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Senate Bill 103 (as enrolled)  
Sponsor: Senator Wayne A. Schmidt  
Senate Committee: Energy and Technology  
House Committee: Energy

Date Completed: 12-14-21

### **RATIONALE**

The Federal Energy Regulatory Commission (FERC) regulates the transmission of electricity throughout most of the United States, except for certain transmission systems that are not interconnected with the rest of the country. In 2011, FERC issued Order 1000 with the intention of increasing competition in the transmission planning process. Among other things, Order 1000 required transmission providers to remove from FERC-approved tariffs and agreements a Federal right of first refusal (ROFR) for a transmission facility selected in a regional transmission plan for purposes of cost allocation. In compliance with the Order, the Midcontinent Independent System Operator (MISO), the regional transmission organization that operates and plans most of the electric transmission system in Michigan and across 14 other states, implemented a competitive developer selection process for certain projects whose costs can be shared across broader regions of its footprint (see **BACKGROUND**).

Since FERC prohibited the Federal ROFR and MISO implemented the competitive developer selection process, there have been no projects in Michigan that qualify for that process. There are concerns that the competitive developer selection process deters stakeholders' interest in and development of new interstate transmission projects. As allowed by FERC in Order 1000, six states in the MISO footprint have opted out of the competitive developer selection process by enacting a ROFR for incumbent utilities (i.e., utilities that already own or operate transmission lines in a state), which establishes the right of an incumbent utility to construct a new facility in that state when MISO approves a project that qualifies for the process. Accordingly, it has been suggested that a ROFR be enacted in the State for incumbent utilities.

### **CONTENT**

**The bill would enact the "Transmission Infrastructure Planning Act" to do the following:**

- **Specify that an incumbent electric transmission company would have the right to construct, own, operate, maintain, and control a regionally cost-shared transmission line if the line or its construction were included in a plan adopted or otherwise approved by a recognized planning authority for the incumbent electric transmission company and the line would interconnect to facilities, owned, or that would be owned, by that company.**
- **Specify that right to construct, own, operate, maintain, and control a regionally cost shared transmission line that would interconnect to facilities owned by two or more incumbent electric transmission companies would belong individually and equally to each incumbent electric transmission company, unless otherwise agreed to in writing by each company.**
- **Specify that certain cost accountability provisions overseen by the Michigan Public Service Commission (MPSC) would apply to an incumbent electric transmission**

**company, or companies if there was more than one owner of the transmission line, that had the rights described above.**

- Specify that the bill would not alter or limit the right of a person to construct, own, operate, maintain, or control an electric transmission line in the State that was not a regionally cost-shared transmission line.**
- Specify that the Act would not modify or supersede certain authorities, rights, and requirements.**

### Definitions

Under the bill, "incumbent electric transmission company" would mean an electric utility, affiliated transmission company, or independent transmission company that owns a high-voltage transmission line in the State on or after the bill's effective date. "High voltage transmission line" would mean a line used to transmit electricity and all associated structures, equipment, facilities, and other personal property necessary to transfer electricity over the line at a system bulk supply voltage of 100 kilovolts or more.

"Electric utility" would mean any of the following:

- An electric utility as that term is defined in Section 10h of Public Act 3 of 1939.
- A municipal electric utility system as that term is defined in Section 4 of the Michigan Energy Employment Act.
- A cooperative electric utility.
- A joint agency acting on its own behalf or on behalf of one or more of its member municipal electric utility systems.

(Under Public Act 3 of 1939, "electric utility" means that term as defined in the Electric Transmission Line Certification Act: a person, partnership, corporation, association, or other legal entity whose transmission or distribution of electricity the Michigan Public Service Commission (MPSC) regulates. Section 4 of the Michigan Energy Employment Act defines "municipal electric utility system" as a system owned by a municipality or combination of municipalities to furnish heat, power, and light.)

"Joint agency" would mean that term as defined in Section 3 of the Michigan Energy Employment Act: a public body corporate and politic consisting of a combination of 2 or more municipalities, authorities, or other public bodies.

"Affiliated transmission company" would mean that term as defined in Section 2 of the Electric Transmission Line Certification Act: a person, partnership, corporation, association, or other legal entity, or its successors or assigns, which has fully satisfied the requirements to join a regional transmission organization as determined by Federal Energy Regulatory Commission, is engaged in the State in the transmission of electricity using facilities it owns that were transferred to the entity by an electric utility that was engaged in the generation, transmission, and distribution of electricity in the State on December 31, 2000, and is not independent of an electric utility or an affiliate of the utility, generating or distributing electricity to retail customers in the State.

"Independent transmission company" would mean that term as defined in Section 2 of the Electric Transmission Line Certification Act: a person, partnership, corporation, association, or other legal entity, or its successors or assigns, engaged in the State in the transmission of electricity using facilities it owns that have been divested to the entity by an electric utility that was engaged in the generation, transmission, and distribution of electricity in the State on December 31, 2000, and is independent of an electric utility or an affiliate of the utility, generating or distributing electricity to retail customers in the State.

"Recognized electric planning authority" would mean a person recognized by FERC or the North American Reliability Corporation as authorized under Federal law to approve a high-voltage transmission line for construction by an incumbent electric transmission company, including a

regional transmission organization. "Regional transmission organization" would mean a person that meets all the following:

- Possesses characteristics required under 18 CFR 35.34(j).
- Performs functions required under 18 CFR 35.34(k).
- Accommodates an open architecture as required under 18 CFR 35.34(l).
- Is recognized by FERC as the organization with oversight responsibility for a region that includes the service territory of an incumbent electric transmission company.

(Generally, under 18 CFR 35.34(j), (k), and (l), a regional transmission organization must demonstrate independence from any market participant, must perform certain functions, such as tariff administration, tariff design, and congestion management, and may not have any provision that limits its capability to evolve in ways that would improve its efficiency.)

"Cooperative electric utility" would mean either an electric cooperative organized as a cooperative under Section 98 to 109 of Public Act 327 of 1931 or a cooperative cooperation in the business of generating or transmitting electricity. (Public Act 327 of 1931 provides for the organization, regulation, and classification of corporations in Michigan. Section 98 of Public Act 327 concerns the applicability of the Act to corporations limiting dividends or voting rights and conducting not more than 50% of business with nonstockholders or nonmembers.)

"Regionally cost-shared transmission line" would mean a high-voltage transmission line that is eligible for regional cost sharing and is not subject to a right of first refusal in accordance with the tariff of a recognized electric planning authority.

#### Incumbent Electric Transmission Company Rights

Under the bill, an incumbent electric transmission company would have the right to construct, own, operate, maintain, and control a regionally cost-shared transmission line if the regionally cost-shared transmission line or its construction were included in a plan adopted or otherwise approved by a recognized electric planning authority for the incumbent electric transmission company and the regionally cost-shared transmission line would interconnect to facilities owned, or that would be owned, by that incumbent electric transmission company. The right to construct, own, operate, maintain, and control a regionally cost-shared transmission line that would interconnect to facilities owned by two or more incumbent electric transmission companies would belong individually and equally to each incumbent electric transmission company, unless otherwise agreed to in writing by each incumbent electric transmission company.

The bill specifies that, if an incumbent transmission company, or companies if there were more than one owner of the transmission line, had the right to construct, own, operate, maintain, and control a regionally cost-shared transmission line in accordance with the bill, all the following cost accountability provisions would apply:

- Within 90 days after approval of the regionally cost-shared transmission line by the recognized electric planning authority, an incumbent electric transmission company, or companies if there were more than one owner, that owned a connecting electric transmission facility would have to notify the MPSC indicating whether the incumbent electric transmission company or companies intended to construct the regionally cost-shared transmission line.
- Within 180 days after approval of the regionally cost-shared transmission line by the recognized electric planning authority, the incumbent electric transmission company or companies would have to hold a meeting with the MPSC to provide detailed information and to answer any questions about the regionally cost-shared transmission line and provide a report to the MPSC that included an estimate of the cost to construct the regionally cost-shared transmission line and documentation that the cost for the regionally cost-shared transmission line was the result of competitively bid engineering, procurement, and construction contracts.
- Until construction of the regionally cost-shared transmission line was complete, the incumbent electric transmission company would have to provide a quarterly report to the MPSC that

included an updated estimate of the cost to construct the regionally cost-shared transmission line and an explanation of changes in the cost estimate from the previous cost estimate.

In addition to the cost accountability provisions above, the bill specifies that if the MPSC filed a complaint at FERC to challenge the costs incurred by the incumbent electric transmission company to construct the regionally cost-shared transmission line, then the incumbent electric transmission company would have to reimburse the MPSC's litigation costs as follows:

- If the MPSC's complaint were granted, the incumbent electric transmission company or companies would have to reimburse the MPSC 100% of its litigation costs, not to exceed \$250,000.
- If the MPSC's complaint were denied, the incumbent electric transmission company or companies would have to reimburse the MPSC 25% of its litigation costs, not to exceed \$250,000.

The bill specifies that the provisions above would not alter or limit the right of a person to construct, own, operate, maintain, or control an electric transmission line in the State that was not a regionally cost-shared transmission line and that these provisions would control any conflict between them and any other law of the State.

#### Limitations of the Act

The bill specifies that it would not do any of the following:

- Confer the power of eminent domain.
- Modify the authority of the MPSC under Public Act 3 of 1939.
- Modify the rights of property owners under the Uniform Condemnation Procedures Act.
- Modify the requirements, rights, and obligations of an incumbent electric transmission company under the Electric Transmission Line Certification Act.
- Modify or supersede the requirements, rights, and obligations of an affiliated transmission company, independent transmission company, or electric utility under any contract to which the affiliated transmission company, independent transmission company, or electric utility was a party, including any service agreement or other contract that was subject to the jurisdiction of FERC, if the contract related to service over facilities owned or operated, or to be owned or operated, by the affiliated transmission company, independent transmission company, or electric utility.
- Modify or supersede the authority, if any, of FERC or the MPSC to determine the proper classification of transmission and local distribution facilities for any purpose, including assignment of jurisdiction and approval of cost-recovery.
- Grant an independent transmission company or affiliated transmission company the right or the authority to distribute electricity or serve retail electric customers in the State.
- Modify the exclusive authority of electric utilities to own, construct, and operate local distribution facilities.
- Modify or supersede the authority of a municipal electric utility or joint agency to own, construct, and operate transmission lines under any other State law.

(Public Act 3 of 1939 creates the MPSC and provides for its powers and duties. The Uniform Procedures Condemnation Act provides procedures for the condemnation, acquisition, or exercise of eminent domain of real or personal property in the State. The Electric Transmission Line Certification Act requires an electric utility, affiliated transmission company, or independent transmission company to receive a certificate issued by the MPSC before beginning construction of a major transmission line, among other requirements.)

#### **BACKGROUND**

In compliance with FERC Order 1000, MISO implemented a competitive developer selection process for certain projects. The Midcontinent Independent Systems Operator determined that multi-value

projects and market efficiency projects are eligible for the competitive developer selection process. Multi-value projects are regional transmission projects that meet certain reliability and economic value goals in a region as determined by MISO. Market efficiency projects are regional transmission projects that reduce market congestion. These projects can include one or more facilities, such as a segment of high-voltage power lines or a transformer, which are upgraded or constructed according to MISO's FERC approved planning process: 1) upgrades to facilities that an incumbent utility already has constructed are completed by that incumbent utility; 2) if a state has enacted a ROFR, the incumbent utility constructs the new facilities in that state; and 3) any new facility that does not meet either of those circumstances is eligible for the competitive developer selection process.

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

Major automakers like Ford and General Motors recently have pledged to stop sales of new gas and diesel vehicles globally by 2040.<sup>1</sup> Between now and then, the automakers will introduce more electric vehicles into their fleets. This transition from gas and diesel vehicles to electric vehicles will require an increase in electric generation and transmission capacity. Although estimates for these increases vary, there is consensus that stakeholders, such as electric utilities and transmission operators, must make significant investments in the electric grid quickly.

Among other investments in the grid, large transmission projects, like the ones regulated by FERC's Order 1000, will be important. For example, these projects could transfer renewable wind energy generated in Iowa to other states within MISO's regional footprint. However, MISO's competitive developer selection process, which FERC Order 1000 mandated for certain transmission projects whose costs can be shared across broader regions of MISO's footprint, adds significant time to the development of large transmission projects. According to MISO, the competitive developer selection process has four phases: 1) a phase for MISO to generate a request for proposals; 2) a proposal generation and submission phase; 3) an evaluation and selection phase; and 4) a phase for the development of an agreement between MISO and the selected developer; and MISO estimates that this four-phased process takes between 305 to 408 days after the approval of a qualifying project.

The electric grid needs large-scale, expedient improvements, but the competitive developer selection process is onerous and time-consuming. In addition, according to testimony before the Senate Energy and Technology Committee, the competitive developer selection process deters MISO and electric transmission stakeholders from pursuing projects that qualify for it. Enacting a ROFR for incumbent utilities in Michigan would avoid these issues associated with the competitive developer selection process and prepare Michigan for necessary improvements to its electric grid.

### **Supporting Argument**

The increased demand in electricity consumption as a result of the proliferation of electric vehicles coincides with a significant shift in the generation of electricity. Renewable energy resources have increased over the past 20 years, accounting for approximately 20% of total US electricity generation in 2020.<sup>2</sup> According to testimony before the Senate Committee on Energy and Technology, these significant changes to the supply and demand of electricity will require continued collaboration between electric transmission stakeholders. Renewable energy resources are by nature intermittent. Solar power and wind power depend on weather patterns, and efficiently using the electricity generated from renewable energy resources in one area or region requires the capacity to transmit that electricity to another, so that it is consumed and not wasted.

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<sup>1</sup> "6 Automakers and 30 Countries Say They'll Phase Out Gasoline Car Sales", *The New York Times*. Retrieved 11-30-2021.

<sup>2</sup> "Renewable Energy Explained", [www.eia.gov](http://www.eia.gov). Retrieved 11-30-2021.

However, FERC Order 1000 has deterred collaboration in the electric transmission planning process. In the proposal phase of the competitive developer selection process, competition makes projects less transparent. Developers are not interested in sharing information that may make their bids more competitive against other developers. Without this transparency, developers cannot know what to expect from other facilities being developed across a region for the same interconnection project. They cannot collaborate to create the most cost-effective and reliable project the first time. Establishing a ROFR in the State for incumbent utilities would encourage collaboration among electric transmission developers for the benefit of electric transmission grid planning.

### **Opposing Argument**

The Federal Energy Regulatory Commission has fostered competition in the electric generation and transmission sector for many years through its orders. For examples, Order 888 required all public utilities to have an open access, nondiscriminatory transmission tariff (the rates terms, and conditions of transmission services) to allow utilities that did not own transmission facilities to use another utility's transmission facilities at a fair rate, and Order 2000 encouraged utilities with transmission facilities to divest from these facilities because FERC considered the common vertical integration of electric utilities as anti-competitive. These orders came from FERC's mission to assist consumers in obtaining efficient and reliable energy services at a reasonable cost.

In 2011, FERC issued Order 1000 with a continued focus on competition. Order 1000 removed the Federal ROFR from FERC-approved tariffs and agreements, breaking down barriers to electric transmission development by allowing nonincumbent electric utilities (i.e. utilities that do not already own or operate transmission lines in a state) to participate in that development. Without the participation of nonincumbent utilities in the electric transmission development process, incumbent utilities had no incentive to offer competitive prices for projects that could result in cost savings as MISO could award automatically the construction of new facilities in a development project to the incumbent utility. In addition, FERC Order 1000 made the electric transmission development process more transparent by requiring incumbent and nonincumbent utilities to submit proposals for the development of projects. Overriding Order 1000's prohibition on a Federal ROFR would reduce transparency and competition within the electric transmission development process, which FERC has fostered for the benefit of consumers for many years.

**Response:** Removing the prohibition of a ROFR would not prevent nonincumbent utilities from purchasing transmission projects in the State and becoming incumbent utilities. It also would not prevent nonincumbent utilities from partnering with transmission providers on regional transmission projects. In addition, the MPSC would have cost oversight authority for projects awarded through a ROFR. The bill's provisions would protect consumers and continue to allow for competition while making the development of regional electric transmission projects less burdensome.

Legislative Analyst: Tyler VanHuysse

### **FISCAL IMPACT**

The bill would have an indeterminate fiscal impact on the Department of Licensing and Regulatory Affairs and on local units of government.

Fiscal Analyst: Elizabeth Raczkowski

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.