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Neutral Testimony on Senate Bill 68

Submitted by Justin Grady, Chief of Revenue Requirements, Cost of Service and Finance  
On Behalf of The Staff of the Kansas Corporation Commission

Chair Olson, Vice Chair Petersen, Ranking Minority Member Francisco, and members of the Committee, thank you for the opportunity to provide testimony to your committee today on behalf of the Staff of the Kansas Corporation Commission (KCC or Commission).

### Executive Summary

Senate Bill 68 would establish a Right of First Refusal (ROFR) for incumbent electric utilities in Kansas to build transmission facilities that would otherwise be subjected to competitive bidding before the Southwest Power Pool (SPP). The current Transmission Owner Selection Process (competitive bidding process) in the SPP was approved by the Federal Energy Regulatory Commission in 2011, in compliance with FERC Order 1000, and is contained within Attachment Y to the SPP Open Access Transmission Tariff (OATT).

Commission Staff is Neutral towards the passage of Senate Bill 68. We see this as largely a policy decision of the Legislature, as there are both pros and cons to the continuation of competitive bidding for certain subsets of regional transmission development in Kansas. We have observed robust cost savings and creative cost containment elements contained in the competitive bids that have been submitted to SPP thus far. However, these benefits have also been diminished by more contentious local certificate proceedings, enhanced administrative burdens on the KCC, lengthy administrative processes at SPP to choose the successful bidder, and general distrust by Kansans of an out-of-state entity seeking permission to build transmission in the State.

The proponents of this proposed legislation point out that ROFR legislation exists in several of the states surrounding Kansas, which does raise questions of equity and fairness. In other words, is it fair that Kansas' incumbent electric utilities (including consumer owned utilities such as cooperatives and municipals) should have to compete to build transmission within our State, when those same Kansas incumbent utilities are not allowed to compete to build transmission in States like Texas, Iowa, North Dakota, South Dakota, Minnesota, Nebraska, or Arkansas?

### Background

Today SPP maintains a competitive bidding process for some forms of regional transmission development, entitled the Transmission Owner Selection Process, contained within Attachment Y

of its OATT. The right to own transmission is open to competition for the following types of projects currently in SPP:

- Transmission upgrades identified in the ITP, Network Upgrades required pursuant to Attachment AQ, High Priority Upgrades, Generator Retirement Upgrades, or Interregional Projects;
- Transmission projects with an operating voltage above 100kV;
- Transmission projects that are not a rebuild of an existing facility;
- Transmission projects that will not alter a Transmission Owner's use and control of existing right of way;
- Transmission projects that are to be built in a state without a State ROFR;
- Transmission projects that do not require the rebuild of existing facilities and new transmission facilities;
- Transmission facilities that are not a local transmission facility;
- Projects in which less than 80% of the cost of the combined project is for rebuild of existing facilities—in these instances, incumbents rebuild existing facilities, new portion of facilities chosen pursuant to competitive bidding; and
- Projects with a need-by date for reliability purposes longer than three years in the future.

As noted in the aforementioned list, if a State ROFR exists in the State where the transmission line is planned, the interconnecting incumbent utility in that State is allowed to build the project, without the need to compete for the right to build and own the project at SPP.

#### KCC Experience with Competitive Bidding of Transmission Lines

There have only been two Kansas projects that have been awarded through a competitive bidding process. One project in southwest Kansas was cancelled due to a restudy of the affected area after the competitive bidding process was completed, but not until considerable time and money was spent by Kansas utilities and non-incumbents to participate in the process. On the other hand, the second transmission project which was the subject of a competitive bidding process, the Wolf Creek to Blackberry 345kV line (WC-BB), has proved a more successful case study, thus far. In that case, NextEra Southwest, LLC (NEET-SW) was awarded the right to construct, own, and operate that line by SPP. Subsequently NEET-SW filed for a certificate of public convenience and necessity with the KCC, which was a requirement before NEET-SW could file for a line-siting Docket, which is also required before NEET-SW can construct the transmission line. The KCC considered NEET-SW's application to become a utility for the purpose of constructing, owning and operating the WC/BB Line in Docket No. 22-NETE-419-COC (22-419 Docket). The line siting Docket is currently pending as Docket No. 23-NETE-585-STG.

The record in the 22-419 Docket contains ample evidence of the consumer benefits that the competitive bidding process brought to the WC-BB line. These benefits occurred in the form of robust cost savings and cost containment elements compared to SPP's original estimates of the

cost to construct the line, as well as compared to the other bids submitted in the process, including those submitted by incumbent Kansas utilities. However, the 22-419 Docket was contentious and controversial, with far more intervenors than has typically been the case in Transmission Rights Only certificate Dockets. This controversy, as well as the need to establish reporting mechanisms and other certificate conditions in order to protect the public interest of Kansans, that would not have been necessary for an incumbent utility, undoubtedly led to additional regulatory costs and administrative burdens for the KCC, though such administrative costs are *de minimis* as compared to the expected cost savings achieved through the competitive bidding process for this project. These lengthy KCC proceedings were in addition to the approximately 12-18 month timeline that occurs at SPP in order to effectuate the competitive bidding process.

### Conclusion

Competition for the right to own transmission in Kansas has thus far had a mixed track record. As noted above, there have only been two Kansas projects that have been awarded through a competitive bidding process. One project in Southwest Kansas was cancelled due to a restudy of the affected area after the competitive bidding process was completed, but not until considerable time and money was spent by Kansas utilities and non-incumbents to participate in the process. The other project, described above, has been more of a success story, with significant cost savings reflected in the winning bid of NEET-SW for the right to build the WC-BB line. But, those cost savings have come at the cost of lengthier, more costly, and more controversial regulatory proceedings, and a general distrust by Kansans of out of state entities coming to the State to build transmission. Ultimately Staff contends that the decision for whether Kansas utilities should have to compete for the right to build regionally funded transmission is a policy decision that is fully within the purview of the Legislature to decide.

Thank you again for the opportunity to present Staff's testimony regarding SB 68, and we welcome the opportunity to appear before the Committee and answer any questions about this testimony.