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Testimony in opposition of Senate Bill No. 103 from:
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Michigan House Energy Committee

Chair Bellino, Vice-Chair Manoogian and Members of the Committee,

My name is Devin Hartman and I am the director of Energy and Environmental Policy at the R Street Institute, a free market think tank that supports limited effective government in many areas, including competitive energy policy. This is why Senate Bill 103, which would grant incumbent transmission utilities the right of first refusal (ROFR) to build and operate new transmission projects, is of special interest to us. My experience in electric transmission policy includes positions at the Indiana Utility Regulatory Commission and the Federal Energy Regulatory Commission (FERC). I also worked as president and CEO of the Electricity Consumers Resource Council.

Simply put, S.B. 103 would harm consumers and undermine regional transmission development and its related economic and reliability benefits. It would also put Michigan on a collision course with other states, federal regulators and, perhaps, the Department of Justice.

The bill would give an incumbent utility the authority to insulate itself from competition for transmission projects. These state-sanctioned monopoly utilities operate under cost-of-service regulation, meaning that the more capital they spend, the more profit they make under government-guaranteed rates of return. Historically, the absence of transmission competition has resulted in a severe lack of economic discipline—as shown by stifled innovation, risk socialization and poor cost containment.¹

Upon recognizing that competition was in consumers' interest, FERC issued Order No. 1000 in 2011 to inject competition into national electric transmission policy. The result was that the average winning bidders of competitive projects came in at 40 percent less than initial cost estimates, whereas non-competitive projects historically average 34 percent above initial estimates.² In addition,

¹ "Comments of the R Street Institute on Post-Workshop Comments on Grid-Enhancing Technologies," Docket No. AD19-19-000, Feb. 14, 2020, p. 1.

https://www.rstreet.org/wp-content/uploads/2020/02/FINAL-Hartman-GETs_Post-Workshop_Comments.pdf.

² Johannes P. Pfeifenberger et al., "Cost Savings Offered by Competition in Electric Transmission," The Brattle Group, April 2019, pp. 29, 40.

https://brattlefiles.blob.core.windows.net/files/16726_cost_savings_offered_by_competition_in_electric_transmission.pdf.

competitive processes spurred innovation in financial solutions, such as cost containment mechanisms to reduce customer risk exposure, as well as technological and engineering solutions.³ Order No. 1000 directed the removal of federal ROFR. However, incumbent transmission owners began pursuing state ROFRs to rebuild their anti-competitive moat.

Where incumbent utilities have secured ROFR laws in other states, they have left a wake of deleterious economic results and lawsuits. The concerns even evoked engagement from the United States Department of Justice, which has made clear that state ROFRs reduce competition and harm consumers.⁴ Backlash to ROFR has become so intense that 72 consumer groups have formed a new initiative—the Electricity Transmission Competition Coalition—that called on FERC last month to intervene to uphold competition and protect consumers from state ROFR laws.⁵

ROFR not only increases costs for consumers within a state which enacts it, but also for out-of-state consumers. This prompted consumer groups from one state to intervene in proceedings in opposition to another state's ROFR. For example, the Iowa Department of Justice Consumer Advocate filed an amicus brief to support a legal challenge to a ROFR law passed by Minnesota.⁶

The ROFR backlash has undermined interstate cooperation in developing regional transmission projects, especially in the Midwest. For example, the state of Illinois began to resist paying for the burdens of other states' anti-competitive transmission laws over a decade ago.⁷ In deterring regional transmission, ROFR has forced states to forego reliability and economic development benefits. Utilities often circumvent efficient regional projects by breaking up the project into smaller, balkanized and costlier pieces in order to comply with a ROFR law.⁸

These results contradict the arguments made by proponents of S.B. 103 that it will provide “a more organized way” to develop additional transmission to avoid a “patchwork system.”⁹ Michigan should instead listen to the voices of its entire business community, not one state-sanctioned monopolist. It is time for Michigan to embrace what fuels its economy: competitive enterprise.

For these reasons, the R Street Institute opposes S.B. 103. Thank you for your time today and I would be happy to take questions.

³ Johannes P. Pfeifenberger et al.

https://brattlefiles.blob.core.windows.net/files/16726_cost_savings_offered_by_competition_in_electric_transmission.pdf.

⁴ “Letter of the U.S. Department of Justice Antitrust Division to the Honorable Travis Clardy,” Department of Justice, April 19, 2019. <https://www.justice.gov/atr/page/file/1155881/download>.

⁵ “Comments of the Electricity Transmission Competition Coalition on Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generation Interconnection,” Docket No. RM21-17-000, Oct. 12, 2021, pp. 2-4. <https://www.ieca-us.com/wp-content/uploads/ETCC-ANOPR-Comments-Filed.pdf>.

⁶ *LSP Transmission Holdings, LLC v. Sieben*, 954 F.3d 1018 (8th Cir. 2020), Brief of the Iowa Department of Justice, Office of Consumer Advocate as Amicus Curiae, filed Oct. 24, 2018. <https://casetext.com/case/lsp-transmission-holdings-llc-v-sieben>.

⁷ *Illinois Commerce Commission v. FERC*, 576 F.3d 470, 476 (7th Cir.2009), filed April 13, 2009.

<https://www.dwt.com/files/uploads/Documents/Advisories/Illinois%20Commerce%20v%20FERC.pdf>.

⁸ Josiah Neeley, “Right of First Refusal Laws for Electric Transmission are Anti-Competitive in Interstate Commerce,” The R Street Institute, June 2021, p. 1. <https://www.rstreet.org/wp-content/uploads/2021/06/explainer27-1.pdf>.

⁹ John Lindstrom and Rich Heidorn Jr., “Mich. Senate Oks Transmission ROFR for Incumbent TOs,” *RTO Insider*, Oct. 26, 2021. <https://www.rtoinsider.com/articles/28850-mich-senate-oks-transmission-rofr-incumbent-tos>.