

SESSION OF 2023

SUPPLEMENTAL NOTE ON SENATE BILL NO. 68

As Amended by Senate Committee on Utilities

Brief*

SB 68, as amended, would establish right of first refusal for incumbent electric transmission owners.

Right of First Refusal

The bill would mandate that an incumbent electric transmission owner (owner) have the first right to construct, upgrade, own, and maintain an electric transmission line (line) that has been approved for construction in a transmission plan (plan) if the line interconnects to facilities owned or proposed to be constructed by the incumbent owner.

[*Note:* In the industry, this is known as “right of first refusal” or ROFR.]

Two or More Owners

In the case of a line that has been approved for construction, upgrade, or maintenance in a plan that interconnects to facilities owned by two or more owners, ROFR would be determined by mutual agreement between the owners.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Written Notice to the Regional Transmission Organization

The bill would require the owner give written notice to the regional transmission organization (RTO) within the time prescribed by the RTO to indicate whether the owner or any affiliate or subsidiary intends to exercise ROFR.

[*Note:* The RTO for Kansas is the Southwest Power Pool (SPP).]

Owner Requirements

Upon submission of a notice of intent to exercise ROFR, the owner would be required to:

- Already have obtained from the Kansas Corporation Commission (KCC) a certificate of convenience and necessity for the construction of the line pursuant to KSA 66-131, and amendments thereto (certificate); or
- Within 18 months after the submission of the notice, file an application for a certificate seeking permission to begin construction of the line.

Other Electric Transmission Entities

The bill would provide that any other electric transmission entity could construct, upgrade, own, and maintain a line if:

- The incumbent owner with the right to exercise ROFR:
 - Does not timely indicate the owner, or affiliate or subsidiary, intends to exercise ROFR;
 - Is deemed to not be qualified for the construction, upgrade, ownership, and maintenance of the line by the RTO;

- Has not received or fails to timely seek a certificate for the line; and
- The transmission entity receives all necessary authorizations or approvals required by the RTO.

Owner's Use and Control of Property Rights

The bill would state that nothing in Section 1 of the bill would be construed to affect an owner's use and control of its existing property rights, including, but not limited to, the owner's ability to assign its rights to construct, upgrade, own, and maintain a line as described in the section. The bill would require the retention, modification, or transfer of existing property rights described in the section to remain subject to the relevant state law recognizing the property right.

Municipally Owned or Operated Utilities

The bill would also state that nothing in Section 1 of the bill would be construed to affect the right of any municipally owned or operated utility to develop, construct, upgrade, own and maintain transmission facilities, substations, and controls used to serve load requirements.

Sunset

The bill would sunset the ROFR on July 1, 2033.

Definitions

The bill would define the following terms:

- "Electric transmission line" would mean any line or extension of a line in the state with a rating 100

kilovolts (kV) or greater or any related transmission facilities, substations, and controls;

- “Incumbent electric transmission owner” would mean every corporation, including municipal corporations, company, individual, association of persons, their trustees, lessees or receivers, that now or hereafter owns, controls, operates, or manages, except for private use, any equipment or plant, or any part thereof, for the transmission, delivery, or furnishing of electricity or electric power in the state. If there are two or more owners of a line, the term “incumbent electric transmission owner” includes each such owner;
- “Regional transmission organization” would mean the organization authorized by the Federal Energy Regulatory Commission (FERC) to conduct regional transmission planning and provide notice of requirements for line construction in the region that includes the state of Kansas; and
- “Transmission plan” would mean a transmission plan adopted by the entity with authority for transmission planning in a RTO recognized by FERC.

Background

The bill was introduced by the Senate Committee on Utilities at the request of a representative of ITC Great Plains.

Senate Committee on Utilities

Proponent Testimony

In the Senate Committee hearing, **proponent** testimony was provided by two representatives of ITC Great Plains and representatives of Evergy, Kansas Farm Bureau, Liberty Utilities, Midwest Energy, and Sunflower Electric Power Corporation. The proponents stated that FERC Order 1000 was intended to increase competition in bids for transmission projects, but instead of utilities designing cost-effective or innovative solutions, it led to submitting low bids to win the project that then led to cost overruns and increased utility rates. Most of the states in the SPP have passed state ROFR laws, which means their transmission is built by local utility companies, while Kansas' lack of a ROFR law allows anyone from out-of-state to bid for a transmission project.

Written-only proponent testimony was provided by the International Brotherhood of Electrical Workers.

Neutral Testimony

Neutral testimony was provided by representatives of the Citizens' Utility Ratepayer Board (CURB) and Kansas Corporation Commission (KCC). Written-only neutral testimony was provided by representatives of the Kansas Municipal Energy Agency, Kansas Municipal Utilities, KCC, KPP Energy, and League of Kansas Municipalities.

Opponent Testimony

Opponent testimony was provided by a Professor of Law from Vanderbilt University and representatives of Americans for Prosperity, Clean Energy Business Council and Climate + Energy Project, Kansans for Lower Electric Bills, Kansas Agribusiness Retailers Association and Kansas Grain and Feed Association, Kansas Chamber, LS Power

Development, Next Era Energy Resources, Polsinelli Energy Practice Group, R Street Institute, Spirit Aerosystems, and Wichita Regional Chamber of Commerce. The opponents generally stated there are constitutional implications in ROFR laws, as a lawsuit is pending in Texas; removing competition for transmission projects will not decrease utility rates for Kansans; and transmission costs are what is increasing rates in the SPP territory, and the bill would not allow new investment and technologies from outside the state to be considered as part of the bidding process.

Written-only opponent testimony was provided by a representative of the Advanced Power Alliance.

Senate Committee Amendments

The Senate Committee adopted amendments to:

- Remove language that would require approval by the RTO in the definition of “incumbent electric transmission owner”;
- Add language that states nothing in Section 1 of the bill would be construed to affect the right of any municipally owned or operated utility to develop, construct, upgrade, own and maintain transmission facilities, substations, and controls used to serve load requirements;
- Add “including municipal corporations” in the definition of “incumbent electric transmission owner” with regard to corporations; and
- Add a sunset of July 1, 2033.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, CURB and KCC indicate that enactment of the bill would have no fiscal effect.

Electric transmission lines; transmission; regional transmission organization; incumbent electric transmission owner; Kansas Corporation Commission; right of first refusal