

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Industrial Energy Consumers of America, et al.)	
Complainants,)	
)	
v.)	Docket No. EL22-78-000
)	
Midcontinent Independent System Operator, Inc.)	
Respondent.)	
)	

**STATUS UPDATE AND SUPPLEMENTAL COMMENTS
OF THE CONSUMER ALLIANCE**

On July 22, 2022, multiple entities representing parties that pay ever increasing transmission costs (“the Consumer Alliance”)¹ filed a complaint² with the Federal Energy Regulatory Commission (“FERC” or “Commission”) addressing the harmful effects of state transmission development incumbent preference laws³ on the Commission’s exclusive jurisdiction to set just and reasonable rates for transmission in interstate commerce (“Complaint”). Despite the significant impact on consumers and the importance of a Commission order explaining the scope of the Commission’s jurisdiction to ensure the justness

¹ The Consumer Alliance is comprised of the Industrial Energy Consumers of America (“IECA”), the Coalition of MISO Transmission Customers (“CMTC”), the Wisconsin Industrial Energy Group (“WIEG”), Resale Power Group of Iowa (“RPGI”), the Association of Businesses Advocating Tariff Equity (“ABATE”), and the Michigan Chemistry Council (“MCC”).

² Complaint of Industrial Consumers of America, *et al.*, Docket No. EL22-78-000 (filed July 22, 2022) (“Complaint”).

³ Although the Complaint referred to state incumbent preference laws as “right of first refusal (‘ROFR’) laws,” this Status Update uses the phrase “incumbent preference laws” as several of the newest set of proposed laws, and some of those already addressed in the Complaint, reflect an outright incumbent preference rather than simply a first option of development. To be clear, the Complainants do not believe this distinction makes any difference to the Commission’s analysis of the infringement of state incumbent preference laws on the Commission’s exclusive jurisdiction to set just and reasonable transmission rates and nondiscriminatory access by similarly situated companies to FERC-jurisdictional regional transmission planning and regional cost allocation.

and reasonableness of interstate transmission projects, the Commission has not ruled on the Complaint. The Complaint emphasized that, as a result of preference laws and the accommodation of those state and local laws in the Midcontinent Independent System Operator, Inc.’s (“MISO”) FERC-jurisdictional Open Access Transmission Tariff (“Tariff”), MISO excluded \$5.5 billion in projects in its Tranche 1 Long Range Transmission Plan (“LRTP”) from competition and handed those projects to incumbents.⁴ Based on the success of those preference laws in protecting incumbent transmission owners from competition, numerous incumbent transmission owners (as predicted by the Complaint and commenters supporting the Complaint)⁵ are now using their state lobbying muscle in an effort to circumvent Commission directives geared to ensuring just and reasonable Commission jurisdictional transmission rates.⁶

Thus far in the 2023 state legislative sessions, new or revised state incumbent preference laws have been introduced in the Indiana, Kansas, Mississippi, Missouri, and Oklahoma legislatures. The Indiana and Missouri bills aim directly at two of the few LRTP projects that MISO identified as being subject to competition.

The Consumer Alliance is submitting these Supplemental Comments along with the recently introduced bills⁷ because these bills directly attack the Commission’s exclusive transmission rate jurisdiction and threaten to increase the cost of new transmission infrastructure needlessly by hundreds of millions, if not billions, of dollars. At a time when the nation needs to

⁴ Complaint at 5 (explaining that consumers throughout MISO’s northern and central regions will pay higher costs – as much as \$1 billion – for those regional transmission projects in the absence of transmission competition).

⁵ Complaint at 41, 70, 76, 91; R Street Institute Comments, Docket No. EL22-78-000, at 8, and LSP Transmission Holdings, II, LLC et al. (“LS Power”) Comments, Docket No. EL22-78-000, at 7.

⁶ On February 21, 2023, the Iowa Supreme Court will hear oral argument in the case challenging the Iowa Legislature’s enactment of a ROFR law as part of an appropriations bill in the closing hours of the 2020 legislative session. *LS Power Midcontinent, LLC v. State of Iowa*, Case No. 21-0696 (Review granted November 2, 2022).

⁷ See **Exhibit A** to this Status Update, which is a compilation of the recent bills introduced in Indiana, Kansas, Mississippi, Missouri, and Oklahoma.

update outdated transmission facilities, reinforce system resiliency and security, and rapidly expand transmission to keep pace with innovative electric generation and storage resources and increased loads, these laws raise high barriers to federal/state collaboration, place substantial burdens on interstate commerce, spark costly litigation, and flout the Commission's pro-competition policy articulated in Order No. 1000. Without Commission action, incumbent preference laws will continue to proliferate, compound the economic harm to consumers, and ultimately eviscerate transmission competition from the MISO footprint. The Consumer Alliance therefore respectfully requests that the Commission act quickly to ensure the broad availability of competition for new transmission infrastructure development.

I. STATE INCUMBENT PREFERENCE LAWS INTERFERE WITH THE COMMISSION'S EXCLUSIVE JURISDICTION OVER TRANSMISSION RATES

While the newly proposed or revised incumbent preference laws are each worded differently, they do exactly what the existing incumbent preference and right-of-first refusal laws accomplish: to consumers' detriment, protect incumbent transmission owners from competition for the opportunity to develop, own, and regionally cost allocate much-needed new transmission facilities. Each proposed law is designed to ensure that existing transmission owners in a particular state are not required to compete with nonincumbent transmission developers when they would otherwise be required to do so. In fact, certain currently-pending legislation seeks to abrogate ongoing competitive processes for MISO-approved transmission system additions needed to meet regional infrastructure needs.

To demonstrate the proposed incumbent preference statutes' proliferation and blatant interference with the Commission's exclusive jurisdiction to set just and reasonable transmission rates, the Consumer Alliance wishes to focus on legislative proposals in three states in the MISO region: Indiana, Missouri, and Mississippi.

A. Indiana Law Revision

Shortly after the Commission adopted Order No. 1000's pro-competition policy, Indiana implemented a state law providing a partial incumbent preference that applied only to "reliability" projects between 100 kV and 300 kV approved by PJM. *See* Indiana Code 8-1-38-3(a). In June 2022, MISO's LRTP identified a multi-value project in Indiana that would not be subject to this preference and therefore eligible for a competitive process for selecting a project developer. On September 13, 2022, MISO opened a proposal window for the competitive project. That proposal window closed on January 11, 2023. But then Indiana House Bill 1420 was introduced, which would replace the limited preference with a general preference for development of new transmission facilities by the incumbent transmission owner to which the new transmission facilities will connect, thereby granting the incumbent an exclusive right to develop and own the project without the necessity to compete for it. The Indiana Bill would condition exercise of that right on the incumbent transmission owner "solicit[ing] bids for the construction of the proposed electric transmission facility . . ." Indiana House Bill 1420 amendment to SECTION 3. IC 8-1-38-9(c).

Competition for construction only, however, is far different from competition for project development. As the Commission well knows, "costs" are not the same as "rates." Construction contractors compete on the basis of cost. All other factors being equal, an owner will award a construction project to the bid reflecting the lowest construction cost, that is, the lowest cost for the equipment, materials, supplies, and labor necessary to complete the project successfully.

In contrast, competition for transmission project development involves far more than the costs of goods and materials. As the Comments to the Commission's transmission related Advanced Notice of Proposed Rulemaking ("ANOPR") in Docket No. RM21-17 explain, competition for the right to develop and own new transmission infrastructure produces consumer

benefits that reduce transmission rates – benefits beyond the mere reduction of construction costs.⁸ These benefits are so significant that it is difficult to conceive how the Commission can establish just and reasonable rates without competition for projects that qualify for it.⁹ In short, simply requiring an incumbent to bid out the construction portion of a transmission project’s development means that customer benefits related to other components of a regulated transmission rate must be foregone.¹⁰

Moreover, the proposed incumbent preference based on the incumbent holding an incumbent-run construction bidding process runs counter to the competition requirement the Commission mandated for regionally cost allocated transmission. As MISO’s Attachment FF Competitive Transmission Process utilized for the recently closed competitive process for Indiana transmission project demonstrates, a fundamental principle of Order No. 1000 was the requirement for a not unduly discriminatory process to select the more efficient or cost-effective developer eligible to access regional cost allocation. It is no surprise that the Competitive Transmission Process in MISO has resulted in the selection of a nonincumbent developer

⁸ LS Power Grid, LLC ANOPR Comments, Docket No. RM21-17, at 13-15, 85-111 (Oct. 12, 2021) (“LS Power ANOPR Comments”). In those Comments, LS Power compared competed projects to those that were not competed, demonstrating that nonincumbent developers were providing cost containment across a wide variety of factors making up transmission rates, well beyond simply construction. *See also* Joint Comments of the Industrial Customer Organizations, Docket No. RM21-17, at 8-9 (Oct. 12, 2022); *see also* Comments of the Electricity Transmission Competition Coalition, Docket No. RM21-17, at 5-12, 27-33 (Oct. 12, 2022).

⁹ *See id.*

¹⁰ *See id.* (regarding binding cost caps offered in competition); *see also* Complaint at 77. Interestingly, incumbent transmission owners in MISO submitted comments to the Commission in opposing Order No. 1000 arguing that construction competition would not provide meaningful benefits because “most construction activities are performed by third-party contractors, construction costs for a specific set of transmission facilities are generally relatively the same per mile, regardless of whether the project is being undertaken by an incumbent or nonincumbent.” MISO Transmission Owners Comments in RM10-23-000 at page 20 (filed Nov. 12, 2010); In addition, Order No. 1000 compliance, the Commission also specifically rejected efforts to allow a single transmission owner to determine which regionally cost allocated project proposal would be selected to move forward. *See S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

because of significant rate concessions provided by those developers when competing against incumbents.¹¹

B. Missouri Proposed Incumbent Preference

Like the proposed Indiana law, the proposed Missouri law comes after MISO issued a request for project sponsors for a MISO LRTP Tranche 1 project in Missouri. MISO opened the proposal window on December 5, 2022, and it will remain open until May 19, 2023. House Bill 992 was introduced on January 30, 2023.¹² Like other incumbent preference laws, the Missouri Bill would provide a direct preference for incumbent transmission owners for projects “approved by a regional transmission operator.” House Bill 992 4 (1). If the Missouri Bill is enacted, only incumbent transmission owners could obtain a certificate of public convenience and necessity for such regional projects.¹³

Given that a MISO-run competitive process is underway for a Missouri LRTP Tranche 1 project, it appears that the proponents of the proposed law seek to short-circuit that process and force the project to be developed by the incumbent. In doing so the law would attack directly the Commission-approved process for selecting the most efficient or cost-effective developer for the project and thus the entity entitled to FERC-jurisdictional regional cost allocation for the project.

¹¹ See the MISO Selection Report for the Duff-Coleman Project (available at [Duff-Coleman EHV 345kv Selection Report82339.pdf \(misoenergy.org\)](https://www.misoenergy.org/Portals/0/Reports/2022/082339.pdf), which reflects rate concession proposals from all the solicitation respondents; See also Complaint at 77.

¹² See Missouri House of Representatives, HB 992, “Modifies provisions for the construction of electric transmission facilities,” (January 30, 2023), available at [Missouri House of Representatives HB 992](https://www.missouri.gov/house/bills/992/).

¹³ See “Ameren Missouri supports the Missouri First Transmission Act,” POWER Forward (Feb. 1, 2023), available at [POWERforward Missouri \(powerforwardmo.com\)](https://www.powerforwardmo.com/) (last accessed Feb. 10, 2023) (seeking to grant preferential treatment to Missouri utilities for three projects in Tranche 1 of MISO’s LRTP).

C. Mississippi Code Revision

As originally introduced, Mississippi Senate Bill 2341 would have added a provision to the Mississippi Code to provide that for “electric transmission facilities in a regional transmission organization” an entity “can only satisfy the certificate of public convenience and necessity if the [transmission] facilities will ultimately be owned by: (a) An entity over which the commission has the jurisdiction to set rates”¹⁴ When the bill was introduced, its sponsors asserted that it would hold out-of-state companies to the same standard as in-state companies when, in fact, it would prohibit entities that do not have retail customers, *i.e.*, Mississippi Commission jurisdiction rates, from developing transmission in Mississippi.

When concerns were raised about the initial bill, a “substitute” bill was introduced that continued to allow entities with retail rates to receive certificates of public convenience and necessity (“CPCNs”), but added a provision that would also allow a transmission only entity with FERC jurisdiction rates to obtain a CPCN only if it “(c) “agrees to submit to [state] commission jurisdiction over its standards for service quality and customer service and, as to costs ultimately to be borne by Mississippi electric customers, agrees to recover through any applicable transmission tariff only those costs, including the cost of capital, approved by the [state] commission.”¹⁵ The substitute bill directly attacks the Commission’s exclusive jurisdiction to set just and reasonable transmission rates for transmission in interstate commerce because the bill (1) dictates to the Commission those entities that can obtain FERC-jurisdictional transmission rates if the transmission addition is physically located in Mississippi regardless of

¹⁴ See **Exhibit A**. Although the bill would also allow a certificate of public convenience and necessity to a “generation and transmission cooperative” that exception does not change the primary tenor of the provision to prohibit transmission development by entities that are not subject to retail rate regulation.

¹⁵ See **Exhibit A**, Committee Substitute for Mississippi Senate Bill No. 2341, Section 1(c).

whether consumers paying for such facilities are in Mississippi; or (2) requires that an entity with FERC-jurisdictional rates for transmission to allow the Mississippi Public Service Commission to second-guess the Commission's judgement on critical rate components, including the cost of capital. The practice of a state resetting FERC jurisdiction rates was rejected by the United States Supreme Court in *Nantahala P. & L. v. Thornburg*, 476 U.S. 953 (1986). In *Nantahala* the Court held:

FERC has exclusive jurisdiction over the rates to be charged Nantahala's interstate wholesale customers. Once FERC sets such a rate, a State may not conclude in setting retail rates that the FERC-approved wholesale rates are unreasonable. Rather, a State must give effect to Congress' desire to give FERC plenary authority over interstate wholesale rates, and not interfere with this authority.¹⁶

Although the proposed Mississippi law would dictate to the Commission that only entities with retail rates or willing to submit to retail jurisdiction in Mississippi can develop regional transmission, the United States Supreme Court specifically held that the division of jurisdiction over transmission splits the other way, finding that the Commission's jurisdiction under the Federal Power Act is so broad it would include retail transmission because: "[t]here is no language in the statute limiting FERC's transmission jurisdiction to the wholesale market, although the statute does limit FERC's sale jurisdiction to that at wholesale. . . . Because the FPA authorizes FERC's jurisdiction over interstate transmissions, without regard to whether the transmissions are sold to a reseller or directly to a consumer, FERC's exercise of this power is valid."¹⁷

¹⁶ 476 U.S. at 966.

¹⁷ *New York v. FERC*, 535 U.S. 1, 527 (2002).

II. THE COMMISSION IS OBLIGATED TO ACT TO PROTECT CONSUMERS FROM UNJUST AND UNREASONABLE TRANSMISSION RATES

As the Complaint demonstrates, MISO incumbent transmission owners have been at the forefront in using their state lobbying muscle to circumvent the Commission's determination that competition is necessary to ensure just and reasonable rates for new transmission included in regional plans where the project costs are allocated regionally beyond a single transmission owner's territory. Now incumbent transmission owners in Indiana seek to expand on their earlier preference law, while incumbent transmission owners in Mississippi and Missouri seek passage of protectionist laws that apply only in those parts of the state covered by regional planning entities. Meanwhile, in Kansas and Oklahoma, transmission owners from the Southwest Power Pool, Inc. ("SPP") seek protection as well.¹⁸

It is not surprising that incumbent transmission owners seek a preference law to help them as they have shown limited ability to compete against non-incumbents when consumer-focused cost containment measures are considered in the developer selection process.¹⁹ In MISO, both the Duff-Coleman and Hartburg-Sabine Junction competitively bid projects have been won by a non-incumbent developer, each of which offered a package of consumer-beneficial cost and rate concessions that are nonexistent when projects are simply handed to an incumbent developer. As LS Power noted its comments to the Commission's Advanced Notice of Proposed Rulemaking, *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, for the project that ITC was

¹⁸ See **Exhibit A**.

¹⁹ See Complaint at 74-79, 84-90.

handed in Minnesota as a result of Minnesota's preference law, ITC's affiliate has a capital structure with 60% equity and a return on that equity of 10.77%.²⁰

Competition, however, has shown that the Commission's proxy for capital structure is outdated and the Commission can no longer assume just and reasonable rates from noncompetitive proxies. For the competitively procured MISO projects of a similar nature to the project handed to ITC, in addition to other cost containment commitments, the respective selected project developers committed to a 45% equity percentage for the life of the projects and a return on that equity of 9.8%.²¹ Such competitive capital structure and return commitments around equity are not outliers either, as the recent Southwest Power Pool and New Jersey State Agreement competitive processes each resulted in proposals with significant reductions in the equity percentage.²² In the most recent California Independent System Operator ("CAISO") competitive solicitations, CAISO's selection report noted that incumbent transmission owners did not even participate in the competitive solicitation, with all four proposals coming from nonincumbent developers and each proposing a series of cost containment measures²³ that are nonexistent when competition is absent.

²⁰ LS Power Grid, LLC ANOPR Comments, Appendix II at 11, Docket No. RM21-17 (Oct. 12, 2021).

²¹ Duff-Coleman EHV 345 kV Competitive Transmission Project, Selection Report, at 26 (Dec. 20, 2016), available at <https://cdn.misoenergy.org/Duff-Coleman%20EHV%20345kv%20Selection%20Report82339.pdf>; Hartsburg-Sabine Junction 500 kV Competitive Transmission Project, Selection Report at 20, Table 2.2 (Nov. 27, 2018), available at <https://cdn.misoenergy.org/Hartburg-Sabine%20Junction%20500%20kV%20Selection%20Report296754.pdf>.

²² See SPP Selection Report for Wolf Creek-Blackberry at 46, available at <https://www.spp.org/documents/65719/wolf%20creek-blackberry%20rfp%20public%20report.pdf> (the Commission should access the non-public report); see also, PJM Analysis for 2021 SAA Proposal Window to Support NJ OSW before the PJM Transmission Expansion Advisory Committee (July 18, 2022) at slide 43, available at <https://www.pjm.com/-/media/committees-groups/committees/teac/2022/20220718-special/item-01---nj-osw-saa.ashx%20%E2%80%93%20PJM%E2%80%99s>.

²³ Manning 500/230 kV Substation Project: Project Sponsor Selection Report at 101-110 (Jan. 23, 2023), available at <http://www.caiso.com/InitiativeDocuments/Manning-500-kV-Substation-Project-Project-Sponsor-Selection-Report.pdf>; Collinsville 500/230 kV Substation Project: Project Sponsor Selection Report at 102-110 (Jan. 23, 2023), available at <http://www.caiso.com/InitiativeDocuments/Collinsville-500-kV-Substation-Project-Project-Sponsor-Selection-Report.pdf>.

Because the state preference laws in the MISO region are intended to, and do, have a direct and substantial impact on the Commission’s ability to exercise its jurisdictional mandate for just and reasonable transmission rates, thereby erecting discriminatory barriers among similarly situated companies regarding access to FERC-jurisdictional regional cost allocation and interstate ratemaking, the Commission is obligated to act. Until the Commission acts, incumbent transmission owners are incentivized to act in their economic self-interest by using their state lobbying muscle to protect themselves from competition at the expense of MISO electricity consumers. As the United States Court of Appeals for the Fifth Circuit held: “[i]n the market for transmission of electricity, vertically integrated utilities, and transmission only companies compete and offer the same services: building, operating, and owning transmission lines.”²⁴ Nonincumbent transmission developers that are qualified in MISO and other regions stand ready to compete and to develop innovative projects with cost-containment measures that benefit consumers. The Commission must act to ensure that competition is permitted and protected.

Respectfully submitted,

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²⁴ *NextEra Energy Capital Holdings v. Lake*, 48 F.4th 306, 319 (5th Cir. 2022).

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CERTIFICATE OF SERVICE

I hereby certify that I have this 10th day of February 2023 served or caused to serve the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

By: /s/ Kenneth R. Stark

Kenneth R. Stark
McNees Wallace & Nurick LLC

EXHIBIT A

By: Senator(s) Carter

To: Energy

SENATE BILL NO. 2341

1 AN ACT TO MAINTAIN STATE JURISDICTION OVER THE INTEGRITY OF
 2 ELECTRIC TRANSMISSION INFRASTRUCTURE TO ASSURE LANDOWNER
 3 SAFEGUARDS, TRANSPARENCY AND OVERSIGHT OF CUSTOMER RATES,
 4 RELIABILITY AND RELIEF; TO PRESCRIBE THE REQUIREMENTS FOR THE
 5 ISSUANCE OF A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO
 6 BUILD CERTAIN ELECTRIC TRANSMISSION FACILITIES IN A REGIONAL
 7 TRANSMISSION ORGANIZATION; AND FOR RELATED PURPOSES.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

9 **SECTION 1.** (1) In order to promote the policy declared in
 10 Section 77-3-2 and to assure a local forum for landowner
 11 safeguards, transparency and oversight of customer rates,
 12 reliability and relief, an application filed under Section 77-3-11
 13 or 77-3-14 after the effective date of this act can only satisfy
 14 the public convenience and necessity if such facilities will
 15 ultimately be owned by:

16 (a) An entity over which the commission has the
 17 jurisdiction to set rates as described in Sections 77-3-5 or
 18 77-3-33; or

19 (b) A "generation and transmission cooperative" or "G&T
 20 cooperative" as defined in Section 77-5-256.



21 (2) Nothing in this section shall be construed as requiring
22 a certificate for facilities that the commission has determined by
23 rule do not require certification to build, own or operate.

24 **SECTION 2.** Section 1 of this act shall be codified in Title
25 77, Chapter 3 of the Mississippi Code of 1972.

26 **SECTION 3.** This act shall take effect and be in force from
27 and after its passage.



By: Senator(s) Carter

To: Energy

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2341

1 AN ACT TO MAINTAIN STATE JURISDICTION OVER THE INTEGRITY OF
2 ELECTRIC TRANSMISSION INFRASTRUCTURE TO ASSURE LANDOWNER
3 SAFEGUARDS, TRANSPARENCY AND OVERSIGHT OF CUSTOMER RATES,
4 RELIABILITY AND RELIEF; TO PRESCRIBE THE REQUIREMENTS FOR THE
5 ISSUANCE OF A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO
6 BUILD CERTAIN ELECTRIC TRANSMISSION FACILITIES IN A REGIONAL
7 TRANSMISSION ORGANIZATION; AND FOR RELATED PURPOSES.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

9 **SECTION 1.** (1) In order to promote the policy declared in
10 Section 77-3-2 and to assure a local forum for landowner
11 safeguards, transparency and oversight of customer rates,
12 reliability and relief, an application filed under Section 77-3-11
13 or 77-3-14 for a certificate of public convenience and necessity
14 to build, own or operate a new transmission facility in a regional
15 transmission organization after the effective date of this act can
16 only satisfy the public convenience and necessity if such
17 facilities will ultimately be owned by:

18 (a) An entity over which the commission has the
19 jurisdiction to set rates as described in Sections 77-3-5 or
20 77-3-33;



21 (b) A "generation and transmission cooperative" or "G&T
22 cooperative" as defined in Section 77-5-256; or

23 (c) An entity that agrees to submit to commission
24 jurisdiction over its standards for service quality and customer
25 service and, as to costs ultimately to be borne by Mississippi
26 electric customers, agrees to recover through any applicable
27 transmission tariff only those costs, including the cost of
28 capital, approved by the commission.

29 (2) Nothing in this section shall be construed as requiring
30 a certificate for facilities that the commission has determined by
31 rule to not require certification to build, own or operate.

32 **SECTION 2.** Section 1 of this act shall be codified in Title
33 77, Chapter 3, Mississippi Code of 1972.

34 **SECTION 3.** This act shall take effect and be in force from
35 and after July 1, 2023, and shall stand repealed on June 30, 2023.



By: Representative Anderson (122nd)

To: Public Utilities

HOUSE BILL NO. 1061

1 AN ACT TO CREATE NEW SECTION 77-3-11.1, MISSISSIPPI CODE OF
 2 1972, TO MAINTAIN STATE JURISDICTION OVER THE INTEGRITY OF
 3 ELECTRIC TRANSMISSION INFRASTRUCTURE IN ORDER TO ASSURE LANDOWNER
 4 SAFEGUARDS, TRANSPARENCY AND OVERSIGHT OF CUSTOMER RATES,
 5 RELIABILITY AND RELIEF; TO PRESCRIBE THE REQUIREMENTS FOR THE
 6 ISSUANCE OF A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO
 7 BUILD CERTAIN ELECTRIC TRANSMISSION FACILITIES IN A REGIONAL
 8 TRANSMISSION ORGANIZATION; AND FOR RELATED PURPOSES.

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

10 **SECTION 1.** The following shall be codified as Section
 11 77-3-11.1 of the Mississippi Code of 1972:

12 77-3-11.1. (1) In order to effectuate the policy contained
 13 in Section 77-3-2, to assure a local forum for landowner
 14 safeguards, transparency and oversight of customer rates,
 15 reliability and relief, an application filed after the effective
 16 date of this act under Section 77-3-11 or Section 77-3-14, for a
 17 certificate of public convenience and necessity to build, own, or
 18 operate a new transmission facility in a regional transmission
 19 organization can only satisfy the public convenience and necessity
 20 if such facilities will ultimately be owned by (a) an entity over
 21 which the commission has the jurisdiction to set rates as provided



22 in 77-3-5 and 77-3-33, or (b) a "generation and transmission
23 cooperative" or "G&T cooperative" as defined in Section 77-5-256.

24 (2) Nothing in this section is intended to require a
25 certificate for facilities that the commission has determined by
26 rule do not require certification to build, own, or operate.

27 **SECTION 2.** This act shall take effect and be in force from
28 and after its passage.



By: Representative Anderson (122nd)

To: Public Utilities

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1061

1 AN ACT TO CREATE NEW SECTION 77-3-11.1, MISSISSIPPI CODE OF
2 1972, TO MAINTAIN STATE JURISDICTION OVER THE INTEGRITY OF
3 ELECTRIC TRANSMISSION INFRASTRUCTURE IN ORDER TO ASSURE LANDOWNER
4 SAFEGUARDS, TRANSPARENCY AND OVERSIGHT OF CUSTOMER RATES,
5 RELIABILITY AND RELIEF; TO PRESCRIBE THE REQUIREMENTS FOR THE
6 ISSUANCE OF A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO
7 BUILD CERTAIN ELECTRIC TRANSMISSION FACILITIES IN A REGIONAL
8 TRANSMISSION ORGANIZATION; AND FOR RELATED PURPOSES.

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

10 **SECTION 1.** The following shall be codified as Section
11 77-3-11.1 of the Mississippi Code of 1972:

12 77-3-11.1. (1) In order to effectuate the policy contained
13 in Section 77-3-2, to assure a local forum for landowner
14 safeguards, transparency and oversight of customer rates,
15 reliability and relief, an application filed under Section 77-3-11
16 or Section 77-3-14, for a certificate of public convenience and
17 necessity to build, own, or operate a new transmission facility in
18 a regional transmission organization can only satisfy the public
19 convenience and necessity if such facilities will ultimately be
20 owned by: (a) an entity over which the commission has the
21 jurisdiction to set rates, as provided in Sections 77-3-5 and



22 77-3-33, or (b) a "generation and transmission cooperative" or
23 "G&T cooperative" as defined in Section 77-5-256.

24 (2) Nothing in this section shall apply to applications
25 filed before the effective date of this act, nor to any amendments
26 or supplements to such application made thereafter. Nothing in
27 this section is intended to require a certificate for facilities
28 that the commission has determined by rule do not require
29 certification to build, own, or operate.

30 **SECTION 2.** This act shall take effect and be in force from
31 and after its passage.



FIRST REGULAR SESSION

SENATE BILL NO. 568

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR BLACK.

2183S.01H

KRISTINA MARTIN, Secretary

AN ACT

To repeal section 393.170, RSMo, and to enact in lieu thereof one new section relating to construction of electric transmission facilities.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 393.170, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 393.170, to read as follows:

393.170. 1. No gas corporation, electrical corporation, water corporation or sewer corporation shall begin construction of a gas plant, electric plant, water system or sewer system, other than an energy generation unit that has a capacity of one megawatt or less, without first having obtained the permission and approval of the commission.

2. No such corporation shall exercise any right or privilege under any franchise hereafter granted, or under any franchise heretofore granted but not heretofore actually exercised, or the exercise of which shall have been suspended for more than one year, without first having obtained the permission and approval of the commission.

Before such certificate shall be issued a certified copy of the charter of such corporation shall be filed in the office of the commission, together with a verified statement of the president and secretary of the corporation, showing that it

18 has received the required consent of the proper municipal
19 authorities.

20 3. The commission shall have the power to grant the
21 permission and approval herein specified whenever it shall
22 after due hearing determine that such construction or such
23 exercise of the right, privilege or franchise is necessary
24 or convenient for the public service. The commission may by
25 its order impose such condition or conditions as it may deem
26 reasonable and necessary. Unless exercised within a period
27 of two years from the grant thereof, authority conferred by
28 such certificate of convenience and necessity issued by the
29 commission shall be null and void.

30 **4. (1) It shall be the policy of this state to ensure**
31 **that construction of electric transmission facilities in the**
32 **state needed to support Missouri's economy, to deliver**
33 **benefits to Missouri customers, and to ensure reliable**
34 **electric service in the state in the twenty-first century**
35 **and beyond will take place in a deliberate and orderly**
36 **manner that helps promote the reliability and integrity of**
37 **the state's existing electric grid. In furtherance of this**
38 **policy, the provisions of this subsection shall apply when**
39 **the permission and approval sought from the commission under**
40 **subsection 1 of this section is for the construction of**
41 **electric transmission facilities approved by a regional**
42 **transmission operator. To the greatest extent practical,**
43 **such electric transmission facilities shall be designed,**
44 **consistent with electric industry standards, to utilize a**
45 **multi-circuit configuration, be sited with or along existing**
46 **above-ground infrastructure, or replace or upgrade existing**
47 **above-ground infrastructure, whether or not the existing**
48 **electric transmission facility infrastructure utilized is**
49 **owned by an electrical corporation that owns in-service**

50 electric transmission facilities in this state that are
51 under the functional control of a regional transmission
52 operator. Electric transmission facilities need not be
53 designed as provided in the immediately preceding sentence
54 if the commission determines in a proceeding pursuant to
55 which permission and approval is sought under subsection 1
56 of this section that such a design is inconsistent with
57 electric industry standards, is inconsistent with the
58 reliability basis given for the electric transmission
59 facilities project, or is not in the best interest of the
60 electrical corporation's customers or, to the extent the
61 electrical corporation does not directly serve retail
62 customers, the interests of the electric customers whose
63 retail rates will reflect the majority of the costs of the
64 electric transmission facilities to-be-constructed.

65 (2) The only electrical corporations that may file an
66 application with the commission for permission and approval
67 to construct electric transmission facilities described in
68 this subsection are electrical corporations that own in-
69 service electric transmission facilities in this state that
70 are under the functional control of a regional transmission
71 operator and to which the electric transmission facilities
72 subject to the application will connect once construction is
73 completed. Within ninety days following approval of the
74 construction of electric transmission facilities by the
75 applicable regional transmission operator, an electrical
76 corporation seeking permission and approval for electric
77 transmission facilities covered by the provisions of this
78 subsection may provide notice to the commission indicating
79 it will not construct any or some portion of the facilities
80 so approved. If such notice is given and indicates the
81 notifying electrical corporation will not construct any of

82 the facilities so approved, the commission may grant
83 permission and approval for such facilities' construction to
84 any other electrical corporation. If such notice indicates
85 that it will assign all or a portion of the facilities so
86 approved to another electrical corporation, the commission
87 may grant permission and approval for the facilities that
88 were assigned to the assignee electrical corporation
89 provided that the assignee electrical corporation's
90 construction of the facilities will be subject to the
91 provisions of this subdivision.

92 (3) This subsection shall not limit the right of any
93 electrical corporation, rural electric cooperative organized
94 under chapter 394 or of any municipal utility, or a joint
95 electric utility commission, to construct, own, and maintain
96 any electric transmission facilities in this state that are
97 not under the functional control of a regional transmission
98 operator. This subsection shall also not limit the right of
99 any electrical corporation to seek permission and approval
100 to construct, operate, and maintain electric transmission
101 facilities in this state that will not initially connect to
102 electric transmission facilities in this state that are
103 under the functional control of a regional transmission
104 operator.

105 5. For purposes of this section, the following terms
106 shall mean:

107 (1) "Electric transmission facilities", a transmission
108 line that is designed and constructed with the capability of
109 being safely and reliably energized at one hundred kilovolts
110 or more, and associated transmission facilities, including
111 substations;

112 (2) "Regional transmission operator", a regional
113 transmission organization, independent system operator, or

114 equivalent entity recognized by the Federal Energy
115 Regulatory Commission or successor agency that exercises
116 functional control over electric transmission facilities
117 located within this state.

✓

FIRST REGULAR SESSION

HOUSE BILL NO. 992

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE LEWIS (6).

2093H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 393.170, RSMo, and to enact in lieu thereof one new section relating to electric transmission facilities.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 393.170, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 393.170, to read as follows:

393.170. 1. No gas corporation, electrical corporation, water corporation or sewer corporation shall begin construction of a gas plant, electric plant, water system or sewer system, other than an energy generation unit that has a capacity of one megawatt or less, without first having obtained the permission and approval of the commission.

2. No such corporation shall exercise any right or privilege under any franchise hereafter granted, or under any franchise heretofore granted but not heretofore actually exercised, or the exercise of which shall have been suspended for more than one year, without first having obtained the permission and approval of the commission. Before such certificate shall be issued a certified copy of the charter of such corporation shall be filed in the office of the commission, together with a verified statement of the president and secretary of the corporation, showing that it has received the required consent of the proper municipal authorities.

3. The commission shall have the power to grant the permission and approval herein specified whenever it shall after due hearing determine that such construction or such exercise of the right, privilege or franchise is necessary or convenient for the public service. The commission may by its order impose such condition or conditions as it may deem reasonable and necessary. Unless exercised within a period of two years from the grant thereof, authority

EXPLANATION — Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 conferred by such certificate of convenience and necessity issued by the commission shall be
19 null and void.

20 **4. (1) The provisions of this subsection shall apply if the permission and**
21 **approval sought from the commission under subsection 1 of this section is for the**
22 **construction of electric transmission facilities approved by a regional transmission**
23 **operator. Such electric transmission facilities shall be designed consistent with electric**
24 **industry standards, to utilize a multi-circuit configuration, be sited with or along**
25 **existing above-ground infrastructure, or replace or upgrade existing above-ground**
26 **infrastructure, regardless of whether the existing electrical transmission facility**
27 **infrastructure utilized is owned by an electrical corporation that owns in-service**
28 **electric transmission facilities in this state that are under the functional control of a**
29 **regional transmission operator. Electric transmission facilities are required to be**
30 **designed as provided in this subdivision if such a design is inconsistent with electrical**
31 **industry standards, is inconsistent with the reliability basis given for the electrical**
32 **transmission facilities project, or is not in the best interest of the electrical corporation's**
33 **customers or, to the extent the electrical corporation does not directly serve retail**
34 **customers, the interests of the electrical customers whose retail rates will reflect the**
35 **majority of the costs of the electric transmission facilities to be constructed.**

36 **(2) Only electrical corporations that own in-service electric transmission**
37 **facilities in this state that are under the functional control of a regional transmission**
38 **operator and to which the electric transmission facilities subject to the application will**
39 **connect once construction is completed may file applications with the commission for**
40 **permission and approval to construct electric transmission facilities described in this**
41 **subsection. Within ninety days following approval of the construction of electric**
42 **transmission facilities by the applicable regional transmission operator, an electric**
43 **corporation seeking permission and approval for electric transmission facilities under**
44 **the provisions of this subsection may notify the commission that it will not construct any**
45 **or some portion of the facilities approved. If such notice is given and indicates the**
46 **notifying electrical corporation will not construct any of the facilities approved, the**
47 **commission may grant permission and approval for such facilities' construction to any**
48 **other electrical corporation. If such notice indicates that it will assign all or a portion of**
49 **the facilities approved to another electrical corporation, the commission may grant**
50 **permission and approval for the facilities that were assigned to the assignee electrical**
51 **corporation's construction of the facilities that will be subject to this subdivision.**

52 **(3) This subsection shall not limit the right of any rural electric cooperative**
53 **organized under chapter 394 or of any municipal utility to construct, own, and maintain**
54 **any electric transmission facilities that are not under the functional control of a regional**

55 **transmission operator. This subsection shall also not limit the right of any electrical**
56 **corporation to seek permission and approval to construct, operate, and maintain electric**
57 **transmission facilities in this state that will not initially connect to electric transmission**
58 **facilities in this state that are under the functional control of a regional transmission**
59 **operator.**

60 **5. For the purposes of this section, the following terms shall mean:**

61 **(1) "Electric transmission facilities", a transmission line that is designed and**
62 **constructed with the capability of being safely and reliably energized at one hundred**
63 **kilovolts or more and associated transmission facilities, including substations;**

64 **(2) "Regional transmission operator", a regional transmission organization,**
65 **independent system operator, or equivalent entity recognized by the Federal Energy**
66 **Regulatory Commission or its successor agency that exercises functional control over**
67 **electric transmission facilities located within this state.**

✓

HOUSE BILL No. 1420

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1-38.

Synopsis: Electric transmission facilities. Amends the chapter in the Indiana Code concerning electric transmission facilities as follows: (1) Specifies that the term "electric transmission facility" does not include a line installed solely for the purpose of connecting an electric generation facility to facilities owned by a public utility. (2) Repeals the definition of "local reliability electric transmission facility" and makes conforming changes. (3) Amends the provision concerning the right of first refusal of an incumbent electric transmission owner to construct an electric transmission facility that connects to an electric transmission facility owned by the incumbent electric transmission owner, to require the incumbent electric transmission owner to solicit and evaluate bids for the construction of an electric transmission facility that is designated for construction by a regional transmission organization.

Effective: July 1, 2023.

Soliday, Jeter

January 17, 2023, read first time and referred to Committee on Utilities, Energy and Telecommunications.



First Regular Session of the 123rd General Assembly (2023)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2022 Regular Session of the General Assembly.

HOUSE BILL No. 1420

A BILL FOR AN ACT to amend the Indiana Code concerning utilities.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 8-1-38-1, AS ADDED BY P.L.174-2013,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2023]: Sec. 1. (a) As used in this chapter, "electric
4 transmission facility" means a high voltage transmission line with a
5 rating of at least one hundred (100) kilovolts and related transmission
6 facilities and controls.

7 (b) **The term does not include a line installed solely for the**
8 **purpose of connecting an electric generation facility to facilities**
9 **owned by a public utility.**

10 SECTION 2. IC 8-1-38-3 IS REPEALED [EFFECTIVE JULY 1,
11 2023]. Sec. 3: (a) As used in this chapter, "local reliability electric
12 transmission facility" means an electric transmission facility located in
13 whole or in part in Indiana that is required by a regional transmission
14 organization to satisfy the reliability standards of the North American
15 Electric Reliability Corporation, a regional reliability organization, or
16 a successor corporation or organization. If the electricity transmission
17 facility is located in the territory of the PJM Interconnection regional



1 transmission organization territory; or its successor organization; its
 2 rating must be:

3 (1) at least one hundred (100) kilovolts; and

4 (2) not more than three hundred (300) kilovolts.

5 (b) The term does not include an electric transmission facility to the
 6 extent the facility is required by a regional transmission organization
 7 primarily to address nonreliability drivers.

8 SECTION 3. IC 8-1-38-9, AS ADDED BY P.L.174-2013,
 9 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 10 JULY 1, 2023]: Sec. 9. (a) An incumbent electric transmission owner
 11 has the right to construct, own, operate, and maintain the following:

12 (1) ~~A local reliability~~ **An** electric transmission facility that
 13 connects to an electric transmission facility owned by the
 14 incumbent electric transmission owner.

15 (2) Upgrades to an existing electric transmission facility owned
 16 by the incumbent electric transmission owner.

17 (b) The right to construct, own, operate, and maintain ~~a local~~
 18 **reliability an electric transmission** facility that connects to electric
 19 transmission facilities owned by two (2) or more incumbent electric
 20 transmission owners belongs individually and proportionately to each
 21 incumbent electric transmission owner, unless the incumbent electric
 22 transmission owners otherwise agree in writing.

23 (c) **An incumbent electric transmission owner that exercises its**
 24 **right under subsection (a)(1) to construct an electric transmission**
 25 **facility designated by a regional transmission organization for**
 26 **construction must solicit bids for the construction of the proposed**
 27 **electric transmission facility that comply with the technical,**
 28 **commercial, and other specifications required by the incumbent**
 29 **electric transmission owner. The incumbent electric transmission**
 30 **owner shall consider the following in evaluating bids received:**

31 (1) **The extent to which the bids comply with or exceed the**
 32 **technical, commercial, and other specifications defined by the**
 33 **incumbent electric transmission owner.**

34 (2) **The lowest reasonable cost for the project.**

35 (3) **Ensuring the timely execution of the project in a reliable**
 36 **manner.**



SENATE BILL No. 68

By Committee on Utilities

1-19

1 AN ACT concerning electric transmission lines; relating to construction
2 and ownership of certain electric transmission lines; providing
3 incumbent electric transmission owners a right of first refusal.
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. (a) An incumbent electric transmission owner shall have
7 the first right to construct, upgrade, own and maintain an electric
8 transmission line that has been approved for construction in a transmission
9 plan if such electric transmission line interconnects to facilities owned or
10 proposed to be constructed by the incumbent electric transmission owner.

11 (b) If an electric transmission line has been approved for
12 construction, upgrade or maintenance in a transmission plan and the line
13 interconnects to facilities owned by two or more incumbent electric
14 transmission owners, the right to construct, upgrade, own and maintain
15 such electric transmission line shall be determined by mutual agreement
16 between such incumbent electric transmission owners.

17 (c) If an electric transmission line has been approved for construction,
18 upgrade or maintenance in a transmission plan, the incumbent electric
19 transmission owner having the first right to construct, upgrade, own and
20 maintain the electric transmission line pursuant to this section shall give
21 written notice to the regional transmission organization within the time
22 prescribed by the regional transmission organization to indicate whether
23 the incumbent electric transmission owner or an affiliate or subsidiary of
24 the incumbent electric transmission owner intends to construct, upgrade,
25 own and maintain all or, if applicable, a share of the electric transmission
26 line. Upon submission of a notice of intent to construct, upgrade, own and
27 maintain an electric transmission line pursuant to this section, the
28 incumbent electric transmission owner shall:

29 (1) Have already obtained from the state corporation commission a
30 certificate of convenience and necessity for the construction of the electric
31 transmission line pursuant to K.S.A. 66-131, and amendments thereto; or

32 (2) within 18 months after submission of such notice, file an
33 application for a certificate of convenience and necessity pursuant to
34 K.S.A. 66-131, and amendments thereto, seeking permission to begin
35 construction of the electric transmission line.

36 (d) Any other electric transmission entity may construct, upgrade,

1 own and maintain an electric transmission line if:

2 (1) The incumbent electric transmission owner having the first right
3 to construct, upgrade, own and maintain the electric transmission line:

4 (A) Does not timely indicate that the incumbent electric transmission
5 owner, or an affiliate or subsidiary of such incumbent electric transmission
6 owner, intends to exercise the right of such incumbent electric
7 transmission owner to construct, upgrade, own and maintain such electric
8 transmission line;

9 (B) is deemed to not be qualified for the construction, upgrade,
10 ownership and maintenance of the electric transmission line by the
11 regional transmission organization; or

12 (C) has not received or fails to timely seek a certificate of
13 convenience and necessity pursuant to K.S.A. 66-131, and amendments
14 thereto, for such electric transmission line; and

15 (2) the electric transmission entity receives all necessary
16 authorizations or approvals required by the regional transmission
17 organization.

18 (e) Nothing in this section shall be construed to affect an incumbent
19 electric transmission owner's use and control of its existing property rights,
20 including, but not limited to, the incumbent electric transmission owner's
21 ability to assign its rights to construct, upgrade, own and maintain an
22 electric transmission line described in this section. The retention,
23 modification or transfer of existing property rights described in this section
24 shall remain subject to the relevant state law recognizing the property
25 right.

26 (f) As used in this section:

27 (1) "Electric transmission line" means any line or extension of a line
28 in this state with a rating of greater than 100 kilovolts or any related
29 transmission facilities, substations and controls.

30 (2) "Incumbent electric transmission owner" means every
31 corporation, company, individual, association of persons, their trustees,
32 lessees or receivers, that now or hereafter owns, controls, operates or
33 manages, except for private use, any equipment or plant, or any part
34 thereof, for the transmission, delivery or furnishing of electricity or
35 electric power in this state and is approved by the regional transmission
36 organization as qualified to provide proposals to construct, upgrade, own
37 and maintain electric transmission lines subject to the competitive
38 solicitations conducted by the regional transmission organization. If there
39 are two or more incumbent electric transmission owners of an electric
40 transmission line, the term "incumbent electric transmission owner"
41 includes each such owner.

42 (3) "Regional transmission organization" means the organization
43 authorized by the federal energy regulatory commission to conduct

1 regional transmission planning and provide notice of requirements for
2 electric transmission line construction in the region that includes the state
3 of Kansas.

4 (4) "Transmission plan" means a transmission plan adopted by the
5 entity with authority for transmission planning in a regional transmission
6 organization recognized by the federal energy regulatory commission.

7 Sec. 2. This act shall take effect and be in force from and after its
8 publication in the statute book.

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 SENATE BILL 498

By: Paxton

4
5
6 AS INTRODUCED

7 An Act relating to public utility resources; amending
8 17 O.S. 2021, Section 291, which relates to
9 definitions; modifying definition; and providing an
10 effective date.

11 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

12 SECTION 1. AMENDATORY 17 O.S. 2021, Section 291, is
13 amended to read as follows:

14 Section 291. As used in this act:

15 1. "Commission" means the Corporation Commission;

16 2. "Incumbent electric transmission owner" means any Oklahoma
17 electric public utility, as recognized by the Commission, or its
18 affiliates, or subsidiaries or any electric cooperative, any
19 municipal power agency or any municipal utility that owns, operates
20 and maintains an electric transmission facility in this state or any
21 public utility, as recognized by the Commission, that is engaged in
22 the development of an electric transmission facility in the state as
23 of the effective date of this act;

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3. "Local electric transmission facility" means a high-voltage transmission line or high-voltage associated transmission facilities with a rating of greater than sixty-nine (69) kilovolts ~~and less than three hundred (300) kilovolts;~~ and

4. "Southwest Power Pool" means the Southwest Power Pool or any federally recognized successor entity.

SECTION 2. This act shall become effective November 1, 2023.

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STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

SENATE BILL 1103

By: Treat

AS INTRODUCED

An Act relating to electric utilities; amending 17 O.S. 2021, Section 291, which relates to public utility resources; modifying definition; creating the Ratepayer Protection Act of 2023; providing short title; defining terms; providing option for certain electric utilities to file certain plan notice; establishing provisions of plan notice; providing for approval of certain plan subject to certain regulation; prohibiting certain electric utilities from filing certain applications prior to certain date; requiring certain rates to remain in effect during certain plan term subject to certain rate adjustments; requiring certain electric utilities to file certain information within application; providing for certain testimony to plan applications be submitted by certain date; requiring certain response to testimony be submitted by certain date; requiring the Corporation Commission to hold certain hearing by certain date; requiring Commission to issue final order by certain date; providing for certain rates to go into immediate effect upon issuance of final order; providing for the Commission to require security under certain circumstances; requiring order by Commission to specify certain information for certain filing; requiring certain application to utilize certain data; providing for utility to file certain application and notice for certain term; requiring certain approved rates to continue in force until certain date; requiring rates to be adjusted subject to certain provisions; requiring certain refund to customer under certain circumstances; requiring adjustments to only occur once per year; requiring certain rates to continue in force subject to certain circumstances; providing for withdrawal process; construing provisions; requiring

1 certain electric utilities to offer certain rate
2 options; requiring utility to submit certain rate
3 option proposals to Commission; requiring certain
4 notice be provided to customers; requiring certain
5 electric utility to administer certain program;
6 establishing provisions of program; requiring
7 promulgation of rules by Commission; prohibiting an
8 electric utility from disconnecting service to a
9 customer under certain conditions; requiring electric
10 utility to maintain certain list; requiring list
11 distribution; requiring certain electric utilities
12 using natural gas electric generation to maintain
13 certain supply by certain date; providing for certain
14 electric utility to enter into certain storage
15 agreements; providing for codification; and declaring
16 an emergency.

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BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 17 O.S. 2021, Section 291, is amended to read as follows:

Section 291. As used in this act:

1. "Commission" means the Corporation Commission;
2. "Incumbent electric transmission owner" means any Oklahoma electric public utility, as recognized by the Commission, or its affiliates, or subsidiaries, or any electric cooperative, any municipal power agency, or any municipal utility that owns, operates, and maintains an electric transmission facility in this state, or any public utility, as recognized by the Commission, that is engaged in the development of an electric transmission facility in the state as of the effective date of this act;

1 3. "Local electric transmission facility" means a high-voltage
2 transmission line or high-voltage associated transmission facilities
3 with a rating of ~~greater than sixty-nine (69) kilovolts and less~~
4 ~~than three hundred (300) kilovolts~~ or greater; and

5 4. "Southwest Power Pool" means the Southwest Power Pool or any
6 federally recognized successor entity.

7 SECTION 2. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 803.1 of Title 17, unless there
9 is created a duplication in numbering, reads as follows:

10 Sections 2 through 12 of this act shall be known and may be
11 cited as the "Ratepayer Protection Act of 2023".

12 SECTION 3. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 803.2 of Title 17, unless there
14 is created a duplication in numbering, reads as follows:

15 As used in this act:

16 1. "Asset manager" means any third party that is authorized to
17 sell, market, or utilize excess natural gas capacity that electric
18 utilities do not need or are not critical for operation during non-
19 winter months;

20 2. "Commission" means the Corporation Commission;

21 3. "Customer utility bill relief program" means a program to be
22 administered by an electric utility subject to retail rate
23 regulation by the Commission, to be offered to residential customers
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1 of the utility for the purposes of providing bill relief options to
2 customers;

3 4. "Earned return on equity" means the actual earned return on
4 equity during the historical year, subject to the adjustments
5 defined in this act and the utility's performance-based rate plan
6 rate schedule approved by the Commission;

7 5. "General rate case application" means a request for review
8 of an electric utility's rates and charges as prescribed by the laws
9 of this state and administrative rule of the Commission;

10 6. "Historical year" means the test period selected by the
11 electric utility in its performance-based rate plan notice;

12 7. "Natural gas electric generation" means a machine or
13 machines that use natural gas to produce capacity, energy, or other
14 electricity products;

15 8. "Performance-based rate plan" means the formula by which the
16 jurisdictional non-fuel revenue requirements of a rate-regulated
17 electric utility shall be calculated and allocated to the utility's
18 various rate schedules, subject to the jurisdiction of the
19 Commission and this act;

20 9. "Performance-based rate plan application" means one of the
21 five annual rate evaluations and adjustments filed by the electric
22 utility before the Commission during the performance-based rate plan
23 term;

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1 10. "Performance-based rate plan application filing date" means
2 the last day of the year in which an electric utility shall file its
3 annual performance-based rate plan application before the
4 Commission, unless a modification to such date is requested by a
5 utility and approved by the Commission;

6 11. "Performance-based rate plan notice" means the request
7 filed before the Commission electing to utilize a performance-based
8 rate plan, which shall be included with a general rate case
9 application filed before the Commission;

10 12. "Performance-based rate plan term" means a period following
11 a final order issued in a general rate case application, inclusive
12 of five annual performance-based rate plan applications within five
13 (5) individual historical years;

14 13. "Target return on equity" means the return on shareholder
15 equity established for the electric utility in the final order
16 addressing its most recent general rate case application; and

17 14. "Winter months" means the time period between December 21
18 of a given year through March 20 of the following year.

19 SECTION 4. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 803.3 of Title 17, unless there
21 is created a duplication in numbering, reads as follows:

22 A. 1. An electric utility filing an application for a general
23 change to its rates and charges under this section and pursuant to
24 the rules of the Corporation Commission may, as part of a general
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1 rate change application, file a performance-based rate plan notice
2 before the Commission indicating the utility is electing to have its
3 rates regulated under a performance-based rate plan as authorized
4 and defined by this act.

5 2. The performance-based rate plan notice shall define the
6 historical year to be selected by the utility and utilized in each
7 performance-based rate plan application during the performance-based
8 rate plan term.

9 B. 1. The Commission shall grant the utility's performance-
10 based rate plan notice to elect rate regulation under a performance-
11 based rate plan, as authorized and defined by this act.

12 2. The Commission shall regulate the rates of the utility in
13 accordance with the terms of this act during the performance-based
14 rate plan term and any tariff approved by the Commission that does
15 not otherwise conflict with the terms of this act.

16 C. An electric utility shall not file its first performance-
17 based rate plan application of any performance-based rate plan term
18 until at least one hundred eighty (180) days after rates have become
19 effective pursuant to the final order on the application for a
20 general change in rates.

21 D. The rates that are approved in the final order of the
22 utility's most recent general rate case application shall remain in
23 effect during the performance-based rate plan term, subject to the
24 rate adjustments under this section.

1 E. 1. An approved performance-based rate plan shall require
2 the utility to file the information required by the Commission
3 pursuant to this section on the performance-based rate plan
4 application filing date.

5 2. An approved performance-based rate plan shall require any
6 party, according to the Commission's rules and procedures, to file
7 with the Commission testimony in response to the utility's
8 performance-based rate plan application no later than seventy-five
9 (75) calendar days after the utility's performance-based rate plan
10 application filing date.

11 3. An approved performance-based rate plan shall require the
12 utility to file with the Commission any rebuttal to a party's
13 testimony under paragraph 1 of this subsection within ninety (90)
14 calendar days after the performance-based rate plan filing date.

15 F. 1. The Commission shall conduct a hearing on a utility's
16 performance-based rate plan application no later than one hundred
17 twenty (120) calendar days after a utility's performance-based rate
18 plan application filing date.

19 2. The Commission shall issue a final order no later than one
20 hundred eighty (180) days after a utility's performance-based rate
21 plan application filing date. If a final order has not been issued
22 by the one-hundred-eightieth day following a performance-based rate
23 plan application filing date, the rates proposed by the utility in
24 its performance-based rate plan application shall go into immediate

1 effect, at the utility's discretion, subject to refund following the
2 issuance of a final order.

3 G. The Commission may require reasonable security to assure the
4 prompt payment of any refunds, including interest, that may be
5 ordered.

6 SECTION 5. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 803.4 of Title 17, unless there
8 is created a duplication in numbering, reads as follows:

9 A. An order by the Corporation Commission approving a
10 performance-based rate application shall specify the minimum
11 information required with each annual rate review filing.

12 B. Annual performance-based rate applications filed by an
13 electric utility during a performance-based rate term shall be
14 developed using the historical year selected by the utility.

15 C. Annual performance-based rate applications shall be prepared
16 consistent with the Commission's final order on the utility's most
17 recent general rate case application.

18 D. Following the conclusion of a performance-based rate term,
19 the utility may file a general rate case application and may elect
20 to include a new performance-based rate notice with such application
21 for a new performance-based rate term. Rates approved pursuant to a
22 utility's most recent performance-based rate application shall
23 continue until a final order in the utility's next general rate case
24 application is issued and the compliance tariffs are approved.

1 SECTION 6. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 803.5 of Title 17, unless there
3 is created a duplication in numbering, reads as follows:

4 A. 1. Rates shall be adjusted in a performance-based rate
5 application based on a comparison of the earned return on equity to
6 the target return on equity.

7 2. The target return on equity shall be established in the
8 final order addressing the performance-based rate notice in the
9 electric utility's most recent general rate case application.

10 3. In a performance-based rate application, the target return
11 on equity and earned return on equity shall be calculated utilizing
12 the same capitalization structure approved by the Commission in the
13 utility's most recent general rate case application.

14 B. For the purposes of adjusting rates in a performance-based
15 rate application, a dead-band of earned returns shall be established
16 around the target return on equity set in the final order. For rate
17 adjustments pursuant to this section, the following provisions shall
18 be applied:

19 1. The dead-band shall be the target return on equity plus
20 fifty (50) basis points and the target return on equity minus fifty
21 (50) basis points, for a total dead-band of one hundred (100) basis
22 points;

1 2. In a performance-based rate application, if the earned
2 return on equity is within the established dead-band, no rate change
3 or refund shall occur; and

4 3. In a performance-based rate application, if the earned
5 return on equity is less than the dead-band, rates shall be adjusted
6 to the target return on equity prospectively.

7 C. 1. In a performance-based rate application, if the earned
8 return on equity is greater than the dead-band, a refund shall be
9 issued to customers over a twelve-month period. The refund shall be
10 seventy-five percent (75%) of such revenues associated with the
11 earned return on equity greater than the dead-band and shall be
12 credited or returned to utility customers. The remaining twenty-
13 five percent (25%) of such revenues associated with the earned
14 return on equity greater than the dead-band shall be retained by the
15 utility and reinvested in the utility's power delivery
16 infrastructure to improve reliability and resilience.

17 2. Revenues returned to customers in one performance-based rate
18 application shall not be included in the calculation of a target
19 return on equity in a subsequent performance-based rate application
20 or a general rate case application.

21 D. Rate base and cost of service shall be computed in the same
22 manner as approved in the utility's most recent general rate case
23 application.

1 E. The utility shall file the resulting rate schedules as part
2 of any performance-based rate application final order compliance
3 filing.

4 F. Only one performance-based rate adjustment shall occur
5 during any period of three hundred sixty-five (365) days.

6 G. Rates resulting from a performance-based rate shall continue
7 until new rates have been ordered by the Commission in a subsequent
8 performance-based rate application or general rate case application.

9 H. A utility may file a general rate case application or seek
10 any other relief it may be entitled to under this act at any time
11 during the performance-based rate term.

12 SECTION 7. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 803.6 of Title 17, unless there
14 is created a duplication in numbering, reads as follows:

15 A. In the event that an electric utility files a performance-
16 based rate notice, all existing tariffs approved by the Corporation
17 Commission providing separate cost recovery outside of base rates
18 shall continue to be effective outside the performance-based rate
19 unless those tariffs are proposed to be eliminated at the discretion
20 of the utility.

21 B. Upon approval of a performance-based rate notice, the
22 Commission shall require the utility to file tariffs conforming to
23 this act and order of the Commission.

1 C. The utility may withdraw its election to have its rates
2 regulated pursuant to this act at any time. Upon withdrawal, all
3 existing rates and charges shall continue until a final order in the
4 utility's next general rate case application is issued and the
5 compliance tariffs are approved.

6 D. 1. Nothing in this act shall be construed to prohibit
7 utilities from requesting approval of additional optional rate
8 offerings to customers.

9 2. Nothing in this act shall be construed to repeal any other
10 provision of law and is supplemental to all other laws governing the
11 regulation of public utility rates.

12 3. Nothing in this act shall prohibit the Commission from
13 exercising its powers under any other statute or the Constitution of
14 the State of Oklahoma.

15 SECTION 8. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 804.1 of Title 17, unless there
17 is created a duplication in numbering, reads as follows:

18 A. All electric utilities subject to retail rate regulation by
19 the Corporation Commission shall offer rate options for residential
20 customers of the electric utility to protect them from price
21 volatility. Each utility shall, at a minimum, offer the following
22 rate options:

23 1. An average monthly billing plan; and

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1 2. An annual flat bill tariff option, for a premium, that
2 results in the same total bill for a twelve-month period. The
3 tariff option shall be available to a residential customer who has
4 resided at his or her current residence for the previous twelve (12)
5 months, has had his or her electricity priced on the applicable
6 residential tariffs and riders over the past twelve (12) months, and
7 is currently in good standing with the utility.

8 B. Each utility shall submit to the Commission for approval the
9 rate options to be offered to customers under subsection A of this
10 section. Upon approval by the Commission, the options shall become
11 a part of the utility's approved tariffs in the electric utility's
12 next general review of rates and charges filed pursuant to this act.

13 C. Not less than once per calendar year, a utility under this
14 section shall give written notice to its residential customers of
15 the availability of the rate options described in subsection A of
16 this section.

17 SECTION 9. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 804.2 of Title 17, unless there
19 is created a duplication in numbering, reads as follows:

20 A. An electric utility subject to retail rate regulation by the
21 Corporation Commission shall propose and be responsible for the
22 administration of a customer utility bill relief program. Proposed
23 programs shall be filed with the Commission or included with a
24 general rate case application for approval.

1 B. A program submitted under subsection A of this section shall
2 include, but not be limited to:

3 1. A process and criteria for application by an eligible
4 customer;

5 2. Provisions and criteria for waiving or reducing late payment
6 penalties, deposits, or unpaid balances;

7 3. Extended payment plans;

8 4. Criteria for suspension of disconnection activity in
9 addition to weather disconnection moratoriums; and

10 5. Explanation of the utility's plan for recovery of prudently
11 incurred program costs and any uncollectable balances incurred as a
12 result of the program.

13 C. The Commission shall promulgate rules to implement the
14 provisions of this section.

15 SECTION 10. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 804.3 of Title 17, unless there
17 is created a duplication in numbering, reads as follows:

18 An electric utility subject to retail rate regulation by the
19 Corporation Commission shall not disconnect service to a customer
20 for any of the following reasons:

21 1. Failure to pay for a different kind or classification of
22 service from that requested;

23 2. Failure to pay a bill correcting a previous underbilling,
24 due to misapplication of rates, unless the utility offers the

1 consumer a deferred payment agreement as provided in administrative
2 rule by the Commission;

3 3. Failure of a previous owner or occupant at the premises or
4 user of the service to pay an unpaid or delinquent account, except
5 where the previous occupant remains an occupant or user of the
6 utility service;

7 4. Failure of a customer to pay any portion of an estimated
8 billing which the customer disputes, except where the customer fails
9 to allow a utility representative access to the meter, or if the
10 customer regularly reads the customer's own meter and fails to
11 supply a current meter reading;

12 5. If a current customer in good standing accepts an additional
13 household member owing a previous bill to the utility, unless that
14 additional household member is listed on the lease arrangements or
15 another utility service as a responsible party, or unless the
16 household member shared service with the subscriber at a different
17 or same location;

18 6. If a customer or potential customer owes a previously unpaid
19 account from a different utility beyond the boundaries of the
20 utility's service territory;

21 7. In the case of a violation protested by a customer, whose
22 name was used to obtain service at another location without the
23 customer's permission or knowledge; provided, however, such misuse
24 shall be verified by the utility;

1 8. Nonpayment of an amount past due for more than three (3)
2 years if the utility cannot substantiate the charges with a copy of
3 the customer's complete billing history reflecting usage,
4 consumption, and relevant charges; and

5 9. Failure to pay a past due amount to another utility.

6 SECTION 11. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 804.4 of Title 17, unless there
8 is created a duplication in numbering, reads as follows:

9 A. 1. An electric utility subject to retail rate regulation by
10 the Corporation Commission shall compile and maintain a list
11 containing the name, address, and phone number of any known payment
12 assistance program, including information regarding any bilingual
13 services offered, that is applicable to each service area within the
14 utility's areas of operation. The list should include but not be
15 limited to local, state, federal, and tribal energy assistance
16 programs. The list shall also include any public or private
17 charitable organization that offers or has been known to offer
18 energy payment assistance; provided, the organization shall give
19 prior consent for inclusion on this list.

20 2. Electric utilities shall use due diligence in compiling and
21 updating this information, with updates to occur at least on an
22 annual basis.

1 3. Each electric utility subject to the provisions of this
2 section shall provide a copy of this list to any consumer who asks
3 for or requests such assistance.

4 B. The offer of any such list under this section shall be for
5 informative resource only. Failure of a customer to gain funding in
6 full or in part from any of the listed resources under this section
7 shall not result in any liability to the electric utility.

8 SECTION 12. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 805.1 of Title 17, unless there
10 is created a duplication in numbering, reads as follows:

11 A. An electric utility subject to retail rate regulation by the
12 Corporation Commission that utilizes natural gas electric generation
13 and has firm gas transportation contracts shall, by December 2026,
14 maintain a firm supply of enough natural gas to operate its
15 facilities at an eighty percent (80%) maximum daily quantity under
16 firm gas transportation contracts for fourteen (14) consecutive days
17 during the winter months to protect customers from adverse weather
18 events and supply chain issues. Of the above required firm supply
19 of natural gas, at least fifty percent (50%) of that firm supply
20 shall be satisfied by firm storage services, if available.

21 B. Each electric utility subject to the requirements of this
22 section may enter into storage management contracts with asset
23 managers, self-optimize its storage services to mitigate the costs
24 of the increased storage for customers, or any combination thereof.

1 One-half (1/2) of any monetary or financial benefits derived from
2 storage management contracts with an asset manager, the electric
3 utility's self-optimized services, or any combination thereof shall
4 be returned to customers to mitigate the costs of increased storage
5 capacity required in subsection A of this section.

6 C. Electric utilities subject to the provisions of this section
7 shall be entitled to recover costs for the firm supply requirements
8 of this section.

9 D. The Commission shall have the authority to promulgate any
10 rules and regulations necessary to effectuate the provisions of this
11 section.

12 SECTION 13. It being immediately necessary for the preservation
13 of the public peace, health or safety, an emergency is hereby
14 declared to exist, by reason whereof this act shall take effect and
15 be in full force from and after its passage and approval.

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