

Joint Proponent Testimony
Everbry
ITC Great Plains
Kansas Electric Cooperatives
Kansas Electric Power Cooperative
Kansas Municipal Utilities
Midwest Energy
Sunflower Electric Power Corporation

Proponent Testimony Submitted to the

Senate Utilities Committee

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Written Testimony in Support of SB 172

Good afternoon Mr. Chairman and members of the Committee,

On behalf of the energy industry – the companies and associations that provide electric, natural gas, water and wastewater service to the residencies and businesses across Kansas, thank you for the opportunity to provide written comments in support of SB 172 which relates to the protection of critical infrastructure. SB 172, if passed, would strengthen a utility’s ability to pursue criminal prosecution for trespassing on a critical infrastructure facility without consent of the owner or owner’s agent or on any fenced property containing critical infrastructure. For those listed above, critical infrastructure could include power generation facilities, transmission or distribution towers or fenced facilities that would include substations, laydown yards, critical control centers, power generation facilities, gas gathering facilities or power collection substations.

Trespass on Vacant Lot vs. Critical Infrastructure

Historically, trespass has not been considered a serious offense. In most jurisdictions there is no distinction drawn between trespassing on a vacant lot and trespassing on a critical infrastructure facility. SB 172 would make that distinction and allow for enhanced penalties for trespassing on the types of facilities utilities own and operate and would presumably increase the likelihood of seeing trespassers prosecuted. The prosecution of trespass on utility-related property would perhaps make trespass a more high-risk proposition in the eyes of those with ill-intent.

Trespass Intent

SB 172 provides for a higher level of prosecution of trespass even where further intent cannot be proved. The “aggravated trespassing” verbiage in this bill would effectively serve to deter more serious crimes by enhancing the seriousness of trespass when further criminal intent *can* be proved (i.e., trespassing with the intent to cause damage or to commit a theft). When a person is trespassing

with the intent to cause damage or to commit a theft, it is not always possible to prove the intent if no overt action toward committing damage or theft has been taken. The difficulty in proving intent combined with trespass being a low-grade misdemeanor, often results in increased willingness to risk apprehension as long as the perpetrator can plausibly deny the intent to commit any crime more serious than trespassing. Unfortunate examples would be a vagrant whose intent was to steal but claims the need for a place to sleep, or the person whose intent was to cause damage but claims they were just looking for a lost dog.

Loss Recovery from Damage or Theft

SB 172 also makes recovery of actual losses due to theft or damage more feasible. In many cases currently, restitution is only granted for the actual replacement value of material stolen or damaged without taking into consideration the time and expense required to repair or replace such items and infrastructure. Copper theft is fairly common in the utility industry. Thieves typically cut fencing and steal relatively small amounts of copper ground wire with an actual replacement value of \$300.00 to \$500.00. If apprehended and prosecuted, restitution is usually granted with reference to that replacement value. The actual cost to the company, however, to replace the stolen wire and repair any associated damage in a typical substation copper theft, can be anywhere from \$5,000.00 to \$15,000.00, or even higher.

On Evergy's system, in late 2019, a copper thief cut approximately 100 feet of wire from a 1,000-foot spool. This spool was slated for a continuous run of over 900 feet in an application that did not permit splicing. The entire spool was a loss to the company valued at approximately \$12,000.00. A municipal court denied, restitution, remanding the case to civil court.

The verbiage in SB 172 provides for restitution to cover a much broader scope of actual losses, including labor, the loss of production, and the cost of equipment necessary to abate or repair damage to the property. This is a positive development from the standpoint of companies that have typically only been able to recovered a fraction of actual losses, even when criminals have been apprehended and prosecuted.

Conclusion

We appreciate the American Petro Chemical Manufacturers for their advance notice of the bill draft and the opportunity to provide input on the bill language before the bill draft went to the Revisor. The various utility interests joining in this testimony provide the services that provide heat, water and electricity while facilitating the function the lives, homes, and businesses of Kansans. As such, we believe the added protections that flow from enhancing penalties for trespassing upon or damaging critical infrastructure are of significant benefit to these expensive and critical assets and for the safety of our customers. As such, we respectfully request your favorable action on this measure.