



Innovation and Investment in Energy

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**LSPOWER.COM**

November 3, 2021

Michigan State Representative Bellino  
N-696 House Office Building  
Lansing, Michigan 48909

Re: Michigan Senate Bill 103

Dear Chairman Bellino and members of the House Energy Committee:

Founded in 1990, LS Power is a development, investment, and operating company focused on the power and energy infrastructure sector. Since our inception, we have developed, constructed, managed, and acquired more than 47,000 MW of competitive power generation and 660 miles of transmission infrastructure, for which we have raised over \$47 billion in debt and equity financing to invest in North American infrastructure. For decades, LS Power has been at the leading edge of the industry's evolution, often introducing or commercializing new technologies and developing new markets. Today is no different.

To date, we have competed and been selected to build transmission projects by a majority of the Independent System Operators across the United States. This includes winning the first competitive solicitation in both PJM Interconnection ("PJM") and Midcontinent Independent System Operator ("MISO"), which together serve more than 100 million people across 25 states, including Michigan. As a St. Louis-based energy developer, we would like to invest in Michigan with quality transmission development, construction and operation that offers siting and landowner excellence, technical innovation, and certainty for consumer savings. Senate Bill 103 prevents competitive transmission development, is not in the public interest, and we write to you to provide background on this bill.

There can be no dispute that, for decades, the nation's energy public policy has been focused on introducing and fostering competition in order to lower prices for consumers. The U.S. Supreme Court concluded that the "history of Part II of the Federal Power Act indicates an

overriding policy of maintaining competition to the maximum extent possible consistent with the public interest.”<sup>1</sup>

The legislation would establish what is referred to as a "right of first refusal" for regionally cost allocated transmission projects and practicably provide them with an exclusive right to build the entirety of future transmission in Michigan. Most states in the United States do not have these state right of first refusal laws. In exchange for Michigan granting this proposed exclusive and lucrative right to incumbent utilities now under the threat of competition, Michigan citizens and Michigan industrial users get nothing in return, but rather, are restricted to only one alternative. As the New Mexico Fiscal Impact Report noted the problem with a similar NM bill that ITC opposed in New Mexico (but now supports in their own backyard), stating:

[b]y providing a utility the right of first refusal, the construction of transmission facilities might cost more than if the facilities were built and operated by another entity able to do so more cheaply, provided the entity met minimum standards.

Certain incumbent transmission owners seek this change because the Federal Energy Regulatory Commission issued an order in 2011, Order No. 1000, which determined that generally, transmission that is regionally paid for by the consumers of two or more utilities should be competitively procured. FERC was worried about the very cost issue raised by the Fiscal Impact Report.

FERC concluded that rights of first refusal (“ROFR”) are inconsistent with just and reasonable transmission rates and are not in the best interest of consumers. FERC was not alone in this conclusion, and the Federal Trade Commission, state public service commissions from around the country and large industrial consumers, all weighed in at FERC strongly supporting competitive pressures. The Federal Trade Commission, for example, stated:

The FTC concurs with FERC's proposed elimination of the ROFR. Consumers benefit from market competition that often takes the form of new entry. . . Objections to elimination of the ROFR,, do not appear to be well-founded.

This competition policy was upheld unanimously by key appellate courts, and the United States Supreme Court denied review. In the competition to-date across the country, the results have been 22 to 42 percent cost savings as a result of competition, and much innovation has resulted from the competitive processes. There are regionally cost allocated projects in the hundreds of millions of dollars that MISO may approve as soon as March 2022 that this Michigan legislation attempts to pre-empt competitive pressures for.

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<sup>1</sup> *Otter Tail Power Co. vs. United States*, 410 U.S. 366, 374 (1973).

SB 103 seeks to undermine these important consumer goals, but it is unclear what public interest "problem" the legislation seeks to fix. Indeed, the provision would restrict the options available to consumers in Michigan, granting a perpetual franchise to incumbent transmission owners. The U.S. Department of Justice filed a Statement of Interest in a similar anti-competitive bill passed in Minnesota. A copy of its Statement of Interest is attached.

The special purpose legislation also does nothing to get critical energy infrastructure built in Michigan. Michigan has some of the fastest growing transmission costs in the United States today.

We ask that you ask: How does this legislation help the consumers of Michigan? Ask: why competition for transmission infrastructure is bad for Michigan ratepayers? Ask: why does Michigan need, or want, this special interest legislation? We believe that answering these simple questions will lead you to but one conclusion: rejection of this special interest legislation is warranted and in the best interest of Michigan.

With much respect,

Sharon K. Segner

Vice President

**Attachment: U.S. Department of Justice Statement of Interest**