February 26th, 2026

Chairs Acomb, Swedzinski, and Members of the Energy Finance and Policy Committee:

Over the past year, Americans for Prosperity-Minnesota (AFP-MN) has reached over 100,000 Minnesotans. The message is consistent and urgent: families are tired of the constant rise in prices. From groceries to gas to home heating bills, household budgets are stretched thin. Energy costs—once a relatively predictable monthly expense—have become a source of real anxiety.

Most recently, Minnesota families, including my own, were hit with another rate recovery increase notice from Xcel Energy, adding to a string of rate hikes that continue to outpace wage growth. While regulated utilities are guaranteed a rate of return as protected monopolies, working families are forced to absorb the consequences. That is not a balanced system. It is a rigged one.

Minnesota's energy system increasingly operates in favor of corporations, not citizens. Through guaranteed cost recovery, mandated resource preferences, and limited market competition, utilities face reduced risk while ratepayers shoulder the burden. This is the very definition of crony capitalism: private profit with public risk.

If we are serious about affordability, reliability, and economic competitiveness, the Minnesota Legislature must pursue structural reforms that put people—not politically connected interests—first.

State-Level Actions to Make Energy Affordable and Competitive

1. **Restore true competition: repeal ROFR (Right of First Refusal).** Expand competitive bidding for new generation and transmission projects. Currently, the incumbent utilities do not need to compete for transmission projects. Prices in Minnesota have risen after the monopoly was passed in 2012, and will only get higher. Minnesotans can be charged top dollar for new projects – projects that are often delayed and incur cost overruns. Even with oversight of the Public Utilities Commission (PUC), lack of competition means that utilities do not have to submit their best offers. Free market 101: when there is no competition, the quality and prices of products and services suffer.

   HF 2553 prioritizes Minnesotans by breaking the monopoly and allowing for competitive transmission projects again.

2. **Require stronger proof of need before approving large capital expenditures.** There is an increasing trend of early retirement of certain power generation (ex: coal). Utilities are incentivized to invest in new renewable generation while retiring older generation units that may still be able to produce electricity. Because Minnesota regulated electric utilities are guaranteed an opportunity to earn recovery of costs through rates plus a return on equity from consumers, these retirements can be profitable, even at the expense of reliability.

3. **Reform ratemaking and cost recovery.** Shift more financial risk back to utilities rather than automatically passing costs to ratepayers. Consumers should only pay for reliable power that they are able to use. HF 1311 ensures that Minnesotans are not on the line for unreliable power at maximum prices while subsidizing unproven, unreliable energy sources and generation.

4. **Repeal and reform mandates that drive up costs.** Reevaluate rigid energy mandates that limit flexibility and raise compliance costs. HF 369 prioritizes energy reliability and affordability by providing flexibility in renewable mandates while ensuring that dependable sources remain available until energy goals are realistically met, protecting families and businesses from blackouts and price spikes.

5. **Ensure resource decisions are guided by reliability and affordability—not politics.** The average Minnesotan would be appalled at the way that the system is rigged against them. They are hostage to activist and political agendas that are often disconnected from reality. No matter how good the intentions are, when laws are passed that put reliability and affordability at risk, Minnesotans and our quality of life suffer. Legislation that impacts our way of life should be carefully deliberated and all impacts considered, not passed in a narrow, agenda-driven manner.

6. **Increase transparency.** Strengthen oversight of utility spending and long-term integrated resource planning. Require clearer disclosure to consumers about what portion of their bill stems from policy mandates versus actual energy generation.

7. **Encourage "all-of-the-above" energy development.** Forcing narrow activist agendas that do not take into consideration a complete picture of current technological capabilities, actual load capacity, generation availability, and reliability make a good campaign mailer but terrible policies to live under. One need only look at the places that have forced these kinds of policies to see how brownouts/blackouts, time-of-day requirements and usage restrictions impact quality of life.

8. **Streamline permitting for new generation of all types**. This includes natural gas and emerging nuclear technologies, which have shown to be some of the most reliable resources at this point in time. HF 8 and HF 9 will help unleash American energy.

9. **Remove barriers to domestic production and infrastructure that could stabilize supply and reduce volatility.** There are thorough processes and regulations that vet, examine, and prove that projects are viable and environmental safeguards preserved. Many processes are duplicative at the state, federal, and local level. Ensuring that projects are not hostage to the political climate and delayed by frivolous litigation will unleash American energy, lower prices, create jobs, and boost local economies.

Minnesota cannot regulate its way to affordability while simultaneously layering mandates, guaranteed returns, and politically favored projects onto the backs of ratepayers. Families do not care about ideological energy labels. They care about whether they can afford to heat their homes in -30-degree weather in January and in 99-degree hot, humid August days. Manufacturers care whether they can keep operating in our state or whether they must relocate somewhere with lower costs and fewer barriers.

Unleashing American energy means restoring competition, cutting cronyism, and ensuring policy decisions prioritize citizens over corporations. Minnesotans are asking you for bold action. Not incremental adjustments. Not another study. Structural reform.

We urge you to lead with courage and restore affordability, accountability, and fairness to Minnesota's energy system.

Sincerely,

RaeAnna K. Lee

RaeAnna K. Lee
Legislative & Coalitions Director, Minnesota
Americans for Prosperity
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Attachments:

AFP-MN Energy Permitting One Pager

Permitting Reform Policy Solutions One Pager

Right of First Refusal One Pager

Xcel Rate Increase Docket Submission

ETCC Competitive Transmission Myths Dispelled

ETCC Competitive Transmission Myth vs. Reality

Examples of Cost Overruns of Transmission Projects that Were Not Competitively Bid

Examples of Ratepayer Cost Savings and Benefits of Transmission Projects that Were Competitively Bid

US Department of Justice Antitrust Division Warning to Iowa on ROFR & Impacts of Lack of Competition

AFP-IA Statement on DOJ Focus on Anticompetitive Regulations, ROFR (https://americansforprosperity.org/press-release/afp-iowa-statement-on-doj-focus-on-anticompetitive-regulations-rofr/)

April 2025 Executive Order https://www.whitehouse.gov/presidential-actions/2025/04/strengthening-the-reliability-and-security-of-the-united-states-electric-grid/

Citing 'crony capitalism,' Iowa Supreme Court blasts late-night legislative logrolling (https://iowacapitaldispatch.com/2023/03/29/citing-crony-capitalism-iowa-supreme-court-blasts-late-night-legislative-logrolling/)

Price relief through competition: ending Minnesota's transmission monopoly (https://minnesotareformer.com/2025/04/30/price-relief-through-competition-ending-minnesotas-transmission-monopoly/)

Pritzker Vetoes Measure Granting Ameren Authority Over Transmission Line Construction (https://news.wttw.com/2023/08/16/pritzker-vetoes-measure-granting-ameren-authority-over-transmission-line-construction)

Right of First Refusal Laws Benefit Utilities, Not Consumers (https://www.realclearenergy.org/articles/2023/02/15/to_lower_energy_prices_states_should_end_right_of_first_refusal_laws_881656.html)

Energy in Minnesota: A Smarter State Permitting Framework

The Challenge

Minnesota's energy permitting process is among the slowest and most complex in the Midwest. Major projects routinely face:

- Years-long approval timelines
- Overlapping agency reviews (PUC, MPCA, DNR, local governments)
- High litigation risk and procedural delays
- Unclear standards for when decisions must be finalized

At the same time, Congress is advancing federal permitting reforms (including the SPEED Act, PERMIT Act, and Pipeline Review proposals) designed to accelerate infrastructure nationwide. These federal efforts do not eliminate state authority, but they change the consequences of delay. If these or similar bills are passed by Congress and signed into law, some of the federal permitting reforms that could result include:

What Federal Permitting Reform Means for Minnesota

Faster Federal Timelines

Federal agencies could be required to complete environmental reviews more quickly. If Minnesota agencies continue operating sequentially instead of concurrently, the state becomes the bottleneck, resulting in fewer projects choosing Minnesota.

Reduced Delay Through Litigation

There could be new limits on judicial review and narrow opportunities for procedural stall tactics. Minnesota will still make permitting decisions, but courts will expect them to be timely, substantive, and clearly documented.

Potentially Tighter Rules Around Clean Water Act §401

States retain water quality authority, but proposed reforms could:

- Impose firm decision deadlines
- Limit repeated permit denials without new evidence
- Reduce serial review cycles

Reforming State Permitting

Minnesota lawmakers can strengthen state control while improving outcomes by adopting commonsense permitting reforms:

Run Agency Reviews in Parallel
Today, permits often move one agency at a time. Requiring concurrent review across PUC, MPCA, and DNR with a unified project timeline maintains the same oversight, but with dramatically fewer delays.

Establish Real Decision Deadlines
Current timelines are aspirational and routinely extended. Setting clear approval windows (e.g., 12–18 months) and requiring written justification and public notice on extensions creates more predictability for communities, workers, and investors.

Pre-Permit Priority Energy Corridors
Identifying and pre-clearing key transmission and infrastructure zones means faster deployment, lower costs, and smarter environmental review.

Positive Movement in Minnesota
MN H.F.8: Modernizes Minnesota's environmental and resource management system by streamlining permitting, creating a Business Permitting Ombudsman, and investing in faster, more predictable approvals, helping job creators build, expand, and compete while maintaining strong environmental standards.

MN H.F.369: Prioritizes energy reliability and affordability by allowing flexibility in renewable mandates when necessary and ensuring dependable fossil-fuel plants remain available until energy goals are realistically met, protecting families and businesses from blackouts and price spikes.

MN H.F.1311: Strengthens accountability and grid reliability by requiring rigorous cost and reliability reviews before utilities recover expenses for major power generation and transmission decisions, protecting ratepayers while ensuring a resilient electric system.

MN H.F.2553: Promotes competition and innovation in electric transmission by ending monopoly protections for incumbent providers, allowing more companies to compete to build and maintain critical infrastructure, driving down costs and accelerating grid improvements.

Bottom Line
Federal permitting reform is on the horizon. Minnesota can either lead by modernizing its own process, preserving state authority and attracting investment, or risk falling behind. Smart permitting reform keeps energy decisions in Minnesota, where they belong, and increases energy investment within the state.

PERMITTING REFORM POLICY SOLUTIONS

AMERICANS *for* PROSPERITY

Americans work hard every day to build a better life. They're not asking for handouts, they're asking the government to step aside and let them succeed. Eliminating burdensome energy regulations for businesses and entrepreneurs can unlock the full potential of the American economy. Individuals will feel empowered to build, innovate, and pursue their own American Dream knowing the government will not be a roadblock to success. Put simply, prosperity is possible with permitting reform.

WHY PERMITTING REFORM IS ESSENTIAL TO THE ECONOMY

1. REFORM WILL EMPOWER INDIVIDUALS AND COMMUNITIES

- The federal permitting process is a bureaucratic maze. It is overly complex and fragmented across several agencies, each with its own timelines, standards, and review procedures. This increases the time and money needed to build new energy-generating facilities, affecting developers and communities in need of affordable energy.
- Reform allows Americans to pursue energy and infrastructure projects without unnecessary government interference.

2. REFORM WOULD REDUCE ENERGY COSTS

- Regulatory delays increase the cost of energy production and distribution, ultimately costing businesses and consumers more.
- Families and businesses bear the burden through higher utility bills and fuel prices. These are dollars they cannot invest or spend elsewhere.
- Reforming permitting unlocks affordable domestic energy sources and helps the U.S. be less reliant on foreign energy.

3. REFORM HELPS CREATE JOBS AND DRIVE ECONOMIC GROWTH

- A strong economy needs access to abundant, reliable, affordable energy in order to thrive.
- Permitting reform plays a critical role in accelerating timelines for infrastructure and energy projects that are powerful engines of job creation across the country.
- Employment opportunities in construction, engineering, and operations will strengthen local economies and revitalize underserved regions.

4. REFORM RESTORES CONGRESSIONAL OVERSIGHT

- Congress must continue to reassert its authority and ensure permitting laws serve their intended purpose. Unprincipled actors have co-opted the permitting process, often through lawfare, to weaponize procedural laws like the National Environmental Policy Act (NEPA) and the Clean Water Act (CWA) to block any projects that they ideologically oppose.
- Reform ensures accountability and prevents regulatory overreach.
- It restores the principle that the government should facilitate — not obstruct — progress.

AREAS OF REFORM

1. ENSURE CONSISTENT TIMELINES AND DUE DATES FOR REVIEWS

- Amend NEPA to create consistent review timelines to ensure procedural responsiveness during the review process.
- Federal agencies and bureaucrats often take years to respond to permit applications, wasting time and driving up costs.
- Place reasonable judicial limitations on NEPA reviews and enforce responsible timelines.

2. CREATE CLARITY THROUGH IMPROVED LEGAL DEFINITIONS

- Clarify the NEPA trigger by defining "major federal action." This reform stops unnecessary reviews, which needlessly extend agency review times, and keeps NEPA actions compliant with current legal precedent.
- Clarify the definition of "Waters of the United States" (WOTUS) and define action for ephemeral features under the CWA.
- Reform provides clear, legally grounded definitions to reduce uncertainty and compliance costs so businesses can plan and invest.

3. PREVENT FEDERAL GOVERNMENT OVERREACH AND ABUSE

- Prevent the abuse of Section 401 of the CWA to deny essential infrastructure projects and amend the section to focus agency attention on priority projects.
- Give key agencies clarifying authority under Section 404 of the CWA to ensure proper use of "veto" authority for critical energy projects domestically.

EXISTING LEGISLATIVE OPPORTUNITIES

H.R. 4776 – SPEED ACT

Standardizing Permitting and Expediting Economic Development

- Streamlines the permitting process by establishing enforceable timelines under NEPA, clarifying what constitutes a major federal action to avoid unnecessary reviews, and placing reasonable limits on judicial intervention to ensure environmental assessments remain focused on procedural integrity rather than political obstruction.

H.R. 3898 – PERMIT ACT

Promoting Efficient Review for Modern Infrastructure Today

- Strengthens permitting efficiency by preventing misuse of the CWA to block essential infrastructure, clarifying key definitions like WOTUS and ephemeral features, protecting emergency response operations, and ensuring agencies exercise their veto authority responsibly and transparently.

FOR MORE INFORMATION OR TO CONNECT, CONTACT:
federalgovernmentaffairs@afphq.org

AMERICANS *for* PROSPERITY

AFP MINNESOTA

Repeal the Right of First Refusal

Restore Competition. Protect Ratepayers.

What Is ROFR?
The Right of First Refusal (ROFR) law gives incumbent utilities exclusive rights to build new high-voltage transmission projects in Minnesota — blocking competitive bidding by other qualified developers. This removes market forces that help control costs and can lead to higher costs passed straight to families and businesses in Minnesota.

Transmission costs are recovered through electric bills for decades, so even small inefficiencies have large long-term impacts on ratepayers.

Why This Matters for Minnesota
Since Minnesota adopted ROFR in 2012:

- Our electricity prices have steadily risen, eroding what once was one of the nation's more competitive rate profiles.
- Transmission project costs — the part of the bill that utilities can largely recover from customers — have grown significantly without giving ratepayers any competition-driven discipline.

Across the Midwest and beyond, competitive bidding on transmission projects has consistently reduced costs by 20–40% or more compared to monopoly build-only approaches — savings that directly flow back to consumers.

What Federal Regulators Have Said
Federal regulators have repeatedly found that limiting competition in transmission development raises costs for consumers:

- FERC Order No. 1000 (2011) removed federal rights of first refusal because they "deprive customers of the benefits of competition."
- The U.S. Department of Justice and Federal Trade Commission have explicitly warned that ROFR laws eliminate consumer benefits like lower rates, improved service, and innovation.
- The DOJ's 2024 Anticompetitive Regulations Task Force highlights how regulations that block competition raise consumer costs.

- *Federal Energy Regulatory Commission, Order No. 1000: Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities, July 21, 2011*
- *https://www.ferc.gov/sites/default/files/2020-04/Order1000.pdf*
- *U.S. Department of Justice & Federal Trade Commission, Comments on Transmission Planning and Cost Allocation, Docket No. RM21-17, 2022*
- *https://www.justice.gov/atr/media/1380466/dl*
- *U.S. Department of Justice, Justice Department Launches Anticompetitive Regulations Task Force, 2024*

ROFR: Facts & Myths
There is a lot of misinformation about what repealing ROFR would do in Minnesota:

Myth: ROFR protects reliability.
Fact: Reliability standards apply no matter who builds the line. Competition does not change oversight or safety requirements.

Myth: Only incumbent utilities can build transmission safely.
Fact: Independent developers build major projects nationwide under the same federal and regional standards.

Myth: Competition delays projects.
Fact: Competitive processes operate on structured timelines and have delivered projects on schedule in other states.

Myth: ROFR saves money.
Fact: Competitive projects often cost 20–40% less. Without bidding, ratepayers lose price discipline.

Myth: Repeal removes regulation.
Fact: All projects remain subject to state permitting and federal reliability rules.

How Competition Protects Minnesotans
- Utilities recover costs directly from ratepayers, increasing profit as spending rises
- Transmission costs can escalate with limited price checks
- Families and businesses bear long-term financial risk

Competitive bidding introduces accountability, cost discipline, and innovation.

What Repeal Would Do
- Open transmission projects to competitive bidding
- Preserve reliability and regulatory oversight
- Keep incumbent utilities eligible — but require them to compete

When electric bills are rising and families are stretching every dollar, state policy should protect consumers not protect monopolies. Repealing ROFR restores competition and puts ratepayers first.

- *New Jersey Board of Public Utilities. State Agreement Approach Offshore Wind Transmission Solicitation Results. October 2022*
- *https://nj.gov/bpu/pdf/boardorders/2022/20221026/8A%20ORDER%20SAA%20Results.pdf*
- *Minnesota Reformer. Price Relief Through Competition: Ending Minnesota's Transmission Monopoly.*
- *https://minnesotareformer.com/2025/04/30/price-relief-through-competition-ending-minnesotas-transmission-monopoly/*
- *U.S. House Committee on Energy & Commerce. Transmission Cost Trends Report*
- *https://docs.house.gov/meetings/IF/IF03/20240911/117628/HMTG-118-IF03-20240911-SD028.pdf*

State Director: Jake Coleman
Deputy Director: Joshua Solano
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VIA ELECTRONIC MAIL

consumer.puc@state.mn.us

December 29, 2025

Minnesota Public Utilities Commission
121 7th Place E, Suite 350
Saint Paul, MN 55101-2147

RE: In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in the State of Minnesota

Docket Number(s): E002/GR-24-320, E002/M-24-321

Americans for Prosperity Minnesota (hereinafter "AFP-MN") submits these comments for consideration in the above-captioned rate proceeding.

AFP-MN is concerned that if the Minnesota Public Utilities Commission (hereinafter "Commission") approves the application of Northern States Power Company, doing business as Xcel Energy (hereinafter "Xcel" or "Company") for a substantial increase in retail electric rates, that increase will undoubtedly harm Xcel's ratepayers and the economy of the State of Minnesota.

Xcel Energy's Application

Among the items Xcel Energy is asking this Commission to approve in *this* proceeding are the following:

- A two-year multiyear rate plan (MYRP), consisting of a 2025 test year and 2026 plan year reflecting the company's forecasted cost of service in each year.
- Final net revenue increases of $353.3 million (9.6 percent) in 2025.
- Incremental $137.5 million (3.6 percent) increase to rates in 2026[1].
- A 10.30 % return on equity as part of final rates[2].

Xcel's Application and The Future

According to the Citizens Utility Board, if Xcel's request "is approved as is, the typical customer's bill will go up by $10.27 per month, or $ 123.37 per year."[3]

This Commission is likely aware of the growth of data centers not only across the nation but in Minnesota in particular. Perhaps the entity most aware of the state's data center landscape is the Federal Reserve Bank of Minneapolis. Per an article published on its website, it states that Xcel

[1] In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in the State of Minnesota, Minnesota Public Utilities Commission, Docket No. E-002/GR-24-320, Docket No. E002/M-24-321, Notice and Petition for Interim Rates, Volume 1, November 1, 2024, p. 2.
[2] *Id.*, p. 5.
[3] "How will Xcel's electric rate increase impact Minnesotans"?, by James Birr, Citizens Utility Board, November 20, 2025, https://cubminnesota.org/how-will-xcels-electric-rate-increase-impact-minnesotans

Energy and Great River Energy have indicated they will supply a combined 2,300 MW to data centers in the next seven years, roughly the same power demand as every household in the state combined.[4]

Why is that relevant and what does that have to do with Xcel's current rate increase request?

It is relevant to Xcel's *current* rate application as this may be a precursor to later rate increase requests to fund the power needs of data centers that may locate within Xcel's Minnesota service territory in the next seven years.

And notwithstanding the potential economic benefits that data centers bring, it is important to recognize that if Xcel Energy ratepayers will be expected to pay for additional generation and transmission in the future, the *current* rate increase request cannot be considered the "last ask" by the Company.

Data centers are not equal. Some data centers, known as hyperscale centers, can house 5,000 servers and can draw over 100 MW of electricity per IBM.[5] Some hyperscalers can support cloud computing, AI technology, and crypto mining. [6]

> "The amount of electricity required to power hyperscale facilities is massive and expected to keep growing. In 2023, the U.S. Department of Energy found that data centers consumed about 4.4 percent of all electricity in the United States. They estimate that this may increase to more than 12 percent by 2028."[7]

And if hyperscalers like the northern climate that Minnesota offers – and they do – additional operations within Xcel's Minnesota service territory could be on the horizon. Once again, as the Federal Reserve Bank of Minneapolis notes:

> "Minnesota, with one of the largest metro areas in the district, has the most proposed hyperscale activity of the Ninth District states. There are at least 13 planned locations, mainly located around the Twin Cities. A facility being built by Meta in Rosemount, Minnesota, is the only known hyperscale facility under construction in the state." [8]

In the context of electric utility rates, it is incumbent on this Commission to be mindful of *all* ratepayers within the service territory Xcel Energy.

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[4] "Massive data centers lay roots in the Ninth District" "Lar-scale data center developers show interest in the district, but projects are still in the planning stage", by Haley Chinander, Writer/Analyst, Federal Reserve Bank of Minneapolis, October 7, 2025 https://www.minneapolisfed.org/article/2025/massive-data-centers-lay-roots-in-the-ninth-district., and citing an article from *The Minnesota Star Tribune*: "Mega data centers are coming to Minnesota. Their power needs are staggering." "With at least 10 planned, these Big Tech projects could consume as much electricity as every home in Minnesota.", by Walker Orenstein, The Minnesota Star Tribune, January 10, 2025, https://www.startribune.com/mega-data-centers-are-coming-to-minnesota-their-power-needs-are-staggering/601204129

[5] *Id.*, "Massive data centers lay roots in the Ninth District" "Lar-scale data center developers show interest in the district, but projects are still in the planning stage", by Haley Chinander, Writer/Analyst, Federal Reserve Bank of Minneapolis, October 7, 2025. https://www.minneapolisfed.org/article/2025/massive-data-centers-lay-roots-in-the-ninth-district

[6] *Id.*

[7] *Id.*

[8] *Id.*

Xcel's Application and Its Impact on Minnesota

Xcel's ratepayers are a cross-section of the Minnesota economy. There are those with substantial economic resources, those with few economic resources, and those caught in the middle who face increased economic challenges from nearly every side.

Referring again to information from the Citizens Utility Board, "Xcel shut off 52,000 customers in 2024 and has already shutoff even more so far in 2025."[9]

Without question, if approved, this requested rate increase will impact thousands of Minnesotans already struggling to pay for basic necessities. Beyond that, this rate increase will result in higher electric costs at schools, churches and synagogues, and small businesses. In many instances, those businesses will in turn pass their increased electric utility costs on to *their* customers through increased costs for the goods and services they provide. The cascading effect throughout the economy will likewise have a widespread negative impact.

Part of the increase requested is an increase in Xcel's return on equity (ROE) from 9.25% to 10.3%, despite hefty corporate wide earnings in 2024.

> "Xcel Energy Inc. (NASDAQ:XEL) today reported 2024 GAAP earnings of $1.94 billion, or $3.44 per share, compared with $1.77 billion, or $3.21 per share in the same period in 2023 and ongoing earnings of $1.97 billion, or $3.50 per share, compared with $1.85 billion, or $3.35 per share in the same period in 2023."[10]

2024 GAAP earnings of $1.94 billion, or $3.44 per share, compared with $1.77 billion, or $3.21 per share in the same period in 2023.

The return on equity request, whereby an electric utility may essentially charge its ratepayers a percentage amount of what the utility *spends* and for which the ratepayers *already* pay, appears both unfair and unreasonable. This is so not only because of the profits earned by Xcel corporate (including entities in addition to Xcel Energy Minnesota), but due to the fact that ratepayers are already paying for the assets.

Executive Compensation

Information from Xcel Energy's 2025 Notice of Annual Meeting and Proxy Statement[11] provides an overview of the company's "Target Total Compensation".[12] That section identifies the Annualized Base Salary for Mr. Bob Frenzel, Chairman, President and CEO at $ 1,400,000; the Annual Incentive Target (% of Base Salary) at 140%; Long-Term Incentive Targets identified as Performance Stock Units($) in the amount of $7,000,000 and Restricted Stock Units ($) in the amount of $3,000,000 for a Total ($) of $13,360,000.

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[9] "What CUB is pushing for in Xcel's electric rate case", by James Birr, December 4, 2025, Citizens Utility Board, https://cubminnesota.org/what-cub-pushing-xcels-electric-rate-case
It is unclear whether the number referenced includes Xcel gas utility customers in addition to Xcel electric utility customers.

[10] Xcel Energy 2024 Year End Earnings Report, February 6, 2025, at: https://investors.xcelenergy.com/news-events/news-releases/news-details/2025/Xcel-Energy-2024-Year-End-Earnings-Report/default.aspx

[11] "Making Energy Work Better, 2025 Notice of Annual Meeting and Proxy Statement, Xcel Energy https://d18rn0p25nwr6d.cloudfront.net/CIK-0000072903/1b58490e-9bca-489f-9059-c964a6d214a4.pdf

[12] *Id.*, p. 35.

Mr. Frenzel's compensation for one year is more than many of Xcel's ratepayers will ever receive as compensation during their lifetime.

It appears that on October 21, 2025, Ms. Bria Shea was named President Xcel Energy – Minnesota, North Dakota and South Dakota.[13] Information concerning Ms. Shea's compensation in her role as President of the named entities was not sourced as of this writing.

The Commission should be mindful of the impact of executive compensation on Xcel's ratepayers.

Conclusion

Americans for Prosperity-Minnesota respectfully requests that the Commission:

- Deny Xcel's full request for final net revenue increases of $353.3 million (9.6 percent) in 2025.
- Deny Xcel's full request for an incremental $137.5 million (3.6 percent) increase to rates in 2026.
- Deny Xcel's request for a 10.30% return on equity as part of final rates.
- Give consideration to the impact of Xcel's requests in its Application to all Xcel ratepayers.

Respectfully submitted,

RaeAnna K. Lee

RaeAnna Lee
Legislative & Coalitions Director, Minnesota
Americans for Prosperity

[13] "Bria Shea named President, Xcel Energy – Minnesota, North and South Dakota", Pres Release Xcel Energy, October 21, 2025 https://investors.xcelenergy.com/news-events/news-releases/news-details/2025/Bria-Shea-named-President-Xcel-Energy--Minnesota-North-and-South-Dakota/default.aspx

The Electricity Transmission Competition Coalition

Transmission Competition Delivers Results: Dispelling Common Myths

At a historic time when massive amounts of capital and megaprojects must be constructed on accelerated timeframes, the open market will provide the best solutions for timely, reliable, cost-effective grid buildout

MYTH	REALITY CHECK	KEY INSIGHTS
Putting transmission projects out to bid slows down progress needed to meet the AI challenge	**Well-designed competitive bidding delivers timely, reliable, and lower-cost infrastructure**	• Recent SPP and CAISO projects show competition does not delay delivery.[1] • Bidders often offer firm schedule guarantees with financial penalties, accelerating completion.[1] • Competition increases accountability — incumbents face fewer on-time performance incentives.
Competitive bidding for transmission has not produced meaningful consumer benefits	**Experience shows competition delivers measurable cost savings and innovation**	• RTO/ISO data shows 20–30% lower costs from competitive bids.[2] • Competition pressures incumbents to improve efficiency and reduce costs. • Competitive projects often feature optimized designs over traditional builds.
Cost caps are illusory, while the regulated business model keeps customer costs in check	**Competition tends to bring more rigorous cost control**	• Competitive developers bear the burden of proving cost recovery beyond agreed caps.[3] • Even partial cost caps offer stronger consumer protection than non-competitive builds. • Incumbents often recover overruns with limited scrutiny. • Local utility experience can't overcome the inherent financial incentive that utilities have to inflate costs to increase profits.
Only RTO/ISO central planners can identify the optimal transmission mix	**Competitive developers create cross-market solutions that maximize value for ratepayers**	• Competitive developers evaluate opportunities across RTO/ISO and utility boundaries, while incumbents focus on their own footprint.[4] • They leverage advanced modeling to identify high-value, system-wide solutions. • Without legacy bias, competition yields more objective and innovative outcomes.
Project competition isn't needed because incumbents have local expertise and will competitively bid project components	**True competition for projects delivers the greatest innovation, cost savings, and speed—outcomes that direct assignments cannot match**	• Local expertise rarely improves cost accuracy or feasibility •Incumbent-led project selection often prioritizes self-interest over RTO-wide benefits. • Component-level bidding is no substitute for full competition.

Footnotes:

1. SPP's Wolf Creek–Blackberry 345 kV competitive project was energized 6 months ahead of target at ~27% lower cost than SPP's estimate (SPP TOSP data, Utility Dive 2022). CAISO competitive solicitations lower ratepayer costs and decrease delays (CA Public Advocates Office 2023).
2. Brattle Group (2021): Competitive bids were 20–30% below reference costs. CAISO (2013–2019) recorded ~29% average capital cost reductions in competitive projects.
3. Brattle Group (2018): Competitive bids include explicit cost caps; incumbents typically recover overruns under prudence presumption. SPP Competitive NTC binds developers to cost and schedule terms.
4. Competitive developers model multi-market value streams and cross-boundary benefits (Brattle 2021). MISO and SPP competitive processes encourage cross-territory, high-value transmission solutions.

Source: Brattle Group, SPP, MISO, CAISO, Utility Dive, CA Public Advocates Office (2018–2023)

The Electricity Transmission Competition Coalition

Competitive Bidding of New Transmission Projects Deliver Results: Dispelling Common Misconceptions

November 11, 2025

At a historic time when massive amounts of capital and megaprojects must be constructed on accelerated timeframes, the open market will provide the best solutions for timely, reliable, cost-effective grid buildout

Myth #1: Competition prolongs both the transmission planning process and development without clearly delivering cost savings or more innovative delivery.

Reality Check: **Competition delivers unmatched speed and savings.**

- There is no evidence that incumbent utilities can move Order 1000-bid greenfield projects any faster than competitive developers.
- Recent RTO/ISO solicitations show competition has not delayed delivery.
    - Competitive examples:
        - NextEra Energy Transmission (NEET)'s Wolf Creek–Blackberry 345 kV project (SPP) was energized in July 2025, 6 months early.
        - LS Power's LS Power's Duff-Coleman 345 kV project (MISO) was completed in June 2020, 6 months early.
        - NEET's Minco–Pleasant Valley–Draper 345 kV project (SPP) had a required 1/1/25 COD and entered service that month.
    - Non-competitive examples:
        - In Nebraska, the "R-Plan" 345kV project was approved in 2013; completion now expected December 2027.
- Transmission planning and project scoping take time with or without competitive processes. Robust planning and scoping processes, like those used in competitive processes, reduce in-service delays.
- Competition increases schedule accountability whereas bidders often offer firm schedule guarantees with financial penalties which accelerates completion.[1] Incumbent utilities face fewer on-time performance incentives.
    - In 2024, SPP directly assigned $3.2 B of projects to incumbents due to "short term reliability need" thus skipping the competitive process. The project cost overruns are **over $2.2 B** with the final costs post-energization still likely higher. The cost overrun also only reflects capital construction costs and when factoring in 40-year present value revenue requirement, the cost implication for consumers is even higher. None of the projects included deadline guarantees for start-up.
    - The MISO RIKY, CAISO Humboldt (x2), and SPP Matthewson-Redbud, Lynch-Medanos, and Potter-Beckham projects, all of which were competitively awarded in 2025, included schedule commitments.

- Competition increases project timeline transparency.
    - In the above mentioned SPP directly assigned projects, the timeline for the incumbent to commit to the project and provide a final estimated cost was largely undefined while competitive processes have rigid timeframes and requirements. Competitive bids could have been run in the timeframes that it took for the incumbents to commit to the projects.

Myth #2: *Competitive bidding for transmission has not produced meaningful consumer benefits.*

Reality Check: **In regions where competitive transmission bidding is allowed, the results speak from themselves.**

- RTO/ISO data shows 20–30% lower costs from competitive bids.[2]
- The mere existence of a competitive bidding process provides the incentive for the incumbent utility to sharpen their pencils on costs and think differently. Alternative tower materials, conductor options, and schedule mitigations can only be challenged for robustness and appropriateness through the competitive process.
- It is a fundamental economic principle that competition lowers costs for customers.
- Local utility experience can't overcome the inherent financial incentive to inflate costs to increase profits. Without competition there is no incentive to reduce costs.
- If an incumbent utility is the best suited to build a given line, they should have no trouble winning in an open, fair bidding process.

Myth #3: *Cost caps are illusory, allowing competitive developers to recover costs exceeding their initial winning bid from customers, while the regulated business model keeps customer costs in check.*

Reality Check: **Competition tends to bring more rigorous cost control.**

- Competitive developers bear the burden of proving cost recovery beyond agreed caps; incumbent utilities face few penalties for cost overruns under cost-plus regulation. Risks and costs that are passed onto the ratepayer.[3]
- Even partial cost caps offer stronger consumer protection than incumbent utility projects without any cost containment.
- Incumbent utilities regularly recover overruns with limited FERC and state scrutiny.
- Local utility experience can't overcome the inherent financial incentive that utilities have to inflate costs to increase profits.

Myth #4: *Only in-state incumbent utilities can be trusted to deliver and reliably operate and maintain grid expansion projects.*

Reality Check: **Competition delivers the greatest innovation, cost savings, and speed. Outcomes that direct assignments cannot match.**

- Component-level bidding is no substitute for full project competition. Sub-bidding project components like engineering construction does not lead to cost savings in the overall cost, reductions in ROE returns, schedule incentives, etc.
- Developers in all regions but CAISO must be pre-qualified as capable to design, construct, and maintain transmission projects before competitively bidding.
- All Order 1000 solicitation processes consider project sponsor expertise, experience, and future potential for project execution. If a bidding entity is less qualified, then the competitive process will demonstrate the skillset gap.
- Competitive projects must meet the same National Electric Safety Code and NERC Reliability Standards as directly assigned projects.
- Local expertise rarely improves cost accuracy or feasibility.
- Incumbent-led project selection often prioritizes self-interest over RTO-wide benefits.

Myth #5: *Only RTO/ISO central planners and incumbents can identify the optimal transmission mix.*

Reality Check: **Competitive developers create cross-market solutions that maximize value for ratepayers.**

- Competitive developers evaluate opportunities across RTO/ISO and utility boundaries, while incumbent utilities—limited by their territorial constraints—typically focus on their retail footprint.[4]
- Without legacy bias, competition yields more objective and innovative solutions as incumbents are constrained by impacts on their existing business model.
- Diversity of thought is one of the strongest benefits of Order 1000, bringing different ideas from all interested parties, which further strengthens the regulatory backing demonstrating deep due diligence to truly select the best idea.

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Footnotes:

1. Brattle Group (2021): Competitive bids were 20–30% below reference costs. CAISO (2013–2019) recorded ~29% average capital cost reductions in competitive projects.
2. Brattle Group (2018): Competitive bids include explicit cost caps; incumbents typically recover overruns under prudence presumption. SPP Competitive NTC binds developers to cost and schedule terms.
3. Competitive developers leverage advanced modeling to identify multi-market value streams and cross-boundary benefits (Brattle 2021). MISO and SPP competitive processes encourage cross-territory, high-value transmission solutions.

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Examples of Cost Overruns of Transmission Projects that Were 'Not' Competitively Bid (No Cost Overrun Protections or Schedule Guarantees for Ratepayers)					
Project Year Start	**Region**	**Project**	**Initial CapEx ($MM)**	**Latest CapEx ($MM)**	**Cost Increase %**
2013	SPP	Multi - Gentleman - Cherry Co. - Holt Co. 345 kV	$373	$463	24%
2020	SPP	Neosho - Riverton	$48	$73	52%
2025	SPP	Phantom - Crossroad - Potter 765 kV	$1,690	$3,620	114%
2007	PJM	Susquehanna - Roseland 500kV	$427	$621	45%
2012	PJM	Mars / Dulles Substation Project	$114	$290	154%
2016	PJM	Line #550 Mt Storm - Valley 500kV	$225	$476	112%
2016	PJM	Mt Vernon Substation and 230kV line extensions	$337	$527	56%
2018	PJM	East Towson Substation & loop in	$93	$276	197%
2023	PJM	Brandon Shores Deactivation Project	$739	$1,514	105%
2012	NYISO	Smart Path 345kV	$878	$920	5%
2011	MISO	Lakefield Jct - Winnebago - Winco - Burt Area - Webster 345 kV	$654	$692	6%
2011	MISO	Ottumwa - Zachary 345 kV	$186	$221	19%
2011	MISO	Zachary - Maywood 345 kV	$137	$172	26%
2011	MISO	Maywood - Herleman - Meredosia - Ipava & Meredosia - Austin 345 kV	$501	$723	44%
2011	MISO	Austin - Pana 345 kV	$115	$135	17%
2011	MISO	Pana - Faraday - Kansas - Sugar Creek 345 kV	$388	$408	5%
2011	MISO	Pleasant Prairie - Zion Energy Center 345 kV	$30	$36	20%
2014	MISO	Reynolds - Burr Oak - Hiple 345 kV	$322	$405	26%
2014	MISO	Reynolds - Greentown 765 kV	$299	$348	16%

2014	MISO	Morrison Ditch - Reynolds - Burr Oak - Leesburg - Hiple 345 kV	$310	$675	118%
2022	MISO	Iron Range - Benton County - Big Oaks 345 kV	$118	$169	43%
2002	ISO-NE	Southwest CT / Middletown-Norwalk	$690	$1,415	105%
2002	ISO-NE	Norwalk Reliability	$128	$234	83%
2008	ISO-NE	NEEWS Greater Springfield Reliability Project	$350	$759	117%
2008	ISO-NE	NEEWS Rhode Island Reliability	$150	$315	110%
2008	ISO-NE	NEEWS Interstate Reliability	$400	$542	36%
2013	ISO-NE	Mystic to Woburn 115kV	$70	$260	271%
2014	ISO-NE	Stoughton Cable Project	$213	$317	49%
2006	CAISO	Sunrise Powerlink Transmission Line	$1,200	$1,900	58%
2007	CAISO	Tehachapi Renewable Transmission Project	$1,500	$3,062	104%
2014	CAISO	Devers - Colorado River 500kV Transmission Line	$545	$775	42%
1) All information contained here is based on publicly available information on each respective RTO/ISO website.					

The Electricity Transmission Competition Coalition

FERC Order 1000 Competitively Bid Transmission Projects 2021 – 2025 Ratepayer Savings & Benefits

Examples of Transmission Projects that Were Competitively Bid and Include Cost Overrun Protections & Schedule Guarantees

Bid Year	Region	Project	Lowest Bid Cost ($MM)	Highest Bid Cost ($MM)	Cost Range ($MM Savings)	Lowest Bid Savings From Highest Bid	Cost Containment Offered on Winning Bid	Schedule Guarantee Offered on Winning Bid
2021	SPP	Minco - Pleasant Valley 345 kV	$55	$97	$42	43%	Yes	Yes
2022	SPP	Wolfcreek - Blackberry 345 kV	$85	$151	$66	44%	Yes	Yes
2023	SPP	Crossroads - Hobbs - Roadrunner 345 kV	$220	$292	$72	25%	Yes	Yes
2024	SPP	Mathewson - Redbud 345 kV	$72	$84	$12	14%	Yes	Yes
2025	SPP	Lynch - Medanos 115 kV	$21	$36	$15	42%	Yes	Yes
2025	SPP	Beckham County - Potter 345 kV	$222	$225	$3	1%	Yes	Yes
2022	PJM	2022 Multi Driver Window	$2	$127	$126	99%	No	No
2023	PJM	2022 Window 3 West Cluster	$684	$2,395	$1,711	71%	Yes	Yes
2023	PJM	2022 Window 3 East Cluster	$495	$5,381	$4,886	91%	Yes	No
2023	PJM	2022 Window 3 South Cluster	$628	$1,226	$598	49%	Yes	No
2024	PJM	2024 RTEP Virginia Cluster	$2,260	$5,500	$3,240	59%	Yes	No
2024	PJM	2024 RTEP Ohio Cluster	$202	$455	$253	56%	Yes	No
2025	PJM	2025 RTEP Pennsylvania PPL zone	$415	$1,136	$721	63%	Yes	No
2020	MISO	Hiple to IN/MI State Border 345 kV	$77	$125	$48	38%	Yes	Yes
2022	MISO	Fairport to Denny to IA/MO State Border 345 kV	$84	$154	$70	45%	Yes	Yes
2023	MISO	Denny–Zachary–Thomas Hill–Maywood 345 kV	$265	$486	$221	45%	Yes	Yes

2025	MISO	Reid EHV to IN/KY State Border 345 kV	$78	$104	$26	25%	Yes	Yes
2022	CAISO[1]	Collinsville Substation	$270	$575	$305	53%	Yes	Yes
2022	CAISO[1]	Manning Substation	$175	$405	$230	57%	Yes	Yes
2022	CAISO[1]	Newark-NRS HVDC	$900	$418[1]	#N/A	#N/A	Yes	Yes
2022	CAISO[1]	Metcalf - San Jose B HVDC	$1,000	$570[1]	#N/A	#N/A	Yes	Yes
2023	CAISO[1]	North Gila - Imperial Valley 500kV T-Line	$256	$340	$84	25%	Yes	Yes
2023	CAISO[1]	Imperial Valley - North of SONGS 500kV T-line/Sub	$1,004	$2,228	$1,224	55%	Yes	No
2023	CAISO[1]	North of SONGS - Serrano 500kV T-Line	$292	$503	$211	42%	Yes	No
2024	CAISO[1]	Humboldt - Collinsville 500kV T-Line/Sub	$1,165	$2,300	$1,135	49%	Yes	Yes
2024	CAISO[1]	Humboldt - Fern Road 500kV T-Line	$684	$1,200	$516	43%	Yes	Yes

1) CAISO does not publish full list of all bid cost. Low bid is typically selected and CAISO cost estimate is used as high bid for reference.
2) Bids do not include any Public Policy or State Goals driven Transmission RFPs (e.g., Offshore Wind Transmission)
3) ISO-NE and NYISO have not facilitated a competitive transmission RFP in the last five years, excluding offshore wind transmission.
4) ERCOT does not facilitate competitive transmission RFPs.
5) All information contained here is based on publicly available information on each respective RTO/ISO website.

U.S. Department of Justice

Antitrust Division

Office of the Assistant Attorney General *Washington, DC 20530*

March 24, 2025

The Honorable Henry Stone
Iowa House of Representatives
Iowa State Capitol
1007 E. Grand Ave.
Des Moines, IA 50319

Dear Representative Stone:

The Antitrust Division of the U.S. Department of Justice (the "Division") appreciates your invitation[1] to comment on Iowa Senate Study Bill 1113 ("S.S.B. 1113" or "the Bill").[2] We are sending an identical response to the other representative who joined your letter.

S.S.B. 1113 would establish a no-bid process in Iowa for incumbent electrical transmission owners to construct new power grid infrastructure. In particular, the Bill would grant incumbents a right of first refusal ("ROFR") to develop new transmission projects before non-incumbents can offer alternative proposals. The Division is concerned that these restrictions would foreclose competition to develop and build electric transmission and thereby potentially raise prices and lower the quality of service for electricity consumers.

I. Interest of the Division

On January 20, 2025, President Donald Trump declared a National Energy Emergency.[3] The President's Executive Order highlights the need to achieve "a reliable, diversified, and affordable supply of energy" and to address "the high energy prices that devastate Americans, particularly those living on low- and fixed-incomes."[4]

President Trump's Executive Order reflects a federal policy of prioritizing the delivery of energy infrastructure[5] while ensuring "an affordable and reliable domestic supply of energy" as critical to the "national and economic security" of the country.[6] This pivotal moment for American energy infrastructure reinforces the importance of promoting competition in the

[1] Letter from Henry Stone, State Rep., and Jesse Green, State Sen., Iowa Legislature, to Karina Lubell, Chief, Competition Pol'y & Advocacy Sec., Antitrust Div., U.S. Dep't. of Just. (Mar. 4, 2025).
[2] S.S.B. 1113, 91st Gen. Ass. (Iowa 2025).
[3] Exec. Order No. 14,156, 80 Fed. Reg. 8439 (Jan. 20, 2025).
[4] *Id.* at § 1.
[5] *Id.* at § 3.
[6] *Id.* at § 1.

development of robust domestic energy infrastructure while creating affordable prices for consumers.

Competition is a core organizing principle of the American economy,[7] and vigorous competition in an open marketplace gives consumers the benefits of lower prices, increased access to higher quality goods and services, and greater innovation.[8] The Division promotes competition by bringing cases to enforce the antitrust laws and through competition advocacy efforts that urge federal, state, and local government bodies to make decisions that benefit competition for the benefit of consumers. Those advocacy efforts take the form of written comments on proposed legislation, discussions with regulators, and court filings, among other channels.[9]

The Division has considerable expertise in examining wholesale electricity markets, including through its antitrust enforcement efforts.[10] In addition, the Department of Justice has filed briefs in actions challenging the constitutionality of state ROFR laws.[11] The Division has also provided competition advocacy regarding other ROFR measures to policymakers at the state and federal levels. For example, in 2019, the Division analyzed a similar proposal in Texas, explaining that even where incumbents may be best positioned to build out additional grid infrastructure, state ROFRs and similar legislation would likely "reduce the competitive pressure on such incumbents to develop higher quality, lower cost transmission facilities" to the detriment of consumers.[12] Likewise in 2022, the Division and the Federal Trade Commission jointly urged the Federal Energy Regulatory Commission ("FERC") not to reinstate a federal ROFR policy that the agency abandoned in 2011.[13] Competition in wholesale electricity markets and in the

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[7] *See, e.g.*, *N.C. State Bd. of Dental Exam'rs v. FTC*, 574 U.S. 494, 504 (2015) (referencing "the Nation's commitment to a policy of robust competition"); *Standard Oil Co. v. FTC*, 340 U.S. 231, 248 (1951) ("The heart of our national economic policy long has been faith in the value of competition.").

[8] *See, e.g.*, *Nat'l Soc'y of Prof'l Eng'rs v. United States*, 435 U.S. 679, 695 (1978) (noting that the antitrust laws reflect "a legislative judgment that ultimately competition will produce not only lower prices, but also better goods and services. The assumption that competition is the best method of allocating resources in a free market recognizes that all elements of a bargain—quality, service, safety, and durability—and not just the immediate cost, are favorably affected by the free opportunity to select among alternative offers.").

[9] *Mission*, Antitrust Div., U.S. Dep't of Just., https://www.justice.gov/atr/mission (last updated Sept. 14, 2023).

[10] *See, e.g.*, Competitive Impact Statement, *United States v. Morgan Stanley*, 881 F. Supp. 2d 563, (S.D.N.Y. Sept. 30, 2011) (No. 11-cv-6875), https://www.justice.gov/atr/case-document/file/505056/download; Competitive Impact Statement, *United States v. Keyspan Corp.*, 763 F. Supp. 2d 633 (S.D.N.Y. Feb. 23, 2011) (No. 10-cv-1415), https://www.justice.gov/atr/case-document/file/500576/download; Competitive Impact Statement, *United States v. Exelon Corp.*, No. 1:06-cv-1138 (D.D.C. Aug. 10, 2006), https://www.justice.gov/atr/case-document/file/495451/download; Competitive Impact Statement, *United States v. Enova Corp.*, 107 F. Supp. 2d 10 (D.D.C. June 8, 1998) (No. 98-cv-583), https://www.justice.gov/atr/case-document/file/495196/download.

[11] *See, e.g.*, Brief for the United States, *Lake v. NextEra Energy Capital Holdings, Inc.*, 144 S.Ct. 485 (2023), https://www.justice.gov/osg/media/1323166/dl (cert. denied); Brief for the United States, *NextEra Energy Capital Holdings, Inc. v. Lake*, 48 F.4th 306 (5th Cir. 2022) (No. 20-50160), https://www.justice.gov/atr/case-document/file/1267011/dl; ; Brief for the United States, *LSP Transmission Holdings, LLC v. Lange*, 329 F. Supp. 3d 695 (8th Cir. 2018), https://www.justice.gov/atr/case-document/file/1102866/dl; Brief for the United States of America as Amicus in Support of Neither Party, Vacatur, and Remand, *LSP Transmission v. Lange*, 954 F.3d 1018 (8th Cir. 2020), *cert. denied*, 141 S. Ct. 1510 (2021).

[12] Letter from Daniel Haar, Acting Chief, Competition Pol'y & Advoc. Sec., Antitrust Div. to Rep. Travis Clardy, Tex. House of Reps. (Apr. 19, 2019), https://www.justice.gov/atr/page/file/1155881/dl?inline=.

[13] Comment of the U.S. Dep't of Justice and Fed. Trade Comm'n, FERC Docket No. RM21-17-000 (Aug. 17, 2022), https://www.justice.gov/jmd/media/1237951/dl?inline.

development of transmission facilities—including competition from independent, transmission-only companies—benefits electricity consumers.

II. The Bill

S.S.B. 1113 proposes to give incumbent electric transmission owners an exclusive ROFR for upgrades to the power grid approved for construction in a federally registered planning authority transmission plan when the new transmission facilities connect to the incumbent's existing lines.[14]

The enforcement of a similar statute, Iowa Code § 478.16 (2020), has been temporarily enjoined after a finding plaintiffs were likely to succeed in showing defects in its enactment under the Iowa Constitution.[15]

The Bill is similar to Iowa Code § 478.16, but among the few differences, the Bill seeks to broaden the definition of "incumbent electric transmission owner" to include out-of-state firms that own transmission facilities in Iowa.[16] It also adds a requirement that the incumbent firm prove its use of a competitive bidding process for subcontractors.[17] And it clarifies the scope of authorities assigned to Iowa's consumer advocate in monitoring the costs of new construction.[18]

But the ROFR provisions otherwise remain. The Bill still permits incumbent firms to bypass competitive bidding for new transmission lines in the state,[19] thereby eliminating competition from firms that could offer lower prices, greater innovation, and superior terms to Iowa's utility customers.

III. Discussion

The Division urges the Iowa legislature to consider whether the ROFR provisions in S.S.B. 1113 would harm consumers by denying them the benefits of robust competition, especially given the critical energy infrastructure needs facing the country. By protecting incumbents from competition, the Bill creates risks for increased costs, reduced quality, and less reliable transmission infrastructure at a moment when the President has declared a national energy emergency.

By restricting the construction of new power grid infrastructure to incumbent electrical transmission owners, the Bill can harm consumers by reducing or eliminating competition. The Bill turns a "preference for further investment in Iowa transmission infrastructure by electric transmission owners"[20] into a legal grant that shields incumbents from competition. In some cases, incumbent operators will be best positioned to deliver high quality, cost-effective infrastructure projects quickly. But even in such circumstances the threat of competitive pressure

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[14] S.S.B. 1113 § 1.
[15] *See LS Power Midcontinent, LLC v. State*, 988 N.W.2d 316, 338 (Iowa 2023).
[16] S.S.B. 1113 § 2(b)
[17] S.S.B. 1113 § 3(b).
[18] S.S.B. 1113 § 3(c).
[19] S.S.B. 1113 § 3(a).
[20] S.S.B. 1113 § 1(1).

from potential rivals will incentivize better outcomes like lower prices for consumers and more robust and innovative project designs.[21] In other cases, non-incumbent firms may offer lower costs, and better project designs, and they should be allowed to compete on the basis of the better value they offer.[22]

Harms resulting from the loss of competition are illustrated by previous experiences in numerous energy markets around the country. Conversely, these experiences also show how competition can lead to better outcomes and lower prices. Consider just a few examples:

- *PJM's Artificial Island Project*: PJM initiated this project to improve performance of the bulk electric system in the Artificial Island area in Southern New Jersey, which is the site of three nuclear reactors.[23] In 2013, PJM received 26 proposals from seven sponsors reflecting a diverse range of technologies, with cost estimates ranging from $100 million to $1.55 billion.[24] In 2015, after PJM permitted supplementary proposals, non-incumbent LS Power was awarded the project at a total cost of $280 million, including certain work to be shared with the incumbent operator Public Service Electric & Gas (PSE&G).[25] PSE&G's own proposals for the project reflected projected costs ranging from $692 million to $1.173 billion,[26] meaning that the incumbent's lowest-cost proposal was more than twice as expensive as the estimated total cost of the approved project. The competition from non-incumbents resulted in savings of at least $412 million to $893 million.

- *NYISO's Western New York Public Policy Transmission Project*: In 2015, the New York Independent System Operator ("NYISO") sought proposals to relieve transmission congestion in Western New York, including by providing access to energy from the

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[21] Ari Peskoe, *Replacing the Utility Transmission Syndicate's Control*, 44.3 Energy L. J. 547, 553-54 (2023) ("without competitive pressures, monopolists have little reason to innovate because they are shielded from new entrants with different business models or technologies.[. . .] With a conservative industry culture and lack of financial incentives [investor-owned utilities] have little reason to deploy technologies or employ operational and planning practices that improve transmission efficiency [. . .] despite potential consumer benefits.").

[22] *See, e.g.*, Ari Peskoe, *Profiteering Hampers U.S. Grid Expansion*, IEEE Spectrum (Feb. 22, 2024), *available at* https://spectrum.ieee.org/transmission-expansion; *see also NextEra Energy Capital Holdings, Inc. v. Lake*, 48 F.4th 306, 315 (5th Cir. 2022) ("[NextEra's] proposal offered 'an outstanding combination of low cost and high value, with best-in-class cost and design, best-in-class project implementation plans, and top-tier plans for operation and maintenance [which would] reap 'substantial benefits to ratepayers over time.'").

[23] PJM Interconnection, L.L.C., *Artificial Island Project Recommendation White Paper* (July 29, 2015), https://www.pjm.com/-/media/DotCom/committees-groups/committees/teac/postings/artificial-island-project-recommendation.ashx.

[24] *Id.* tbl.2.1, at 12-13.

[25] PJM Interconnection, L.L.C., *Transmission Expansion Advisory Committee (TEAC) Artificial Island Recommendations to the PJM Board* at 5-7; Johnson, Tom, *Plan for high voltage power line between Del. and N.J. moving ahead*, WHYY (Apr. 7, 2017), https://whyy.org/articles/pjms-high-voltage-plan-to-enhance-power-grid-back-on-track.

[26] PJM Interconnection, L.L.C., *Artificial Island Project Recommendation White Paper*, tbl.2.1 at 12-13 (July 29, 2015), https://www.pjm.com/-/media/committees-groups/committees/teac/postings/artificial-island-projectrecommendation.ashx.

Niagara hydroelectric facility and imports from Ontario.[27] In 2017, after receiving ten viable proposals, NYISO selected a proposal from NextEra Energy Transmission as the winner, noting that it was "both the more efficient and more cost-effective transmission solution" to address the identified need.[28] That NextEra project cost $181 million, while the lowest-cost proposal from an incumbent—a joint proposal from the New York Power Authority and New York State Electric & Gas Corporation—was $222 million.[29] NextEra's project thus represented a 22 percent savings over the incumbents' proposal.

- *Hartburg-Sabine Project*: In 2018, the Midcontinent Independent System Operator (MISO) issued a request for proposals for the construction of a 500 kV transmission line and related substation facilities in Orange and Newton counties in East Texas.[30] After considering 12 competing proposals,[31] MISO selected NextEra Energy Transmission Midwest, LLC because its proposal "provid[ed] the greatest overall value by offering an outstanding combination of low cost, robust transmission and substation design, and strength across all evaluation criteria," and noted that "NextEra's proposal reflected thorough knowledge and substantial effort in proposal development" compared to the other proposals.[32] In May 2019, after MISO had selected NextEra's bid for the project, the Texas legislature enacted S.B. 1938, which barred companies from competing for new projects in Texas unless they already owned the facilities to which they would connect.[33] The practical effect of the law was to reject the winning proposal and grant the project instead to the local incumbent. In 2022, the Court of Appeals for the Fifth Circuit sided with NextEra in striking down the law for violating the dormant Commerce Clause of the Constitution.[34] The Department of Justice responded to the U.S. Supreme Court's call for the view of the Solicitor General with a brief[35] defending the Fifth Circuit's decision and recommending against granting certiorari. The Supreme Court did not grant certiorari.[36]

These lessons bear on our analysis of the Bill, which effectively prevents new entrants from competing with incumbents in the construction of new transmission infrastructure. Open competitive processes for the projects discussed above resulted in a significant number of bids from incumbent and nonincumbent competitors. In these cases, the nonincumbents won. And even in other cases where incumbents have won, consumers benefited, because incumbents tend to make more competitive proposals when they face competition. This is because competition for

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[27] New York Independent System Operator, Inc., *Western New York Public Policy Transmission Planning Report* at 3, 15 (Oct. 17, 2017), https://www.nyiso.com/documents/20142/2892590/Western-New-York-PublicPolicy-Transmission-Planning-Report.pdf/d3f62964-2e2d-588c-2da4-9aa33bb5470b?t=1541702788476.
[28] *Id.* at 4, 21.
[29] *Id.* at 78, tbl.4.1 at 74.
[30] *NextEra Energy Cap. Holdings, Inc. v. Walker*, 2020 WL 3580149 at *3 (W.D. Tex. Feb. 26, 2020).
[31] Selection Report: Hartburg-Sabine Junction 500 kV Competitive Transmission Project, MISO (Nov. 27, 2018), *available at* https://cdn.misoenergy.org/Hartburg-Sabine%20Junction%20500%20kV%20Selection%20Report296754.pdf.
[32] *See id.* at § 3.
[33] *NextEra Energy Cap. Holdings, Inc. v. Lake*, 48 F.4th 306, 314 (5th Cir. 2022).
[34] *Id.*
[35] Brief for the United States, *Lake v. NextEra Energy Capital Holdings, Inc.*, 144 S. Ct. 485 (2023), https://www.justice.gov/osg/media/1323166/dl (cert. denied).
[36] *Lake v. NextEra Energy Capital Holdings, Inc.*, 144 S. Ct. 485 (2023).

the construction of transmission facilities creates incentives for rival transmission developers to minimize costs while investing in innovation and more efficient designs—incentives that are not present when construction rights are exclusive.

Moreover, lack of competition in this market has the potential to cause harm at a substantial scale. For example, in December 2024, a large transmission project was approved to run through Iowa with a buildout cost of nearly $3 billion in the state.[37] Competition will help ensure such buildouts produce "affordable and reliable" energy infrastructure during the current national energy emergency.

The Division notes that many state electric markets operate without restrictions like the proposed ROFR law.[38] To the extent legitimate and well-founded safety or public welfare concerns underlie S.S.B. 1113, the Division urges Iowa to consider whether it can achieve those considerations through mechanisms that do not unduly restrict competition to develop transmission facilities in Iowa.

We appreciate the opportunity to present our views.[39] Please do not hesitate to contact us if we may provide additional assistance regarding this or any other matter.

Sincerely,

Abigail Slater

Digitally signed by Abigail Slater
Date: 2025.03.24 14:47:15 -04'00'

Abigail Slater
Assistant Attorney General

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[37] Olivia Cohen, The Gazette, *ITC Midwest moves forward with Upper Midwest's first 765-kV transmission line* (Mar. 8, 2025), *available at* https://www.thegazette.com/energy/itc-midwest-moves-forward-with-upper-midwests-first-765-kv-transmission-line.

[38] *Right of First Refusal for Electric Transmission*, National Conference of State Legislatures (Dec. 9, 2024), *available at* https://www.ncsl.org/energy/right-of-first-refusal-for-electric-transmission.

[39] Please feel free to contact the staff if you have questions about these comments, or if new questions arise as Iowa considers these issues: Garrett Windle (garrett.windle@usdoj.gov), Competition Policy & Advocacy Section, Antitrust Division, U.S. Department of Justice, Erica Mintzer (erica.mintzer@usdoj.gov), Competition Policy & Advocacy Section, Antitrust Division, U.S. Department of Justice, Matthew Mandelberg (matthew.mandelberg@usdoj.gov), Appellate Section, Antitrust Division, U.S. Department of Justice, and J. Chandra Mazumdar (chan.mazumdar@usdoj.gov), Transportation, Energy, & Agriculture Section, Antitrust Division, U.S. Department of Justice.

U.S. Department of Justice

Antitrust Division

Office of the Assistant Attorney General

Washington, DC 20530

March 24, 2025

The Honorable Jesse Green
Iowa Senate
Iowa State Capitol
1007 E. Grand Ave.
Des Moines, IA 50319

Dear Senator Green:

The Antitrust Division of the U.S. Department of Justice (the "Division") appreciates your invitation[1] to comment on Iowa Senate Study Bill 1113 ("S.S.B. 1113" or "the Bill").[2] We are sending an identical response to the other representative who joined your letter.

S.S.B. 1113 would establish a no-bid process in Iowa for incumbent electrical transmission owners to construct new power grid infrastructure. In particular, the Bill would grant incumbents a right of first refusal ("ROFR") to develop new transmission projects before non-incumbents can offer alternative proposals. The Division is concerned that these restrictions would foreclose competition to develop and build electric transmission and thereby potentially raise prices and lower the quality of service for electricity consumers.

I. Interest of the Division

On January 20, 2025, President Donald Trump declared a National Energy Emergency.[3] The President's Executive Order highlights the need to achieve "a reliable, diversified, and affordable supply of energy" and to address "the high energy prices that devastate Americans, particularly those living on low- and fixed-incomes."[4]

President Trump's Executive Order reflects a federal policy of prioritizing the delivery of energy infrastructure[5] while ensuring "an affordable and reliable domestic supply of energy" as critical to the "national and economic security" of the country.[6] This pivotal moment for American energy infrastructure reinforces the importance of promoting competition in the

[1] Letter from Henry Stone, State Rep., and Jesse Green, State Sen., Iowa Legislature, to Karina Lubell, Chief, Competition Pol'y & Advocacy Sec., Antitrust Div., U.S. Dep't. of Just. (Mar. 4, 2025).
[2] S.S.B. 1113, 91st Gen. Ass. (Iowa 2025).
[3] Exec. Order No. 14,156, 80 Fed. Reg. 8439 (Jan. 20, 2025).
[4] *Id.* at § 1.
[5] *Id.* at § 3.
[6] *Id.* at § 1.

development of robust domestic energy infrastructure while creating affordable prices for consumers.

Competition is a core organizing principle of the American economy,[7] and vigorous competition in an open marketplace gives consumers the benefits of lower prices, increased access to higher quality goods and services, and greater innovation.[8] The Division promotes competition by bringing cases to enforce the antitrust laws and through competition advocacy efforts that urge federal, state, and local government bodies to make decisions that benefit competition for the benefit of consumers. Those advocacy efforts take the form of written comments on proposed legislation, discussions with regulators, and court filings, among other channels.[9]

The Division has considerable expertise in examining wholesale electricity markets, including through its antitrust enforcement efforts.[10] In addition, the Department of Justice has filed briefs in actions challenging the constitutionality of state ROFR laws.[11] The Division has also provided competition advocacy regarding other ROFR measures to policymakers at the state and federal levels. For example, in 2019, the Division analyzed a similar proposal in Texas, explaining that even where incumbents may be best positioned to build out additional grid infrastructure, state ROFRs and similar legislation would likely "reduce the competitive pressure on such incumbents to develop higher quality, lower cost transmission facilities" to the detriment of consumers.[12] Likewise in 2022, the Division and the Federal Trade Commission jointly urged the Federal Energy Regulatory Commission ("FERC") not to reinstate a federal ROFR policy that the agency abandoned in 2011.[13] Competition in wholesale electricity markets and in the

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[8] *See, e.g.*, *Nat'l Soc'y of Prof'l Eng'rs v. United States*, 435 U.S. 679, 695 (1978) (noting that the antitrust laws reflect "a legislative judgment that ultimately competition will produce not only lower prices, but also better goods and services. The assumption that competition is the best method of allocating resources in a free market recognizes that all elements of a bargain—quality, service, safety, and durability—and not just the immediate cost, are favorably affected by the free opportunity to select among alternative offers.").

[9] *Mission*, Antitrust Div., U.S. Dep't of Just., https://www.justice.gov/atr/mission (last updated Sept. 14, 2023).

[10] *See, e.g.*, Competitive Impact Statement, *United States v. Morgan Stanley*, 881 F. Supp. 2d 563, (S.D.N.Y. Sept. 30, 2011) (No. 11-cv-6875), https://www.justice.gov/atr/case-document/file/505056/download; Competitive Impact Statement, *United States v. Keyspan Corp.*, 763 F.Supp.2d 633 (S.D.N.Y. Feb. 23, 2011) (No. 10-cv-1415), https://www.justice.gov/atr/case-document/file/500576/download; Competitive Impact Statement, *United States v. Exelon Corp.*, No. 1:06-cv-1138 (D.D.C. Aug. 10, 2006), https://www.justice.gov/atr/case-document/file/495451/download; Competitive Impact Statement, *United States v. Enova Corp.*, 107 F. Supp. 2d 10 (D.D.C. June 8, 1998) (No. 98-cv-583), https://www.justice.gov/atr/case-document/file/495196/download.

[11] *See, e.g.*, Brief for the United States, *Lake v. NextEra Energy Capital Holdings, Inc.*, 144 S. Ct. 485 (2023), https://www.justice.gov/osg/media/1323166/dl (cert. denied); Brief for the United States, *NextEra Energy Capital Holdings, Inc. v. Lake*, 48 F.4th 306 (5th Cir. 2022) (No. 20-50160), https://www.justice.gov/atr/case-document/file/1267011/dl; ; Brief for the United States, *LSP Transmission Holdings, LLC v. Lange*, 329 F. Supp. 3d 695 (8th Cir. 2018), https://www.justice.gov/atr/case-document/file/1102866/dl; Brief for the United States of America as Amicus in Support of Neither Party, Vacatur, and Remand, *LSP Transmission v. Lange*, 954 F.3d 1018 (8th Cir. 2020), *cert. denied*, 141 S. Ct. 1510 (2021).

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[13] Comment of the U.S. Dep't of Justice and Fed. Trade Comm'n, FERC Docket No. RM21-17-000 (Aug. 17, 2022), https://www.justice.gov/jmd/media/1237951/dl?inline.

development of transmission facilities—including competition from independent, transmission-only companies—benefits electricity consumers.

II. The Bill

S.S.B. 1113 proposes to give incumbent electric transmission owners an exclusive ROFR for upgrades to the power grid approved for construction in a federally registered planning authority transmission plan when the new transmission facilities connect to the incumbent's existing lines.[14]

The enforcement of a similar statute, Iowa Code § 478.16 (2020), has been temporarily enjoined after a finding plaintiffs were likely to succeed in showing defects in its enactment under the Iowa Constitution.[15]

The Bill is similar to Iowa Code § 478.16, but among the few differences, the Bill seeks to broaden the definition of "incumbent electric transmission owner" to include out-of-state firms that own transmission facilities in Iowa.[16] It also adds a requirement that the incumbent firm prove its use of a competitive bidding process for subcontractors.[17] And it clarifies the scope of authorities assigned to Iowa's consumer advocate in monitoring the costs of new construction.[18]

But the ROFR provisions otherwise remain. The Bill still permits incumbent firms to bypass competitive bidding for new transmission lines in the state,[19] thereby eliminating competition from firms that could offer lower prices, greater innovation, and superior terms to Iowa's utility customers.

III. Discussion

The Division urges the Iowa legislature to consider whether the ROFR provisions in S.S.B. 1113 would harm consumers by denying them the benefits of robust competition, especially given the critical energy infrastructure needs facing the country. By protecting incumbents from competition, the Bill creates risks for increased costs, reduced quality, and less reliable transmission infrastructure at a moment when the President has declared a national energy emergency.

By restricting the construction of new power grid infrastructure to incumbent electrical transmission owners, the Bill can harm consumers by reducing or eliminating competition. The Bill turns a "preference for further investment in Iowa transmission infrastructure by electric transmission owners"[20] into a legal grant that shields incumbents from competition. In some cases, incumbent operators will be best positioned to deliver high quality, cost-effective infrastructure projects quickly. But even in such circumstances the threat of competitive pressure

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[14] S.S.B. 1113 § 1.
[15] *See LS Power Midcontinent, LLC v. State*, 988 N.W.2d 316, 338 (Iowa 2023).
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from potential rivals will incentivize better outcomes like lower prices for consumers and more robust and innovative project designs.[21] In other cases, non-incumbent firms may offer lower costs, and better project designs, and they should be allowed to compete on the basis of the better value they offer.[22]

Harms resulting from the loss of competition are illustrated by previous experiences in numerous energy markets around the country. Conversely, these experiences also show how competition can lead to better outcomes and lower prices. Consider just a few examples:

- *PJM's Artificial Island Project*: PJM initiated this project to improve performance of the bulk electric system in the Artificial Island area in Southern New Jersey, which is the site of three nuclear reactors.[23] In 2013, PJM received 26 proposals from seven sponsors reflecting a diverse range of technologies, with cost estimates ranging from $100 million to $1.55 billion.[24] In 2015, after PJM permitted supplementary proposals, non-incumbent LS Power was awarded the project at a total cost of $280 million, including certain work to be shared with the incumbent operator Public Service Electric & Gas (PSE&G).[25] PSE&G's own proposals for the project reflected projected costs ranging from $692 million to $1.173 billion,[26] meaning that the incumbent's lowest-cost proposal was more than twice as expensive as the estimated total cost of the approved project. The competition from non-incumbents resulted in savings of at least $412 million to $893 million.

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[24] *Id.* tbl.2.1, at 12-13.

[25] PJM Interconnection, L.L.C., *Transmission Expansion Advisory Committee (TEAC) Artificial Island Recommendations to the PJM Board* at 5-7; Johnson, Tom, *Plan for high voltage power line between Del. and N.J. moving ahead*, WHYY (Apr. 7, 2017), https://whyy.org/articles/pjms-high-voltage-plan-to-enhance-power-grid-back-on-track.

[26] PJM Interconnection, L.L.C., *Artificial Island Project Recommendation White Paper*, tbl.2.1 at 12-13 (July 29, 2015), https://www.pjm.com/~/media/committees-groups/committees/teac/postings/artificial-island-projectrecommendation.ashx.

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U.S. Department of Justice

Antitrust Division

Office of the Assistant Attorney General

Washington, DC 20530

March 24, 2025

The Honorable Henry Stone
Iowa House of Representatives
Iowa State Capitol
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S.S.B. 1113 would establish a no-bid process in Iowa for incumbent electrical transmission owners to construct new power grid infrastructure. In particular, the Bill would grant incumbents a right of first refusal ("ROFR") to develop new transmission projects before non-incumbents can offer alternative proposals. The Division is concerned that these restrictions would foreclose competition to develop and build electric transmission and thereby potentially raise prices and lower the quality of service for electricity consumers.

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- *Hartburg-Sabine Project*: In 2018, the Midcontinent Independent System Operator (MISO) issued a request for proposals for the construction of a 500 kV transmission line and related substation facilities in Orange and Newton counties in East Texas.[30] After considering 12 competing proposals,[31] MISO selected NextEra Energy Transmission Midwest, LLC because its proposal "provid[ed] the greatest overall value by offering an outstanding combination of low cost, robust transmission and substation design, and strength across all evaluation criteria," and noted that "NextEra's proposal reflected thorough knowledge and substantial effort in proposal development" compared to the other proposals.[32] In May 2019, after MISO had selected NextEra's bid for the project, the Texas legislature enacted S.B. 1938, which barred companies from competing for new projects in Texas unless they already owned the facilities to which they would connect.[33] The practical effect of the law was to reject the winning proposal and grant the project instead to the local incumbent. In 2022, the Court of Appeals for the Fifth Circuit sided with NextEra in striking down the law for violating the dormant Commerce Clause of the Constitution.[34] The Department of Justice responded to the U.S. Supreme Court's call for the view of the Solicitor General with a brief[35] defending the Fifth Circuit's decision and recommending against granting certiorari. The Supreme Court did not grant certiorari.[36]

These lessons bear on our analysis of the Bill, which effectively prevents new entrants from competing with incumbents in the construction of new transmission infrastructure. Open competitive processes for the projects discussed above resulted in a significant number of bids from incumbent and nonincumbent competitors. In these cases, the nonincumbents won. And even in other cases where incumbents have won, consumers benefited, because incumbents tend to make more competitive proposals when they face competition. This is because competition for

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[27] New York Independent System Operator, Inc., *Western New York Public Policy Transmission Planning Report* at 3, 15 (Oct. 17, 2017), https://www.nyiso.com/documents/20142/2892590/Western-New-York-PublicPolicy-Transmission-Planning-Report.pdf/d3f62964-2e2d-588c-2da4-9aa33bb5470b?t=1541702788476.

[28] *Id.* at 4, 21.

[29] *Id.* at 78, tbl.4.1 at 74.

[30] *NextEra Energy Cap. Holdings, Inc. v. Walker*, 2020 WL 3580149 at *3 (W.D. Tex. Feb. 26, 2020).

[31] Selection Report: Hartburg-Sabine Junction 500 kV Competitive Transmission Project, MISO (Nov. 27, 2018), *available at* https://cdn.misoenergy.org/Hartburg-Sabine%20Junction%20500%20kV%20Selection%20Report296754.pdf.

[32] *See id.* at § 3.

[33] *NextEra Energy Cap. Holdings, Inc. v. Lake*, 48 F.4th 306, 314 (5th Cir. 2022).

[34] *Id.*

[35] Brief for the United States, *Lake v. NextEra Energy Capital Holdings, Inc.*, 144 S. Ct. 485 (2023), https://www.justice.gov/osg/media/1323166/dl (cert. denied).

[36] *Lake v. NextEra Energy Capital Holdings, Inc.*, 144 S. Ct. 485 (2023).

the construction of transmission facilities creates incentives for rival transmission developers to minimize costs while investing in innovation and more efficient designs—incentives that are not present when construction rights are exclusive.

Moreover, lack of competition in this market has the potential to cause harm at a substantial scale. For example, in December 2024, a large transmission project was approved to run through Iowa with a buildout cost of nearly $3 billion in the state.[37] Competition will help ensure such buildouts produce "affordable and reliable" energy infrastructure during the current national energy emergency.

The Division notes that many state electric markets operate without restrictions like the proposed ROFR law.[38] To the extent legitimate and well-founded safety or public welfare concerns underlie S.S.B. 1113, the Division urges Iowa to consider whether it can achieve those considerations through mechanisms that do not unduly restrict competition to develop transmission facilities in Iowa.

We appreciate the opportunity to present our views.[39] Please do not hesitate to contact us if we may provide additional assistance regarding this or any other matter.

Sincerely,

Abigail Slater

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Abigail Slater
Assistant Attorney General

[37] Olivia Cohen, The Gazette, *ITC Midwest moves forward with Upper Midwest's first 765-kV transmission line* (Mar. 8, 2025), *available at* https://www.thegazette.com/energy/itc-midwest-moves-forward-with-upper-midwests-first-765-kv-transmission-line.

[38] *Right of First Refusal for Electric Transmission*, National Conference of State Legislatures (Dec. 9, 2024), *available at* https://www.ncsl.org/energy/right-of-first-refusal-for-electric-transmission.

[39] Please feel free to contact the staff if you have questions about these comments, or if new questions arise as Iowa considers these issues: Garrett Windle (garrett.windle@usdoj.gov), Competition Policy & Advocacy Section, Antitrust Division, U.S. Department of Justice, Erica Mintzer (erica.mintzer@usdoj.gov), Competition Policy & Advocacy Section, Antitrust Division, U.S. Department of Justice, Matthew Mandelberg (matthew.mandelberg@usdoj.gov), Appellate Section, Antitrust Division, U.S. Department of Justice, and J. Chandra Mazumdar (chan.mazumdar@usdoj.gov), Transportation, Energy, & Agriculture Section, Antitrust Division, U.S. Department of Justice.

U.S. Department of Justice

Antitrust Division

Office of the Assistant Attorney General *Washington, DC 20530*

March 24, 2025

The Honorable Jesse Green
Iowa Senate
Iowa State Capitol
1007 E. Grand Ave.
Des Moines, IA 50319

Dear Senator Green:

The Antitrust Division of the U.S. Department of Justice (the "Division") appreciates your invitation[1] to comment on Iowa Senate Study Bill 1113 ("S.S.B. 1113" or "the Bill").[2] We are sending an identical response to the other representative who joined your letter.

S.S.B. 1113 would establish a no-bid process in Iowa for incumbent electrical transmission owners to construct new power grid infrastructure. In particular, the Bill would grant incumbents a right of first refusal ("ROFR") to develop new transmission projects before non-incumbents can offer alternative proposals. The Division is concerned that these restrictions would foreclose competition to develop and build electric transmission and thereby potentially raise prices and lower the quality of service for electricity consumers.

I. Interest of the Division

On January 20, 2025, President Donald Trump declared a National Energy Emergency.[3] The President's Executive Order highlights the need to achieve "a reliable, diversified, and affordable supply of energy" and to address "the high energy prices that devastate Americans, particularly those living on low- and fixed-incomes."[4]

President Trump's Executive Order reflects a federal policy of prioritizing the delivery of energy infrastructure[5] while ensuring "an affordable and reliable domestic supply of energy" as critical to the "national and economic security" of the country.[6] This pivotal moment for American energy infrastructure reinforces the importance of promoting competition in the

[1] Letter from Henry Stone, State Rep., and Jesse Green, State Sen., Iowa Legislature, to Karina Lubell, Chief, Competition Pol'y & Advocacy Sec., Antitrust Div., U.S. Dep't. of Just. (Mar. 4, 2025).
[2] S.S.B. 1113, 91st Gen. Ass. (Iowa 2025).
[3] Exec. Order No. 14,156, 80 Fed. Reg. 8439 (Jan. 20, 2025).
[4] *Id.* at § 1.
[5] *Id.* at § 3.
[6] *Id.* at § 1.

development of robust domestic energy infrastructure while creating affordable prices for consumers.

Competition is a core organizing principle of the American economy,[7] and vigorous competition in an open marketplace gives consumers the benefits of lower prices, increased access to higher quality goods and services, and greater innovation.[8] The Division promotes competition by bringing cases to enforce the antitrust laws and through competition advocacy efforts that urge federal, state, and local government bodies to make decisions that benefit competition for the benefit of consumers. Those advocacy efforts take the form of written comments on proposed legislation, discussions with regulators, and court filings, among other channels.[9]

The Division has considerable expertise in examining wholesale electricity markets, including through its antitrust enforcement efforts.[10] In addition, the Department of Justice has filed briefs in actions challenging the constitutionality of state ROFR laws.[11] The Division has also provided competition advocacy regarding other ROFR measures to policymakers at the state and federal levels. For example, in 2019, the Division analyzed a similar proposal in Texas, explaining that even where incumbents may be best positioned to build out additional grid infrastructure, state ROFRs and similar legislation would likely "reduce the competitive pressure on such incumbents to develop higher quality, lower cost transmission facilities" to the detriment of consumers.[12] Likewise in 2022, the Division and the Federal Trade Commission jointly urged the Federal Energy Regulatory Commission ("FERC") not to reinstate a federal ROFR policy that the agency abandoned in 2011.[13] Competition in wholesale electricity markets and in the

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[7] *See, e.g.*, *N.C. State Bd. of Dental Exam'rs v. FTC*, 574 U.S. 494, 504 (2015) (referencing "the Nation's commitment to a policy of robust competition"); *Standard Oil Co. v. FTC*, 340 U.S. 231, 248 (1951) ("The heart of our national economic policy long has been faith in the value of competition.").

[8] *See, e.g.*, *Nat'l Soc'y of Prof'l Eng'rs v. United States*, 435 U.S. 679, 695 (1978) (noting that the antitrust laws reflect "a legislative judgment that ultimately competition will produce not only lower prices, but also better goods and services. The assumption that competition is the best method of allocating resources in a free market recognizes that all elements of a bargain—quality, service, safety, and durability—and not just the immediate cost, are favorably affected by the free opportunity to select among alternative offers.").

[9] *Mission*, Antitrust Div., U.S. Dep't of Just., https://www.justice.gov/atr/mission (last updated Sept. 14, 2023).

[10] *See, e.g.*, Competitive Impact Statement, *United States v. Morgan Stanley*, 881 F. Supp. 2d 563, (S.D.N.Y. Sept. 30, 2011) (No. 11-cv-6875), https://www.justice.gov/atr/case-document/file/505056/download; Competitive Impact Statement, *United States v. Keyspan Corp.*, 763 F.Supp.2d 633 (S.D.N.Y. Feb. 23, 2011) (No. 10-cv-1415), https://www.justice.gov/atr/case-document/file/500576/download; Competitive Impact Statement, *United States v. Exelon Corp.*, No. 1:06-cv-1138 (D.D.C. Aug. 10, 2006), https://www.justice.gov/atr/case-document/file/495451/download; Competitive Impact Statement, *United States v. Enova Corp.*, 107 F. Supp. 2d 10 (D.D.C. June 8, 1998) (No. 98-cv-583), https://www.justice.gov/atr/case-document/file/495196/download.

[11] *See, e.g.*, Brief for the United States, *Lake v. NextEra Energy Capital Holdings, Inc.*, 144 S. Ct. 485 (2023), https://www.justice.gov/osg/media/1323166/dl (cert. denied); Brief for the United States, *NextEra Energy Capital Holdings, Inc. v. Lake*, 48 F.4th 306 (5th Cir. 2022) (No. 20-50160), https://www.justice.gov/atr/case-document/file/1267011/dl; ; Brief for the United States, *LSP Transmission Holdings, LLC v. Lange*, 329 F. Supp. 3d 695 (8th Cir. 2018), https://www.justice.gov/atr/case-document/file/1102866/dl; Brief for the United States of America as Amicus in Support of Neither Party, Vacatur, and Remand, *LSP Transmission v. Lange*, 954 F.3d 1018 (8th Cir. 2020), *cert. denied*, 141 S. Ct. 1510 (2021).

[12] Letter from Daniel Haar, Acting Chief, Competition Pol'y & Advoc. Sec., Antitrust Div. to Rep. Travis Clardy, Tex. House of Reps. (Apr. 19, 2019), https://www.justice.gov/atr/page/file/1155881/dl?inline=.

[13] Comment of the U.S. Dep't of Justice and Fed. Trade Comm'n, FERC Docket No. RM21-17-000 (Aug. 17, 2022), https://www.justice.gov/jmd/media/1237951/dl?inline.

development of transmission facilities—including competition from independent, transmission-only companies—benefits electricity consumers.

II. The Bill

S.S.B. 1113 proposes to give incumbent electric transmission owners an exclusive ROFR for upgrades to the power grid approved for construction in a federally registered planning authority transmission plan when the new transmission facilities connect to the incumbent's existing lines.[14]

The enforcement of a similar statute, Iowa Code § 478.16 (2020), has been temporarily enjoined after a finding plaintiffs were likely to succeed in showing defects in its enactment under the Iowa Constitution.[15]

The Bill is similar to Iowa Code § 478.16, but among the few differences, the Bill seeks to broaden the definition of "incumbent electric transmission owner" to include out-of-state firms that own transmission facilities in Iowa.[16] It also adds a requirement that the incumbent firm prove its use of a competitive bidding process for subcontractors.[17] And it clarifies the scope of authorities assigned to Iowa's consumer advocate in monitoring the costs of new construction.[18]

But the ROFR provisions otherwise remain. The Bill still permits incumbent firms to bypass competitive bidding for new transmission lines in the state,[19] thereby eliminating competition from firms that could offer lower prices, greater innovation, and superior terms to Iowa's utility customers.

III. Discussion

The Division urges the Iowa legislature to consider whether the ROFR provisions in S.S.B. 1113 would harm consumers by denying them the benefits of robust competition, especially given the critical energy infrastructure needs facing the country. By protecting incumbents from competition, the Bill creates risks for increased costs, reduced quality, and less reliable transmission infrastructure at a moment when the President has declared a national energy emergency.

By restricting the construction of new power grid infrastructure to incumbent electrical transmission owners, the Bill can harm consumers by reducing or eliminating competition. The Bill turns a "preference for further investment in Iowa transmission infrastructure by electric transmission owners"[20] into a legal grant that shields incumbents from competition. In some cases, incumbent operators will be best positioned to deliver high quality, cost-effective infrastructure projects quickly. But even in such circumstances the threat of competitive pressure

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[14] S.S.B. 1113 § 1.
[15] *See LS Power Midcontinent, LLC v. State*, 988 N.W.2d 316, 338 (Iowa 2023).
[16] S.S.B. 1113 § 2(b)
[17] S.S.B. 1113 § 3(b).
[18] S.S.B. 1113 § 3(c).
[19] S.S.B. 1113 § 3(a).
[20] S.S.B. 1113 § 1(1).

from potential rivals will incentivize better outcomes like lower prices for consumers and more robust and innovative project designs.[21] In other cases, non-incumbent firms may offer lower costs, and better project designs, and they should be allowed to compete on the basis of the better value they offer.[22]

Harms resulting from the loss of competition are illustrated by previous experiences in numerous energy markets around the country. Conversely, these experiences also show how competition can lead to better outcomes and lower prices. Consider just a few examples:

- *PJM's Artificial Island Project*: PJM initiated this project to improve performance of the bulk electric system in the Artificial Island area in Southern New Jersey, which is the site of three nuclear reactors.[23] In 2013, PJM received 26 proposals from seven sponsors reflecting a diverse range of technologies, with cost estimates ranging from $100 million to $1.55 billion.[24] In 2015, after PJM permitted supplementary proposals, non-incumbent LS Power was awarded the project at a total cost of $280 million, including certain work to be shared with the incumbent operator Public Service Electric & Gas (PSE&G).[25] PSE&G's own proposals for the project reflected projected costs ranging from $692 million to $1.173 billion,[26] meaning that the incumbent's lowest-cost proposal was more than twice as expensive as the estimated total cost of the approved project. The competition from non-incumbents resulted in savings of at least $412 million to $893 million.

- *NYISO's Western New York Public Policy Transmission Project*: In 2015, the New York Independent System Operator ("NYISO") sought proposals to relieve transmission congestion in Western New York, including by providing access to energy from the

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[21] Ari Peskoe, *Replacing the Utility Transmission Syndicate's Control*, 44.3 Energy L. J. 547, 553-54 (2023) ("without competitive pressures, monopolists have little reason to innovate because they are shielded from new entrants with different business models or technologies.[. . .] With a conservative industry culture and lack of financial incentives [investor-owned utilities] have little reason to deploy technologies or employ operational and planning practices that improve transmission efficiency [. . .] despite potential consumer benefits.").

[22] *See, e.g.*, Ari Peskoe, *Profiteering Hampers U.S. Grid Expansion*, IEEE Spectrum (Feb. 22, 2024), *available at* https://spectrum.ieee.org/transmission-expansion; *see also NextEra Energy Capital Holdings, Inc. v. Lake*, 48 F.4th 306, 315 (5th Cir. 2022) ("[NextEra's] proposal offered 'an outstanding combination of low cost and high value, with best-in-class cost and design, best-in-class project implementation plans, and top-tier plans for operation and maintenance [which would] reap 'substantial benefits to ratepayers over time.'").

[23] PJM Interconnection, L.L.C., *Artificial Island Project Recommendation White Paper* (July 29, 2015), https://www.pjm.com/-/media/DotCom/committees-groups/committees/teac/postings/artificial-island-project-recommendation.ashx.

[24] *Id.* tbl.2.1, at 12-13.

[25] PJM Interconnection, L.L.C., *Transmission Expansion Advisory Committee (TEAC) Artificial Island Recommendations to the PJM Board* at 5-7; Johnson, Tom, *Plan for high voltage power line between Del. and N.J. moving ahead*, WHYY (Apr. 7, 2017), https://whyy.org/articles/pjms-high-voltage-plan-to-enhance-power-grid-back-on-track.

[26] PJM Interconnection, L.L.C., *Artificial Island Project Recommendation White Paper*, tbl.2.1 at 12-13 (July 29, 2015), https://www.pjm.com/~/media/committees-groups/committees/teac/postings/artificial-island-projectrecommendation.ashx.

Niagara hydroelectric facility and imports from Ontario.[27] In 2017, after receiving ten viable proposals, NYISO selected a proposal from NextEra Energy Transmission as the winner, noting that it was "both the more efficient and more cost-effective transmission solution" to address the identified need.[28] That NextEra project cost $181 million, while the lowest-cost proposal from an incumbent—a joint proposal from the New York Power Authority and New York State Electric & Gas Corporation—was $222 million.[29] NextEra's project thus represented a 22 percent savings over the incumbents' proposal.

- *Hartburg-Sabine Project*: In 2018, the Midcontinent Independent System Operator (MISO) issued a request for proposals for the construction of a 500 kV transmission line and related substation facilities in Orange and Newton counties in East Texas.[30] After considering 12 competing proposals,[31] MISO selected NextEra Energy Transmission Midwest, LLC because its proposal "provid[ed] the greatest overall value by offering an outstanding combination of low cost, robust transmission and substation design, and strength across all evaluation criteria," and noted that "NextEra's proposal reflected thorough knowledge and substantial effort in proposal development" compared to the other proposals.[32] In May 2019, after MISO had selected NextEra's bid for the project, the Texas legislature enacted S.B. 1938, which barred companies from competing for new projects in Texas unless they already owned the facilities to which they would connect.[33] The practical effect of the law was to reject the winning proposal and grant the project instead to the local incumbent. In 2022, the Court of Appeals for the Fifth Circuit sided with NextEra in striking down the law for violating the dormant Commerce Clause of the Constitution.[34] The Department of Justice responded to the U.S. Supreme Court's call for the view of the Solicitor General with a brief[35] defending the Fifth Circuit's decision and recommending against granting certiorari. The Supreme Court did not grant certiorari.[36]

These lessons bear on our analysis of the Bill, which effectively prevents new entrants from competing with incumbents in the construction of new transmission infrastructure. Open competitive processes for the projects discussed above resulted in a significant number of bids from incumbent and nonincumbent competitors. In these cases, the nonincumbents won. And even in other cases where incumbents have won, consumers benefited, because incumbents tend to make more competitive proposals when they face competition. This is because competition for

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[27] New York Independent System Operator, Inc., *Western New York Public Policy Transmission Planning Report* at 3, 15 (Oct. 17, 2017), https://www.nyiso.com/documents/20142/2892590/Western-New-York-PublicPolicy-Transmission-Planning-Report.pdf/d3f62964-2e2d-588c-2da4-9aa33bb5470b?t=1541702788476.
[28] *Id.* at 4, 21.
[29] *Id.* at 78, tbl.4.1 at 74.
[30] *NextEra Energy Cap. Holdings, Inc. v. Walker*, 2020 WL 3580149 at *3 (W.D. Tex. Feb. 26, 2020).
[31] Selection Report: Hartburg-Sabine Junction 500 kV Competitive Transmission Project, MISO (Nov. 27, 2018), *available at* https://cdn.misoenergy.org/Hartburg-Sabine%20Junction%20500%20kV%20Selection%20Report296754.pdf.
[32] *See id.* at § 3.
[33] *NextEra Energy Cap. Holdings, Inc. v. Lake*, 48 F.4th 306, 314 (5th Cir. 2022).
[34] *Id.*
[35] Brief for the United States, *Lake v. NextEra Energy Capital Holdings, Inc.*, 144 S. Ct. 485 (2023), https://www.justice.gov/osg/media/1323166/dl (cert. denied).
[36] *Lake v. NextEra Energy Capital Holdings, Inc.*, 144 S. Ct. 485 (2023).

the construction of transmission facilities creates incentives for rival transmission developers to minimize costs while investing in innovation and more efficient designs—incentives that are not present when construction rights are exclusive.

Moreover, lack of competition in this market has the potential to cause harm at a substantial scale. For example, in December 2024, a large transmission project was approved to run through Iowa with a buildout cost of nearly $3 billion in the state.[37] Competition will help ensure such buildouts produce "affordable and reliable" energy infrastructure during the current national energy emergency.

The Division notes that many state electric markets operate without restrictions like the proposed ROFR law.[38] To the extent legitimate and well-founded safety or public welfare concerns underlie S.S.B. 1113, the Division urges Iowa to consider whether it can achieve those considerations through mechanisms that do not unduly restrict competition to develop transmission facilities in Iowa.

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Abigail Slater
Assistant Attorney General

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[37] Olivia Cohen, The Gazette, *ITC Midwest moves forward with Upper Midwest's first 765-kV transmission line* (Mar. 8, 2025), *available at* https://www.thegazette.com/energy/itc-midwest-moves-forward-with-upper-midwests-first-765-kv-transmission-line.

[38] *Right of First Refusal for Electric Transmission*, National Conference of State Legislatures (Dec. 9, 2024), *available at* https://www.ncsl.org/energy/right-of-first-refusal-for-electric-transmission.

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