robert E. Krehbiel, Commissioner
Michael E. Moffet, Commissioner

In the Matter of the Application of Elk River Windfarm, LLC) Docket No.
for a Certificate of Public Convenience to Transact the) 05-ERWE-499-COC
Business of an Electric Public Utility in the State of Kansas.)

CERTIFICATE

NOW, there comes on for consideration and determination by the State Corporation Commission, of the State of Kansas (Commission) the application of Elk River Windfarm, LLC (Applicant) as captioned above, for a Limited Certificate of Convenience and Necessity to construct and operate a wind power project (project) in a portion of Butler County. After giving due consideration to the application and being fully advised in the premises, the Commission finds and concludes that:

1. Although the project planned by Applicant is qualified for exemption under K.S.A. 66-104(e), Applicant, at its option, seeks a limited certificate to operate as an electric public utility.
2. The application in the instant docket was filed with this Commission on the 2nd day of December 2004. There have been no interventions. A public hearing was not held on the instant application.
3. Applicant seeks a limited certificate in this application to operate a wind power project in Butler County near Beaumont, Kansas. The project consists of approximately 100 wind turbines and attendant electric facilities as described and shown on maps and exhibits attached to the application. Applicant requests authority to sell at wholesale the output of electric energy from the project to Empire District Electric Company (Empire). Applicant states it has no current plans to offer retail electric service in Kansas.

1-3

4. Applicant requests a limited certificate to transact the business of an electric public utility in the territory and to the extent described as follows:

The property is all of the following tracts or parcels of land, situated in the County of Butler, State of Kansas, more particularly described as follows:

BUTLER COUNTY

- The East 1/2 of Section 32, Township 28 South, Range 8 East;
- All of Section 33, Township 28 South, Range 8 East;
- All of Section 4, Township 29 South, Range 8 East;
- All of Section 5, Township 29 South, Range 8 East;
- The East 1/2 of the Northeast 1/4 and the East 1/2 of the Southeast 1/4 of Section 16, Township 28 South, Range 8 East;
- The South 1/2 of the Southeast 1/4 of Section 29, Township 28 South, Range 8 East;
- All of Section 21, Township 28 South, Range 8 East;
- All of Section 28, Township 28 South, Range 8 East;
- The Southeast 1/4 of Section 17, Township 28 South, Range 8 East;
- Lots fifteen (15), sixteen (16), seventeen (17) and eighteen (18) of Section 31, Township 28 South, Range 8 East;
- Lots one (1), two (2), three (3), four (4) and eighteen (18) of Section 6, Township 29 South, Range 8 East;
- The South 1/2 of the Northeast 1/4 and the Southeast 1/4 of Section 6, Township 29 South, Range 8 East;
- The East 1/2 and Lots one (1), two (2), fifteen (15), sixteen (16), seventeen (17) and eighteen (18) of Section 19, Township 28 South, Range 8 East;
- The Southeast 1/4 of Section 18, Township 28 South, Range 8 East;
- The Southwest 1/4 of Section 17, Township 28 South, Range 8 East;
- All of Section 20, Township 28 South, Range 8 East;
- All of Section 29 (less the South 1/2 of the Southeast 1/4), Township 28 South, Range 8 East;
- The West 1/2 of Section 32, Township 28 South, Range 8 East;
- The East 1/5 of Section 30, Township 28 South, Range 8 East; and
- The East 1/5 of Section 31, Township 28 South, Range 8 East.

In addition, Applicant requests transmission rights only in and along the two optional routes for a 345 KV electric transmission line and other attendant facilities necessary to connect the wind power project with a nearby Kansas Gas and Electric Company 345 KV electric transmission line shown on maps marked as Exhibit B-1 and B-2 of the application herein

5. There are two other electric suppliers certificated in the area described in paragraph 4 above. Westar and Butler have been provided notice of this application and have filed no objection.

1-4

6. Increased electricity production would enhance the availability and affordability of power to the benefit of the Kansas public generally. Interconnection with the Kansas electric grid is necessary to achieve such benefit. The issuance of the certificate, including the authorities and obligations associated with it would serve the public convenience and necessity.

7. Because the public convenience will be promoted by permitting Applicant to transact the business of an electric wind power generation utility in the territory and to the extent described in previous findings herein, the application should be granted and a limited certificate issued in accordance with the provisions of K.S.A. 66-131.

IT IS, THEREFORE, BY THE COMMISSION CONSIDERED AND CERTIFIED:

That the application in the instant docket is granted and Elk River Windfarm, LLC is permitted to transact the business of an electric wind power generation utility in the territory described in paragraph 4 above.

A party may file a petition for reconsideration of this order within 15 days of service. If the order is mailed, service is made upon mailing and three (3) days are added to the above time period.

The Commission retains jurisdiction of the subject matter and parties for the purpose of entering such further order or orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED AND CERTIFICATED.

Dated: DEC 20 2004

Moline, Chair; Krehbiel, Com.; Moffet, Com.

ORDER MAILED

DEC 21 2004

Samuel L. Moffet Executive Director
EXECUTIVE DIRECTOR

SEAL

GDD:ram

15



PUBLIC POLICY STATEMENT

HOUSE COMMITTEE ON UTILITIES

Re: SB 93—Eminent Domain; Wind Energy Development

March 9, 2005
Topeka, Kansas

Presented by:
Terry D. Holdren
KFB Governmental Relations

Chairman Holmes and members of the House Committee on Utilities, thank you for the opportunity to appear before you today in support of SB 93. I am Terry Holdren and I serve as Local Affairs Director—Governmental Relations for Kansas Farm Bureau. 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.

As amended by the Senate Utilities Committee SB 93 provides protection for landowners in areas targeted by wind farm developers. KFB vigorously supports the rights of landowners. We have long held the belief that those who own and operate land should have the responsibility for use and development of that asset. In order to protect those rights and responsibilities, we believe that the power of eminent domain should only be used for legitimate purposes; siting and construction of a wind farm, in our opinion, does not meet that criteria.

Kansas ranks high in wind velocity—3rd in the nation in total wind potential behind North Dakota and Texas. Those three states have the potential to supply enough energy to meet the needs of all of the lower 48 states. Kansas Farm Bureau supports the development of wind as a renewable energy resource. A resource, which could play a significant role in revitalizing the Kansas economy. It is imperative that we continue to study this resource and develop a plan, with incentives, to encourage wind generation in Kansas.

HOUSE UTILITIES

DATE: 3-9-05

ATTACHMENT 2

We share the concern of many in protecting the natural resources and historic and scenic value that exists in the Flint Hills, the Smoky Hills, and many other regions across the state. Success in protecting those resources is dependent upon partnering and cooperation involving local governments, agricultural landowners, homeowners, and natural and environmental interests. All of these groups must come to the table to increase public awareness and encourage appropriate action in a timely manner.

Thank you for the opportunity to share our thoughts today. SB 93 provides appropriate protection for landowners who may not desire the development of wind energy resources on their property. Should you choose to do so, we urge the committee to act favorably toward this legislation.

Thank you.

Whitney B. Damron, P.A.
919 South Kansas Avenue
Topeka, Kansas 66612-1210
(785) 354-1354 • (785) 354-8092 (Fax)
E-Mail: wbdamron@aol.com

TESTIMONY

**TO: The Honorable Carl Holmes, Chair
And Members Of The
House Utilities Committee**

**FROM: Whitney Damron
On Behalf Of
The Empire District Electric Company**

**RE: SB 93 - An Act concerning eminent domain; relating to
wind energy development projects.**

DATE: March 9, 2005

Good morning Chairman Holmes and Members of the House Utilities Committee. I am Whitney Damron and I appear before you today on behalf of The Empire District Electric Company in opposition to SB 93 that would prohibit the use of eminent domain authority by a public utility for the siting or construction of wind powered electrical generators or turbines.

By way of information, Empire is an investor-owned utility providing electric service to approximately 157,000 customers in southwest Missouri, southeast Kansas, northeast Oklahoma and northwest Arkansas. The Company is a Kansas corporation headquartered in Joplin, Missouri.

As Members of the Committee may be aware, in December, 2004, Empire signed a 20-year contract with PPM Energy, the U.S. competitive subsidiary of Scottish Power, to purchase the energy generated at the 150-megawatt Elk River Windfarm located in Butler County, Kansas near Beaumont. The Beaumont site is not located within the Heart of the Flint Hills as defined by the Natural Resources Sub-Cabinet created by Governor Sebelius, but approximately five miles south of this designated area. We do not believe SB 93 as it is currently written has an adverse impact on this project.

Included with my testimony is a copy of the press release that accompanied that announcement by Empire in December of 2004.

HOUSE UTILITIES

DATE: 3-9-05

ATTACHMENT 3

Public utilities, by their very definition and purpose, are granted certain authority to provide for the common good, including the power of eminent domain. Empire does not believe it is appropriate to single out public utilities that may seek to develop wind energy and preclude them from the use of eminent domain authority. Public utilities often require this authority to fulfill their obligations to their customers within their defined service territory. Removing this authority for public utilities involved in wind projects may very well halt any future development of this environmentally friendly and abundant resource in our state.

It is important to note, public utilities do not have unilateral eminent domain authority. Significant protections for private property rights are included under state law, including allowance for public hearings and just compensation.

Wind power is but one of several generation options available to electric utilities in the Midwest. For some companies, as has been discussed in this and other committees during the past few months, wind power is not in their immediate plans or is not economically feasible. However, for others, including Empire, wind generation can be an integral and cost effective part of an electric utilities' generation portfolio.

Public utilities have historically had the ability to utilize the power of eminent domain when providing services for the public. Prohibiting the use of this authority for wind energy development in our state is an improper limitation of longstanding public utility authority and thus SB 93 should not be approved.

In closing, I would note that the sponsors of this legislation have accepted changes to the bill as originally introduced that make it more acceptable to Empire. By insuring a public utility continues to have the ability to utilize eminent domain authority for construction of transmission lines is helpful. But we respectfully suggest to the Committee that creating different classes of public utilities may result in unintended consequences in the years to come. Wind energy is somewhat in its infancy – certainly it is in Kansas. It is apparent from past, present and very likely future litigation related to the siting and development of wind energy in Kansas that the various interested parties have significant legal remedies available to them under current law. Creating yet another statutory roadblock to the development of an alternative energy source may limit a utility's ability to serve their customers and legislation such as SB 93 should be carefully considered before being written into the statute books.

On behalf of The Empire District Electric Company, I thank you for your consideration of our comments and would be pleased to stand for questions at the appropriate time.

Whitney Damron



SERVICES YOU COUNT ON

PRESS RELEASE

FOR IMMEDIATE RELEASE

Contact:

Empire District Electric Company
Media Communications
Amy Bass
Director of Corporate Communications
417-625-5114
abass@empiredistrict.com
Investor Relations
Jan Watson
Secretary – Treasurer
(417) 625-5108
jwatson@empiredistrict.com

PPM Energy
Jan Johnson
Communications Manager
503-796-7070
jan.johnson@ppmenergy.com

**THE EMPIRE DISTRICT ELECTRIC COMPANY
SIGNS WIND ENERGY CONTRACT**

JOPLIN, MO – December 13, 2004 – The Empire District Electric Company (NYSE:EDE) announced today that it has signed a 20-year contract with PPM Energy, the U.S. competitive subsidiary of ScottishPower, to purchase the energy generated at the 150-megawatt Elk River Windfarm located in Butler County, Kansas, near Beaumont. The Elk River project, developed by Greenlight Energy, of Charlottesville, Virginia, is in an area where the governor of Kansas has urged wind developers to move quickly to bring projects online. Empire anticipates that it will purchase approximately 550,000 megawatt-hours of energy annually from the project, enough energy to meet the annual needs of about 42,000 homes.

In making the announcement, Brad Beecher, Vice President – Energy Supply, stated, "Today's contract signing is a major step in ensuring that our customers benefit from a balanced mix of generation options. With the improvements made in wind generation technology and the production tax credits that were recently enacted by Congress and signed into law by President Bush, wind energy provides price stability, is environmentally friendly, and is economical for our customers."

(more)

3-3

Page 2/Wind Purchase

Beecher continued, "This project is expected to provide about 10 percent of our energy resources, and we anticipate taking delivery of the energy about December 1, 2005."

"We are pleased to be building our first wind power plant in Kansas, the state with the third most robust wind resource in the nation," said Terry Hudgens, Chief Executive Officer of PPM. "The Elk River Project is the third we have announced so far that is expected to go into commercial operation in 2005 and we look forward to additional growth and geographic expansion in 2005."

Based in Joplin, Missouri, The Empire District Electric Company (NYSE:EDE) is an investor-owned utility providing electric service to approximately 157,000 customers in southwest Missouri, southeast Kansas, northeast Oklahoma, and northwest Arkansas. The Company also provides fiber optic and Internet services, customer information software services, utility industry technical training, and has an investment in close-tolerance, custom manufacturing. Empire provides water service in three incorporated communities in Missouri.

Portland, Oregon-based PPM Energy is part of the ScottishPower (NYSE: SPI) group of companies. With a portfolio of more than 830 MW of wind power currently in operation in seven states, PPM Energy has a goal of bringing 2,300 MW of new wind power to market by 2010. PPM Energy balances its supply portfolio with sales to wholesale customers, placing almost all of its output in long-term contracts. Major customers include the federal Bonneville Power Administration, the cities of Seattle, Sacramento, Pasadena, Anaheim, investor-owned utilities such as Alliant Energy and Xcel Energy and cooperatives such as Minnesota's Great River Energy. PPM Energy also has about 800 megawatts of clean gas resources under its control to give customers a wide range of options for adding environmentally responsible energy to their portfolios. The U.S. Environmental Protection Agency, the U.S. Department of Energy, and the Center for Resource Solutions honored PPM recently for significantly advancing development of the green power market. For more information, please visit www.ppmenergy.com.

###

Certain matters discussed in this press release are "forward-looking statements" intended to qualify for the safe harbor from liability established by the Private Securities Litigation Reform Act of 1995. Such statements address future plans, objectives, expectations, and events or conditions concerning various matters. Actual results in each case could differ materially from those currently anticipated in such statements, by reason of the factors noted in our filings with the SEC, including the most recent Form 10-K and 10-Q

3-4

Concerning Eminent Domain Relating to Wind Energy Development
Senate Bill 93
Submitted to the House Utilities Committee
Wednesday, March 9, 2005

John R. Grimwade
Manager, Energy Resource Management
Kansas City Power and Light

Thank you, Chairman Holmes and members of the committee, for this opportunity to appear before you in opposition of Senate Bill 93. My name is John R. Grimwade, from Kansas City Power and Light. Kansas City Power and Light provides electricity to over 490,000 customers in 24 counties in the Kansas City metropolitan area.

Kansas City Power and Light is exploring options in which to meet the area's growing needs for electricity and a cleaner environment.

Kansas City Power & Light's strategic planning process has involved the input from hundreds of people including our customers, community leaders, regulators, energy experts and our employees in shaping our plans for the future. What we have learned through this process is that in order to maintain a long term economic, environmentally responsible and reliable electricity supply to our growing customer base, Kansas City Power & Light needs to consider a balanced set of alternatives to achieve this goal. As part of our long-range plan to meet these needs, we are looking at an investment of up to 200 megawatts of wind generation in Kansas.

Wind technology has evolved over the past several years to where utilities such as Kansas City Power & Light must now give serious consideration to its inclusion in a balanced energy resource portfolio. The criteria used for locating and siting a wind project have many similarities to the criteria used to site traditional coal and gas fired generation and its required transmission. These criteria include access to a reliable fuel source (or in the case of wind, adequate wind resources), proximity to electric transmission infrastructure and minimal environmental impact to the surrounding community.

Just as there are a limited number of sites that meet the criteria for siting traditional generating resources, there are even fewer sites available to us that have the combination of a high quality wind resources, proximity to and compatibility with the electrical transmission system and minimal environmental impact.

HOUSE UTILITIES

DATE: 3-9-05

ATTACHMENT 4

Kansas City Power & Light recognizes that the use of eminent domain authority must be done in a responsible manor and that utilities must consider the balance of all stakeholders' interests with its use. But just as eminent domain has been a critical tool in the past for use by utilities to provide a set of resource alternatives that are in the best interests of the public, it is important that we do not now limit the authority to exclude wind resources if we are to be able to include this promising new technology and to continue to provide a balanced portfolio of resources to serve our customers well into the future.

Senate Bill 93 eliminates a valuable tool in Kansas's law in eminent domain to assist in the development of wind generation and transmission of that wind generation in Kansas. Regardless if you are planning to build or purchase capacity from a wind generation facility, restrictions as presenting in SB 93 restrict the ability to build and transmit electricity from the abundant sources of wind in Kansas.

Thank you. I am available for questions at the appropriate time.

John R. Grimwade
Manager, Energy Resource Management
Kansas City Power & Light
1201 Walnut PO Box 418679
Kansas City, Missouri 64141-9679

816-556-2896
816-556-2262 Fax
john.grimwade@kcpl.com

**Testimony on SB 93 before the
House Utilities Committee
By
Mark Schreiber, Manager Government Affairs
Westar Energy, Topeka, KS
March 9, 2005**

Good morning Chairman Holmes and members of the committee.

I am Mark Schreiber, manager government affairs for Westar Energy. We oppose Senate Bill 93 because it denies a utility of a basic right it uses to ensure the construction of utility facilities.

Westar Energy works diligently with landowners whenever the need arises to procure easements or property for the siting of generation. At times, the parties cannot agree on compensation and as a last resort we may use our power of eminent domain as a certificated utility. The need for eminent domain is present regardless of the type of generation being sited.

Eminent domain is used only as a last resort. However, when necessary, its use allows the completion of energy projects that can benefit large regions of the state. In the event, the state of Kansas or federal government enacts a renewable portfolio standard (RPS), the lack of eminent domain authority could impact the completion of suitable projects to meet that standard.

Westar Energy urges this committee to oppose Senate Bill 93. Thank you for the opportunity to address the committee. I will stand for questions at the appropriate time.

HOUSE UTILITIES

DATE: 3-9-05

ATTACHMENT 5

Testimony Neutral to S.B. 93
Concerning eminent domain and wind energy development projects

Charles M. Benjamin, Ph.D., J.D.

P.O. Box 1642
Lawrence, Kansas 66044-8642
(785) 841-5902
(785) 841-5922 facsimile
chasbenjamin@sbcglobal.net

On behalf of the Kansas Chapter of Sierra Club

March 9, 2005

Before the Kansas House Committee on Utilities

Mr. Chairman, members of the Committee, thank you for the opportunity to testify Neutral to S.B. 93 on behalf of the Sierra Club – the largest grass roots environmental organization in the world with some 800,000 members – including over 4,000 in Kansas. The national Sierra Club supports renewable energy and specifically supports the development of wind energy – see <http://www.sierraclub.org/globalwarming/cleanenergy/factsheet/wind.asp>.

The Kansas Chapter of Sierra Club has also adopted renewable energy and energy conservation as its priority conservation goals. The development of Kansas wind energy resources, especially in western Kansas, is central to the renewable energy conservation goals of the Kansas Chapter of Sierra Club – see <http://kansas.sierraclub.org/Planet/2005-0203/Planet-2005-0203-Wind1.pdf>. The Kansas Chapter of Sierra Club has also produced a “Kansas Wind Power” fact sheet available on-line at <http://kansas.sierraclub.org/Planet/2005-0203/Planet-2005-0203-Wind2.pdf>.

In the 2004 legislative the Kansas Sierra Club worked with the Kansas Livestock Association to support passage of Senator Goodwin’s bill that limited the eminent domain powers of a port authority and the Cowley County Commission to create a recreational lake in Cowley County. Sierra Club members in south central Kansas were concerned about losing Grouse Creek, one of the few remaining pristine streams left in the state, to a lake project whose sole purpose was the enrichment of private developers. That effort was such a success that the national Sierra Club’s Planet, a newsletter for environmental activists, ran a feature story on our collaboration with KLA and Senator Goodwin to save Grouse Creek.

The Kansas Sierra Club is also concerned about the 2003 decision by the Kansas Supreme Court, in *General Building Contractors v. Board of Shawnee County Commissioners*, to legitimize the use of eminent domain for economic and industrial development. Sierra Club feels that decision is an inducement to sprawl. The KLA was concerned that farmland would be the most likely victim of condemnation by local governments for economic and industrial development. I worked with Allie and with Senators Pugh and Tyson in the 2004 session to craft a bill that would eliminate the eminent domain powers of local government to condemn private property for economic and industrial development. Senator Pugh withdrew that bill on the promise by Senate President Kerr that an interim committee would examine that issue.

HOUSE UTILITIES

DATE: 3-9-05

ATTACHMENT 6

At the beginning of the 2005 session I was approached by Allie who informed me that KLA would be sponsoring a bill to eliminate eminent domain powers for wind generating facilities and for easements for transmission lines to carry wind farm created electricity. The Executive Committee of the Kansas Sierra Club decided that S.B. 93, as it was introduced to the Senate Utilities Committee, unfairly discriminated against wind-produced energy and would have potentially crippled wind energy development in Kansas. The fact is that utilities have long held eminent domain powers to site generation facilities and transmission lines. It just so happens that those generation facilities have historically been powered by coal, natural gas and nuclear fission. It was our testimony to the Senate Utilities Committee that if the legislature sees fit to eliminate eminent domain for wind generated energy and transmission lines then the legislature should be consistent and also eliminate eminent domain for energy generated by coal, natural gas, hydroelectric and nuclear power.

We appreciate that the bill before you, as it came out of the Senate, retains eminent domain powers for transmission lines associated with wind generated energy. The reason we are neutral on this version of the bill is that we have concerns about the use of eminent domain for siting ANY electrical transmission generating facilities, not just wind. This version of the bill only singles out wind generating facilities. Second, as we have researched wind generating facilities we cannot find a single instance of any land that has been condemned anywhere for any wind generating facilities. However, there are numerous instances, including here in Kansas, of land that has been condemned for coal fired and nuclear electrical generation facilities. Private land was condemned to build both the Wolf Creek Nuclear Generating facility and the coal fired Jeffrey Energy Center. Yet S.B. 93 bill, as it came from the Senate, retains eminent domain powers for utilities to build those kinds of electrical generating facilities.

The fact is that wind farm developments will be in rural areas and wind turbines will be spaced out over many thousands of acres. The experience with early "wind farms" was that when wind turbines were "clustered" too close together the turbines interfered with the wind flow of other turbines. In modern "wind farms" the turbines are in "strings" and each string of turbines is located far enough away from another string of turbines to prevent wind flow disturbances between strings of wind turbines. Wind farm companies want easements to access the land to erect and maintain the turbines and lease agreements for the use of the land for the purpose of creating electricity through wind turbines. These are always voluntary agreements. We know of no wind farm company, no matter how large the company, that wants to own the land upon which their turbines operate. So this notion that thousands of acres, or even one acre, of land will be condemned for the creation of a wind farm is so remote as to be absurd.

We are concerned that if the legislature singles out the industry wind for this type of restriction the state will be once again be sending a message hostile to the development of wind power in Kansas. Many people in Kansas have already sent many negative messages to the wind industry because of the controversy over wind farms in the Flint Hills. Many of those messages contain false and absurd assertions about the wind industry. S.B. 93 would send a further negative message to an industry that promises to bring millions of dollars worth of investments into the state. Frankly, this is a bill that promotes a solution looking for a problem to solve.

Thank you for your time and attention.

W-2