

Testimony of
ITC Great Plains, LLC and Sunflower Electric Power Corporation
In Opposition to SB 312
Senate Local Government Committee
March 23, 2023

Chair McGinn, Vice Chair Bowers, Ranking Member Francisco and members of the committee, my name is Brett Leopold, President of ITC Great Plains, and I want to express my appreciation for the opportunity to provide opposition testimony to you about Senate Bill 312.

ITC Great Plains (ITC GP) is a state-certificated independent transmission company that owns and operates approximately 450 miles of high-voltage transmission lines in Kansas. At the time we received our Kansas certificate in 2007, the Kansas Corporation Chairman announced that ITC GP was probably the first new Kansas public utility in 100 years, and 16 years later, we are the largest transmission-only public utility in the state. ITC GP is a subsidiary of ITC Holdings, which owns, operates, and maintains electric transmission systems and assets across seven states in the Midwest and Great Plains region, serving over 25,000 MW of connected load and operating over 16,000 miles of electric transmission lines. ITC GP is headquartered in Topeka and has offices in Wichita and Dodge City. Our company is a deeply committed and engaged corporate citizen in the towns and counties where we work and do business. In 2015, after being nominated by Ford County Economic Development, ITC Great Plains was chosen by the Department of Commerce and received the *Governor's Award of Excellence* as business of the year.

Sunflower Electric Power Corporation ("Sunflower") is a generation and transmission electric cooperative in central and western Kansas, certified as a public utility by the Kansas Corporation Commission ("KCC") and operating on a not-for-profit basis. Sunflower primarily serves its seven member-owner distribution cooperatives, which are owned by Kansas ratepayers, and many wholesale and municipal customers in central and western Kansas. Sunflower owns and operates approximately 2,500 miles of transmission lines in Kansas.

As a not-for-profit cooperative, Sunflower seeks to provide affordable and reliable electricity and is not operated in a manner that seeks to maximize shareholder return. Its rates are set based on the cost to serve, and any excess margins are allocated and ultimately returned to its member-owners, who are, in turn, owned by the ratepayers they serve. Any costs of Sunflower are ultimately borne by the ratepayers it serves. Sunflower is also a member of the Southwest Power Pool, Inc. ("SPP"), a Federal Energy Regulatory Commission regulated regional transmission organization. SPP studies and monitors the reliability of the region, which can sometimes result in SPP issuing Sunflower a notice to construct specific transmission facilities in Kansas.

Eminent domain is already the last resort of responsible utilities like ITC and Sunflower.

When constructing transmission lines in Kansas, ITC and Sunflower diligently work to secure voluntary easements from landowners and minimize the impact on the land. Long before ITC or Sunflower file a siting application at the KCC, we work for months studying multiple potential reasonable routes for the transmission line. We host widely-publicized open houses and share the potential routes with interested stakeholders, including landowners, businesses, county and municipal

government officials, and environmental organizations. Only after we have processed all of the feedback from these stakeholders do we select a single route to file with the KCC as required by law. We view the use of eminent domain as the last resort, and we have a track record of success in working with landowners. For example, ITC's portion (which is jointly owned by Sunflower) of the line from Elm Creek Substation in Cloud County to the Summit Substation in Saline County featured a 30-mile route with 75 landowners. ITC and Sunflower work closely with landowners to avoid or minimize interference with the impact on the ongoing and normal use of the land by the owner. We are careful to avoid interference with irrigation systems and to place structures in locations that minimize interference with planting, harvesting, grazing and other activities. After months of negotiation with landowners, there were only two landowners on that route with whom we could not reach a voluntary easement agreement. The line was completed, with 97% of the easements obtained voluntarily. For all of ITC Great Plains' Kansas projects, the average for resolution through voluntary negotiations is 94%.

SB 312 would make profound changes to the long-standing eminent domain laws in Kansas, which exist to protect all Kansans.

Our regulated public utilities were created to uphold the fundamental principle that all Kansans should have access to electricity. When electrification began in America, rural states were in danger of being passed over.

Unregulated markets could not economically and affordably serve sparsely populated areas where power line distances were great. But Kansans knew the value of electricity, and they utilized their state institutions to help one another. Public utilities were created by law and historically were given assigned certificated territories in exchange for the obligation to serve every customer.

Along with that obligation to serve came increased regulation through the Kansas Corporation Commission and the ability to exercise eminent domain. Why? Because any single landowner could hold up and perhaps block a project that was important to the state by refusing to grant an easement for a power line that served the greater public good. Eminent domain creates a fair process for the courts to use local citizens who are knowledgeable in land values to determine the fair market value of the land to be used and requires payment of that value to the landowner. The state instituted this process because it knew that Kansans would electrify the state together or be passed over, and this process continues to work well today.

SB 312 will drive up costs, reduce reliability, and negatively impact Kansas ratepayers and utilities like ITC Great Plains and Sunflower.

Why does a transmission owning public utility care about SB 312? We are in the grid reliability business. Moving power around the grid from generation sources to load centers and, ultimately, electric consumers is critical to keeping the lights on, businesses running, and families safe during hot Kansas summers and cold Kansas winters. SB 312 will inject needless uncertainty and costs into the transmission siting and construction process. For example:

- ITC GP is the oldest and the largest transmission-only public utility in Kansas, and has an excellent track record of collaboration with landowners and local government. Typically, ITC GP has used its resources and expertise to build some of the largest high-voltage transmission

projects in the state. These projects bring significant reliability and economic benefits to the customers in Kansas, and delaying these projects with a redundant county-by-county approval of the right to exercise eminent domain will result in costly delays and additional expense for ratepayers in constructing needed transmission. If a county denies the right to eminent domain for a transmission project and a landowner refuses to negotiate an easement, the need for that important project will not go away. Without the authority to exercise eminent domain, the transmission-only public utility will be faced with two bad alternatives to complete the needed project. First, the public utility may be compelled to pay the landowner a price significantly above fair market value in order to convince the landowner to grant an easement. The extended and delayed negotiation and the higher price for land will be passed on to Kansas ratepayers. Second, if a landowner declines to grant an easement at any reasonable price and the county prohibits the utility from the use of eminent domain, the utility will be faced with re-routing and possibly re-engineering the line in order to maintain reliability. The significant additional expense will ultimately be charged to ratepayers and the benefits to ratepayers will be delayed and diminished. In a worst-case scenario, the increased cost of a major project route change could escalate so much that the project is cancelled - putting the reliability of the transmission grid at risk for all Kansas families and businesses and denying all customers the economic benefits that originally justified the project. Further, SB 312 fails to specify a timeline for county commissions to act on a request from a utility, which could add months or even years of costly delays which would ultimately affect ratepayers.

- SB 312 does not specify the voltage or length of transmission lines to which it applies. The bill references utilities holding a “certificate of convenience or necessity from the [KCC]”, but the KCC only has siting authority over a very limited subset of lines, those at 230kV and more than 5 miles in length. Therefore, the bill creates confusion about exactly what kind of facilities the bill applies to.
- SB 312 rejects a long-established and court-tested method that the Kansas Corporation Commission uses to balance the public need for electricity and the landowner’s important right to enjoy and preserve their land. This bill will throw out decades of legal cases and inject uncertainty into the system. Current Kansas businesses and businesses considering relocation to Kansas will take note of the unusual and unpredictable laws in Kansas that govern the construction of important infrastructure.
- SB312 creates uncertainty in the ability of a business to obtain electric service and thus undermines economic stability, development, and growth.

SB 68 provides a better alternative to protect Kansas landowners.

We encourage the committee to review SB 68, the state Right of First Refusal (ROFR) for Kansas Incumbent Transmission Owners, as a better way to ensure that important transmission lines are built by companies with a proven track record of working with Kansas landowners for the benefit of Kansas ratepayers.

Conclusion

SB 312 would radically change a system that has powered the plains, supported industry and agriculture, and heated and cooled our homes.

Without access to eminent domain as a last resort, utilities cannot carry out their mission to provide reliable, cost-effective power for Kansas families and businesses. For the above reasons, we believe this measure should be rejected. We urge the committee to not advance SB 312. Thank you, Chair McGinn and members of the committee, for your consideration.