

February 6, 2023
Senate Bill 68 – Transmission Right of First Refusal
Oral In-person
Neutral

FROM:

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TO:

Senate Utilities Committee

Chair Olson and members of the Senate Utilities Committee, thank you for this opportunity to testify regarding Senate Bill (SB) 68. My name is David Nickel. I am the Consumer Counsel for the Citizens' Utility Ratepayer Board (CURB). CURB is the advocate for residential and small commercial ratepayers before the Kansas Corporation Commission (KCC or Commission) and the Kansas legislature. My testimony reflects the interests of these utility ratepayer classes regarding SB 68.

SB 68 provides a first right to construct, upgrade, own and maintain an electric transmission line approved in a transmission plan by a regional transmission organization recognized by the Federal Energy Regulatory Commission (FERC) to an incumbent transmission owner. SB 68 defines incumbent transmission owner as an individual, company or other entity that now or hereafter owns, controls, operates or manages any equipment or plant for the transmission, delivery to furnishing of electricity in Kansas; provided that if there are two or more incumbent transmission owners, then the first right to construct, upgrade, own and maintain the pertinent electric transmission line shall be determined by mutual agreement between the incumbent transmission owners. SB 68 has various provisions governing notice of an intent to exercise the first right granted by the bill and prerequisites for exercising said right.

In CURB's view, this bill may affect affordability of electric utility rates for Kansas ratepayers, including the residential and small commercial ratepayers that CURB represents as well as the reliability of electric services to those Kansas customers. Both of these are important to CURB. Consistent with these concerns, it is also important to CURB that FERC regulatory schemes do not hinder the development of SPP transmission projects that can help to lower energy costs to Kansans.

CURB's analysis of SB 68 is very high level due to CURB's limited involvement in the Southwest Power Pool (SPP) and transmission-related dockets. Due to the lack of cases involving transmission matters springing from the competitive bidding process, CURB has been involved in only one KCC transmission docket that emanated out of a competitive bidding process conducted by SPP. Upon information supplied to CURB, it appears that there have been only four such cases in the SPP footprint since 2011, two from Kansas and two from Oklahoma. In view of this limitation, CURB remains neutral on SB 68, recognizing that several stakeholders will provide detailed information to the Kansas Legislature on the practical effects of SB 68 and that the Kansas Legislature will wisely weigh this, perhaps, competing information to determine appropriate public policy for the State of Kansas.

Prior to 2011, the FERC transmission granting process provided a right of first refusal for incumbent transmission owners relative to the construction, operation and maintenance of pertinent transmission lines. In 2011, through FERC Order 1000, the FERC eliminated that right, but recognized states' ability to impose rights of first refusal for incumbent transmission owners. It is CURB's understanding that the FERC is now reconsidering its elimination of a federal right of first refusal.

Several states, including Nebraska, Oklahoma, Texas and Iowa, among others, responded to FERC Order 1000 by granting a right of first refusal for incumbent transmission owners relative to the construction, operation and maintenance of pertinent transmission lines. Kansas and Missouri currently do not impose such rights. Due to the low number of competitively bid projects in the SPP footprint, it is difficult to ascertain the effect on rates and reliability caused by granting a right of first refusal for incumbent transmission owners relative to the construction, operation and maintenance of pertinent transmission lines in these states. Yet, CURB queries that, if rights of first refusal are contrary to the public interest, why are they allowed in the many aforementioned states.

CURB is mindful that ratepayers benefit if transmission projects have low reasonable costs. From CURB's perspective, CURB is aware that low rates may result from competitive bidding, but that is not assured. In a study concerning the cost savings brought about by competition in electricity transmission, LSP Transmission Holdings found that competitive bidding yields a 40% reduction in the cost of transmission projects nationwide. On the other hand, a 2022 study by Concentric Energy Advisors found that FERC Order 1000 competitive solicitations have not been successful in driving costs savings. Given the low number of competitively bid transmission projects in the United States, the disparity between these two studies and point of view is not surprising. CURB is not poised to evaluate any such study.

Rather, CURB is aware that the U.S. Department of Justice (DOJ) and Federal Trade Commission (FTC) have been critical of the FERC's proposal to revisit the right of first refusal in

connection with federal transmission cases. In a pleading filed with the FERC, the DOJ and FTC stated, "With a ROFR, consumers will lose the many benefits that competition can bring, including lower rates, improved service, and increased innovation, leading to a more efficient, reliable, and resilient grid." Others differ.

It is important to note that in reconsidering the elimination of the federal right of first refusal, the FERC noted that recent transmission investment trends suggest that despite increased investment in transmission facilities overall, in many transmission planning regions there has been comparatively limited investment in transmission facilities selected in a regional transmission plan for purposes of cost allocation as a result of a competitive process. In its comments regarding this matter, the Indiana Utility Regulatory Commission concurred with FERC's conclusions regarding unintended consequences resulting from Order No. 1000, specifically that transmission is now mostly developed in transmission owners' own footprints, and that little region wide economic transmission development is occurring. In CURB's view, recognizing a right of first refusal under SB 68 may provide an incentive for investment in regional transmission which may allow lower prices for Kansas ratepayers.

With respect to reliability, CURB is concerned that competitive bidding may adversely affect consumer's interests. CURB's fear is that some companies could bid low by cutting corners on reliability features in order to win the bid. Moreover, Kansas utilities best know the environment in which transmission systems need to operate. Kansas utilities know their own utility systems and can design transmission systems to best fit the same.

In summary, Kansas ratepayers desire a reliable transmission system *and* just and reasonable rates. CURB's interests may not be fully served by a less-than-reliable transmission system at the lowest cost. CURB believes that before SB 68 is enacted, the responsibility falls upon Kansas incumbent electric transmission owners to demonstrate to this Committee that the bill will lead to both a reliable transmission system and just and reasonable rates. Because of the highly technical nature of SB 68, and CURB's general knowledge in this matter, CURB remains neutral and trusts that the Kansas Legislature will determine proper policy that meets the interests of Kansans with respect to this bill.

Thank you for this opportunity to express the perspective of CURB on SB 68.