

Sens. Moran, Marshall, Rep. Mann Introduce Legislation to Protect Kansans' Private Property Rights

Sep 13 2024

WASHINGTON - U.S. Senators Jerry Moran (R-Kan.) and Roger Marshall, M.D. (R-Kan.) and U.S. Representative Tracey Mann (R-Kan.) introduced legislation to prevent the federal government from using taxpayer dollars to seize private property to be used for electric transmission lines.

The Department of Energy (DOE) recently announced a National Interest Electric Transmission Corridor (NIETC) proposal to consider building a transmission line across Kansas. By designating land as part of a NIETC, the Federal Energy Regulatory Commission (FERC) would have new authority to site electric transmission lines.

The Biden administration's *Infrastructure Investment and Jobs Act* allows FERC to issue permits for transmission lines in a corridor even when state regulators have denied an application.

"Kansans have made it clear to the federal government that their land is not for sale," **said Sen. Moran**. "The NIETC proposal has been problematic from the start since the DOE permitted only 45 days for folks to submit their comments regarding the proposed transmission line. Sen. Marshall, Congressman Mann and I introduced legislation, the passage of which would prohibit the Department of Energy from trampling on the rights of Kansas landowners or usurping the authority of state regulators in order to build a transmission line across Kansas. These decisions should be left up to Kansans, not Washington."

"Bureaucrats in Washington, D.C. should not have the unchecked authority to approve projects that could strip Kansans of their property rights," **said Sen. Marshall**. "It's as simple as this: decisions affecting local lands should always rest with the states."

"I am vehemently opposed to any effort by the federal government to seize private land," **said Rep. Mann**. "The Department of Energy's phase 2 announcement of the NIETC proposal was grossly under publicized, overly vague, and left landowners with no clarity regarding whether their lands would be impacted. Senator Moran and I have heard Kansans loud and clear—they are not interested in the federal government grabbing their land. We

introduced this legislation to protect the rights of Kansas landowners and prevent the federal government from treading on their liberties. Any land given to the federal government for this project should be voluntarily, not mandated, and I will never stop fighting to defend that right.”

“Kansas Farm Bureau appreciates the leadership of Sens. Jerry Moran and Roger Marshall and Rep. Tracey Mann in introducing legislation to level the playing field and encourage good faith negotiations for the siting and building of electric transmission lines,” **said Joe Newland, president of Kansas Farm Bureau.** “Additionally, this bill recognizes the important voice state regulators have in the process. While our policy supports reliable, low-cost electricity, and increasing transmission capacity to keep pace with growing demand, without vital protections included in this legislation, landowners will continue to face unilateral ultimatums from transmission developers who are using taxpayer dollars to build infrastructure.”

This legislation would:

- Ban federal funds from being used to condemn private property to be used for electric transmission lines, and
- Prohibit FERC from using its authority to overrule a state regulator’s rejection of an electric transmission project.

Sens. Moran and Marshall and Rep. Mann secured an agreement from the DOE to they continue accepting comments regarding the NIETC proposal in Kansas. If a Kansan would like to offer comments on the proposed transmission line to the Department of Energy, they can email their comments to NIETC@hq.doe.gov



National Interest Electric Transmission Corridors (NIETCs)

This overview is intended to provide Kansans with information about a Department of Energy transmission corridor project that could potentially involve areas of our State and to explain the role and responsibilities of the KCC.

Background

The U.S. Department of Energy (DOE) has initiated the process of designating several National Interest Electric Transmission Corridors (NIETCs). A NIETC is not a transmission line, but rather a geographic area that the agency has identified as having present or expected transmission capacity constraints or transmission congestion that adversely affects consumers. Currently there are two preliminary NIETCs with partial locations in Kansas, the Midwest Plains NIETC and the Plains Southwest NIETC. The DOE's stated goal is to expedite the build out of a resilient and reliable electric grid and address the lack of electric transmission infrastructure which can harm consumers by directly contributing to higher electricity prices, more frequent power outages from extreme weather, and longer outages as the grid struggles to come back online.

The Federal Power Act authorizes the Secretary of Energy to designate any geographic area as a National Interest Electric Transmission Corridor if the Secretary finds that consumers are harmed by a lack of transmission and that the development of new transmission would increase reliability and reduce consumer costs.

Project Milestones

Phase 1 – Information Gathering

On December 19, 2023, the Grid Deployment Office released final guidance for the NIETC designation process and opened the first 45-day window for public submission of information and recommendations on NIETC designation.

Phase 2 – Preliminary List and Comments

On May 8, 2024, the Grid Deployment Office released a preliminary list of 10 potential NIETC corridors and opened a 45-day comment period on the potential corridor locations. The list is still under evaluation and fewer than 10 corridors may be selected.

Phase 3 – Public Engagement

Anticipated to begin in Fall 2024, the public engagement phase includes refining geographic boundaries of potential NIETCs, initiating any required environmental reviews under the National Environmental Policy Act (NEPA) and other applicable federal statutes, preparing a draft report, and conducting community engagement. Public activities will focus on DOE-led community engagement activities focused on potential NIETCs.

Phase 4 – NIETC Designations

The designation phase includes issuing the final NIETC Transmission preliminary list of boundaries of potential designation report(s) and any required environmental reviews. Public activities will focus on

areas of greatest transmission need and providing access to transmission developers in NIETCs for available federal financing and siting tools. The timeline for this phase of the process has yet to be communicated by the DOE.

Frequently Asked Questions

What is the role of the KCC related to the NIETCs?

The designation of NIETCs is a federal project under the direction of the Department of Energy. At a high level, under certain circumstances, the Federal Energy Regulatory Commission (FERC) may grant permits within a NIETC where a state does not have authority to site a transmission line or a state siting authority has not acted on an application to site a transmission line for over one year or has denied an application. This includes granting the transmission developer the ability to obtain rights-of-way by exercise of the right of eminent domain. For Kansas, the KCC has statutory siting authority and will continue its responsibilities under Kansas law as the agency that evaluates applications for companies seeking to operate as a public utility in Kansas as well as approving the routes of any transmission line 230kV or higher and longer than 5 miles that is constructed in the State.

Will any of the corridors be located in Kansas?

The preliminary list of 10 corridors released in May included the potential selection of the Midwest Plains NIETC, and the Plains Southwest NIETC. (See DOE maps and information on pages 3 and 4)

The proposed Midwest Plains NIETC is approximately 5-mile-wide, 780-mile long traversing an east-west geographic area that includes parts of Kansas, Missouri, Illinois, and Indiana, and portions of an existing 345 kV transmission facility. This proposed corridor follows the same route as the Grain Belt Express line which was approved in 2011 by the KCC. The route of the line was approved by the KCC in 2013. If the Midwest Plains corridor is selected as a NIETC, the approved route of the Grain Belt Express will not change. However, it would open up federal funding for the project.

The proposed Plains Southwest NIETC is an approximately 345-mile-long from east to west and 220-mile-long from north to south geographic area of significantly varying width (from less than five miles to near 100 miles). The Plains-Southwest potential NIETC crosses the Eastern–Western Interconnection seam, including portions of New Mexico, Texas, Oklahoma, and Kansas. This potential NIETC is much wider in Oklahoma, New Mexico, and Texas than it is in Kansas.

If the Midwest Plains corridor is approved, who will decide if additional lines are added?

Any company requesting permission to operate as a public utility in Kansas will apply to the KCC for a certificate of convenience. If that is granted, a proposed route will be submitted to the agency for review. The siting process, by Kansas statute, requires public notice, a public hearing and a public comment period. If the KCC denies a permit to build a transmission line in a NIETC, then there is a process for the Federal Energy Regulatory Commission (FERC) to issue a siting permit for the construction of a transmission line.

Phase 2 of the Preliminary NIETC public comment period is over. Will there be another opportunity for public input?

Phase 3 of the NIETC designation process, as identified by DOE, includes public engagement. DOE will announce and lead community engagement activities.

Resources for more information:

<https://www.energy.gov/gdo/national-interest-electric-transmission-corridor-designation-process>


<https://www.energy.gov/articles/biden-harris-administration-announces-initial-list-high-priority-areas-accelerated>



Fast Facts

- Approximately 5 miles wide, 780 miles long
- Includes portions of Illinois, Indiana, Kansas, and Missouri
- Includes parts of existing 345 kV transmission right-of-way
- Interregional corridor between PJM Interconnection, Midcontinent Independent System Operator (MISO), and Southwest Power Pool (SPP)

The map and fast facts shown above were supplied by the Department of Energy.

 Plains - Southwest



Fast Facts

- Approximately 5-100 miles wide, 345 miles long east to west, and 220 miles long north to south
- Includes portions of Kansas, New Mexico, Oklahoma, and Texas
- Interregional and cross-interconnection corridor between Southwest Power Pool (SPP) and WestConnect, with potential to facilitate interconnection with Electric Reliability Council of Texas (ERCOT), Midcontinent Independent System Operator (MISO), and PJM Interconnection

The map and fast facts shown above were supplied by the Department of Energy.



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MAY 2024



KANSAS ENERGY UPDATE

Kansas is experiencing unprecedented growth in renewable energy production, and buildout of electric transmission infrastructure. Many factors at the state, federal, and global level, are contributing to this growth. This means that Kansas landowners are facing great opportunities and challenges relating to renewable energy leases and transmission line easements.

WIND AND SOLAR LEASING

While landowner sentiment toward renewable energy leases might vary, KFB policy is largely supportive of landowner rights to voluntarily enter into such contracts. There is a preference, however, that prime agricultural soils be avoided in commercial solar installations. For landowners considering entering into a wind or solar lease, we have some great resources on our website that can provide guidance, but our best advice is to seek counsel from a private attorney to review the lease and help negotiate with the leasing agent. Wind leases can supplement income from agricultural operations without much interference to the operation, while solar leases replace agricultural income. In most cases, solar leases make the land unusable for agricultural production during the lease term, with some exceptions for grazing sheep, or vegetable production. Even in those cases, however, the lease must provide for those agricultural uses. One of the areas of the largest potential growth in renewable projects is southwest Kansas, near Ford County, and it is related to the Grain Belt Express transmission line - read on to learn more.



FIND THESE HELPFUL RESOURCES ON THE LEGAL FOUNDATION'S WEBSITE:

- Transmission line checklist for landowners
- Resources on wind and solar leasing
- Links to learn more about the Grain Belt Express
- Information about decommissioning of electric energy generation projects
- Links to current statutes applicable to renewable energy and transmission

 WWW.KFB.ORG/LEGALFOUNDATION

TRANSMISSION BUILDOUT

In addition to regional and federal transmission authorities, the Kansas Corporation Commission (KCC) has authority in Kansas to oversee the determination of necessity and reasonableness of the location of a proposed electric transmission line. (K.S.A. 66-1,178.) During its oversight process associated with a recent transmission line siting case (see [KCC docket 23-NETE-585-STG](#) for the Wolf Creek to Blackberry Project), the KCC received feedback, including from its staff, that the KCC should study its line siting oversight process. In response, the KCC opened a docket ([KCC docket 24-GIME-102-GIE](#)) to investigate the principles and priorities of proposed transmission lines for future line siting proceedings. The scope of this investigation will likely be limited to establishing guidelines of land use parameters and construction practices that should be considered in determining the reasonableness of a proposed route. KFB has intervened in the matter and will continue to follow it and engage with comments when given the opportunity.

We are awaiting a line siting application related to collector lines for the Grain Belt Express, which is anticipated at the end of May. The Grain Belt Express is an 800-mile, high voltage direct current (HVDC) transmission line, that plans to deliver 5,000 megawatts of power (largely from newly-constructed renewable sources) from southwest Kansas to customers in Missouri and states farther east. To put that in perspective, at the beginning of 2023, the whole state of Kansas had almost 8,250 megawatts of installed wind energy generating capacity. The collector lines will gather power from many renewable energy generating projects, and take it to the Grain Belt Express, for the energy to be exported from the state. The Grain Belt Express project was granted a [certificate of convenience](#) from the KCC that included the concept of collector lines, but the siting process for the collector lines must still take place. It is anticipated that Invenergy, the owner of the Grain Belt Express, will have authority to use eminent domain to acquire easement rights for the collector lines once it has completed the KCC line siting process. Other transmission lines that will take energy from generation projects to the collector lines (often referred to as “gen-tie lines”) must be acquired through voluntary contracts, as there is no eminent domain authority for them. It is important to understand the differences in these lines when contracting with Invenergy and other energy companies.

HOW TO ENGAGE

Wind and solar developments face only minimal regulation at the state level. County governments have the ability to regulate electric energy generation from wind and solar, as well as new electric transmission installations, but often do not undertake such regulations. One way landowners can get involved to protect their interests is by engaging in or with their county government, on local planning and zoning boards and commissions. About one-half of Kansas counties have zoning regulations, and many of the zoned counties lack robust wind or solar regulations that can guide where renewable energy development should occur, and what reassurances and practices should be in place when a project is decommissioned. Working with your county government to get reasonable regulations in place can help ensure that renewable energy growth can continue in a responsible manner, consistent with local goals and plans. Visit the [Resources page](#) on our website for more guidance on county solar regulations.

Disclaimer: This document is intended for informational purposes only and NOT provided as legal advice. Information contained in this paper is limited by considerations of space and the laws that exist at the time of its publication. Our laws are subject to change yearly through legislative procedures, regulatory rulemaking, and judicial determinations. Additionally, this document does not and shall not be construed to establish an attorney-client relationship. If you have legal questions, you should contact a private attorney with experience in matters relating to your specific facts and circumstances.

Elaine Bowers

From: Elaine Bowers
Sent: Friday, September 27, 2024 2:53 PM
To: Elaine Bowers
Subject: **NIETC PROCESS**

Statement from Kansas Farm Bureau on NIETC process

The following statement may be attributed to Kansas Farm Bureau President Joe Newland:

Kansas Farm Bureau has been engaged on National Interest Electric Transmission Corridor (NIETC) issues for nearly two years. Based on our grassroots policy, we have opposed the NIETC process, and we have opposed both of the proposed NIETC corridors in Kansas. More specifically, we oppose the Federal Energy Regulatory Commission being given backstop authority to override decisions made by our state regulators, and we oppose the use of eminent domain within these corridors. We have voiced our concerns over the 5-mile width of the proposed Midwest-Plains corridor, which overlaps the path of the already-approved Grain Belt Express transmission line, and because of feedback like ours, Invenergy has submitted a request to the Department of Energy (DOE) to reduce the width of that proposed corridor to a half-mile span. KFB is hopeful DOE considers these requests in its review and will continue to engage with all entities to either eliminate the proposed NIETC designations in Kansas or make them as narrow as possible. The next phase of the NIETC designation process will involve DOE-led community engagement. We encourage our members, and other potentially affected landowners, to thoughtfully participate in this process and voice their concerns. When we learn more about that engagement process, we will share it.

If you would like to offer your comments to the Department of Energy for consideration, please do so at NIETC@hq.doe.gov.

If you want to learn more about this and other current transmission issues, and our advocacy efforts, visit our [Legal Foundation website](#).

Grain Belt Express

What is the Grain Belt Express?

- The Grain Belt Express is a 5,000 megawatt transmission line that will move renewable energy generated in southwest Kansas to other states in the North-Central and Northeast parts of the U.S. Land for the Grain Belt Express (GBX) has already been acquired by the development company, Invenergy.
- Once completed, the line will have the capability of transporting up to 5,000 megawatts of renewable energy.

Who has oversight of the project?

- The Kansas Corporation Commission approved the GBX in 2011 and declared it a public utility, which gives it the right to work with landowners for right-of-way's for transmission line construction and easement. And, if needed, eminent domain.
- Currently only 2% of parcels of land along the GBX line are in some kind of condemnation process – that process goes through state court.
- As of now, project developers are expected to move forward with construction in 2025
- Any questions about existing contracts need to be directed to an attorney.
- If you have not signed a contract with Invenergy then you are NOT part of the Grain Belt project
- Those with contracts for the GBX will see be able to live on and farm the land once the project completed.

Dept of Energy National Interest Electric Transmission Corridor (NIETC) Proposal

What is NIETC?

- National Interest Electric Transmission Corridors are part of a larger proposal by the U.S. Department of Energy to identify areas of the country in need of greater energy transmission capacity.
- Congress granted the Dept. of Energy the authority to move forward with the NIETC proposal through the Bipartisan Infrastructure Law (BIL) – Senator Marshall voted AGAINST the BIL.
- The NIETC corridors are in the rule making process – meaning the agency is working through a multi-phase process to identify corridors in the U.S.
- There is a proposed corridor that runs through North-Central and Western Kansas and follows the path of the Grain Belt Express
- A corridor is simply a route or geographic location that has been identified as needing greater transmission capacity to more efficiently move energy

- Any new transmission lines built within the corridor would be afforded federal financial assistance requested, and the Federal Energy Regulatory Commission (FERC) would have back-stop authority allowing it the ability to approve any transmission projects denied by the KCC.
- If a new transmission project was approved, development companies would still be required to complete a permitting and public comment process and to compensate landowners for easement and rights-of-ways for the construction of transmission lines.
- The next phase will be a public engagement period that is expected to begin this fall.
- The final outcome of the NIETC corridor proposal will either be a formal corridor in Kansas – which will allow the KCC the first opportunity to approve or deny any new projects before FERC steps in OR the corridor will not be selected by the Dept of Energy and the Grain Belt Express project will continue on as planned.
- Final corridor declarations are expected in 2026.

Next steps for the Senator?

- The Senator has been and continues to be focused on preventing FERC from having the ability to approve any transmission projects denied by the KCC.
- We believe the KCC – Not Washington D.C. knows what’s best for the State of Kansas and Kansas landowners.
- Calling for the Dept. of Energy to hold an in-person hearing in Kansas as part of the next phase of public engagement.
- Introduced legislation to prevent the federal government from using taxpayer dollars to seize private property to be used for a proposed National Interest Electric Transmission Corridor (NIETC).

Next steps for landowners?

- Engage in the public engagement process this fall.
- Our office will continue to track the proposal and will publish instructions for landowners to provide comments to the agency when the public comment period opens.

You can send your comments to
the Department of Energy at:
NIETC@hq.doe.gov

or

U.S. Department of Energy
Grid Deployment Office
1000 Independence Ave. SW
Washington, DC 20585

**Questions? Please contact Katie Sawyer at katie_sawyer@marshall.senate.gov or
Abbi Rankin at abbi_rankin@marshall.senate.gov**



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