



April 3, 2024

Chair Frentz and Members of the Senate Energy, Utilities, Environment & Climate Committee:

We strongly support repealing the Right of First Refusal (ROFR) law and highly recommend the committee's consideration and passage of Senate File 1456 (Mathews). The ROFR provision, now ensconced in our state law, gives utility companies that currently provide service to Minnesotans a monopoly over new electric energy transmission infrastructure.

Maintaining ROFR perpetuates anti-competitive practices, inhibits the free flow of interstate commerce, and undermines the likelihood that Minnesotans can have reasonably priced electricity for years to come.

At the federal level, the Federal Energy Regulatory Commission (FERC) removed the right of first refusal for certain new transmission facilities from its Commission-approved tariffs and agreements in its [Order No. 1000](#),¹ issued July 21, 2011. Due to a number of factors, including the changing generation resource mix in the years that followed, FERC issued a [notice of proposed rulemaking](#) on May 4, 2022.²

That proposal would require a public utility transmission provider to conduct long-term regional transmission planning on a sufficiently forward-looking basis; seek the agreement of relevant state entities within the transmission planning region regarding the cost allocation methods that will apply to transmission facilities selected in the regional transmission plan for purposes of cost allocation through long-term regional transmission planning; and would permit the exercise of federal rights of first refusal for transmission facilities selected in a regional transmission plan for purposes of cost allocation, conditioned on the incumbent transmission provider with the federal right of first refusal for such regional transmission facilities establishing joint ownership of the transmission facilities. A final rule has not been issued as of this writing.

A number of comments have been submitted in response to the proposal, including a noteworthy [comment](#) from the United States Department of Justice (DOJ) and the Federal Trade Commission (FTC).³ The comment sets out the Agencies' concerns that the reinstatement of a federal right of first refusal (ROFR) is not justified:

“With a ROFR, consumers will lose the many benefits that competition can bring, including lower rates, improved service, and increased innovation, leading to a more efficient, reliable, and resilient grid. The rulemaking's requirement that the ROFR can be exercised only if the incumbent transmission provider establishes joint ownership of the new transmission

¹ Federal Energy Regulatory Commission Final Rule, Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities, Docket No. RM10-23-000; [Order No. 1000](#), Issued July 21, 2011.

² Federal Energy Regulatory Commission: Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection, Notice of proposed rulemaking, 87 FR 26504, Docket No. RM21-17-000, May 4, 2022.

³ Comment of the United States Department of Justice and Federal Trade Commission, Docket No. RM21-17-000. Document is undated; however, a date of 08/17/2022 is indicated in the Column titled “Filed” in online FERC records: https://elibrary.ferc.gov/eLibrary/docketsheet?docket_number=RM21-17-000&sub_docket=



facilities does not alleviate the Agencies' concerns. Like an unconditional ROFR, a conditional one displaces competition and thus forgoes the important benefits that competition produces for consumers."⁴ (Emphasis Added).

The comment went on to discuss competition in the marketplace:

"Competition is a core organizing principle of the American economy, and vigorous competition gives consumers the benefits of lower prices, higher quality goods and services, increased access to goods and services, and greater innovation. The Agencies work to promote competition through enforcement of the antitrust laws, which prohibit certain transactions and business practices that harm competition and consumers, and through competition advocacy efforts, which urge federal, state, and local governmental bodies to make decisions that benefit competition and consumers.... In the Agencies' experience, competition in wholesale electricity markets and in the development of transmission facilities – including competition from independent, transmission-only companies and other non-incumbent transmission owners – produces important benefits for wholesale and retail electricity consumers."⁵ (Emphasis Added).

The comment also discussed that competitive processes have significantly reduced costs of regional transmission development when they have been implemented. In referencing FERC's removal of the ROFR from federal tariffs, it cited part of Order No. 1000 where FERC had stated:

"federal rights of first refusal in favor of incumbent transmission providers deprive customers of the benefits of competition in transmission development, and associated potential saving...."⁶ (Emphasis Added).

And finally, the Agencies noted that

"(a)dopting reforms that promote competition where possible will make transmission development less costly, more resilient, and more innovative for the American consumer than it otherwise would be."⁷ (Emphasis Added).

Policies that promote competition instead of putting up roadblocks need to be adopted at the state level as well.

One example of competition is in New Jersey, where in October, 2022, it was announced significant

⁴ *Id.*, pp. 1-2.

⁵ *Id.*, pp. 3-4.

⁶ *Id.*, p. 10.

⁷ *Id.*, p. 22.



estimated savings⁸ when the state did its largest-ever competitive bidding process for an offshore wind energy transmission project. That project was New Jersey's first use of the State Agreement Approach (SAA) between the New Jersey Board of Public Utilities (NJBPR) and PJM, the Regional Transmission Organization (RTO) that coordinates wholesale electricity in all or parts of thirteen states and the District of Columbia. This project used PJM's competitive transmission planning process to help NJBPU solicit and evaluate 80 different transmission proposals. The selected projects will save New Jersey ratepayers an estimated \$900 million compared to the cost of transmission without utilizing the coordination through the State Agreement Approach (SAA).⁹

It is puzzling indeed why any legislative body in the United States would promote a policy that inhibits competition and hurts consumers. But that is what we currently have here in Minnesota with our state ROFR law. **A repeal of this anti-competitive measure should be a top priority for this legislative body: we urge members to remove the thumb of government tipping the scales in the utilities' favor and choose the side of Minnesotans who are otherwise held hostage to uncompetitive rate hikes under the ROFR-induced monopoly.**

Respectfully submitted,

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⁸ Press Release: New Jersey Board of Public Utilities Selects Offshore Wind Transmission Project Proposed by Mid-Atlantic Offshore Development and Jersey Central Power & Light Company in First in Nation State Agreement Approach Solicitation, October 26, 2022, <https://nj.gov/bpu/newsroom/2022/approved/20221026.html>

⁹ *Id.*