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Testimony from:
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Testimony in Support of SB 119
Committee on Energy, Technology, and Federal Relations
January 21, 2025

Chairman and members of the committee,

My name is Josiah Neeley and I am a Senior Fellow in energy policy with the R Street Institute. R Street is a nonprofit, nonpartisan, public-policy research organization with a mission to engage in policy research and outreach to promote free markets and limited, effective government including in relation to electric utility regulations. This is why we have an interest in SB 119.

This legislation would repeal Montana’s “right of first refusal” (“ROFR”) law for electric transmission projects. What is ROFR and what is the alternative? Under a ROFR system, when a new transmission project is approved, only the incumbent utility is allowed to build, own, and operate that project. By contrast, in areas without ROFR, a competitive bidding process can be held to determine who can build, own, and operate the line.

Repealing ROFR is a good idea for three reasons. First, competition saves consumers money. This is not just common sense, but it also the conclusion reached by the best research on the subject, which finds that competitive bidding reduces the cost of electric transmission projects by 20-30 percent.¹ Given the vast expansion of transmission that is anticipated in the coming years, keeping ROFR could result in billions in higher costs passed on to consumers.

Second, ROFR should be repealed because it is unfair. Here it should be noted that under a competitive bidding system incumbent utilities are free to submit their own bids and may be awarded the right to build and maintain the project. ROFR laws, by contrast, unfairly exclude all but one entity from the right to seek out these projects.

Finally, ROFR should be repealed because it is unconstitutional. The so-called Dormant Commerce clause prohibits states from discriminating against out-of-state businesses. ROFR requirements do just that. The constitutionality of ROFR laws is currently being litigated throughout the nation, and while there is a

¹ Johannes Pfeifenberger, et al., “Cost Savings Offered by Competition in Electric Transmission,” The Brattle Group, December 11, 2019. https://www.brattle.com/wp-content/uploads/2021/05/17805_cost_savings_offered_by_competition_in_electric_transmission.pdf

division among courts, the balance of courts – including in Texas² and Indiana³ - have concluded that ROFR is unconstitutional.

For these reasons, R Street supports SB 119. Thank you for allowing me to speak to you today, and I would be happy to answer any questions.

Thank you,

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² Ethan Howland, “US district court rules Texas transmission law favoring incumbent utilities unconstitutional,” Utility Dive, October 24, 2024. <https://www.utilitydive.com/news/texas-transmission-rofr-law-court-nextera-ls-power/731311/>

³ Jeffrey Tomick, “Judge blocks Indiana law that gave utilities a transmission monopoly,” E&E News, December 11, 2024. <https://www.eenews.net/articles/judge-blocks-indiana-law-that-gave-utilities-a-transmission-monopoly/>