

# Right of First Refusal for Electric Transmission Projects:

## Delivering Resiliency and Affordability to Indiana Consumers

### EXECUTIVE SUMMARY

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Transmission reform has become a key policy item at both the federal and state level in recent years, as the national push toward new forms of clean generation increasingly demands a rethinking of how transmission has traditionally been planned and developed. While the policy zeitgeist over the past two decades has been to foster greater “competition” in these processes, recent experience has shown that this may not always be the best approach to serving essential energy policy goals when it comes at the expense of the timely, coordinated, and cost-effective expansion of the grid.

The Federal Energy Regulatory Commission’s (“FERC”) 2011 elimination of the federal right of first refusal (“ROFR”) for incumbent transmission providers has driven this paradoxical outcome. For the last decade-plus, cumbersome processes imposed by this change have hamstrung the development of new regional and inter-regional transmission facilities—transmission critically needed to support the clean energy transition, manage consumer costs, and address concerns about grid resiliency and resource adequacy. Some states, like Indiana, have worked to bridge the gap by enacting their own state ROFRs over the years, and FERC itself is now considering rolling back its federal ROFR policy. These shifts reflect a reality that has become increasingly apparent as the shortcomings of the competitive transmission process have emerged—rather than being backward and anti-competitive, granting incumbent utilities a ROFR to build new transmission can foster better outcomes for customers and the grid.

In the end, ROFRs benefit consumers by resulting in transmission developed based on realistic cost estimates and eliminating the need for other investments or payments necessary to maintain reliability in the absence of the development of the transmission. At a time when this country needs transmission, revisiting the need for ROFRs at the state level is imperative—a point underscored by FERC itself doing so at the federal level.



## KEY BENEFITS FOR HOOSIERS

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- Incumbent providers' typically long history of serving a particular area and engaging with local communities to address their specific concerns means that they tend to have a much greater degree of established knowledge that competitive developers simply cannot replicate.
- Incumbent utilities are state-regulated entities with a duty to serve in their state-sanctioned service territory subject to oversight by regulators
- Should reliability or other concerns arise, utilities can be called before regulators and held to task where appropriate on the facilities they build and operate.

## COMMON ROFR MYTHS

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ROFRs increase costs to customers, contribute to project delays, and stymie innovation in the transmission industry.

- Information asymmetry between incumbent utilities and competitive developers can lead to competitive developers offering unrealistically low-priced bids aimed largely at winning the solicitation, whereas utilities have more reason to submit a more realistic proposal that will hold up over time for cost recovery purposes.
- Competitive developers' bids may also offer cost caps as a purported cost containment measure; however, these caps frequently provide for risk-shifting exclusions that allow for final project costs to exceed those cost caps, and often for known high-risk cost categories.
- Competitive solicitations for new transmission projects are heavily time- and resource-intensive, with the delay between identification of a transmission need through the regional planning process and selection of a winning project ranging from several months at the low end to over four years at the high end, with an average delay of over 500 days.