February 7, 2023
Senate Committee on Utilities
SB68 – ROFR - PROPONENT
ORAL-in-person testimony
Darrin Ives, Vice President, Regulatory Affairs
Darrin.Ives@evergy.com 816-652-1200
Evergy

I. Introduction

Thank you Chairman Olson and members of the Committee for the opportunity to talk today about the Right of First Refusal (ROFR) legislation and why it is important to Evergy, our customers, and economic development in Kansas. We believe that the legislation will benefit all transmission-owning or affiliated entities in Kansas and their respective Kansas customers, because it allows incumbent utilities the opportunity to build projects within, and connecting to, their systems to promote long-term reliability and short and long-term efficiencies, before providing the opportunity to others.

II. FERC Order 1000 Attempted to Ignite Competition in 2011

Since FERC Order 1000 was issued in 2011, the electric transmission industry has attempted to utilize a competitive bid-based approach for regionally funded transmission projects approved for construction by the various regional transmission organizations (RTOs). Prior to Order 1000, generally, the utilities who owned the transmission facilities to which the new project would interconnect had the right to build those projects. Those incumbent utilities know the intricacies of their systems, topography, landowners and land usage, weather conditions, and what designs and materials could withstand the test of time and provide reliable service for their customers. Order 1000 was an attempt by Federal Government regulators to require competitive bidding for such projects in order to assure the lowest initial cost for regionally beneficial projects. As we have now seen in our region, and nationally, it has been a race to the bottom based on misguided incentives and superficial and ineffective price caps.

III. Competition has Failed to Produce the Cost Savings Anticipated

Importantly, the industry now has the benefit of hindsight. Recent history of the competitive process has shown it to be an incentive to low-bid projects to win the award versus a competition amongst experienced utilities to design cost-effective or innovative solutions that can be constructed to stand the test of time. In other words, bids are based upon "getting the project" with a focus on stripping the design down to the bare minimum and applying hollow cost caps that have a multitude of exemptions and no guarantee of cost containment. Instead of designing projects at reasonable costs for long-term reliability and savings for end-use customers, the competitive process has delivered minimalist "low ball" designs to win bids rather than provide robust solutions.

As the table below demonstrates, the results from a few key projects that were awarded after a competitive solicitation show that actual costs, after completion of a project, are typically higher than the bid price.[1]

TABLE 1: CASE STUDY COST SUMMARY

NAME	REGION	REGION'S COST ESTIMATE ($M)	WINNING BID COST ESTIMATE ($M)	FINAL COST OR CURRENT ESTIMATE ($M)
Empire State	NYISO	NA	181	249
Artificial Island	PJM	NA	146	149.5
Duff Coleman	MISO	58.9	49.8	54.2
Delaney to Colorado	CAISO	325	300	389
Suncrest	CAISO	50-75	42.3	53
Harry Allen to Eldorado	CAISO	120[2]	144	202.4

In fact, FERC has recently re-opened consideration of Order 1000 to review the effectiveness of competitive bidding.[2] The industry has submitted comments to FERC in the policy-making docket citing studies stating: "The SPP processes created to comply with FERC Order No. 1000 do not work to efficiently identify the most cost effective and regionally beneficial projects."[3] Studies are also demonstrating that Order No. 1000 competitive solicitations have not been successful in driving cost savings and have added delays to the development of transmission infrastructure, have added as many as 1,000 days to the development of transmission projects, and many experienced cost escalations further questioning the value of competitive solicitations.[4] Nearly a decade later, it is apparent that transmission development is not meeting the vision of Order 1000.[5]

Allowing Kansas utilities to construct, own, operate and maintain the local facilities is the most cost effective for Kansas customers and provides the most benefits to Kansas rate payers as Kansas entities like Evergy are fully regulated by the Kansas Corporation Commission (KCC). While out-of-state entities must obtain utility status and siting authorization from the KCC, they are not fully regulated by the KCC and they have gone out of their way to make clear that the KCC does not regulate their rates for the transmission projects subject to this ROFR.

---

[1] *See* Concentric Energy Advisors, Inc., *Competitive Transmission: Experience to-Date Shows Order No. 1000 Solicitations Fail to Show Benefits*, (August 2022). https://ceadvisors.com/publication/competitive-transmission-experience-to-date-shows-order-no-1000-solicitations-fail-to-show-benefits/.

[2] *See Bldg. for the Future Through Elec. Reg'l Transmission Planning & Cost Allocation & Generator Interconnection, Notice of Proposed Rulemaking*, 179 FERC ¶ 61,028, P 39 (May 4, 2022) (FERC stating that since Order No. 1000, "the regional transmission planning and cost allocation processes have yielded limited investment in regional transmission facilities.").

[3] *See, Id.*, Docket No. RM21-17, Comments of Developers Advocating Transmission Advancements, Exh. 3, Affidavit of Jarred Cooley, P 30 (August 17, 2022).

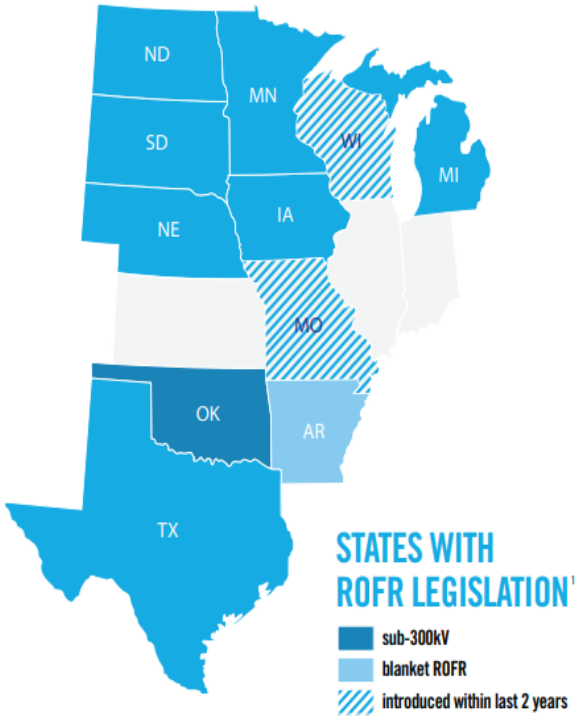
[4] *See* Concentric Energy Advisors report, footnote 1.

[5] *See* Hon. Joseph T. Kelliher, "A Modest Proposal on Federal Transmission Policy Reform," EBA Brief, Spring 2021, Vol. 2, Issue 1, at 3.

IV. Kansas Is an Outlier

While FERC removed the Federal right of first refusal, it acknowledged and recognized states' rights to continue providing state-regulated incumbent utilities with the opportunity to build transmission projects, prior to opening them up to competition. Indeed, in the wake of FERC's issuance of Order 1000, many states initiated ROFR legislation for purposes of providing incumbent electric utility transmission owners the first option to build transmission projects. Some states already had such statutes in place and chose to retain them. In our RTO, the Southwest Power Pool (SPP), our neighboring member states with a ROFR are Nebraska, Oklahoma, Texas, North Dakota, South Dakota, Iowa, Minnesota, and Montana, while Missouri has current proposed legislation to add a ROFR. Indiana and Michigan also have state ROFRs. This proposed legislation would add Kansas to that list and keep the option of who builds transmission in our state within our state.

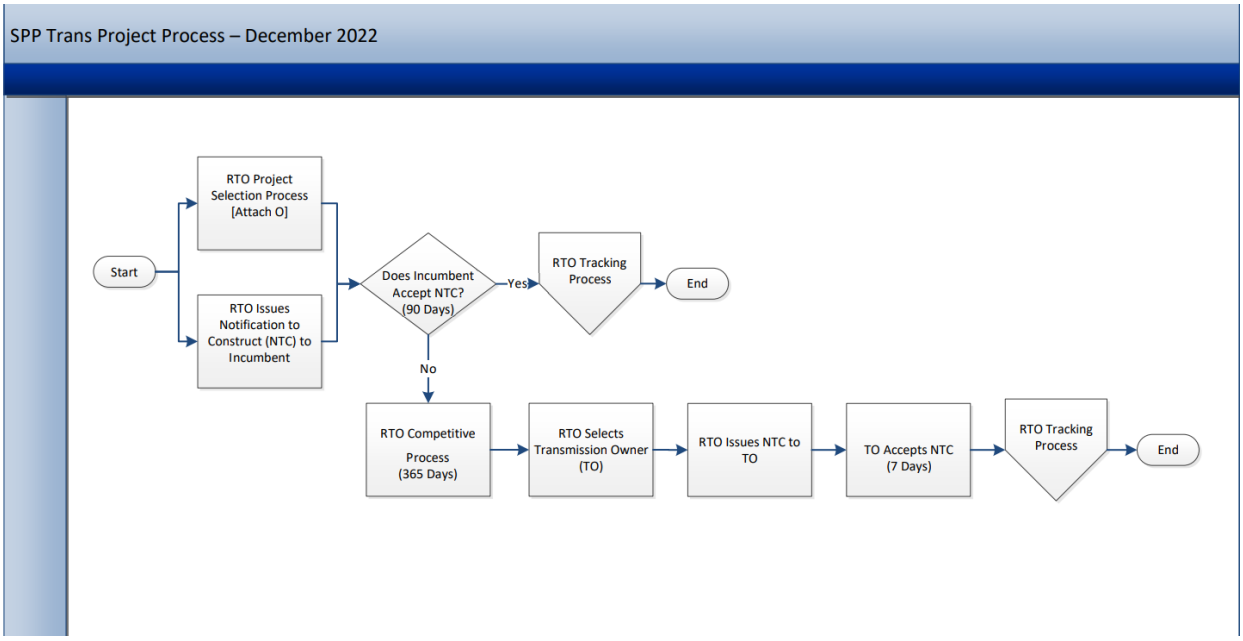
Kansas is becoming the exception within SPP, where anyone can come in and bid on transmission projects, while Kansas utilities cannot bid on projects in other states due to their state ROFRs. Even our neighboring RTO, the Midcontinent Independent System Operator (MISO), essentially has a ROFR throughout their territory for projects below 300kV. (See RTO map, attached.) Moreover, additional states (*e.g.*, Missouri, Wisconsin, Mississippi) currently are proposing legislation to implement a state ROFR. This ROFR legislation (SB 68) would promote reliability and keep control of the local grid with Kansas incumbent utilities rather than low-bidding projects to out-of-state entities utilizing minimal design standards.



It is important to understand that the bidding process is not for a single proposed transmission line design and route. SPP does not set forth a single proscribed transmission line with a distinct design and route and ask bidders who can build it for the lowest price. SPP simply says we need a transmission line of a certain voltage from Point A to Point B. The bidding entities can strip the design down to the minimal standards and cheapest materials allowed by the SPP and electric codes. Many things should not necessarily be designed and constructed by the lowest bidder: Bridges, dams, your dream home . . . or high voltage transmission lines.

V. The Competitive Process Delays Implementation of Projects

The competitive process introduces delays into the ability to get steel in the ground. The RFP process, as well as regulatory approvals for new entrants often delay projects several years. By way of example, SPP's competitive solicitation process adds approximately a year to a project. Once the project is awarded, regulatory approvals are often required that extend the timeframe. With a ROFR, most utilities have franchised service areas and ability to construct without additional regulatory processes.



Recently, an important and needed 345kV line interconnected to the Wolf Creek substation that Westar/Evergy has proposed for years was finally approved by the SPP but was required to be submitted to the competitive process. The result was a winning bid that was 40% below SPP's initial $142.6 million cost estimate and 27% lower than the second lowest bid. SPP's estimated cost per mile was $1.5 million which was in line with Evergy's experience for similar 345kV lines. When dissecting the winning bid's $906k/mile cost, the alleged savings can be found with design elements such as concrete pole materials that are extremely rare in Kansas, and the use of down guy wires for support that interfere with agricultural land use and are less reliable and more costly to maintain over time than self-supporting steel structures like Evergy utilizes. Furthermore, key replacement components of the line will be stored at the winning bidder's facilities in Texas, about 8 hours away from the new line in Kansas.

This transmission line was approved because it provides economic and reliability benefits to Kansas and the region that are greater than the cost of the line. However, the project has been delayed by at least two years because, but for the time required to complete the competitive process, SPP would have issued a notice to construct to Evergy two years ago and construction would already be well underway. With a ROFR, while projects must still meet a cost-benefit analysis at SPP to show they will create more benefits than the cost of the line, the ROFR will prevent the unnecessary delay of those benefits caused by a long competitive bidding process.

Additionally, the competitive process is expensive to administer. SPP engages 3-5 external subject matter experts for 6 months to a year to evaluate the projects and recommend a winner. In addition, each bidder spends 6 months or more working on their design, engineering, route, suppliers, etc., knowing that there will only be one successful bidder and the costs to submit the proposal and bid are likely sunk and will never be used or useful. State ROFRs eliminate the need for costly and time-consuming bidding processes.

VI. Competition Does NOT Create Additional Value for Landowners.

Another misconception is that landowners will benefit from utilities competing for easement rights on their property. The competitive process does not involve multiple entities trying to negotiate easement rights resulting in higher payments to landowners. The easement rights are only granted to the single winning bidder who then negotiates with the landowner under the pressure of their cost-capped low bid. In other words, the landowner will only ever deal with one utility that is incentivized to remain within their low bid. If no agreement is reached with a landowner, the low-bidder utility then must resort to condemnation proceedings. This rarely occurs with incumbent Kansas utilities who already have a relationship with their customers and landowners.

VII. In-State Entities Are More Responsive to Customer Needs

For Evergy, this is an issue about keeping the lights on for our customers and allowing Kansans to decide how we do it. Senate Bill 68 addresses transmission lines that feed the distribution system to our customers and which have the greatest potential to impact customer reliability. Currently, when an out-of-state transmission company with no Kansas customers and no underlying distribution system successfully secures the bid for an SPP-directed line to be built in Kansas, that entity will build, own, and maintain the transmission line and any associated equipment.

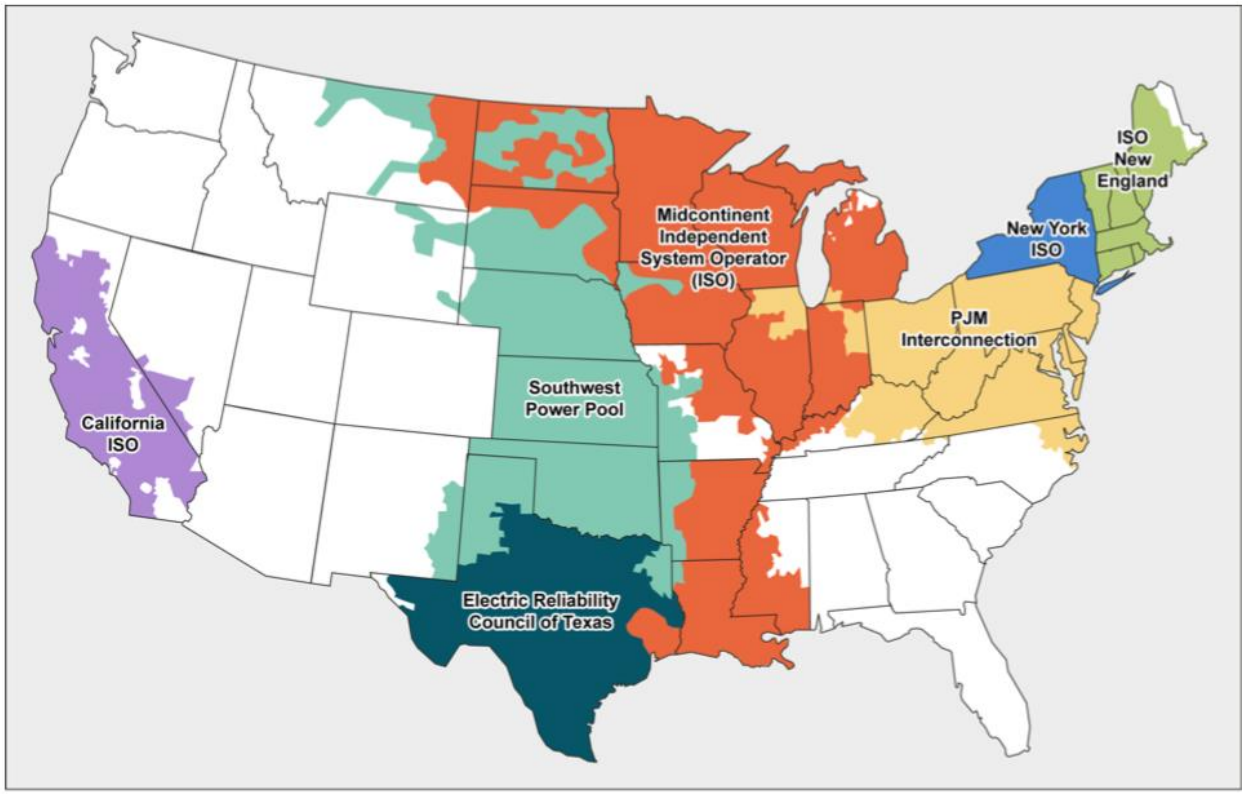
When we experience typical Kansas wind, ice, and freezing temperatures and that entity's line goes out of service, do they have crews and equipment at the ready? How quickly can they get there? By not having Kansas businesses and residents as customers, what will the out-of-state entity's priority be? When Evergy has similar outages, Evergy already has nearby resources dedicated to getting our customers' lights and heat back on. Evergy's customers are calling Evergy – not the out-of-state company that owns the line that is out of service. When lights remain out longer because a non-Kansas owner of a downed line is slow to respond, our customers still perceive Evergy as the culprit.

Evergy designs and builds its transmission lines to be robust and reliable at standards to meet or exceed those required by the National Electric Safety Code (NESC) and Southwest Power Pool (SPP). This is based on over a century of experience serving Kansans, has been proven to work, and is cost-effective over time. Although the NESC and other SPP member designs are sufficient to safely and reliably operate an electric transmission system, Evergy's experience with Mother Nature over the last 125 years of serving our customers has taught us a few lessons that have spurred us to alter our design standards increasing the level of reliability of our transmission lines. Transmission-only companies coming into our state based on competitive bids are actually incentivized to design to minimum standards in order to be the low-bidder and win the project – and we all know what the low bid often gets us.

For instance, the maximum wind speed the NESC requires transmission lines in Kansas to endure is 90 miles per hour. In the late 1990s, a severe wind storm brought down 36 miles of 345 kV transmission line. Since then, Evergy has designed our lines to withstand 103-mph winds based on data collected from our service territory. Another example of Evergy's commitment to providing reliable power is the ice load a transmission system is designed to handle. Following a 2007 ice storm, crews reported up to two inches of radial ice on conductors, so we now design for a 2-inch ice case, compared to SPP's requirements of 1.25 inches and NESC's 1-inch requirement. The incremental cost of building a more robust transmission line saves our customers significantly more over the life of the line -- simple and efficient economics that will continue if protected by a ROFR.

SB 68 fixes the unintended consequences of FERC Order 1000 and allows Kansas companies to be responsible for Kansas transmission. It is about allowing Kansas companies to continue doing what they do best – knowing the weather conditions of the state, building to that standard, responding quickly to restore service as needed, and keeping the lights on for our Kansas customers. As important, it allows Kansas companies to retain the right to build these projects themselves, or choose who builds for them based on the values that have served Kansas for so long.

Thank you again for your time. We are pleased to stand for questions.



Evergy, Inc. (NASDAQ: EVRG), serves 1.7 million customers in Kansas and Missouri. Evergy's mission is to empower a better future. Our focus remains on producing, transmitting and delivering reliable, affordable, and sustainable energy for the benefit of our stakeholders. Today, about half of Evergy's power comes from carbon-free sources, creating more reliable energy with less impact to the environment. For more information about Evergy, Inc., visit us at www.evergy.com.