

OPPOSITION TESTIMONY

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On Behalf of
Evergy
ITC
Kansas Municipal Utilities
Liberty Utilities
NextEra Energy Transmission

**Senate Committee on Judiciary
January 30, 2025**

SB 61

Requiring an electric public utility to pay a landowner's attorney fees when a party appeals the appraisers' award and the jury renders a verdict that is greater than the appraisers' award in an eminent domain action.

Madam Chair Warren and Members of the Committee:

On behalf of the retail electric utilities and transmission-only utilities in Kansas, please find these comments in opposition to SB 61 that would require the payment of legal fees for a right-of-way easement greater than the final determination made by an appraisers' award in a condemnation action.

When a property owner and a public utility cannot reach agreement on a price, a three-member panel appraiser is given the task to determine fair market value of the easement. Neither party has an advantage with this process and both parties are allowed to provide evidence as to what they believe to be reasonable and appropriate. In essence, this three-person jury, made up of appraisers from within the county where the land is located, is fair to both parties and has worked well for more than 60 years with a few minor changes to condemnation law since that time. Current law allows a judge to award attorney fees when deemed appropriate. The process proposed in SB61 gives a landowner more incentive to appeal an award, because their risk is reduced. This will lessen the number of negotiated settlements and ultimately increase the overall cost of infrastructure projects, impacting all customers.

As the issue of condemnation has brought more attention from legislators over the past few years, public utilities have worked more diligently to gain agreement from landowners outside the condemnation process. In fact, a utility's approach is to only exercise the use of eminent domain as a method of last resort when acquiring real estate interests. And of those times that eminent domain is used, a high percentage of those instances are only because attempts to obtain adequate title to real estate interests have failed.

We would also question why the bill appears to be directed at electric public utilities but does not include other entities that have the power of eminent domain.

Recently, the Kansas Corporation Commission issued an order in a general investigation docket considering principles and priorities for the routing of transmission lines (Line Siting Investigation). The order in the Line Siting Investigation adopted a Guiding Document for future transmission siting proceedings.

Key points of the Line Siting Investigation order include the following:

- *An applicant for a proposed transmission line project shall utilize the Guiding Document when obtaining a routing study, and adhere to the priorities, principles, Standard Routing Criteria and Weights contained therein; provided however, that an applicant may request a deviation by showing the reasonableness of any such deviation, as ultimately determined by the Commission.*
- *An applicant shall include a routing study addressing the priorities, principles, and Standard Routing Criteria and Weights contained in the Guidance Document with any line siting application submitted pursuant to K.S.A. 66-1,178. An applicant shall also submit proposed Agricultural Impact Mitigation Protocols, Landowner Protocols, and Oil and gas Industry Protocols with such application.*

While the adoption of a Guiding Document does not directly affect easement valuations or eliminate condemnation proceedings, the establishment of these requirements for future transmission projects in Kansas should enhance the exchange of information between the parties and ensure projects are sited in a manner that considers all affected parties, which will hopefully reduce the use of condemnation authority for the securement of an easement by a public utility.

From the Order:

“The Commission believes the competitive solicitation process will be improved, with potentially better outcomes identified, if input from relevant siting authorities is incorporated early in the process.”

The retail electric utilities and transmission-only utilities in Kansas agree with the KCC’s assessment.

Kansas has long resisted “loser pays” for attorney fees in litigation as being seen as a bar to those who wish to exercise their legal rights. A one-way street for attorney fees, where only one side of a legal case can obtain a mandatory award of attorney fees, also strikes us as unfair as well.

On behalf of the electric utilities with retail customers and transmission-only utilities, we urge the Committee to take no action on SB 61 and leave the current system in place.

Thank you for your consideration.

Docket No. 24-GIME-102-GIE

In the Matter of the Investigation into the Principles and Priorities to be Established for Evaluating the Reasonableness of the Location of a Proposed Transmission Line in Future Line Siting Proceedings.

ORDER ADOPTING GUIDELINES FOR TRANSMISSION LINE SITING CRITERIA AND PRIORITIES

[24-102_Order_\(Precidential\).pdf, filename=24-102_Order_\(Precidential\).pdf](#)