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Testimony on HB 2101

House Energy & Environment Committee

February 15, 2013

Mr. Chairman, Members of the Committee: HB 2101 represents a voluntary process by which utilities constructing interstate high voltage transmission lines potentially can expedite the regulatory review process. As you can imagine, every state has different rules, timelines, procedures, and opportunities for public input when an application to site a new transmission line is filed with their regulatory agency. This can create problems for an electric utility that wants to build a transmission line. The most egregious example of the problem involved the American Electric Company's effort to build a 14 mile line. It took 12 years to secure the necessary permits. While some of the problems were the result of federal agencies' delays, it is not unusual for companies to spend more than six years getting the necessary state approvals.

The Federal Energy Act of 2005 provides the Federal Energy Regulatory Commission (FERC) with transmission siting "backstop" authority. Under the federal statute, if a state does not approve an interstate transmission line application within one year of its filing, FERC can take jurisdiction of the application. While there exist differences of opinion about the likelihood that FERC would exercise that backstop authority, it exists as a Congressional "direction" to ensure that transmission lines are constructed to improve the reliability and security of the national electric grid.

The EPACT 05 language specifically states that one way that states can act to prevent FERC backstop actions is to join a Compact. Compacts are near identically worded laws passed by states that tie their policy and administrative activities together. For example, Kansas is a member of 35 interstate compacts, including The Interstate Compact for Juveniles (2004), the Interstate Compact on Educational Opportunities for Military Children (2008), and the Surplus Lines Insurance Compact (2011). Other Compacts to which Kansas belongs include: the Driver's License Compact, Midwest higher Education Compact, the Insurance Product Regulation Compact, and the Emergency management Assistance Compact.

The Council of State Governments (CSG) is one of the three primary legislative professional organizations. The National Conference of State Legislatures (NCSL) and the American Legislative Exchange Council (ALEC) are the other two. CSG helps develop Compacts in response to identified needs and opportunities. All Compacts are voluntarily joined by states and processes exist in each Compact for a state to withdraw if their needs change.

HB 2101 represents the Compact language developed during a two-year project by a group of legislators from across the country, regional transmission authority officers, utility representatives, and consumer advocates with the assistance of U.S. Department of Energy (DOE) and FERC staff. Both agencies support the development of one or more Compacts to address the EPACT 05 law.

HB 2101/Compact provides that:

- a. Three levels of organization will exist: a State Project Review Panel within each state to coordinate the views of different agencies and interests within the state; a Combined Multistate Siting Authority consisting of the states affected by a particular proposed project that is authorized to make siting decisions for that project; and an Interstate Compact Commission to provide administrative support and rulemaking capability. States that approve the Compact enabling legislation have a representative on the Interstate Compact Commission.
- b. A request for siting authorization is initiated by a utility filing an application in any one of the states in which the project would be constructed. That state will convene the Combined Multistate Siting Authority to make an early determination to accept or reject the application for completeness and to set a procedural schedule for a hearing on the merits of the project.
- c. During the application review process by the Combined Multistate Siting Authority, all meetings will be open to the public, application and all hearing-related expenses will be paid by the filing utility, and a strict review process schedule will be established.
- d. The initial application review for completeness shall be completed within 60 days of the filing. The first Combined Multistate Siting Authority shall occur within 90 days of the filing to assess the merits of the application, including proposed route, regional and national energy needs, and costs.
- e. The Combined Multistate Siting Authority shall hold at least one public comment hearing in each of the involved member states (states through which the proposed transmission line will be constructed). These public comment hearings must be completed within 120 days of the initial filing. At all meetings, transcripts will be made, meetings will be open to the public (unless closed due to confidential information is to be presented by the utility).
- f. The Combined Multistate Siting Authority shall issue conditional or final approval based on the record within 270 days of the initial filing unless the applicant and Authority agree to a different timeline. The Authority shall outline the required actions in instances where conditional approval is granted. All Authority decisions shall be by majority vote of the member states.
- g. All appropriate tribal and federal agency groups shall be invited to participate in the hearing process and encouraged to participate in the decision-making process. Eminent domain use by the utility for an approved transmission line is based on each state's existing authority and procedures.
- h. Persons feeling aggrieved by the Combined Multistate Siting Authority, within 90 days of the Authority's decision, may pursue administrative remedies and subsequently may file for judicial review before a three-judge panel from the U.S. District Court.

This Compact is modeled as closely to Kansas' practices as possible. For example, under Kansas law, the Corporation Commission shall make a decision on a transmission application within 120 days of filing.

Because the Compact covers multi-state projects, 270 days for an ultimate decision was deemed prudent and expeditious. The Kansas Corporation Commission is already authorized under existing state law to hold joint hearings with other states' regulatory bodies and filing utilities are responsible for all costs associated with the hearing and decision-making processes.

There is one error in the bill that I request be corrected when you work it. On page 13, line 15, the filing fee is 1.5 percent of the projected project's cost. That number should be "a maximum of .5 percent" and has been developed in partnership with an interstate transmission utility.

Participation in the Compact is voluntary. States join the overall Compact by passing language similar to HB 2101. The Compact's provisions are triggered IF a utility chooses to file under the Compact's terms and if the states through which the transmission line will go are all members of the Compact. A utility may elect to file an application in each state, even if all states along the projected transmission line route are Compact members.

This bill will Not impact most Kansas utilities – because they do not construct high voltage transmission lines that connect at least three states. Nor would the bill apply to the two primary transmission lines being constructed in Kansas, the "KETA" line from Spearville to Axtell, NE, and the V-Plan in South Central Kansas, because they do not cross three state borders.

To summarize: the intent of HB 2101 is to institutionalize across the county, to the extent possible, Kansas' regulatory process, to protect Kansas' sovereignty from the Federal Energy Act of 2005's FERC preemption capability, maintains the voluntary nature of utility filings under the Compact, and streamlines the hearing and decision-making process across multiple states. Language related to the Interstate Compact Commission is essentially "boiler-plate" language found in all other Compacts.

Thank you for your attention. I will respond to questions at the appropriate time.