

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Vice Chairman Pat Apple at 9:30 A.M. on February 2, 2005 in Room 526-S of the Capitol.

Committee members absent:

Committee staff present: Athena Andaya, Kansas Legislative Research Department
Raney Gilliland, Kansas Legislative Research Department
Bruce Kinzie, Revisor of Statutes' Office
Diana Lee, Revisor of Statutes' Office
Ann McMorris, Committee Secretary

Conferees appearing before the committee:

Allie Devine, Kansas Livestock Assn.
Don Low, KCC
Carl Huslig, Aquila
Charles Benjamin, Sierra Club, Kansas Chapter
Mark Schreiber, Westar
Whitney Damron, Empire District Electric Co.

Others in attendance: See attached sheet

Vice Chairman Pat Apple opened the hearing on:

S.B. 93 - Eminent domain for wind energy projects

PROPOSERS

Allie Devine, Kansas Livestock Association noted the 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. The fundamental issue is preservation of private property rights. **SB 93** is asking the legislature to withdraw the delegation of authority to the KCC to issue a certificate of convenience to utility companies which allows the power of eminent domain. (Attachment 1)

OPPOSERS

Don Low, Kansas Corporation Commission, noted the Commission opposes this legislation because it restricts utility options with regard to wind generation and it may unintentionally prevent utilities from constructing any needed electric transmission lines. (Attachment 2)

Carl Huslig, Vice President-Transmission, Aquila Networks, noted that **SB 93** is a step-back from the progress the state has made to facilitate transmission. Aquila is opposed to any legislation that would restrict or prohibit their ability to site or locate transmission facilities. (Attachment 3)

Charles Benjamin, Sierra Club, Kansas Chapter, noted their members feel that **S.B. 93** unfairly discriminates against wind produced energy and could potentially cripple wind energy development in Kansas. (Attachment 4)

Whitney Damron, Empire District Electric Company, noted that public utilities have historically had the ability to utilize the power of eminent domain when providing services for the public and **S.B. 93** would place an improper limitation on longstanding public utility authority. (Attachment 5)

Mark Schreiber, Westar (Attachment 6)

Lee Allison, Kansas Energy Center (written only) (Attachment 7)

Sandy Braden, Great Plain Energy (written only) (Attachment 8)

Chairman Emler closed the hearing on **S.B. 93**.

Adjournment.

Respectfully submitted,

Ann McMorris, Secretary

Attachments - 8

SENATE UTILITIES COMMITTEE GUEST LIST

DATE: FEBRUARY 2, 2005

Name	Representing
LARRY BERG	MIDWEST ENERGY
DAVE HUTCHINS, M.D.	Ks Electric Co-ops Assoc
JOE DICK	KC BPU
BRUCE GRAHAM	KEPCo, Topeka
David Springle	Carb
Whitney Jansen	Empire
James Ludwig	WESTAR
Don Low	KLK
Allie Devine	Ks LUSTIK ASSN
Mike Beam	Ks LUSTIK ASSN.
Steve Adams	Wildcat & Packer
Carl Hustig	Aguila, Inc
Kimberly Gencar	Aguila, Inc
Sandy Braden	Great Plains / KEPCO
Earnie Lehman	Midwest Energy

SENATE UTILITIES COMMITTEE GUEST LIST

DATE: FEBRUARY 2, 2005

Name	Representing
- Richard A. Sommers	Kanawest & ASSOC.
Lucas Thompson	
Carole Jordan	KDA
Brent Haden	KS Livestock Assoc.
Christine Shirley	
Jim Hartness	SBC
Martin Hauwa	Hauwa's Capital Report
Ron Gaches	KS. WIND COALITION
Carl McDowell	Tallgrass Ranchers
STEVE JOHNSON	Kansas Gas Service
GEOFF COVENTRY	TRADEWIND ENERGY
Mark Schreiber	Westar Energy
John D. Pinegar	State Independent Tele. ass.
Bill Carter	Manhattan Chamber
Charles Benjamin	KS Sierra Club



Since 1894

TESTIMONY

To: Senate Utilities Committee
Senator Jay Emler, Chairman

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

Date: February 2, 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, and power lines. 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

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February 2, 2005
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landowner wants 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 from 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; and for the siting or construction of electrical transmission lines to or from any wind powered electrical generator or turbine.

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.

2004.12.20 15:45:59
Kansas Corporation Commission
By Susan K. Davis

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.

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.

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

Susan L. Coffey Executive Director
EXECUTIVE DIRECTOR

SEAL

GDD:ram

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**BEFORE THE SENATE UTILITIES COMMITTEE
PRESENTATION OF THE
KANSAS CORPORATION COMMISSION
February 2, 2005
SB 93**

Thank you, Chairman and members of the Committee. I am Don Low, Director of the Utilities Division for the Kansas Corporation Commission. I appreciate the opportunity to be here today to testify for the Commission on SB 93.

The Commission opposes this legislation because it restricts utility options with regard to wind generation and it may unintentionally prevent utilities from constructing any needed electric transmission lines. ✓

This bill proposes to amend K.S.A. 17-618 to prevent the use of eminent domain for "the siting or construction of wind powered electric generators or turbines" or for "the siting and construction of electric transmission lines to or from any wind powered generator or turbine."

The granting of eminent domain to public utilities is, of course, a policy decision for the legislature. However, the Commission is concerned that eliminating the use of eminent domain for siting wind-powered generation restricts an electric utility's generation options. The Committee should note that there are no similar restrictions on the use of eminent domain if a utility decides to build a gas-fired generating unit, a hydroelectric dam, a coal power plant or even a nuclear power facility. There are no obvious reasons to treat wind generation differently, especially in light of the numerous incentives for renewable energy previously adopted by the legislature. Past legislation, for example, has allowed the Commission to grant utilities an increased return on renewable investments and to retain a portion of the revenue generated from renewable purchases. At the very least this proposal appears to confuse the direction of public policy regarding wind powered renewable energy.

More significantly the Commission is concerned that the restrictions regarding electric transmission could inadvertently prevent needed transmission lines from being constructed. It appears the language is intended to apply to transmission lines used to

directly interconnect wind generators to the transmission system. However, the bill's language could arguably apply to any transmission line that is indirectly connected to the wind generator. Because the electric transmission system is highly interconnected, this restriction could also apply to most other transmission facilities. Suppose, for example, an electric utility in Illinois purchases wind generation from a Kansas wind generator, or even an Oklahoma wind generator. That wind generation flows over the entire transmission system following the path of least resistance. For this reason almost any transmission line in Kansas could be considered "a transmission line to or from any wind powered electric generator or turbine." The transmission lines in Kansas are a critical and vital part of the regional and national transmission system or "grid". Nonetheless, utilities often face intense opposition from landowners when constructing any new transmission facility. While electric utilities exercise eminent domain as a last resort, it is critical that they retain this ability for the continued reliability of the electric system.

Thank you for considering these comments. I will be glad to answer any questions.

**Testimony on Senate Bill 93
Senate Utilities Committee
February 2nd, 2005**

Prepared by:
Carl A. Huslig
V.P. Transmission
Aquila Networks- WPK

Good morning Mr. Chairman and fellow committee members. My name is Carl Huslig. I am the Vice President of Transmission for Aquila Networks – West Plains Kansas. Aquila appreciates the opportunity to testify before the committee concerning Senate Bill 93.

I would like to begin by stating that this committee, and its counterpart in the House, has successfully promoted and passed legislation in previous sessions to enhance the transmission system in Kansas. The steps taken in recent years regarding transmission prompted the FERC Chairman, Pat Wood, to recently deem Kansas “best-in-class”- the model which other states should follow concerning the advancement of transmission.

SB 93 is a step-back from the progress the state has made to facilitate transmission. Aquila is ardently opposed to Section 1(b) of this bill which restricts our ability to exercise eminent domain rights so we can further deploy our transmission network. Aquila is, however, agreeable to the editorial changes made in Section 1(a).

Aquila is opposed to any legislation that would restrict or prohibit our ability to site or locate transmission facilities. If Kansas is going to regain our status as a net exporter of energy, rather than a net importer of energy and continue to provide safe and low-cost energy to our customers, we must ensure that rights granting to utilities such as eminent domain are not limited or constrained.

I am happy to answer any questions that you may have.

Thank you again.

Testimony in **opposition to S.B. 93**
Concerning certain electric transmission facilities and providing for recovery of
certain costs of construction and upgrading.

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

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On behalf of the Kansas Chapter of Sierra Club

February 2, 2005

Before the Kansas Senate Committee on Utilities

Mr. Chairman, members of the Committee, thank you for the opportunity to
testify in opposition to S.B. 93.

The Sierra Club is the largest grass roots environmental organization in the world
with almost 800,000 members including over 4,000 in Kansas. For more
information about the work of the Kansas Chapter of Sierra Club see the web
site at <http://kansas.sierraclub.org/>.

The Kansas Chapter of Sierra Club has just launched a campaign to promote
both energy efficiency and wind power in Kansas. I have attached to this
testimony the February/March 2005 Planet Kansas that elaborates on that
campaign. It can also be found at the web site above.

In the 2004 legislative session I worked closely, on behalf of Kansas Sierra Club,
with the Kansas Livestock Association, and especially Allie Devine, to support
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 was 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 felt that decision was an inducement to

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sprawl. Allie and the KLA were concerned that farmland would be the most likely victim of condemnation by local governments for economic and industrial development. I worked closely 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. As you know, Senator Pugh withdrew that bill on the promise by Senate President Kerr that an interim committee would examine that issue.

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 to create wind farm developments and for easements for transmission lines to carry wind farm created electricity. Unfortunately, Sierra Club cannot join with KLA in support of this bill. We feel that S.B. 93 unfairly discriminates against wind-produced energy and could potentially cripple 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. Just because electrical generation is coming from wind should not place it in a special category with regard to eminent domain authority. 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.

The fact is that wind farm developments will be in rural areas. If we are ever to develop that vast wind potential in rural Kansas we cannot have a situation where recalcitrant landowners stop wind developments by refusing to allow transmission easements on their land or accessory structures to enable wind energy to connect to transmission lines. Some of these recalcitrant landowners could be motivated simply by the fact that a wind farm company refused to put wind turbines on their land.

The state of Kansas has already sent many negative messages to the wind industry because of the controversy over wind farms in the Flint Hills. S.B. 93 would send a further negative message to the industry. If the legislature passes this bill then the state's new slogan would not be "A Big As You Think" but rather "As Unfriendly As Can Be" to the wind industry and to its promise of economic development in Kansas. We urge you to defeat this bill.

Thank you for your time and attention.

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TESTIMONY

**TO: The Honorable Jay Emler, Chair
And Members Of The
Senate Committee on Utilities**

**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: February 2, 2005

Good morning Chairman Emler and Members of the Senate Committee on Utilities. 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 or the siting of electrical transmission lines to or from such 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.

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

**Senate Utilities Committee
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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 weeks, 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.

In closing, 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.

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

Attachment



PRESS RELEASE

FOR IMMEDIATE RELEASE**Contact:**

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**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)

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.

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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

THE EMPIRE DISTRICT ELECTRIC COMPANY • 602 JOPLIN STREET • JOPLIN, MISSOURI 64802 • 417-625-5100 • FAX: 417-625-5169 • www.empiredistrict.com

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**Testimony on SB 93 before the
Senate Utilities Committee
By
Mark Schreiber, Manager Government Affairs
Westar Energy
February 2, 2005**

Good morning Chairman Emler 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 or transmission. 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 or transmission 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.

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.

**Senate Utilities Committee
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**Written Testimony
submitted to the
Senate Utilities Committee
on SB 93**

February 2, 2005

**Lee Allison
Governor's Office of Science and Energy Policy**

Mr. Chairman, I appreciate the opportunity to submit written comments on Senate Bill 93 regarding eminent domain for wind energy development.

We appreciate concerns that many hold over the use of eminent domain. However, wind energy developers expect to negotiate leases with willing landowners for sites for wind power generators or turbines and we encourage that kind of arrangement to continue. Therefore, we support the provision of the bill that removes authority for use of eminent domain for siting of wind power generators and turbines.

We are concerned however, that SB93 selectively eliminates the power of eminent domain for electrical transmission lines only when they are used for wind energy. Wind energy is an emerging field with great potential economic and environmental benefits for Kansas. We oppose the provision to eliminate the use of eminent domain for wind energy transmission as long as other fuel types have the use of that power.

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Concerning Eminent Domain Relating to Wind Energy Development
Senate Bill 93
Submitted to the Senate Utilities Committee
Wednesday February 2, 2005

Sandy Braden, Gaches, Braden, Barbee and Associates on behalf of
Great Plains Energy/KCPL

Thank you, Senator Emler, for this opportunity to appear before your Committee in opposition of Senate Bill 93. My name is Sandy Braden, of Gaches, Braden, Barbee and Associates. I am appearing on behalf Great Plains/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.

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

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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 Mr. Chairman and members of the Committee.

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