SUNFLOWER ELECTRIC POWER CORPORATION

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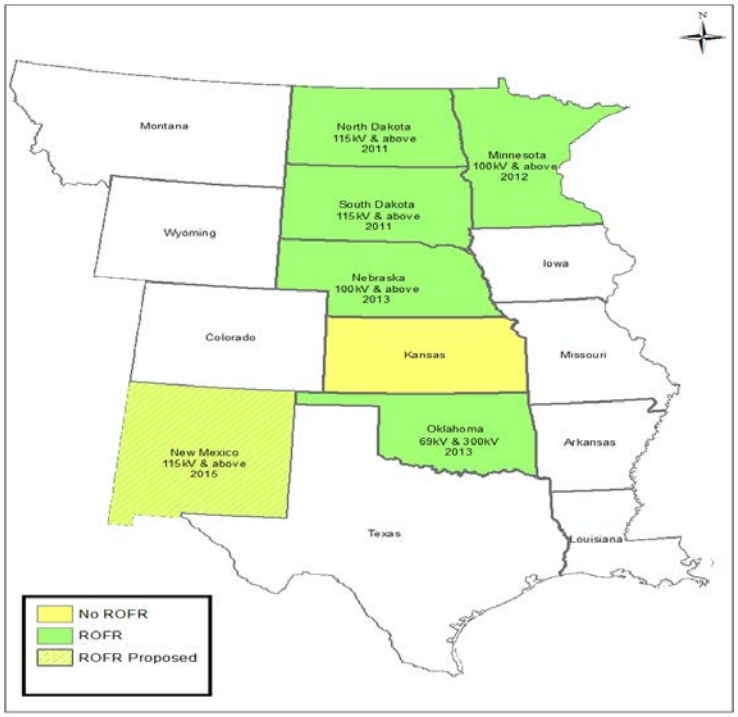
Bill Number	House Bill No. 2623
Date of Hearing	February 12, 2016
Stance	Proponent
Testimony By	Stuart Lowry, President and CEO, Sunflower Electric Power Corporation
Summary	• Sunflower Electric Power Corporation and Mid Kansas Electric Company, LLC support HB 2623. The bill establishes a Right of First refusal from FERC Order 1000 transmission projects for the construction of transmission projects between 100-200 kV, the voltage directly serving our Members. • HB 2623 retains state, not federal, control of transmission between 100-200kV. • The adoption of HB 2636 helps Sunflower and Mid-Kansas control transmission costs and thus save ratepayers money. o Controls transmission costs, the fastest growing portion of electric bills. o Helps ensure only needed transmission projects are built. o Allows utilities to pursue least-cost options to meet reliability needs. o Incents implementing the lowest overall cost solution, not the lowest initial cost solution. o Allows for near real-time avoidance of expenditures for transmission based on current system needs. o FERC Order 1000 incents transmission projects at any cost, not necessarily the least cost to the ratepayer. • HB 2623 helps ensure the safe and reliable operation of the transmission system. o Prevents communication gaps and safety consequences between companies o Avoids patchwork of owners and operators, some of them absentee. o Promotes safe, efficient, timely responses to storm situations. • HB 2623 is consistent with legislation adopted in surrounding states. o Nearby states have adopted ROFR legislation to protect ratepayers. o HB 2623 allows Order 1000 competition for other voltages. o HB 2623 is the least restrictive ROFR in the country. • HB 2623 insulates ratepayers from the effects of a “competitive” process where the seller, not the buyer, determines how much the buyer (ratepayer) must purchase. • HB 2623 does not impact SPP’s consideration of the Walkemeyer Order 1000 project already underway. • HB 2623 does not prevent Kansas utilities from building, owning and operating transmission needed to serve their customers.

TESTIMONY SUBMITTED BY STUART LOWRY, PRESIDENT AND CEO
ON BEHALF OF SUNFLOWER ELECTRIC POWER CORPORATION
BEFORE THE HOUSE ENERGY AND ENVIRONMENT COMMITTEE
IN SUPPORT OF HB 2623

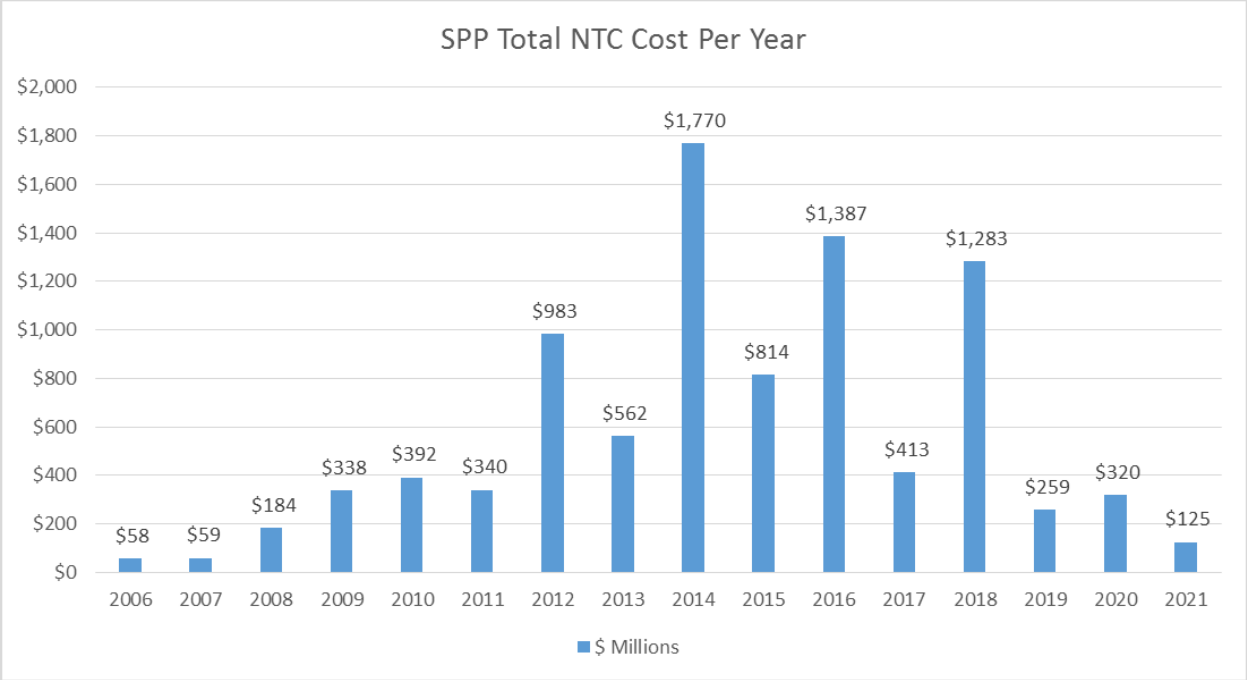
February 12, 2016

Good morning, Mr. Chairman and Members of the Committee. My name is Stuart Lowry, and I am the President and CEO of Sunflower Electric Power Corporation and Mid-Kansas Electric Company, LLC. Our companies provides generation and high voltage transmission service to our six Member-Owners, who in turn provide retail service to nearly 400,000 consumers and a significant number of beef, dairy , oil and gas facilities in central and western Kansas. We own and operate over 2,000 miles of high voltage transmission lines and are a transmission owning member of the Southwest Power Pool (SPP). I am here today to provide testimony in support of HB 2623. Kansas should join the five other states in the central plains, shown on the map below, that have adopted Right of First Refusal (ROFR) legislation in order to maintain affordable electric rates, ensure reliability of service, and limit the impact on ratepayers that widespread transmission buildout might involve.



Transmission is one piece of the retail electric service you and all Kansans receive, along with generation and distribution services. Transmission service has been the fastest growing portion of Kansas electric rates in recent years. Millions of dollars of transmission projects have been built in recent years, many facilitating wind projects located in western Kansas contracted to utilities in other parts of the country. The cost

of all transmission is typically borne by the zone in which the transmission is located in varying percentages and based on the size of the line. This is critical to understand—regardless of who builds a transmission line, who owns a transmission line, and who operates a transmission line, electric ratepayers pay for the line. For most western Kansas projects between 100-200 kV, the voltages impacted by this legislation, two-thirds of the cost is typically borne by the ratepayers living within western Kansans. Note the past actual and future anticipated transmission expenditures in the SPP as shown in the chart below.



Order 1000 was issued by the Presidential appointees serving on the Federal Energy Regulatory Commission (FERC). Highly summarized, Order 1000 requires that Regional Transmission Organizations, such as the SPP, implement a competitive bidding process for regional transmission projects for purposes of regional cost allocation. It allows non-incumbent utilities the opportunity to bid on the construction of transmission projects identified in the SPP planning process. The competitive bidding process is complex and expensive and makes very little sense for small, lower voltage projects such as those identified in this bill. In fact, the SPP stakeholders approved right of first refusal provisions in the tariff submitted to FERC for approval, and the provisions were rejected by FERC. While FERC rejected ROFR protections in the SPP tariff, they have been clear that states have the right to preserve the ROFR for incumbent utilities.

The word “competition” in the context of Order 1000 is not as you would commonly understand it. The process requires that SPP choose who will build transmission projects from among multiple sellers via a competitive process. In a typical competitive business environment, the buyer determines how much of the competitive product the

buyer wants to purchase. By relinquishing control to an Order 1000 process, the buyer, in this case the electric ratepayer in Kansas, can be forced to buy much more transmission than the buyer wants or needs. In fact, the ratepayer is forced to buy all that SPP requires and approves. The desires and objectives of entities whose principle objective could be to build ever more transmission, could override the desires and needs of the ratepayers in the state of Kansas. To illustrate this exuberance with transmission, consider that in 2012, there were 150 project submissions at SPP. That number rose to more than 1,700 in 2014 with the pending implementation of Order 1000.

There are several ways Order 1000 can unnecessarily increase costs for Kansas ratepayers.

- **Order 1000 incents proposal of, and advocacy for, transmission projects whether truly needed or not.** This is especially problematic for Kansas. As the map above shows, Kansas is the only state in the windy plains states without a ROFR. Absent a ROFR, companies with more interest in rate of return than service to a Kansas electric customer will see an opportunity for that return. This makes it likely that a Kansas transmission solution will be identified to solve nearly any problem in any state.
- **Order 1000 creates the potential that transmission projects will be pursued despite the ability to utilize lower cost, non-transmission solutions to electrical needs.** This is because Order 1000 guarantees return of, and return on, the transmission investment. When changes in assumptions made in the transmission planning models occur, such as changing load forecasts, some competitive transmission projects may become unnecessary. Competitive transmission bidders with no ratepayer accountability in Kansas have little-to-no incentive to request that a transmission project be withdrawn as those modeling assumptions change. A local utility who is trying to balance reliability with affordable electricity will have the incentive to do what is right and advocate for the lowest cost option. It is clear why so many states have adopted ROFRs. One need only do an internet search to learn the extent to which private equity, hedge funds, and venture capital see gold in the hills of the transmission landscape. This committee should remember that the gold would be mined from the pocketbooks of the electric ratepayers we all represent.
- **The Order 1000 competitive process can also incent transmission being built at the lowest initial cost (in order to win a competitive bid), rather than the lowest overall cost for the expected useful life of the line.** This can result in transmission lines that are not constructed to withstand rigors of Kansas weather. The same wind that creates so much electricity for our wind turbines stresses the transmission facilities delivering the electricy. This, of course, will result in shortened asset lifespans, more maintenance and repair costs, and an overall higher cost to the ratepayers who are supposed to be benefiting from the Order 1000 competitive process.

- **The Order 1000 process does not clearly allow the withdrawal of a project due to changes in loads or system conditions.** There is no clear mechanism in Order 1000 or the SPP tariff for the State of Kansas or the ratepayers that have to pay for the project to challenge the need for an project once it has been identified as an Order 1000 project by the SPP. Conversely, in recent years Sunflower has identified changes in load on the Sunflower system or changes in system needs that allowed us to withdraw over $167 million in non-Order 1000 transmission projects in the SPP planning process, resulting in significant savings to Kansas ratepayers. The requirement, or even the opportunity, to revisit the need for a project that will end up costing ratepayers is either missing or unclear in the Order 1000 process.
- **The Highway/Byway funding methodology used by SPP allows out-of-state entities to propose and build transmission projects that Kansas ratepayers have to pay for.** For example, two-thirds of the cost of the Walkemeyer project, described below, will be paid by Sunflower ratepayers, regardless of who is the owner of the project. Due to Sunflower's geographic location and the number of wind projects, the Sunflower zone could see many projects identified in the future.
- **The implementation of Order 1000 results in the duplication of the cost of planning and designing a transmission line that will be competitively bid.** In the Order 1000 process, each bidder bears the expense of planning and designing the proposed project for bid submission, and, while there can only be one successful bidder, the cost of preparing all bids has to be borne by someone, somewhere, and that someone will ultimately be a ratepayer somewhere, sometime. It is likely that an accurate accounting of all costs of bid preparations by all bidders on the Walkemeyer project actually exceeds the cost of the project itself. Opponents of ROFR will say that Walkemeyer was the first project and that the planning/engineering costs will go down for future projects, which may be true. However, the cumulative cost of everyone's planning/engineering will never be less than the cost of one entity planning and engineering, especially for the lower voltage lines contemplated in this bill.
- **Order 1000 can fragment ownership of facilities and negatively impact reliability, safety, and coordination.** The competitive bid process can lead to multiple transmission line owners within a geographic area. This fragmented ownership can negatively impact reliability of service and the safety of the public and those people responsible for maintaining the integrity and operation of our lines. For example, restoring service in an outage would require coordination with numerous other entities for switching and clearing procedures. In those instances, coordination will have to occur in the middle of the event that triggered the outage, such as an ice storm, thunderstorm, blizzard, etc. Restoring electric service during such severe inclement weather conditions presents its own set of safety considerations. Ownership fragmentation only adds to the complexity of the concerns for public safety.

A project in the Sunflower area, the Walkemeyer project mentioned above, provides an illustration of the shortcomings of the Order 1000 process. This project was identified as an Order 1000 project in the most recently completed SPP planning process. It is an approximately 21 mile, 115 kV transmission line between two substations, Walkemeyer and North Liberal. The project was Phase 2 of a two phase solution identified in the SPP planning process as solving a reliability problem that could exist, assuming load forecasts and certain system conditions, in the summer of 2019. This was one, and the most expensive, of the options considered by the SPP Board. Other, significantly less expensive options were a non-transmission solution and a transmission solution which required minimum usage of existing generation facilities (less than 20 hours in the peak months of summer). Walkemeyer Phase 2 failed to get the necessary support from SPP Market and Operations Policy Committee and Members Committee, but did get approval of the SPP Board of Directors.

Since the approval, bidding entities have moved forward with bid preparation and submission and SPP has convened an Independent Expert Panel to evaluate the bids and award the project to the winner—all at considerable cost that will ultimately be borne in large part by western Kansas ratepayers. In the meantime, the real-time load conditions purportedly necessitating the project have changed in a way that makes even the most optimistic view of project need to be false. With a ROFR, the project would have been assigned to Sunflower, who could withdraw the project or consider less-costly alternatives.

Nothing in HB 2623 can change or eliminate the Walkemeyer project. Only the SPP could make that change through an as-yet undetermined process. But the Walkemeyer project should serve as an example of why this legislation is needed for future projects.

HB 2623 limits or eliminates the applicability of Order 1000 to transmission projects between 100-200 kV. In this instance, the bill's features as well as the benefits it offers to Kansas ratepayers are as follows:

- Kansas electric utilities have incumbent rights to construct, own, and maintain electric transmission projects between 100-200 kV that interconnect to, modify, or upgrade their transmission facilities that are identified as part of a SPP plan;
- In the event there are two or more incumbents, each incumbent utility has equal and identical rights in the project.

This bill does not and is not intended to preclude any Kansas utility from building, owning, and maintaining electric transmission assets in the state of Kansas needed to reliably serve their customers. In fact, transmission facilities built by Kansas utilities would qualify them for incumbency status under this bill in the future. The bill does not impair the regulatory oversight of the state for the sale or transfer of utility assets to another entity—those types of transfers would still require KCC approval. The bill has no impact on SPP awarding the pending Walkemeyer project.

For the reasons stated herein, Sunflower Electric Power Corporation, on behalf of the over 400,000 ratepayers who want reliable, affordable electric power, urges your approval of HB 2623.

SUPPLEMENT TO TESTIMONY

SUBMITTED BY STUART LOWRY, PRESIDENT AND CEO

ON BEHALF OF SUNFLOWER ELECTRIC POWER CORPORATION

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IN SUPPORT OF HB 2623

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KEPCo has expressed concerns that under HB 2623, they and their Members would not be able to own transmission facilities in the future due to the incumbent right of first refusal (ROFR). HB 2623 does not alter existing Kansas law authorizing utility ownership of transmission. Although KEPCo or their Members would have the legal right to build transmission, they may not want to. Although Sunflower might have ROFR rights, they may not invoke them. A simple example below illustrates how KEPCo or their Members could own transmission in the future after adoption of HB 2623 and how Sunflower and KEPCo's individual economic interests will lead to KEPCo transmission ownership, or at least that opportunity.

Assumptions:

- KEPCo, who does not now own or operate transmission, wants to do so in the future
- Transmission is built to serve a Member/customer need, and not as some type of investment mechanism for KEPCo or a third party
- Primary goals of all parties—Sunflower and KEPCo-- are to provide reliable service at lowest possible cost
- KEPCo represents 1% of the load in the Sunflower load zone (Load ratio share)

Scenario: A KEPCo Member has a new customer that will require a tap from an existing Sunflower 115 kV transmission line and the construction of 5 miles of new 115 kV line to a new substation. Because the new 115 kV line is between the 100-200 kV range in HB 2623, KEPCo believes it would be subject to Sunflower's right of first refusal under HB 2623. If that is true, there are at least three potential outcomes:

<u>Potential Outcome 1—Sunflower invokes ROFR and builds project:</u>

Impact to KEPCo:

Reliability: KEPCo gets reliable service to the Member customer.

Cost: Because KEPCo pays only its load ratio share of the cost of the project, they get reliable service for very little cost.

Transmission ownership: KEPCo would not own the transmission.

Impact to Sunflower:

Reliability: No real improvement to reliability of Sunflowers system.

Cost: Sunflower/Sunflower Members (and other transmission customers) would be paying 99% of the cost to build a service that doesn't benefit their Members/Customers.

Transmission ownership: Sunflower would own transmission unnecessary to the operation of their system.

Conclusion/Potential Outcome 1—It would not be wise, nor in Sunflower's economic or operational interests, for Sunflower to invoke ROFR. Sunflower would take on unnecessary cost with no corresponding benefit to Sunflower Members or customers.

Potential Outcome 2—Sunflower doesn't invoke ROFR and KEPCo or a KEPCo Member builds project:

Impact to KEPCo:

Reliability: KEPCo gets reliable service to the Member customer.

Cost: KEPCo pays for the total cost of the line. Potentially recovers the cost directly from the end use customer via a contribution in aid of construction.

Transmission ownership: KEPCo would own the transmission and be responsible for operation.

Impact to Sunflower:

Reliability: No real impact to reliability of Sunflowers system.

Cost: No cost to Sunflower so no impact on Sunflower rates.

Transmission ownership: KEPCo would own the transmission facilities.

Conclusion/Potential Outcome 2—Sunflower and KEPCo would both get what they want from the project with appropriate cost assignment. KEPCo would become the incumbent/owner of the new line.

Potential Outcome 3 (Typical from historical perspective)—Sunflower doesn't invoke ROFR but KEPCo requests that Sunflower build the project:

Impact to KEPCo:

Reliability: KEPCo gets reliable service to the Member customer.

Cost: KEPCo pays for the total cost of the line. Potentially recovers the cost directly from the end use customer via a contribution in aid of construction.

Transmission ownership: KEPCo would not own the transmission; Sunflower holds operations/compliance responsibility and carries the loss risk for the transmission line.

Impact to Sunflower:

Reliability: No real improvement to reliability of Sunflowers system.

Cost: Sunflower would be recovering the cost to build a service that doesn't benefit their Members/Customers directly from KEPCo, so no negative impact on cost.

Transmission ownership: Sunflower would own transmission, but only because KEPCo chose not to.

Conclusion/Potential Outcome 3: Sunflower and KEPCo both get what they want from the project with appropriate cost assignment. KEPCo exercises choice to not build transmission.