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Written and In-person Testimony of  
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Before the Senate Committee on Utilities  
Regarding Senate Bill No. 68

February 8, 2023

Chairman Olson and Committee Members,

My name is Alan Claus Anderson and I am a practicing attorney and the Vice-Chair of the Energy Practice Group at Polsinelli, a nationally recognized law firm based in Kansas City, which provides a wide breadth of legal services to both Kansas businesses and the individual residents of Kansas. I am also an adjunct Professor of Law at the University of Kansas School of Law where I teach Renewable Energy Law Practice and Policy. Thank you for allowing me to appear before you today to discuss the destructive policies contained in Senate Bill No. 68 (the “Bill”).

**A. INTRODUCTION**

Polsinelli is a law firm with over 900 lawyers with offices across the United States. We are fortunate to work for clients in all areas of energy production, from oil, gas, and coal, to renewable energies such as wind and solar. I also study and teach renewable energy law and the impacts of both good, and bad, policy. I am a proud Kansan and have had the good fortune of working with various Kansas state agencies to attract business to Kansas, and our firm has a long track record of unwavering support for this great State.

**B. OVERVIEW**

Competition is the engine of the American economy and a fundamental precept to free market capitalism. Through competition, we achieve efficiency, effectiveness, and innovation. This fundamental economic reality is particularly true as applied to building and operating electric transmission projects. Senate Bill 68 proposes to introduce a right-of-first-refusal (“ROFR”) for incumbent utilities that would extinguish competition and prohibit the competitive bidding process for electric transmission projects.

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### C. NATIONAL AND LOCAL PROOF OF THE BENEFITS OF COMPETITION

While the benefits of competition should be patently obvious, we are fortunate to also have national and local evidence that the competitive bidding process for electric transmission projects produces immense benefits. At the national level, leading economists at the Brattle Group found that estimated cost savings from the competitive process average between 20% and 30%.<sup>1</sup>

More importantly, we have a recent Kansas example that provides specific evidence of how competition benefits Kansas ratepayers. A recent competitive bidding process for the Wolf Creek to Blackberry Transmission Project (“WCB Project”) did not just create a small benefit to Kansans, it resulted in cost savings of 40%.<sup>2</sup>

The WCB Project experience is instructive:

- Through the competitive process administered by the independent regional grid operator, Southwest Power Pool (“SPP”), 7 entities submitted proposals for the WCB Project, including incumbent utilities.
- In October 2021, NextEra Energy Transmission Southwest (“NEET Southwest”) was selected by SPP as the winning proposal via a “blind” competitive process. SPP used an independent Industry Expert Panel (“IEP”) to review all 7 proposals and score them based on engineering design, project management, operations, cost to customers, and the financial viability and credit worthiness of the entity submitting the proposal.<sup>3</sup>
- NEET Southwest’s total score from the IEP was over 20 points higher than the next ranking proposal.
- NEET Southwest’s proposed cost to construct the WCP Project was ~\$85 million vs. the next lowest cost proposal of ~\$121 million. In addition, NEET Southwest estimated the ongoing cost of operating this project over a 40-year period at ~\$63 million vs. ~\$94 million from the next most competitive proposal.
- NEET Southwest’s bid also included cost caps, which provide further value to SPP and Kansas customers. Direct-assigned projects are not subject to such cost caps.

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<sup>1</sup> Cost Savings Offered by Competition in Electric Transmission, p. 1, Brattle Group (April 2019) *available at* [https://www.brattle.com/wp-content/uploads/2021/05/16726\\_cost\\_savings\\_offered\\_by\\_competition\\_in\\_electric\\_transmission.pdf](https://www.brattle.com/wp-content/uploads/2021/05/16726_cost_savings_offered_by_competition_in_electric_transmission.pdf)

<sup>2</sup> Kansas Corporation Commission Staff Report and Recommendation, p. 2, Docket No. 22-NETE-419-COC (May 17, 2022), *available at* <https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202205171656406925.pdf?Id=9b22e62b-479a-4bce-9ffa-9d6d4af30052>

<sup>3</sup> IEP Public Report (Oct. 11, 2021), *available at* <https://www.spp.org/documents/65719/wolf%20creek-blackberry%20rfp%20public%20report.pdf>.

- Prior to the competitive bidding process, SPP’s estimated cost for the project was ~\$143 million – approximately \$58 million more than the ~\$85 million in NEET Southwest’s bid. Had the project been assigned without competitive bidding, there would have been no incentive to construct the project below SPP’s original estimate, as utilities earn a return on every dollar they spend. Moreover, the other benefits to ratepayers, such as cost caps and ongoing operating cost caps, would not likely have been included.

Parties looking to eliminate competition in transmission projects will make unfounded operational claims that they would like you to believe outweigh the massive economic inefficiencies of a monopolized system. However, claims that only the incumbent utilities can properly operate and maintain transmission lines is debunked by the IEP report, which give NEET Southwest the highest score among all bidders in the category of operation/maintenance/safety.<sup>4</sup>

Additionally, such claims wholly ignore the specific contrary proof from decades of generation tie lines and transmission lines successfully operated by non-incumbent utilities in Kansas.<sup>5</sup> With the clear and acknowledged economic benefits of competition, and decades of proof of operational abilities, there is no justifiable reason to provide a ROFR to incumbent utilities.

#### **D. COMPETITIVE BID PROJECTS ALSO FACE SPECIFIC SCRUTINY TO INSURE KANSAS BENEFITS**

After SPP selected NEET Southwest to build and operate the WCB Project, NEET Southwest applied for a Certificate of Convenience and Necessity (“CCN”) from the Kansas Corporation Commission (“KCC”). On August 29, 2022, the KCC granted the CCN, finding that “SPP’s process was a valid means of evaluating and awarding a transmission project to a successful bidder and that this process meets the Kansas criteria of encouraging orderly development of transmission service.”<sup>6</sup> The KCC also made independent findings that the WCB Project is in the public interest of Kansas and that NEET Southwest has the financial, technical, and managerial capability to build and operate the Project – including the ability to appropriately respond to emergency events.

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<sup>4</sup> IEP Public Report at pp. 8, 37.

<sup>5</sup> Non-incumbent developers have been operating generator tie lines in Kansas since the first renewable energy project went into operation in 2001. ITC Grain Plains, LLC is an independent transmission owner that has operated transmission facilities in Kansas since obtaining a CCN from the KCC in 2007. GridLiance High Plains LLC is another example of an independent transmission owner with operating facilities in Kansas, which received a CCN from the KCC in 2019.

<sup>6</sup> Order on Application for Certificate of Convenience and Necessity, ¶ 25, Docket No. 22-NETE-419-COC (Aug. 29, 2022), available at <https://estar.kcc.ks.gov/estar/ViewFile.aspx/20220829144059.pdf?Id=07dd463d-6fe6-4fc0-bb3f-038913329b98>

#### **E. COMPETITION IS CRITICAL TO RELIABILITY**

It is also critical to consider that Kansas is part of the Eastern Interconnection—an electric grid that extends from Canada to Louisiana and from New Mexico to Maine. As recent severe weather events demonstrate, the interconnected nature of the transmission grid is critical to reliability and resiliency. During Winter Storm Uri in February 2021, SPP and Kansas—although not perfect—fared far better than Texas, precisely because Kansas is interconnected to its neighbors through multiple high-voltage, long-distance transmission lines and Texas is not. The only way to build high-voltage, long-distance transmission lines is through regional cost sharing.

State ROFR laws, like Senate Bill 68, have the potential to delay and discourage much-needed interstate transmission projects, creating the potential for negative impacts to Kansans. Some states, such as Illinois, have threatened to stop paying for regional projects because other states' ROFR laws inflate costs. If ROFR laws proliferate, innovation and efficiency in the building and operating of transmission lines will stall, costs will rise dramatically, and the electric grid will be less reliable and less resilient.

#### **F. CONCLUSION**

An attempt to eliminate competition, by parties that would directly benefit from such anti-free market fundamentals, should be viewed through a lens of strict and intense scrutiny. If we were simply working in a theoretical realm where there were no examples of the benefits of competition, either economically or in operation, there could be a discussion as to the relative merits of such a bill as Senate Bill 68. However, we do have clear evidence that there are massive financial benefits to Kansas ratepayers when projects are competitively bid. Kansas can't be forced to take on higher rates solely to give away money to the incumbent utilities that do not want to compete for projects. Indeed, competition is good for our incumbent utilities, as it forces them to become better and stronger in order to win the competition. Lessons learned from the competitive bid process can also be applied across the landscape in Kansas, even for projects that are not part of a formal competitive bid process.

Fortunately, we also have decades of experience with non-incumbent utilities successfully operating generation-tie lines and transmission lines in Kansas, which directly contradicts any claims related to incumbent utility operational necessity. For legislative policy makers, Senate Bill 68 must not pass and burden Kansas ratepayers with unnecessary rate increases, lack of innovation, and reduced reliability. Instead, this Committee should challenge our incumbent utilities to win the competition through innovation and efficiency.