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Testimony of  
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Before the Senate Committee on Local Government  
Opposing Senate Bill No. 312

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Chair McGinn, Vice Chair Bowers, Ranking Minority Member Francisco and Committee Members,

My name is Alan Claus Anderson and I am an 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. 312 (the “Bill”).

#### A. INTRODUCTION

Polsinelli is a law firm with over 1,000 lawyers with offices across the United States. We are fortunate to work for clients in all areas of energy production and transmission, from oil, gas, and coal, to renewable energies such as wind and solar and the transmission needed to connect these resources. 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.

SB 312 eliminates the availability of eminent domain to our State’s electric public utilities unless granted such authority by the County Commission where such property is located. It must first be noted that in this context, eminent domain is only available if the respective company has a certificate of convenience and necessity issued by the State Corporation Commission (“KCC”). Therefore, after a vigorous review and hearings, a determination has already been made that such facility is in the public interest of Kansans. However, if SB 312 were to become a law, any individual county could essentially veto the determination of the KCC. Projects that benefit

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Kansas as a whole would no longer be built and the chaos and harm to our state and its citizens cannot be understated.

Moreover, if this was a bill representing good and thoughtful policy, it would apply to eminent domain in all circumstances, not just energy generation and transmission. In this testimony I will provide background on eminent domain, our generation and transmission grid, and detail the disastrous impact this bill would have on Kansas' economic interests and grid reliability. Additionally, while this Bill intersects with local government, its greatest impact is on our state's grid reliability and ratepayers. Even if this Committee had some level of interest in the underlying goals of SB 312, it could not pass this out of Committee due to the utter void of study as to the impact of grid reliability and rates.

## **B. EMINENT DOMAIN BACKGROUND AND CONSTITUTIONAL BASIS**

The concept of eminent domain is one that goes back to the founding of the United States of America. The 5<sup>th</sup> Amendment to the U.S. Constitution provides for eminent domain, stating:

“...nor shall private property be taken for public use, without just compensation.”

Kansas also recognized eminent domain in Article 12, Section 4 of its Constitution, stating:

“§ 4. Rights of way; eminent domain. No right of way shall be appropriated to the use of any corporation, until full compensation therefor be first made in money, or secured by a deposit of money, to the owner, irrespective of any benefit from any improvement proposed by such corporation.”

The reason for eminent domain is simple from a macro view, even if it is difficult to appreciate in any individual case. Without eminent domain, we could not build large infrastructure that is critical to the public good, as any single recalcitrant landowner could block such beneficial project, regardless of the negative impact to the State and its citizens. The founders of the United States of America understood eminent domain was necessary, as did the founders of the great State of Kansas. That is not to ignore the impacts on any individuals, and that is why both the State and Federal Constitutions require appropriate compensation. It was, however, understood in the 1700s and the mid 1800s that eminent domain authority was necessary to a safe and prosperous Nation and State. We should not lose sight of the wisdom contained in each Constitution.

## **C. KANSAS EMINENT DOMAIN**

Kansas provides eminent domain to certain corporations imbued with a public purpose pursuant to K.S.A. 17-618 and K.S.A. 26-101. The important part to remember is that electric utilities may only obtain such authority when the underlying use has been determined to be beneficial to the public and that allowing any single individuals to block such uses would be detrimental to the state as a whole. Examples of eminent domain authority include for the building of roads, airports, pipelines, police and fire stations, schools, and electricity generation and transmission. Without eminent domain, we cannot effectively build and site large projects that are critical to the safety and prosperity of the state of Kansas.

#### **D. IMPACT ON TRANSMISSION – RATE INCREASES AND DECIMATED RELIABILITY**

Senate Bill 312 would make the construction of long-distance transmission lines in Kansas nearly impossible, which would impair the ability of Kansas electric utilities to comply with federal law. Pursuant to its authority to regulate interstate commerce, the federal government enacted 16 U.S.C. § 824a, which addresses “interconnection and coordination of facilities.” The statute requires the Federal Energy Regulatory Commission (“FERC”) to promote and encourage interconnection and coordination within regional districts. The section also gives FERC the authority to direct a public utility to establish physical connections between its transmission system and the transmission system of another. FERC has implemented these requirements by empowering regional transmission organizations, such as the to conduct regional planning and to issue binding notices to construct to transmission owners.

Federal Energy Regulatory Commission (“FERC”) Order 2000 furthers the implementation of U.S.C. § 824a by encouraging transmission-owning utilities to form regional transmission organizations (“RTOs”). Although FERC did not require utilities to join RTOs, it gave these regional organizations the task of developing regional transmission plans and pricing structures that would create efficiency and reliability through regional planning, and promote competition in wholesale power markets. The planned transmission system is the critical element for enhanced economics and the creation of regional transmission interconnection allows for far greater reliability and flexibility.

The RTO Kansas joined is the Southwest Power Pool (SPP) which now contains members in 15 states, serves approximately 18 million people, has a regional service territory of 552,885 square miles with 5,180 substations, and 72,004 miles of transmission lines<sup>1</sup>. The transmission system within the SPP territory is a sophisticated network, involving interconnected power plants, substations, and other power lines to create the most economically efficient and reliable system possible.

Critically within the role and benefits of SPP are high voltage transmission lines that are essential to delivering low-cost electricity where it is needed and providing grid stability and reliability through the benefits of generation spread over this vast area. A depiction of the high voltage regional transmission in SPP is found in Diagram 1 below.

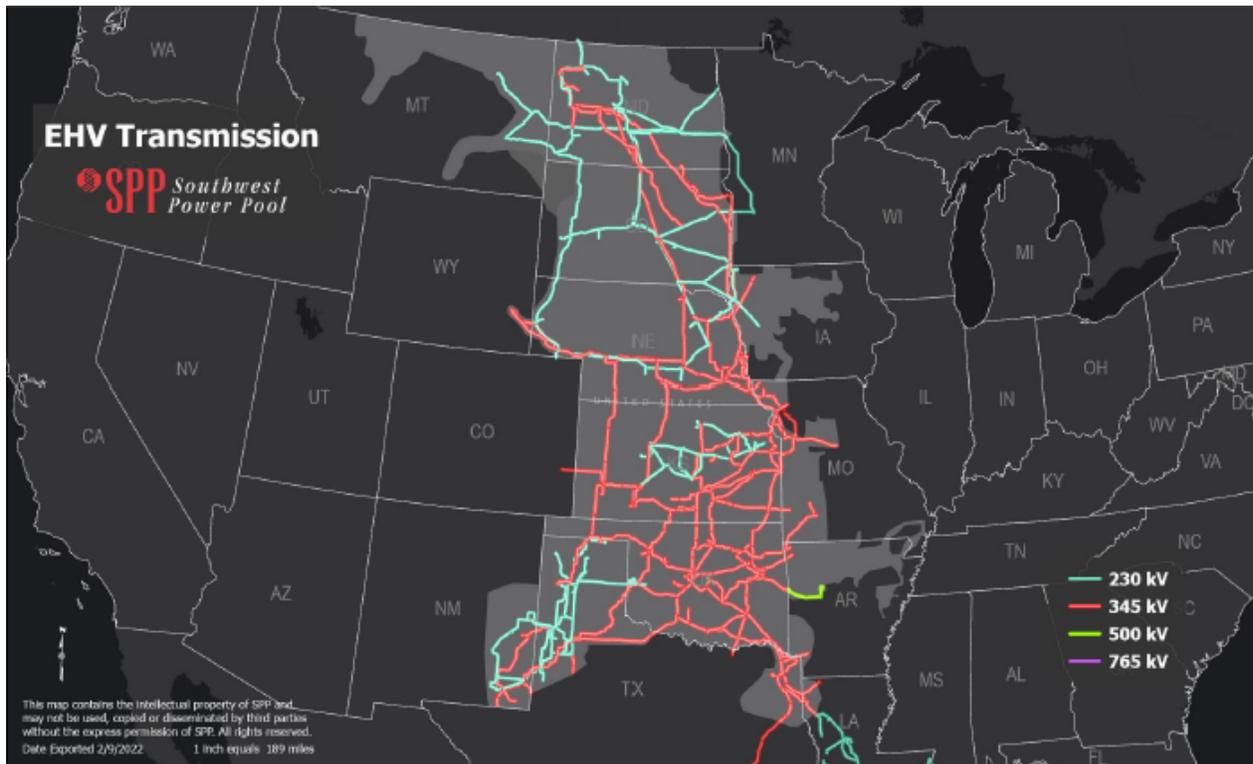
The transmission and generation regionally connected network works incredibly well and has served Kansas, and our utilities, effectively from a planning and coordination standpoint as well as for reliability and economic efficiency. However, state and regional planning is a continual process necessary to meet changing needs and create further economic benefits. Additionally, there are times the grid is stressed, whether through new load, weather events, or impacts to generation. Our utilities must be able to meet these constantly evolving conditions through the construction of additional and improved transmission. The removal of eminent domain would

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<sup>1</sup> See, <https://www.spp.org/about-us/fast-facts/>

eliminate Kansas' ability to handle the future needs of the electric grid and meet their obligation to participate in regional planning.

**Diagram 1**



#### **E. REMOVAL OF EMINENT DOMAIN IS DISASTROUS TO KANSAS**

The removal of eminent domain turns the regional nature of the electric grid on its head and would eliminate Kansas from the opportunity to save ratepayers hundreds of millions of dollars in savings from transmission lines that would create increased market efficiency and risk reliability. Because Kansas will not be able to add transmission lines that connect regional generation that may be necessary to meet evolving load demands, or to connect to lower cost generation, rates will increase significantly and reliability will deteriorate.

In order for Kansas, and its utilities, to participate in any future high voltage transmission projects, it must have eminent domain or there is no way these lines can be completed and there is no way SPP can rely upon Kansas in planning such lines. The Bill would prevent Kansas from participating in the regional electric grid, essentially isolating Kansas electric facilities and resulting in the extreme degradation to Kansas' electric grid. The degradation of Kansas' electric grid would directly impact surrounding states and, indeed, the entire Eastern Interconnection.

#### F. WITH SENATE BILL 312, THERE WOULD BE MORE IN-STATE TRANSMISSION AND IT WILL BE MUCH MORE EXPENSIVE

Without the ability to participate in regional transmission projects that offer market efficiency and reliability, Kansas will be isolated and forced to meet all its transmission needs within the state, leading to more, and less economic, transmission. Without eminent domain, it will require extreme measures to be able to site transmission lines necessary for the States' needs. As transmission requires a connection between two definitive points, a small portion of landowners may be able to block critical transmission projects. In scenarios with exceptionally dire consequences to the grid, there will either be grid failure or the utility may need to make exorbitant payments to receive the necessary right-of-way. The brunt of both the grid failure, or the excessive payments, will be borne by Kansans and its ratepayers. As the electricity load demand evolves, and the grid infrastructure ages and deteriorates, a Kansas isolated from regional transmission will place extreme burdens upon in-state generation and transmission, resulting in chaos.

Other states have looked at this issue when the grid was much less complicated and foresaw this chaos. The Supreme Court of Missouri, citing with approval to a Supreme Court of New Jersey opinion, has stated:

It is rather difficult to conceive of a subject which more requires uniform regulation at a high and broad level of authority than the method of transmission of electric power, especially where it must be generated in a single location and distributed and used in many and distant places. **Were each municipality through which a power line has to pass free to impose its own ideas of how the current should be transmitted through it, nothing but chaos would result, and neither the utility nor the state agency vested with control could be assured of ability to fulfill its obligations of furnishing safe, adequate and proper service to the public in all areas.**<sup>2</sup>

In recognition of the chaos that would result, Kansas has likewise regulated state-wide infrastructure issues in a uniform manner at the state level. State level regulation allows for consideration of the complex reliability and economic aspects of transmission projects and the impact of such projects on the state as a whole.

#### G. CONCLUSION

Senate Bill 312 would require a resolution of approval from each county in which any pertinent project is located or would traverse. This is directly contrary to any thoughtful regulation and would result in "nothing but chaos" as forebode by multiple state Supreme Courts. Accordingly, if Senate Bill 312 becomes law, Kansas will be left in the relative dark ages and far behind its neighbors in the modernization of electric infrastructure.

For the foregoing reasons, Senate Bill 312 cannot pass out of this Committee.

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<sup>2</sup> *Union Elec. Co. v. City of Crestwood*, 499 S.W. 2d 480, 483 (1973) (emphasis added).