



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 invitation¹ 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 infrastructure⁵ 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

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.”).

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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

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

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.'").

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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>.

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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 brief³⁵ 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

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-Public-Policy-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).

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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

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.



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I. Interest of the Division

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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

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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 brief³⁵ 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

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

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.