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February 8, 2023

SB 68, Providing incumbent electric transmission owners a right of first refusal for the construction of certain electric transmission lines.

Virtual Testimony

Opponent

From:

Josiah Neeley, Texas Director, R Street Institute

To: Senate Committee on Utilities

Chair and members of the committee,

My name is Josiah Neeley. I am the Texas director and a senior fellow at the R Street Institute, a center-right, free market think tank that supports limited effective government in many areas, including the electricity market. This is why Senate Bill 68, which would grant incumbent transmission utilities the right of first refusal (ROFR) to build and operate new transmission projects, is of special interest to us.

Electricity policy can be complicated, but fundamentally this bill is simple. All it does is remove elements of competition from the current transmission construction process, which will result in higher costs for consumers and less comity between states.

**Senate Bill 68 is anti-competitive and bad for consumers.** The bill would give an incumbent utility the authority to insulate itself from competition for transmission projects. These state-sanctioned monopoly utilities operate under cost-of-service regulation, meaning that the more capital they spend, the more profit they make under government-guaranteed rates of return. Historically, the absence of transmission competition has resulted in a severe lack of economic discipline—leading to cost overruns, with captive consumers footing the bill.

We all know that competition can help keep costs down and spur better service. When it comes to building electric transmission, the cost savings from competition can be substantial. For example,



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studies have found that competitive bidding reduces the cost of project bids by between 20 and 30 percent on average.<sup>1</sup> Transmission costs are already a growing fraction of the price of delivering electricity to consumers throughout the country, and with the recent passage of the federal Inflation Reduction Act, billions in new transmission projects are coming in the next few years. Eliminating competition for these impending projects would be a major windfall for incumbent utilities, the costs of which would be borne by Kansas ratepayers.

**In addition, ROFR requirements can delay needed transmission projects and provoke conflicts with other states.** Where incumbent utilities have secured ROFR laws in other states, they have left a wake of deleterious economic results and lawsuits. The concerns even evoked engagement from the United States Department of Justice, which has made clear that state ROFRs reduce competition and harm consumers.<sup>2</sup>

The ROFR backlash has undermined interstate cooperation in developing regional transmission projects. For example, the state of Illinois began to resist paying for the burdens of other states' anti-competitive transmission laws over a decade ago.<sup>3</sup> In deterring regional transmission, ROFR has forced states to forego reliability and economic development benefits. Utilities often circumvent efficient regional projects by breaking up the project into smaller, balkanized and costlier pieces in order to comply with a ROFR law.<sup>4</sup>

For these reasons, the R Street Institute opposes Senate Bill 68. Thank you for your time today and I would be happy to take questions.

Sincerely,

Josiah Neeley  
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<sup>1</sup> Johannes P. Pfeifenberger et al., "Cost Savings Offered by Competition in Electric Transmission," The Brattle Group, April 2019. [https://www.brattle.com/wp-content/uploads/2021/05/17805\\_cost\\_savings\\_offered\\_by\\_competition\\_in\\_electric\\_transmission.pdf](https://www.brattle.com/wp-content/uploads/2021/05/17805_cost_savings_offered_by_competition_in_electric_transmission.pdf)



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<sup>2</sup> “Letter of the U.S. Department of Justice Antitrust Division to the Honorable Travis Clardy,” U.S. Department of Justice, April 19, 2019. <https://www.justice.gov/atr/page/file/1155881/download>.

<sup>3</sup> *Illinois Commerce Commission v. FERC*, 576 F.3d 470 (7th Cir. 2009), United States 7th Circuit Court of Appeals, filed April 13, 2009.

<https://www.dwt.com/files/uploads/Documents/Advisories/Illinois%20Commerce%20v%20FERC.pdf>.

<sup>4</sup> Josiah Neeley, “Right of First Refusal Laws for Electric Transmission are Anti-Competitive in Interstate Commerce,” R Street Institute, June 2021, p. 1. <https://www.rstreet.org/wp-content/uploads/2021/06/explainer27-1.pdf>.