



February 12, 2016

**Testimony Provided to House Energy & Environment Committee  
In Opposition to HB 2623 - Utilities and Electric Transmission Lines**

Chairman Hedke, Vice-Chairman Corbet, Ranking Member Kuether and Members of the Committee,

My name is Sharon K. Segner and I am Vice President with St. Louis, MO-based LS Power Development. I provide testimony today in opposition to an anti-consumer and anti-competitive bill that is currently before the House Energy and Environment Committee. The bill, HB 2623, provides no benefit to the citizens of Kansas and I hope that once you have an opportunity to review the bill fully and understand its ultimate purpose, solely to protect incumbent transmission owners from competition, you will agree that the legislation is not in the best interest of the citizens of Kansas and you will oppose it.

The legislation would establish what is referred to as a “right of first refusal” for incumbent transmission owners and provide them with an exclusive right to build new electric transmission in Kansas, even when the cost for such new transmission is paid for by consumers outside of Kansas.

Certain existing Kansas transmission owners seek adoption of the law (while other existing transmission owners oppose the law) because the Federal Energy Regulatory Commission issued an order in 2011, Order No. 1000, which determined that transmission projects that are paid for by two or more utilities must be competitively procured.<sup>1</sup> In Kansas, this practically means that transmission 115 kV and above in voltage level is now subject to competitive pressures. HB 2623 specifically targets transmission that must be competitively procured today with its focus on transmission greater than 100kV and below 200 kV. Indeed, the Southwest Power Pool has issued a competitive solicitation for just such a Kansas project and the proposed legislation appears geared to circumvent that solicitation. At the same time that some Kansas incumbent transmission owners are seeking passage of this Kansas state law, they are also working with others to overturn in federal court the entire pro-competition model. That case, No. 14-1281, is currently pending before the United States Court of Appeals, D.C. Circuit. The briefing period has ended, and oral arguments have not yet been scheduled. The D.C. Circuit is expected to rule on this litigation joined by certain Kansas incumbent transmission owners this year.

FERC Order No. 1000 concluded that rights of first refusal are inconsistent with just and reasonable transmission rates and are not in the best interest of consumers. FERC was not alone in this conclusion, with the Federal Trade Commission, state public service commissions from

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<sup>1</sup> Order No. 1000 specifically allowed existing transmission owners to address any needed upgrades to their existing facilities, or to build projects solely in their existing retail distribution service territory that are to be paid for solely by their customers.

around the country and large industrial consumers, all weighing in at FERC strongly supporting competitive pressures. The Federal Trade Commission, for example, stated

The FTC concurs with FERC's proposed elimination of the [right of first refusal] ROFR. Consumers benefit from market competition that often takes the form of new entry. . . . Objections to elimination of the ROFR, as described in the [notice of proposed rulemaking] NOPR, do not appear to be well-founded.

HB 2623 seeks to undermine these important consumer goals but it is unclear what “problem” the legislation seeks to fix. The bill establishes a Kansas, in-state monopoly for the building of regional transmission projects, **which is in direct contradiction to the Kansas State Constitution<sup>2</sup> and the United States Constitution.** See *Gilbert v. Mathews*, 186 Kan. 672 (1960), and *Miami County Board of Commissioners v. Kanza Rail-Trails Conservancy*, 292 Kan. 285 (2011) – two Kansas Supreme Court cases stating that legislation that serves to keep non-resident competitors out of a market, or that discriminates against non-residents with a design towards benefitting in-state economic interests by burdening out-of-state competitors, violates the Kansas and United States Constitutions. The bill would restrict the options available to consumers in Kansas, granting what is essentially a perpetual franchise to incumbent transmission owners for most new transmission in Kansas.

The legislation also does nothing to get critical energy infrastructure built in the State of Kansas. Order No. 1000 opens regionally cost allocated projects to competition, bringing in new ideas and new solutions. Order No. 1000 has already brought significant consumer and competition benefits in other parts of the United States, with binding cost caps being proposed in other parts of the United States. As FERC Commissioner LaFleur stated in a 2015 decision:

**One of Order No. 1000's key goals was to harness the benefits of competition in transmission development for customers, and it is important that, as regions implement their Order No. 1000 procedures, we do not lose sight of that goal: facilitating the identification, development, and ultimately the construction of more efficient or cost-effective transmission projects that are better for customers. Order No. 1000's competitive solicitation processes – and in some cases, the mere prospect of competitive solicitation processes – have already led to a host of innovative rate structures and cost containment proposals that, if properly designed, could provide significant benefits for customers.** I believe that these efforts should be encouraged,

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**§1. Equal rights.** All men are possessed of equal and inalienable natural rights, among which are life, liberty, and the pursuit of happiness.

**§17. Property rights of citizens and aliens.** No distinction shall ever be made between citizens of the state of Kansas and the citizens of other states and territories of the United States in reference to the purchase, enjoyment or descent of property. The rights of aliens in reference to the purchase, enjoyment of descent of property may be regulated by law.

both by the Commission and in the regional transmission planning processes, to foster a dynamic environment for new transmission development.

My company is one of the “new entrants” in other parts of the United States that have successfully competed and won new transmission projects. My company has proposed new innovative rate structures in both the Mid-Atlantic and Western markets, and has successfully won projects because of these new capital cost cap proposals. For example, my company won the first competitive procurement process in the Mid-Atlantic. My company proposed to become a public utility under the state laws of Delaware, and has proposed some of the first binding capital cost caps proposed anywhere in the United States. In the Mid-Atlantic, there were 26 different proposals for this first competitively procured project, with a cost range of \$120 million to \$1.6 billion to solve the same transmission problem! Our company proposed a binding cost cap, and won the first competitive process in the Mid-Atlantic. It is estimated that this first process in the Mid-Atlantic region could have saved consumers as much as \$1 billion dollars. These cost cap proposals are setting new and powerful industry trends in competitive transmission, and have the potential to provide significant benefits for consumers.

In the SPP Region, where Kansas is located, the first competitive bid process in SPP is underway. Bidders have bid on a new transmission project in the Liberal, Kansas area. SPP is in the process of reviewing the bids, and the SPP Board will announce the winning entity in April 2016. It is my understanding that the intent of HB 2623 could be to upend the competitive bid process underway. My company is aware that there are creative cost-containment proposals that have also been proposed for the Kansas SPP project, which is currently out for competitive bid.

The bottom line is that the legislation is anti-competitive, inconsistent with the Kansas and United States Constitutions, and is not in the best interest of Kansas ratepayers. We ask that you ask: how this legislation helps the consumers of Kansas? Ask: why competition for transmission infrastructure is bad for rate payers? Ask: why regionally planned and cost allocated transmission should not be the most efficient and cost effective solution available? Ask: why does Kansas need, or want, this special interest legislation? We believe that answering these questions will lead you to but one conclusion: that a rejection of this special interest legislation is warranted and in the best interest of Kansas.