

Electric Transmission Right of First Refusal = Millions In Increased Electricity Rates

Legislation that would create a right of first refusal for incumbent electric utility companies to build high voltage transmission lines authorized by the Southwest Power Pool would further entrench monopoly development, construction and operation of transmission lines. Such legislation does nothing to expedite needed electricity infrastructure or reliability, but rather creates barriers to entry and locks in no-bid control of electric transmission development. This action increases costs for businesses and families, while eliminating the benefits of free market competition such as cost caps and delivering the projects on time and on budget.

Kansans cannot afford higher utility rates

- Kansans need transmission development competition to keep prices down, especially during record high inflation.
 - Kansas has the second highest average retail price for electricity in the region, trailing only Minnesota.¹
 - The Kansas Corporation Commission staff is concerned that if Evergy's spending trend continues "it will undermine the goal of achieving regionally competitive rates and reliable electric service, especially with rising inflation."²
- From October 2021 to October 2022, average Kansas residential electricity prices increased by 14.5 percent from 13.2 cents per kilowatt hour to 15.1 cents per kilowatt hour.³
 - Kansas policy makers must do all they can to keep electricity costs down and allowing competition in the development electricity transmission is one way to do so.

Right of First Refusal removes transparency and increases prices

- There is \$100s of millions planned in transmission expansion and improvements in our region.
- No competition means:
 - Fewer checks and balances on cost estimates
 - No pressure or incentive to curb transmission project costs and prevent overruns, or increase innovation
 - Fewer cost controls on projects
- With competing developers permanently on the sidelines, incumbent transmission companies would have little incentive to "sharpen their pencils"⁴
- To prevent further price increases Kansas **must** maintain the right of competition and transparency.

ROFR laws are unconstitutional

- In August 2022, the U.S. 5th Circuit Court of Appeals issued an opinion throwing out a ROFR law in Texas. The law prevented any company to build, own or operate new transmission lines unless they already owned transmission facilities in the same region of the state.
- The Court found the law unconstitutional on dormant Commerce Clause grounds explaining that the "electricity grid is on its own an interstate market, state protectionist measures regulating its instrumentalities run a much greater risk of harming out-of-state interests - the ability of companies to compete, the prices consumers pay – than regulations on retail wine stores. Indeed, transmission lines that are part of an interstate grid are much closer to the heartland of interstate commerce than the wine stores, dairies, or waste processing facilities that have faced dormant Commerce Clause scrutiny."⁵

¹ [The Topeka Capital-Journal Advocates want to put an end to steep electric rate hikes. The Topeka Capital-Journal, Feb. 16, 2022](#)

² [ORDER FINDING EVERGY COMPLIED WITH REQUIREMENTS OF CAPITAL PLAN FRAMEWORK AND DIRECTING EVERGY TO ATTEND A PUBLIC WORKSHOP TO EXPLAIN THE NECESSITY OF INCREASED CAPITAL EXPENDITURES, Kansas Corporate Commission, Sept. 15, 2022](#)

³ [U.S. Energy Information Administration, Electric Power Monthly, December 2022](#)

⁴ [Justice Department, FTC urge FERC to expand competition for building new transmission, deny utility exclusivity, Utility Dive, August 18, 2022](#)

⁵ [NextEra Energy Capital Holdings, Inc. et al. v. Lake et al., Case No. 20-50160 \(5th Cir. 2022\)](#)

Competitive transmission development has saved customers hundreds of millions (examples)

Kansas and Missouri

\$58 million estimated savings⁶ - The Wolf Creek to Blackberry transmission project, a 94-mile 345 kV line, was competitively bid and the least expensive proposal was selected.

Oklahoma

\$26 million estimated savings⁷ - The Minco-Pleasant Valley Draper transmission project, a 48-mile, 345 KV line, was competitively bid with regulators selecting the least costly proposal, which included a range of benefits in addition to meaningful cost savings.

New Jersey

\$900 million estimated savings⁸ - New Jersey had the largest-ever competitive bidding process for a transmission project in the country saving \$900 million, and a new order from the Board of Public Utilities is asking for a second round of competitive projects, which could save ratepayers *billions*.⁹

New York

\$500 million estimated savings¹⁰ - New York's Empire State Transmission Line was selected by the New York Independent System Operator (NYISO) through a competitive bidding process – that first competitively bid transmission project awarded and built in New York.

⁶ Electricity Transmission Competition Coalition, "Competition Works" available at <https://electricitytransmissioncompetitioncoalition.org/competition-works/>

⁷ Southwest Power Pool, *Minco-Pleasant Valley-Draper RFP* available at <https://www.spp.org/documents/66929/minco-pleasant%20valley-draper%20rfp%20iep%20public%20report.pdf>

⁸ New Jersey Board of Public Utilities, *New Jersey Board of Public Utilities Selects Offshore Win Transmission Project Proposed by Mid-Atlantic Offshore Development and Jersey Century Power & Light Company in First in Nation State Agreement Approach Solution*, (10/26/2022) available at <https://nj.gov/bpu/newsroom/2022/approved/20221026.html>; Also see Electricity Transmission Competition Coalition, *Competitive Electricity Bidding Process Saves New Jersey Ratepayers Billions of Dollars*, (11/1/2022) available at <https://electricitytransmissioncompetitioncoalition.org/competitive-electricity-transmission-bidding-process-saves-new-jersey-ratepayers-billions-of-dollars/>

⁹ Id.

¹⁰ Electricity Transmission Competition Coalition, *Statement from ETCC Chair Paul Cicio on NYISO's New, Competitively Bid Empire State Line Project*, (07/12/2022) available at <https://electricitytransmissioncompetitioncoalition.org/statement-from-etcc-chair-paul-cicio-on-nyisos-new-competitively-bid-empire-state-line-project/>