KEVIN PETERSEN

STATE REPRESENTATIVE • SPEAKER PRO TEMPORE

Testimony on Assembly Bill 25 / Senate Bill 28
Right of First Refusal

Good afternoon members of the Senate Committee on Utilities and Tourism and the Assembly Committee on Energy and Utilities, thank you for allowing me to testify today. I have several things to discuss, but I'd like to highlight the four things this bill will do when signed into law: It will maintain Wisconsin's authority to control power grid decisions, ensure continued reliability for Wisconsin's electric customers, enshrine cost competition into our statutes, and it will stop the imbalance of other states having their costs shifted to us without us being able to shift our costs back to them.

In Wisconsin, when we turn our light switches on at night, we trust that there will be power to light our homes. We value the reliability of our energy, and our energy policies have been made to ensure we have power when we need it. But it wasn't always that way in the state.

A little over 20 years ago, Wisconsin's economic future was in doubt because we lacked a reliable and robust energy grid. Multiple utilities operated a fragmented transmission network. Utilities were disincentivized from making investments in their own transmission because those investments could benefit competitors at the expense of their own ratepayers. This resulted in under investment in transmission causing Wisconsin to be cut off from cheaper external power sources, while decreasing reliability and economic efficiency.

Can you imagine trying to lure massive data centers or major manufacturers to our state without electric reliability?

Things changed in the late 1990s, when the Governor and Legislature engaged in a multi-session bipartisan effort to make sure that Wisconsin had a safe, reliable, and economically efficient transmission network. Beginning with 1997 Wisconsin Act 240, the state began the process of encouraging utilities to divest

STATE CAPITOL: POST OFFICE BOX 8953 • MADISON, WISCONSIN 53708-8953
(608) 237-9157 • TOLL-FREE: (888) 534-0057 • FAX: (608) 282-3657 • Rep.Petersen@legis.wi.gov

their transmission lines in order to consolidate transmission operations in the state. While some utilities retained their transmission lines, such as Xcel and Dairyland Power Cooperative, many other utilities chose to divest these lines. The next session, 1999 Wisconsin Act 9 created the company we know today as American Transmission Company (ATC).

In that act, Wisconsin utilities were permitted to transfer their transmission assets, and ATC was required to assume those assets, along with the statutory duty to provide transmission and maintain the transmission lines that had been transferred. With the state's creation of ATC, much of Wisconsin's transmission lines came under the control of one company whose sole purpose is to ensure the reliable transmission of power in our state.

For many years after its creation, ATC was responsible for the construction, maintenance, and operation of both inter-state transmission projects (such as lines bringing wind power from the Dakotas into Wisconsin) and intra-state projects affecting only Wisconsin's grid. Federal law, at the time, granted ATC and other transmission operators a right-of-first refusal for the construction of these lines, and the projects were overseen and regulated by our own Public Service Commission (PSC).

Since then an order from the Federal Energy Regulatory Commission (FERC) has undermined states' energy independence, including in Wisconsin, by requiring inter-state projects to go through a lengthy bureaucratic bidding process mandated by the federal government. In 2015, FERC issued Order 1000, which removed a federal right-of-first refusal for incumbent transmission companies to construct inter-state transmission lines, although in Wisconsin, transmission companies retain the exclusive right to intra-state transmission construction.

FERC Order 1000 gives the Midcontinent Independent System Operator (MISO), the Midwest's regional grid regulator, a private entity, the authority to make

decisions about Wisconsin's electric transmission lines and power grid that would otherwise be under the jurisdiction of the PSC of Wisconsin.

The goals of Order 1000 were to encourage competition and cost-savings. Although these goals were admirable, unfortunately, they have not necessarily been realized.

When we talk about energy policy, it's important to keep in mind that we're dealing with a highly regulated industry, and it's highly regulated because the legislature intended it to be that way. I'll use the example of buying something at Wal-Mart to illustrate a point I'd like to make. If I go to Wal-Mart and want to buy a microwave, I go to the kitchen aisle and I can choose between varying qualities, types, and prices. As you're obviously aware, I can't go to an aisle in Wal-Mart or any other store to buy my power. In fact, I can't even choose which company I buy my power from.

This is by design. I have one utility that I can buy my power from when I'm at home, and in Wisconsin, I will always have one utility that I can buy power from, even in the most remote corners of the state. That utility has a regional monopoly on power. In exchange for that monopoly, given to them by state law, that utility can't pick and choose who they want to provide service to, they have to provide it to everyone. They are also subject to extensive oversight by the PSC that looks out for our interests. Everyone who wants power has access to power. That's known as the regulatory compact.

Given the highly regulated nature of energy policy, it's not surprising that Order 1000's goals of a competitive energy market have encountered challenges. Recent studies have found a number of issues with competitively bid projects under Order 1000. I will go over some of these issues, although it is a non-exhaustive list.

First, projects under this new scheme have experienced delays in start times. These delays can be attributed to a number of factors stemming from Order 1000, including the extensive bidding process required by MISO and companies operating in states they have little to no experience in. The Alliance for Innovation and Infrastructure noted this lack of evidence in their study "Building New Critical Infrastructure: No Time to Waste."

They noted what we all know, "Time is money." Furthermore, the study reports: "The competitive bidding process ensures that the development of these critical projects will be delayed by at least a year. The competitive solicitation processes has led to administrative costs and project delays. In addition to the reality that final costs have exceeded cost caps, many of the solicitations took more than two years to receive regulatory approval, and several years to complete the construction. This is a very real cost of the competitive process."

Second, the people approving transmission projects are not from Wisconsin, and don't keep our interests in mind. No disrespect to them, but I think you and I have Wisconsin's best interests in mind, and we should be making these important decisions. Without a state right-of-first-refusal, MISO is the one making the decision about who, where, and how transmission lines will be constructed in Wisconsin. The people making decisions about Wisconsin's grid are not beholden to anyone in our state government for the cost, reliability, or efficiency of our power grid.

Third, competitive projects have seen cost overruns passed on to rate payers. Even though competitive bidding may result in an initial low-ball bid from a developer, these projects will often have cost-overrun contingencies and multiple exclusions in capped costs. Developers have found ways to game the competitive bidding system by submitting a low-ball bid and then recovering the true costs from rate payers by taking advantage of these contingencies and cost caps. Examples of these cost overruns include the Harry Allen to Eldorado line, which

had a cost cap overrun of 39%, the Suncrest Project, which had a cost cap overrun of 14%, and the Ten West Link Project, which is still ongoing.

In fact, with the Test West Link Project, the investor filed for a 128% increase from its original price. Now Arizona and California have to wait while the Federal Energy Regulatory Commission decides on which no-win scenario applies to them. Either ratepayers pay more, making the cost caps meaningless, or they project is left hanging.

In light of these issues with Order 1000, Wisconsin must take action and level the playing field to return to earlier transmission policy that worked so well in in the 2000s and early 2010s.

Although FERC Order 1000 removed the federal right-of-first refusal, states may still implement a right-of-first refusal. While MISO has authority over inter-state transmission, MISO defers to state law regarding siting and permitting of transmission facilities. Because of this, a state level right-of-first refusal is still permitted and recognized, and such a law will return the authority over transmission lines in Wisconsin back to our PSC.

That is the purpose of Assembly Bill 25 / Senate Bill 28:

- It preserves the role of the PSC, whose members are appointed by the Governor and confirmed with the advice and consent of the State Senate, in deciding who owns and operates the transmission infrastructure in the state versus an out-of-state regulator decisions affecting Wisconsin ratepayers.

- It also requires Wisconsin's transmission developers to competitively bid the construction of their infrastructure which will be reviewed and approved by the PSC in an open, transparent process.

- It will not allow other MISO members from shifting a portion of their regional costs to Wisconsin without Wisconsin having the ability to cost allocate across the MISO region.

Multiple states in MISO already adopted similar legislation. Opponents will talk about how courts have overturned this in certain states, but they won't talk about the other states where the legislation is still good law. Nor will they talk about the wide conservative majorities that passed the legislation, and the bipartisan support it has garnered. Wisconsin should join these states by keeping our authority over our own power grid and remaining competitive in keeping the price of transmission low.

Thank you again for this opportunity to testify before you, and I look forward to any questions you may have.

DEVIN LEMAHIEU
SENATE MAJORITY LEADER

Senate Bill 28 & Assembly Bill 25
Senate Committee on Utilities and Tourism
Assembly Committee on Energy and Utilities
Tuesday, March 4, 2025

Chairmen Bradley, Steffen and Members,

Thank you for hearing testimony on Senate Bill 28 and Assembly Bill 25 commonly known as Right-of-First-Refusal or ROFR.

Senate Bill 28 will save Wisconsin utility ratepayers up to $1 billion on our future utility bills.

Transmission line project costs, deemed regionally beneficial by the Midcontinent Independent System Operator (MISO), can be shared within the region. However, when an incumbent company builds the project not only can they cost shift capital cost (poles, wires, labor, etc.) but also part of their fixed operational costs (system operating center, accounting, planning, etc.).

Senate Bill 28 will help ensure that those fixed costs are shared with beneficiaries in other states and not paid solely by Wisconsin ratepayers. Sharing fixed costs is estimated to save Wisconsin ratepayers $1 billion.

To further protect Wisconsin ratepayers, we've introduced Senate Amendment 1. The amendment removes the 10 year sunset included in the legislation and replaces it with language specific to the ability of a facility to cost shift to the region. Essentially, this legislation would be repealed if the MISO tariff that allows a transmission facility owner to allocate costs to the region changes. This can occur by the following three actions:

- A Presidential Executive Order
- An Act of Congress
- A Federal Energy Regulatory Commission Rule

With MISO looking to expand and improve the transmission network in the upper Midwest to improve reliability and support economic growth – including $1.8B for Wisconsin projects – it's important to ensure that the costs associated with these builds are not placed exclusively on Wisconsin ratepayers.

Thank you for your time, and I'd be happy to answer any questions the committee has.

OFFICE: State Capitol, P.O. Box 7882, Madison, WI 53707-7882 PHONE: (608) 266-2056 TOLL-FREE: (888) 295-8750
E-MAIL: Sen.LeMahieu@legis.wi.gov WEB: http://LeMahieu.senate.wi.gov

February 28, 2025

Answers to Wisconsin Senate (Incumbent vs. Non-Incumbent Developer):

- Is there any difference between how MISO would authorize a non-incumbent versus incumbent transmission company to spread the capital costs associated with an MVP line across the region? If there is, please explain the distinction.

No, there is no difference in how MISO's FERC-approved Tariff allocates capital costs associated with a Multi-Value Project (MVP) line whether developed by an incumbent or non-incumbent transmission company.
Under MISO's Tariff the revenue requirements (including capital and O&M costs) of MVP projects are allocated to MISO customers based on their net energy withdrawals, regardless of whether the project is developed by an incumbent or non-incumbent transmission company.
Note: MISO does not authorize the allocation of costs. FERC has approved the cost allocation and FERC has approved the formula rate utilized to calculate the revenue requirements. MISO's role is to administer the approved Tariff.

- Is there any difference between how a non-incumbent or incumbent transmission company would be authorized to spread the "overhead" costs associated with an MVP line across the region and the impact of any difference on who would ultimately pay for the overhead costs associated with the particular project? If there is, please explain the distinction?

No, there is no difference in how a non-incumbent versus an incumbent transmission company would spread its "overhead" (assumed to be O&M/A&G, etc.) costs associated with an MVP line across the region. MISO's tariff applies the same cost allocation methodology to both capital and overhead costs of MVP projects, regardless of whether the project is developed by an incumbent or non-incumbent transmission company.
However, due to the FERC approved formula rate template, company-specific allocation factors for total "overhead" costs may vary depending on the capital investments of the company and its total number of capital projects. This treatment by each company arises from how the formula rate calculation allocates overhead costs, potentially resulting in different financial impacts for Wisconsin ratepayers depending on the developer.

- Under the analysis you reviewed, please confirm how the costs of an MVP line would be regionally cost shared "does not produce the same result for a non-incumbent developer" as it does for an incumbent developer.

MISO's cost allocation framework under its Tariff applies the same methodology to both capital and overhead costs for MVP projects, regardless of whether the developer is an incumbent or non-incumbent transmission company.

However, as noted previously, the FERC-approved formula rate template results in different cost impacts on customers arising from company-specific allocation factors that may vary between incumbent and non-incumbent transmission owners who seek to build MVP lines. These allocation factors, calculated through Attachment MM, will differ based on each company's circumstances.
This explains the previous statements by MISO based upon the analysis we reviewed earlier this month called "Regional Cost sharing for MVP Projects". Specifically, we concluded that under certain assumptions (of that presentation) the cost/rate impacts from an incumbent transmission owner constructing MVP lines in Wisconsin are lower than that of a non-incumbent transmission owner.

Kind Regards,

Bob Kuzman

Midcontinent Independent System Operator, Inc.
317-249-5400
www.misoenergy.org

720 City Center Drive
Carmel, Indiana 46032

2985 Ames Crossing Road
Eagan, Minnesota 55121

1700 Centerview Drive
Little Rock, AR 72211

KAREN HURD
WISCONSIN STATE REPRESENTATIVE

Testimony in Support of Assembly Bill 25 & Senate Bill 28

Assembly Committee on Energy and Utilities & Senate Committee on Utilities and Tourism
Tuesday, March 4, 2025

Chairman Steffen, Chairman Bradley, and committee members, thank you for holding this hearing today on Assembly Bill (AB) 25 and Senate Bill (SB) 28. I would like to thank Representative Petersen and Senator LeMahieu for bringing this important legislation forward.

Not all square pegs can be forced effectively into a round hole. Such is the case with free trade/capitalism and utilities. For that is the issue with the Right of First Refusal (ROFR) legislation before us today. As a responsible society we cannot run multiple lines of transmission wires along the same route. It would be duplicative and is economically unfeasible. Imagine Company A running a high power transmission line down the highway, and Company B and C also doing the same thing to accommodate the consumer having a choice in which company provides their electricity. Because of the unique nature of utilities, monopolies are the common-sense solution, BUT they must be highly regulated by the state to ensure fair rates so that consumers cannot be taken advantage of by the utility. Thus, in the state of Wisconsin we have the Public Service Commission (PSC) that is the regulatory authority for our utilities.

As far as free trade the problem is not with the actual construction and building of the lines. That does undergo the open bidding process. For instance, Xcel Energy, the American Transmission Company, or Dairyland Power don't actually build the lines. They solicit bids for construction companies that specifically build transmission lines. It is similar to me building a house. I don't personally build the house, I hire someone to build it for me based on my selection of contractors to do the actual construction.

The issue before us is the ownership of the transmission line. Who has the right to own the transmission lines? There are two important points of which to take note in answering this question.

1) Consider our water utilities for a moment—water is carried from the water main via laterals to homes, and also consider wastewater treatment plants. Who owns these utilities? The local municipality. What if the city needed to dig a new well or build a new wastewater treatment plant? Who would own those new wells or new wastewater treatment plant? Our capitalist principles would certainly be followed as the municipality would bid out the work in digging the new wells or building the new wastewater treatment plant. However, the ownership would remain with the municipality. How can the state ensure that our water/sewer consumers won't be charged unreasonable prices by these municipal monopolies? Water and wastewater are highly regulated just as our electric utilities by the PSC.

Applying the same principle to our electric transmission lines, the entities that could be owners of new lines might be out-of-state developers not regulated by Wisconsin's PSC if ROFR is not in place, and instead these transmission lines would be regulated by the Midcontinent

P.O. Box 8952 • Madison, WI 53708-8952 • (608) 237-9169 • Toll-Free: (888) 534-0069 • Fax: (608) 282-3669
Rep.Hurd@legis.wisconsin.gov

Independent System Operator (MISO) which is overseen by the Federal Energy Regulatory Commission (FERC). We will have handed over our local control to larger regulatory agencies that may not have Wisconsin's best in mind.

2) Whoever owns the transmission line will have a monopoly on that line. Consumers will not have a choice in which company supplies their electricity. If they are along Company A's line, they can only get their electricity from Company A. Utilities are not like other consumer goods. They are too expensive to build to run multiple options from which a consumer could choose. Thus we create the possibility of an out-of-state monopoly that is not under the jurisdiction of our Wisconsin PSC, but regulated by a regional and federal authority if we do not pass ROFR. Far better to have our own Wisconsin companies be the monopoly than an out-of-state monopoly.

I ask for your support of AB 25/SB28 and thank you again for the opportunity to testify before you today.

"Energy Through Excellence"
This institution is an EOE and provider

Dunn Energy Cooperative

N5725 600th Street, P.O. Box 220
Menomonie, WI 54751-0220
Phone: 715-232-6240
Toll Free: 800-924-0630
Fax: 715-232-6244
www.dunnenergy.com

March 4, 2025

Chairman Bradley and members of the Senate Committee on Utilities and Tourism, as well as Chairman Steffen and members of the Assembly Committee on Energy & Utilities, thank you for allowing me to testify today on this critical legislation.

My name is Jesse Singerhouse, and I am the General Manager/CEO of Dunn Energy Cooperative in Menomonie, Wisconsin. There, I work with a team of 27 dedicated employees to keep the lights on for over 10,000 accounts in our rural service territory. I've been with the Cooperative for 25 years, serving the last five as CEO. Dunn Energy is governed by a board of directors made up of members of the cooperative. As a cooperative, we are guided by our principles to serve our member-owners and our communities.

I'm here today to express our strong support for Senate Bill 28 and Assembly Bill 25. This legislation is a positive step forward in helping Dunn Energy Cooperative and other cooperatives deliver on our mission to safely provide reliable, affordable, and environmentally responsible energy to our members as a cooperative business. Let me dive deeper into how this legislation helps us achieve that mission.

First, we know that a robust transmission system allows us to access an increased supply of renewable energy for our members as part of an all-of-the-above approach to power supply. Having access to a diverse power supply helps us keep power reliable and costs affordable for our members.

Second, Wisconsin cooperatives have historically invested in system reliability for our members. When we ask our members what the most important thing we can do is, keeping their power reliable is always at the top of the list. Ensuring that Wisconsin electric providers continue to build, maintain, and operate our transmission system is critical to keeping the lights on for all of Wisconsin.

Third, this legislation will help keep energy rates affordable for all members. Under the Midwest Independent System Operator (MISO) rules, incumbent transmission owners in Wisconsin—unlike new developers who are awarded projects—are allowed to spread some of the costs regionally within MISO. This will help make these large infrastructure investments more affordable for my members. Some will argue that ROFR legislation will increase project costs. I challenge that assumption. Wisconsin-based cooperatives have an obligation to our members, and we believe that having this legislation in place is the best financial approach to investing in our transmission system. If our costs are too high,

businesses will not locate here, and our growth will be slowed. Therefore, we have every incentive to keep project costs low and maintain competitive energy rates for both new and existing members.

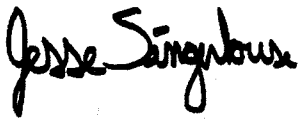
Finally, and most importantly, the safety of our crews, contractors, members, and the public when building electric infrastructure is critical and something we focus on every day. Safety in relation to this legislation also means having a provider who is accountable and can be relied upon to build, maintain, and operate these transmission projects in Wisconsin. Who is better suited for this than Wisconsin electric cooperatives, which are accountable to our member-owners and local boards, as well as other incumbent transmission owners in Wisconsin who are accountable to the state through the Public Service Commission? Companies that have been serving the energy needs of Wisconsinites—for 88 years in our case—should be the ones developing these projects to ensure Wisconsin energy decisions and accountability remain in Wisconsin.

Members of the Committee, the cooperative business model is something I am truly passionate about. My commitment has always been, and will continue to be, to my members and to doing what is best for them and our cooperative. Our board members and management team consider our local member-owners in every decision we make. If we believed that this legislation would negatively impact our members, I would feel obligated to tell you that. However, after reviewing this issue in its entirety, we believe that passing Senate Bill 28 and Assembly Bill 25 is the right step to protect and enhance the safety, reliability, affordability, and sustainability of our energy future in Wisconsin.

I urge the committee to support Senate Bill 28 and Assembly Bill 25 to establish a Right of First Refusal for incumbent transmission owners.

Thank you for your time and for your work representing the people of Wisconsin.

Respectfully,



Jesse Singerhouse
General Manager/CEO
Dunn Energy Cooperative

To: Members of the Senate Committee on Utilities and Tourism and the Assembly Committee on Energy and Utilities

From: Megan Novak, State Director, Americans for Prosperity – Wisconsin

Date: March 4, 2025

Subject: Support Ratepayers, Oppose Senate Bill 28/Assembly Bill 25

Chairman Bradley, Chairman Steffen and committee members, thank you for the opportunity to provide testimony opposing Senate Bill 28/Assembly Bill 25.

Americans for Prosperity – Wisconsin (AFP-Wisconsin) believes freedom and opportunity are the keys to unleashing prosperity for all. Through our community of activists in every corner of the state, we advocate for solutions, based on proven principles, in order to tackle the country's most critical challenges.

Our position has not changed.

While this bill, as introduced, is slightly different than previous versions by sunsetting the Right of First Refusal for incumbent transmission facility owners, this does not occur until 10 years after the effective date of the Act, which is, unfortunately, ten years too late for Wisconsin ratepayers. In fact, this provision actually appears to be an acknowledgement that a Right of First Refusal for incumbent transmission facilities is bad – if it were the silver bullet of savings proponents claim, wouldn't they want the language in statute in perpetuity?

Projects for Wisconsin

MISO recently announced the next round of transmission projects for it's footprint under Tranche 2.1. Wisconsin is set to have two competitively bid projects – the Wisconsin Southeast 345 kV Project and the Bell-Center-Columbia-Sugar Creek-Illinois/Wisconsin State Line 765 kV Project.

It is important to note that this will be the first 765 kV line in Wisconsin, and in the MISO region. The incumbent provider for this project has never built a 765 kV line – wouldn't we want

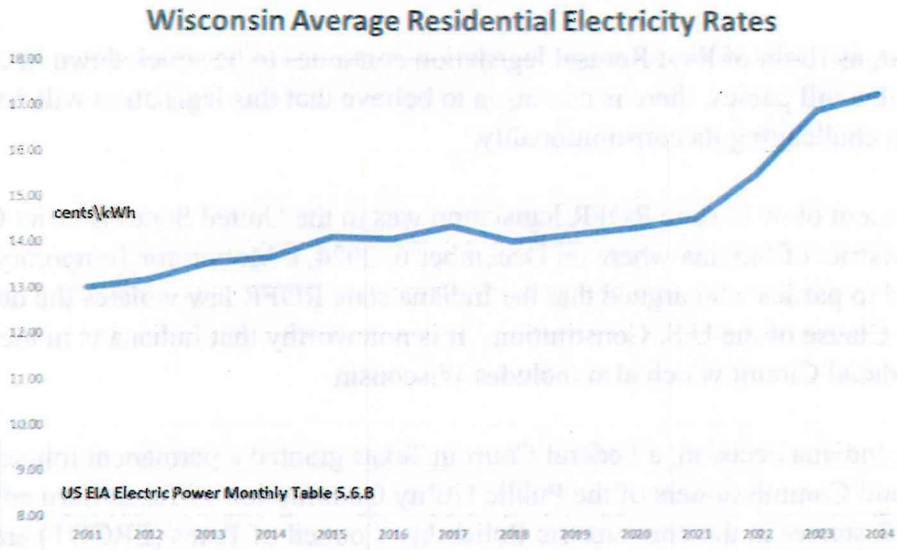
to see the types of innovation and financing package savings a competitive bid would offer for a line that is new to our state?

Collectively these two projects are estimated by MISO to cost over $1.7 billion. Both projects had their respective Requests for Proposal issued in February, meaning the competitive bidding process has started for these projects. These two RFPs are why the proponents of this bill are pushing for it to be passed after failing in the previous two sessions – they do not want to have to competitively bid for these massive new projects in our state.

NAME Competitive Transmission Project Description *High-Level Scope*	Estimated RFP Release Date*	Estimated Proposal Submission Deadline (Proposal Window)	MTEP Facility ID	State	Project Estimated Cost ($ millions 2024)	MTEP Expected In-Service Date (ISD)
WISE Wisconsin Southeast Project *Construct four new 345 kV transmission line facilities and four new 345 kV substation facilities*	2/13/2025	7/28/2025	50961 50968 50972 50974 50981 50987 50990 50993	WI	$568.3	2033
BECI Bell Center - Columbia - Sugar Creek - Illinois/Wisconsin State Line *Construct three new 765 kV transmission line facilities*	2/27/2025	8/11/2025	50949 51026 51028	WI	$1,209.3	2034

Rising Energy Costs for Wisconsinites

Wisconsin ratepayers have seen their electric utility bills skyrocket in recent years. The Public Service Commission has approved $2 billion in rate hikes since 2019. Wisconsin has gone from the lowest rates in the Midwest to 2nd highest over the last 20 years. All of these rate hikes are putting increased pressures on Wisconsin families and businesses.



Senate Bill 28/Assembly Bill 25 will only add costs to ratepayers' bills by eliminating the downward cost pressures we see from competition in the marketplace. While the utility space remains a highly regulated monopoly, eliminating the last vestige of free market principles – competitive bidding for these projects – is irresponsible for the ratepayers.

Competition Saves Money

Monopolies drive up prices and reduce quality. Competition drives down prices and increases quality. It is why this Legislature continues to inject free market forces into highly regulated industries like in K-12 education and in healthcare. The energy sector should be no exception.

While proponents and opponents of ROFR can each pick one or two projects that best fit their perspective on this bill, the facts of the matter is the evidence in the MISO region of the EHV transmission projects shows that competitively bid projects are expected to save ratepayers 37% over the estimated cost, while no-bid contracts saw an increase of 18%, of over $5.5 billion in additional costs for ratepayers. See attachment to this testimony.

Bid sheets from competitively bid projects across the MISO region also offer a key insight into the types of financing packages Wisconsin ratepayers could expect to see should this Legislature reject this bill. In the MISO selection report for the Hiple to IN/MI State Border 345 kV transmission project the winning bid included a lowered 9.8% return on equity (ROE), additional ROE reductions for any project delays, and annual revenue caps. This winning bid was $1.2 million lower ***per mile*** than the highest bid submitted – a massive savings for ratepayers.

Legal Issues Affecting Various ROFR Statutes

Beyond that, as Right of First Refusal legislation continues to be struck down in courts across the country, if this bill passes, there is no reason to believe that this legislation will not be the subject of litigation challenging its constitutionality.

The most recent blow to state ROFR legislation was in the United States District Court for the Southern District of Indiana where on December 6, 2024, a Motion for Temporary Injunction was granted to parties who argued that the Indiana state ROFR law violates the dormant Commerce Clause of the U.S. Constitution.[1] It is noteworthy that Indiana is in the federal Seventh Judicial Circuit which also includes Wisconsin.

Prior to the Indiana decision, a Federal Court in Texas granted a permanent injunction against the Chairman and Commissioners of the Public Utility Commission of Texas from enforcing the Texas ROFR statues in the non-Electric Reliability Council of Texas (ERCOT) areas of Texas.[2] In doing so, the Court stated that the various ROFR provisions of the Texas code

> "are unconstitutional because they violate the dormant Commerce Clause and are therefore invalid and unenforceable, to the extent they grant in-state transmission owners the exclusive right to build or acquire transmission lines in the non-ERCOT regions of Texas."[3]

In Iowa, their state Supreme Court struck down ROFR provisions due to logrolling. While this ruling was not on the merits of the statutory language, the court proactively went out of their way in the decision to call ROFR "quintessentially crony capitalism," stating "This rent-seeking protectionist legislation is anticompetitive."

Outside of the court system, the U.S. Department of Justice – Anti-Trust Division under President Trump's first term, commented on ROFR legislation in Texas in 2019. Their letter stated that "...these restrictions would limit competition, thereby, potentially raising prices and lowering the quality of service for electricity consumers..." and that "...such laws can similarly

---

[1] The litigation is in the United States District Court, Southern District of Indiana, Indianapolis Division, Case No. 1:24-cv-01722-TWP-MG and styled: LSP Transmission Holdings II, LLC, LS Power Midcontinent, LLC, Central Transmission, LLC, LS Power Grid DRS Holdings, LLC, Plaintiffs v. Chairman James F. Huston Indiana Utility Regulatory Commission, Commissioner Wesley R. Bennett Indiana Utility Regulatory Commission, Commissioner Sarah E. Freeman Indiana Utility Regulatory Commission, Commissioner David E. Veleta Indiana Utility Regulatory Commission, Commissioner David E. Ziegner Indiana Utility Regulatory Commission, Defendants, Northern Indiana Public Service Company, Indianapolis Power & Light Company d/b/a/ AES Indiana, Southern Indiana Gas and Electric Company d/b/a CenterPoint Energy Indiana South, Duke Energy Indiana, LLC, Intervenor Defendants.

[2] United States District Court for the Western District of Texas, Austin Division, Nextera Energy Capital Holdings, Inc, et. al., Plaintiffs, v. Kathleen Jackson, in her official capacity as Commissioner of the Public Utility Commission of Texas, et. al., Defendants, Case No. 1:19-CV-626-DII.

[3] *Id.*, Final Judgment issued October 28, 2024, at p. 1.

reduce competition and, thereby, harm consumers. State ROFR laws also may interfere with interstate commerce…".

In 2022, the US Department of Justice and Federal Trade Commission issued a joint comment to FERC stating "ROFR threatens to displace competition where it exists today for transmission design and construction for certain new projects."

Transmission Building Process

Regardless of this legislation passing or not, the Wisconsin Public Service Commission maintains authority over the siting and construction process of these transmission lines. Additionally, this legislation does not and cannot alter the coordinated planning conducted by MISO and it can't impact the policies of FERC. Transmission expansion planning is performed by MISO and is subject to stakeholder input and FERC approval prior to going into effect.

Conclusion

In Wisconsin, the lowest income households devote more than 20 percent of their after-tax income on residential utilities and gasoline. Governor Evers' appointees on the Public Service Commission continue to approve double digit rate hikes on Wisconsin families and businesses. Year after year, our activists across the state are stunned by skyrocketing utility bills.

Over time, the passage of SB 28/AB 25 will make these problems worse, raising costs on those who can least afford to pay while making our manufacturing sector less competitive nationally and internationally.

For too long, a protectionist energy system that is detrimental to both ratepayers and our state's long-term ability to be innovative has survived. We should instead be embracing efficient and forward looking energy policy, but passing Right of First Refusal would be a step back toward these same harmful protectionist policies.

This committee must stand for ratepayers and reject these bills.

1425 Corporate Center Drive Sun Prairie, WI 53590-9109 608.834.4500 wppienergy.org

Good afternoon, Chairman Bradley, Chairman Steffen and members of the Senate Committee on Utilities and Tourism and the Assembly Committee on Energy and Utilities, my name is Mike Peters and I am the President and CEO of WPPI Energy. Thank you for the opportunity to testify in support of Senate Bill 28 and Assembly Bill 25.

WPPI Energy is a member-owned, not for profit joint action agency that provides wholesale energy, services, and advocacy to 41 municipal electric utilities covering 18 Senate and 32 Assembly districts across the State of Wisconsin. Our members keep the lights on and the businesses running in the small to medium sized cities, towns and villages they serve and answer directly to their friends and neighbors in those communities.

Unlike other joint action agencies across the country, WPPI Energy is fortunate to own transmission through our fractional ownership of ATC. Prior to the formation of ATC, we needed to negotiate for transmission access rights across multiple jurisdictions to bring the energy needed to serve our members to their communities. This is still the case for many of our peers across the country. Our strong support for SB 28 and AB 25 is based on a simple premise: WPPI and our members benefit in two distinct ways when ATC builds transmission lines.

First, because of our partial ownership in ATC, we can offset the costs associated with moving energy across the power grid with the payment we receive for our fractional ownership of ATC transmission assets and we pass both the costs and the savings along to our members. **This would not be the case with a transmission line built by an out of state, merchant transmission company where we would incur costs, but have no earnings offset.**

The savings provided to our members because of WPPI's participation in ATC are significant: over the past three years (2021-2023) the savings have averaged over $9M per year. This bill would ensure WPPI's ability to offset the cost of delivering electricity to our municipal member utilities, and ultimately their customers, is preserved for future transmission lines MISO determines are needed to promote regional electric grid stability. **Passing ROFR will save money on future transmission costs for all 41 WPPI Energy member utilities.**

Second, ATC is in the transmission business for the long term and is a trusted and valued partner in a sector critical to all Wisconsinites: providing safe and reliable electricity. It is invested in and responsive to Wisconsin communities, businesses, stakeholders and WPPI member utilities. If we have any issues in delivering our generation resources to our load, we know exactly who to call at ATC. They are responsive and collaborative in seeking beneficial outcomes and are singularly focused on providing safe and reliable electricity to Wisconsinites year after year. They are not here today on one big project and gone tomorrow with no vested interest over the approach taken to build a single project.

WPPI Member Communities in Wisconsin:

Algoma, Black River Falls, Boscobel, Brodhead, Cedarburg, Columbus, Cuba City, Eagle River, Evansville, Florence, Hartford, Hustisford, Jefferson, Juneau, Kaukauna, Lake Mills, Lodi, Menasha, Mt. Horeb, Muscoda, New Glarus, New Holstein, New London, New Richmond, Oconomowoc, Oconto Falls, Plymouth, Prairie du Sac, Reedsburg, Richland Center, River Falls, Slinger, Stoughton, Sturgeon Bay, Sun Prairie, Two Rivers, Waterloo, Waunakee, Waupun, Westby, Whitehall

This bill would ensure a Wisconsin company employing men and women from across the state continues to build the critical infrastructure needed to provide reliable energy to all corners of the state. **ATC is a trusted, Wisconsin-based partner providing a critical service and this benefits all WPPI members.**

Thank you for the opportunity to testify on this important bill and **I ask that you support lowering costs for public power customers across the State of Wisconsin by supporting SB 28 and AB 25.**

WPPI Member Communities in Wisconsin:

Algoma, Black River Falls, Boscobel, Brodhead, Cedarburg, Columbus, Cuba City, Eagle River, Evansville, Florence, Hartford, Hustisford, Jefferson, Juneau, Kaukauna, Lake Mills, Lodi, Menasha, Mt. Horeb, Muscoda, New Glarus, New Holstein, New London, New Richmond, Oconomowoc, Oconto Falls, Plymouth, Prairie du Sac, Reedsburg, Richland Center, River Falls, Slinger, Stoughton, Sturgeon Bay, Sun Prairie, Two Rivers, Waterloo, Waunakee, Waupun, Westby, Whitehall

Marshfield Utilities Testimony in SUPPORT of AB 25 and SB 28: Incumbent transmission companies Right of First Refusal to maintain, own, and construct certain transmission facilities.

Chairman Bradley, Chairman Steffen, and members of the Assembly and Senate Utilities Committees,

Thank you for the opportunity to testify in support of AB 25 and SB 28 today. My name is Nicolas Kumm, and I am the General Manager of Marshfield Utilities (MU).

Marshfield Utilities, established in 1904, serves nearly 14,000 electric customers in the Marshfield area and is a founding member of Great Lakes Utilities. I have over 22 years of experience with Marshfield Utilities and have served as General Manager since 2018. Additionally, I am the Managing Director of Great Lakes Utilities, a joint action agency representing 11 Wisconsin municipal utilities, and the current Chair of the state association, Municipal Electric Utilities of Wisconsin, which represents 81 municipal electric utilities across the state.

I support AB 25 and SB 28 because they will save Marshfield Utilities' customers' money and ensure that our critical electric infrastructure is built and managed by Wisconsin-based companies with a proven track record of delivering reliable and safe energy transmission.

When American Transmission Company (ATC) was established in the early 2000s as the first multi-state, transmission-only utility in the United States, municipal utility members, including Marshfield Utilities, transferred their transmission assets to ATC in exchange for fractional ownership. Today, 15 municipal utilities are ATC owners.

As not-for-profit entities funded exclusively by ratepayer dollars, municipal utilities benefit when Wisconsin-owned transmission companies build our infrastructure. Over the past decade, ATC has distributed more than $197 million to public power utilities in Wisconsin—funds that have been reinvested into system improvements, helping to keep customer rates low. By contrast, projects built by out-of-state entities provide no such financial return to our customers.

As an ATC owner, Marshfield Utilities has received over $3.8 million in distributions in the past 10 years. These funds have enabled reinvestment in our distribution network, expansion of our EV charging infrastructure, and contributions to community projects such as pickleball courts, school athletic facilities, and educational exhibits at the Wildwood Zoo welcome center—all

direct benefits to our customers. None of these benefits would exist with projects built by an out-of-state company.

As a public power community, we take pride in delivering low-cost, reliable electricity to our residential, commercial, and industrial customers. Passing this bill ensures that major transmission projects remain Wisconsin-owned and overseen by Wisconsin regulators—leading generally to faster approvals, more efficient completion, and cost-effective outcomes for our customers and businesses.

Finally, our longstanding partnerships with Wisconsin-based companies like ATC are invaluable. ATC actively prepares and plans for our needs and, by extension, the needs of our customers. We have trusted working relationships with ATC personnel, ensuring quick problem resolution and reliable communication—key elements in maintaining customer confidence and service reliability.

Thank you for your time and for your support of AB 25 and SB 28.

Wisconsin Public Power Utility Owners of American Transmission Company

- Algoma Utility Commission
- Columbus Utilities
- Kaukauna Utilities
- Manitowoc Public Utilities
- Marshfield Utilities
- Oconto Falls Municipal Utilities
- Plymouth Utilities
- Reedsburg Utility
- Sheboygan Falls Utilities
- Stoughton Utilities
- Sturgeon Bay Utilities
- Sun Prairie Utilities
- Wisconsin Rapids Utilities
- Badger Power Authority
- Shawano Municipal Utilities
- Clintonville Utilities

CUB CITIZENS UTILITY BOARD

Citizens Utility Board of Wisconsin, Inc.
Thomas Content - Executive Director

P.O. BOX 8983 | Madison, WI 53708-8983
608-251-3322 | staff@cubwi.org

To: Assembly Committee on Energy and Utilities

Senate Committee on Utilities and Tourism

From: Tom Content, Executive Director

Citizens Utility Board of Wisconsin

Re: Opposition to Assembly Bill 25/Senate Bill 28

Date: March 4, 2025

Good afternoon. Chairmen Bradley and Steffen and committee members, I'm here to testify on behalf of the Citizens Utility Board of Wisconsin, a nonpartisan, nonprofit and independent consumer advocacy organization that works for a reliable, affordable, and safe energy future for Wisconsin.

At CUB our main focus is on price hikes customers across Wisconsin are seeing, including prices that are rising faster than inflation for customers across eastern Wisconsin. We've seen that transmission costs are taking a much bigger bite out of customers' bills than they did 10 or 15 years ago.

At a time when customers are concerned about rising costs at the grocery store and when they turn on the furnace to keep warm, this bill seeks to remove a tool that produces cost savings for utility customers.

Wisconsinites are being asked to pay for $5 billion of $32 billion in projects that have been announced so far. It doesn't matter whether those projects are built here in Wisconsin, or across the MISO north region, but we'll be paying a share. And that $32 billion price tag is expected to go higher.

ATC and other utilities are claiming O&M savings for Wisconsin customers if this bill passes. The problem is, those savings amount to a cost shift to other states, but the benefits to Wisconsin are overstated. After all, utilities in other states with protectionist ROFR laws on the books will shift their costs here. R Street estimates Wisconsinites are already seeing costs climb as a result.

The bottom line is that competitive bidding is preferable to Right of First Refusal, for a couple key reasons:

FIRST: Bidders in a competition often agree to cut their returns, so that the typical profit a utility will earn from building a line would be reduced from the more than 10% earned by incumbent utilities. This can produce sizable savings for customers.

SECOND: More cost savings come because utility customers in Wisconsin wouldn't be asked to absorb the cost of construction overruns, and we've seen cases like Cardinal Hickory Creek in Wisconsin and projects elsewhere where projects have gone significantly over budget – and customers end up paying more, and more – with the utility continuing to earn double-digit returns even on the higher amount.

THIRD: Legality of ROFR remains a challenge. Courts in Iowa, Texas and most recently Indiana have tossed ROFR laws for violating interstate commerce.

One other thing I'd like to emphasize is that only a portion of the lines the utilities want to build are eligible for bidding. MISO already limits which projects can be put out for bid. For the projects that are available, nothing would stop our utilities from coming in with the best designed, best priced project, and under those circumstances, all the benefits the utilities are touting would still flow through to Wisconsin customers.

As Wisconsin's consumer advocate for residential and small commercial and industrial customers, CUB is aligned with consumer advocates in other states and across the country on this issue.

I currently serve as vice president of the National Association of State Utility Consumer Advocates (NASUCA), a voluntary association of 60 consumer advocate offices in 44 states and the District of Columbia. Most of these offices are within a state Attorney General's office or an independent state agency.

In a diverse national group representing states on the coasts and here in the heartland, it's often hard to find consensus. But on this issue, we did.

Consumer advocates agree on the value of competitive bidding for major transmission projects, and have highlighted that in recent years.

In June 2022, NASUCA passed a transmission policy resolution that states in part:

> "Competitive bidding for transmission services should result in greater innovation and lower prices for consumers. In addition, competitive bidding should improve operating efficiencies and will shift business risk from monopoly customers to competitive transmission providers."[1]

More recently, in 2023,[2] NASUCA submitted comments to the Federal Energy Regulatory Commission emphasizing the value of competitive bidding and opposition to plans to undercut that through ROFR. Quoting from NASUCA's comments:

> "NASUCA believes that allowing entities to compete on price to win the opportunity to build defined projects will result in the lowest cost for consumers. In a process arguably controlled by incumbent transmission owners, eliminating the opportunity to bring competitive suppliers and competitive pressures into play for the benefit of consumers is the wrong policy direction."[3]

Thank you for the opportunity to speak on this issue. Please don't remove a tool in the toolbox for cost savings for customers already facing energy inflation.

---

[1] NASUCA Resolution 2022-01, Urging the Development of Consumer Protection Policies for Interconnection and Electric Transmission and Distribution Planning and Development, June 2022

[2] Initial Comments of NASUCA in FERC Transmission 'Building the Future" NOPR RM21-17-000, August 17, 2022

WISCONSIN INDUSTRIAL ENERGY GROUP

44 EAST MIFFLIN STREET | SUITE 404 | MADISON, WI 53703 | PH: 608 441 5740 | WIEG.ORG

To: Assembly Committee on Energy and Utilities
Senate Committee on Utilities and Tourism

From: Todd Stuart, Executive Director
Wisconsin Industrial Energy Group, Inc.

Re: Opposition to Assembly Bill 25/Senate Bill 28

Date: March 4, 2025

Chairmen Bradley and Steffen and members of the committee, thank you for the opportunity to provide comments on Assembly Bill 25/Senate Bill 28. Wisconsin Industrial Energy Group, Inc. respectfully offers these comments on behalf of its members in opposition to AB 25/SB 28 regarding an incumbent transmission facility owner's right to construct, own, and maintain certain transmission facilities.

WIEG is a non-profit association of 25 of Wisconsin's largest energy consumers. The group has long advocated for policies that support affordable and reliable energy. Since the early 1970s, WIEG has been the premiere voice of Wisconsin ratepayers and an engine for business retention and expansion. Each year its members collectively spend more than $500 million on electricity in Wisconsin. Most of these companies have electric bills of over $1 million each month, and electricity costs are one of their top costs of doing business. If we truly believed AB 25/SB 28 was a cost-effective approach, if it really saved $1 billion (or any money at all over the status quo) then we'd be the first group to offer our support.

- **Eliminating competition raises costs.** AB 25/SB 28 removes competitive bidding for large regional transmission projects. This will likely increase costs for Wisconsin ratepayers by removing cost controls.
- **High stakes for ratepayers.** WIEG's 25 member companies spend over $500 million annually on electricity. Wisconsin's rates are above the Midwest and national averages. MISO's transmission expansion plan is potentially $100 billion.
- **Competition is proven to save money.** Studies and recent MISO projects - like Ameren Transmission Company of Illinois (ATXI) Fairport to Denny to IA/MO Border project – show savings by as much as 45%. Cost reductions and alternative financing can save Wisconsin consumers billions over time.
- **ATC's $1 billion in savings is not real.** The utilities' own study shows increased costs in the first six years. Any savings are back-end loaded and negligible in today's dollars. It relies on Operations & Maintenance (O&M) cost shifting that occurs regardless of a Right of First Refusal (ROFR) law and not actual cost reductions.

This bill eliminates competition on the development of large, new, regionally cost-shared transmission projects approved by the Midcontinent Independent System Operator (MISO). Eliminating competition will almost certainly cost Wisconsin businesses and consumers more money. Without competition, there are fewer checks and balances on cost estimates, and little or no incentive to curb transmission project costs and prevent cost overruns.

Our utilities have touted $1 billion in savings derived from regional O&M cost shifting/cost sharing under the MISO tariff. Our utilities give the impression that O&M cost shifting will only occur if Wisconsin has a ROFR law in Wisconsin. This (mis)characterization does not indicate that the very same O&M cost sharing goes on when our utilities win a competitive bid. ATC or Xcel can do this O&M cost shift without a ROFR law. The utilities just need to win the bid. As you can see from the ATXI example, a utility can produce cost savings through the RFP process and have O&M cost sharing. WIEG wants the cost discipline of both the RFP process and the cost sharing.

Once again, you do not need a ROFR law to have O&M cost shifting. Under MISO's Attachment MM, all incumbent transmission owners and their new entrant competitors can share O&M costs. All utilities are doing the same O&M cost shifting so there is no secret sauce and no net savings due to a negation effect.

It is very important to highlight that O&M cost shifting is not the same as cost savings. If overall transmission costs end up higher from lack of competition, then the higher costs eventually come back to Wisconsin customers. For example, R Street estimated Wisconsin is paying $175 million more for MISO Tranche 1 projects due to the ROFR laws in other states.

ATC's own report, even if you take all their assumptions at face value, the "savings" crossover does not occur until year 7, a time horizon far longer than what most private-sector businesses find acceptable. In other words, it would cost customers millions for at least the first 6 years. WIEG would like to see the savings right now. You can see from ATC's own report that the savings are all back-end loaded over the 40 years. If you apply a net present value analysis such as the Manhattan Institute and MacIver Institute, then it is easy to discern any ROFR law "advantage" is illusory at best. In layman's terms, the $1 billion in savings projected over 40 years is almost worth nothing in today's dollars.

The very same utilities that have raised rates by billions of dollars over the last several years now claim to want to save us $1 billion over 40 years. We have heard utilities claim time and again that spending billions on new infrastructure will eventually lead to savings. Unfortunately, we have had among the highest rates in the Midwest for over 20 years. Consumers believe that we could use more competition for generation and transmission, not less, if we are to ever regain competitive rates in Wisconsin.

That's why WIEG and our members join ratepayer organizations like Citizens Utility Board, taxpayer advocate groups like Americans for Prosperity and Americans for Tax Reform, free market advocates like Wisconsin Institute of Law and Liberty, and other trade associations representing thousands of Wisconsin employees like Associated Builders and Contractors, Midwest Food Products Association and Wisconsin Cast Metals Association in opposing this legislation.

There is no real urgency to pass a transmission ROFR bill. The only "urgency" is coming from utilities that want to short circuit the competitive bidding process for large multi-state transmission lines. To the best of our knowledge, ATC or DATC, Xcel and ITC have never won a competitive project inside the MISO footprint or elsewhere in the United States.

On February 13, MISO issued the RFP for the Wisconsin Southeast Project (WISE). This project would construct four new 345 kV transmission line facilities and four new 345 kV substation facilities for an estimated $568 million. Bids on WISE are due July 28, 2025. On February 27, MISO issued the RFP for the Bell Center-Columbia–Sugar Creek-Illinois/Wisconsin State Line (BECI). This project would consist of three new 765 kV transmission line facilities for an estimated $1.2 billion. Bids on BECI are due August 11, 2025. We believe the competitive bidding process should be allowed to proceed and there should be no urgency to pass a ROFR bill. In fact, with 765kV being novel to MISO, Wisconsin and ATC, taking some time to get it done right makes sense, especially when other developers with current 765 experience are allowed to compete and bring forth their unique insight and innovations in a way that could save money for all customers.

Wisconsin's ratepayers simply can't afford additional cost burdens. High electric rates are effectively a tax on all Wisconsin homeowners and businesses. Wisconsin's electricity rates have been well above the Midwest average since 2003 and continue to be above the national average. Energy inflation is a real issue in Wisconsin.

This is a major concern for our members, employing thousands of Wisconsin taxpayers across Wisconsin as MISO is expected to approve up to $100 billion of transmission projects during its Long-Range Transmission Planning process (LRTP). Wisconsin has historically had a roughly 13% cost share of regional projects. If a similar percentage of cost sharing is applied to the new MISO projects, then Wisconsin would see billions of dollars in new costs from regional projects.

Transmission costs have been a contributing factor in Wisconsin's persistently high rates. Transmission has steadily grown and now makes up a significant and growing line item on electricity bills in Wisconsin. ATC's latest 10-year capital expansion plan ranges from $8.9 billion up to $10.9 billion. This is ATC's largest capital plan ever, and it is $0.8 billion to $4.3 billion more than last year. It is double or even triple the capital expenditure plans of four years ago. Based on MISO's expansion plans, we have no reason to believe there will be any diminished rate pressure from the growth in capital expenditures related to transmission.

It is one reason WIEG has joined coalitions to promote competition and reduce the Return on Equity of incumbent transmission owners over the last decade. For example, in November 2013, MISO industrial customers, including WIEG, filed a Complaint with the Federal Electricity Regulatory Commission (FERC) asking that the FERC order a reduction to the base Return on Equity used by MISO transmission owners, including ATC, from 12.2% down to 9.15%. Eventually the Return on Equity was ordered down to the current 10.48% for MISO transmission owners. More recently, a consumer coalition filed a Complaint that alleges FERC has not delivered "just and reasonable" transmission rates.

The Public Service Commission (PSC) has supported transmission competition at MISO because competitive bidding serves the public interest and promotes compliance with FERC Order 1000. Multiple regulatory and consumer agencies, including National Association of Regulatory Utility Commissioners (NARUC) and National Association of State Utility Advocates (NASUCA) filed comments in recent years related to FERC Order 1000 in support of competition.

President Trump's Department of Justice said that bills like AB 25/SB 28 will increase costs, reduce reliability and harm consumers. The Trump administration commented on the Texas version of AB 25/SB 28: *"such laws can similarly reduce competition and thereby harm consumers... consumers may face higher electricity rates and less reliable service as H.B. 3995 [the Texas version of AB 25/SB 28] may limit construction of transmission that would increase the supply of generation available to serve a local territory or area."*

According to studies by the Brattle Group, competition to build regional transmission projects drives cost savings between 20% - 30%, and when cost overruns by incumbent utilities are factored in, the cost savings are estimated closer to 40%. Other more recent studies such as the MacIver Institute, the Manhattan Institute, the Pelican Institute and R Street have confirmed these savings figures using results from 2023-2024 MISO competitions that have occurred since the last time the legislative committees had public hearings on this ROFR issue.

These up to date "real world" examples within the MISO footprint demonstrate how competition can spur innovation and create savings for customers. The six competitively bid MISO multi-value projects (MVP) resulted in winning bids 37% less than the highest bids placed and 52% less than MISO's estimates. In contrast, the 17 directly assigned (not subject to competition) MVP projects were 18% higher than MISO's original estimates. That figure includes ATC's Cardinal-Hickory Creek line. According to the most recent filing at the Wisconsin Public Service Commission, Cardinal-Hickory Creek is 41% or over $200 million over the total project cost approved by the regulators.

One competitive project we must highlight is the Fairport to Denny to IA/MO Border project. The winning bidder, ATXI, had a winning bid of $84 million as compared to MISO's estimate of $161 million, a 45% reduction. The winning bid had a project implementation cap and annual Operations & Maintenance (O&M) ten-year cost cap.

Perhaps most importantly, to win the bid, ATXI partnered with Missouri Joint Municipal Electric Utility Commission (MJMEUC) for an alternative financing package.

ATXI used 45% equity and an imputed 6.69% authorized Return on Equity (level of profit) for this project. For comparison, ATC uses 50% equity and a 10.48% Return on Equity. If the ATXI financing package would be applied to the two competitively bid projects for Wisconsin, that would easily add up to billions in savings versus directly assigned projects (e.g. if a ROFR law is in place).

Another example is the Hiple to Indiana/Michigan State Border project. This is a 30-mile 345 kV transmission line. It was for the first project of the Renewable Integration Projects that are part of Tranche 1 LRTP. There are cost caps in place. The financing is set at 9.8% rather than ATC's return on equity of 10.48%. As a result of the competitive process, the Hiple to Indiana/Michigan State Border project will cost about 26% per mile less and save $177 million versus MISO's original estimate.

The schedule guarantees and reduced return on equity are significant long-term benefits to the consumer. These commitments end up being incorporated into binding and enforceable contracts with MISO. In other words, if there are delays or cost overruns, the developer must absorb the financial consequences. If AB 25/SB 28 would be signed into law, then the protections are removed and large, regionally cost shared projects default to the incumbent utilities. The excess costs to consumers resulting from the lack of competition would be easily reach into the billions from overruns and/or lack of financial concessions.

In other words, just like shopping around for a better car loan or mortgage, the alternative financing package because of the competitive process holds the promise of true savings over time. Under a ROFR law, you can forget about utilities offering a lower return on equity or lower weighted average cost of capital.

Wisconsin has one of the most manufacturing-dependent economies in the country. Our member companies support 35,000 good paying jobs, compete locally, regionally and globally. Energy costs are one of the primary factors considered for retention, relocation or expansion for manufacturers throughout our great state.

Many utility customers, both large and small, had double-digit rate hikes on their electric bills in recent years. The PSC recently approved over a half billion dollars in higher electric and natural gas rates for 2025 and 2026.

Wisconsin's energy inflation and uncompetitive electric rates are a threat to our industries. Removing competition will cost Wisconsin businesses and taxpayers more money, and that is why members of this committee should vote no on this bill.

MISO RFPs FOR EHV TRANSMISSION

Results of MISO Competitive Transmission Administration Process 2021 to 2024, January 2025

YEAR	Project	BIDS	Owner	Winning Bid Cost	Status	Bidding Range of Proposals HIGH	RATEPAYER EFFECTS
2018	Hartburg Sarbine	12	NextEra	$115,000,000	Cancelled by ROFR	$134,000,000	-14%
2015	Duff Coleman	11	Republic	$50,000,000	Complete	$59,000,000	-15%
2023	Hipple IN-MI Border	7	Republic	$77,000,000	In-Progress	$125,000,000	-38%
2023	Fairport Denny	9	ATXI	$84,000,000	In-Progress	$154,000,000	-45%
2023	Deadend Tremval	1	DPC	$8,400,000	In-Progress	$13,800,000	-39%
2023	IA-IL Ipava	1	ATXI	$20,000,000	In-Progress	$26,000,000	-23%
2024	Denny Zach TH Maywood	6	ATXI	$273,000,000	In-Progress	$486,000,000	-44%
			Sum	$627,400,000		$997,800,000	-37%

MISO Non-Compete MVP Projects

Results from MISO MVP Dashboard 2024, January 2025

YEAR	Project		Utility Owner	Developed Cost	Status	Original Cost	RATEPAYER EFFECTS
2017	Big Stone Brookings	SD	CAPX	$123,000,000	Complete	$227,000,000	-46%
2011	Brookings Twin Cities	MN/SD	Xcel	$670,000,000	Complete	$738,000,000	-9%
2015	Lakefield Jct. Webster	MN/IA	ITC-M	$692,000,000	Complete	$550,000,000	26%
2015	Winco Hazleton	IA	Basin	$564,000,000	Complete	$469,000,000	20%
2018	Badger Coulee & CHC	WI	ATC	$1,034,000,000	Complete	$798,000,000	30%
2019	Big Stone Ellendale	N/SD	OTP	$247,000,000	Complete	$331,000,000	-25%
2017	Otumwa Zachary	IA/MO	ITC-M	$221,000,000	Complete	$152,000,000	45%
2016	Zachary Maywood	MO	Ameren	$172,000,000	Complete	$113,000,000	52%
2016	Maywood Austin	MO/IL	Ameren	$723,000,000	Complete	$432,000,000	67%
2018	Austin Pana	IL	ATXI	$135,000,000	Complete	$99,000,000	36%
2018	Pana Sugar Creek	IL/IN	ATXI	$408,000,000	Complete	$318,000,000	28%
2019	Reynolds Hipple	IN	NIPSCO	$405,000,000	Complete	$271,000,000	49%
2013	Michigan Thumb Loop	MI	ITC	$504,000,000	Complete	$510,000,000	-1%
2018	Reynolds Greentown	IN	NIPSCO	$348,000,000	Complete	$245,000,000	42%
2014	Pleasant Prairie Zion	WI	ATC	$36,000,000	Complete	$29,000,000	24%
2014	Fargo Oak Grove	IL	ATXI	$201,000,000	Complete	$199,000,000	1%
2016	Sidney Rising	IL	ATXI	$88,000,000	Complete	$83,000,000	6%
			Sum	$6,571,000,000		$5,564,000,000	18%

Total Project Cost	$	1,800,000,000
Depreciable Life (years)		40
Utility Developer		
Equity Capital %		50.00%
Debt Capital %		50.00%
Cost of Debt %		4.00%
Authorized ROE %		10.48%
Authorized WACC		7.24%

Attachments O & MM, 2024 Budgets

$1.8 Billion Tranche 2.1 Projects in Wisconsin

ATC *Approach*

$5.25 Billion Total Revenue Requirement Over 40 Years

Year	Beginning Book Value	Capital Expenditures	Depreciation Expense	End Book Value	Avg Book Value (Net Investment Rate Base)	Interest Expense	Net Income	Return on NIRB	Income Taxes	Gross Reciepts Tax	Total Revenue Requirement
0	-	$ 1,800,000,000	-	$ 1,800,000,000	$ 900,000,000			$ -			-
1	$ 1,800,000,000	-	$ 45,000,000	$ 1,755,000,000	$ 1,777,500,000	$ 35,550,000	$ 93,141,000	$ 128,691,000	$ 34,871,990	$5,540,743	**$214,103,733**
2	$ 1,755,000,000	-	$ 45,000,000	$ 1,710,000,000	$ 1,732,500,000	$ 34,650,000	$ 90,783,000	$ 125,433,000	$ 33,989,155	$5,436,813	$209,858,968
3	$ 1,710,000,000	-	$ 45,000,000	$ 1,665,000,000	$ 1,687,500,000	$ 33,750,000	$ 88,425,000	$ 122,175,000	$ 33,106,320	$5,332,883	$205,614,203
4	$ 1,665,000,000	-	$ 45,000,000	$ 1,620,000,000	$ 1,642,500,000	$ 32,850,000	$ 86,067,000	$ 118,917,000	$ 32,223,485	$5,228,952	$201,369,437
5	$ 1,620,000,000	-	$ 45,000,000	$ 1,575,000,000	$ 1,597,500,000	$ 31,950,000	$ 83,709,000	$ 115,659,000	$ 31,340,650	$5,125,022	$197,124,672
6	$ 1,575,000,000	-	$ 45,000,000	$ 1,530,000,000	$ 1,552,500,000	$ 31,050,000	$ 81,351,000	$ 112,401,000	$ 30,457,814	$5,021,092	$192,879,906
7	$ 1,530,000,000	-	$ 45,000,000	$ 1,485,000,000	$ 1,507,500,000	$ 30,150,000	$ 78,993,000	$ 109,143,000	$ 29,574,979	$4,917,162	$188,635,141
8	$ 1,485,000,000	-	$ 45,000,000	$ 1,440,000,000	$ 1,462,500,000	$ 29,250,000	$ 76,635,000	$ 105,885,000	$ 28,692,144	$4,813,232	$184,390,376
9	$ 1,440,000,000	-	$ 45,000,000	$ 1,395,000,000	$ 1,417,500,000	$ 28,350,000	$ 74,277,000	$ 102,627,000	$ 27,809,309	$4,709,301	$180,145,610
10	$ 1,395,000,000	-	$ 45,000,000	$ 1,350,000,000	$ 1,372,500,000	$ 27,450,000	$ 71,919,000	$ 99,369,000	$ 26,926,474	$4,605,371	$175,900,845
11	$ 1,350,000,000	-	$ 45,000,000	$ 1,305,000,000	$ 1,327,500,000	$ 26,550,000	$ 69,561,000	$ 96,111,000	$ 26,043,638	$4,501,441	$171,656,079
12	$ 1,305,000,000	-	$ 45,000,000	$ 1,260,000,000	$ 1,282,500,000	$ 25,650,000	$ 67,203,000	$ 92,853,000	$ 25,160,803	$4,397,511	$167,411,314
13	$ 1,260,000,000	-	$ 45,000,000	$ 1,215,000,000	$ 1,237,500,000	$ 24,750,000	$ 64,845,000	$ 89,595,000	$ 24,277,968	$4,293,581	$163,166,549
14	$ 1,215,000,000	-	$ 45,000,000	$ 1,170,000,000	$ 1,192,500,000	$ 23,850,000	$ 62,487,000	$ 86,337,000	$ 23,395,133	$4,189,650	$158,921,783
15	$ 1,170,000,000	-	$ 45,000,000	$ 1,125,000,000	$ 1,147,500,000	$ 22,950,000	$ 60,129,000	$ 83,079,000	$ 22,512,298	$4,085,720	$154,677,018
16	$ 1,125,000,000	-	$ 45,000,000	$ 1,080,000,000	$ 1,102,500,000	$ 22,050,000	$ 57,771,000	$ 79,821,000	$ 21,629,462	$3,981,790	$150,432,252
17	$ 1,080,000,000	-	$ 45,000,000	$ 1,035,000,000	$ 1,057,500,000	$ 21,150,000	$ 55,413,000	$ 76,563,000	$ 20,746,627	$3,877,860	$146,187,487
18	$ 1,035,000,000	-	$ 45,000,000	$ 990,000,000	$ 1,012,500,000	$ 20,250,000	$ 53,055,000	$ 73,305,000	$ 19,863,792	$3,773,930	$141,942,722
19	$ 990,000,000	-	$ 45,000,000	$ 945,000,000	$ 967,500,000	$ 19,350,000	$ 50,697,000	$ 70,047,000	$ 18,980,957	$3,669,999	$137,697,956
20	$ 945,000,000	-	$ 45,000,000	$ 900,000,000	$ 922,500,000	$ 18,450,000	$ 48,339,000	$ 66,789,000	$ 18,098,122	$3,566,069	$133,453,191
21	$ 900,000,000	-	$ 45,000,000	$ 855,000,000	$ 877,500,000	$ 17,550,000	$ 45,981,000	$ 63,531,000	$ 17,215,286	$3,462,139	$129,208,425
22	$ 855,000,000	-	$ 45,000,000	$ 810,000,000	$ 832,500,000	$ 16,650,000	$ 43,623,000	$ 60,273,000	$ 16,332,451	$3,358,209	$124,963,660
23	$ 810,000,000	-	$ 45,000,000	$ 765,000,000	$ 787,500,000	$ 15,750,000	$ 41,265,000	$ 57,015,000	$ 15,449,616	$3,254,279	$120,718,895
24	$ 765,000,000	-	$ 45,000,000	$ 720,000,000	$ 742,500,000	$ 14,850,000	$ 38,907,000	$ 53,757,000	$ 14,566,781	$3,150,348	$116,474,129
25	$ 720,000,000	-	$ 45,000,000	$ 675,000,000	$ 697,500,000	$ 13,950,000	$ 36,549,000	$ 50,499,000	$ 13,683,946	$3,046,418	$112,229,364
26	$ 675,000,000	-	$ 45,000,000	$ 630,000,000	$ 652,500,000	$ 13,050,000	$ 34,191,000	$ 47,241,000	$ 12,801,110	$2,942,488	$107,984,598
27	$ 630,000,000	-	$ 45,000,000	$ 585,000,000	$ 607,500,000	$ 12,150,000	$ 31,833,000	$ 43,983,000	$ 11,918,275	$2,838,558	$103,739,833
28	$ 585,000,000	-	$ 45,000,000	$ 540,000,000	$ 562,500,000	$ 11,250,000	$ 29,475,000	$ 40,725,000	$ 11,035,440	$2,734,628	$99,495,068
29	$ 540,000,000	-	$ 45,000,000	$ 495,000,000	$ 517,500,000	$ 10,350,000	$ 27,117,000	$ 37,467,000	$ 10,152,605	$2,630,697	$95,250,302
30	$ 495,000,000	-	$ 45,000,000	$ 450,000,000	$ 472,500,000	$ 9,450,000	$ 24,759,000	$ 34,209,000	$ 9,269,770	$2,526,767	$91,005,537
31	$ 450,000,000	-	$ 45,000,000	$ 405,000,000	$ 427,500,000	$ 8,550,000	$ 22,401,000	$ 30,951,000	$ 8,386,934	$2,422,837	$86,760,771
32	$ 405,000,000	-	$ 45,000,000	$ 360,000,000	$ 382,500,000	$ 7,650,000	$ 20,043,000	$ 27,693,000	$ 7,504,099	$2,318,907	$82,516,006
33	$ 360,000,000	-	$ 45,000,000	$ 315,000,000	$ 337,500,000	$ 6,750,000	$ 17,685,000	$ 24,435,000	$ 6,621,264	$2,214,977	$78,271,241
34	$ 315,000,000	-	$ 45,000,000	$ 270,000,000	$ 292,500,000	$ 5,850,000	$ 15,327,000	$ 21,177,000	$ 5,738,429	$2,111,046	$74,026,475
35	$ 270,000,000	-	$ 45,000,000	$ 225,000,000	$ 247,500,000	$ 4,950,000	$ 12,969,000	$ 17,919,000	$ 4,855,594	$2,007,116	$69,781,710
36	$ 225,000,000	-	$ 45,000,000	$ 180,000,000	$ 202,500,000	$ 4,050,000	$ 10,611,000	$ 14,661,000	$ 3,972,758	$1,903,186	$65,536,944
37	$ 180,000,000	-	$ 45,000,000	$ 135,000,000	$ 157,500,000	$ 3,150,000	$ 8,253,000	$ 11,403,000	$ 3,089,923	$1,799,256	$61,292,179
38	$ 135,000,000	-	$ 45,000,000	$ 90,000,000	$ 112,500,000	$ 2,250,000	$ 5,895,000	$ 8,145,000	$ 2,207,088	$1,695,326	$57,047,414
39	$ 90,000,000	-	$ 45,000,000	$ 45,000,000	$ 67,500,000	$ 1,350,000	$ 3,537,000	$ 4,887,000	$ 1,324,253	$1,591,395	$52,802,648
40	$ 45,000,000	-	$ 45,000,000	$ -	$ 22,500,000	$ 450,000	$ 1,179,000	$ 1,629,000	$ 441,418	$1,487,465	$48,557,883
		$1,800,000,000	$1,800,000,000			$720,000,000	$1,886,400,000	$2,606,400,000	$706,268,160	$140,564,160	$5,253,232,320

$2,013,716,176.82

Charter Steel

1658 Cold Springs Road
Saukville, WI 53080

To: Assembly Committee on Energy and Utilities
Senate Committee on Utilities and Tourism

From: Marco Gonzalez, CEM
Director of Energy
Charter Manufacturing

Re: Opposition to Assembly Bill 25/Senate Bill 28

Date: March 4, 2025

Chairmen Bradley and Steffen and members of the committee, thank you for the opportunity to provide comments on Assembly Bill 25/Senate Bill 28. Charter Manufacturing respectfully offers these comments in opposition to AB 25/SB 28 regarding an incumbent transmission facility owner's right to construct, own, and maintain certain transmission facilities.

Charter Manufacturing is headquartered in Mequon, WI and supports over 1,300 employees in the state. Energy costs have been a major concern for our company for decades. As one of the largest customers of We Energies, we are always looking for opportunities to reduce our costs to remain competitive. Energy expenses represent the third highest cost of manufacturing our products, following raw materials and labor.

Charter Manufacturing is a family-owned steel and iron production and manufacturing company with manufacturing facilities in Wisconsin, Ohio, Illinois, North Carolina, Pennsylvania, and Texas . Charter Manufacturing's operations utilize a large amount of electricity to convert scrap metal into high quality steel and iron used in a range of sophisticated applications.

AB 25/SB 28 effectively eliminates competition on the development of large, new, regionally cost-shared transmission projects approved by the Midcontinent Independent System Operator (MISO). Eliminating competition will almost certainly cost energy-intensive Wisconsin businesses more money. If we truly believed AB 25/SB 28 was a cost-effective approach, then we'd be the first company to offer our support.

Transmission costs have been a contributing factor in Wisconsin's persistently high rates. Based on MISO's expansion plans, we have no reason to believe there will be any diminished rate pressure from the growth in capital expenditures related to transmission.

Charter Steel

1658 Cold Springs Road
Saukville, WI 53080

We have observed several MISO competitive projects coming in significantly less than the highest bids placed and 52% less than MISO's estimates. In contrast, the directly assigned MVP projects were 18% higher than MISO's original estimates.

Another important distinction between competitive projects and state Right of First Refusal (ROFR) laws is related to financial concessions or alternative financing. The winning bidder often uses a lower return on equity or lower weighted average cost of capital. Alternative financing would be off the table under a ROFR law.

Unlike the last two legislative sessions, there has been a lot of recent discussion of regional Operations & Maintenance (O&M) cost shifting under the MISO tariff. This is not a correct justification for reason as O&M cost shifting by any developer is allowed by MISO tariffs and occurs with or without a ROFR law. It would be best for Wisconsin consumers if ATC would win the projects through the competitive process and continue to shift these O&M costs.

We note that in ATC's own commissioned study with the flawed O&M premises a ROFR law costs money in the first six years. Most of the savings are in the second half of the forty-year period. If you discount for the time value of money, then the projected savings evaporate.

There are record capital expenditure plans pending for Wisconsin's utilities and ATC. MISO's Tranche 2.1 projects were recently announced, including 765 kV lines for Midwestern states. To maintain cost discipline, we believe the competitive process should remain in place.

Charter Manufacturing has been doing all that it can to control energy costs because we compete in global markets. We are proud of our participation in the Strategic Energy Management (SEM) program. Our Saukville steel mill has been awarded the international ISO 50001 certification for its energy management and energy efficiency systems. It was the first steel mill in the United States to have received recognition for its use of energy and the integration of energy management into the company's overall effort to improve quality and environmental management.

All our internal energy cost control efforts may not be enough to counteract the strong upward pressure on electric rates. Please consider the negative public policy implications of a ROFR law.

We respectfully ask you to oppose AB 25/SB 28.

Testimony of Randel Pilo, Opposing ROFR Legislation
March 4, 2025

I do not see regional O&M and Other cost shifting ability and having a ROFR as dependent on each other. The regional cost shifting mechanism in MISO's Attachment O and MM related to MVPs is real. Savings from having RFPs is also real and quite large as demonstrated by several MISO 2023-2024 competitions, including where ATXI was the selected developer and project implementation costs were 20-40% less than original design estimates.

With a ROFR, ATC would be able to do cost shifting; yet, it is also the case that ATC winning an RFP competition would allow the very same regional cost shifting. The economist in me wants both, and we can have both. Not having competition allows for less cost discipline and less innovation. That result is in the mainstream economics literature, and just good old-fashioned American common sense.

I do not believe having both is a risky proposition as ROFR supporters may aver. ATC is a competent utility with proven track record in Wisconsin with deep knowledge of the transmission system and its operation in Wisconsin, and as such would be **THE** formidable competitor! In fact, it would have a comparative advantage to win any such RFPs in Wisconsin.

In summary, Wisconsin should not enact a ROFR statute for transmission construction, and should leave the status quo in place.

Randel Pilo
ECONWERKS LLC

WISCONSIN CAST METALS ASSOCIATION

To: Assembly Committee on Energy and Utilities
Senate Committee on Utilities and Tourism

From: Bryant Esch, President
Wisconsin Cast Metals Association

Re: Opposition to Assembly Bill 25/Senate Bill 28

Date: March 4, 2025

Chairmen Bradley and Steffen and members of the committee, thank you for the opportunity to provide comments on Assembly Bill 25/Senate Bill 28. The Wisconsin Cast Metals Association (WCMA) respectfully asks you to oppose AB 25/SB 28. AB 25/SB 28 would eliminate competition on the development of new regionally cost shared transmission projects. As large and energy intensive customers, we need every tool available to manage costs.

WCMA is a trade association dedicated to enhancing the knowledge and competitiveness of metalcasting in the state of Wisconsin through the collective actions of its members. Wisconsin metalcasting is an $11 billion industry (total economic benefit including $5.2 billion in direct economic benefits) consisting of some 130 foundries employing approximately 19,000 people in communities across the state.

Wisconsin metalcasting products support other primary manufacturing located within the state, that in-turn provide jobs and supply product to service a wide variety of industries including mining, construction, transportation, consumer products, energy and military applications.

Wisconsin's electric rates have been well above the Midwest average since 2003 and continue to be above the national average. Transmission has steadily grown and now makes up a significant and growing line item on electricity bills in Wisconsin. MISO's long-range plans of up to $100 billion indicate transmission costs may soar in the coming years.

As significant employers and large energy consumers, our companies are especially sensitive to rate increases. The PSC recently approved over a half billion dollars in higher electric and natural gas rates for 2025 and 2026.

According to recent studies, transmission projects subject to competition can reduce costs to consumers of 20% - 30% or more if cost overruns are included. The costs savings from competitive projects in the 2023-2024 MISO competitions have verified those estimates.

Our member companies face stiff competition in the global marketplace. Competitive bidding has been a powerful tool in helping manage our production costs and we anticipate a similar outcome for our state's utilities. Without competition, there is reduced incentive to lower costs and prevent cost overruns.

WCMA respectfully asks that you oppose AB 25/SB 28.

Total Project Cost	$	1,080,000,000
Depreciable Life (years)		40

Utility Developer

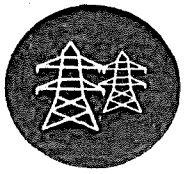
Equity Capital %	45.00%
Debt Capital %	55.00%
Cost of Debt %	4.00%
Authorized ROE %	6.69%
Authorized WACC	5.21%

Attachments O & MM, 2024 Budgets

$1.8 Billion Tranche 2.1 Projects in Wisconsin

ATXI *Financing and 40% RFP Savings on Planning Costs*

$2.52 Billion Total Revenue Requirement Over 40 Years



Year	Beginning Book Value	Capital Expenditures	Depreciation Expense	End Book Value	Avg Book Value (Net Investment Rate Base)	Interest Expense	Net Income	Return on NIRB	Income Taxes	Gross Receipts Tax	Total Revenue Requirement
0	-	$ 1,080,000,000	-	$ 1,080,000,000	$ 540,000,000			$ -			-
1	$ 1,080,000,000	-	$ 27,000,000	$ 1,053,000,000	$ 1,066,500,000	$ 23,463,000	$ 32,106,983	$ 55,569,983	$ 12,020,854	$2,633,982	**$97,224,819**
2	$ 1,053,000,000	-	$ 27,000,000	$ 1,026,000,000	$ 1,039,500,000	$ 22,869,000	$ 31,294,148	$ 54,163,148	$ 11,716,529	$2,589,104	$95,468,781
3	$ 1,026,000,000	-	$ 27,000,000	$ 999,000,000	$ 1,012,500,000	$ 22,275,000	$ 30,481,313	$ 52,756,313	$ 11,412,203	$2,544,226	$93,712,742
4	$ 999,000,000	-	$ 27,000,000	$ 972,000,000	$ 985,500,000	$ 21,681,000	$ 29,668,478	$ 51,349,478	$ 11,107,878	$2,499,348	$91,956,704
5	$ 972,000,000	-	$ 27,000,000	$ 945,000,000	$ 958,500,000	$ 21,087,000	$ 28,855,643	$ 49,942,643	$ 10,803,553	$2,454,470	$90,200,665
6	$ 945,000,000	-	$ 27,000,000	$ 918,000,000	$ 931,500,000	$ 20,493,000	$ 28,042,808	$ 48,535,808	$ 10,499,227	$2,409,592	$88,444,627
7	$ 918,000,000	-	$ 27,000,000	$ 891,000,000	$ 904,500,000	$ 19,899,000	$ 27,229,973	$ 47,128,973	$ 10,194,902	$2,364,714	$86,688,588
8	$ 891,000,000	-	$ 27,000,000	$ 864,000,000	$ 877,500,000	$ 19,305,000	$ 26,417,138	$ 45,722,138	$ 9,890,576	$2,319,836	$84,932,550
9	$ 864,000,000	-	$ 27,000,000	$ 837,000,000	$ 850,500,000	$ 18,711,000	$ 25,604,303	$ 44,315,303	$ 9,586,251	$2,274,958	$83,176,512
10	$ 837,000,000	-	$ 27,000,000	$ 810,000,000	$ 823,500,000	$ 18,117,000	$ 24,791,468	$ 42,908,468	$ 9,281,925	$2,230,080	$81,420,473
11	$ 810,000,000	-	$ 27,000,000	$ 783,000,000	$ 796,500,000	$ 17,523,000	$ 23,978,633	$ 41,501,633	$ 8,977,600	$2,185,202	$79,664,435
12	$ 783,000,000	-	$ 27,000,000	$ 756,000,000	$ 769,500,000	$ 16,929,000	$ 23,165,798	$ 40,094,798	$ 8,673,275	$2,140,324	$77,908,396
13	$ 756,000,000	-	$ 27,000,000	$ 729,000,000	$ 742,500,000	$ 16,335,000	$ 22,352,963	$ 38,687,963	$ 8,368,949	$2,095,446	$76,152,358
14	$ 729,000,000	-	$ 27,000,000	$ 702,000,000	$ 715,500,000	$ 15,741,000	$ 21,540,128	$ 37,281,128	$ 8,064,624	$2,050,568	$74,396,319
15	$ 702,000,000	-	$ 27,000,000	$ 675,000,000	$ 688,500,000	$ 15,147,000	$ 20,727,293	$ 35,874,293	$ 7,760,298	$2,005,690	$72,640,281
16	$ 675,000,000	-	$ 27,000,000	$ 648,000,000	$ 661,500,000	$ 14,553,000	$ 19,914,458	$ 34,467,458	$ 7,455,973	$1,960,812	$70,884,242
17	$ 648,000,000	-	$ 27,000,000	$ 621,000,000	$ 634,500,000	$ 13,959,000	$ 19,101,623	$ 33,060,623	$ 7,151,647	$1,915,934	$69,128,204
18	$ 621,000,000	-	$ 27,000,000	$ 594,000,000	$ 607,500,000	$ 13,365,000	$ 18,288,788	$ 31,653,788	$ 6,847,322	$1,871,056	$67,372,165
19	$ 594,000,000	-	$ 27,000,000	$ 567,000,000	$ 580,500,000	$ 12,771,000	$ 17,475,953	$ 30,246,953	$ 6,542,997	$1,826,178	$65,616,127
20	$ 567,000,000	-	$ 27,000,000	$ 540,000,000	$ 553,500,000	$ 12,177,000	$ 16,663,118	$ 28,840,118	$ 6,238,671	$1,781,300	$63,860,088
21	$ 540,000,000	-	$ 27,000,000	$ 513,000,000	$ 526,500,000	$ 11,583,000	$ 15,850,283	$ 27,433,283	$ 5,934,346	$1,736,422	$62,104,050
22	$ 513,000,000	-	$ 27,000,000	$ 486,000,000	$ 499,500,000	$ 10,989,000	$ 15,037,448	$ 26,026,448	$ 5,630,020	$1,691,544	$60,348,012
23	$ 486,000,000	-	$ 27,000,000	$ 459,000,000	$ 472,500,000	$ 10,395,000	$ 14,224,613	$ 24,619,613	$ 5,325,695	$1,646,666	$58,591,973
24	$ 459,000,000	-	$ 27,000,000	$ 432,000,000	$ 445,500,000	$ 9,801,000	$ 13,411,778	$ 23,212,778	$ 5,021,369	$1,601,788	$56,835,935
25	$ 432,000,000	-	$ 27,000,000	$ 405,000,000	$ 418,500,000	$ 9,207,000	$ 12,598,943	$ 21,805,943	$ 4,717,044	$1,556,910	$55,079,896
26	$ 405,000,000	-	$ 27,000,000	$ 378,000,000	$ 391,500,000	$ 8,613,000	$ 11,786,108	$ 20,399,108	$ 4,412,719	$1,512,032	$53,323,858
27	$ 378,000,000	-	$ 27,000,000	$ 351,000,000	$ 364,500,000	$ 8,019,000	$ 10,973,273	$ 18,992,273	$ 4,108,393	$1,467,153	$51,567,819
28	$ 351,000,000	-	$ 27,000,000	$ 324,000,000	$ 337,500,000	$ 7,425,000	$ 10,160,438	$ 17,585,438	$ 3,804,068	$1,422,275	$49,811,781
29	$ 324,000,000	-	$ 27,000,000	$ 297,000,000	$ 310,500,000	$ 6,831,000	$ 9,347,603	$ 16,178,603	$ 3,499,742	$1,377,397	$48,055,742
30	$ 297,000,000	-	$ 27,000,000	$ 270,000,000	$ 283,500,000	$ 6,237,000	$ 8,534,768	$ 14,771,768	$ 3,195,417	$1,332,519	$46,299,704
31	$ 270,000,000	-	$ 27,000,000	$ 243,000,000	$ 256,500,000	$ 5,643,000	$ 7,721,933	$ 13,364,933	$ 2,891,092	$1,287,641	$44,543,665
32	$ 243,000,000	-	$ 27,000,000	$ 216,000,000	$ 229,500,000	$ 5,049,000	$ 6,909,098	$ 11,958,098	$ 2,586,766	$1,242,763	$42,787,627
33	$ 216,000,000	-	$ 27,000,000	$ 189,000,000	$ 202,500,000	$ 4,455,000	$ 6,096,263	$ 10,551,263	$ 2,282,441	$1,197,885	$41,031,588
34	$ 189,000,000	-	$ 27,000,000	$ 162,000,000	$ 175,500,000	$ 3,861,000	$ 5,283,428	$ 9,144,428	$ 1,978,115	$1,153,007	$39,275,550
35	$ 162,000,000	-	$ 27,000,000	$ 135,000,000	$ 148,500,000	$ 3,267,000	$ 4,470,593	$ 7,737,593	$ 1,673,790	$1,108,129	$37,519,512
36	$ 135,000,000	-	$ 27,000,000	$ 108,000,000	$ 121,500,000	$ 2,673,000	$ 3,657,758	$ 6,330,758	$ 1,369,464	$1,063,251	$35,763,473
37	$ 108,000,000	-	$ 27,000,000	$ 81,000,000	$ 94,500,000	$ 2,079,000	$ 2,844,923	$ 4,923,923	$ 1,065,139	$1,018,373	$34,007,435
38	$ 81,000,000	-	$ 27,000,000	$ 54,000,000	$ 67,500,000	$ 1,485,000	$ 2,032,088	$ 3,517,088	$ 760,814	$973,495	$32,251,396
39	$ 54,000,000	-	$ 27,000,000	$ 27,000,000	$ 40,500,000	$ 891,000	$ 1,219,253	$ 2,110,253	$ 456,488	$928,617	$30,495,358
40	$ 27,000,000	-	$ 27,000,000	$ -	$ 13,500,000	$ 297,000	$ 406,418	$ 703,418	$ 152,163	$883,739	$28,739,319
		$1,080,000,000	$1,080,000,000			$475,200,000	$650,268,000	$1,125,468,000	$243,460,339	$70,354,429	$2,519,282,768

$1,174,824,224.55

Testimony Before the Joint Hearing of the Senate Committee on Utilities and Tourism and the Assembly Committee on Energy and Utilities

March 4, 2025

Testimony of Lane Ruhland on Behalf of the Wisconsin Industrial Energy Group
In Opposition to Senate Bill 28/Assembly Bill 25

Honorable Chairmen and Members of the Senate Committee on Utilities and Assembly Committee on Energy and Utilities,

I respectfully submit this testimony in opposition to Senate Bill 28/Assembly Bill 25, which grants incumbent utilities an exclusive right to construct transmission lines (the more aptly named In-State Incumbent Entitlement Law). This legislative proposal is constitutionally untenable, posing grave and immediate threat to the integrity of interstate commerce and the foundational principles of the U.S. Constitution's dormant Commerce Clause. Its enactment would not only invite inevitable judicial invalidation but also inflict profound economic harm on Wisconsin's citizens, undermining our state's unwavering commitment to equitable competition, fiscal efficiency, and constitutional fidelity. I urge you to reject these bills to protect Wisconsin's legal and economic integrity.

Constitutional Concerns Under the Dormant Commerce Clause

The central provision of the bills, prioritizing utilities with a local presence over out-of-state competitors, erects an impermissible and discriminatory barrier to interstate commerce, directly contravening the dormant Commerce Clause, which prohibits state laws that discriminate against or unduly burden interstate trade. This protectionist framework is strikingly analogous to In-state Incumbent Entitlement laws invalidated in other jurisdictions, offering a robust legal precedent for opposition. The Trump Administration filed Statement of Interests in the other state ROFR cases, raising strong constitutional concerns. The U.S. Court of Appeals for the 5th Circuit's seminal decision in *NextEra v. Paxton, agreeing with the Trump and Biden Administration,* declared Texas's In-state Incumbent Entitlement law unconstitutional, asserting with authoritative clarity, "Transmission lines that are part of an interstate grid are much closer to the heartland of interstate commerce than the wine stores, dairies, or waste processing facilities that have faced dormant Commerce Clause scrutiny." The U.S. District Court for the Western District of Texas reaffirmed this just last year, ruling Texas utility codes granting an in-state utility preference for transmission "unconstitutional because they violate the dormant Commerce Clause and are therefore invalid and unenforceable, to the extent they grant in-state transmission owners the exclusive right to build or acquire transmission lines in the non-ERCOT regions of Texas." Similarly, the Iowa Supreme Court, in *LS Power Midcontinent v. Iowa*, found Iowa's In-state Incumbent Entitlement law unconstitutional under the Iowa state constitution, noting it eliminated competition and enabled higher prices, stating, "Common sense tells us that competitive bidding will lower the cost of upgrading Iowa's electric grid and that eliminating competition will enable the incumbent to command higher prices for both construction and maintenance."

Most recently, the United States District Court for the Southern District of Indiana, addressing a comparable statute, ruled it violated the dormant Commerce Clause, stating, "limiting competition based on the existence or extent of a business's local foothold is the protectionism the Commerce Clause guards

against." This case is currently pending before the 7th Circuit Court of Appeals – the circuit in which Wisconsin falls. While the 7th Circuit has not yet decided on the merits, it did dissolve a stay on the lower court's ruling on January 12, 2025, effectively allowing competitive bidding to proceed despite Indiana's In-state Incumbent Entitlement law, signaling a decisive 7th Circuit judicial trend against such protectionism. A 7th Circuit decision could come in a matter of weeks or months.

In-Depth Analysis: Strict Scrutiny and the Pike Test

To rigorously assess In-state Incumbent Entitlement law constitutionality, we must apply it to one of two dormant Commerce Clause frameworks: strict scrutiny, or the more lenient *Pike* balancing test. Under either test, In-state Incumbent Entitlement laws fail.

Under strict scrutiny—applicable when a law discriminates against interstate commerce, which we contend happens in these bills— an In-state Incumbent Entitlement law must serve a compelling state interest and be narrowly tailored to achieve that interest. The bills' incumbent preference provisions explicitly favor utilities with an existing in-state presence, discriminating against out-of-state developers by granting incumbents exclusive rights to build new transmission lines. While the state may argue that the proposed law serves a compelling interest in energy reliability or cost control, the evidence tells a different story: this bill is likely to enrich a small cadre of powerful companies by insulating them from competition, while leaving residential and industrial consumers alike, footing the bill. In any event, the law is not narrowly tailored. It eliminates competition entirely, foreclosing less restrictive alternatives like competitive bidding, which courts in Texas, Iowa, and Indiana have upheld as constitutionally preferable. Thus, the bills fail strict scrutiny, as its protectionist design cannot withstand the rigorous necessity and precision required.

Alternatively, under the *Pike* test, a non-discriminatory law that only incidentally burdens interstate commerce must have a legitimate local purpose not outweighed by the burden on interstate commerce. These bills - assuming arguendo that they are non-discriminatory - impose a substantial burden on interstate commerce by barring out-of-state developers from participating in Wisconsin's transmission market, a sector critical to the national grid. The state's purported local purpose—ensuring reliable and cost-effective transmission—does not outweigh this burden, especially given evidence from Texas and Iowa that competitive bidding reduces costs and improves efficiency. The *Pike* test thus reveals the In-state Incumbent Entitlement law's unconstitutional impact, as its benefits to existing transmission utilities are dwarfed by the harm to interstate commerce and Wisconsin consumers.

Proponents of the legislation will point to the favorable decision from the 8th Circuit Court of Appeals as supporting the constitutionality of an In-state Incumbent Entitlement law, however, that decision is the exception to otherwise unfavorable outlooks by courts. The 8th Circuit's 2020 decision in *LSP Transmission Holdings, LLC v. Sieben,* upholding Minnesota's In-state Incumbent Entitlement law for new transmission lines, was fundamentally flawed and misaligned with dormant Commerce Clause principles. Moreover, the 8th Circuit's reliance on a superficial neutrality ignored the economic reality that In-state Incumbent Entitlement laws eliminate competitive bidding, undermining the constitutional mandate for a free and open market, as articulated in *NextEra v. Paxton* and *LS Power Midcontinent v. Iowa* where courts recognized such laws as "quintessentially crony capitalism" and unconstitutional protectionism.

Broader Context: Dormant Commerce Clause Jurisprudence

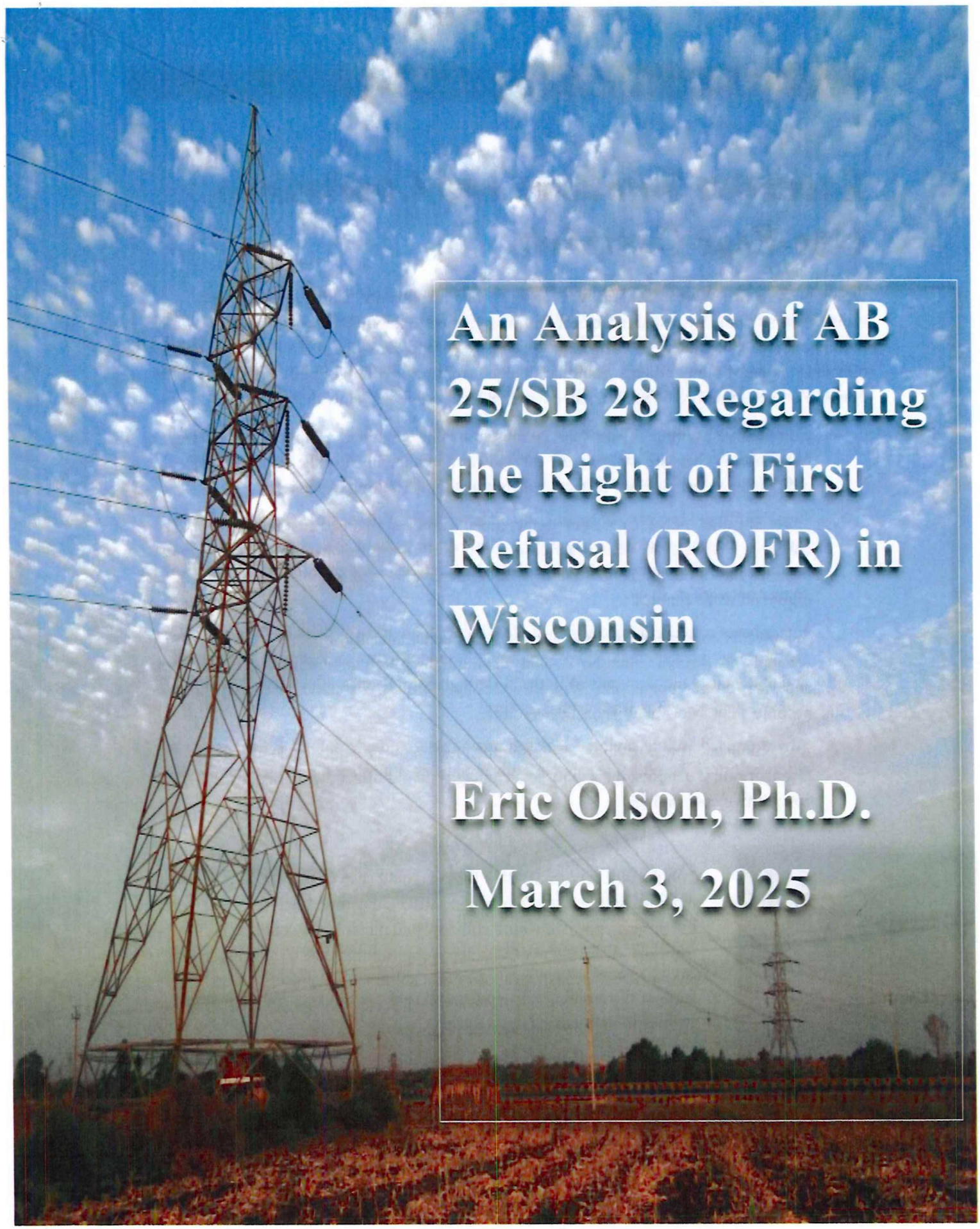
This constitutional analysis is reinforced by a robust body of dormant Commerce Clause jurisprudence. In *Philadelphia v. New Jersey* (1978), the U.S. Supreme Court invalidated a New Jersey law banning out-of-state waste disposal, finding it discriminated against interstate commerce by favoring local interests—a concern directly applicable to ROFR's prioritization of local utilities. Similarly, *C&A Carbone, Inc. v. Town of Clarkstown* (1994) struck down a New York ordinance requiring local waste processing, determining it imposed an unconstitutional burden on interstate commerce by favoring local businesses. In *Granholm v. Heald* (2005), the Supreme Court invalidated Michigan and New York laws restricting out-of-state wine shipments, affirming that such protectionism violates the dormant Commerce Clause by impeding interstate trade. Even the 8th Circuit's 2020 decision in *LSP Transmission Holdings, LLC v. Sieben,* upholding Minnesota's ROFR law, stands as an exception, relying on a narrow interpretation of non-discrimination that subsequent rulings in Texas, Iowa, and Indiana have decisively rejected, further underscoring the legal risks these bills face if enacted.

Economic and Practical Implications

By favoring incumbent utilities, these bills create an unconstitutional preference that could stifle competition and increase energy costs for Wisconsin ratepayers. This approach may deter out-of-state developers, reducing investment and innovation in our energy infrastructure. It also risks protracted litigation, as evidenced by judicial trends in Texas, Iowa, and the 7th Circuit's scrutiny of Indiana's In-state Incumbent Entitlement law, which could delay critical transmission projects and elevate costs for consumers. The academic literature, supported by these judicial precedents, indicates that In-state Incumbent Entitlement laws undermine the constitutional mandate for a free and open market, particularly for interstate utilities essential to the national grid, potentially compromising Wisconsin's economic efficiency, energy reliability, and fiscal sustainability.

Conclusion and Recommendation

I strongly urge this committee to reject Senate Bill 28/Assembly Bill 25 to uphold Wisconsin's constitutional obligations and protect the economic interests of its citizens. Enacting these bills would likely contravene federal constitutional norms, fail both strict scrutiny and the Pike test, and lead to inefficiencies in our energy market. By aligning with the judicial precedents and constitutional principles outlined, Wisconsin can maintain a competitive, cost-effective, and constitutionally sound energy policy.



An Analysis of AB 25/SB 28 Regarding the Right of First Refusal (ROFR) in Wisconsin

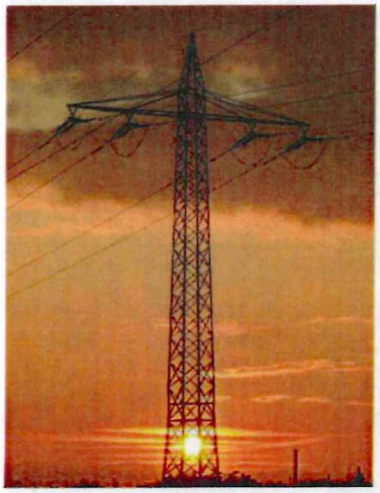
Eric Olson, Ph.D.

March 3, 2025

Executive Summary and Conclusion: One-Page Overview

Despite claims that Wisconsin ratepayers benefit when incumbents "shift" costs for new transmission, the reality is that these cost-shifting practices do not reduce total spending—they merely reallocate it. Under AB 25/SB 28, Wisconsin's proposed Right of First Refusal (ROFR) transmission legislation, projects would be shielded from competition, limiting the downward pressure on construction, financing, and operating costs. Analyses show that:

- Competitive Bidding Yields Real Savings. When new entrants compete, final project transmission costs are typically 20–40% lower than incumbent-only builds. These reductions reflect *genuine* cost savings, not just redistributing expenses.
- "Cost Shifting" Is Not Cost Saving. Incumbents argue Wisconsin customers benefit if costs can be spread across a larger base. But overall transmission costs end up higher, pushing part of the burden onto other MISO ratepayers—and eventually circling back as higher network charges.
- Incumbents concede this policy isn't ideal but mathematically "benefits" the state. Once we apply net present value (NPV) analysis, these long-term gains shrink substantially, and many costs rebound onto Wisconsin through MISO's cost allocation. It will likely become a net loser for Wisconsin over time.
- Any promised "future savings" is worth much less in today's dollars. By the time we discount future benefits, the supposed advantages do not offset the immediate 20–40% competitive cost savings.



Conclusion: AB 25/SB 28's ROFR would strip away market competition and artificially inflate final costs. MISO's existing rules for cost allocation and project approval would still apply so incumbents could continue "shifting" overhead to other ratepayers. But that doesn't mean genuine savings for Wisconsin. The strongest solution is to preserve or enhance competitive bidding, thus locking in true cost savings and innovation, while still distributing costs fairly across the region.

1.0 Table of Contents

2.0 Scope of the Report

Purpose and Objectives

This report provides an independent economic analysis of Wisconsin's proposed Right of First Refusal (ROFR) legislation (SB 28) and Assembly Bill 25 and the potential impact on transmission costs for Wisconsin ratepayers. The analysis examines the economic arguments presented in American Transmission Company's (ATC) report dated October 30, 2024, and offers an alternative assessment of how competition in transmission development affects ratepayer costs.

The primary objectives of this report are to:

1. Evaluate ATC's claims regarding cost allocation benefits under MISO's regional framework.
2. Analyze the distinction between cost shifting and genuine cost reduction.
3. Examine empirical evidence on competitive versus non-competitive transmission development costs.
4. Assess the timeline and efficiency implications of ROFR policies.
5. Provide a comprehensive economic assessment of ROFR's impact on Wisconsin ratepayers.

Methodology and Approach

This analysis employs multiple methodological approaches including:

- Review of published economic literature on ROFR policies.
- Analysis of transmission project cost data from competitive and non-competitive markets
- Examination of MISO's cost allocation mechanisms.
- Evaluation of project timeline data across different regulatory frameworks.
- Net present value analysis of long-term cost projections.

The report utilizes economic modeling techniques to analyze long-term cost implications and applies standard financial analysis methodologies to evaluate ATC's cost allocation claims. All data sources are cited, and economic assumptions are clearly stated throughout the analysis.

Limitations and Assumptions

This report focuses on economic impacts and does not address all legal or regulatory implications of ROFR legislation. The analysis relies on publicly available data, published research, and reasonable economic assumptions. While comprehensive, this report cannot

account for all potential market dynamics or future policy changes that might affect transmission development.

All charts, graphs and economic models referenced in the report represent the author's analysis based on data from cited sources. The conclusions represent the independent professional opinions and judgment of the author based on economic principles and available evidence.

Author Qualifications

This report was prepared by Dr. Eric Olson, who currently holds the Mervin Bovaird Foundation Endowed Professorship in Business at the University of Tulsa and maintains a joint appointment with the School of Cyber Studies. Dr. Olson was the Founding Director of the Center for Energy Studies at the University of Tulsa, where he led research and policy initiatives focused on the intersection of energy markets, financial stability, and policy.

Dr. Olson holds a Ph.D. in Economics from the University of Alabama (2010), an M.A. in Economics from the University of Alabama (2005), and a B.A. from the University of Alabama (2004). His professional certifications include Data Mining (University of Alabama & SAS Institute), Applied Analytics (SAS Enterprise Miner), and Credit Scoring & Basel II Modeling (SAS Institute).

Dr. Olson is a member of the American Economic Association (AEA), Financial Management Association (FMA), and United States Association for Energy Economics (USAEE). He has authored or co-authored over 40 peer-reviewed academic publications, including journal articles, book chapters, and research studies, on topics ranging from monetary policy and market volatility to the effects of uncertainty on economic growth and the role of fiscal and monetary policy in stabilizing macroeconomic fluctuations.

3.0 Disclaimer and Limitations

Disclaimer: This report has been prepared at the request of interested parties to provide an independent economic analysis of Wisconsin's proposed Right of First Refusal (ROFR) legislation (AB 25/SB 28). The opinions, analyses, and conclusions expressed herein represent the author's professional opinion and judgment based on publicly available information and economic principles.

This report is not intended to provide legal advice or regulatory guidance. The economic analyses presented are for informational purposes and should be considered alongside other relevant factors in policy discussions. Any reliance on this report should take into account its inherent limitations and the date of its preparation. Beyond the present study, I have also contributed to other energy-industry projects, including research on renewable integration and cost/benefit analyses of grid expansions for cities. Those experiences, while not detailed here, inform the broader context of my economic analysis.

The author has no financial interest in the outcome of Wisconsin's ROFR legislation. This analysis has been conducted with professional independence and academic rigor.

Limitations: The following limitations should be considered when reviewing this report:

1. Data Availability: The analysis relies on publicly available data and previously published research. In some cases, proprietary or confidential information that might affect transmission costs was not accessible.
2. Future Uncertainties: Projections of future costs and benefits necessarily involve uncertainties. Changes in technology, energy markets, regulatory frameworks, or inflation could affect the accuracy of long-term cost projections.
3. Regional Specificity: While the report examines MISO's cost allocation framework broadly, there may be Wisconsin-specific factors that aren't fully captured in regional analyses.
4. Regulatory Evolution: The analysis is based on current MISO policies and procedures. Future changes to FERC policies or MISO rules could alter the regulatory landscape and impact the conclusions.
5. Empirical Constraints: The relatively limited number of competitively bid transmission projects in MISO provides a smaller sample size than would be ideal for statistical analysis.

The report does not address:

- The constitutionality or legal standing of state ROFR laws
- Detailed engineering or technical specifications of transmission projects
- Environmental impacts of transmission development
- Political considerations outside economic efficiency
- Grid reliability factors beyond cost considerations

4.0 Executive Summary: AB 25/SB 28 and ROFR

Wisconsin's proposed Right of First Refusal (ROFR) law (AB 25/SB 28) would give incumbent transmission owners, such as ATC, an automatic advantage to develop new lines. While ATC argues this setup benefits Wisconsin due to "cost shifting," the reality is that such shifting does not reduce the total cost of projects—it merely redistributes them. Empirical research across multiple regions shows that competitive bidding can reduce final project costs by 20–40% without sacrificing reliability or timeliness.

New Entrants vs. Incumbents

"Cost shifting" should not be confused with genuine "cost savings." Incumbents claim they can spread overhead and financing charges over more projects, slightly lowering each individual customer's bill within Wisconsin. In practice, however, this tactic still increases total spending. New entrants, by contrast, lower the *overall* cost of building and operating the line through true competition—reducing construction, labor, and financing expenses from the start.

Why it Matters for Wisconsin Ratepayers

- **Higher Total Costs**. When incumbents face no competition, there is little incentive to minimize costs. Overruns, inflated financing terms, and administrative overhead can push total project expenses far beyond what a competitive process would deliver.
- **Net Harm Over Time**. Although ATC suggests Wisconsin "wins" by burdening other MISO states, that argument ignores the broader regional cost allocation. Many of these expenses inevitably circle back, leaving Wisconsin on the hook for inflated transmission fees in the long run.
- **Time Value of Money**. When we convert future savings or cost shifts to today's dollars (using net present value calculations), the apparent benefits of cost shifting fade significantly—often outweighed by the straightforward 20–40% cost reduction from an open bid process.

Bottom Line: ROFR policies artificially eliminate market pressures that keep electricity rates affordable. Empirical data from states without ROFR consistently show lower total project costs, faster completion times, and more innovation in transmission planning. Wisconsin can maintain its fair share of regional benefits under MISO's cost allocation *and* capture real savings for ratepayers by preserving competition.

5.0 Overview of the Right of First Refusal Bill

Wisconsin's proposed Right of First Refusal (ROFR), legislation (AB 25/SB 28) would grant American Transmission Company (ATC) and other incumbents a privileged position in the development of new transmission lines once a need has been identified by either the Midcontinent Independent System Operator (MISO) or state authorities. This arrangement fundamentally alters how new transmission projects are awarded, shifting from a potentially competitive environment to a process where ATC enjoys automatic priority.

Essentially, incumbents would have the prerogative to decide whether to proceed with a project as soon as it is formally recognized as necessary. If ATC chooses to move forward, the project is effectively taken off the table for any other transmission developer. Conversely, if ATC declines, only then may the state or MISO open the opportunity to other entities through competitive solicitation. The automatic priority given to ATC raises significant concerns about competition, cost efficiency, and technological innovation. Under a competitive solicitation process, multiple transmission developers would be able to submit proposals, including detailed cost and design specifications that could potentially offer more affordable or technologically advanced solutions.

Critics of the ROFR policy observe that, unless ATC declines a new project, ratepayers might not benefit from lower-cost bids or innovative designs that could emerge in a competitive environment. Moreover, developers that specialize in cutting-edge transmission technologies or alternative financing structures would have limited or no opportunity to bring their ideas to Wisconsin's grid expansion.

Controversy surrounds the ROFR policy as it would grant ATC the right to block competition simply by choosing to proceed. This model constrains market forces and may keep transmission costs artificially elevated in the long run. In particular, the absence of competitive pressure removes financial incentives for ATC to keep construction and operational expenses as low as possible. Evidence from other states demonstrates that open bidding processes attract multiple vendors and result in lower bids for project completion.

State "right of first refusal" (ROFR) laws for electricity transmission, which give incumbent utilities priority to build new lines before outside competitors can bid, have been widely criticized for dampening competition, escalating project costs, and stifling innovation in infrastructure development (Mogen 2023; Bikhchandani, Lippman, and Ryan 2004; Rossi 2023).

With ROFRs in place, incumbent firms can match or supersede any rival proposal, effectively shutting non-incumbent developers out of the market. By undercutting a true bidding process, regulatory agencies as well as consumers lose the opportunity to evaluate more cost-effective or modern proposals, which can ultimately translate into higher rates for households (Rossi 2023). Reduced competition also means incumbent utilities have less incentive to explore cost containment, cutting-edge technologies, or future-proof engineering solutions that enhance grid reliability and resilience (Bikhchandani, Lippman, and Ryan 2004).

Further, when incumbents dominate build-outs, states can become locked into potentially inflated infrastructure expenses. Noncompetitively determined financing and construction costs get passed on to consumers, including state governments, which raises electricity bills for public institutions and low-income ratepayers alike (Mogen 2023). From a legal standpoint, critics point to potential Dormant Commerce Clause issues, as ROFR laws arguably favor in-state utilities at the expense of out-of-state firms, creating possible grounds for constitutional challenges (Mogen 2023).

The Federal Energy Regulatory Commission's push for open, competitive transmission planning in Order No. 1000 has also heightened tension, suggesting that state-level ROFR laws may undermine federal objectives for fostering integrated, least-cost regional infrastructure (Rossi 2023). Ultimately, by hindering dynamic competition and thereby increasing prices, ROFR laws impose economic burdens on consumers, reduce the adoption of new grid technologies, and raise legal uncertainty. These outcomes run contrary to the goals of affordability, innovation, and fair market principles (Bikhchandani, Lippman, and Ryan 2004; Mogen 2023).

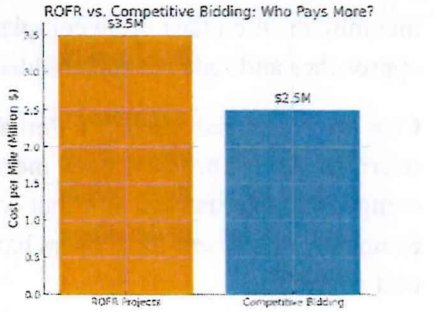
The academic literature is nearly unanimous in its skepticism of state right of first refusal legislation for transmission projects. Analysts highlight a predictable chain of negative outcomes: decreased competition, heightened prices, stalled innovation, elevated legal risks, and potential burdens on state treasuries. Under ROFR statutes, incumbent utilities gain an artificial advantage over outside developers, forgoing genuine price discovery and closing off the potential for cost savings and modernization.

6.0 Economic Impact Analysis: ROFR vs. Competitive Bidding

The economic consequences of Right of First Refusal (ROFR) policies versus competitive bidding can be quantified through multiple metrics. Three key dimensions reveal the comprehensive disadvantages of anti-competitive transmission policies: cost per mile, cost breakdown structure, and project timeline implications.

Figure 1 presents a straightforward cost comparison between transmission projects developed under ROFR protection versus competitive solicitation. As clearly illustrated, ROFR projects cost approximately $3.5 million per mile, compared to $2.5 million per mile for competitively bid projects. Simply, a 40% cost premium is imposed by anti-competitive policies.

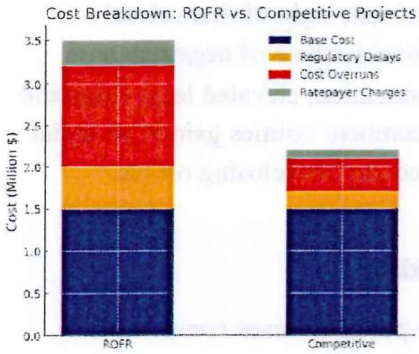
Figure 1: Direct Cost Comparison: The Price Premium of ROFR



This stark difference stems from multiple empirical analyses conducted by the Brattle Group (2019), which found that competitive procurement consistently yields cost savings of 20-30% across various transmission projects. The R Street Institute (2023) further confirmed these findings, demonstrating that restricting competition for transmission infrastructure directly increases consumer costs through higher rates.

The differential shown in Figure 1 translates to significant financial implications for Wisconsin ratepayers. For a typical 100-mile transmission project, ROFR protection would cost consumers an additional $100 million compared to competitive alternatives. These excess costs are ultimately passed through to residential, commercial, and industrial electricity customers through higher utility rates, creating an unnecessary economic burden that affects the state's overall economic competitiveness.

Figure 2: Cost Breakdown: ROFR vs. Competitive Projects



While Figure 1 illustrates the total cost differential, *Figure 2: Cost Breakdown: ROFR vs. Competitive Projects* provides critical insight into why ROFR projects consistently cost more. This detailed cost composition analysis reveals that while base construction costs remain relatively stable between project types, ROFR projects suffer from significant inefficiencies in a few key areas.

1. Regulatory Delays (orange segment): ROFR projects experience 33% higher regulatory compliance costs, contradicting proponents' claims that incumbent utilities navigate permitting more efficiently. The MacIver Institute Report (2025) found that protected incumbents often face more complex regulatory challenges due to less innovative design approaches and reduced stakeholder engagement.

2. Cost Overruns (red segment): Perhaps most striking is the dramatic difference in cost overruns. ROFR projects show more than double the cost overrun expenses compared to competitive alternatives. Without competitive pressure to maintain original budget estimates, incumbent developers have significantly less incentive to implement rigorous cost controls.

3. Ratepayer Charges (gray segment): The additional financing and administrative fees passed to ratepayers are 27% higher in ROFR projects. This category includes various

overhead allocations, profit margins, and financing costs that inflate consumer bills without delivering proportional value.

Figure 2 highlights that ROFR's higher costs do not purchase superior infrastructure or reliability. Instead, the additional expenses primarily fund inefficiency, administrative overhead, and higher profit margins; none of which benefit Wisconsin ratepayers. The R Street Institute (2023) specifically found that ROFR laws increase Midwestern states' transmission costs without delivering corresponding improvements in service quality or reliability.

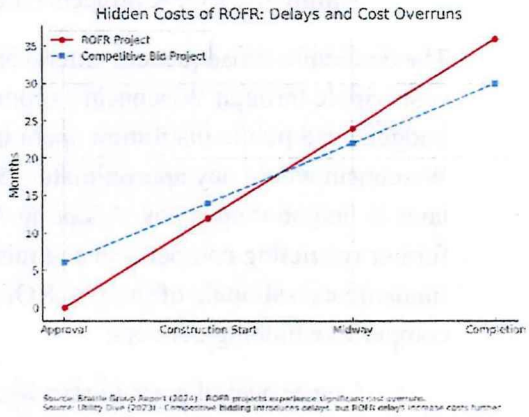
7.0 Timeline Realities

Proponents of AB 25/SB 28 often claim that granting ATC exclusive development rights will accelerate project timelines. Figure 3 directly refutes this assertion with empirical project timeline data. This longitudinal analysis tracks typical transmission projects from approval through completion, measuring progress in months across four key milestones.

The evidence reveals several critical insights:

1. Initial Delay Paradox: Contrary to claims of administrative efficiency, ROFR projects experience significant delays at the approval stage. The data shows ROFR begin construction approximately 6 months earlier, largely because competitive developers submit more complete, innovation-driven proposals that satisfy regulatory requirements more effectively.

Figure 3: Hidden Costs of ROFR: Delays and Cost Overruns



2. Midpoint Convergence: By the midway point of development (approximately 24 months), both project types converge temporarily before ROFR projects begin experiencing additional delays.
3. Completion Gap: The most significant finding appears at project completion, where ROFR projects require an average of 36 months compared to 30 months for competitive alternatives. This is a 20% extension in the timeline that clearly contradicts efficiency claims.

The Brattle Group Report (2019) attributes this counterintuitive outcome to several factors. Protected incumbents face less pressure to maintain aggressive schedules, often utilize less innovative construction techniques, and experience more frequent design modifications during

implementation. Meanwhile, competitive bidders typically include binding completion deadlines and financial penalties for delays, creating powerful incentives for timely delivery.

Utility Dive's 2023 analysis further confirms that while competitive bidding introduces a longer initial procurement phase, this investment in upfront planning significantly reduces execution delays. The comprehensive timeline data in Figure 3 highlights that ROFR protection not only increases direct costs but also extends project durations, delaying the delivery of critical infrastructure and its associated benefits.

Taken together, Figures 1-3 present compelling evidence that ROFR policies like AB 25/SB 28 would impose significant economic harm on Wisconsin through multiple mechanisms:

1. Direct Cost Premium: As shown in Figure 1, ROFR projects cost approximately 40% more per mile ($3.5M vs. $2.5M).
2. Inefficient Cost Structure: Figure 2 reveals that these higher costs primarily fund administrative inefficiencies and profit margins rather than superior infrastructure.
3. Extended Project Timelines: Figure 3 demonstrates that despite claims of administrative simplicity, ROFR projects take 20% longer to complete (36 months vs. 30 months).

The economic consequences extend beyond transmission rates themselves. Higher electricity costs ripple through Wisconsin's economy, affecting manufacturing competitiveness, household budgets, and public institution operating expenses. The R Street Institute calculated that Wisconsin would pay approximately $176 million in unnecessary costs due to existing ROFR laws in neighboring states. Adopting AB 25/SB 28 would compound this economic damage by further restricting competition and raising costs. Moreover, these analyses contradict the fundamental rationale offered by ROFR proponents. The empirical evidence demonstrates that competitive bidding delivers:

- Lower overall costs to ratepayers
- More efficient project execution
- Faster infrastructure deployment
- Greater technological innovation

By maintaining competitive bidding requirements, Wisconsin can avoid the substantial economic penalties clearly documented in these analyses while ensuring its transmission infrastructure benefits from market-driven efficiency and innovation.

In fact, several recent MISO projects have been competitively bid as shown in Figure 4. The variation in bids for MISO projects since 2016 underscores the differing cost structures among firms, which benefit Wisconsin taxpayers and keeps incumbent costs in check. The spread

between high and low bids, which in some cases exceeds $70 million, demonstrates that firms bring different assumptions about costs, financing, and profitability to the bidding process.

A key factor influencing these bids is the Return on Equity (ROE) built into each proposal. Since transmission projects require significant capital investment, firms must incorporate an acceptable ROE to ensure financial viability while remaining competitive. Companies with lower overhead costs, better financing terms, or more aggressive efficiency measures can afford to bid lower while still achieving their required ROE. In contrast, firms with higher capital costs or risk premiums must submit higher bids to meet their profitability targets.[1]

This built-in competition among bidders serves an essential role in preventing excessive rates for Wisconsin taxpayers. Without competitive pressure, incumbent firms might be able to pass along inflated costs under the assumption that no viable alternatives exist. The bid variance seen in this dataset indicates that multiple firms are actively competing, ensuring that transmission projects are awarded at the most efficient cost structure.

Ultimately, maintaining a competitive bidding environment—including transparency on cost components such as ROE—helps ensure that infrastructure projects are priced fairly and efficiently. Encouraging participation from a diverse set of firms continues to be in the best interest of taxpayers and energy consumers alike.

8.0 ATC and MISO cost allocation

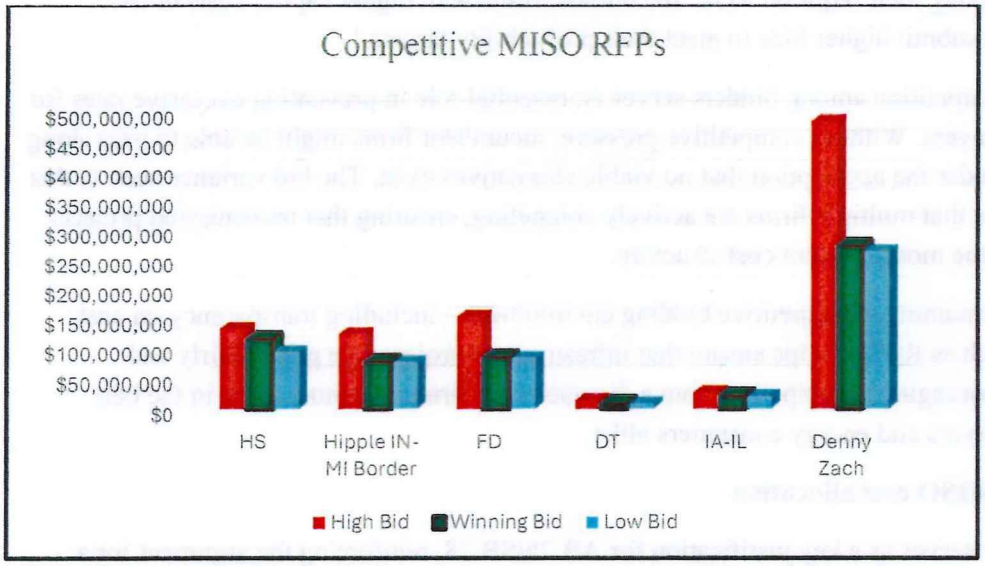
The ATC study serves as a key justification for AB 25/SB 28, reinforcing the argument for a Right of First Refusal (ROFR) for incumbent transmission providers in Wisconsin. The study asserts that ATC's existing Wisconsin network customers would benefit most if ATC, rather than a new entrant, constructs and operates major transmission projects. However, this conclusion is exclusively based on cost allocation methodologies that favor incumbents, rather than a true market comparison of efficiency and cost-effectiveness. The study's assumptions and findings primarily support the case for AB 25/SB 28, which seeks to limit competition by granting incumbents preferential rights to new transmission projects.

MISO employs a principle known as "beneficiary pays" or "cost causation" to allocate the costs of new transmission lines among those parties that gain reliability, economic, or other measurable advantages from the project. In practice, this means MISO conducts detailed studies

[1] MISO has issued competitive Requests for Proposals (RFPs) for two major Wisconsin transmission projects: the Wisconsin Southeast Project (WISE) and the Bell Center-Columbia–Sugar Creek-Illinois/Wisconsin State Line (BECI) Project, with estimated costs of $568 million and $1.2 billion, respectively. These projects, totaling $1.8 billion, are expected to be competitively bid unless state legislation establishes Right of First Refusal (ROFR) protections that would eliminate the bidding process and assign them directly to incumbent utilities. Analysis by https://www.econwerks.com/ comparing financing models for these projects illustrates the significant cost savings potential of competitive bidding. If developed under the incumbent ATC financing model, total project costs would result in a 40-year revenue requirement of $5.25 billion, driven by a 50% equity financing structure and a 10.48% Return on Equity (ROE). In contrast, a competitive model following ATXI's recent bid-winning financing approach—which used 45% equity and a 6.69% ROE—reduces the total revenue requirement to $2.52 billion, a 52% decrease. Please refer to ATXI's Fairport to Denny to IA/MO Border Project, where the winning bid came in 45% below MISO's estimate and included cost caps for construction and long-term operations and maintenance.

to identify how a proposed transmission line will improve grid performance, alleviate congestion, integrate new generation resources, or bolster system reliability across a broad regional footprint. Once the range of beneficiaries is determined (e.g., utilities, load-serving entities, or specific zones), the costs are proportionally assigned in line with each entity's share of the projected benefits.

Figure 4: MISO Recent MISO Project Bid Information



A major driver behind MISO's cost allocation approach is the understanding that reliability and economic benefits rarely stop at state or utility boundaries. A high-voltage line built in one part of the region can provide indirect benefits to stakeholders hundreds of miles away. For instance, if a new transmission corridor reduces congestion in one transmission zone, neighboring zones may also experience improved reliability or better access to lower-cost generation, even if they are not physically located along the exact path of the line. MISO's studies aim to quantify these broader, more far-reaching benefits, ensuring that all parties who stand to gain contribute fairly to project expenses, regardless of their location.

Historically, MISO has refined its cost-sharing formulas and processes through stakeholder engagement, periodic planning cycles, and guidance from the Federal Energy Regulatory Commission (FERC). One well-known example is the Multi-Value Project (MVP) portfolio introduced in 2011. MVPs are large-scale projects that offer wide-ranging benefits, from facilitating renewable energy integration to improving system reliability. As a result, MISO uses a region-wide allocation for MVPs, arguing that the advantages spill over to all utilities and customers, particularly in terms of economic efficiency and access to diverse generation sources.

In the annual MISO Transmission Expansion Plan (MTEP), MISO collaborates with member utilities, state regulators, and other stakeholders to assess grid needs, identify viable projects, and conduct benefit-cost analyses. These analyses look at factors such as load growth projections, generation retirements or additions, shifting power flows, and the potential for extreme weather events. By capturing both the direct and indirect benefits of transmission expansion, the planning process shapes how individual projects are prioritized and how their associated costs are split among beneficiaries.

Transparency is central to the success of MISO's cost-sharing model. Detailed technical reports, stakeholder meetings, and opportunities for public comment ensure that cost allocations are clearly explained and justified. When disagreements arise regarding cost allocations, MISO's open planning framework is designed to address such concerns through negotiation and, if necessary, arbitration at FERC.

ATC is a privately owned transmission utility and operates with a distinct set of financial parameters that go beyond the regional cost-sharing principles established by MISO. MISO determines which parties, and in what proportion, will bear the costs for a given transmission project. Separately, ATC applies its own internal calculations for overhead, financing charges, and profit margins. These internal costs include administrative expenses, corporate overhead, return on equity for investors, and debt-servicing obligations, among others.

Because ATC's revenue is ultimately derived from regulated transmission rates approved by FERC, it is allowed to earn a regulated rate of return on its investments. However, the specific way ATC structures its project costs can vary and may not perfectly align with the assumptions or methodologies that MISO uses when conducting regional benefit-cost analyses. In other words, MISO's cost allocation determines *who* pays, not necessarily *how much* is charged in total. Consequently, even if MISO allocates a certain percentage of a project's cost to Wisconsin, that percentage is applied to ATC's total project expenditure. The total project expenditure reflects ATC's internal overhead or financing decisions.

9.0 Understanding ATC's Cost-Shifting Argument: Are they Really Savings?

ATC argues that its incumbent status allows it to offer cost-effective solutions for transmission development compared to new entrants. However, this claim relies on a misleading interpretation of cost savings, which actually represents cost shifting rather than a true reduction in expenses. ATC's reasoning is built around Attachment O, the formula used to determine transmission cost allocations within MISO). While ATC suggests that customers benefit from cost-sharing under its existing network, the reality is that this approach does not lower overall transmission costs—it merely reallocates them.

How ATC's Cost-Shifting Works

ATC claims that even if a new developer can construct and operate a transmission project 20% cheaper, ATC's existing customers would still be better off if ATC builds the project. This is

because ATC can distribute transmission costs across a larger portfolio, reducing the share that individual customers must pay. However, this so-called "savings" is not an actual cost reduction but a redistribution of costs across multiple projects and regions.

The key mechanism behind ATC's claim is Attachment O, which determines how transmission costs are allocated among ratepayers. Under MISO's cost-sharing system, each new transmission project contributes to a cumulative revenue requirement, which includes all of ATC's existing transmission infrastructure. This means that when ATC develops a new transmission project, the revenue requirement is spread across all of ATC's customers, thereby reducing the per-customer cost within its existing service territory. However, this comes at the expense of other MISO ratepayers, who must absorb a greater share of transmission costs.

It is important to note that new entrants are **not** legally prohibited from shifting certain operations and maintenance (O&M) costs. Once a competitor owns multiple lines, it too can spread overhead across its broader asset base. The real question is whether total project costs are truly lower, not merely shifted.

Comparing True Cost Savings vs. Cost Shifting

The distinction between true cost savings and cost shifting is crucial in evaluating whether ATC's argument holds up. In reality, competitive bidding for transmission projects lowers actual costs by driving down construction and operational expenses, whereas ATC's method merely shifts costs around without reducing the total burden on consumers. The following table illustrates this key difference:

Table 1: Cost Shifting vs. Cost Savings

Key Factor	ROFR (Incumbent Builds)	Competitive RFP (No ROFR)
Can use MISO Regional Cost "shifting formula mechanism?"	Yes. MISO's rules (e.g., MVP) apply automatically; A ROFR is not needed for an incumbent to shift costs to other customers of MISO.	Yes. MISO cost-allocation rules do not depend on Wisconsin having a state ROFR bill. Cost allocation rules still apply, independent of state ROFR laws.
Cost Shifting vs. Cost Savings	**Often conflated**: Incumbent "shifts" overhead cost regionally, but that doesn't necessarily reduce total project costs. It may just assign some of those costs to other MISO customers.	True cost savings come from lower bids and more efficient project design. Even if a new entrant can't shift overhead initially, the overall project costs tend to be lower due to competition.
Project Cost to Consumers	Will likely be **higher** overall because there is no competition to keep the incumbent's total project budget in check. "Shifting" overhead does not guarantee a net reduction in total spending.	**Lower** up-front capital costs because multiple bidders vie for the project, driving efficiency. Over a 40-year horizon, once the new developer owns more lines, it, too, can shift overhead regionally.
Innovation / Technology	**Less** incentive to innovate. Without competition, incumbents have no strong reason to incorporate advanced solutions or reduce overhead.	**Greater** incentive to propose innovative or cost-saving measures to win the bid and cut overall costs.

Key Factor	ROFR (Incumbent Builds)	Competitive RFP (No ROFR)
Long-Term Net Effect	Incumbent may appear to save local consumers by "shifting" overhead, but total costs can remain high. **Cost shifting ≠ cost savings.**	Region-wide competition lowers overall expenses. **Real** savings matter more than how costs are assigned regionally over decades.

The economic impact of building a new transmission line in Wisconsin hinges on how effectively its costs and benefits stack up against alternative proposals. American Transmission Company (ATC) argues that, under Midcontinent Independent System Operator (MISO) rules, an incumbent utility's ability to reallocate overhead and operations and maintenance (O&M) expenses can yield a significant net advantage for existing customers. Because ATC already owns a substantial asset base, it can spread a portion of its existing expenses over more projects, effectively reducing the share attributed to its current ratepayers. When those same costs are allocated to a new line that qualifies as a Multi-Value Project (MVP), most of the associated revenue requirement gets spread across the wider MISO region. As a result, Wisconsin's local ratepayers see a reduction in their portion of O&M and other overhead expenses. According to ATC's hypothetical modeling, these reallocations can exceed the incremental cost its own customers pay for the new transmission asset, leading to a net benefit for the state.

However, the question is whether a new, non-incumbent developer can deliver enough savings to overcome that reallocation advantage. A competitor might propose a 20% reduction in total capital and ongoing costs, indicating a leaner project approach or better resource procurement. At first glance, that sounds compelling. Yet, if the savings is merely marginal relative to the overall life-cycle expenses, ATC's cost reallocation might still outpace it. The key is how these competing streams of benefits and costs line up in present-value terms. Because net present value (NPV) analysis accounts for both time and the cost of capital, it is the best way to compare two competing cost forecasts.

Some may argue that new entrants can't "shift" overhead the way an incumbent can. But that argument sidesteps the real point: new entrants *don't have to* shift costs if they're reducing the total project budget by 20–40%. That is *actual* savings—not moving costs around.

- **Incumbent Strategy**: Spread overhead and indirect expenses across multiple projects, hoping local customers see modest relief on paper while other MISO members assume a share of the bill.
- **Competitive RFP**: Offer a substantially lower initial cost, leveraging sharper construction bids, more efficient technology, and favorable financing.

Ultimately, **if overall spending is lower, even a smaller "share" of the total can end up cheaper** than a supposedly "shifted" incumbent approach.

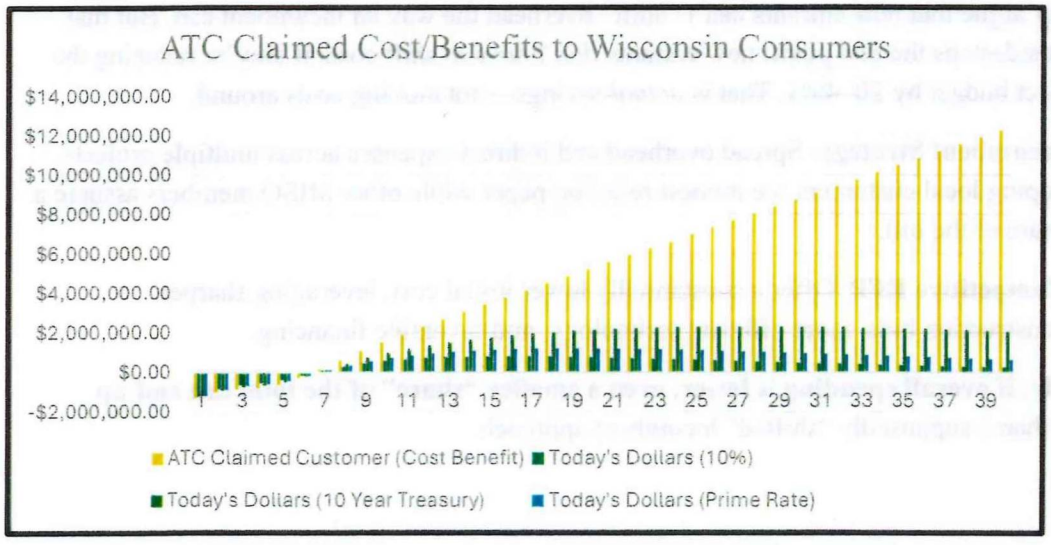
For a fair comparison, both the incumbent's and competitor's scenarios should be examined on a present-value basis. That way, when ATC measures the project's benefit (or "savings") as a net present value (NPV), any alternative estimate (e.g., as a 20% cost reduction by a new entrant) must likewise be expressed in today's dollars. The result is that the two discounted cash flow streams in the same time dimension, which is the key principle behind NPV analysis.

> **NPV Example: Time Value of Money in Plain Terms**
> If you "save" $10 million in year 30 of a project, that $10 million is not worth the same as $10 million in today's dollars. By the time we discount it back using a reasonable interest rate, it might only be worth $2–3 million. Therefore, big-sounding future savings can become quite small when translated into present-value terms. This underscores why actual, *immediate* cost reductions (like a 20% cut in construction bids) often outweigh intangible promises of long-term shifting.

When the study refers to the advantage that ATC has from reallocating overhead and O&M expenses across its broader asset base, it is effectively taking into account a future stream of credits and allocations that lowers customer bills over decades. Those credits need to be discounted back to present value. Meanwhile, if a nonincumbent competitor delivers a 20% cheaper total project cost, that discount also has a forward-looking component—both the upfront construction expenditures and the ongoing O&M. To see whether that 20% discount truly overcomes ATC's reallocated overhead benefits, it must be compared to ATC's net present value of expense credits (and any other savings) using the same discount rate and time horizon.

Figure 5 presents a comparison of the nominal savings reported by ATC and the present value of those savings under three different relevant discount rates: a 10% discount rate, the 10-year Treasury rate, and the Prime rate. In each of these discounted scenarios, the benefits claimed by ATC are significantly lower when expressed in today's dollars. While ATC's projections suggest large cumulative benefits over 40 years, applying these present-value adjustments shows that the long-term financial impact is much smaller when properly accounting for the time-value of money.

Figure 5: Nominal vs Net Present Value of Claimed Benefits



It is also worth noting that in many of ATC's models, the supposed "savings" crossover does not occur until year 7 or later—a time horizon far longer than what most private-sector analyses find acceptable. Waiting that long exposes ratepayers to undue risk and fails to guarantee genuine cost reductions in net present value terms.

The American Transmission Company (ATC) study significantly overstates the net present value (NPV) of the claimed customer savings by failing to properly discount future benefits. While ATC asserts that its approach leads to $212.8 million in cost benefits, a closer examination using standard discounting methods shows a drastic reduction in the actual present value of savings. Applying a 10% discount rate, the savings shrink to only $15.5 million, while using more conservative rates such as the 10-year Treasury (4.55%) and the Prime Rate (7.55%) yields adjusted savings of $60.2 million and $28.1 million, respectively. The stark contrast between ATC's claimed cost benefits and the reality when properly discounted underscores a fundamental issue in their analysis: the failure to account for the time value of money. Future savings, when adjusted for risk and opportunity cost, are worth significantly less than ATC's raw figures suggest. The ATC model primarily shifts costs rather than generating true savings, and when evaluated through an NPV framework, the purported financial benefits erode significantly, failing to offset the higher upfront costs imposed by Right of First Refusal (ROFR) policies.

Capital investment of $600 million	**Total Accumulated Savings**	Discount Rate Applied
ATC Claimed Customer (Cost Benefit)	$212,845,960.00	0%
ATC Claimed Customer Today's Dollars (10%)	**$15,504,132.71**	10%
ATC Claimed Customer Today's Dollars (10 Year Treasury)	**$60,213,319.64**	4.55%
ATC Claimed Customer Today's Dollars (Prime Rate)	**$28,147,090.99**	7.55%

For Wisconsin's ratepayers, the deciding factor is the net benefit (i.e., NPV) that each option brings. Under ATC's approach, the primary benefit arises when existing O&M costs are partially lifted off local customers and spread over the MISO footprint. Under a competitive approach, the selling point is cheaper capital investment and possibly lower ongoing expenses. Yet both outcomes have long tails, with costs and benefits unfolding over many years. By integrating all these costs, credits, and regional allocations into a robust NPV calculation, stakeholders can properly judge whether a competitor's discounted project truly surpasses the incumbent's reallocated overhead advantage. If the 20% cost reduction (or more) has a present value that outstrips ATC's allocation-driven benefit, then competition may yield superior overall results for Wisconsin. Otherwise, ATC's strategic advantage in expense sharing could maintain its upper hand, ensuring that local customers still gain the most from the incumbent's approach.

ATC's argument assumes that its customers' costs should be prioritized at the expense of the broader transmission system. However, if a new developer can build and operate a transmission line for 20% less, then the entire system would benefit from lower costs, rather than simply redistributing expenses.

The Department of Justice (DOJ) and the Federal Trade Commission (FTC) have strongly opposed the restoration of Right of First Refusal (ROFR) provisions in their joint comment to the Federal Energy Regulatory Commission (FERC) (U.S. Department of Justice & Federal Trade Commission, 2022). They argue that ROFR policies suppress competition, inflate transmission costs, and ultimately harm consumers by allowing incumbent utilities to monopolize new transmission projects. Their analysis highlights that competitive bidding consistently leads to cost reductions of 20-40%, whereas ROFR laws eliminate this downward pressure, resulting in higher prices for ratepayers. The DOJ and FTC further contend that incumbents already benefit from existing cost allocation mechanisms and regulatory structures that provide sufficient incentives to invest in transmission without requiring protection from competition. By restoring ROFR, FERC would effectively undermine the goals of open and efficient transmission markets, locking in higher costs and limiting innovation in grid development (*Comment of the U.S. Department of Justice and the Federal Trade Commission on Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Docket No. RM21-17-000, July 2022).

Moreover, ATC's ability to claim customer "savings" depends on its monopoly control over transmission development. In a competitive bidding environment, ATC could still offer lower costs to customers while facing competition from new entrants. However, instead of relying on ROFR protections, ATC would need to submit bids that reflect actual cost reductions, rather than just shifting expenses across a larger customer base.[2]

10.0 Conclusion: The Case for Competition

Wisconsin's Right of First Refusal bill (AB 25/SB 28) effectively blocks competition in new transmission development and keeps overall costs high. While ATC contends that cost shifting benefits Wisconsin ratepayers "mathematically," this is misleading:

- Higher Total Costs: Incumbents free from competitive pressures generally produce higher overall project budgets. Spreading those expenses around the region still adds up to more money spent.

[2] For additional visibility into how MISO manages competitive transmission projects, consult the **MISO Competitive Transmission Administration (CTA) web page** at:
https://www.misoenergy.org/planning/transmission-planning/competitive-transmission-administration/
This resource provides up-to-date listings of ongoing and completed competitive projects, including sponsors, in-service dates, detailed cost breakdowns, and bidding processes. By reviewing these data, stakeholders can see real-world cost outcomes for competitively bid lines and compare them to ROFR-awarded projects. Such transparency underscores how competition can yield significant savings and how MISO allocates responsibilities among potential developers

- Net Present Value Shrinks Long-Term Benefits: Once we convert claimed future credits into today's dollars, the advantage largely disappears.
- Net Harm: Even if Wisconsin sees a short-term offset on paper, that burden eventually returns as higher MISO-wide charges—resulting in a net loss.

By preserving competition, Wisconsin could ensure legitimate cost reductions—rather than relying on internal accounting tactics that merely shift expenses from one ratepayer group to another. Empirical data from states without a ROFR consistently show *faster completion times, more innovation, and lower final costs*. In this light, competitive bidding is not just an economic preference—it's a safeguard against inflated electricity rates in the decades to come.

ROFR laws effectively function as a "beggar-thy-neighbor" policy[3], a concept in economic theory where one state benefits at the direct expense of others. According to the R Street Institute's analysis, ROFR policies lead to higher costs for consumers not just within the state enacting them, but also across regional transmission organizations like MISO, where costs are shared among multiple states. This means that when a state, such as Minnesota or the Dakotas, enforces a ROFR law, it prevents competitive bidding, raises transmission costs, and shifts a portion of those higher costs onto ratepayers in neighboring states. The economic burden does not stop at the ROFR state's border. States that allow competition, like Wisconsin, Missouri, Illinois, and Indiana, are forced to absorb excess transmission costs due to the monopolistic policies of their neighbors.

This practice is akin to forcing everyone at a group dinner to split the bill, regardless of what they ordered. The R Street report estimates that Wisconsin, for example, could have saved $268 million under full competition, but because of other states' ROFR protections, it will only realize $92 million in savings. This is a $176 million shortfall caused by external anti-competitive policies. Similarly, Missouri, Illinois, and Indiana will each pay between $100 million and $205 million more because other states have chosen to restrict competition. This clear interstate burden is not only an example of poor economic policy, but it is also likely unconstitutional under the Commerce Clause, which prohibits states from enacting protectionist laws that discriminate against interstate commerce or place undue burdens on economic activity across state lines.

The economic harm caused by ROFR policies is a compelling argument for legal challenges and federal intervention. As noted in the R Street report, the discriminatory nature of ROFRs could increase the odds of litigation success against states that enforce them, especially as the Federal Energy Regulatory Commission (FERC) and the Department of Justice (DOJ) have raised concerns about their impact on competitive markets. The harm extends beyond just economic inefficiency—it creates a system where utilities are shielded from competition at the direct

[3] **Beggar-Thy-Neighbor:** Although cost shifting may look appealing for one area, it ultimately acts as a zero-sum game when every incumbent tries the same tactic. True savings come from lowering total costs, not by redistributing them among different states or ratepayer groups.

financial expense of consumers across multiple states. This "beggar-thy-neighbor" approach not only contradicts the principles of a fair market but also highlights why federal regulators should step in to prevent these policies from distorting electricity prices regionally.

11. References

Abito, Jose Miguel. "Measuring the welfare gains from optimal incentive regulation." *The Review of Economic Studies* 87, no. 5 (2020): 2019-2048.

Bikhchandani, Sushil, Steven A. Lippman, and Reade Ryan. "On the Right-of-first-refusal." *The BE Journal of Theoretical Economics* 5, no. 1 (2005): 00001022021534596311 94.

Felsenthal, Alan (2024). "Expert Report on the Revenue Requirement Impact on ATC's Existing Wisconsin Network Customers from Constructing and Operating a Hypothetical New Transmission Line Under MISO Cost Allocation Procedures https://www.wispolitics.com/wp-content/uploads/2024/12/241220ATC.pdf

For a complete overview of ongoing and completed MISO competitive projects, consult the **MISO Competitive Transmission Administration (CTA)** resource: https://www.misoenergy.org/planning/transmission-planning/competitive-transmission-administration/

Grosskopf, Brit, and Alvin E. Roth. "If you are offered the Right of First Refusal, should you accept? An investigation of contract design." *Games and Economic Behavior* 65, no. 1 (2009): 176-204.

Josiah Neeley, 2023. How ROFR Laws Increase Electric Transmission Costs in Midwestern States. https://www.rstreet.org/commentary/how-rofr-laws-increase-electric-transmission-costs-in-midwestern-states/

Josiah Neeley, 2023. ROFR in the Midwest: 2023 Legislative After Analysis. https://www.rstreet.org/commentary/rofr-in-the-midwest-2023-legislative-after-action-analysis

Josiah Neeley, 2024. Can Interstate Compacts Overcome the ROFR Challenge? https://www.rstreet.org/commentary/can-interstate-compacts-overcome-the-rofr-challenge/

Josiah Neeley, 2024. ATC's "Beggar Thy Neighbor" Strategy on Electric Transmission. https://www.rstreet.org/commentary/atcs-beggar-thy-neighbor-strategy-on-electric-transmission/

LaRiviere, Jacob, and Xueying Lyu. "Transmission constraints, intermittent renewables and welfare." *Journal of Environmental Economics and Management* 112 (2022): 102618.

Lucas, Michael. *ROFR Laws Increase Costs to Consumers.* February 2025. [https://www.maciverinstitute.com/assets/files/pdfs-files/Mike's%20PDFs%20and%20Files/ROFR/mi-study,-rofr-increases-costs-to-consumers;-atc-agrees.pdf].

Mogen, Walker. "The Dormant Commerce Clause as a Way to Combat the Anti-Competitive, Anti-Transmission-Development Effects of State Right of First Refusal Laws for Electricity Transmission Construction." *Mich. J. Env't & Admin. L.* 12 (2022): 291.

Macey, Joshua, and Jacob Mays. "The law and economics of transmission planning and cost allocation." *Energy Law Journal (forthcoming)* (2024).

Pfeifenberger, J. P., J. Chang, and M. Hagerty. "Cost savings offered by competition in Electric transmission." *LSP Transmission Holdings at* 5 (2019).

Rossi, Jim. "The costs of "crony capitalism" in regional transmission grid expansion." *The Electricity Journal* 36, no. 8 (2023): 107335.

12. Author Biography

Expertise and Professional Background

Dr. Eric Olson currently holds the Mervin Bovaird Foundation Endowed Professorship in Business at the University of Tulsa and maintains a joint appointment with the School of Cyber Studies.

Dr. Olson was the Founding Director of the Center for Energy Studies at the University of Tulsa, where he led research and policy initiatives focused on the intersection of energy markets, financial stability, and policy.

Education and Certifications

- Ph.D., Economics, University of Alabama (2010)
- M.A., Economics, University of Alabama (2005)
- B.A., Economics, University of Alabama (2004)
- Data Mining Certificate, University of Alabama & SAS Institute
- Applied Analytics Certification, SAS Enterprise Miner
- Credit Scoring & Basel II Modeling Certification, SAS Institute

Professional Memberships

- American Economic Association (AEA)
- Financial Management Association (FMA)
- United States Association for Energy Economics (USAEE)

Research and Publications

Dr. Olson has authored or co-authored over 40 peer-reviewed academic publications, including journal articles, book chapters, and research studies, on topics ranging from monetary policy and market volatility to the effects of uncertainty on economic growth. The role of fiscal and monetary policy in stabilizing macroeconomic fluctuations

Contact Information

Eric Olson, Ph.D.
Mervin Bovaird Foundation Endowed Professorship in Business
Associate Professor of Finance
Collins College of Business
The University of Tulsa
Email: Eric-olson@utulsa.edu
Phone: 918-631-2218

DAIRYLAND POWER
COOPERATIVE

Testimony on Assembly Bill 25 and Senate Bill 28
Joint Assembly and Senate Hearing
Tuesday, March 4, 2025

Chairmen Steffen and Bradley and Members of the Committees,

Thank you for the opportunity to testify on behalf of our 24 distribution cooperatives and their members in support of Assembly Bill 25 and Senate Bill 28. My name is Su Tzu-Yaun and I am the Transmission Policy and Strategy Manager at Dairyland Power Cooperative. This bill represents an important opportunity for our electric cooperative members and other Wisconsin consumers to see significant cost savings.

Dairyland Power is a Generation and Transmission Electric Cooperative. That means we generate electricity through natural gas plants, solar fields, and hopefully someday nuclear plants before transmitting that power via over 3,300 miles of transmission lines to our 24 distribution cooperatives and the municipal utilities we serve. We do this work in 4 states, including Wisconsin, where 18 of our 24 member cooperatives are located and serve rural residents.

Dairyland Power Cooperative, like American Transmission Company and Xcel Energy, is a member of the Midcontinent Independent System Operator, or MISO.

In absence of a Right of First Refusal law in Wisconsin, MISO selects major transmission builders using a very time-consuming and expensive bidding process.

While MISO does a great job operating the transmission grid and ensuring adequate power is available for Wisconsin families and businesses, Wisconsin can do a better job for our consumers when it comes to who builds, owns and operates the Multi-Value Projects.

The committee is going to hear a lot of testimony about the cost of these projects and it's important to remember two things throughout that discussion:

- The cost savings touted by opponents of this bill are nearly entirely theoretical. They are calculating savings by simply finding the difference between submitted bids.
- The cost savings provided by incumbent transmission owners are real dollars that lower the rates our members are paying as these projects are constructed and operated for decades to come.

I will offer two examples to highlight this difference.

Last session, opponents of the bill mentioned a project in Maine as examples of "savings" generated by competitive bidding.

Testimony in Support of Senate Bill 28 and Assembly Bill 25
Right of First Refusal Legislation for Transmission Projects in Wisconsin
Karl Hoesly, President, Xcel Energy Wisconsin & Michigan

March 4, 2025

Chairman Bradley, Chairman Steffen, and Members of the Committee,

Thank you for the opportunity to provide testimony in support of Senate Bill 28 and Assembly Bill 25. I am Karl Hoesly, President of Xcel Energy in Wisconsin and Michigan.

I have submitted written testimony on behalf of Xcel Energy for the committee and to keep today's hearing efficient I will not read my testimony verbatim but highlight the importance of SB 28 and AB 25 and refute inaccurate information opponents are using for talking points.

Xcel Energy, with operations in eight Midwestern, Western and Southwestern states, owns and operates one the largest investor-owned transmission systems in the country. , . In fact, in the past 10 years, no other company in the country has built more new transmission lines ensuring a safe and lower cost system for our customers than Xcel Energy. Today, our company owns and operates more than 20,000 transmission miles and nearly 1,200 transmission substations across Wisconsin and nine other states.

Just like any major infrastructure provider, such as telecommunications, roads and highways, the transmission grid needs to be upgraded and expanded to serve existing and new customers. We are fortunate to live in a state that continues to grow economically – something I see every day in my travels throughout our State. I and my team have regular conversations with large companies looking to grow or re-locate to because of the quality of our workforce, low cost of living and supportive business environment - the trend is upward. And through each economic story, there is a common thread – these businesses need ready access to safe, reliable and low-cost electricity.

MISO Tariff

Mike did a great job in his testimony, and I hope that if the committee takes one thing away from today it is that the MISO rules give existing transmission providers in the state the ability to share the costs of the construction plus existing overhead with the rest of the utilities in the MISO region – greatly reducing cost to Wisconsin customers. A new developer does not have that overhead in Wisconsin, thus the benefits won't come to Wisconsin customers, only to the region.

Today, the committee will hear lots of talk from opponents of this legislation, but none will contradict the math on how the MISO rules work. Opponents will talk about studies that they paid for that say competition saves money., They will cherry pick 1 or 2 projects they claim were cheaper while skipping the numerous projects that were overbudget, didn't meet deadlines and were more costly. And each time, they won't explain how the MISO rules will not allow them to save Wisconsin customers over $1 billion --- why? Because they can't. Members of the committee, people may not like the way MISO rules work but if you agree with how they work its clear to see the savings they provide for Wisconsin customers when Xcel Energy, ATC or Dairyland are awarded the projects.

Dairyland/ATC Partnership
I also want to highlight that all three transmission providers in Wisconsin are sitting here today in support of this legislation. At Xcel Energy, we have a rich history of working together with other transmission owners and our electric cooperatives to support development of the regional grid that enables economic growth in our state.

Our relationship with ATC and Dairyland has never been stronger as we all see the benefit to the State of Wisconsin and all customers to pass SB 28 and AB 25

Pelican Institute Report
Our opponents latest talking point stems from a new report from the Pelican Institute. This report is not a serious evaluation of the cost of electricity. It evaluates rates in Wisconsin and Minnesota during a time when **no** transmission projects of the type covered by Wisconsin's ROFR legislation were bid. The report simply compares rates over that time and then decides that since Minnesota had a ROFR it caused Minnesota's rates to rise without showing any link, this is simply untrue.

No competitive transmission projects were completed in the region during the timeframe.
Due to the long planning and construction time for transmission projects, as well as the effective date of the FERC policy, there were no competitive transmission projects placed into service in the region during the timeframe studied in the report. The report cannot claim to measure the effect of transmission competition on retail rates when competition did not exist during the timeframe used in the report.

Federal regulation of transmission development does not work
Others will attempt to cherry pick a few projects to support their premise against this legislation. However, it's a fact that they will not mention that the majority of the projects built under the federal bureaucratic process of competition were plagued by scope changes resulting in massive cost overruns and extreme delays. They also will act as if the federal process guarantees cost savings through the bidding process, which it simply does not. Actual costs for these projects have almost always exceeded the low bids that are incentivized with the competitive bidding process.

A perfect example is the Crossroads-Hobbs-Roadrunner project in southeast New Mexico where Xcel Energy serves.

- In this project, Xcel Energy, the incumbent was not selected, while an out-of-state contractor (NextEra) was the selected developer.
- The out-of-state developer's proposal was >30% higher, took a year longer for commercial operation and is siting the project using condemnation rather than working with property owners.

It is a fact that since FERC Order 1000 was passed over a decade ago it has been entirely unsuccessful in bringing more efficient projects to life. It has also resulted in far less collaboration, created extensive delays in development, imposed costly processes and removed control from local and state officials who know best what their communities need.

Let me give you a few examples:

- In several regions, such as out west, local utilities have stopped altogether in participating in federal bureaucratic competitive processes.

- In the Southwestern part of the U.S., generally only four companies bid into projects.
- In the MISO region, the number of companies participating dropped by half between the first and second competitive projects that were provided.

In addition to these examples, there's tremendous risk to overall reliability when incumbent utilities don't construct these projects. Unlike incumbent companies, developers with no experience in Wisconsin only need to maintain infrastructure for the first number of years when they are receiving revenue. But after the period when revenues decrease, they have little incentive to maintain that infrastructure. Conversely, local utilities are held accountable and are required by the PSCW to continue maintaining infrastructure for reliability and the safety and security of our residents.

Regarding price, I would like to note that we are fully regulated and mandated to file rate cases with the Public Service Commission of Wisconsin at least every other year. As you know, in these proceedings the Commission regulates the reasonableness of our rates, and it is in our best interest to have affordable rates to attract new business to our region and to have satisfied customers.

It is also worth underscoring that all new transmission projects built by Wisconsin utilities are subject to Wisconsin's robust Certificate of Public Convenience and Necessity process, which is reviewed by the Public Service Commission. This process includes ensuring the project is in the public interest and is competitively priced and bid.

Thank you for the opportunity to testify today in support of SB 28 and AB 25, and I am happy to take any questions you might have.

ALWAYS ON
ENERGY RESEARCH

March 4, 2025

Always On Energy Research (AOER) is a 501(c)(3) dedicated to ensuring that every state in America has the affordable, reliable energy needed to power the nation and to fuel a robust, rapidly growing economy now and into the future.

AOER believes that Assembly Bill 25 and Senate Bill 28 establishing a Right of First Refusal for incumbent monopoly utilities to build interregional transmission lines is an unnecessary and potentially unlawful policy that misses the true cause of skyrocketing electricity rates in Wisconsin.

Electricity prices in America's Dairyland are surging. Data from the U.S. Energy Information Administration (EIA) show electricity prices for Wisconsin families have increased by 20 percent since 2016 and energy intensive industries like manufacturing and the paper industry are struggling to keep up with rising electricity prices.

Prices are surging because Wisconsin's government-approved monopoly Investor-Owned Utilities, are prematurely retiring their affordable coal plants and replacing them with an expensive combination of natural gas, wind, and solar facilities to bolster corporate profits for their shareholders.

These monopoly utilities, which are raising the price of electricity for your constituents and unnecessarily increasing the cost of living, are now asking for the right to build interregional transmission lines without being subject to competition.

It's worth noting that these transmission lines are not needed. They are only being built to facilitate the construction of more unreliable wind and solar resources that will undermine the reliability of the regional grid and supercharge the increase in electricity bills for everyone. Without the Green New Deal, there is not a need for these interregional transmission projects.

Lastly, these laws are being struck down in court in states throughout the country because they violate federal competition principles and interfere with interstate commerce. Courts in Texas, Indiana, and Iowa have ruled these laws unconstitutional.

Reversing the upward trend of electricity bills is essential to improving the lives of Wisconsinites. The lawmakers in this body would do better by the ratepayers of Wisconsin to reign in the power of its monopoly utilities to unilaterally retire reliable, depreciated assets

WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.
330 E. Kilbourn Avenue, Suite 725, Milwaukee, WI 53202-3141
414-727-WILL (9455) | Fax 414-727-6385 | www.will-law.org

MEMORANDUM REGARDING RIGHT OF FIRST REFUSAL LEGISLATION

Only twelve states have so-called "right of first refusal" ("ROFR") statutes.[1] These statutes give existing in-state utility companies an exclusive right to build or own certain new transmission lines. Only if no such company exercises this right may the government use a competitive bidding process, thereby permitting other companies a chance to win a contract for a project.

2025 Senate Bill 28 and Assembly Bill 25 attempt to create an ROFR statute in Wisconsin for the first time. The Wisconsin Institute for Law & Liberty ("WILL") opposes this legislation. It is unconstitutional because it impermissibly discriminates against nonresident companies. Additionally, it is a bad policy that will drive up costs for ratepayers. While supporters of this legislation claim it is necessary to ensure "reliability," existing laws already accomplish that goal.

The proposed ROFR statute is unconstitutional.

The proposed ROFR statute is unconstitutional. The Commerce Clause of the U.S. Constitution vests unto Congress the power "to regulate commerce ... among the several states ...."[2] Under U.S. Supreme Court precedent, this clause prohibits states from discriminating against "out-of-state goods or nonresident economic actors."[3] A state law that does either passes muster only if the state can prove the law is "narrowly tailored" to "advanc[e] a legitimate local purpose."[4] This doctrine is colloquially known as the "Dormant Commerce Clause." In the words of the Court, "[a]ssuredly, under ... [the] [D]ormant Commerce Clause ..., no State may use its laws to discriminate purposefully against out-of-state economic interests."[5] Accordingly, an allegation that a law "seeks to advantage in-state firms or disadvantage out-of-state rivals" is grave.[6] For example, in 2019, the Court examined a Tennessee law that required liquor store operators and owners to first have an in-state presence. It held that law was unconstitutional because it restricted out-of-state competition.[7]

---

[1] *Right of First Refusal for Electric Transmission*, NCSL (last updated Dec. 9, 2024), https://www.ncsl.org/energy/right-of-first-refusal-for-electric-transmission#:~:text=Currently%2012%20states%20have%20enacted,and%20Mississippi%20enacting%20new%20requirements.

[2] U.S. Const., art. 1, § 8, cl. 3.

[3] *Tenn. Wine & Spirits Retailers Ass'n v. Thomas*, 588 U.S. 504, 518 (2019).

[4] *Id.* (quoting *Dep't of Revenue of Ky. v. Davis*, 553 U.S. 328, 338 (2008)); *see also Granholm v. Heald*, 544 U.S. 460 (2005).

[5] *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 364 (2023).

[6] *Id.* at 370.

[7] *Tenn. Wine*, 588 U.S. at 510.

SB 28 and AB 25 violate the Dormant Commerce Clause by advantaging in-state interests and disadvantaging out-of-state rivals. The legislation defines an "incumbent transmission facility owner" as "a transmission company or transmission utility ...." The terms "transmission company" and "transmission utility" are already defined in statute. A transmission company is defined as, among other things, a company organized under the laws of Wisconsin.[8] Similarly, a transmission utility is defined as a cooperative or public utility that owns a transmission facility in the state or provides transmission service in the state.[9] Accordingly, to get a ROFR under this legislation, a company needs an in-state presence, just like the Tennessee law that the U.S. Supreme Court held was unconstitutional.[10]

Litigants have brought at least three successful challenges against ROFR statutes. In 2022, the Fifth Circuit admonished Texas's ROFR statute and remanded for further proceedings: "Imagine if Texas—a state that prides itself on promoting free enterprise—passed a law saying that only those with existing oil wells in the state could drill new wells. It would be hard to believe. It would also raise significant questions under the [D]ormant Commerce Clause."[11] In October 2024, a federal district court held that "[b]ecause ... [the statute] facially discriminates based on interstate commerce and does not survive strict scrutiny, the statute is unconstitutional under the [Dormant] Commerce Clause."[12]

In 2023, the Iowa Supreme Court reversed a dismissal and returned an ROFR challenge to the trial court. In its opinion, the court stated:

> We are not surprised that the ROFR lacked enough votes to pass without logrolling. The provision is quintessentially crony capitalism. This rent-seeking, protectionist legislation is anticompetitive. Common sense tells us that competitive bidding will lower the cost of upgrading Iowa's electric grid and that eliminating competition will enable the incumbent to command higher prices for both construction and maintenance. Ultimately, the ROFR will impose higher costs on Iowans.[13]

The court temporarily enjoined enforcement of the ROFR statute.

---

[8] Wis. Stat. § 196.485(1)(ge).

[9] Wis. Stat. § 196.485(1)(i).

[10] While SB 28/ AB 25 proposes that an incumbent "includes a transmission company or transmission utility, regardless of whether this state is its principal place of business or where it is organized or headquartered," this confusing language does nothing to address the underlying constitutional problem. For example, to even be a "transmission company," the utility company would still need to be organized under Wisconsin law. All the "regardless" clause does is clarify that such a utility company need not also have its principal place of business in Wisconsin or be headquartered in Wisconsin. No other reading sufficiently harmonizes the bill's proposed language with existing statutes.

[11] *NextEra Energy Cap. Holdings, Inc. v. Lake*, 48 F.4th 306, 309 (5th Cir. 2022).

[12] *NextEra Energy Cap. Holdings, Inc. v. Jackson*, 2024 WL 4660920, at *17 (W.D. Tex. Oct. 28, 2024).

[13] *LS Power Midcontinent, LLC v. State*, 988 N.W.2d 316, 338 (Iowa 2023), *reh'g denied* (Apr. 26, 2023).

In December 2024, a federal district court concluded that an Indiana ROFR statute was unconstitutional: "[The statute] cannot withstand strict scrutiny. Although it serves legitimate governmental interests—promoting transmission reliability, maintaining cost-effective infrastructure, and continuity of service—Indiana already requires '[e]very public utility ... to furnish reasonably adequate services and facilities.' Thus, Defendants' proffered reasons for upholding the statute are insufficient ...."[14]

These three recent decisions demonstrate that this legislation will fail in court. Notably, Wisconsin statutory law, like Indiana's, already requires a transmission company "to provide an adequate and reliable transmission system that meets the needs of all users that are dependent on the transmission system ...."[15] As one commentator wrote, "[t]he reliability justification does not hold water. Non-incumbents seeking to build transmission lines can provide just as reliable service as incumbent utility companies. ... The state utility board would make sure the non-incumbent company was up for the job and had the capabilities to build and operate the transmission line."[16]

The proposed ROFR statute will limit competition.

Putting aside the legislation's unconstitutionality, it is also bad policy. This legislation attempts to eliminate the little competition in Wisconsin's transmission market. For context, transmission companies do not operate in a "natural" monopoly. Across the nation, transmission companies regularly connect to each other's facilities as part of the larger grid, and they do so while competitively bidding against one another. This competitive process ensures lines are built efficiently at the lowest cost for ratepayers. One study by the Brattle Group found that competition can save ratepayers 20–30% on the project's cost.[17] When coupled with the fact that contracts under the competitive bidding process often include containment measures, thereby limiting the potential for overruns, these savings have the potential to grow even more. The MISO region where Wisconsin operates has tens of billions of dollars in projects each year, so these savings are substantial. The bottom line is that the market can support more than one firm bidding and building these projects.

The state should embrace this competition and have those firms bid against one another to lower costs, which, in turn, helps Wisconsin families. Alternatively, if this bill were to pass, ratepayers could expect an increase on their power bills.

---

[14] *LSP Transmission Holdings II, LLC v. Huston*, 2024 WL 5008048, at *9 (S.D. Ind. Dec. 6, 2024), *appeal filed* (quoting Ind. Code § 8-1-2-4).

[15] Wis. Stat. § 196.485(1)(ge); § 196.03(1) ("Subject to s. 196.63, a public utility shall furnish reasonably adequate service and facilities.").

[16] Walker Mogen, Note, *The Dormant Commerce Clause as a Way to Combat Anti-Competitive, Anti-Transmission-Development Effects of State Right of First Refusal Laws for Electricity Transmission Construction*, 12 Mich. J. Evn't & Admin. L. 291, 309 (2023).

[17] Johannes Pfeifenberger, Judy Chang & Michael Hagerty, *Cost Savings Offered by Competition in Electric Transmission: Experience to Date and Potential Value for Electricity Consumers* (2019), https://www.brattle.com/wp-content/uploads/2021/05/17805_cost_savings_offered_by_competition_in_electric_transmission.pdf.

Conclusion

Using the heavy hand of government to eliminate competition does not benefit Wisconsin families, who will have to foot the bill for the added expense. In addition, while legal challenges elsewhere continue to play out, Wisconsin should set this proposal aside.

Please oppose SB 28.

MWFPA
Midwest Food Products Association, Inc.

To: Assembly Committee on Energy and Utilities
Senate Committee on Utilities and Tourism

From: Nick Novak
President
Midwest Food Products Association

Date: Tuesday, March 4, 2025

Re: Opposition to Assembly Bill 25/Senate Bill 28

Chairmen Bradley and Steffen and members of the committee, thank you for the opportunity to provide comments on Assembly Bill 25/Senate Bill 28.

The Midwest Food Products Association (MWFPA) represents food manufacturing companies and their affiliated industries operating throughout the Midwest. Our members produce a wide range of products ranging from canned and frozen fruits and vegetables to meat, pickles, sauces, frozen snacks and meals, and a variety of other items. Simply, MWFPA members make the food that feeds millions of people here in the Midwest, across the nation and around the globe.

In Wisconsin specifically, we typically rank second in the nation in vegetable production, placing first in snap bean and cranberry production and third in sweet corn. Wisconsin food processors also produce a wide range of other vegetables like beets, carrots, celery, kidney beans, kraut cabbage, lima beans, peas and pickling cucumbers.

One of the top expenses our manufacturing members face is energy, and that is why we respectfully ask that you oppose Assembly Bill 25/Senate Bill 28.

This bill would eliminate competitive bidding for transmission projects, which would result in higher costs for our members who are already facing inflationary pressures in other aspects of their businesses. If energy costs go up, the prices at the grocery store and our favorite restaurants also go up.

We believe the best way to control costs for Wisconsin ratepayers is to ensure competitive bids for upcoming transmission projects. We can see this play out when

comparing electricity rates in Wisconsin and Minnesota in recent years. MWFPA has members in both states, and unfortunately for our neighbors west of the St. Croix River, Minnesota electricity rates have increased at a faster rate than Wisconsin.

According to a recent study, this is likely due to Minnesota implementing Right of First Refusal (ROFR) legislation in 2012.[1] These higher energy costs make industries like food processing less competitive at a time when other costs continue to increase.

Additionally, it should be noted that under the current rules in Wisconsin, any qualified transmission line builder can spread their operating and maintenance costs within the Midcontinent Independent System Operator (MISO) footprint. So, the argument that electricity costs would come down because ROFR would better allow this to happen falls flat.

Our members are looking to policymakers to help reduce their costs and make Wisconsin a more competitive place to do business – especially for the manufacturers that are critical to our food supply chain. We believe that Assembly Bill 25/Senate Bill 28 would have the opposite effect and result in higher costs for both our members and the families that purchase the many food products they make.

Thank you for your time and consideration.

Please oppose Assembly Bill 25/Senate Bill 28.

[1] Pelican Institute – The Economic Implications of ROFR Legislation: https://pelicanpolicy.org/wp-content/uploads/2024/10/Economy-ROFR-Paper-Oct-2024.pdf

Written Testimony of LS Power in Opposition to Wisconsin Senate Bill 28 / Wisconsin Assembly 25

LS Power is an independent transmission company that develops, owns, and operates competitive transmission projects all over the United States. We would like to thank the Chairmen and committee members for the opportunity to present written comments in opposition to Assembly Bill 28 / Senate Bill 28, which will prohibit transmission competition in Wisconsin, harming Wisconsin ratepayers for decades to come.

Introduction to LS Power

LS Power is an independent power and transmission company. In total, we have developed, constructed, managed and acquired more than 50,000 MW of competitive power generation and over 780 miles of transmission infrastructure, for which we have raised more than $65 billion in debt and equity financing to invest in North American infrastructure. We have won 13 projects through competitive transmission solicitations nationally, representing approximately $6 billion of investment. Assembly Bill 25 / Senate Bill 28 would prohibit such future transmission competitive processes in Wisconsin, harming LS Power and denying ratepayers the benefits of competition. In each instance in which LS Power has prevailed in the competitive process, we have provided significant cost savings and other benefits over traditional cost of service transmission development where consumers bear all the development risk. This is because incumbent utilities have many natural business advantages, so in order to be successful, independent companies like LS Power need to identify tangible benefits, usually include cost savings for ratepayers, more attractive financing terms, and risk mitigation such as cost caps.

The projects for which LS Power has been selected as the developer are from coast to coast– California, Nevada, Texas, Indiana, Kentucky, Delaware, New Jersey, and New York. Of these projects, seven are fully in operations and the rest are in various stages of permitting or construction. In order to be successful in a competitive process, we have to identify an innovative approach, provide risk mitigation in the form of cost containment, and often include competitive concessions such as a capped rate of return on equity, and a cap on the amount of equity. The seven projects in operations have all been delivered under budget with best quality and at less than or below our guaranteed construction cost. We have **never** charged cost overruns to ratepayers. We have never sought to include Construction Work in Process ("CWIP") in rates. We also have a strong history of partnership with local municipalities and cooperatives in our successful bids. Table 1 summarizes LS Power's competitive transmission project portfolio.

Project	Scope	Selection	Status
Cross Texas – CREZ Facilities	235 miles double-circuit 345 kV transmission and associated substations in Texas Panhandle	Selected by Texas Public Utility Commission in 2009	In service on-time in 2013 at least cost
Republic Transmission -Duff to Coleman	31 miles 345 kV in Indiana and Kentucky	Selected by Midcontinent ISO in 2016	In service six-months early and within cost cap
Republic Transmission -Hiple to Indiana/Michigan Border	~30 miles 345 kV in Indiana	Selected by Midcontinent ISO in 2023	In permitting, scheduled in service 2030

DesertLink	60 miles 500 kV near Las Vegas, Nevada	Selected by California ISO in 2016	In service on time in 2020 within cost cap
Silver Run Electric	5 miles 230 kV include 3 miles submarine cable and substation, in New Jersey and Delaware	Selected by PJM in 2012	In service on time in 2020, within cost cap, $400 million less than lowest incumbent proposal
Silver Run Electric Expansion	3 miles 230 kV submarine cable in New Jersey and Delaware	Selected by New Jersey Board of Public Utilities in 2022	In permitting, scheduled in service in 2029
LS Power Grid New York	123 miles mostly double-circuit 345 kV and 2 substations in upstate New York	Selected by New York ISO in 2019	In service on time in 2023 at cost $200 million less than estimate
LS Power Grid California – Gates	500 kV 800 MVAR STATCOM and substation	Selected by California ISO in 2020	Scheduled in service in 2025
LS Power Grid California – Round Mountain	500 kV 500 MVAR STATCOM and substation	Selected by California ISO in 2020	Scheduled in service in 2025
LS Power Grid California – Manning	500/230 kV substation and 230 kV lines near Fresno, California	Selected by California ISO in 2023	Scheduled in service in 2028
LS Power Grid California – Collinsville	500/230 kV substation and 230 kV lines near Pittsburg, California	Selected by California ISO in 2023	Scheduled in service in 2028
LS Power Grid California – Newark Project –Metcalf Project	Each is a 320 kV HVDC transmission line systems near San Jose, California	Selected by California ISO in 2023	Scheduled in service in 2028

Table 1 - LS Power Competitive Transmission Projects

Competition in the Electric Industry

Competition for transmission projects produces better results for consumers than simply assigning all new transmission to existing transmission owners. Wisconsin Senate Bill 25 / Assembly Bill 28 is bad for Wisconsin electricity consumers.

Before we address competition though it is important to understand how the electricity industry has changed. For most of its history, the electric industry was characterized by individual companies building all three phases needed to deliver electricity to homes and businesses in its dedicated service territory: generation, transmission, and distribution. The facilities needed to generate electricity were the biggest cost component on consumer's bills, followed by distribution facilities and then transmission as illustrated in Figure 1.

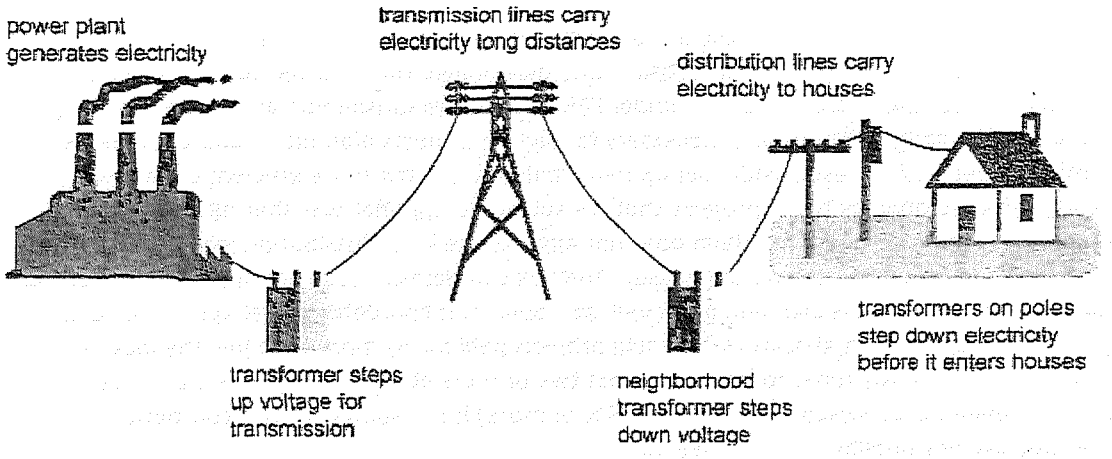


Figure 1 – Electricity Generation, Transmission, and Distribution

Historically in the mid-1990s utilities were vertically integrated, although competition for generation was gaining momentum. Today, the generation of electricity is competitive to some degree in every state. As a result of generation competition, the generation piece of consumers' bills, while still often the largest, has steadily declined as a percentage of the overall bills. Competitive generation has also meant that the generation needed to power Wisconsin homes may not come from facilities located in Wisconsin, and it also means that Wisconsin-based generation can be supplying electricity to other states. As I will describe below, certain transmission projects are also subject to various levels of competition.

Also in the mid-1990s, Federal Energy Regulatory Commission ("FERC"), the federal agency Congress tasked with addressing wholesale generation and interstate electric transmission, encouraged the development of regional transmission organizations. These organizations do not own any generation or transmission but have responsibility to independently operate existing transmission and plan for transmission needed to serve the region.

Wisconsin utilities participate in the Midcontinent Independent System Operator ("MISO"). Figure 2 on the next page identifies the 14-State area that MISO serves.

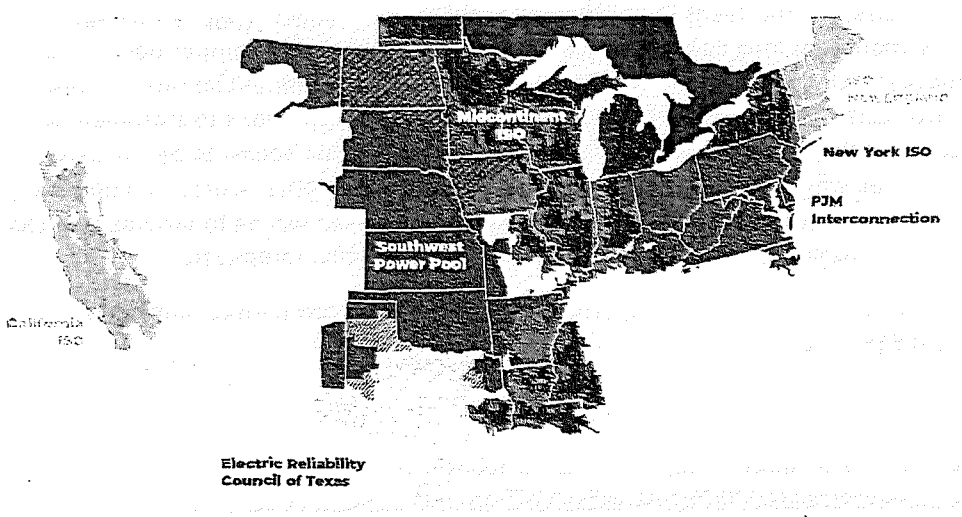


Figure 2 – Independent System Operations and Regional Transmission Operators in the United States

Competition in Electric Transmission

In 2011, recognizing the changes in the use of electric transmission and the need for significant investments in new transmission, a bipartisan FERC determined that in order to ensure just and reasonable transmission rates (a subject under FERC's exclusive jurisdiction as declared by Congress nearly 100 years ago), competition is necessary for certain projects planned to address regional transmission needs. As a result, MISO set up rules to determine the more efficient or cost effective transmission developer for those projects that are subject to regional cost sharing and thus FERC's competition mandate. This competition does not apply to the local distribution wires or the delivery of electricity to individual homes and businesses. And this competition does not apply to most of the high-voltage transmission that is planned, approved, and built. This competition just applies to certain projects with regional cost allocation, meaning projects paid for by more than just the local utility territory and most of the time, consumers across two or more states. Most of the transmission investment planning by Wisconsin's utilities (80% or more) is not subject to this competition. But the utilities oppose *any* possibility of competition.

Transmission competition works like most other competitive requests for proposals in other industries. Bidders compete for the right to be the regulated utility for a specific transmission project. An independent entity, such as MISO identifies the need and administers the process. MISO has extensive technical and financial qualifications processes, and 51 qualified bidders are eligible to provide proposals in MISO today, with the winner being able to recover the capital cost of the projects from MISO's customers on a 14-state or 8-state basis. Senate Bill 28/ Assembly Bill 25 targets the 51 qualified bidders today in MISO by eliminating the MISO competitive process.[1] LS Power entities today are included in the list of qualified bidders in MISO. The vast majority of qualified entities are the incumbent utilities in each region, or competitive affiliates of incumbents, including Wisconsin's ATC and Dairyland Electric Cooperative.

Transmission RFPs include detailed requirements that are provided as part of the solicitation package. Bidders provide detailed proposals on all aspects of design and operations. These proposals are evaluated against the solicitation requirements. The standard of review is typically the proposal that exceeds the proposal requirements and provides the more efficient or cost-effective solution.

Remember that a typical utility under cost-of-service regulation does not provide any cost containment, and in fact the more a utility spends, the more the utility earns, as long as the expenditures are prudently incurred. In the event of unexpected problems or changes, a utility's perverse incentive is to spend more money, as long as it can be justified. Under transmission competition, it is often the case that a proposal includes some sort of cost cap, as well as other competitive rate concessions. Cost caps align the interests of the utility with ratepayers to find creative solutions to a problem without increased costs. This is not only true of proposals from non-incumbents, but seems to be the case for incumbent proposals as well when incumbents are required to compete. In other words, utilities that pass cost overrun risk on to ratepayers in their normal business have been willing to provide cost caps and risk mitigation when forced to compete. Competition clearly benefits ratepayers.

Initially, some incumbents saw an opportunity in transmission competition and supported the concept. Ameren told FERC that:

---

[1] The list of the 51 MISO qualified developers can be found here: https://cdn.misoenergy.org/MISO%20Qualified%20Transmission%20Developers%20List82330.pdf and attached as Exhibit A.

> "Ameren believes that including cost containment provisions in project proposals provide cost certainty and risk mitigation to transmission customers. Ameren also believes that cost containment provisions, even when coupled with incentives like CWIP, abandonment, hypothetical capital structures and ROE adders to address the additional risk associated with the competitive transmission development process in general, and cost containment provisions in particular, can produce a "win-win" for customers and developers alike....
> The transfer of project risk away from the customer is the key benefit of cost containment provisions which have been advanced under the competitive transmission process. Through the use of cost containment provisions developers are able to further differentiate their transmission project proposals by increasing price certainty for customers."[2]

ATC expressed similar views in the state of Minnesota initially. ATC now opposes the concept as it poses a risk to its own business interests.

Clear Benefits of Competition

Competitive procurements provide several avenues of benefits to ratepayers:

- Significant capital cost savings through innovation in design and construction methods;
- Risk mitigation and protection from cost overruns through cost caps; and
- Long-term savings through favorable financing terms such as lower rates of return on equity.

In its 2016 comments, Ameren had it exactly right, "cost containment provisions in project proposals provide cost certainty and risk mitigation to transmission customers." That is exactly what competition has done, and the type of consumer benefits that Senate Bill 28/ Assembly Bill 25 would eliminate. A few case studies of transmission competition illustrate this point.[3]

Case Study 1 – Duff to Coleman

MISO's first competitive transmission solicitation was for a project in Indiana that crossed the Ohio River into Kentucky, named Duff to Coleman. LS Power partnered with an Indiana cooperative utility and was chosen to develop and own the facilities from among 11 respondents, including an affiliate of Ameren, an affiliate of Evergy, as well as various other incumbent transmission owners.[4] In selecting LS Power ("Republic Transmission"), MISO noted that:

> The Executive Committee determined that Republic Transmission's proposal provided the strongest combination of attributes, including but not limited to, **the highest degree of certainty and specificity, the lowest risk, and low cost.** It distinguished itself across the collective evaluation criteria in a way no other proposal matched. It was the best proposal for project implementation. It provided the best balance of high-quality design and competitive cost. It was in the top tier for operations and maintenance....[5]

---

[2] Post Technical Conference Comments of Ameren Services Company, filed October 3, 2016 in Docket AD16-18-000, available through FERC's eLibrary https://elibrary.ferc.gov/eLibrary/search.

[3] In addition to the two case studies described in these comments, LS Power filed a detailed summary of transmission competition in October 2021 as Appendix II to its comments filed in FERC Docket RM21-17, at: https://elibrary.ferc.gov/eLibrary/filedownload?fileid=1B0DAEBB-F252-CF19-8983-7C7A2FC00000

[4] Duff-Coleman EHV 345 kV Competitive Transmission Project Selection Report includes the list of bidders and can be found at: https://cdn.misoenergy.org/Duff-Coleman%20EHV%20345kv%20Selection%20Report82339.pdf

[5] Duff-Coleman Selection Report at 35. Emphasis added.

In MISO's Selection Report it noted that LS Power received 95 points (on a 100 point scale) with the "other proposals scored between 80 and 41 points." The "other proposals" included multiple existing incumbent MISO transmission owners[6] yet MISO declared LS Power "Best" for Cost and Design, "Best" for Project Implementation, and "Better" for Operations and Maintenance Project. Further, as important as the concessions offered by the selected developer, the Selection Report indicated that multiple developers beyond the selected developer, including existing transmission owners, offered cost containment commitments. As shown in Table 2 below, the Selection Report shows that 10 of 11 proposals had a cap on the cost of the project, with 6 of 11 capping the return on equity. While the selection report does not identify which proposal is from which entity, 10 of 11 bidders, mostly incumbent utilities, were willing to propose cost containment when forced to compete.

Summary of Cost Caps, Concessions, and Commitments											
Uncertainty	101	102	103	104	105	106	107	108	109	110	111
ROE		✓		✓ i			✓	✓ i	✓ iii	✓	
Capital Structure		✓		✓						✓	
Implementation Costs	✓ iv	✓ v	✓	✓ iv		✓	✓	✓	✓ iv	✓	✓ iv
Operations and Maintenance Costs				✓							
Inflation Rate			✓	✓		✓		✓		✓	
Rate Concessions						✓					✓

Table 2 – Summary of Cost Caps, Concessions & Commitments from Duff-Coleman Evaluation Report

LS Power's proposal had a cost cap, and also several concessions related to financing terms. LS Power capped its rate of return on equity at 9.8% for the life of the project, at a time when the MISO transmission owner rate of return on equity was 12.38%. LS Power also limited the equity portion of its capital structure to 45% when most incumbent utilities equity percentage is between 52% and 60%. LS Power committed to not seek Construction Work in Progress in rates. All else equal, these financing terms **reduce the cost** to ratepayers **by 25%**, not just in the first year, but in every year over the life of the project.

Without competition, incumbent transmission owners build new transmission facilities with little control on cost and with consumers bearing the risk of cost overruns and with rates set through administrative processes at FERC. To be clear, the projects that are subject to competition are outside of the ratemaking jurisdiction of the Wisconsin Public Service Commission, even if they are built by the incumbent. LS Power's commitments were incorporated into a binding contract with MISO and incorporated into rates. LS Power placed the Duff-Coleman project in service ahead of the required in-service date, and at a cost less than the cost cap. The project has had 100% availability.

[6] Duff-Coleman Selection Report.

Case Study 2 – Fairport to Denny to IA/MO Border

The below case study shows that the existence of the MISO competitive process also makes the incumbent stronger, even if the incumbent wins the competitive bid process.

In the Fairport to Denny to IA/MO Border RFP, MISO received nine qualifying bids from four bidders: Ameren Illinois, Nextera, LS Power, and Transource (an affiliate of Evergy).[7] Even though the project was won by an affiliate of the incumbent utility, the process demonstrates a clear win from competition for ratepayers. Ameren really sharpened their pencil and found a way to provide a capital cost significantly below its actual cost for a similar project (despite 10 year of high inflation), and it included a cost cap. Ameren provided caps on the cost of equity and operations and maintenance that would not have been provided absent a competitive process. The partnership with the municipal entity also provides significant cost savings. Overall, ratepayers will save nearly 55% ($74 million compared to the original estimate of $161 million) from competition. Table 3 below compares the outcome for Fairport to Denny to IA/MO Border to a similar Ameren transmission project built more than a decade ago.

	Ameren Illinois Fairport to Denny to IA/MO Border	Ameren Illinois Mark Twain Project
Partnership	Missouri Joint Municipal Electric Utility Commission for 49%	None
Capital Cost	$1.5 million/mile ($2023)	$2.4 million/mile ($2011)
Capital Cost Containment	Cap on project implementation cost	None
Equity Cost Commitment	Cap over life of project	None
Operations and Maintenance Cost Cap	Cap for 10 years	None

Table 3 – Comparison of Ameren Fairport to Denny to IA/MO Border Proposal to Mark Twain Project

Summary of Transmission Competition

Experience with transmission competition proves that competition saves consumers significantly. Competitive transmission developers and utilities alike have been willing to shift risk from consumers to themselves by capping construction costs, taking inflation risk, offering schedule guarantees while also capping return and the equity portion of the capital structure.

Response To Claims from Competition Critics

Existing utilities, seeking to avoid competition, have raised a variety of unfounded criticisms of competition. Critics of competition say its unproven or risky, potentially involving unproven companies. With a straight face, they say that competitive bidding will *increase* costs. These claims should be seen for what they are – disparagements, exaggerations, and misstatements from incumbents who do not want to face competition.

Competition clearly provides cost savings. It is just common sense that in a competitive request for proposals with multiple proposals, chances are good that one proposal from a non-incumbent could be better than if there is only one proposal from an incumbent without competition. Incumbents claim everyone is just bidding the work out to the same contractors, so having an RFP for construction is good enough. It is true that all utilities and developers will not be performing construction themselves, and

[7] Fairport to Denny to IA/MO State Border 345 kV Competitive Transmission Project Selection Report: https://cdn.misoenergy.org/FDIM%20345%20kV%20Selection%20Report630669.pdf

will be drawing from the same pool of qualified transmission line construction contractors, and using the same union labor. However, this statement just confuses the issue. Each developer will go to construction contractors with their own project scope, and each bidder will have other cost differences such as financing costs. In the example of the Duff to Coleman project described above, the savings from financing costs alone are 25% per year. There are many opportunities for a transmission developer to innovate and provide cost savings.

Cost savings from competition in transmission are supported by a study by the Brattle Group which identifies cost savings of 20%-30% from transmission competition.[8] Incumbent utilities hired a consultant, Concentric, to dispute these findings with no sworn affidavits. Brattle rebutted the initial Concentric critique, pointing out that Concentric sought to mask incumbent cost increases by using updated cost estimates for incumbent projects rather that initial cost estimates. In its 2022 report, Concentric asserts false statements regarding LS Power's competitive projects. LS Power immediately corrected these falsehoods on the record in a filing with a sworn affidavit at FERC on the day after the report was published.[9] Nevertheless, incumbents still refer to this erroneous report and cite it as if it were fact.

Competition poses no risks to reliability. Before ever submitting a proposal, transmission developers meet rigorous qualification criteria as to engineering, construction, operations, maintenance, financing ability, etc. MISO evaluates those attributes again in selecting between qualified proposals, thus ranking each developer on their capability across all aspects of transmission development and operations. Most qualified entities are incumbent utilities and their affiliates. We often use the same engineers, such as Burns and McDonnell and Power Engineers, the same pool of local construction contractors, and the same union labor. We compete strongly on profit margins, and that strong competition saves consumers money.

Critics try to diminish these consumer savings by alleging that non-incumbents cut corners or design to a lesser standard. Again, this is not the case. In addition to meeting the rigorous qualification criteria on the ability to operate and maintain the line, and having proposals independently evaluated for reliability capabilities, all selected developers are subject to the same reliability criteria, at the state and federal level, including the same North American Electric Reliability Corporation standards as all transmission owners. Regional entities like MISO evaluate proposals based on the quality of the design criteria and operations and maintenance strategy, in addition to cost. For its projects, LS Power has repeatedly proven the ability to deliver consumer savings and provide excellent reliability. In fact, LS Power has established a track record of better reliability than the industry average. Our availability (over the past 5 years) has been 99.85% (outage rate of 0.15%), much better than the industry average availability of 99.73% (outage rate of 0.27%) as shown in Figure 3. LS Power's forced outage rate nearly half of the industry average. LS Power's high availability includes two direct hits by tornadoes in the Texas panhandle as well as extreme ice and other harsh conditions.

---

[8] Brattle Report https://www.brattle.com/wp-content/uploads/2021/05/16726_cost_savings_offered_by_competition_in_electric_transmission.pdf

[9] Affidavit of Paul Thessen filed in FERC Docket RM21-17 as Attachment 1 to Comments of LS Power Grid, August 17, 2022, the day after the second Concentric report was released. https://elibrary.ferc.gov/eLibrary/filedownload?fileid=550ea64f-1877-ce2d-85fe-82ad8f500000

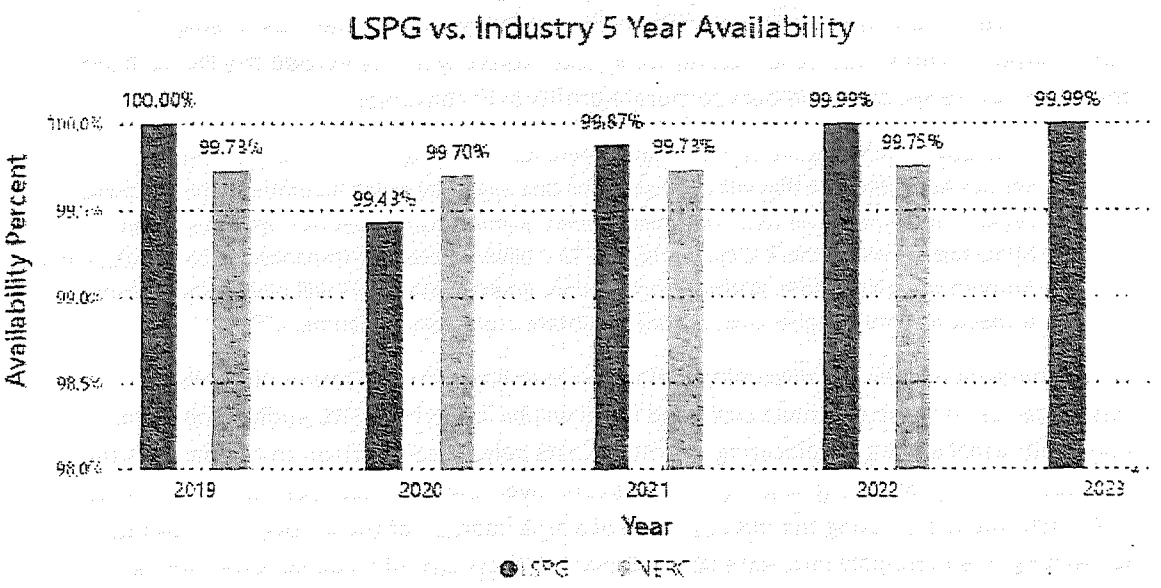


Figure 3 – LS Power Grid (LSPG) Transmission Availability vs. Industry Average

Incumbent transmission owners assert that competition delays needed transmission and that the process is lengthy and costly. The competitive MISO projects in Wisconsin have required in-service dates of 2034, providing more than sufficient time to undertake competition. MISO sets the in-service date, and the in-service date must be met and it is NOT adjusted by the length of the competitive process. If a transmission project is needed in less than three years by MISO, there is no competitive process. As to the alleged costs of the competitive process, those who submit project proposals pay the entire cost of the competitive process. Consumers are not paying for those costs, only benefitting from potential savings.

Near Team Consequence of Senate Bill 28/ Assembly Bill 25

These bills are being pursued by Wisconsin's utilities because there are near term transmission planning processes which will result in competitive processes in Wisconsin. MISO has approved its Long Range Transmission Plan including a proposed Tranche 2, which includes an estimated $21 billion to $22 billion of infrastructure. A portion of these facilities in Wisconsin are subject to an open competitive process in the year 2025. The total cost savings for these Wisconsin facilities as a result of competition could be billions. The incumbent utilities seek not just a leg up in the solicitation; they seek a legislative hand-out insulating them from competition.

Competition bring competition not only on transmission capital costs, but importantly, competition on profit margin as well. **ATC and NSP-Wisconsin's non-competitive annual FERC return on equity (ROE) is 10.52% with 50% equity for an overall rate of return of 7.53% on each million in investment.** In contrast, the MISO competitive project, Duff-Coleman was 9.8% ROE with 45% equity and **an overall return of 5.97% on each million in investment.**

If the ROFR law in Wisconsin passes, it would apply to this future transmission ordered in the State of Wisconsin, and competition for ownership return on equity on the transmission would not occur. If $5 billion of this transmission is in the state of Wisconsin, the difference alone in the overall profit margin between competitive transmission (5.97%) and non-competitive transmission (7.53%) is $78,000,000

per year, or $3.1 billion over the 40-year life of the transmission. The result of the law would be to lock in higher profit margins while incentivizing higher spending, rather than cost management and cost containment. This is why Illinois Governor Pritzker stated when he vetoed the Illinois ROFR law, that the ROFR law raises costs and puts corporate profits over consumers.

> "The Governor has issued an Amendatory Veto due to the right of first refusal language inserted by Senate Amendment 4 that will raise costs for rate payers by giving incumbent utility providers in the MISO region a monopoly over new transmission lines. Eliminating competition will cause rates to increase in the MISO region, where there is currently over $3.6 billion in planned transmission construction in the Ameren service territory. Without competition, Ameren ratepayers will pay for these transmission projects at a much higher cost, putting corporate profits over consumers."[10]

The incumbent utilities are discussing various ways to game the allocation of overhead costs. The misallocation of these overhead costs and fraud will be subject to FERC audits, and any benefits of inappropriately gaming of allocating overhead costs pales in comparison to the benefits that competition on profit margins brings. ATC's total overhead costs last year were $47,722,852 million. ATC's scheme is discussing the misallocation of a small portion of these total overhead costs as a basis for writing in a monopoly into state law. Ultimately, these sort of fraud schemes will fail, and promoting this sort of accounting fraud will also encourage other utilities in MISO to do the same fraudulent allocation to Wisconsin until the fraud eventually stopped.

		True-up		
Utility		Transmisison	A&G	Total
American Transmission Company	2020	92,063,948	41,004,408	133,068,356
	2021	97,200,105	36,874,235	134,074,340
	2022	92,292,557	40,314,788	132,607,345
Projection	2023	99,739,906	40,088,360	139,828,266
Projection	2024	121,804,254	47,722,852	169,527,106

Source: ATC Filings (https://www.misoenergy.org/markets-and-operations/settlements/to-rate-data/american-transmission-company-llc-atc/#t=10&p=0&s=tsposteddate&sd=desc)

The real question that legislators should be asking ATC is why are your overhead costs growing so much? The MISO competitive process also further reigns in overhead costs of utilities, as the competitive process also allows bidders to provide cost containment in their bids including, but not limited to, for overhead costs, inflation rates, annual total revenue requirements, capital costs, and ROE/profit margins. LS Power has a history in our competitive bids in not only capping capital costs, partnering with municipalities and coops, and competing on return on equity, but also capping all-in-costs for the transmission for the life of the project, which also would lower the ultimate costs for Wisconsinites.

Conclusion

By prohibiting transmission competition in Wisconsin, Senate Bill 25 / Assembly Bill 28 will directly harm competitive transmission companies like LS Power, but more importantly will harm Wisconsin consumers. There are simply no public interest benefits to establishing a perpetual transmission monopoly for those companies with existing transmission. LS Power requests that Senate Bill 28 and House Bill 25 be rejected. LS Power strongly opposes these bills.

[10] https://gov.illinois.gov/news/press-release.26893.html

Exhibit A:

2025 LIST OF MISO QUALIFIED DEVELOPERS ELIGIBLE TO COMPETE FOR MISO COMPETITIVE PROJECTS, INCLUDING IN THE STATE OF WISCONSIN

MISO Qualified Transmission Developers

The Qualified Transmission Developers listed below have supplied the required information to support the required acceptable levels of financial, project implementation, regulatory and operational risk, based on their track records, level of experience, credentials, business plans and/or existing resources to become certified as a MISO Qualified Transmission Developer. Recertification Notifications will be sent by July 15th of the year prior to the Qualified Transmission Developer's next recertification year.

	Entity Name (Sorted Alphabetically)	Recertification Year
1.	AEP Transmission Holding Company, LLC	2027
2.	ALLETE, Inc. d/b/a Minnesota Power	2027
3.	Ameren Transmission Company of Illinois	2027
4.	American Transmission Company, LLC	2027
5.	Avangrid Networks, Inc.	2026
6.	Cardinal Point Electric, LLC	2026
7.	Cleco Power LLC	2027
8.	Con Edison Transmission, Inc.	2026
9.	Cooperative Energy	2027
10.	Dairyland Power Cooperative	2027
11.	Duke Energy Business Services, LLC for Duke Energy Indiana, Inc.	2027
12.	East Texas Electric Cooperative, Inc.	2027
13.	EasTex TransCo, LLC	2026
14.	Entergy Arkansas, LLC	2027
15.	Entergy Louisiana, LLC	2027
16.	Entergy Mississippi, LLC	2027
17.	Entergy New Orleans, LLC	2027
18.	Entergy Texas, Inc.	2027
19.	Exelon Corporation	2027
20.	Ferrovial Transco International B.V.	2026
21.	Great River Energy	2027
22.	GridLiance Heartland LLC	2026
23.	Indianapolis Power & Light Company	2027
24.	International Transmission Company d/b/a ITC Transmission	2027
25.	ITC Midcontinent Development, LLC	2027
26.	ITC Midwest LLC	2027
27.	Invenergy Transmission, LLC	2026
28.	LS Power Grid Wisconsin, Inc.	2026
29.	LS Power Midcontinent, LLC	2026
30.	Michigan Electric Transmission Company, LLC	2027
31.	MidAmerican Energy Company	2027

32.	Midwest Grid Corp.	2026
33.	Missouri Basin Municipal Power Agency d/b/a Missouri River Energy	2027
34.	Montana-Dakota Utilities Co.	2027
35.	NextEra Energy Transmission, LLC	2027
36.	NextEra Energy Transmission Midwest, LLC	2027
37.	Northern Indiana Public Service Company, LLC	2027
38.	Northern States Power Company, a Minnesota corporation	2027
39.	Northern States Power Company, a Wisconsin corporation	2027
40.	Otter Tail Power Company	2027
41.	Pattern Transmission LP	2027
42.	PPL TransLink, Inc.	2027
43.	Republic Transmission LLC	2027
44.	Southern Indiana Gas & Electric D/B/A CenterPoint Energy Indiana South	2027
45.	SP Transmission, LLC	2026
46.	Superior Water, Light and Power Company	2027
47.	Transource Energy, LLC	2027
48.	Verdant Plains Electric, LLC	2027
49.	Viridon Midcontinent LLC	2026
50.	Xcel Energy Transmission Development Company, LLC	2027
51.	Xcel Energy Acorn Transmission, LLC	2027

Last Update: 12/05/2024

AARP Wisconsin

222 W. Washington Avenue, #600 | Madison, WI 53703
1-866-448-3611 | Fax: 608-251-7612 | TTY: 1-877-434-7598
aarp.org/wi | aarpwi@aarp.org | twitter: @aarpwi
facebook.com/AARPWisconsin

March 4, 2025

TO: Representative David Steffen, Chairman – Assembly Committee on Energy and Utilities
Senator Julian Bradley, Chairman – Senate Committee on Utilities and Tourism

FROM: Martha Cranley, State Director, AARP Wisconsin

RE: Statement of AARP Wisconsin's opposition to Right of First Refusal bills

Dear Chairmen,

AARP Wisconsin opposes the ROFR bills (SB 28/AB 25) as they will raise the state's already high electricity rates. The legislation would inappropriately give monopoly utilities and the utility-owned American Transmission Company the exclusive right to build large new regional transmission lines to the detriment of ratepayers who now benefit from the required competitive bidding of new transmission which is estimated to save up to 30%.

Competitive bidding of new transmission lines is required by FERC per Order 1000 issued on July 21, 2011. FERC just upheld its decision when it issued its Order 1920 on May 13, 2024.

Given the magnitude of planned Midwest transmission spending (MISO's Tranche 2 spending is at $22 billion on top of $10 billion for its first Tranche), the potential savings for Wisconsin ratepayers is substantial.

Further, Wisconsin must pay for 15% of all spending (including in other states). Minnesota regulators just approved a huge transmission spending plan (of which Wisconsin will end up paying 15% of the cost).

Minnesota has ROFR so the potential cost savings from competitive bidding aren't there and the inflated cost due to ROFR goes onto Wisconsin electricity bills.

The MISO Tranche 2 spending plan is especially troubling given the independent MISO market monitor (Dr. David C. Patton of Potomac Economics) found the plan largely uneconomic and that it will cost $2,600 per family (see https://cdn.misoenergy.org/20241030%20System%20Planning%20Committee%20of%20the%20BOD%20Item%2003a%20IMM%20LRTP%20Feedback655623.pdf)

We are alarmed at the talk that ROFR is a money saver given the magnitude of transmission spending. Building a massive 765 kv line (double the normal size) at a cost of $1.2 billion is hardly a way to save money. It will increase Midwest electricity rates plain and simple.

Further, ATC, Xcel, and Dairyland will be free to bid to construct the new transmission lines, including the new massive 765 kv line from Rochester to near Milwaukee. And they may well be selected in the MISO competitive bidding process.

States that have rejected legislation to void the FERC competitive bidding policy include Illinois, Missouri, Montana, Kansas, Oklahoma, and of course, Wisconsin (2024 session). Further, the courts have struck down ROFR laws in Indiana, Texas, and Iowa. A 50-year asset like a high voltage transmission line deserves to go through the competitive bidding process.

Given Wisconsin's already high (and rapidly increasing) electricity rates, we urge measures be taken to rein in rapidly rising electricity rates.

Wisconsin ratepayers are not an ATM for ATC, much less for Minnesota which has aggressive renewable energy goals but is able to shift compliance costs to Wisconsin ratepayers. The over 50 population is often on fixed or low income and already has trouble making ends meet. And the argument that costs will be spread to other states is specious. AARP has members in those states too.

ROFR will make a dire situation worse. We urge a NO vote on both ROFR bills.

AMERICAN
POWER PLAY

Dear Chairman Bradley and Members of the Senate Committee on Utilities and Tourism,

I am writing on behalf of American Power Play to express our strong opposition to Senate Bill 28, which proposes to grant incumbent transmission facility owners the right of first refusal (ROFR) for constructing, owning, and maintaining certain transmission facilities in Wisconsin. We believe that this bill undermines free and open markets, encourages monopolistic practices, and ultimately raises costs for ratepayers.

Promotion of Monopolistic Practices

Granting incumbent utilities a ROFR effectively eliminates competition by allowing these entities to bypass the competitive bidding process for new transmission projects. This preferential treatment discourages new entrants from participating in the market, thereby reinforcing existing monopolies. Such a framework not only stifles innovation but also leads to inefficiencies in the development and maintenance of critical infrastructure.

Increased Costs for Ratepayers

The absence of competitive bidding, as facilitated by ROFR policies, often results in higher project costs. When incumbent utilities are not challenged by potential competitors, there is little incentive to minimize expenses or seek cost-effective solutions. These inflated costs are typically passed on to consumers, leading to higher electricity rates. A report by the Pelican Institute highlights that consumers in states with ROFR policies, such as Minnesota, pay tens of millions more for electricity each month compared to states without such policies, like Wisconsin.

Contradiction to Federal Initiatives Promoting Competition

In 2011, the Federal Energy Regulatory Commission (FERC) issued Order 1000, which removed the federal ROFR for new electricity transmission projects to promote competition and reduce costs . By reintroducing ROFR at the state level, Senate Bill 28 contradicts these federal efforts aimed at fostering a competitive and efficient energy market.

Legal and Constitutional Concerns

ROFR laws have faced legal challenges on the grounds that they may violate the U.S. Constitution's Commerce Clause by impeding interstate commerce. For instance, a federal judge ruled that a Texas law granting ROFR to incumbent utilities unconstitutionally discriminated against out-of-state energy providers . Enacting similar legislation in Wisconsin could expose the state to legal disputes, resulting in unnecessary litigation costs and potential setbacks in infrastructure development.

Conclusion

We urge the committee to consider the adverse implications of Senate Bill 28 on market competition, consumer costs, and legal standing. Embracing competitive bidding processes for transmission projects encourages innovation, ensures fair pricing, and aligns with both federal directives and free-market principles. Upholding these values will better serve the interests of Wisconsin's consumers and promote a more robust and efficient energy infrastructure.

Thank you for considering our perspective on this critical issue. I hope we may have opportunities to work together to improve critical infrastructure and enhance Wisconsin's ability to compete and drive economic prosperity.

Sincerely,

Micah Derry
External Affairs
American Power Play

To the honorable members of the State of Wisconsin Energy & Utilities Committee:

I am writing to oppose Assembly Bill 25 as it would create a monopoly here in Wisconsin. This would put taxpayers & nonunion workers at a severe disadvantage. Ratepayers would be forced to pay higher rates due to unconstrained costs & guaranteed high market rates of project returns. It would also impede the entry of new technology & practices that could emerge from a more open and competitive bidding process.

When neighboring states (Minnesota & Iowa) proposed similar legislation, ATC submitted comments in opposition in order to be able to compete for projects outside of Wisconsin.

"Senate File 1815, unfortunately, would stifle competition in the development and construction of electric transmission facilities leading to higher costs for electricity users in Minnesota. Unquestionably the competitive free market system in America has benefited businesses and consumers for decades. This same competitive spirit will only benefit Minnesota electricity users when applied to the development I construction, ownership and maintenance of electric transmission facilities." (Excerpt from 3.20.2012 memo from John Gavin, American Transmission Co. to Minnesota committee)

Additionally, the courts in Iowa, Indiana, and Texas have ruled ROFR laws unconstitutional. In those rulings, the courts have said that ROFR laws limit competition, raise prices, lower the quality of service, ultimately harm consumers, and likely violate the Commerce Clause of the U.S. Constitution.

In closing, for the betterment of Wisconsin, I ask that you kill this Bill.

Sincerely,
Sheila Williams
Janesville WI

WISCONSIN CONSERVATIVE ENERGY FORUM

March 4, 2025

Chairman Steffen and members of the Energy and Utilities Committee:

Members of the Committee, thank you for giving me this opportunity to testify in favor of the Right of First Refusal legislation before you today. My name is Ryan Huebsch and I am the Executive Director of the Wisconsin Conservative Energy Forum. WISCEF is a conservative, non-profit group dedicated to advancing forward-looking, small government, market oriented, and pragmatic energy policy for our state. We believe strongly that there is a lane for conservatives to recognize and push for pragmatic and measured use of new technologies like renewable resources and electric vehicles while also recognizing our continued need and use of sources like natural gas and oil

Free market, competitive capitalism is the cornerstone of our economy and one of the main factors that created the unparalleled success of the United States. The drive to produce a profitable product or service creates innovation, quality, and economic growth. Although we have put up some legal parameters and safeguards around it throughout the years, a competitive free market is still largely what drives the American economy.

The idea that we should provide a right of first refusal to any one company seems to be opposite of how our economic system is designed to succeed. We don't give Ford the right of first refusal to be the only company to build cars. We don't say Apple is the only company that can provide phones or Microsoft, computers. Competition is why we have advanced beyond the Model T, the rotary dial phone and punch card computer programming.

Opposition to the right of first refusal in the utility sector is understandably based on the idea that free market competition is the conservative, even American way to go. However, that ignores the fact that for the past century, the utility sector in Wisconsin, by design, is not and has not been a free market. It is a regulated monopoly that each of us created, built, funded, and have elected officials to oversee.

Energy is a critically essential part of life. Since the first power plants and transmission lines were built, we determined that our power system should be safe, reliable, and affordable, but not necessarily profitable. Yes, the utility companies must make a return on investment, or profit, if you prefer, to remain economically stable, but that return is pre-determined and regulated by our Public Service Commission. In fact, oftentimes, if that return is ever greater than the predetermined amount, that excess is shared with ratepayers.

As our regulated power companies built the infrastructure to provide energy to every corner of our state, those costs have been paid by all of us through our rates. Not because we chose against competition, but because we as a society believed that a safe, reliable and affordable transmission grid was better suited for a monopoly structure than having three competing transmission lines running through our neighborhoods.

To suggest new companies that did not have a stake nor investment in that infrastructure should now be able to build and compete with those that did, ignores the laws and rules in place that spreads those costs over all ratepayers. All who benefit from new generation or transmission have paid for it, including those who are connected to our grid in other states. To allow developers to bid against our regulated power companies may provide a windfall for those new companies, but does not compensate the generations of ratepayers who built our current system, nor does it guarantee lower cost or greater safety or reliability.

With the exponentially growing need for more energy due to the heavy load of new data centers, artificial intelligence and even returning manufacturing, more transmission is necessary. The right of first refusal on transmission projects will give our regulated utilities, those that have built here for years and know our state's energy history and grid best, the opportunity to build out our transmission needs first. If they are unable to take on the project, they can still pass the opportunity for that project onto others. This brings balance into our current structure without injecting a competitive force too early into the process.

Thank you for your time.

Testimony on Wisconsin AB25
Josh T. Smith

Chair and members of the Committee, Thank you for the opportunity to submit testimony and for your work on promoting policies that lower energy costs. I am Josh T. Smith, energy policy lead at the Abundance Institute. We are a nonprofit based in Salt Lake City, Utah, focused on creating space for emerging technologies to grow, thrive, and reach their full potential.

Research overwhelmingly suggests that Wisconsin's adoption of right of first refusal (ROFR) laws would increase consumers' costs by millions of dollars a year.

Economic theory is clear that barring competition raises prices and lowers quality
Energy and electricity policies are more complicated than most areas. So, it is useful to step back and consider comparisons in other topics. Imagine that a city changed its rules to only allow those who already own and operate restaurants to open new restaurants.

In this hypothetical, what are the economic expectations for food prices and quality? The conclusion is obvious in our restaurant analogy. Because the policy insulates insiders from competition, the city's choice will mean lower quality and higher prices for customers. Without the threat of competition, why not raise your prices? If there's nowhere else to go, why invest in new and better options?

This ban on competition is the situation that states with ROFR laws have created for building transmission lines. These laws insulate certain providers from competition and, because of this, raise costs for consumers. When multiple firms compete for the same project, each firm has an incentive to sharpen its pencils, improve efficiency, and deliver the lowest possible cost. When policymakers short-circuit that process, they eliminate the competitive pressure that drives companies towards lower costs and new solutions.

Strong evidence supports this analogy in practice. When Minnesota adopted a ROFR for transmission projects, electricity costs rose significantly compared to Wisconsin without ROFR. According to a recent economic analysis, **Minnesota's ROFR increased electricity prices and costs Minnesota ratepayers up to $15 million extra per month and $180 million per year.**[1] These higher costs directly harm consumers and businesses. Because energy is an input into everything, higher electricity costs have negative ripple effects across the entire economy.

An important aspect of the ROFR debate is that incumbent utilities can still bid for the relevant projects. If, as advocates of ROFR claim, there are inherent advantages that these groups have, then they will win in the bidding process. Michael Lucas, a researcher at Wisconsin's MacIver

---

[1] Erin Bendily, "The Economic Impacts of Right of First Refusal (ROFR) Legislation" (Pelican Institute, October 2024), https://pelicanpolicy.org/wp-content/uploads/2024/10/Economy-ROFR-Paper-Oct-2024.pdf.

Institute, correctly makes this point in his recent ROFR study. If the incumbent utility "is the least-cost developer, then they have nothing to fear from competition."[2]

There is broad opposition to ROFR across the country and across political affiliations
Opposition to ROFR is broad and bipartisan because the policy is fundamentally anti-consumer. Free-market groups, progressive consumer advocates, Wisconsin's industry voices[3], and academics all point toward ROFR's high costs.[4] This broad consensus underscores a simple truth: maintaining competition in transmission benefits the public.

Thank you for your work on these important policy issues. I am happy to assist further however I can.

Josh T. Smith
Energy Policy Lead, Abundance Institute

---

[2] Michael Lucas, "Competition Reduces Costs to Consumers: ATC Agrees" (MacIver Institute, February 2025), https://www.maciverinstitute.com/assets/files/pdfs-files/Mike's%20PDFs%20and%20Files/ROFR/mi-study,-rofr-increases-costs-to-consumers;-atc-agrees.pdf.

[3] "Press Release: Consumer Groups Urge ROFR Rejection," Citizens Utility Board, March 11, 2024, https://cubwi.org/press-release-consumer-groups-urge-rofr-rejection/; "Wisconsin Industrial Energy Group: 20 Years of High Electric Rates in Wisconsin; Consumers Urge Legislators to Reject yet Another ROFR Bill," WisPolitics, February 3, 2025, https://www.wispolitics.com/2025/wisconsin-industrial-energy-group-20-years-of-high-electric-rates-in-wisconsin-consumers-urge-legislators-to-reject-yet-another-rofr-bill/.

[4] Michael Lucas, "ROFR Is Back" (MacIver Institute, February 13, 2025), https://www.maciverinstitute.com/perspectives/rofr-is-back; Pat Garofalo, "Testimony to Minnesota Senate Energy, Utilities, Environment, and Climate Committee" (American Economic Liberties Project, April 3, 2024), https://www.lrl.mn.gov/archive/minutes/senate/2024/energy/20240403/energy_20240403_SF1456-American-Economic-Liberties-Project.pdf; Josiah Neeley, "How ROFR Laws Increase Electric Transmission Costs in Midwestern States" (R Street, March 7, 2023), https://www.rstreet.org/commentary/how-rofr-laws-increase-electric-transmission-costs-in-midwestern-states/; Devin Hartman, "Testimony in Opposition of Senate Bill No. 103" (R Street Institute, November 3, 2021), https://www.rstreet.org/wp-content/uploads/2021/11/Final_Michigan-testimony-SB-103-Devin-Hartman.docx.pdf; David Stokes, "Senate Bill 568 and Transmission Line Projects" (Show-Me Institute, May 2, 2023), https://showmeinstitute.org/wp-content/uploads/2023/05/20230502-Senate-Bill-568-ROFR-Stokes.pdf; Jim Rossi, "Promoting Cost-Effective Grid Modernization," *Regulation* 45 (2022), https://doi.org/10.2139/ssrn.4252771; Jim Rossi, "The Costs of 'Crony Capitalism' in Regional Transmission Grid Expansion," *The Electricity Journal* 36, no. 8 (October 1, 2023): 107335, https://doi.org/10.1016/j.tej.2023.107335; Megan Novak, "AFP-WI Statement on 'Right of First Refusal' Passing Assembly," Americans for Prosperity, February 15, 2024, https://americansforprosperity.org/press-release/afp-wi-statement-on-right-of-first-refusal-passing-assembly/; Jason M Walter, Meagan McCollum, and Eric Olson, "Overcoming 'Right of Report First Refusal' Obstacles in America's Energy Grid" (Manhattan Institute, December 19, 2024); Jason M. Walter, Meagan McCollum, and Eric Olson, "Shining a Light on America's Dim Electrical Outlook" (University of Tulsa Center for Energy Policy, September 2024), https://sites.utulsa.edu/energy-policy/research-papers/shining-a-light-on-americas-dim-electrical-outlook/.

MISO Non-Compete MVP Projects

Results from MISO MVP Dashboard 2024, accessed January 2025

YEAR	PROJECT	LOCATION	UTILITY OWNER	DEVELOPED COST	STATUS	ORIGINAL COST	RATEPAYER EFFECTS
2017	Big Stone Brookings	SD	CAPX	$123,000,000	Complete	$227,000,000	-46%
2011	Brookings Twin Cities	MN/SD	Xcel	$670,000,000	Complete	$738,000,000	-9%
2015	Lakefield Jct. Webster	MN/IA	ITC-M	$692,000,000	Complete	$550,000,000	26%
2015	Winco Hazleton	IA	Basin	$564,000,000	Complete	$469,000,000	20%
2018	Badger Coulee & CHC	WI	ATC	$1,034,000,000	Complete	$798,000,000	30%
2019	Big Stone Ellendale	ND/SD	OTP	$247,000,000	Complete	$331,000,000	-25%
2017	Ottumwa Zachary	IA/MO	ITC-M	$221,000,000	Complete	$152,000,000	45%
2016	Zachary Maywood	MO	Ameren	$172,000,000	Complete	$113,000,000	52%
2016	Maywood Austin	MO/IL	Ameren	$723,000,000	Complete	$432,000,000	67%
2018	Austin Pana	IL	ATXI	$135,000,000	Complete	$99,000,000	36%
2018	Pana Sugar Creek	IL/IN	ATXI	$408,000,000	Complete	$318,000,000	28%
2019	Reynolds Hipple	IN	NIPSCO	$405,000,000	Complete	$271,000,000	49%
2013	Michigan Thumb Loop	MI	ITC-M	$504,000,000	Complete	$510,000,000	-1%
2018	Reynolds Greentown	IN	NIPSCO	$348,000,000	Complete	$245,000,000	42%
2014	Pleasant Prairie Zion	WI	ATC	$36,000,000	Complete	$29,000,000	24%
2014	Fargo Oak Grove	IL	ATXI	$201,000,000	Complete	$199,000,000	1%
2016	Sidney Rising	IL	ATXI	$88,000,000	Complete	$83,000,000	6%
Sum				***$6,571,000,000***		***$5,564,000,000***	***18% Increase***

source: https://cdn.misoenergy.org/MVP%20Dashboard117055.pdf

3id Projects for EHV Transmission
smission Administration Process 2021-2024

YEAR	PROJECT	# of BIDS	OWNER	WINNING BID COST	CURRENT STATUS	ADDITIONAL DETAILS	HIGH RANGE OF BIDS/ESTIAMTED COSTS FROM MISO	RATEPAYER EFFECT
2018	Hartburg Sabine	12	NextEra	$115,000,000	Cancelled by MISO	This was a project located in Texas. Due to previous ongoing litigation over the Texas ROFR law, which was eventually found unconstitutional, MISO cancelled the Hartburg Sabine transmission line project.	$134,000,000	-14%
2015	Duff Coleman	11	Republic	$50,000,000	Completed	Republic Transmission included binding cost containment provisions, which include a cost cap below MISO's original estimate, as well as a return on equity cap, equity percentage cap, and a schedule guarantee. Completed 6 months ahead of schedule.	$59,000,000	-15%
2023	Hipple IN-MI Border	7	Republic	$77,000,000	In Progress	This project is currently in the route selection and public comment period.	$125,000,000	-38%
2023	Fairport Denny	9	ATXI	$84,000,000	In Progress	This project is in the regulatory process with the Missouri Public Service Commission.	$154,000,000	-45%
2023	Deadend Tremval	1	DPC	$8,400,000	In Progress	This project is in the regulatory review process with the Wisconsin Public Service Commission.	$13,800,000	-39%
2023	IA-IL Ipava	1	ATXI	$20,000,000	In Progress	This project is in the regulatory review process with the Illinois Public Service Commission.	$26,000,000	-23%
2024	Denny Zach TH Maywood	6	ATXI	$273,000,000	In Progress	This project is in the regulatory review process.	$486,000,000	-44%
Summary				***$627,400,000***			***$997,800,000***	***-37%***

Hoosier Energy, and Big Rivers Electric Cooperative (a local utility).

Sources:
https://www.misoenergy.org/planning/competitive-transmission-administration/#t=10&p=0&s=FileName&sd=asc
https://www.brattle.com/wp-content/uploads/2021/05/16726_cost_savings_offered_by_competition_in_electric_transmission.pdf
https://ceadvisors.com/wp-content/uploads/2022/08/Competitive-Transmission-Experience-To-Date-Shows-Order-No.-1000-Solicit
https://www.tdworld.com/overhead-transmission/article/21133885/miso-republic-transmission-energized-345-kv-duff-to-coleman-l

WISCONSIN PIPE TRADES ASSOCIATION

2102 East Springs Drive, Suite 210, Madison, WI 53704
Office: (608) 230-6978
www.wipipetrades.org

UA Affiliated Unions:
Fox Valley
No. 400
Milwaukee-Madison
No. 75
No. 601
Milwaukee
No. 183
Northwest
No. 434
Racine-Kenosha
No. 118
Superior-Duluth
No.11
Local 669
District 15
District 31

TO: Chairman Bradley, Members
Senate Committee on Utilities & Tourism
Chairman Steffen, Members
Assembly Committee on Energy & Utilities

FR: Corey Gall, President
Wisconsin Pipe Trades Association

DA: March 4, 2025

RE: Support of Senate Bill 28 and Assembly Bill 25

On behalf of 10,000 hard working men and women in the pipe trades industry, we write in support of SB 28 and AB 25, otherwise known as the Right of First Refusal (ROFR) legislation for the operation of transmission lines in Wisconsin.

As a part of the construction industry in Wisconsin, we are used to competing for projects in the state and with this process, it will be no different. Together with our contractor partners, we will compete for the construction work of these critical transmission lines.

As ratepayers, we want to ensure two things:

1. **The best cost sharing solution among our surrounding states**. Passage of ROFR benefits all Wisconsin ratepayers, ultimately benefitting both businesses and their customers. Failure to pass this legislation will only benefit ratepayers in states that surround us, and stick our members as well as the rest of the state with the bill.

2. **The reliability of our energy grid.** For our members in particular - we have invested tens of millions of dollars building training centers across Wisconsin that utilize a large amount of energy. We don't stress about the ability to continue the daily operation of these important facilities because Wisconsin has invested in, and ensured, a reliable grid structure. Failure to pass this legislation will only threaten that reliability for a set amount of transmission lines.

We urge your support of this bill. Thank you for the opportunity to submit comments on this important topic.

Written Testimony of Joshua Macey,* Associate Professor at Yale Law School, in Opposition to SB 28

I am a Professor at Yale Law School. My research focuses on energy law, electricity markets, financial regulation, and bankruptcy. I am a co-author on one of the country's leading Energy Law casebooks, and my work is frequently cited by courts, including the U.S. Supreme Court. This testimony examines the merits of state right-of-first-refusal (ROFR) laws. It explains (a) why ROFRs are anticompetitive, raise customer costs, and impede innovation; (b) that reports defending ROFRs are based on selective and misleading use of data and case studies; and (c) that Wisconsin's proposed ROFR law is likely to be found unconstitutional under the Dormant Commerce Clause.

* Associate Professor, Yale Law School. The text of this comment is based on a Whitepaper that was commissioned by the Hawthorn Group. The views expressed in this written testimony reflect my own views.

Overview

A right-of-first-refusal (ROFR) is a legal or regulatory mechanism that allows an incumbent utility the right to bid on, purchase, or otherwise assume control of transmission assets before non-incumbent developers have an opportunity to compete for the project. Recently, incumbent utilities have argued that states should respond to escalating transmission and distribution costs by enacting ROFR laws that would limit or eliminate competitive transmission planning. This is a bad idea. ROFRs are bad economic policy and have frequently been found unconstitutional. This testimony makes five basic points:

1. **Cost savings:** Incentives to reduce costs are muted when utilities do not face competition that can result in a rival receiving the right to build project.
2. **Minimize costs:** Competition increases incentives for developers to minimize costs. These cost savings are evident both because competition leads utiltiies to submit lower bids and also because competition causes developers to propose capital structures that further drive cost savings.
3. **Innovation and efficiency:** Competition encourages innovative project design and rate structures that further contribute to cost reductions. These include milestones and cost caps that are part of transmission rates filed with FERC.
4. **Studies defending ROFRs misuse and misrepresent data:** Reports critiquing competition misrepresent data on transmission. For example, some reports blame the competitive transmission developer for cost escalations even when cost increases were due to substation upgrades assigned to the incumbent (and therefore outside the competitive process). In a somewhat humorous example, a report commissioned by Ameren Transmission Company emphasizes that technical aspects of cost allocation rules allow ROFRed projects to shift costs to other states but ignores the fact that (a) other states would likely retaliate, and (b) competitive developers are eligible for the exact same cost sharing provisions as soon as they construct projects in the area.[1]
5. **Wisconsin's ROFR violates the Dormant Commerce Clause.** The U.S. Constitution prohibits state laws that discriminate against out-of-state interests. A majority of courts that have reviewed state ROFR laws have found that they violate the Dormant Commerce Clause, and the U.S. Supreme Court has long disfavored laws that, like Wisconsin's proposed ROFR, discriminate on the basis of physical presence.

[1] *See* Ameren Transmission Company, Expert Report on the Revenue Requirement Impact on ATC's Existing Wisconsin Network Customers from Constructing and Operating a Hypothetical New Transmission Line Under MISO Cost Allocation Procedures (Oct. 30, 2024), https://www.wispolitics.com/wp-content/uploads/2024/12/241220ATC.pdf.

Introduction

Despite aggressive lobbying for state right of first refusal (ROFR) laws, there is no economic or legal justification for shielding incumbent transmission owners from competition. In fact, while there is considerable evidence showing that competition reduces costs and encourages innovation, pro-ROFR reports purporting to defend state ROFRs manipulate or misrepresent evidence and data. ROFR laws can lead to higher costs, reduced reliability, and less effective regional planning. Moreover, because ROFRs likely violate the Dormant Commerce Clause, new ROFR laws can be expected to delay much-needed transmission investment and lead to years of uncertainty and costly litigation. It makes three primary points:

1. The best available evidence shows that competition reduces transmission costs, does not cause delays, and promotes innovation.
2. Studies that support ROFRs are based on selective and misleading evidence.
3. Because ROFRs appear to violate the Dormant Commerce Clause, proposed state ROFR policies will lead to years of litigation and are likely to be ultimately be overturned.

I. History of Competitive Transmission Planning

Traditionally, most high-voltage transmission infrastructure in the United States was owned and operated by incumbent utilities.[2] Rate regulated utilities received a monopoly franchise and were required to provide open, nondiscriminatory service at regulated rates. In the 1990s and early 2000s, state and federal regulators sought to break down barriers to entry and introduce competition to different parts of the electricity sector.[3] After FERC's wholesale market restructuring orders, the Commission turned its attention to transmission, issuing two Orders—Orders No. 890 and 1000—with the aim of promoting competitive regional transmission planning.[4] Order No. 1000 is particularly important and has three principal requirements:

---

[2] *See* Werner Troesken, Regime Change and Corruption. A History of Public Utility Regulation (2004) https://www.nber.org/system/files/chapters/c9986/c9986.pdf.

[3] An alternative approach, the competitive procurement model, involves soliciting bids from both incumbent and non-incumbent developers for transmission projects identified through an open planning process. the concept of a merchant transmission model gained attention. This theoretical framework proposed that transmission investments could be financed through tradable transmission rights, with revenues derived from locational price differences. While theoretically appealing, practical applications of this model have been limited, especially in the U.S., due to challenges in aligning the model with the complexities of real-world transmission networks and market imperfections.

[4] *See* Order No. 890, Preventing Undue Discrimination and Preference in Transmission Service, 118 FERC ¶ 61,119 at P 437 (2007) (codified at 18 C.F.R. pts. 35, 37); Order No. 1000, Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities, 136 FERC ¶ 61,051 (2011).

- **Competitive Transmission Planning**: Public utilities must participate in competitive regional transmission planning processes that consider the benefits of new lines.
- **Beneficiary Pays Cost Allocation**: The costs of new transmission investment must be allocated to areas that benefit from transmission investment.
- **Eliminating Federal Right of First Refusal**: Transmission planners must remove provisions that allowed incumbent utilities to have the first opportunity to develop new transmission projects, thereby leveling the playing field for non-incumbent developers.

Both Orders No. 890 and 1000 recognized that incumbent utilities have misaligned incentives—they are reluctant to expose their generation assets to competition and are insufficiently motivated to keep costs down—and that competitive, forward-looking transmission planning would therefore lead to more efficient transmission investment.[5]

Unfortunately, carve-outs to Order No. 1000's competitive solicitation requirement has resulted in a parochial transmission planning process that bears little resemblance to the approach envisioned in Order No. 1000. One reason Order No. 1000 did not lead to a significant amount of competitive transmission is that states responded to the Order by passing their own ROFR laws, effectively blocking competition from independent developers in addition to incumbents focusing on intrastate lines to avoid competition in non-ROFR states. The table in Appendix A summarizes state ROFR laws and summarizes some of the legal challenges they have faced:

In addition, a few states in the Midwest are actively considering adopting or strengthening ROFR laws. The table in Appendix B summarizes proposed ROFR legislation. Although these laws differ in their particulars, they would all grant utilities that own or operate transmission in the Midwest a right to bid on new lines before competitors. As the next two sections show, these laws would likely contribute to project delays, higher electricity bills, and be mired in litigation.

II. ROFRs Contribute to Cost Overruns and Delays

[5] *See* Order No. 890, at P 422 ("We cannot rely on the self-interest of transmission providers to expand the grid in a nondiscriminatory manner. Although many transmission providers have an incentive to expand the grid to meet their state-imposed obligations to serve, they can have a disincentive to remedy transmission congestion when doing so reduces the value of their generation or otherwise stimulates new entry or greater competition in their area. For example, a transmission provider does not have an incentive to relieve local congestion that restricts the output of a competing merchant generator if doing so will make the transmission provider's own generation less competitive. A transmission provider also does not have an incentive to increase the import or export capacity of its transmission system if doing so would allow cheaper power to displace its higher cost generation or otherwise make new entry more profitable by facilitating exports."); Order No. 1000, at P 256 ("It is not in the economic self-interest of incumbent transmission providers to permit new entrants to develop transmission facilities.").

Incumbent utilities have lobbied aggressively for state-level ROFRs that would give them preferential rights in constructing and operating new transmission lines within their service areas.[6] In addition to direct lobbying, utilities have commissioned reports arguing that competition for new transmission projects contribute to transmission delays, cost overruns, and potential litigation. The primary arguments against competitive transmission are that competition increases costs, slows down the process of building new transmission, and reduces incentives for collaborative planning. These claims are based primarily on case studies in which competitive transmission ultimately received cost escalations or took more time than expected. This section examines the justifications offered in defense of ROFRs and explains why those arguments are misleading and unconvincing—in no small part because they present evidence selectively, misidentify the root causes of cost overruns and project delays, and otherwise ignore important benefits of competition.[7]

In the United States and elsewhere, competitive solicitations for new transmission projects have led to significant cost reductions. For example, a 2019 Brattle Report estimated that ROFRs produce cost savings of forty percent below the lowest-cost incumbent proposal, and that investments that are made outside competitive processes have average cost escalations of 34%.[8] Studies from outside of the United States have reached similar results, with the World Bank Group finding that winning bids in a sample of fifteen competitively procured projects in Peru were thirty-six percent lower than estimated costs.[9]

In response to this empirical evidence, utility-sponsored research relies primarily on individual case studies to argue that competition leads to cost increases. These studies typically collect a sample of lines that came in above-cost, and based on that evidence, conclude that

---

[6] For example, Ameren has actively lobbied for ROFRs in Illinois and has continued to push for ROFR laws even after the Governor vetoed ROFR legislation. Similarly, Xcel has been involved in lobbying efforts to support ROFR legislation in Wisconsin and Minnesota, and Entergy has pushed for aggressive ROFR laws in Texas.

[7] There are of course examples in which competitively planned lines result in cost overruns and delay, but this is common of all types of transmission projects. In fact, the best available evidence indicates that it is more difficult for regulators to control costs and keep projects on schedule when competition is not available to discipline transmission development.

[8] *See* Johannes P. Pfeifenberger et al., The Brattle Group, Cost Savings Offered by Competition in Electric Transmission: Experience to Date and the Potential for Additional Customer Value, P. 15, 29 (Apr. 2019), https://www.brattle.com/wp-content/uploads/2021/05/16726_cost_savings_offered_by_competition_in_electric_transmission.pdf [hereinafter Brattle Report].

[9] *See* Pedro E. Sanchez & Samuel Oguah, World Bank Group, Private Sector Participation in Transmission Systems: making It Work, https://documents.worldbank.org/en/publication/documents-reports/documentdetail/337861467990990322/private-sector-participation-in-transmission-systems-making-it-work. In ERCOT, the one region in the United States that has consistently relied on competitive solicitations to procure new transmission, projects that were constructed under Texas' Competitive Renewable Energy Zones (CREZ) program were ultimately slightly more expensive than expected but were completed in five years. By contrast, comparable projects in regions where incumbent utilities' control transmission planning have frequently faced decade-long delays. *See* Warrant Lasher, Dir. Of Sys. Planning, ERCOT, The Competitive Renewable Energy Zones Process, ERCOT (Aug. 11, 2014), https://www.energy.gov/sites/prod/files/2014/08/f18/c_lasher_qer_santafe_presentation.pdf.

competitive transmission planning is more costly and prone to delay than incumbent-driven processes.[10] For several reasons, including inflation and siting challenges, transmission lines are often more expensive than originally expected. It is also true that competitively planned lines have not been immune from cost overruns. But that hardly provides evidence that ROFRs lead to cost reductions.

These studies are problematic on their own terms, and for three specific reasons. First, evidence of cost overruns from individual projects is hardly representative of the cost impacts of competition, and the most egregious examples have involved lines that *avoided* competitive procurements. Consider, for example, a recent PJM decision allowing an incumbent to construct transmission facilities in response to Maryland's Brandon Shores generator retirements. The transmission upgrades were not selected in a competitive procurement,[11] and the project's costs recently increased $775 million, from $738 million to $1.51 billion.[12] In its most recent Integrated Resource Plan, the NV Energy's Greenlink project announced that the project's cost had increased from approximately $2.5 billion to approximately $4.2 billion—a sixty-six percent increase over initial estimates.[13] Other notable examples include Ameren's Pana-Mt. Zion-Kansas 345 kV line, which was completed two years behind schedule and whose costs were more than $120 million above the original $284 million estimate;[14] ITC Midwest's Cardinal-Hickory Creek Line in Iowa, whose costs increased from $490 to $675 million after nearly a decade of delays;[15] and an Xcel Energy line in Minnesota, whose costs doubled to $1.14 billion.[16]

Basic economic theory teaches that competition creates incentives for firms to keep costs down. It is therefore unsurprising that developers that face fewer competitive pressures have been

---

[10] For example, a recent study commissioned by incumbent utilities with service territories in the Midwest focused on four competitively planned lines, two of which had cost overruns *See* Developers Advocating Transmission Advancements, Recent Experience with Competitive Transmission Projects and Solicitations (2025), https://www.modernizethegrid.com/wp-content/uploads/2025/02/DATA-Whitepaper-2024_2-5-25_vF_edit.pdf.

[11] The project qualified as an immediate-need reliability project and was therefore exempt from competition. *See* https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20231108-3068&optimized=false

[12] *See* Sami Abdulsalam, Director, PJM Transmission Planning, Transmission Expansion Advisory Committee, Reliability Analysis Update, P. 13-15 (Feb. 4, 2024), https://www.pjm.com/-/media/DotCom/committees-groups/committees/teac/2025/20250204/20250204-item-12---reliability-analysis-update.pdf

[13] *See* Robert Walton, *NV Energy Proposes 400 MW Gas Peakers, More Than 1 GW Each of Solar, Storage in 2024 IRP*, UTILITY DIVE (Jun. 11, 2024), https://www.utilitydive.com/news/nv-energy-proposes-400-mw-gas-peakers-1-gw-solar-storage/718548/;

[14] *See* Answer Of The Electricity Transmission Competition Coalition to the Unauthorized Supplemental Reply Comments Of Certain Anti-Competition Incumbent Utilities, Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection, Docket No. RM21-17-000, P. 17 (Aug 17, 2022), https://electricitytransmissioncompetitioncoalition.org/wp-content/uploads/ETCC-Response-to-Incumbent-TO-Comments.pdf.

[15] https://apps.psc.wi.gov/ERF/ERFview/viewdoc.aspx?docid=510563

[16] *See* Walker Orenstein, Price for huge Xcel transmission line more than doubles to $1.14B, The Minnesota Star Tribune (Nov. 16, 2023), https://www.startribune.com/price-for-huge-xcel-transmission-line-more-than-doubles-to-1-14b/600320218?utm_medium=email&refresh=true).

responsible for many of the most significant transmission cost overruns in recent memory, and that empirical evidence indicates that competition has led to cost savings.

Second, studies critiquing competitively procured transmission projects often ignore or misrepresent the underlying causes of the cost increases. For example, when an ITC representative presented a defense of ROFRs to the Oklahoma legislature, he pointed specifically to the Artificial Island Project in Delaware, which came in sixty-one percent above the cost cap.[17] The problem with this example is that, in the case of the Artificial Island project, the cost overrun occurred because incumbent utility Public Service Gas & Electric's substation upgrades that were assigned to the incumbent came in above projected cost.[18] Similarly, for one of the lines cited in the DATA Report described above—the LS Power lines in the San Jose area—the cost increase was also caused largely by unplanned substation upgrades that were not competitively solicited.[19] In other words, these cost overruns—cited as evidence that competitive procurements lead to cost increases—were actually the responsibility of incumbent utilities that did not participate in a competitive procurement.

Third, studies that have defended ROFRs routinely present data in a misleading manner. Consider the Concentric study that found lower cost escalations associated with ROFR-ed projects.[20] The study compared the final cost of incumbent-led projects not to the initial cost estimate, but rather to more recent estimates that came in higher than the initial proposal. This has the effect of underestimating incumbent cost increases. Imagine if a project was initially estimated to cost $100 million. After a year the utility or RTO updated the projected cost to $150 million. The project was ultimately completed at a cost of $200 million. The cost increase should be $100 million, since the initial estimate was $100 million, and the project ultimately cost $200 million. But the Concentric study would take the second year of the project—when the estimate had already increased to $150 million—and, on that basis, find that the project only increased by $50 million.

In one example, Concentric examined a project that was initially estimated to cost $360 million. The project ultimately cost $493 million—37% higher than the cost estimate.[21] However,

---

[17] *See* Chris Winland, Dir. Of Strat. Planning, ITC Great Plains Oklahoma ROFR Presentation (Oct. 17, 2023), https://oksenate.gov/sites/default/files/2023-10/PRZ_ITC%20Great%20Plains_Oklahoma%20ROFR%20presentation_10.17.23.pdf.

[18] *See* Krysti Shallenberger, *PJM Suspends Artificial Island Transmission Project*, UTILITY DIVE (Aug. 8, 2016), https://www.utilitydive.com/news/pjm-suspends-artificial-island-transmission-project/424009/.

[19] *See* DATA P. 13-16. The DATA Whitepaper argues that this case study shows that ROFRs support streamlined and comprehensive planning processes, but it is unclear why PG&E, the incumbent transmission owner here, was unable to coordinate with the winning bidder. Nor is there evidence that a ROFR would have caused the incumbent to better anticipate substation upgrades.

[20] *See* Emma Nicholson, Meredith Stone, & Danielle Powers, Concentric Energy Advisors, *Building New Transmission: Experience To-Date Does Not Support Expanding Solicitations* (Jun. 2019), https://ceadvisors.com/wp-content/uploads/2019/06/CEA_Order1000report_final.pdf.

[21] *See id.*; *see also See* Johannes Pfeeifenberger, Judy Chang, & Michael Hagerty, Cost Savings Offered by Competition in Electric Transmission: Esperience to Date and Potential Value for Electricity Customers, P. 24-25 (Dec. 11, 2019), https://www.brattle.com/wp-content/uploads/2021/05/17805_cost_savings_offered_by_competition_in_electric_transmission.pdf.

Concentric relied on updated cost estimates—that came in higher than the initial one—to find cost increases of 10%. But to determine the real cost increase, one should of course compare the final project cost to the initial estimate—not to a baseline estimate that occurs after the utility has already raised costs. Thus, the study assumed that cost escalations for non-competitive lines should be calculated by comparing the final cost to the *recent* estimates. The study therefore significantly underrepresents the true cost escalations for ROFR-ed projects.[22]

Perhaps the most surprising example of misleading data is a recent report commissioned by Ameren Transmission Company that argues that technical aspects of cost allocation rules would allow Wisconsin customers to shift costs to other states. The basic thesis of the report is that regional cost allocation allows utilities to shift some fixed costs onto customers in other states. There are numerous flaws with this study, including the fact that most cost savings do not occur for decades and that whatever cost savings do exist are a small fraction of the cost savings associated with competitive solicitations for transmission. But the most significant problems are that (a) other states would likely retaliate, (b) competitive developers are eligible for the exact same cost sharing provisions as soon as they construct projects in the area, and (c) for the reasons explained in section IV, a state law passed for the purpose of shifting costs onto other states is a textbook example of a Dormant Commerce Clause violation.[23]

The point of this section is not to nitpick individual case studies, but rather to show that utilities have failed to identify any evidence at all suggesting that ROFRs keep costs down or reduce delays. Instead, they present evidence selectively, misrepresent the individual case studies they do rely on, and ignore more comprehensive studies that have found cost savings and improved efficiency associated with competitive solicitations.

III. Competition Promotes Innovation, Efficiency, and Transparency

Most of the arguments defending ROFRs focus on an apples-to-apples comparison—specifically, on whether cost escalations are higher for competitive or non-competitive projects, and on whether competition reduces the likelihood that projects are built on time. Competition does, however, have other benefits that are harder to quantify. For example, it provides information about developer costs, supports innovative design and pricing arrangements, and makes it more difficult for utilities to direct investment to projects that do not promote the public interest. None

[22] *See* Pfeeifenberger, Chang, & Hagerty, Cost Savings Offered by Competition in Electric Transmission, supra note 21 at 24-25. Another problem with these studies is that, because competition likely leads to lower initial proposals, a straightforward comparison of cost escalations ignores the fact that the initial estimate of the competitive line can be expected to be lower than the estimate of the incumbent-led line.

[23] *See* Ameren Transmission Company, Expert Report on the Revenue Requirement Impact on ATC's Existing Wisconsin Network Customers from Constructing and Operating a Hypothetical New Transmission Line Under MISO Cost Allocation Procedures (Oct. 30, 2024), https://www.wispolitics.com/wp-content/uploads/2024/12/241220ATC.pdf.

of these benefits can be assessed simply by comparing the costs of competitive and non-competitive projects.

But one reason it is misleading to compare cost escalations of competitive and non-competitive projects is that initial bids from competitive lines are likely to be lower than initial bids from non-competitive lines. If an incumbent is assured that it will be able to own or construct a new transmission line, it has little incentive to keep costs down and is therefore likely to submit a higher bid or cost estimate than it would if it had to compete with other potential developers. For similar reasons, the incumbent has less incentive to propose innovative solutions that will drive costs down in the future, since it receives a return for addressing an identified transmission need but does not have to worry that it will forfeit the right to build the line if a competitor offers a more innovative or cost-effective solution.

RTOs' experience with competition highlights these benefits. One benefit that is not apparent simply by comparing cost increases is that competition often drives costs down. For example, the Concentric Report notes that, "Seven discrete developers submitted separate proposals with cost estimates ranging from approximately $100M to $1.55 billion for a wide array of projects," and that the "Average Bid" came in at $780 million.[24] This suggests that competition encourages developers to find ways to keep costs down to win transmission contracts and provides regulators information on how much it will actually cost to build the project.

Individual examples further emphasize that competition can drive down the costs of initial bids. Since Order No. 1000 went into effect, MISO has selected only two projects through competitive solicitations. Both projects were intended to reduce congestion in the region. One, the Duff-Coleman project, was proposed at $49.8M by Republic Transmission, a non-incumbent subsidiary of LSP. The project's final cost was $54.2M.[25] Although the project came in above LSP's proposal, it still came in below MISO's initial estimate of the project's cost and below the project's costs cap.[26] Importantly, the cost cap was one of the reasons MISO awarded the project to LSP. Another MISO project, the Hartburg-Sabine project, was initially awarded to NextEra. NextEra's $114.8 million bid was $6.8 million lower than the median cost estimate.[27] The NextEra project was ultimately canceled because of a Texas ROFR law.

In addition to creating downward pressure on capital outlays, projects that are selected through competitive processes have an incentive to develop innovative rate designs that limit cost escalations. LSP was selected to build the Duff-Coleman project in part because it included a cost

[24] Concentric Report, supra note 25, at 19.
[25] *See* Concentric Report, supra note 25, at 21.
[26] *See* MISO, Selection Report, Hartburg-Sabine Junction 500 kV Competitive Transmission Project (Nov. 27, 2018), https://cdn.misoenergy.org/Hartburg-Sabine%20Junction%20500%20kV%20Selection%20Report296754.pdf
[27] *See id.*

cap in its proposal. While both competitive and non-competitive lines can include cost caps, it is more difficult to prevent cost overruns when a regulator is required to work with an incumbent in the future and is unable to compare the incumbent's proposal to competitors. With competitive solicitations, regulators can insist on proposals that include provisions to contain costs. If the regulator is worried about cost escalations in the future, it can require the developer to post margin or a financial security to guarantee that it can pay a percentage of cost overruns. Another option is to reduce the return on equity associated with the project for cost increases. Finally, if none of these cost containment measures proves feasible, it can prohibit the developer from bidding on future projects.

In theory, some of these measures are available in non-competitive processes, but the lack of competition makes it much more difficult for regulators to enforce these provisions. Without competition, the incumbent has little incentive to include a cost cap, since it is not worried about losing the bid to a rival transmission developer. After all, the state has already tied the regulator's hands by preventing it from seeking alternative solutions. It is therefore unsurprising that when utilities have ROFR protections, they prefer cost-of-service contracts that provide a guaranteed rate of return. Competitive projects, by contrast, typically involve fixed-price or performance-based contracts that shift cost risks to developers rather than consumers. Real-world experience with competitive transmission procurements in ERCOT and Canada show that competitive lines do in fact tend to use fixed-cost contracts that result in lower project costs and better risk-sharing, whereas projects that enjoy ROFR protections have frequent cost overruns since utilities pass excess costs onto ratepayers without facing consequences.

The Hartburg-Sabine line further illustrates that ROFR laws make it difficult for regulators to evaluate the competitiveness of new projects. As discussed, NextEra was ultimately unable to build the Hartburg-Sabine line because a Texas ROFR prevented the company from obtaining a certificate of public convenience and necessity. When projects undergo competitive bids, regulators receive information about what the project will cost, which firms can support the region's transmission needs, and whether alternative proposals can more cost-effectively meet the region's transmission needs. Over time, one would expect costs to come down as firms work to provide more competitive bids and develop more competitive transmission solutions. But if only one company has a right to build a line in a region, that company has little incentive to innovate or drive costs down.

Moreover, because ROFRs do not lead to proposals from different developers, the regulator does not receive information about expected project costs. When projects are bid competitively, there is a public evaluation of proposals that includes the project's financing terms. The developer agreement also typically includes milestones, cost containment provisions, and rate concessions. Perhaps most importantly, cost containment provisions are incorporated in FERC-approved

formula rate. As a result, competitively procured projects provide are more transparent than non-competitive projects.

Thus, if the initial estimate in an incumbent-led process is higher than it should be, the regulator lacks relevant data that could demonstrate that the estimate is high. Thus, when state laws that limit competition deter developers like NextEra, LSP or others from submitting bids, they also make it more difficult for regulators to acquire information about expected regulatory costs.

It is also worth mentioning that competition creates downward pressure on capital structure that can result in significant cost savings. Studies defending ROFRs have typically focused capital costs associated with new transmission projects. But that is only one part of a project's costs. Another important benefit of competition is that developers have an incentive to propose capital structures and offer rate cap concessions that further reduce customer bills. In recent competitive transmission procurements, developers have offered to cap the equity percentage of the capital structure that limits customers' exposure to future cost increases. For example, when Republic Transmission (a subsidiary of LS Power) received a contract for the Duff Coleman project, it included (a) a 45% equity cap, (b) a return on equity cap set at the lesser of 9.8% or MISO's region-wide return on equity, *at the lesser of* 9.80% (inclusive of incentives) or the MISO region-wide base return on equity plus an RTO participation adder, and (c) a commitment to reduce the return on equity if the project did not meet cetain milestones.[28] Utilities have no incentive to propose these contract terms when they do not face pressure from a competitor.

Competitive is also more likely to result in technological innovation. Incumbent utilities have historically been reluctant to invest in new technologies. This, too, is consistent with their financial incentives. Rate regulated utilities receive a return on large infrastructure investments, so are relatively unmotivated to propose innovative solutions. Even when regulators offer to increase returns to utilities that use advanced technologies, utilities may be disinclined to adopt them since they are worried about risks compared to known approaches.[29]

In short, without competition, utilities lack incentives to minimize costs, optimize designs, or seek efficiency improvements. Notably, even if incumbents win bids in these regions, the threat of competition has created an incentive for them to reduce costs. Second, cost estimates from competitive bidding processes have often been lower than those from projects awarded directly to incumbents, again suggesting that competition creates incentives for developers to reduce their costs. This not only provides benefits for the immediate project, but it can also drive continued

[28] *See* Affidavit of Paul Thessen in Support of Comments of LL Power Grid, Appendix II, Summary of Completed Competitive Processes, Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection, https://www.lspower.com/wp-content/uploads/2023/09/Initial-Comments-of-LS-Power-Affidavit-Only.pdf.
[29] JOskow 22:

cost declines as utilities continue to compete for project awards. The table below summarizes benefits of competition:

Problem	Description	Evidence
Increases Costs	ROFRs limit competition, leading to higher transmission costs due to lack of cost-saving incentives.	Competitive bidding in ERCOT and Canada led to lower costs compared to ROFR-protected projects.
Reduces Innovation	Incumbents avoid adopting new technologies and contract designs, while competitive projects encourage innovation.	Independent developers propose advanced grid technologies more frequently than incumbents.
Affects Contract Structures	ROFRs favor cost-of-service contracts that shift risks to consumers, unlike competitive fixed-price contracts.	Competitive transmission projects use performance-based contracts, reducing cost overruns.
Creates Legal Barriers	State-level ROFR laws create legal disputes and regulatory uncertainty, delaying project approvals.	Minnesota, Texas, Indiana and Iowa state ROFR laws faced legal challenges, stalling transmission expansion.
Delays Transmission Expansion	Slower deployment of critical transmission lines hinders renewable energy integration and decarbonization goals.	PJM and CAISO competitive projects have shorter completion times than incumbent-driven projects.

IV. ROFRs Are Unconstitutional

The final problem with ROFRs is that they appear to violate the Dormant Commerce Clause. In the past few years, four federal courts have reviewed the constitutionality of state ROFRs or anticompetitive siting decisions.[30] While the Eighth Circuit found a Minnesota ROFR

[30] As discussed below, a district court in Pennsylvania did not review state ROFR laws. Instead, the court reviewed a state decision denying a certificate of public convenience and necessity to a project that had been approved by the RTO for regional cost allocation. The state denied the certificate because it did not think the line would produce sufficient benefits to Pennsylvania customers. The district court decision, which held that the line violated the Dormant

constitutional, three other federal courts—the Fifth Circuit and two district courts—found that they violate the Dormant Commerce Clause. As discussed more in this section, the Eighth Circuit decision adopts an unusual theory of the Dormant Commerce Clause and, in my opinion, is unlikely to survive if the Supreme Court reviews the constitutionality of state ROFR laws in the future.

The Dormant Commerce Clause prohibits state laws that discriminate against or unduly burden interstate commerce. The Dormant Commerce Clause is based on the Constitution's Commerce Clause and aims to prevent state economic protectionism and promote a national economy. Specifically, the doctrine prohibits laws that either expressly or purposefully discriminate, as well as laws that place an undue burden on out-of-state interests. When a state law expressly discriminates against out-of-state interests, the law is presumed to be unconstitutional, subject to strict scrutiny, and may go into effect only if it promotes a legitimate governmental interest for which there are no non-discriminatory alternatives.

The goal of the Dormant Commerce Clause is to "prevent[] the states from adopting protectionist measures,"[31] and it has long been used to strike down state laws that interfere with interstate commerce or favor in-state interests. In fact, even laws that have only incidental effects on interstate commerce may nonetheless be unlawful if the burden imposed is clearly excessive in relation to the putative local benefits.[32] Recent cases have found ROFRs unconstitutional for both reasons—they expressly discriminate and impose an excessive burden on out-of-state economic interests.

Consider the recent Indiana ROFR that was enjoined by an Indiana District Court. The Indiana Law—enacted as part of the House Enrolled Act 1420 of 2023 (HEA 142)—gave any "incumbent transmission owner . . . the right to construct, own, operate, and maintain. . . . An electric transmission facility that has been approved for construction through a regional transmission organization planning process and that connects to an electric transmission facility owned by the incumbent electric transmission owner."[33] The law defined "incumbent electric transmission owner as "a public utility that owns, operates, and maintains an electric transmission facility in whole or in part in Indiana."[34] And it defined a "new transmission owner" as "a corporation, company, partnership, limited liability company, or other organization that . . . does

---

Commerce Clause because it was intended to favor Pennsylvania interests, demonstrated that ROFRs can also be on uncertain legal footing when they are used to further protectionist state policies. *See* LSP Transmission Holdings II, LLC v. Huston, No. 1:24-CV-01722-TWP-MG, 2024 WL 5008048, at *8 (S.D. Ind. Dec. 6, 2024).

[31] Tenn. Wine & Spirits Retailers Ass'n v. Thomas, 588 U.S. 504, 514 (2019) (quoting New Energy Co. of Ind. v. Limbach, 486 U.S. 269, 273 (1988)).

[32] Pike v. Bruce Church, Inc. 397 U.S. 137, 142 (1970).

[33] Ind. Code § 8-1-38-9(a).

[34] *Id.* § 8-1-38-2.

not own, operate, or maintain an electric transmission facility located in whole or in part in Indiana."[35] As the district court explained, the law

> "expressly mandates differential treatment of in-state and out-of-state economic interests that benefits owners of transmission facilities in Indiana and burdens owners of transmission facilities outside of Indiana. Entities . . . that already own, operate, and maintain facilities in Indiana must do nothing more than inform IURC of their intent to construct or upgrade a transmission line that connects to one of their existing facilities to avoid competition for new transmission projects. On the other hand, entities like LSP are required to establish a physical presence in the state before they may compete in the Indiana electric transmission market. "Limiting competition based on the existence or extent of a business's local foothold is the protectionism that the Commerce Clause guards against."[36]

This, the court found, constituted facial discrimination against out of state interests.

The Fifth Circuit reached a similar conclusion in *NextEra v. Lake*.[37] There, the court reviewed the constitutionality of a Texas law—SB 1938—that stipulated that the right to the build, own, or operate new lines "that directly [connect] with an existing utility facility ... may be granted only to the owner of that existing facility."[38] Only if the incumbent chose not to pursue a project could the project be built by another developer.[39] The Dormant Commerce Clause challenge was brought after MISO awarded the right to build a transmission line to NextEra, which had submitted a bid $6 million below the MISO's estimate of the line's cost, only for NextEra to lose the right to build the line as a result of Texas' ROFR law. The Texas law barred companies from competing in MISO or SPP territory unless they already owned a transmission facility in Texas.

In *Lake*, the Fifth Circuit found that SB 1938 violates the dormant commerce clause "on its face."[40] The court reasoned that "lines that carry electricity through multiple states are classic instrumentalities of interstate commerce."[41] Because the Texas law provided differential treatment for in-state and out-of-state lines, it facially discriminated against out-of-state interests.

---

[35] *Id.* § 8-1-38-4. It further defined "new transmission owner" as one that "is incorporated or organized to construct, own, operate, and maintain an electric transmission facility located in whole or in part in Indiana." *Id. Id.* § 8-1-38-4(2).
[36] LSP Transmission Holdings II, LLC v. Huston, No. 1:24-CV-01722-TWP-MG, 2024 WL 5008048, at *8 (S.D. Ind. Dec. 6, 2024)
[37] NextEra Energy Capital Holdings, Inc. v. Lake, 48 F.4th 306 (5th Cir. 2022)
[38] TEX. UTIL. CODE § 37.056(e).
[39] *Id.* § 37.056(g).
[40] NextEra Energy Capital Holdings, Inc. v. Lake, 48 F.4th 306, 326 (5th Cir. 2022).
[41] *Id.* at 310.

The Court made clear that "in-state presence requirement[s]" such as ROFRs "have been a fertile ground for recent dormant Commerce Clause challenges."[42] The Fifth Circuit discussed a number of precedents that had found that laws that protect incumbents with a physical presence in a state facially discriminate against out-of-state interests in violation of the Dormant Commerce Clause.[43] The relevant question is not the place of incorporation. Nor can a law be saved by the theoretical possibility of entering the state in the event that the incumbent is unable to build a line in the future. Instead, if a state law provides more favorable treatment to companies that already own or operate transmission facilities in the state—if "[a]ll that was required to be 'in-state' was a physical presence in the state"—then the law constitutes facial discrimination.[44]

The third recent Dormant Commerce Clause relevant to ROFRs is *Transource Pennsylvania v. DeFrank*.[45] There, the court was not reviewing a state ROFR law. It was instead determining the constitutionality of a state decision to deny a certificate of public convenience and necessity to a transmission line that was being built to support transmission needs in the PJM region. The Pennsylvania Commission denied the certificate of public convenience and necessity on the ground that the line would not provide sufficient benefits to Pennsylvania customers. The case is instructive, however, because it suggests how ROFRs can be unconstitutional both because they facially discriminate against out-of-state interests and because they produce excessive or undue burdens on interstate commerce.[46]

The court first determined that Pennsylvania's denial of a certificate of public convenience and necessity facially discriminated against out of state interests. As the court explained, Pennsylvania "fails the *per se* test because it discriminates on its face against interstate commerce. Quite simply, the PUC denied the Project because the PUC wished to maintain low prices for Pennsylvania customers that benefit from congestion."[47] As a result, the court found, "that the PUC's decision was a per se violation of the dormant Commerce Clause driven by economic protectionism. . . . The Project's sole purpose is to better facilitate commerce across regional and state boundaries. And the PUC's opposition to the Project is rooted in economic protectionism in the form of maintaining the status quo imbalance of access to low-priced electricity."[48] Like the

---

[42] NextEra Energy Cap. Holdings, Inc. v. Lake, 48 F.4th 306, 324 (5th Cir. 2022) (citing Granholm, 544 U.S. 460, 475 (2005).

[43] *See id.*

[44] *Id.*

[45] Transource Pennsylvania, LLC v. DeFrank, 705 F. Supp. 3d 266, 294 (M.D. Pa. 2023).

[46] *See id.* ("There are two ways in which the dormant Commerce Clause invalidates state regulation. First, where a state regulation is 'motivated by simple economic protectionism,' it will be 'subject to a virtually *per se* rule of invalidity, which can only be overcome by a showing that the State has no other means to advance a legitimate local purpose.' *United Haulers Ass'n v. Oneida-Herkimer Solid Waste Mgmt. Auth.*, 550 U.S. 330, 338–39 (2007). This heightened scrutiny will apply where a State acts with "discriminatory purpose," *Bacchus Imports, Ltd. v. Dias*, 468 U.S. 263, 270, (1984), or the regulation "discriminates against interstate commerce 'either on its face or in practical effect.' . . . If there is discrimination, the state is required to show that the law is narrowly tailored to "advance a legitimate purpose." *Dep't of Revenue of Ky. v. Davis*, 553 U.S. 328, 338 (2008).").

[47] Transource Pennsylvania, LLC v. DeFrank, 705 F. Supp. 3d 266, 294 (M.D. Pa. 2023).

[48] *Id.* at 296.

Texas law reviewed in *Lake*, the court recognized that a legal decision grounded entirely in protecting in-state interests constitutes facial discrimination that violates the Dormant Commerce Clause.

In addition to being facially discriminatory, the court also found that the law places an undue burden on interstate commerce. The Pennsylvania decision denying a certificate of public convenience and necessity was based primarily on the fact that the project would reduce congestion, which in turn could result in price increases in Pennsylvania as the state's generators are able to sell electric power across a larger market. Of course, in reducing congestion, the project would result in price decreases in other states across the region and reduce market power problems in energy markets. The court determined that simple economic protectionism is not a legitimate state interest, and that the state cannot deny a certificate of public convenience and necessity simply because it does not want to increase competition in the regional market:

> "By insisting on counting as a Project cost the projected increase in pricing to those who currently benefit from congestion, the PUC's decision recognizes congestion as a benefit. That is, it determines that similar access to low-cost electricity is only desirable to the extent that it does not raise prices to those who currently benefit from congestion. Thus, the court concludes that Transource has met its burden in proving the existence of discrimination."[49]

Although *Transource* does not directly address the constitutionality of state ROFR laws, it shows that state transmission policies can be attacked under two distinct theories of the Dormant Commerce Clause. First, when they facially or expressly discriminate against out-of-state interests, they are presumptively invalid. This is the Dormant Commerce Clause theory that the Fifth Circuit adopted in *Lake* and that the Indiana District Court adopted in *Huston*. Second, when the effect of the state law is to preference in-state economic interests, it can fail what is known as the *Pike* balancing test. In the context of ROFRs, states should be aware that the laws can be both facially discriminatory because they can expressly favor in-state interests, and they can place an undue burden on interstate commerce that does not advance a legitimate state interest. If ROFRs turn out to be barriers to competition—if, for example, states or vertically integrated utilities use them to avoid solutions that increase competition in the market—then they could place an undue burden on interstate commerce in violation of the Dormant Commerce Clause.

There is, however, one case that reached the opposite conclusion. In *LSP Transmission Holdings, LLC v. Sieben*,[50] the Eighth Circuit upheld a Minnesota ROFR law, finding that a law that allowed incumbent transmission owners to construct lines connecting to their own facility if those projects have been approved by the grid operator.[51] It was important to the Eighth Circuit that the "law applies evenhandedly to all entities, regardless of whether they are Minnesota-based

[49] *Id.* at 296–97.
[50] 954 F.3d 1018 (8th Cir. 2020).
[51] *See id.* at 1031.

entities or based elsewhere."[52] In other words, the Court was moved by the fact that the Minnesota law did not discriminate based on place of incorporation. As a result, the Court determined that the purpose of the law is not to "protect[] in-state interests," but rather to provide "adequate and reliable service at reasonable rates."[53] Even though the court did not explain how a ROFR would support "adequate and reasonable service," it nevertheless balanced that state interest against the law's discriminatory effect. And because a competitor could construct a project "[i]f an incumbent owner chooses not to exercise its ROFR," the law did not "eliminate competition in the market completely," so there is not an "undue burden" on interstate commerce.[54] In other words, the Court determined that the state's legitimate interest in furnishing cheap and reliable electricity justified any discriminatory effect caused by the ROFR.

But the Eighth Circuit's argument overlooks or ignores overwhelming case law establishing that differential treatment based on physical presence constitutes facial discrimination under the Dormant Commerce Clause. Indeed, as the Indiana district court observed in *Huston*, "States cannot require an out-of-state firm to become a resident in order to compete on equal terms."[55] This holding was based on multiple Supreme Court and Circuit Court decisions holding that a distinction based on physical presence amounted to facial discrimination under the Dormant Commerce Clause.[56] In other words, while the Eighth Circuit upheld the Minnesota ROFR law on the ground that it was theoretically possible for a non-incumbent to construct the line, that holding is in direct tension with a number of other cases, including Supreme Court cases, that reached the opposite result. It is therefore unsurprising that every other court to consider this issue has disagreed with the Eighth Circuit, and it seems likely that the Supreme Court will eventually hold that ROFRs violate the Dormant Commerce Clause.

V. Conclusion

While a few industry-led reports have suggested that competition increases costs, the reality is that these reports misrepresent data and case studies in order to create the impression that ROFRs provide economic benefits. The reality is that competition has driven cost savings and encouraged innovation, and that recent attempts to enact or strengthen state ROFR laws would essentially eliminate these benefits—at least in midwestern states where they would go into effect. For decades, state and federal regulators have sought to break down barriers to entry and introduce

[52] *Id.* at 1028-29.
[53] *Id.* at 1028-29.
[54] *Id.* at 1031 (citing *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970))
[55] LSP Transmission Holdings II, LLC v. Huston, 2024 WL 5008048 (S.D. Ind. Dec. 6, 2024).
[56] *See id.* (citing Granholm v. Heald, 544 U.S. 460, 472 (2005)); *Id.* at *9 (quoting *Regan v. City of Hammond*, 934 F.3d 702, 704 (7th Cir. 2019)).

competition into the electricity industry. These laws would expose customers to unnecessary risks and lead to years of costly litigation.

Appendix A

State	ROFR Law Citation	Effective Date	Applicability	Notes
Alabama	Ala. Code § 37-2A-10	N/A	Incumbent utilities have the right to construct new transmission lines within their service areas.	
Indiana	Ind. Code § 8-1-38-9 (as amended by HEA 1420)	July 1, 2023	Applies to transmission facilities approved through an RTO planning process. Incumbent utilities must exercise their right within 90 days following approval.	District Court found the ROFR unconstitutional. Federal litigation pending.
Iowa	Iowa Code § 478.16	N/A	Applies to construction of lines above 100 kV approved through a federally registered planning authority. Incumbent utilities must exercise their right within 90 days following approval.	Iowa District Court ruled the statute unconstitutional on December 4, 2023; ;ew legislation was defeated in 2024. New legislation proposed in 2025.
Michigan	Mich. Comp. Laws § 460.593	December 17, 2021	Applies to regionally cost-shared transmission lines included in a plan adopted by a recognized planning authority. Incumbent utilities must exercise their right within 90 days after plan adoption/approval.	
Minnesota	Minn. Stat. § 216B.246	August 1, 2012	Applies to lines above 100 kV approved for construction in a federally registered planning authority transmission plan. Incumbent utilities must exercise their right within 60 days following approval.	Upheld by Eighth Circuit in 2020. Legislation introduced that would repeal ROFR in 2024 and 2025.
Mississippi	Miss. Code § 77-3-10.1	July 1, 2023	Only entities meeting specific statutory criteria can build, own, or operate new transmission facilities approved by an RTO.	

State	ROFR Law Citation	Effective Date	Applicability	Notes
Montana	Mont. Code Ann. § 69-5-203	N/A	Incumbent utilities have the right to construct new transmission lines within their service areas.	ROFR repeal legislation introduced in 2025
Nebraska	Neb. Rev. Stat. § 70-1012	N/A	Incumbent utilities have the right to construct new transmission lines within their service areas.	
North Dakota	N.D. Cent. Code § 49-03-02	March 29, 2011	Applies if the interconnecting incumbent electric public utility is willing and able to construct and operate a similar electric transmission line.	
Oklahoma	Okla. Stat. tit. 17, § 292	N/A	Incumbent utilities have the right to construct new transmission lines below 300kV within their service areas.	
South Dakota	S.D. Codified Laws § 49-32-20	March 11, 2011	Applies to any incumbent transmission owner. Incumbent utilities must exercise their right within 90 days following approval of construction by a federally registered planning authority.	
Texas	Tex. Util. Code § 37.051	N/A	Certification may be granted only to the interconnecting electric or municipal utility unless assigned to another entity certificated in the same electric power region, coordinating council, ISO, or power pool.	Fifth Circuit found ROFR likely violates Dormant Commerce Clause; U.S. District Court for the Western District of Texas ruled the statute unconstitutional on October 28, 2024.

Appendix B

State	ROFR Law Citation	Applicability	Notes
Illinois	HB 3445	Only firms that own transmission facilities	Vetoed by Governor Pritzker
Missouri	SB 139; SB 568	Only firms that own transmission facilities and to which the electric transmission facilities subject to the application will connect can construct the electric transmission facilities built under regional transmission plan	Did not pass; new legislation filed in 2025 session
Wisconsin	SB 481	Would grant incumbent utility owner the right to construct, own, and maintain transmission facility that has been approved for construction in MISO transmission plan if that facility connects to facilities owned by that incumbent transmission facility owner	Legislation defeated in 2022 & 2023; new legislation being considered in 2025

Warren Whitson
VP Development
515 N. State Street
Suite 1150
Chicago, IL 60654
205.903.4134
warren@viridon.com

Chairmen and Members of the
Assembly Committee on Energy and Utilities &
Senate Committee on Utilities and Tourism
State Capitol
Madison, WI 53702

March 3, 2025

Re: Senate Bill 28 and Assembly Bill 25

Chairmen Bradley and Steffen, and members of the Committees:

I write on behalf of Viridon Midcontinent LLC ("Viridon") in support of competition and in opposition to Senate Bill 28/Assembly Bill 25. We would like to call to the attention of members of the Committees three key points as it considers this legislation.

1. Competition for transmission projects between incumbent and competitive transmission developers will lower costs for all Wisconsinites.
2. MISO's tariff determines how an entity can spread project costs across the region. It does not matter whether an incumbent or competitive transmission developer builds a project – both can spread costs across customers beyond Wisconsin.
3. If the incumbent transmission developers believe that they can save Wisconsinites up to $1 billion, the most definitive way for them to prove it by submitting binding competitive project applications. That will allow MISO to apply its cost criteria across all options to select the most cost-effective project for construction.

Monopoly rules do not drive quality and efficiency – competition does. Let the best project win.

Viridon has the experience to provide excellent value to Wisconsin, if you'll let us.

Viridon is a certified Qualified Transmission Developer in MISO and is focused on developing, constructing and operating transmission assets through the competitive development process. Headquartered in Chicago, with easy access to the entire MISO footprint, Viridon was formed in 2023 by a team of experienced transmission leaders each of whom has decades of experience in the utility industry – including 30 years of combined experience in competitive transmission – and a deep understanding of how to deliver and manage complex transmission facilities. Our

employees are located around the region including in Madison, Chicago, and beyond. We are committed to adding value, reducing costs for ratepayers, and honoring project timelines to deliver a superior transmission project to MISO's customers in Wisconsin and the region.

Competition drives value and the best outcome for Wisconsin.

Viridon strongly believes in the power of competition to drive the best quality outcomes, ensuring that each participant is incentivized to design, execute and deliver a project that is the most reliable and cost-efficient. MISO's strong transmission planning process assesses project proposals from all prospective developers, incumbent utilities and competitive developers alike. The process takes account of all benefits that a proposed project will deliver, from a technical and operational standpoint, as well as accounting for *all* costs and tradeoffs. The result of this competitive process is identifying the project that will optimally serve customers and the transmission system.

Pursuant to MISO's tariff, MISO evaluates project proposals across four key criteria: (1) certainty: providing a high degree of certainty and predictability; (2) risk mitigation: reflecting the lowest risk to the success of the project; (3) cost: meeting all requirements at the lowest overall cost; and (4) specificity: providing a high degree of specificity and detail. (See MISO's Business Practice Manual No. 027 at p. 54.)

These criteria, including cost, are applied to all projects in the selection process whether the project is proposed to be developed by an incumbent utility or a competitive transmission developer. After selection, the project will require the approval of the Public Service Commission of Wisconsin to proceed. The entire approach is designed to incentivize the best proposals, ensure the best project is selected, and then guarantee appropriate state oversight.

The competitive process forces everyone to bring their best. Retreating to monopoly pricing does not save Wisconsin customers money.

In the competitive process, all proponents of a project proposal are held to the same exacting criteria, and all parties are motivated to develop the best option for customers, knowing that competing companies are doing the same. This drives all parties to present the best possible options, including presenting binding cost-containment commitments to make the proposal the most competitive – something incumbents would not have to do in a ROFR scenario.

Wisconsin is privileged to have capable incumbent utilities. However, logic and experience tell us that parties that are guaranteed to "win" are not incentivized to bring the best ideas or performance. On the other hand, data shows that competition in the transmission sector drives innovation and significant cost savings. If tasked with competing in the development

process, Wisconsin's utilities will have the opportunity to design and present the best solutions. If those solutions are superior to projects proposed by Viridon or any other party in the process, they will be selected – as they should be.

Assertions that Wisconsin citizens will bear higher costs if the project is awarded to a competitive developer are simply wrong. MISO's cost allocation rules are determined by tariff, and the same calculations apply regardless of who builds a project. (See MISO Tariff at Attachment MM.) For example, all project-related costs from MISO's currently open solicitations will be billed across the entire customer base of the MISO region (not just Wisconsin customers). This is true whether the project is built by an incumbent utility or a competitive developer. A ROFR would not save Wisconsin consumers money.

Some utilities have asserted that under a ROFR, Wisconsin customers would save as much as $1 billion over the next four decades, primarily in the later years. Setting aside that the net present value of such a number over that time horizon amounts to modest theoretical savings, this ignores several important facts. First, the driver of ultimate savings to customers is overall project cost, and competition drives overall project cost and efficiency, not monopoly pricing.

Second, to the extent an incumbent utility can spread overhead costs more broadly than competitive developers, MISO's competitive evaluation already takes account of any such impacts: the incumbent project will beat other proposals in that scenario. The fact that large incumbent utilities do not in fact win every competitive solicitation demonstrates how this theoretical overhead cost advantage does not always lower project costs. The fact that utilities are such strong proponents of the ROFR and so opposed to competition suggests the same.

Let the best project win.

In sum, shutting the door on competition and companies like ours does not serve Wisconsin. Implementing a ROFR simply guarantees that Wisconsin customers will never have a chance to see what the best technical and cost-effective solutions look like. Under the current MISO competitive process, if a Wisconsin utility is able to offer MISO the best, most cost-effective project, they will win the solicitation. And if instead there is a better approach out there, Wisconsin will realize the benefit of competition. Let the best project win.

Sincerely,

Warren Whitson

Warren Whitson

MacIver iMPACT

The Free Market Advocate for Wisconsin

March 4, 2025

To: The Senate Committee on Utilities and Tourism and
The Assembly Committee on Energy and Utilities

Re: AB25/SB28 – Relating to: and incumbent transmission facility owner's right to construct, own and maintain certain transmission facilities ....or the Right of First Refusal (ROFR)

Dear Chairmen Senator Julian Bradley and Representative David Steffen, Vice-chairmen Senator Dan Feyen and Representative Rob Summerfield, and all members of the Senate and Assembly Committees,

MacIver Impact, Inc is opposed to this legislation.

MacIver Impact is committed to championing policies that realign Wisconsin and America with the foundational principles of our nation. Our mission is to inform, engage, and inspire Wisconsin citizens to actively participate in government at all levels. We advocate for the constitutional values of free markets, limited government, and liberty and freedom for all, ensuring that these principles are at the forefront of our democratic process.

Please find attached to this cover letter documents arguing and advocating in opposition to the passage of AB/25 and SB28 – relating to the Right Of First Refusal for transmission companies otherwise referred to as ROFR.

Attached is the report titled: **Competition Reduces Costs to Consumers: ATC Agrees**. This report is from ***The John K MacIver Institute For Public Policy*** and has been widely acclaimed as accurate and cited by other think tanks, legislators, authors and talk radio shows in their work on this issue. To our knowledge there has been zero rebuttals to this report.

The organizations listed below and whose documents are attached requested that I submit these on their behalf in opposition to the legislation.

Pelican Institute For Public Policy – **The Economics of Transmission Monopoly: ROFR Laws and Their Price Impact** – still in draft form for editing.

Jocky International, Inc. – letter sent to Speaker Robin Vos and President Donald J. Trump on February 17, 2025.

Tankcraft Corporation and ***Plasticraft Corporation*** – letter sent to Representative Tyler August on March 4, 2024.

MacIver Impact holds state legislators and elected officials accountable to uphold and legislate in accordance with the Constitution of the United States and the Constitution of the state of Wisconsin. ROFR legislation has been found to be unconstitutional around the country where it has been introduced and passed in other states.

All of the above urge you to vote NO on AB25/SB28.

Respectfully Submitted,

Annette Olson

Annette Olson
MacIver Impact, Inc.

Competition Reduces Costs to Consumers: ATC Agrees

Executive Summary

Permitting competition in electric transmission is vastly superior to the creation of a state ROFR law. Competitively-developed projects result in 37% *savings* to ratepayers while similar, non-competitive projects *increase* costs to ratepayers by 18%. A competitive system is therefore much more beneficial to consumers than the government grant of monopoly a ROFR law would create. Furthermore, the recent *Report* commissioned by ATC fails to show that ATC is the least-cost developer of transmission lines because it considers only the scenario where ATC is competing against a *new developer*, rather than the much more common situation in which ATC competes against other incumbent utilities. This latter scenario is the one which ATC needs to contend with, but which would, if successfully demonstrated, show that a ROFR law is redundant—if ATC is the least-cost developer, then they have nothing to fear from competition.

Introduction

In 2023 the Wisconsin legislature proposed **Assembly Bill 470** (AB470) with the intent of providing incumbent electric transmission facility owners the

> "*right to construct, own, and maintain a transmission facility that has been approved for construction in the Midwest independent system operator's transmission plan and that connects to transmission facilities owned by that incumbent transmission facility owner.*"[1]

This bill would have granted incumbent transmission facility owners a right of first refusal (**ROFR**) and thereby precluded projects from what would have otherwise been a competitive bidding process, provided the incumbent declared their intent to develop the project within 90 days of the project's approval.

This bill, and others like it, attempt to extend the monopoly privileges of electric transmission companies to the only area of regional transmission where competition exists.[2] The rationale for eliminating competition via the creation of a state ROFR law rests on the assertion that a ROFR law reduces the overall cost to Wisconsin ratepayers—an assertion that defies intuition, economic theory, and all empirical evidence.

The fact of the matter is: competition results in lower overall costs for both Wisconsin, and regional, ratepayers. The evidence to-date shows that competitively developed transmission projects result in a 37% cost savings for consumers while similar, non-competitively developed projects result in cost increases of 18%.

---

[1] *AB 470, Sec. 3g*, 2023-2024 Legislature, Reg. Sess. (Wis. 2023). https://docs.legis.wisconsin.gov/2023/related/proposals/ab470.pdf#page=1

[2] Projects subject to competition according to MISO rules are: (1) MVPs where estimated costs are >$20 million and voltage is >100kV and; (2) MEPs where estimated costs are >$5 million and voltage is >345kV.

ATC's Pro-ROFR Argument

On October 30th, 2024, Wisconsin transmission company, the American Transmission Company (ATC), published a commissioned report called "*Expert Report on the Revenue Requirement Impact on ATC's Existing Wisconsin Network Customers from Constructing and Operating a Hypothetical New Transmission Line Under MISO Cost Allocation Procedures*" (**Report**).[3] The Report's conclusion that competition ought to be prohibited by the creation of a state ROFR law is as follows:

> "The allocation of existing O&M and Other Expenses to the new project which are then recovered from a wider base of customers, leads to an overall reduction in costs for ATC's existing Wisconsin network customers. This contrasts to the scenarios for a new developer with a single project where all expenses must be included in the revenue requirements of that one transmission line and not allocated from an existing Attachment O applicable to existing Wisconsin network customers."[4]

This conclusion is based on extremely narrow and unreasonable assumptions. Principally, the Report only considers scenarios where ATC is competing against a *new* developer, when every competitive project proposed by MISO to-date has consisted of competing *incumbent* developers as well as new companies. Secondarily, the Report considers only O&M and Other Expenses and assumes that a new developer would not be able to share these costs throughout the region because they have no *existing* Attachment O—the FERC-approved tariff for cost allocation.

With respect to the first assumption, even if it were true that ATC had a cost-savings advantage compared to new transmission developers, it would not prove that a ROFR law is beneficial to Wisconsin ratepayers. Since competitively developed transmission projects have, on average, more than four incumbent and new developers placing bids on a given project, ATC must show that their development costs are *always* superior to that of competing incumbents. Even if ATC is the superior developer for a majority of projects, that still does not warrant the creation of a ROFR law since a rival's cost savings from a single competitively developed project could exceed that of ATC's. On the other hand, if ATC managed to show that it is *always* the superior developer, then a ROFR law still isn't necessary—they would have the winning bid for every project anyway. And this should be the expected case given ATC's knowledge of Wisconsin and its own transmission system. That it would not have such a presumption would entail ATC believing that it is not a truly cost competitive transmission owner.

As for the assumption that new developers cannot share their O&M and Other Expenses throughout the region, this fails on two grounds: First, (1) when a new developer wins the bid for a project they become an incumbent and would acquire an Attachment O after their first year of operation and would then be able to share those costs regionally; Second, (2) even if a new developer did not have an Attachment O from which to reference, O&M and Other Expenses are calculated by the new developer anyway. Calculating future expenses is an essential component of *every* business plan that is required to assess its viability. The entrepreneur uses personal and market data to estimate a project's future cash flows in every period and only proceeds with the plan if the discounted future cash flows are positive. ATC and others understand this fact very well since they constantly engage in this sort of prospective planning. In other words, for a new

---

[3] ATC. (2024). *Expert Report on the Revenue Requirement Impact on ATC's Existing Wisconsin Network Customers*. https://www.wispolitics.com/wp-content/uploads/2024/12/241220ATC.pdf.

[4] *Ibid.*, (p. 7-8).

developer to win the competition must incorporate its best estimate of what its competitors are doing in their Attachment O and then aggressively bid accordingly.

Finally, if ATC's Report is to be taken seriously, they ought to have considered the cost savings guarantees that are frequently made by developers in competitive projects, and which are entirely absent from non-competitive projects. Namely, competitive bids, in addition to lower project implementation costs, frequently include the following guarantees:

- Cost Caps
- Time Guarantees
- Annual Transmission Revenue Caps
- Return on Equity Caps
- Alternative Blends of Equity and Debt Financing

Competition Reduces Overall Costs to Consumers[5]

The evidence in support of competition reducing overall costs to consumers is overwhelming. The table below shows that competitively-bid projects in the MISO region resulted in overall costs 37% less than the highest bids placed, and 52% less than MISO's estimates.

MISO Competitive EHV Projects

MTEP Year	Project	Bids	# of Bidders	Winner	Winning Bid	Highest Bid	MISO's Cost Estimate	Status	Final Cost	Ratepayer Savings
2015	Duff Coleman	11	11	*Republic*	$ 50,000,000	$ 59,000,000	---	*Complete*	$ 53,848,417	-9%
2017	Hartburg Sabine	12	9	*NextEra*	$ 115,000,000	$ 134,000,000	---	*Cancelled by ROFR*	---	-14%
2021	Hiple to IN/MI Border	7	3	*Republic*	$ 77,000,000	$ 125,000,000	$ 254,000,000	*In-Progress*	---	-38%
2021	Fairport to Denny to IA/MO Border	9	4	*ATXI*	$ 84,000,000	$ 154,000,000	$ 161,000,000	*In-Progress*	---	-45%
2021	Deadend (WI) - Tremval	1	1	*DPC*	$ 8,400,000	$ 13,800,000	$ 13,800,000	*In-Progress*	---	-39%
2021	IA/IL Border to Ipava	1	1	*ATXI*	$ 19,800,000	$ 25,700,000	$ 25,700,000	*In-Progress*	---	-23%
2021	Denny - Zachary - Thomas Hill - Maywood	6	4	*ATXI*	$ 273,000,000	$ 486,000,000	$ 500,000,000	*In-Progress*	---	-44%
	Total # of Projects	Avg Bids/Project	Avg Bidders/Project		Sum of Winning Bids	Sum of Highest Bids	Savings Compared to MISO Estimates			Total Ratepayer Savings
	6	7	4.71		$ 627,200,000	$ 997,500,000	-52%			-37%

On the other hand, the table below shows that similar multi-value projects (**MVP**) *not* subject to the competitive process resulted in costs that were 18% higher than MISO's original estimates. Furthermore, the table shows that the two MVP projects developed by ATC both exceeded MISO's original cost estimates, while one even exceeded MISO's revised cost increase. The second project, Badger-Coulee & CHC, is 30% over MISO's original estimate and quickly approaching the revised figure.

[5] Results of the competitions and the non-compete projects can be found at MISO Competitive Transmission Administration website.

MISO non-Competitive MVP Projects										
MTEP Year	Project	State	Estimated In-Service Date	Owner		Adjusted Cost	Innitial Cost	Status	Final Cost	Ratepayer Savings
2011	Brookings - Twin Cities	MN/SD	2015	CAPX		$ 738,000,000	$ 738,000,000	Complete	$ 670,000,000	-9%
2013	Michigan Thumb Loop Expansion	MI	2015	ITC		$ 563,000,000	$ 510,000,000	Complete	$ 504,000,000	-1%
2014	Pleasant Prairie - Zion Energy Center	WI	2013	ATC		$ 30,000,000	$ 29,000,000	Complete	$ 36,000,000	24%
2014	Fargo - Sandburg - Oak Grove	IL	2018	ATXI		$ 237,000,000	$ 199,000,000	Complete	$ 201,000,000	1%
2015	Lakefield Jct - Webster	MN/IA	2018	ITC-M		$ 654,000,000	$ 550,000,000	Complete	$ 692,000,000	26%
2015	Winco - Hazleton	IA	2019	Basin		$ 571,000,000	$ 469,000,000	Complete	$ 564,000,000	20%
2016	Zachary - Maywood	MO	2019	Ameren		$ 137,000,000	$ 113,000,000	Complete	$ 172,000,000	52%
2016	Maywood - Austin	MO/IL	2017	Ameren		$ 501,000,000	$ 432,000,000	Complete	$ 723,000,000	67%
2016	Sidney - Rising	IL	2016	ATXI		$ 94,000,000	$ 83,000,000	Complete	$ 88,000,000	6%
2017	Big Stone - Brookings	SD	2017	CAPX		$ 263,000,000	$ 227,000,000	Complete	$ 123,000,000	-46%
2017	Ottumwa - Zachary	IA/MO	2019	ITC-M		$ 186,000,000	$ 152,000,000	Complete	$ 221,000,000	45%
2018	Badger - Coulee & Cardinal - Hickory Creek	WI, WI/IA	2018, 2025	ATC		$ 1,073,000,000	$ 798,000,000	Partially Complete	$ 1,034,000,000	30%
2018	Austin - Pana	IL	2017	ATXI		$ 115,000,000	$ 99,000,000	Complete	$ 135,000,000	36%
2018	Pana - Sugar Creek	IL/IN	2020	ATXI		$ 388,000,000	$ 318,000,000	Complete	$ 408,000,000	28%
2018	Reynolds - Greentown	IN	2018	NIPSCO		$ 299,000,000	$ 245,000,000	Complete	$ 348,000,000	42%
2019	Big Stone South - Ellendale	ND/SD	2019	OTP		$ 403,000,000	$ 331,000,000	Complete	$ 247,000,000	-25%
2019	Reynolds - Hiple	IN	2018	NIPSCO		$ 322,000,000	$ 271,000,000	Complete	$ 405,000,000	49%
	Total # of Projects					Sum of Highest Bids	Sum of Innitial Costs		Sum of Final Costs	Total Ratepayer Savings
	17					$ 6,574,000,000	$ 5,564,000,000		$ 6,571,000,000	18%

Crucially, the fact that a ROFR law increases costs to consumers while giving undue preference to incumbents is precisely the reason for the Federal Energy Regulatory Commission's (**FERC**) Order 1000[6] and was a frequent talking point made by ATC in their testimonies and Protests/Comments filed with FERC.

When FERC initially asked for comments regarding the proposed Order 1000, ATC came out in support of the Order, arguing that the Commission should allow competitive reforms:

> "The Commission should allow regions to propose revisions to their respective regional planning processes that would insure that the processes themselves do not foster or continue undue preference or discrimination."[7]

For example, on March 20th 2012, in testimony delivered to the Minnesota Senate Energy, Utilities and Telecommunications Committee, ATC made the following remarks regarding Senate File 1815—Minnesota's then pending ROFR law:

> "Senate File 1815, unfortunately, would stifle competition in the development and construction of electric transmission facilities leading to higher costs for electricity users in Minnesota. Unquestionably the competitive free market system in America has benefited businesses and consumers for decades. This same competitive spirit will only benefit Minnesota electricity users when applied to the development, construction, ownership and maintenance of electric transmission facilities."[8]

Again, in December 2012, ATC submitted comments supporting the elimination of a federal ROFR, saying:

> "The ROFR is thus a disincentive to robust participation in the transmission planning process and leaving it intact would leave intact anticompetitive practices that undermine the identification and evaluation of more efficient or cost-effective solutions to regional transmission needs. Unchanged, the ROFR leads to rates that are unjust and unreasonable…"[9]

---

[6] The FERC recently reviewed provisions of Order 1000 and continues to endorse competition for regionally cost shared transmission projects.

[7] ATC. (Sep, 2010). *Accession #: 20100929-5329, Docket No. RM10-23-000.*

[8] ATC. (Mar, 2012). *Memorandum to Minnesota Senate Energy, Utilities and Telecommunications Committee.*

[9] ATC. (Dec, 2012). *Accession #: 20121210-5254, Docket No. ER13-187-000.*

While ATC had been a longtime opponent of federal and state ROFR laws in other states, their recent remarks on the issue of a Wisconsin ROFR law are decidedly inconsistent. The reason for this change in position is *not* due to changes in economic theory or any substantial evidence, but rather because ATC did not succeed in becoming an incumbent utility in those states where it fought for entry. Now, ATC and other utilities find it in their economic interest to deny to others the privilege they once demanded for themselves.

In light of the evidence of cost savings due to competition and ATC's public comments of support for a free, competitive transmission industry, ATC's recent support for a Wisconsin ROFR law may seem curious. Why would a longtime proponent of free, competitive bidding suddenly have a change of heart if not for good reason?

The chart below answers that question completely and unambiguously.

This year, MISO has announced a total of 7 competitive transmission projects, two of which are located at least partially in Wisconsin. All together, the 7 projects are estimated to cost more than $6.5 billion, and the two Wisconsin-based projects are estimated at a cost of nearly $1.8 billion.

Upcoming Competitive MISO Projects

Short Name	State	Full Project Name	Project Description	Facilities in Project	Opening Bid Date	Bidding Deadline	MISO Estimated Cost	Expected In-Service Date
RIKY	KY	Reid EHV - Indiana/Kentucky State Line	1 new 345 kV transmission line	1	1/31/25	5/1/25	$ 73,600,000	2032
WISE	WI	Wisconsin Southeastern Project	4 new 345 kV transmission lines; 4 new 345 kV substations	8	2/13/25	7/28/25	$ 568,300,000	2033
BECI	WI	Bell Center – Columbia – Illinois/Wisconsin State Line	3 new 765 kV transmission lines	3	2/27/25	8/11/25	$ 1,209,300,000	2034
WIIL	IL	Woodford County – Illinois/Indiana State Line	2 new 765 kV transmission lines; 1 new 765 kV substation	3	7/25/25	1/6/26	$ 984,600,000	2034
STIW	IA/IL	Sub T – Iowa/Illinois State Line – Woodford County	2 new 765 kV transmission lines	2	8/8/25	1/20/26	$ 940,100,000	2034
MARS	IA	Marshalltown – Lehigh – Sub T – Montezuma – East Adair	2 new 345 kV transmission lines; 2 new 765 kV transmission lines	4	11/25/25	5/11/26	$ 1,498,200,000	2032-2034
EASL	IA	East Adair – Minnesota/Iowa State Line – Arbor Hill – York Avenue	2 new 345 kV transmission lines; 1 new 765 kV transmission line; 1 new 765 kV substation	4	12/11/25	5/27/26	$ 1,226,300,000	2034
		Total # of Projects		Total # of Facilities			Total Estimated Cost	Total Estimated Cost of WI Projects
		7		25			$ 6,500,400,000	$ 1,777,600,000

Given that 27% of all competitive transmission projects by value are taking place here in Wisconsin in 2025, ATC has a clear economic incentive to prevent potential competitors from winning these transmission projects via the passing of a state ROFR law.

Conclusion

A law affording a right of first refusal to electric transmission companies in Wisconsin would not benefit consumers. Non-competitively developed MISO projects have a record of going seriously overbudget by a rate of 18%. Competive projects, on the other hand, have a record of saving consumers money at a rate of 37%. The reason for these cost savings is because bidders self-impose project implementation caps, revenue restrictions and other cost containment strategies in order to earn the right to develop, own and maintain competitive projects.

The fact that competing utilities incorporate these cost containment strategies into their bids indicates that the potential profit from these large, risky and sometimes ground-breaking transmission projects is still so substantial that developers are willing to develop them despite these restrictions.

In the absence of competition, there is no reason and, indeed, no requirement, for ATC or any other incumbent transmission developer to offer creative and cost-saving mechanisms. If, indeed, ATC is the least-cost developer of transmission infrastructure in the state, then they have nothing to fear from competition other than the prospect of earning less profit than they would in a 100% monopoly industry. If a diminution in potential profits is ATC's concern, then it makes little sense from a consumer's perspective why the state should be looking after the interests of a single utility company and not the interests of its citizens as a whole.

The Economics of Transmission Monopoly: ROFR Laws and Their Price Impact *

Gavin Roberts
Pelican Institute for Public Policy
Senior Fellow, Energy
*Draft – in editing

Executive Summary

This study examines the economic impact of state-level Right of First Refusal (ROFR) laws on electricity prices across multiple states. ROFR laws grant incumbent utilities the preferential right to develop new transmission projects, limiting competition from independent developers. Using a two-way fixed effects difference-in-differences (DiD) framework, we analyze monthly and annual electricity price data from 2007 to 2018, and in some cases, extend the analysis to 2000 to 2025. Our results indicate that ROFR laws are associated with statistically significant increases in electricity prices, particularly in the industrial and commercial sectors. The industrial sector experiences the largest increases, ranging from 4.25% to 7.64%, while the commercial sector sees increases of 1.04% to 4.34%. Residential electricity prices also rise in most specifications, although the effects are generally smaller.

Introduction

State-level Right of First Refusal (ROFR) laws have increasingly become a policy tool shaping electricity transmission investment in the United States. These laws emerged as a response to the Federal Energy Regulatory Commission's (FERC) Order 1000, which sought to increase competition by removing federal ROFR protections for incumbent utilities (FERC, 2011). FERC made the decision to remove federal ROFR protections because leaving it in place, in FERC's view, would "allow practices that have the potential to undermine the identification and evaluation of a more efficient or cost-effective solution to regional transmission needs, which in turn can result in rates … that are unjust and unreasonable or otherwise result in undue discrimination by public utility transmission providers" (FERC, 2011). In short, FERC removed ROFR to make electricity transmission more efficient and ultimately save money for consumers.

In the aftermath of this regulatory shift, multiple states enacted their own ROFR laws, ensuring local utilities retained exclusive rights to construct new transmission infrastructure (For example, see Minnesota Legislature, 2012; Michigan Legislature, 2021; Indiana General Assembly, 2023). Proponents argue that these laws safeguard local jobs, maintain grid reliability, and leverage the expertise of established utilities (Bruggers, 2023). Critics, however, contend that ROFR laws stifle competition, drive up costs, and lead to inefficient infrastructure investments (Pelican Institute, 2024; Pfeifenberger, Chang, & Hagerty, 2021).

The economic consequences of ROFR laws remain a subject of significant debate. While supporters claim these policies prevent unnecessary regulatory hurdles and provide continuity in transmission development, emerging evidence suggests that they may lead to higher costs

(Pelican Institute, 2024; Lucas, 2025). By granting exclusive rights to incumbents, ROFR laws limit competitive bidding and reduce incentives for cost minimization and innovation. These inefficiencies can translate into higher electricity prices for consumers. Moreover, legal challenges in states such as Texas and Iowa highlight the contentious nature of ROFR laws, with courts ruling that these policies violate principles of fair competition (Kleckner, 2023; Kauffman, 2023).

This study employs a rigorous approach to assess the impact of ROFR laws on electricity prices. Using a two-way fixed effects difference-in-differences (DiD) framework, we analyze data spanning multiple states and time periods to isolate the effect of ROFR policies from other market factors. By focusing on monthly and annual electricity price data from 2007 to 2018 and, in some specifications, extending the analysis to 2000 to 2025, we aim to provide robust evidence on the consequences of these laws. Our findings indicate that ROFR laws are associated with price increases across all consumer sectors, particularly in the industrial and commercial sectors.

Summary of Right of First Refusal (ROFR) Laws

State-level Right of First Refusal (ROFR) laws have emerged as a legislative response to FERC Order 1000, which sought to introduce competition into electricity transmission planning by removing federal ROFR protections for incumbent utilities. Despite the federal deregulation, several states enacted their own ROFR laws, ensuring that local, incumbent transmission providers retained preferential rights to build new high-voltage transmission lines within their territories (FERC, 2011).

Minnesota, North Dakota, and South Dakota were among the earliest adopters of state-level ROFR laws, passing their statutes in 2011 and 2012 (Minnesota Legislature, 2012; North Dakota Legislative Assembly, 2011; South Dakota Legislature, 2011). These laws primarily function to shield local utilities from competition, allowing them to exercise first rights over new projects connecting to their existing infrastructure. Over the next decade, other states followed suit, with Nebraska and Oklahoma implementing ROFR protections in 2013 (Nebraska Legislature, 2013; Oklahoma Legislature, 2013), Alabama in 2015 (Alabama Legislature, 2015), Montana in 2017 (Montana Legislature, 2017), and Texas in 2019 (Texas Legislature, 2019).

By the early 2020s, a new wave of ROFR legislation spread across states with utilities concerned about competitive bidding processes for new transmission investments. Iowa (2020), Michigan (2021), Indiana (2023), and Mississippi (2023) each passed ROFR laws ensuring that incumbent transmission owners retained development rights for infrastructure expansions (Iowa Legislature, 2020; Michigan Legislature, 2021; Indiana General Assembly, 2023; Mississippi Legislature, 2023). These laws were often championed by local utilities and affiliated trade groups, who argued that ROFR protects local jobs, ensures reliability, and leverages incumbent expertise (Bruggers, 2023). However, critics contend that ROFR laws increase costs, stifle competition, and ultimately raise electricity prices for consumers (Pelican Institute, 2024; Pfeifenberger et al., 2021).

While most state ROFR laws remain intact, some have faced significant legal challenges. The Texas ROFR law (2019) was struck down by the U.S. Court of Appeals for the Fifth Circuit, which ruled that it violated the dormant Commerce Clause by discriminating against out-of-state firms (Kleckner, 2023). Similarly, Iowa's 2020 ROFR law was blocked by the Iowa Supreme Court, which described the statute as "quintessential crony capitalism" and ruled that it had been improperly passed through legislative logrolling (Kauffman, 2023). In contrast, Minnesota's ROFR statute survived judicial scrutiny in *LSP Transmission Holdings v. Sieben* (2020), where the Eighth Circuit Court upheld the law, arguing that it did not place an undue burden on interstate commerce (LSP Transmission Holdings v. Sieben, 2020).

As the legal landscape evolves, state-level ROFR policies remain contentious, with ongoing debates about their economic implications. Empirical analyses suggest that these laws may lead to higher electricity costs, as utilities lacking competitive pressure tend to engage in less cost-efficient transmission planning (Pfeifenberger et al., 2021). Last year, we pointed to Minnesota as a case study in how ROFR protections can raise costs, as electricity prices in Minnesota have trended higher than neighboring Wisconsin, which does not enforce ROFR protections (Pelican Institute, 2024).

The broader impact of ROFR laws extends beyond state borders, affecting regional electricity markets and interstate transmission planning efforts. Many of these states are part of the Midcontinent Independent System Operator (MISO) network, meaning that the presence or absence of ROFR laws in one jurisdiction can influence grid investments across multiple states (FERC, 2011). This interconnectedness implies that costs related to ROFR policies likely spillover into neighboring states and beyond.

The Economic Impact of ROFR Laws

ROFR policies limit competition by creating barriers to entry in the electricity transmission sector. Incumbent utilities and their allies argue that these policies promote stability by protecting local jobs, maintaining long-term relationships with stakeholders, and leveraging the specialized expertise of existing service providers. However, by effectively excluding independent transmission developers from bidding on new projects, ROFR laws restrict market competition and lead to inefficiencies in transmission investment. Without competitive pressures, incumbents have little incentive to minimize costs, optimize infrastructure development, or seek innovative solutions to improve the grid (Rossi, 2023).

The inefficiencies associated with ROFR policies are evident in transmission cost disparities between competitive and non-competitive projects. A study found that competitively developed transmission projects resulted in 37% cost savings, while similar non-competitive projects experienced cost increases of 18% (Lucas, 2025). These findings suggest that removing competition leads to higher transmission costs, which are ultimately passed on to consumers in the form of increased electricity rates.

This dynamic is particularly pronounced in states where utilities operate under cost-of-service regulation, a framework that allows utilities to recover their costs plus a guaranteed rate of return from ratepayers. Under this model, higher project costs can translate into higher profits for the

utility, as increased capital expenditures lead to a larger rate base on which returns are calculated. This incentivizes utilities to favor costlier projects and resist competitive bidding processes that might drive down costs (Rossi, 2023).

In addition to higher costs, ROFR laws contribute to regulatory capture, as utilities leverage their influence to shape policies in their favor. This manifests in extensive lobbying efforts aimed at preserving or expanding ROFR protections. The cost of these lobbying efforts represents another inefficiency, diverting resources that could be used to improve transmission infrastructure or integrate renewable energy sources. Furthermore, legal uncertainty surrounding ROFR laws—exemplified by court rulings in Iowa and Texas striking down state ROFR provisions as unconstitutional—adds to the instability of long-term transmission planning (Kauffman, 2023; Kleckner, 2023).

The anti-competitive nature of ROFR laws also stifles innovation in grid modernization. Independent developers often introduce cost-containment mechanisms, alternative financing structures, and advanced grid technologies, but their exclusion under ROFR policies prevents these efficiency gains from reaching the market. Competitive bidding has been shown to produce transmission cost savings of 20% to 30% while encouraging technological improvements (Rossi, 2023).

The consequences of ROFR laws extend beyond individual states and impact regional energy markets. Many states with ROFR policies participate in multi-state transmission networks, such as the Midcontinent Independent System Operator (MISO) region, where inconsistent ROFR laws complicate infrastructure development and increase costs across the grid (FERC, 2011). As policymakers consider the trade-offs between protecting incumbent utilities and fostering a more competitive energy market, empirical evidence suggests that competitive transmission development leads to lower costs, improved efficiency, and a more resilient electricity grid.

Methodology

To evaluate how state-level Right of First Refusal (ROFR) laws affect electricity prices, we employ a two-way fixed effects difference-in-differences (DiD) framework. This model helps isolate the impact of ROFR enactment by controlling for unobserved, time-invariant differences across states (through state fixed effects) and for common shocks affecting all states in a given period (through time fixed effects) (Wing et al., 2018).

Data

We use monthly and annual data on electricity prices from 2007 to 2018, focusing on states in the midcontinent of the United States. The sample states are shown in Figure 1. To allow for flexibility in how we measure effects across sectors, we examine the natural log of electricity prices for all sectors combined and separately for each sector (commercial, residential, and industrial). The use of the natural log transforms price levels to permit the interpretation of the coefficient on ROFR as an approximate percentage change.

The sample of states is chosen such that it primarily consists of states within the Midcontinent Independent System Operator (MISO) region, ensuring that differences in electricity prices are not driven by variations in transmission system governance. By focusing on states in the midcontinent, the analysis controls for regional electricity market dynamics and avoids confounding effects from fundamentally different regulatory or market structures. Additionally, the selection includes a mix of treatment and control states with comparable electricity consumption patterns and sectoral distributions, helping to isolate the impact of Right of First Refusal (ROFR) laws. The mix of control and treatment states exhibit similar industrial and residential electricity demand profiles and comparable weather patterns. The similarities across control and treatment states helps ensure that our results are not driven by confounding factors.

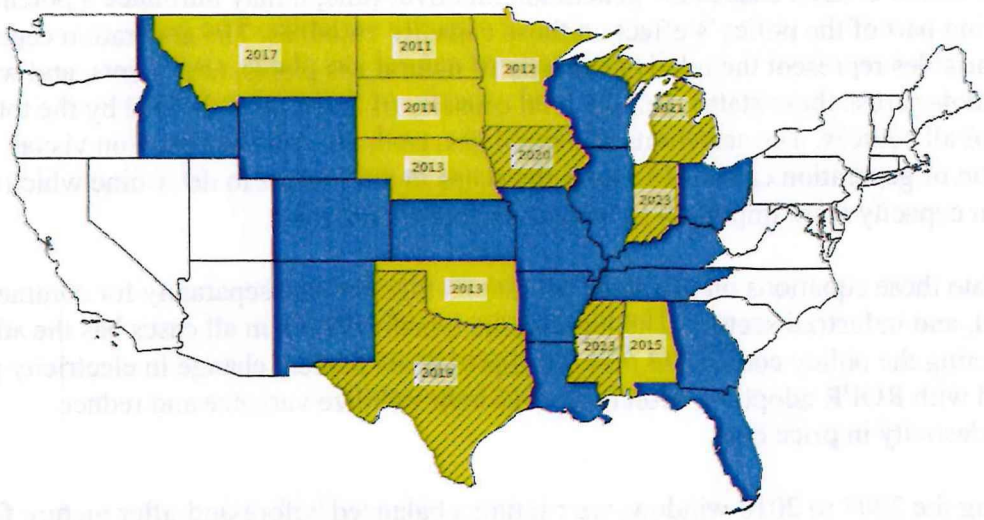


Figure 1. *Sample states for estimating the impact of ROFR policies on electricity prices. Blue states never enacted state ROFR. Yellow states eventually enacted. Shaded states did not yet enact ROFR in the main sample (2007 to 2018).*

Indiana, Iowa, Michigan, Mississippi, and Texas are shaded in Figure 1 because they passed ROFR in the indicated years, but these years occurred after the main sample period applied in our analysis, so those states serve as control rather than treatment states in the main analysis. This is a feature of the analysis as a driving assumption is that control states have a similar propensity to pass the legislation as treatment states, which is clearly true for this set.

Analysis

In the baseline analysis with monthly data, we estimate:

$$\ln(P_{it}) = \alpha + \delta ROFR_{it} + \lambda_i + \gamma_t + \epsilon_{it}$$

where $\ln(P_{it})$ is the electricity price in state i at time t, $\ln(\cdot)$ denotes the natural logarithm, $ROFR_{it}$ is a treatment indicator that equals 1 if a ROFR law is in effect in state i at time t and 0 otherwise, λ_i denotes state fixed effects, γ_t denotes time fixed effects (month or year dummies),

and ϵ_{it} is the error term. We also estimate this regression for the expanded monthly sample from 2000 to 2025.

In the annual specification, we add generation capacity control variables. In this case, the model can be written as:

$$\ln(P_{it}) = \alpha + \delta ROFR_{it} + \beta_1 RelGasCap_{it} + \beta_2 RelCoalCap_{it} + \beta_3 RelWindCap_{it} + \lambda_i + \gamma_t + \epsilon_{it}$$

where $RelGasCap_{it}$, $RelCoalCap_{it}$, and $RelWindCap_{it}$ represent the proportions of a state's total generation capacity attributable to natural gas, coal, and wind, respectively. Including these capacity variables helps control for factors influencing electricity prices beyond ROFR policy. However, if ROFR itself shapes the generation mix over time, it may introduce a potential bias by capturing part of the policy's effect on those capacity variables. The generation capacity control variables represent the relative capacity of natural gas plants, coal plants, and wind turbine plants across these states, i.e., the total capacity of that source divided by the total capacity of all sources. The selections of natural gas, coal, and wind is based on visual comparison of generation capacities across the states in our sample to determine which types of generation capacity were important to include as control variables.

We estimate these equations on prices for all sectors together and separately for commercial, residential, and industrial sectors. The logarithmic transformation in all cases has the advantage of interpreting the policy coefficient δ as the approximate percent change in electricity prices associated with ROFR adoption. Moreover, logs help stabilize variance and reduce heteroskedasticity in price data.

In choosing the 2007 to 2018 window, we capture a balanced before-and-after picture for states that enacted ROFR laws early, while also treating states such as TX, IA, MI, and IN as controls prior to their laws taking effect.

Models are also run excluding TX, IA, and NM due to ongoing legal challenges and the fact that TX and NM are not as interconnected with MISO as other states in the sample. Finally, we explore a longer 2000 to 2025 window to examine potential long-run impacts and capture additional policy variation, though this expanded sample comes with a heightened risk of confounding factors entering the analysis. Controlling for generation capacity in the 2000 to 2025 sample presents a particular concern, as the extended period allows more time for ROFR policies themselves to influence the generation capacity mix, potentially biasing estimates if capacity shifts are endogenous to the policy, i.e., if the ROFR policy impacts generation mix then the results from this model might be biased. However, results from all samples and specifications are provided for completeness.

All data for this analysis was collected using the U.S. Energy Information Administration (EIA) API. The EIA API allows for retrieval of monthly and annual electricity prices across all sectors, as well as detailed capacity data for different generation sources, ensuring consistency in measurement across states and time periods (EIA, 2024).

Results

Table 1 presents the estimated impact of Right of First Refusal (ROFR) laws on electricity prices across different sectors and timeframes. The results indicate that ROFR laws are generally associated with higher electricity prices, with statistically significant effects in most specifications. The estimated effects vary by sector, with the industrial sector experiencing the largest price increases, followed by the commercial sector, while the residential sector sees more modest impacts. The preferred specification, which uses monthly data from 2007 to 2018 without generation capacity controls, provides the most direct estimate of the policy's effect on prices.

For the industrial sector, ROFR enactment is associated with electricity price increases ranging from 4.25% to 7.64%. These estimates are statistically significant across all specifications, highlighting a strong relationship between ROFR laws and industrial electricity costs. The commercial sector also experiences meaningful increases, with estimates ranging from 1.04% to 4.34%. These effects are statistically significant in most cases. The industrial and commercial results suggest that businesses bear higher costs following the implementation of ROFR laws, which has broader economic implications as businesses tend to be sensitive to energy prices.

Table 1. *Estimated impacts of ROFR laws on electricity prices. ROFR impact estimates in bold.*

	Monthly (2007 to 2018)	Monthly (2000 to 2025)	Annual (2007 to 2018)	Annual (2000 to 2025)	Monthly (2007 to 2018) w/out IA, NM, TX
All Sectors					
ROFR Active	**0.0389*****	**0.0093****	**0.0246**	**0.002**	**0.0269*****
Sample Size	3890	7750	238	404	3457
R-Squared	0.791	0.871	0.848	0.909	0.8253
Commercial					
ROFR Active	**0.0434*****	**0.0154*****	**0.0308***	**0.0104**	**0.0343*****
Sample Size	3887	7749	238	404	3456
R-Squared	0.762	0.840	0.828	0.884	0.804
Industrial					
ROFR Active	**0.0764*****	**0.0489*****	**0.0647****	**0.0425****	**0.0621*****
Sample Size	3888	7751	238	404	3456
R-Squared	0.615	0.746	0.636	0.790	0.655
Residential					
ROFR Active	**0.0312*****	**0.0100*****	**0.0145**	**-0.0055**	**0.0222*****
Sample Size	3887	7746	238	404	3455
R-Squared	0.8362	0.906	0.9122	0.9397	0.859
Gen Controls?	No	No	Yes	Yes	No

*indicates significance at the 10% level, **at the 5% level, and ***at the 1% level.

The residential sector shows smaller estimated effects, but most specifications still yield positive and statistically significant coefficients. The estimated price increases range from 1.00% to 3.12%, though one specification, the annual model covering 2000 to 2025, produces a negative estimate of -0.55%, but that estimate is not statistically significant. The weaker effects in the residential sector suggest that ROFR policies may have a more limited direct impact on

household electricity prices compared to industrial and commercial consumers. This is not altogether surprising, as state public utility commissions tend to be more protective of residential consumers than industrial or commercial consumers.

The preferred specification is the monthly sample from 2007 to 2018 without controls for generation capacity. This approach allows for the largest sample and clearer identification of the ROFR effect without introducing potential bias from changes in the generation mix. The consistency of positive and significant results in this specification supports the conclusion that ROFR laws contribute to higher electricity prices across all sectors. Further, the results in Table 1 likely underestimate the impact of ROFR policies for two reasons: (1) most of the states in the sample are in MISO, so higher costs associated with ROFR policies in treatment states are likely to spillover into control states, which will bias the estimates downwards; and (2) ROFR policies likely lead to inefficient generation capacity investment and employment, so when we control for generation, we dampen the estimated overall impact of ROFR policies on electricity prices.

Conclusion

The results of this study provide strong empirical evidence that ROFR laws lead to higher electricity prices across multiple consumer sectors. The industrial sector experiences the largest cost increases, with price effects ranging from 4.25% to 7.64%, followed by the commercial sector, which sees increases between 1.04% and 4.34%. Residential electricity prices also rise in most specifications, though to a lesser extent. These estimates likely reflect lower bounds to the overall impact of ROFR policies on prices due to potential spillovers and inefficient generation investment.

Our findings highlight the costs associated with the anti-competitive nature of ROFR laws and their implications for electricity affordability. By limiting competition, these laws allow incumbent utilities to engage in costlier transmission investments without market pressures to minimize expenses. This not only raises electricity costs for consumers but also stifles innovation in transmission infrastructure development and generation investment. Policymakers should carefully evaluate these negative effects of ROFR policies.

References

Alabama Legislature. *Energy Security Act of 2015*, Alabama Code § 37-4-150. Retrieved from https://law.justia.com/codes/alabama/2023/title-37/chapter-4/article-7/

Bruggers, J. (2023). Utilities seize control of the coming boom in transmission lines. *Inside Climate News*. Retrieved from https://insideclimatenews.org/news/26042023/transmission-utilities-right-first-refusal/

U.S. Energy Information Administration (EIA). (2024). *Electricity data via EIA API*. Retrieved from https://www.eia.gov/opendata/

Federal Energy Regulatory Commission (FERC). (2011). *Transmission planning and cost allocation by transmission owning and operating public utilities*. Retrieved from https://www.ferc.gov/sites/default/files/2020-04/OrderNo.1000.pdf

Indiana General Assembly. *Indiana Code § 8-1-38-9 (2023)*.

Iowa Legislature. *Iowa Code § 478.16 (2020)*. Retrieved from https://www.legis.iowa.gov/docs/code/2022/478.16.pdf

Kauffman, C. (2023). Citing 'crony capitalism,' Iowa Supreme Court blasts late-night legislative logrolling. *Iowa Capital Dispatch*. Retrieved from https://iowacapitaldispatch.com/2023/03/29/citing-crony-capitalism-iowa-supreme-court-blasts-late-night-legislative-logrolling/

Kleckner, T. (2023). SCOTUS won't take up Texas appeal of ROFR law. *RTO Insider*. Retrieved from https://www.rtoinsider.com/65790-scotus-wont-take-up-texas-rofr-law/

LSP Transmission Holdings v. Sieben, 954 F.3d 1018 (8th Cir. 2020).

Lucas, M. (2025). ROFR Laws Increase Costs to Consumers: Competition Reduces Costs to Consumers: ATC Agrees. *MacIver Institute.*

Michigan Legislature. *MCL § 460.593 (2021)*. Retrieved from https://www.legislature.mi.gov/mileg.aspx?page=getObject&objectName=mcl-460-593

Minnesota Legislature. *Minn. Stat. § 216B.246 (2012)*. Retrieved from https://www.revisor.mn.gov/statutes/cite/216B.246

Mississippi Legislature. *Miss. Code Ann. § 77-3-10.1 (2023)*. Retrieved from https://law.justia.com/codes/mississippi/2015/title-77/chapter-3/

Pelican Institute. (2024). *The Economic Implications of Right of First Refusal (ROFR) Legislation*.

Pfeifenberger, J., Chang, J., & Hagerty, M. (2021). Cost savings offered by competition in electric transmission: Experience to date and potential value for electricity consumers. *The Brattle Group.*

Rossi, J. (2023). The costs of crony capitalism in regional transmission grid expansion. *The Electricity Journal, 36*, 107335.

Texas Legislature. *Tex. Utilities Code § 37.056(e) (2019)*. Retrieved from https://statutes.capitol.texas.gov/docs/sdocs/utilitiescode.pdf

Wing, C., Simon, K., & Bello-Gomez, R. (2018). Designing difference in difference studies: Best practices for public health policy research. *Annual Review of Public Health, 39*, 453–469.

JOCKEY INTERNATIONAL, INC.

February 17, 2025

Speaker Robin Vos
P.O. Box 8953
Madison, WI 53708-8953

RE: Please Oppose New ROFR Legislation

Dear Representative Vos:

As General Counsel of Jockey International, Inc. ("Jockey"), I am writing to you regarding the proposed Right of First Refusal legislation ("ROFR") being pressed by Wisconsin's incumbent utility companies. The proposed ROFR legislation is a major concern to Jockey as it is anti-business and will likely lead to higher utility rates across Wisconsin.

Jockey maintains its corporate headquarters in Kenosha, Wisconsin, and employs hundreds of Wisconsinites. Jockey is a good corporate citizen and is heavily invested in Wisconsin; therefore, Jockey is keenly interested in any proposed legislation that will raise the cost of doing business in Wisconsin.

As you are aware, under ROFR laws, the competitive bidding process for the development of large new transmission projects approved by the Midcontinent Independent System Operator ("MISO") would effectively be eliminated. The utility companies are using a biased, self-funded study to claim this legislation will save ratepayers $1 billion in additional costs. These alleged savings by eliminating competition are illogical.

Removing outside competition from the bidding process will place Wisconsin's utility infrastructure in a weakened state over time, as a lack of competition will lead to increased utility costs, reduced innovation and a disincentive for incumbent utility companies to create efficiencies. It is not in Wisconsin's best interest to freeze out legitimate competition just to appease incumbent utility companies. Jockey has faced competition in its industry for over 149 years. This competition has incentivized Jockey to innovate, create efficiencies and stay cost competitive to keep Jockey a market leader. Competition has made Jockey stronger and has benefited our consumers. Utility companies should be treated the same way to ensure that they push for innovation, strive for efficiencies and stay cost competitive.

As a large employer in Wisconsin, we urge you to reject this attempt to expand existing monopolies and stifle competition in new utility projects. Wisconsin used to have among the lowest electricity rates in the nation. Former Gov. Tommy Thompson used to highlight our low-cost energy status when trying to bring new firms to Wisconsin. Much has changed since then.

AMERICAN TRANSMISSION COMPANY®

MEMORANDUM

TO: Minnesota Senate Energy, Utilities and Telecommunications Committee

FROM: John Garvin, American Transmission Co.

DATE: March 20, 2012

SUBJECT: Senate File 1815

Thank you very much for the opportunity to provide testimony regarding Senate File 1815.

ATC owns, operates, builds and maintains the high voltage transmission system serving portions of Wisconsin, Michigan, Minnesota and Illinois. Formed in 2001 as the nation's first multi-state transmission-only utility, ATC has invested $2.7 billion to improve the adequacy and reliability of its infrastructure. ATC is a $3.1 billion company with 9,440 miles of transmission lines and 519 substations.

ATC is also a national leader in the cost efficient planning, development and construction of high voltage electric transmission facilities. With nearly $3 billion invested in the last 10 years, ATC has a proven track record of building needed transmission as cost efficiently as possible for electricity users.

Senate File 1815, unfortunately, would stifle competition in the development and construction of electric transmission facilities leading to higher costs for electricity users in Minnesota. Unquestionably the competitive free market system in America has benefited businesses and consumers for decades. This same competitive spirit will only benefit Minnesota electricity users when applied to the development, construction, ownership and maintenance of electric transmission facilities.

Senate File 1815 is contrary to the nation's energy policy governing transmission. In July, 2011, the Federal Energy Regulatory Commission (FERC) issued Order 1000. One of the central tenets of Order 1000 is to enable incumbent and non-incumbent transmission developers to compete to build transmission facilities that would provide regional benefits, with the costs shared on a regional basis. In its regional transmission planning process, MISO is proposing that these projects would be designated "Market Efficiency Projects" that provide economic savings and "Multi-Value Projects" that provide public policy, reliability and/or economic

benefits. FERC's goal with Order No. 1000 was to encourage the development of the substantial amount of transmission needed to support Renewable Portfolio Standards and reliability among other purposes, and that it be developed in the most efficient and cost effective manner.

Establishing an exclusive right of incumbent transmission owners to construct and own electric transmission lines that connect to facilities of the incumbent provider, as proposed in Senate File 1815, would remove any competition to plan, construct, own, operate and maintain certain transmission facilities that MISO would require to provide within its regional planning process. Yet Minnesota incumbent transmission owners who would be protected from competition inside Minnesota would at the same time be able to compete to develop transmission projects in other states that do not impose ROFRs on the market.

Finally, the legislation would create an "off-ramp" for projects that are included in the MISO regional plan for the state of Minnesota. The projects included in that plan are those determined to be the best solution to address a given transmission need. Senate File 1815 would inappropriately give Minnesota transmission owners the ability to refuse to build a project that is included in a regional plan, and this would conflict with the MISO Transmission Owners' obligation to build.

Today, the transmission grid is a regionally interconnected regional system, not a series of in-state systems. An incumbent transmission owner's ability to veto a project that is included in a regional plan could have cost and reliability impacts both on Minnesota electricity users, as well as users beyond the Minnesota state border.

American Transmission Company

Expert Report on the Revenue Requirement Impact on ATC's Existing Wisconsin Network Customers from Constructing and Operating a Hypothetical New Transmission Line Under MISO Cost Allocation Procedures

October 30, 2024

Table of Contents

1. Scope of the report

At the request of American Transmission Company ("ATC" or "the Company"), I was engaged to prepare an expert report on the development of revenue requirements, cost allocation approaches, and procedures under MISO (Midcontinent Independent System Operator) rules for ATC and competitors under the conditions applicable to the construction of a new transmission line ("The Report") using assumptions provided by ATC for the hypothetical new transmission line. The resulting revenue requirement impacts to construct and operate the hypothetical new transmission line will affect both ATC's existing Wisconsin network customers as well as non-ATC network transmission customers within the region of the hypothetical new transmission line. This report provides an illustration of the methods used to develop revenue requirements using various assumptions and applicable MISO rules for cost allocations. The results provide a comparison of the revenues, costs and regional cost-sharing benefits for the construction and operation of the new hypothetical transmission line for incumbent entities (in this case, ATC) as opposed to new entrants.

This report includes:

- Qualifications of Expert (Section 2),
- An executive summary (Section 3),
- Background on the current competitive transmission process (Section 4),
- Using existing MISO/ATC procedures, a description of the methodology used to develop and analyze the revenues, costs and benefits that will apply to existing ATC Wisconsin network customers and customers of the hypothetical new transmission line using assumptions provided by ATC (Section 5),
- Outcomes of the scenarios (revenue requirements) based on ATC-provided assumptions and MISO regional cost allocation methods (Section 6),
- A summary of results and findings from the Study (Section 7), and
- Details of the MISO procedures for revenue requirements (Appendix A), Cost allocations (Appendix B) and Revenue Requirement Calculations under three scenarios (Appendix C).

Limitations & assumptions of the Study

Our work was limited to the specific procedures and analysis applied to ATC as described in this Expert Report. Our engagement cannot be relied upon to disclose errors, irregularities, or illegal acts including fraud or falsifications that may exist. We are not providing an audit, accounting, tax or attest opinion or other form of assurance.

2. Alan Felsenthal Qualifications & CARS Practice Overview

Alan Felsenthal's Qualifications:

I, Alan Felsenthal, am currently a Managing Director with PricewaterhouseCoopers LLP ("PwC") and work exclusively in our Complex Accounting & Regulatory Solutions (CARS) practice within PwC's Trust practice. PwC is an international public accounting firm and a leading provider of services to the electric and gas industry. I received a Bachelor of Science degree in Accounting from the University of Illinois and joined the Regulated Industries Division of Arthur Andersen LLP in 1971 and became a Principal at that Firm in 1985. I remained at Arthur Andersen until 2002 when I joined PwC as a Managing Director. Throughout my 50 plus year career, I have focused on the unique accounting, tax and financial reporting issues at regulated entities.

Among various duties, I have provided rate case assistance for a number of utilities on various issues including, but not limited to, the reasonableness of projections in connection with service company cost allocations, forecast test periods, application of regulatory accounting in specific situations, appropriate regulatory treatment of asset retirement obligations and cost of removal, lead-lag studies, various income tax issues and inclusion of the prepaid pension asset in rate base. I have prepared and submitted expert testimony on a number of issues before the Regulatory Commission of Alaska, the Arizona Corporation Commission, the Florida Public Service Commission, the Hawaii Public Utilities Commission, the Illinois Commerce Commission, the Indiana Utility Regulatory Commission, the Maine Public Utilities Commission, the Missouri Public Service Commission, the Public Utility Commission of Ohio, the South Carolina Public Service Commission, the Public Utility Commission of Texas, the Public Service Commission of Utah, the Washington Utilities and Transportation Commission, the Public Service Commission of West Virginia, and the Federal Energy Regulatory Commission (FERC).

In addition to my regulatory consulting experience, I have been a financial statement auditor and supported companies from a financial audit and consulting perspective including review and reporting on financial statements filed with the NYSE and SEC, reporting on FERC Form 1's, consulting on matters involving cost allocations, and compliance with applicable guidelines.

I developed and instructed a Rate Case Experience Seminar which is a week-long seminar conducted each year on an open enrollment basis for utility professionals. I also developed and instructed PwC's Utility Industry Basic Accounting and Ratemaking Seminar and PwC's Utility Income Taxes – Accounting and Ratemaking Issues training, both of which are 2-day seminars provided to utility professionals. I have presented at Edison Electric Institute and American Gas Association seminars. I have conducted numerous special purpose training courses for over 30 utility companies and regulators including the FERC. I am a member of the American Institute of Certified Public Accountants as well as the Illinois CPA Society.

I, as well as other PwC personnel working under my supervision and direction, have read and analyzed supporting documentation and information relevant to the issues on this engagement. I have been assisted by several other PwC professionals, each with applicable experience on utility accounting processes.

Complex Accounting and Regulatory Support Practice:

Within the Power and Utilities industry team, there is a smaller, highly specialized group, the Complex Accounting and Regulatory Solutions ("CARS") practice, of which I am a member. The CARS practice is dedicated to helping regulated companies in the energy and utilities industries manage their regulatory risk and solve complex accounting problems. This team of seasoned professionals has deep experience working with regulated entities. The individuals in the CARS practice have many years of experience serving rate regulated entities (regulated electric, gas, and water utilities).

3. Executive summary

Mr. Felsenthal was engaged by ATC to prepare an expert report for the Company supporting the calculation of revenue requirements for ATC's existing Wisconsin network customers necessary to recover construction costs and operating costs over the life of a hypothetical new transmission line under several scenarios using ATC-provided assumptions. The revenue requirements were determined using existing ATC data from their Attachment O filing (the annual formula rate filing described in more detail later in this Report), certain assumptions with respect to the costs to construct a hypothetical new transmission line, cost escalations and procedures to allocate costs between ATC's existing Wisconsin network customers and customers of the new transmission line using MISO (Midcontinent Independent System Operator) regulations and criteria applicable to ATC and its competitors. All of the underlying assumptions related to this hypothetical new transmission line were proposed by ATC and Mr. Felsenthal is not opining on the reasonableness of these assumptions. The guidance included in the MISO Rules, Manuals and Agreements were used to establish a scope and comprehensive understanding to form the conclusion.

Transmission infrastructure is constructed to provide a dependable and reliable flow of electricity to customers. Most rate-regulated utilities, including ATC, determine the price they charge their customers for regulated service using a traditional rate base/rate of return methodology. Under such an approach, revenue requirements (or cost of service) are calculated by determining the regulated entities' allowable operating costs (those costs necessary to provide the regulated service including operation and maintenance expenses, depreciation expense, taxes other than income and income taxes) and adding such expenses to a calculated return (cost of debt and a fair return on rate base, primarily the net investment in property, plant and equipment). This is the regulatory compact that exists between regulators and regulated utilities—in exchange for being granted an exclusive service territory, the regulator permits the regulated entity to recover the costs of providing regulated service plus a fair return to its investors. The revenue requirement formula is reviewed and approved by regulatory bodies such as the Federal Energy Regulatory Commission ("FERC") and administered by MISO. The Public Service

Commission of Wisconsin is responsible for the approval of routing and siting for certain transmission projects in the state of Wisconsin. The revenue requirement is allocated to ratepayers through a rate structure that distributes costs based on factors like usage, demand, and specific service areas, thereby ensuring that each customer pays a fair share of the overall costs.

ATC computes its annual revenue requirement on Attachment O which is submitted to MISO for review and approval. From the Attachment O, transmission rates will be developed based on, among other things, expected system peak. See Appendix A for a more detailed discussion of Attachment O and regulation under MISO as well as MISO's rules and regulations for transmission Multi-Value Projects ("MVP's"), large-scale projects which among other criteria provides various benefits across multiple jurisdictions.

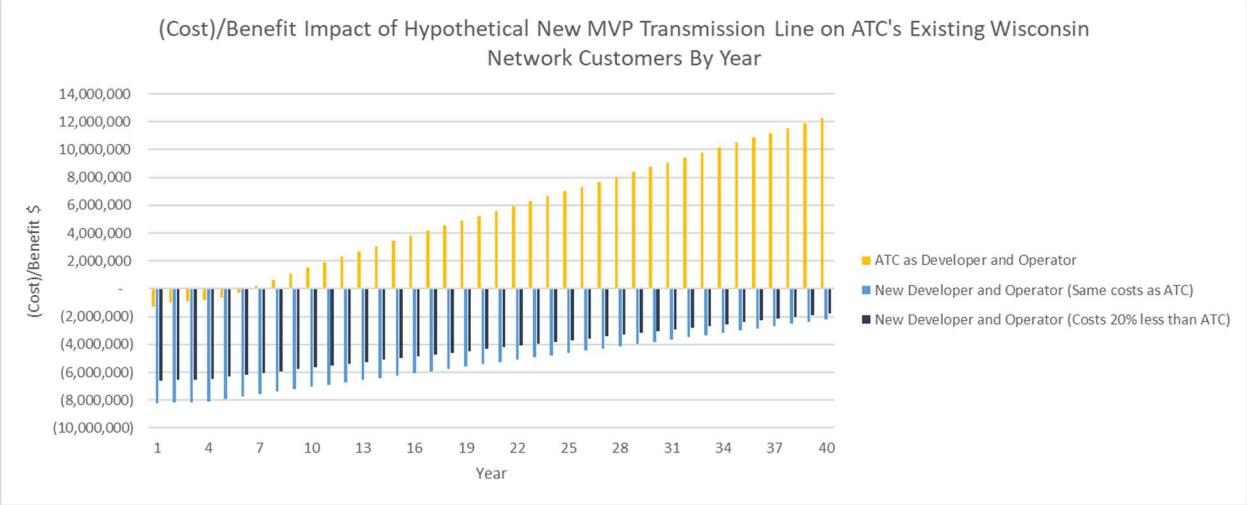
MISO is an independent, not-for-profit, member-based organization that plays a crucial role in managing and coordinating the transmission of electricity across multiple states in the United States. When it comes to allocating the revenues and costs associated with new transmission facilities, MISO follows a structured process to distribute such costs among the various jurisdictions it serves. Costs are divided based on whether the transmission facility provides regional benefits (affecting multiple jurisdictions) or local benefits (affecting a single jurisdiction or a limited area) using different allocation methodologies depending on the type of project. By categorizing projects and using the specific cost allocation mechanisms, MISO strives to increase the equitable allocation of such costs.

To illustrate these principles and the rate effects to ATC's customers, an example scenario was developed by ATC under which a new hypothetical 200-mile transmission line was assumed to be constructed and operated entirely in the state of Wisconsin. In accordance with MISO guidelines, this hypothetical transmission line would qualify as an MVP under MISO's MVP framework and regional cost sharing policies. As a result of being an MVP, the entire annual revenue requirement associated with this transmission project is allocated across all Midwest MISO member companies and their respective customers (including an allocation to ATC customers).

The cost burden of the hypothetical new transmission line on the Company's existing Wisconsin network customers were calculated under three different scenarios:

- Scenario One: ATC as the entity that constructs and operates the new line,
- Scenario Two: A “New” competitive entity constructs and operates the new line whose construction and operating costs for the project are the same as ATC’s, and
- Scenario Three: A “New” competitive entity constructs and operates the new line whose construction and operating costs for the project are 20% less than ATC’s.

The results of this scenario analysis demonstrate that ATC’s existing Wisconsin network customers will benefit significantly if ATC constructs and operates the hypothetical transmission line compared to what their customers would pay under the scenarios where the project is constructed and operated by new developers. This is true even if the new competitor could construct and operate the hypothetical new transmission line for 20% lower total project construction and operating costs.



As we detail in this report, the basis for ATC’s existing Wisconsin network customers achieving this significant benefit is because of the following cost allocation methodology that exists under MISO rules.

Under MISO rules, the Company is required to compute a share of existing operations and maintenance (“O&M”) and other expenses to allocate to the new transmission line. By doing so, the existing O&M and other expenses are reduced from existing revenue requirements reflected on Attachment O and the revenue requirement of the new transmission line increased by this allocation. However, because it is assumed the new transmission project qualifies as an MVP according to MISO rules, the costs for this project will be recovered from a much wider base of regional customers. The

allocation of existing O&M and Other Expenses to the new project which are then recovered from a wider base of customers, leads to an overall reduction in costs for ATC's existing Wisconsin network customers.

This contrasts to the scenarios for a new developer with a single project where all expenses must be included in the revenue requirements of that one transmission line and not allocated from an existing Attachment O applicable to existing Wisconsin network customers. As this is still an MVP project, the non-incumbent's revenue requirement to construct and operate that hypothetical new line is also allocated across the MISO region, but the new developer will not have existing O&M and Other Expenses (serving existing Wisconsin network customers) that will be reduced for the calculated O&M and other expenses (and allocated to the new transmission project).

In summary, the Company's calculations of a hypothetical transmission line under various scenarios support the assertion that a right of first refusal ("ROFR") translates into reduced costs for existing customers. State-level ROFR provisions grant incumbent utilities the right to construct new transmission projects within the state even if those projects are part of a regional transmission plan subject to FERC's competitive bidding requirements. As detailed within this report, using ATC's Attachment O data, certain construction costs and operating cost growth assumptions and MISO's existing revenue requirement and cost allocation rules, the cost implications for existing ATC customers under the MISO framework suggests that an incumbent transmission developer offers a solution with lower total costs for existing customers as compared to a new developer. Among other reasons, this is due to existing costs allocated to ATC's network customers being allocated among a larger portfolio of projects and under MISO's cost allocation methods for projects that qualify as MVPs, these costs are shared among a larger group of customers for which existing ATC customers only pay a calculated percentage. A new developer does not have an existing network overhead base that a new project will have an effect of diluting (allocating to others).

4. Current Competitive Transmission Process

4.1 Background

The current competitive transmission process in the United States represents a shift in how transmission infrastructure is planned, developed, and managed. Before the introduction of Order 1000 by the FERC in 2011, the ROFR was a common provision that allowed incumbent utilities the priority or exclusive right to construct new transmission projects within their service areas. This meant that when a new transmission line or infrastructure upgrade was needed, the incumbent utility had the first opportunity to propose, design, and construct the project. FERC's Order 1000 altered the transmission planning and development landscape by eliminating the federal ROFR provisions for new transmission projects selected in regional transmission plans for cost allocation. Under this competitive framework, regional transmission organizations (RTOs) and independent system operators (ISOs), such as MISO, have implemented processes that allow for open bidding on certain types of transmission projects.

ATC is a member of MISO, an organization that oversees the operation of the regional electric transmission grid across 15 states in the Midwest and Southern regions of the United States, operating under its framework and oversight in ensuring that necessary transmission infrastructure is developed and maintained efficiently, while meeting the needs of the region. In the wake of Order 1000, several states within MISO's operational footprint enacted ROFR laws.

4.2 Recent Regulatory Developments

In May 2024, FERC issued Order 1920, which among other items impacting transmission planning policy, did not establish a conditional federal ROFR as FERC had originally proposed in its Notice of Proposed Rulemaking (“NOPR”). In the final rulemaking order, FERC explained further that the NOPR proposal and federal ROFR reforms might be more appropriately addressed in other future proceedings and that it would be a policy that it would consider monitoring.

4.3 Process for New Transmission Projects under MISO

Under the current regulatory landscape, regionally cost-shared projects in states without ROFR laws within MISO's footprint are subject to a competitive bidding process. The competitive transmission process under MISO is a process that involves the planning, development, and operation of transmission projects, which are essential for maintaining the stability of the power grid. MISO's competitive transmission process is a component of the annual Transmission Expansion Plan ("MTEP") and the Long-Range Transmission Plan ("LRTP"). The MTEP and LRTP processes are highly collaborative, involving stakeholders such as utility companies, state regulators, and consumer advocates. Through a series of meetings and consultations, MISO gathers input and feedback to refine project proposals and ensure that they meet the region's energy needs effectively. When a transmission project is identified that meets the requirements of a competitive solicitation, MISO issues a request for proposals to solicit bids from qualified transmission developers. Proposals are evaluated based on a range of criteria including cost, project timeline, technical expertise, and the developer's financial stability. MISO has established monitoring and reporting mechanisms to track the progress of transmission projects.

5. New, Hypothetical MVP Transmission Line Scenario

5.1 Preliminary Overview

To illustrate MISO revenue requirement and cost allocation principles, example scenarios were developed by ATC under which a hypothetical new MVP transmission line would be constructed and operated in Wisconsin. The annual and total costs and revenues were calculated by ATC and shown in Appendix C. These scenarios demonstrate the potential costs and benefits to existing customers who would be using a new transmission line when developed by either ATC as the Wisconsin incumbent state developer (Scenario One) or a nonincumbent developer under the conditions defined in Section 5.2 (Scenarios Two and Three). Both in the context of the new developer constructing the project for costs equal to those of ATC and constructing for costs 20% less than ATC's, the Wisconsin customer costs and benefits in both situations were estimated annually over the course of the project's 40-year lifetime. The annual costs of the new MVP transmission line being charged to existing ATC customers were projected in the context of this framework (refer to section 5.3). Scenarios Two and Three show the impacts to existing ATC customers compared to if ATC were to develop the new transmission line and the annual and overall net customer benefit/expense of the new MVP transmission line was then forecast.

5.2 Underlying Assumptions of the Project

Project Assumptions	Scenario 1	Scenario 2	Scenario 3
Developer of New Transmission Line	ATC	New Developer	New Developer
Miles of New Transmission Line	200	200	200
Construction cost per mile	$3M	$3M	$2.4M
Overall Construction Costs	$600M	$600M	$480M
Annual transmission O&M per mile	$3k	$3k	$2.4k
Multi-Value Project (MVP)	Yes	Yes	Yes
Eligble for Regional Cost Sharing	Yes	Yes	Yes
Existing Network Customers	Yes	No	No
Allocated Customer Share of Costs Due to Project being a MVP	13.1%	13.1%	13.1%
Depreciation Rate	2.5%	2.5%	2.5%
Cost Escalation Rate	3.0%	3.0%	3.0%

Under this hypothetical example created by ATC, a new MVP transmission line 200 miles in length would be constructed in Wisconsin with a construction cost of $3 million per mile. The annual transmission operations & maintenance expense is estimated to be $3 thousand per mile annually with an annual cost escalation rate of 3% (to factor for inflation). The new transmission line is assumed to have a 40-year life (2.5% annual rate—is approximately consistent with the depreciation rates listed under ATC's "Electric Utility Plant Depreciation Rate Study", which was released in December 2020). MISO's Attachment MM sets forth the method for collecting the charges associated with MVP's and for distributing the revenues associated with such charges in accordance with the tariff. In accordance with ATC's 2024 Attachment MM filing, the starting Annual Allocation Factor for Return utilized in the first year of the project was 8.0%. The Annual Allocation Factor for Return under MISO is used to determine each stakeholder's share of the financial returns or revenue requirements associated with MVP's. This is calculated by adding the Annual Allocation Factor for Income Taxes of 1.4% with the Annual Allocation Factor for Return on Rate Base of 6.6%. This 8.0% Annual Allocation Factor for Return was utilized in the first year of all three scenarios with the rate rising uniformly to the same rate under each year of the scenario.

5.3 Calculation of Annual Portion of New Transmission Line Charged to Customers

This project is assumed to be an MVP under MISO rules and eligible for cost sharing across the Midwest subregion of the MISO footprint through the developer's annual Attachment MM filing (refer to appendix section B.4 for further detail on the criteria to qualify as a Multi-Value Project). Within the MISO

Tariff, Attachment MM specifies how the costs associated with such MVPs are distributed through a regional cost-sharing mechanism. Following MISO Schedule 26-A guidelines, costs are allocated according to annual customer MVP usage rate for each Local Balancing Authority utilizing data on the customers' share of MVP energy withdrawals in that area (methodology discussed further in appendix section B.4). Essentially, MVP charges are allocated across the MISO region by distributing the total annual revenue requirement for all MVPs among load-serving entities based on their proportional energy consumption.

Based on MISO's 2024 indicative data, the Local Balancing Authorities in ATC's jurisdiction made up 13.1% of the annual charges of the approved MVPs portfolio within the MISO Midwest footprint. As such, 13.1% of the costs related to the new transmission line will be allocated to customers in ATC's jurisdiction with the rest spread across the other Local Balancing Authorities of the Midwest subregion.

The Local Balancing Authorities of the Midwest MISO footprint within ATC Customer Zones are:

Local Balancing Authority	Allocated Portion of MVP Usage Charges in MISO Midwest Region
ALTE (Alliant East)	2.9%
MGE (Madison Gas and Electric)	0.7%
MIUP (Michigan Upper Peninsula)	0.6%
UPPC (Upper Peninsula Power Company)	0.2%
WEC (Wisconsin Electric Power Company)	6.0%
WPS (Wisconsin Public Service Company)	2.7%
Total	13.1%

Source: MISO Schedule 26-A Data

The calculation of the annual adjusted revenue requirement for an MVP through Attachment MM of the MISO tariff involves several key financial components. The project gross plant refers to the total capital investment in infrastructure, equipment, and software necessary for the project's development and operation. This gross plant value forms the basis for calculating depreciation and the return on investment. Project accumulated depreciation represents the total amount of depreciation that has been expensed over the life of the assets up to a specific point in time; thereby, reducing the net book value of the project gross plant and is calculated based on the new transmission line's useful life. The annual expense charge includes all operational costs, such as labor and materials, necessary for the project's ongoing maintenance and functioning. Another component is the annual return charge, which represents

the required rate of return on the invested capital. This charge is calculated by multiplying the rate base by the allowed rate of return. The annual return charge ensures that the project meets the financial expectations of its investors and stakeholders. Through a comprehensive evaluation of these factors, the annual revenue requirement ensures that the MVP is financially sustainable and compliant with regulatory standards; thus, securing the necessary funding and support for its successful implementation and operation.

6. Outcomes of Hypothetical Example Scenarios

Using ATC's Attachment O data and assumed costs to construct the hypothetical new transmission line, MISO guidelines for cost allocation between existing Attachment O revenue requirements and revenue requirements applicable to the hypothetical new MVP transmission line over the 40-year life of the new transmission line, the net cost/benefit of this project for the Company's network customers was projected annually by the Company.

Taking into consideration the annual revenue requirement associated with the hypothetical new transmission line, the costs for this MVP project were then allocated across the MISO Midwest subregion to arrive at the Portion Charged to ATC Customers. The costs were allocated to ATC's customers at the 13.1% share ATC's local balancing authorities utilized and withdrew energy from the Midwest subregion's MVP projects, with the remaining 86.9% allocated to customers across the MISO Midwest footprint. This portion being charged to ATC's existing Wisconsin network customers was calculated each year of the scenario:

Annual Revenue Requirement x ATC Customer Share % = Portion Charged to ATC Customers

Such a charge would be applicable for each of the of the conditions tested under this scenario, with the resulting cost to customers factored into the Net ATC Customer (Cost)/Benefit each year. Customers benefit from this regional cost-sharing mechanism, as it reduces the total share of costs associated with the new project paid by the transmission owner's customers.

Under Scenario One, ATC's existing network customers will significantly benefit from the new transmission line if ATC is the developer and operator of that new transmission line, and that line qualifies as an MVP project. Under this scenario, ATC's existing transmission O&M and Other Expenses (supporting the provision of service to customers) do not noticeably increase because of the new transmission line, but under MISO's cost allocation guidelines the new level of such costs (existing plus the estimated incremental) are allocated to the new transmission line (and deducted from the existing

network revenue requirement) using allocation factors derived from ATC's plant and accumulated depreciation balances. Under this scenario, a significant reduction of O&M and Other Expenses currently included in ATC's existing Wisconsin network customers revenue requirements occurs.

The associated revenue requirement calculation with the hypothetical project would not have these existing Wisconsin network customers or established infrastructure for the Second and Third Scenarios with the non-incumbent developer constructing and operating the new transmission line. Since the new developer does not have any Wisconsin network customers or existing assets in Wisconsin, they lack an established revenue requirement where existing customers would benefit from an existing base over which to spread their expense credits in their Attachment O since this new transmission line would be their only assets in Wisconsin. In other words, there are no existing expenses related to an existing Wisconsin asset base that can be allocated to the new project, as they can be with ATC. Therefore, the revenue requirement calculation for the new developer will not benefit from the cost efficiencies that ATC benefits from under MISO's current rate structures. Consequently, in Scenarios Two and Three, existing Wisconsin customers will not see the same reduction in allocated costs from the new developer building the transmission line as they would in Scenario One with ATC's established infrastructure.

While the revenue requirement for the proposed new transmission line itself is higher under Scenario One compared to Scenario's Two and Three (primarily as a result of the allocation of O&M and Other Expenses to the MVP project), the allocation of such costs reduces these costs to existing network customers from Attachment O and, further, the existing network customers are charged only 13.1% of the MVP revenue requirement as the remaining 86.9% are allocated to other MISO customers in the Midwest region. The net overall customer (cost)/benefit values under the scenario with ATC as the developer produces a significant benefit for existing Wisconsin customers. The net cost under Scenarios Two and Three suggests that even with a lower annual revenue requirement associated with the new transmission line, and subsequently a lower portion of the new line's revenue requirement being charged to ATC's existing Wisconsin network customers, the new developer would still ultimately result in a considerable net cost to the existing customers.

Furthermore, Scenario Three underscores that incumbent developers offer existing customers more cost-effective solutions compared to solutions proposed by new developers even when the new developers have lower initial construction and operating costs such as under Scenario Three in which the construction and operating costs are 20% lower. The ability of the incumbent developer under Scenario One to spread costs across a broader portfolio contributes to significant customer benefits. This occurs because the expense credit that existing ATC customers receive on Attachment O exceeds the incremental cost that they pay for the new project.

When calculating Attachment O for a transmission provider, each individual transmission project, including new and existing ones, contributes to the overall revenue requirement. The individual project's revenue requirement is added to the revenue requirements of all other transmission projects and facilities owned by the provider to form a cumulative revenue requirement with this cumulative total representing the amount the transmission provider needs to recover to cover the costs of all its transmission facilities. In arriving at the net ATC Customer (Cost)/Benefit each year under Scenario One, in which ATC is the developer for the new transmission line, the portion of the annual revenue requirement associated with this MVP project would be reduced by the savings customers would receive via Attachment O through these existing customers being allocated a smaller portion of the O&M costs and such costs being allocated to customers in the rest of the region.

7. Summary and Conclusion

In assessing the cost implications for existing ATC Wisconsin network customers under the MISO framework, the Company developed scenarios demonstrating that when the incumbent transmission developer of a hypothetical MVP qualifying project (such as ATC for their Wisconsin network customers) is selected as the developer and operator of the hypothetical MVP project, ATC's Wisconsin network customers will pay less compared to scenarios where that hypothetical MVP project is developed and operated by a new developer all other things being equal. This is because under MISO rules, ATC's sum portion of O&M and Other expenses currently included on Attachment O and recovered from ATC's existing Wisconsin network customers are allocated to the hypothetical MVP project and recovered from not only ATC's existing Wisconsin customers but from other transmission customers in the region. ATC's existing Wisconsin network customers benefit from the ability, under MISO rules, to allocate costs across a larger, regional portfolio, thus benefitting from regional cost-sharing mechanisms for MVPs and leveraging established operational efficiencies and providing a cost-effective option for ATC's existing Wisconsin network customers.

The Company calculations under the various scenarios show that under MISO's cost allocation methods for projects that qualify as MVPs, the financial benefits for ATC's existing network customers are significant. In a scenario where ATC is the developer and operator of the hypothetical MVP project, ATC's Attachment O revenue requirement, which includes the combined costs of ATC's current Attachment O costs and the costs of the hypothetical MVP project, is allocated to the hypothetical MVP project using an allocation factor. Based on MISO guidance, this allocation factor is calculated based on the hypothetical project's percentage of net plant, or the value of the project's assets, relative to ATC's total net plant or total accumulated depreciation. This creates a beneficial effect for ATC's existing network customers because the O&M costs and Other Expenses are deducted from ATC's existing Wisconsin network customers and allocated to the hypothetical MVP project, being spread to and recovered from a larger regional customer base. These findings support the assertion that, under the existing MISO framework, ATC's existing Wisconsin network customers benefit when ATC is selected as the developer and operator

of a hypothetical MVP project compared to the amount such customers would pay if a developer and operator who is not currently serving Wisconsin network customers is selected.

Respectfully,

Alan D. Felsenthal

Index to the Appendices

These appendices detail the cost allocation and revenue requirement policies and procedures under MISO (Appendix A and Appendix B) as well as the Company's calculation of the revenue requirement impacts for a hypothetical new MVP transmission line (impacts on ATC's existing Wisconsin network customers) under various scenarios as to whether construction and operation of the hypothetical new MVP transmission line is constructed and operated by ATC or by non-incumbent entities (Appendix C).

Appendix A

MISO Revenue Requirements

A.1 Background

Determining revenue requirements for MISO customers involves an established process that ensures fair cost recovery and transparency. Under MISO's existing rate formulas, the cost ultimately allocated to customers arises from the annual revenue requirement, calculated through a detailed process of identifying and justifying various costs to meet regulatory and market standards. MISO's rate policies and formulas are subject to approval by the FERC, utilizing rate formulas that automatically adjust to reflect changes in costs and financial metrics, allowing for timely cost recovery. Once approved, the revenue requirement is recovered through transmission rates set within the MISO tariff structure, ensuring that costs are fairly allocated among customers based on their usage and demand.

A.2 Development of ATC's Annual Revenue Requirement

ATC calculates its annual revenue requirement utilizing Attachment O of the MISO Tariff, which provides the rate formula template to be used by transmission owners within the region. Attachment O provides a standardized formula rate protocol that transmission owners must follow to calculate their ATRR (annual transmission revenue requirements) including several key components designed to ensure that transmission owners can recover the costs associated with operating, maintaining, and developing transmission facilities. The process begins with the calculation of the rate base, which includes the gross plant investment, reduction for accumulated depreciation, and necessary adjustments for working capital and effects of income taxes. This establishes the net value of the owner's investment, commonly referred to as rate base. A critical part of the process is calculating the return on investment, which involves determining the required return on equity (ROE) and the cost of debt, then blending these into a Weighted Average Cost of Capital (WACC) to ensure that owners establish appropriate capital structures and earn a fair return on the investment. Next, O&M expenses are determined, encompassing the prudently

incurred costs related to the operation and maintenance of the transmission system, such as labor, materials, administrative and general expenses, and applicable taxes.

The final step in the Attachment O calculation involves summing the return and yearly expenses to derive the total cost of service. This sum includes the return on rate base, O&M expenses, depreciation expense, and taxes, both taxes other than income and income taxes.

The overall revenue requirement is then calculated by summing the return on the rate base, operating expenses, and other allowable costs and reduced for any credits. This calculation outlined in Attachment O inputs are based on financial statement amounts reported to the FERC on Form 1. This enables transmission owners to recover their investments and costs for operating and maintaining the assets and ensures that the determination of revenue requirements is compliant with regulatory standards within the MISO region.

The costs included in the revenue requirement are then allocated to ATC's Wisconsin customers based on their usage, demand, and ultimately each month, their proportionate share of the total monthly load for the MISO pricing zone. The tariff structure established by MISO and approved by the FERC is central to determining transmission charges. Along with most other transmission owners within MISO, ATC uses formula rates, which are adjusted annually to reflect actual incurred and projected costs. Unlike fixed rates that remain static until formally revised, formula rates adjust annually based on the actual costs incurred and projected by the transmission owners.

Network customers are entities under the MISO framework that use the transmission system to serve their end-use load. They are crucial to the effective operation of the electrical grid as they provide a stable and predictable demand for electricity, ultimately aiding in grid planning and load forecasting for the transmission providers. Schedule 9 under the MISO tariff outlines the rates, terms, and conditions under which ATC's network customers are billed for using the transmission system to meet their load requirements. The charges under Schedule 9 are based on the Annual Transmission Revenue Requirement (ATRR), calculated using the formula rates specified in Attachment O of the MISO tariff. ATC collects monthly load data from its Transmission Customers based on the monthly coincident peaks beginning September 1 of the prior calendar year through August 31 of the current year, including actual

load data provided by its customers and expected transfers of load between customers expected by the end of the following year. Charges to be collected from the network customers are then allocated based on their load ratio share. In essence, Attachment O provides the financial rules and regulatory framework for determining the revenue needs of transmission owners, while Schedule 9 applies these calculations to create a structured billing system for network customers.

A.3 Revenue Requirements for New Transmission Facilities

Determining the revenue requirements for proposed new transmission facilities to be approved by MISO is an established process that integrates various financial aspects. It starts with estimating all potential costs including capital, operational, maintenance, and financing expenses. These costs are detailed and submitted to MISO as part of the MTEP process for approval to ensure they are reasonable and necessary. Once included in MTEP, certain projects may require approval by state regulatory bodies such as the Public Service Commission of Wisconsin. After such approval, the expenditures for the project are included in the transmission company's rate base, where they are depreciated over the expected useful life of the assets and collected in customer rates. This process includes calculating a return on investment to cover the cost of capital and provide a fair return to investors. To calculate the total revenue requirement, the transmission company adds the annual depreciation expense, the return on investment from rate base, and the allowed operational and maintenance costs. This total is then divided by the projected usage of the transmission system to establish the rates charged to users. The total revenue requirement is then incorporated into transmission rates, which are charged to the users of the transmission system.

With the introduction of a new project, the transmission provider's Attachment O incorporates the costs associated with the new infrastructure or improvements. This ensures that the financial implications of the new project including capital investments, operational expenses, and potential benefits are incorporated into the transmission rates. For an example scenario under the MISO framework, illustrating how a new transmission line would impact existing Wisconsin customers refer to Sections 5 and 6 and Appendix C. These sections detail the comparative effects of the incumbent developer ATC with its established infrastructure to serve Wisconsin network customers developing the hypothetical new

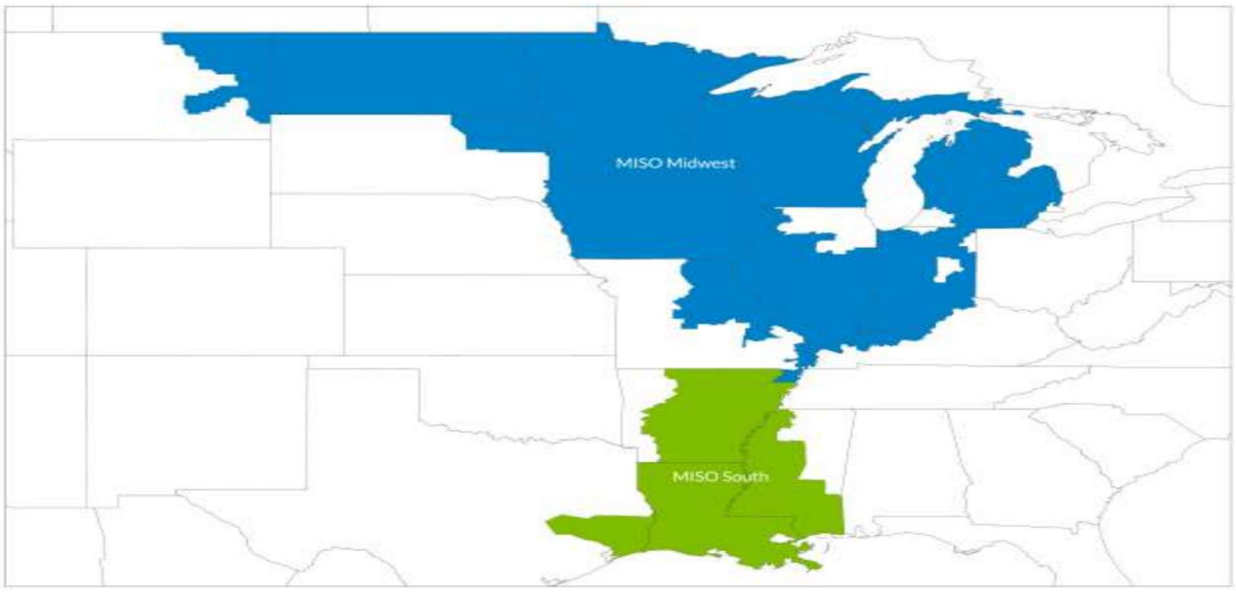
transmission line versus a new developer without existing assets. This process facilitated through Attachment O allows for transmission rates to be based on the actual costs of providing reliable transmission services. By adhering to the standardized methodology outlined in Attachment O, transmission owners within the MISO region can consistently and accurately determine their revenue requirements, thereby supporting the operation and maintenance of the transmission network.

MISO oversees a diverse range of transmission projects to ensure the durability and effectiveness of the electrical grid across its service area as part of its Transmission Expansion Plan ("MTEP") and Long-Range Transmission Plan ("LRTP"). These projects are categorized based on their specific goals and benefits. Among these are the Multi-Value Projects ("MVP"), Market Efficiency Projects ("MEP"), and Baseline reliability projects ("BRPs"), which each have distinct objectives and impacts. The revenue requirements for each of these transmission projects vary based on the type of project due to differences in cost allocation and capital intensity. MVPs are designed to address broad regional needs and provide multiple benefits, including improving grid reliability, supporting public policy requirements, and facilitating the integration of renewable energy. To qualify as an MVP, a project must demonstrate that it provides significant value across the MISO region. The distribution of revenue requirements for new transmission projects is a systematic process designed to ensure fair cost-sharing among users of the transmission system.

A unique aspect of MVPs is that 100% of their costs can be regionally allocated and applied to different regions within the MISO footprint such as the MISO Midwest Subregion, the MISO South Subregion, or the entire MISO system-wide footprint. This broad allocation is based on the premise that MVPs provide regional benefits such as improved reliability and reduced congestion that extend beyond individual transmission zones. The regional cost-sharing mechanism for MVPs is facilitated through Schedule 26-A of the MISO tariff. Schedule 26-A outlines how the costs of MVPs are distributed among transmission owners and customers proportional to the benefits received by each transmission zone. The MVP costs are allocated based on the MVP Usage Rate, which reflects the usage of the MVPs by the transmission customers (refer to appendix section B.4 for further detail on this calculation).

For Multi-Value Projects, they typically have higher revenue requirements because they involve significant capital investments in constructing new transmission lines and substantial infrastructure upgrades. MISO's approach to allocating MVP costs is characterized by the "postage stamp" methodology, wherein costs are allocated uniformly across all load-serving entities (LSEs) within the subregions of the MISO footprint, generally being split into the Midwest and Southern subregions (refer below to the cost allocation subregions per Attachment XX of the MISO tariff).

Map of MVP Cost Allocation Subregion Boundaries



Source: MISO Tariff Attachment XX

This regional cost allocation reflects the principle that the benefits of MVPs are shared by all users of the grid. Attachments O and MM support this regional cost allocation by ensuring that the revenue requirements for new MVP projects are calculated in a manner that reflects the true costs of providing transmission services. The revenue requirement calculated in Attachment MM for MVP projects is subtracted from the revenue requirement calculated in Attachment O. This subtraction prevents double-counting of costs and ensures that the costs associated with MVPs are properly allocated. By subtracting the share of MVP costs that have been allocated across the region, the revenue requirement reflects the net amount the transmission owner needs to recover through network transmission rates. The resulting

annual transmission revenue requirement from Attachments O and MM ensure that transmission owners can recover their costs in a transparent and predictable manner.

Appendix B

MISO Cost Allocation

B.1 Background

In MISO markets, cost allocation is a critical process for distributing costs associated with electricity generation, transmission, and related services among market participants. MISO employs various methodologies for cost allocation in ensuring that the costs of maintaining a dependable power grid are equitably shared. The process of allocating transmission costs involves distributing the expenses associated with building, maintaining, and upgrading the transmission infrastructure among the various market participants, such as utilities, generators, and consumers.

B.2 MISO Cost Allocation Procedures for New Transmission Projects

Once transmission projects are identified, MISO employs various Attachments within its tariff to determine how costs are allocated. Cost allocation for these projects is guided by specific methodologies outlined in MISO's tariff which distribute costs based on the benefits received by different regions and stakeholders. For instance, Attachment FF outlines the general principles for cost allocation, categorizing projects into types, with each category having its own set of criteria and benefits influencing how costs are allocated. Primarily, MISO employs a combination of cost causation and beneficiary-pays principles to distribute costs. This means those who need new transmission investments or benefit from the grid's enhanced reliability and efficiency are allocated a proportionate share of the costs. The principles of cost allocation used by MISO are overseen and approved by the FERC ensuring that all cost allocation methods and recovery mechanisms are just, reasonable, and non-discriminatory.

MISO allocates the costs and revenues associated with new transmission facilities under both the Long-Range Transmission Planning (LRTP) and the MISO Transmission Expansion Plan (MTEP) through structured methodologies designed to ensure equitable distribution among the various jurisdictions it oversees. Current infrastructure, future energy demand forecasts, and the identification of projects

needed to maintain and strengthen the grid are evaluated in identifying necessary transmission projects under such planning procedures. Cost allocation for these projects follows a methodology that considers factors such as regional and interregional benefits. The benefits of this cost allocation approach, facilitated by Attachment O of the MISO tariff, are significant for consumers. The role of existing assets in allocating regional transmission project costs under MISO is crucial for ensuring that cost distribution is fair and reflective of the current infrastructure landscape. Existing assets refer to the already established transmission facilities and infrastructure that are in place within the MISO region. These assets play a significant role in determining how new project costs are allocated among stakeholders. If a new project leverages or enhances the capabilities of existing infrastructure, the cost allocation can be adjusted to reflect the degree of improvement or reinforcement provided by the new project. This means that areas with substantial existing infrastructure that benefit from incremental upgrades may bear a different portion of the costs compared to regions where entirely new infrastructure is required. This existing infrastructure allows for a streamlined implementation process, often reducing the overall costs and improving the effectiveness of the transmission projects.

When a new developer enters a state within MISO's region to initiate a transmission project, the new developer works within MISO's structured framework. New developers may find more difficulties in integrating their projects seamlessly into the current grid, potentially causing delays and driving up costs, leading to higher initial costs and longer implementation timelines. This can result in less optimal solutions that do not fully capitalize on the existing infrastructure's capabilities, ultimately providing fewer immediate benefits to the state and its stakeholders.

B.3 Differences Between Incremental/Marginal and Full Cost Allocation in MISO Markets

In the context of the MISO markets, cost allocation methodologies are critical for determining how the financial responsibilities of new transmission facilities are distributed among stakeholders. The two primary approaches to cost allocation are incremental/marginal cost allocation and full cost allocation.

Incremental or marginal cost allocation focuses on additional costs being assigned to the entities or activities that directly cause the need for additional investments or system upgrades. In the context of MISO markets, incremental cost allocation is used for various types of projects, such as Generator

Interconnections and Market Efficiency Projects (MEPs). For such projects, the financial impact of decisions is directly linked to those driving the need for new investments, thereby aligning costs with the underlying economic activities. For Generator Interconnections, incremental cost allocation assigns the costs of necessary network upgrades to the generators requesting the interconnection. For MEPs, which aim to reduce congestion and improve market operations, incremental cost allocation assigns costs based on the economic benefits provided. This approach is different from full cost allocation in that it focuses on the additional costs required to accommodate specific changes or developments in the grid.

Full cost allocation is generally used for large-scale projects that provide broad regional benefits, where the advantages extend beyond the immediate area of implementation. This approach shares the costs of large-scale transmission projects, which often provide widespread regional benefits, across all beneficiaries irrespective of their direct involvement in causing the need for the investment. One of the primary applications of full cost allocation in MISO markets is for Multi-Value Projects (MVPs), with BRPs (Baseline Reliability Projects) also utilizing full cost allocation when the benefits of the project extend beyond a localized area. As MVPs provide many benefits that enhance the efficiency and sustainability of the electric grid, the full cost allocation method for MVPs ensures that the costs are distributed among all load-serving entities within the MISO region. By spreading the financial burden across all beneficiaries, this approach supports the development of essential infrastructure that enhances grid reliability, reduces congestion, and facilitates the integration of renewable energy sources.

Under MISO cost allocation methodologies, incumbent transmission providers—those with established networks and multiple transmission projects—can use a full cost allocation approach for MVP projects. These providers include their fixed and A&G costs within their total O&M costs, which are then allocated across all projects based on each project's percentage of net plant value. The existing personnel, technology, and infrastructure can support additional projects without a proportional rise in administrative overhead, leading to a decreased cost allocation rate per project. Consequently, customers benefit from a lower share of fixed and A&G costs as they are spread over a larger asset base.

Nonincumbent transmission providers, which often do not benefit from the same level of established infrastructure and multiple projects, adopt an incremental/marginal cost allocation approach.

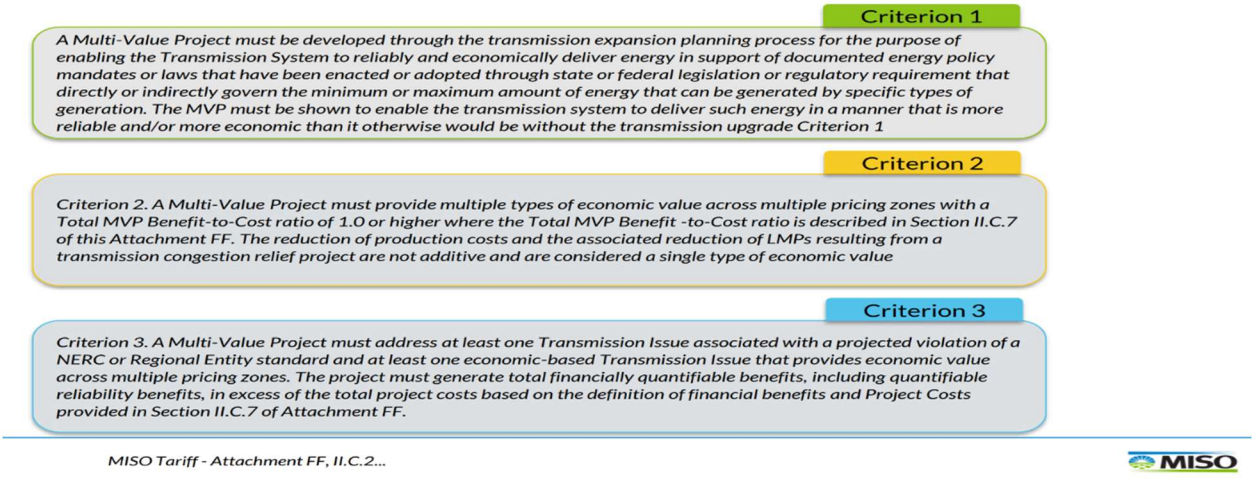
For these providers, each new project must bear its own costs, including a higher proportion of fixed and A&G expenses. Therefore, the incremental cost approach allocates costs based directly on the additional expenditures incurred by introducing a new project and could lead to the Attachment O of the nonincumbent mirroring the Attachment MM as both would include the full extent of the incurred costs without spreading them over a larger asset base.

While the cost allocation for non-O&M costs remains consistent across both incumbents and nonincumbents, the treatment of O&M costs, particularly the inclusion and allocation of A&G expenses, diverges significantly. Incumbent providers with multiple projects can distribute costs more efficiently, benefiting their customers, whereas nonincumbents must rely on incremental cost allocation to ensure financial transparency and viability for each new project.

B.4 Regional Cost Sharing

As outlined in Attachment FF of the MISO tariff, MISO employs a portfolio-based approach to the cost-sharing of Multi-Value Projects, with the portfolio being made up of the MVPs that provide transmission upgrades across the MISO footprint and allocates those costs regionally. By considering projects as part of a portfolio, MISO implements cost-sharing mechanisms that aim to equitably distribute the financial burden across the region and promote the prioritization of projects that provide the greatest overall benefits. Multi-Value Projects under MISO allocate costs on either a sub-regional or system-wide basis. The MISO footprint includes both its Midwest and Southern regions, with the costs of MVPs either allocated among the Midwest or Southern region, or across both on a system-wide basis depending on the degree of benefits a particular project provides.

Long Range Transmission Projects (LRTPs) must meet one of three criteria defined in Attachment FF of the MISO Tariff to be considered an MVP. In addition to the three criteria defined below, the project must have a cost greater than or equal to $20 million, must include construction or improvement of transmission facilities operating at voltages above 100kV, and must be evaluated as part of a portfolio of projects whose benefits are spread broadly across the footprint.



Schedule 26-A under the MISO tariff pertains to the cost allocation for Multi-Value Projects (MVPs). Schedule 26-A outlines the methodology for distributing the costs associated with these MVPs among the various entities that benefit from them. The MISO region is split into Local Balancing Authorities (LBAs), with each LBA being responsible for maintaining the electricity balance within their specific geographic areas by managing the supply and demand of electricity in real time. Under Schedule 26-A, the costs of large-scale transmission projects, the MVPs, are allocated in a way that reflects the benefits received by the various LBAs. Each LBA's MVP Usage Rate is then ultimately calculated in accordance with Schedule 26-A.

The MVP Usage Rate (MUR) ensures that 100% of MVP costs are allocated across the MISO footprint, primarily either for the Midwest or Southern subregions. This is facilitated through Schedule 26-A, where the MVP Usage Rate for the MISO Midwest and MISO South regions, as well as the system-wide footprint, is calculated by dividing the total MVP Annual Revenue Requirements by the sum of Monthly Net Actual Energy Withdrawals, Real-Time Export Schedules, Real-Time Through Schedules, among other factors. The applicable Monthly MVP Revenue Requirements are calculated by multiplying the Total MVP Annual Revenue Requirements by a weighting factor. This factor is based on the applicable withdrawals, with withdrawals being the amount of electricity consumed or taken off the grid by an entity within the MISO footprint, for the month in the prior year divided by the total monthly withdrawals in the prior year. The weighting factors for each month are derived from prior year withdrawals and are calculated to ensure the costs are proportionally distributed based on actual usage. The MUR is

ultimately then calculated by multiplying the Total MVP Annual Revenue Requirements by the weighting factor.

B.5 ATC Customers' Share of MVP Usage

In accordance with MISO Schedule 26-A, ATC's annual customer MVP usage rate is based off their customer's share of the MVP energy withdrawals. Of the thirty-two Local Balancing Authorities within MISO's Midwest region, six are considered within ATC's jurisdiction. As such, the portion of MVP costs allocated to ATC's region each year would be based on the percentage of total MVP usage the local balancing authorities within ATC's jurisdiction account for across the Midwest MISO footprint. The calculation begins with the total annual revenue requirement for all MVPs, with this then being allocated to each load-serving entity in proportion to their share of the total energy consumption within the MISO subregion. The allocated costs are then incorporated into the transmission rates paid by customers in each region, with the entities that consume more energy contributing a larger share to the cost recovery of MVPs. These charges are reviewed and adjusted annually to reflect changes in project costs and energy consumption patterns. Refer to section 5.3 of the report for further detail regarding ATC's cost share within the framework of constructing a new transmission line in Wisconsin based off data from MISO's Schedule 26-A.

B.6 Transmission O&M and Other Expense Cost Allocation to Network Customers and MVP projects

Under MISO cost allocation methodologies network service providers apply an allocation factor to transmission O&M costs (from Attachment O) to determine the amount of such costs to allocate to the hypothetical MVP project. The O&M allocation factor is based on the project's percentage of accumulated depreciation, as a percentage of the total accumulated depreciation for the transmission provider. In addition, certain other costs (non-transmission O&M, common and general plant depreciation expense and taxes other than income) are allocated to the new project based on its proportion of gross transmission plant to the transmission provider's total gross transmission plant.

Under the cost allocation practices within MISO, customers of a network service provider will benefit from additional projects being built by their network operator that qualify as MVP projects as the overall O&M and Other costs (which do not noticeably increase for the hypothetical new MVP project) are allocated to the MVP project over a larger asset base (the network service provider's transmission plant and accumulated depreciation), producing an overall reduction in Attachment O O&M and Other costs to existing customers. As discussed in the previous sections of this Appendix, the costs allocated to the MVP revenue requirement are paid by all MISO Midwest region customers, reducing the total share of the costs paid by the network customers for the transmission operator.

Appendix C

Year by Year Cost/Benefit to ATC's Existing Wisconsin Network Customers Based on ATC's Calculated Revenue Requirements for Hypothetical New MVP Transmission Line

The Company's calculations of the revenue requirements using MISO cost allocation guidelines for a hypothetical new MVP Transmission line under various scenarios are included in this Appendix. Each scenario walks through, column by column, the determination of revenue requirements to be included in Attachment MM (to recover the costs of the hypothetical new MVP transmission line) and, under Scenario One, the impacts of the hypothetical new transmission line costs on Attachment O revenues for ATC's existing Wisconsin network customers. The assumptions used to determine these amounts are included below. The scenarios are:

Scenario One: ATC constructs and operates the hypothetical new MVP transmission line.

Scenario Two: A non-incumbent competitor constructs and operates the hypothetical new MVP transmission line with the same construction and operating costs as in Scenario One.

Scenario Three: A non-incumbent competitor constructs and operates the hypothetical new MVP transmission line but is able to construct and operate at 20% less cost than in Scenarios One and Two.

The calculations show the revenue requirement impacts necessary to recover the construction and operating costs of the hypothetical new transmission line as well as the revenue requirement impact on ATC's existing Wisconsin network customers whose current costs of service (as shown in Attachment

O) are reduced for O&M and Other Expenses allocated from Attachment O recovery to the hypothetical new MVP transmission line.

In Scenario One, ATC's existing plant, accumulated depreciation, O&M, Other Expenses are shown as these amounts are used to determine amounts of O&M and Other Expenses to allocate to the hypothetical new transmission line. In Scenarios Two and Three it is assumed the competitor does not serve existing Wisconsin network customers so there are no Wisconsin Attachment O plant, accumulated depreciation, O&M and Other Expenses to reduce for allocations to the hypothetical new MVP transmission line.

The underlying assumptions developed by ATC used for the hypothetical new MVP transmission line are below and further detailed in section 5.2:

Depreciation rate	2.5%	(Assum. 1)
Cost escalation rate	3.0%	(Assum. 2)
ATC customer share of Schedule 26A	13.13%	(Assum. 3)
Miles of new transmission line	200	(Assum. 4)
Construction cost per mile	3,000,000	(Assum. 5)
Annual transmission O&M per mile	3,000	(Assum. 6)
Annual depreciation rate	2.5%	(Assum. 7)
Cost escalation rate	3.0%	(Assum. 8)

Scenario One – ATC as the Entity Constructing and Operating the Hypothetical New MVP Transmission Line

	(A)	(B)	(A - B = C)	(Assum. 4 x Assum. 5 = D)	(PY E + (Assum. 7 x (-D)) = E)	(D + E = F)	(A + D = G)	(B + E = H)	(G + H = I)	((PY J x (1 + Assum. 8)) = CY J)	Yr. 1: (Assum. 4 x Assum. 6 = K); Yr. 2 and beyond: ((PY K x (1 + Assum. 8)) = CY K)	(J + K = L)	((PY M x (1 + Assum. 2)) = CY M)	(L / H = N)	(E x N = O)	(M / G = P)	(D x P = Q)	(O + Q = R)	(S)	(F x S = T)	(U)	(R + T + U = V)	(Assum. 3 = W)	(V x W = X)	(R = Y)	(Y - X = Z)
	Base ATC Values			Regional Project Values			Combined Values																			
Year	Gross Transmission Plant	Transmission Accumulated Depreciation	Net Transmission Plant	Gross Transmission Plant	Transmission Accumulated Depreciation	Net Transmission Plant	Gross Transmission Plant	Transmission Accumulated Depreciation	Net Transmission Plant	Base Transmission O&M	Project Transmission O&M	Combined Transmission O&M	Other Expense	Transmission O&M Annual Allocation Factor	Annual Allocation for Transmission O&M	Other Expense Annual Allocation Factor	Annual Allocation for Other Expense	Annual Expense Charge	Annual Allocation Factor for Return	Annual Return Charge	Project Depreciation Expense	Annual Revenue Requirement	ATC Customer Share %	Portion Charged to ATC Customers	Reduction For Existing Network Customers Through Attachment O	Net ATC Customer (Cost) / Benefit
1	7,902,246,091	(2,326,504,681)	5,575,741,410			-	7,902,246,091	(2,326,504,681)	5,575,741,410	104,727,413		104,727,413	106,882,997	4.50%		1.35%			8.00%							
2	8,492,917,141	(2,512,025,078)	5,980,892,062	600,000,000	(15,000,000)	585,000,000	9,092,917,141	(2,527,025,078)	6,565,892,062	107,869,235	600,000	108,469,235	110,089,487	4.29%	643,855	1.21%	7,264,302	7,908,157	8.04%	47,027,518	15,000,000	69,935,675	13.13%	9,182,554	7,908,157	(1,274,397)
3	9,196,670,972	(2,716,567,796)	6,480,103,176	600,000,000	(30,000,000)	570,000,000	9,796,670,972	(2,746,567,796)	7,050,103,176	111,105,312	618,000	111,723,312	113,392,172	4.07%	1,220,323	1.16%	6,944,737	8,165,060	8.20%	46,714,690	15,000,000	69,879,750	13.13%	9,175,211	8,165,060	(1,010,151)
4	10,048,582,287	(2,933,552,925)	7,115,029,362	600,000,000	(45,000,000)	555,000,000	10,648,582,287	(2,978,552,925)	7,670,029,362	114,438,472	636,540	115,075,012	116,793,937	3.86%	1,738,554	1.10%	6,580,816	8,319,370	8.40%	46,612,481	15,000,000	69,931,852	13.13%	9,182,052	8,319,370	(862,682)
5	11,231,008,398	(3,165,595,390)	8,065,413,007	600,000,000	(60,000,000)	540,000,000	11,831,008,398	(3,225,595,390)	8,605,413,007	117,871,626	655,636	118,527,262	120,297,755	3.67%	2,204,751	1.02%	6,100,803	8,305,554	8.52%	46,025,741	15,000,000	69,331,295	13.13%	9,103,199	8,305,554	(797,645)
6	12,507,613,021	(3,440,117,655)	9,067,495,366	600,000,000	(75,000,000)	525,000,000	13,107,613,021	(3,515,117,655)	9,592,495,366	121,407,774	675,305	122,083,080	123,906,688	3.47%	2,604,815	0.95%	5,671,819	8,276,634	8.49%	44,558,372	15,000,000	67,835,007	13.13%	8,906,736	8,276,634	(630,102)
7	13,179,470,650	(3,763,945,691)	9,415,524,959	600,000,000	(90,000,000)	510,000,000	13,779,470,650	(3,853,945,691)	9,925,524,959	125,050,008	695,564	125,745,572	127,623,888	3.26%	2,936,497	0.93%	5,557,132	8,493,629	8.50%	43,332,940	15,000,000	66,826,570	13.13%	8,774,329	8,493,629	(280,699)
8	13,509,952,267	(4,106,881,848)	9,403,070,420	600,000,000	(105,000,000)	495,000,000	14,109,952,267	(4,211,881,848)	9,898,070,420	128,801,508	716,431	129,517,939	131,452,605	3.08%	3,228,814	0.93%	5,589,782	8,818,597	8.49%	42,019,149	15,000,000	65,837,746	13.13%	8,644,496	8,818,597	174,101
9	13,822,778,458	(4,459,010,613)	9,363,767,845	600,000,000	(120,000,000)	480,000,000	14,422,778,458	(4,579,010,613)	9,843,767,845	132,665,553	737,924	133,403,478	135,396,183	2.91%	3,496,043	0.94%	5,632,598	9,128,641	8.47%	40,641,211	15,000,000	64,769,852	13.13%	8,504,282	9,128,641	624,359
10	14,003,606,225	(4,823,081,952)	9,180,524,273	600,000,000	(135,000,000)	465,000,000	14,603,606,225	(4,958,081,952)	9,645,524,273	136,645,520	760,062	137,405,582	139,458,069	2.77%	3,741,316	0.95%	5,729,738	9,471,055	8.44%	39,224,203	15,000,000	63,695,258	13.13%	8,363,187	9,471,055	1,107,867
11	14,353,696,381	(5,173,172,108)	9,180,524,273	600,000,000	(150,000,000)	450,000,000	14,953,696,381	(5,323,172,108)	9,630,524,273	140,744,885	782,864	141,527,749	143,641,811	2.66%	3,988,066	0.96%	5,763,464	9,751,530	8.44%	37,958,906	15,000,000	62,710,436	13.13%	8,233,880	9,751,530	1,517,650
12	14,712,538,790	(5,532,014,518)	9,180,524,273	600,000,000	(165,000,000)	435,000,000	15,312,538,790	(5,697,014,518)	9,615,524,273	144,967,232	806,350	145,773,582	147,951,065	2.56%	4,221,973	0.97%	5,797,252	10,019,224	8.44%	36,693,609	15,000,000	61,712,834	13.13%	8,102,895	10,019,224	1,916,329
13	15,080,352,260	(5,899,827,987)	9,180,524,273	600,000,000	(180,000,000)	420,000,000	15,680,352,260	(6,079,827,987)	9,600,524,273	149,316,249	830,540	150,146,789	152,389,597	2.47%	4,445,261	0.97%	5,831,104	10,276,365	8.44%	35,428,312	15,000,000	60,704,677	13.13%	7,970,524	10,276,365	2,305,840
14	15,457,361,067	(6,276,836,794)	9,180,524,273	600,000,000	(195,000,000)	405,000,000	16,057,361,067	(6,471,836,794)	9,585,524,273	153,795,736	855,457	154,651,193	156,961,285	2.39%	4,659,725	0.98%	5,865,022	10,524,747	8.44%	34,163,015	15,000,000	59,687,763	13.13%	7,837,003	10,524,747	2,687,744
15	15,843,795,093	(6,663,270,821)	9,180,524,273	600,000,000	(210,000,000)	390,000,000	16,443,795,093	(6,873,270,821)	9,570,524,273	158,409,608	881,120	159,290,729	161,670,123	2.32%	4,866,832	0.98%	5,899,008	10,765,840	8.44%	32,897,719	15,000,000	58,663,558	13.13%	7,702,525	10,765,840	3,063,314
16	16,239,889,971	(7,059,365,698)	9,180,524,273	600,000,000	(225,000,000)	375,000,000	16,839,889,971	(7,284,365,698)	9,555,524,273	163,161,897	907,554	164,069,451	166,520,227	2.25%	5,067,789	0.99%	5,933,063	11,000,852	8.44%	31,632,422	15,000,000	57,633,274	13.13%	7,567,249	11,000,852	3,433,603
17	16,645,887,220	(7,465,362,947)	9,180,524,273	600,000,000	(240,000,000)	360,000,000	17,245,887,220	(7,705,362,947)	9,540,524,273	168,056,754	934,780	168,991,534	171,515,834	2.19%	5,263,603	0.99%	5,967,191	11,230,793	8.44%	30,367,125	15,000,000	56,597,918	13.13%	7,431,307	11,230,793	3,799,487
18	17,062,034,401	(7,881,510,128)	9,180,524,273	600,000,000	(255,000,000)	345,000,000	17,662,034,401	(8,136,510,128)	9,525,524,273	173,098,456	962,824	174,061,280	176,661,309	2.14%	5,455,118	1.00%	6,001,392	11,456,510	8.44%	29,101,828	15,000,000	55,558,338	13.13%	7,294,810	11,456,510	4,161,700
19	17,488,585,261	(8,308,060,988)	9,180,524,273	600,000,000	(270,000,000)	330,000,000	18,088,585,261	(8,578,060,988)	9,510,524,273	178,291,410	991,709	179,283,118	181,961,148	2.09%	5,643,052	1.01%	6,035,668	11,678,719	8.44%	27,836,531	15,000,000	54,515,250	13.13%	7,157,852	11,678,719	4,520,867
20	17,925,799,892	(8,745,275,619)	9,180,524,273	600,000,000	(285,000,000)	315,000,000	18,525,799,892	(9,030,275,619)	9,495,524,273	183,640,152	1,021,460	184,661,612	187,419,983	2.04%	5,828,013	1.01%	6,070,021	11,898,033	8.44%	26,571,234	15,000,000	53,469,267	13.13%	7,020,515	11,898,033	4,877,518
21	18,373,944,889	(9,193,420,616)	9,180,524,273	600,000,000	(300,000,000)	300,000,000	18,973,944,889	(9,493,420,616)	9,480,524,273	189,149,357	1,052,104	190,201,460	193,042,582	2.00%	6,010,525	1.02%	6,104,453	12,114,977	8.44%	25,305,937	15,000,000	52,420,915	13.13%	6,882,866	12,114,977	5,232,111
22	18,833,293,512	(9,652,769,239)	9,180,524,273	600,000,000	(315,000,000)	285,000,000	19,433,293,512	(9,967,769,239)	9,465,524,273	194,823,837	1,083,667	195,907,504	198,833,860	1.97%	6,191,041	1.02%	6,138,965	12,330,006	8.44%	24,040,640	15,000,000	51,370,646	13.13%	6,744,966	12,330,006	5,585,040
23	19,304,125,849	(10,123,601,577)	9,180,524,273	600,000,000	(330,000,000)	270,000,000	19,904,125,849	(10,453,601,577)	9,450,524,273	200,668,553	1,116,177	201,784,729	204,798,875	1.93%	6,369,954	1.03%	6,173,561	12,543,514	8.44%	22,775,344	15,000,000	50,318,858	13.13%	6,606,866	12,543,514	5,936,646
24	19,786,728,996	(10,606,204,723)	9,180,524,273	600,000,000	(345,000,000)	255,000,000	20,386,728,996	(10,951,204,723)	9,435,524,273	206,688,609	1,149,662	207,838,271	210,942,842	1.90%	6,547,609	1.03%	6,208,240	12,755,849	8.44%	21,510,047	15,000,000	49,265,895	13.13%	6,468,612	12,755,849	6,287,237
25	20,281,397,220	(11,100,872,948)	9,180,524,273	600,000,000	(360,000,000)	240,000,000	20,881,397,220	(11,460,872,948)	9,420,524,273	212,889,267	1,184,152	214,073,419	217,271,127	1.87%	6,724,307	1.04%	6,243,005	12,967,313	8.44%	20,244,750	15,000,000	48,212,063	13.13%	6,330,244	12,967,313	6,637,069
26	20,788,432,151	(11,607,907,878)	9,180,524,273	600,000,000	(375,000,000)	225,000,000	21,388,432,151	(11,982,907,878)	9,405,524,273	219,275,945	1,219,676	220,495,622	223,789,261	1.84%	6,900,317	1.05%	6,277,859	13,178,175	8.44%	18,979,453	15,000,000	47,157,628	13.13%	6,191,797	13,178,175	6,986,379
27	21,308,142,955	(12,127,618,682)	9,180,524,273	600,000,000	(390,000,000)	210,000,000	21,908,142,955	(12,517,618,682)	9,390,524,273	225,854,224	1,256,267	227,110,491	230,502,938	1.81%	7,075,874	1.05%	6,312,802	13,388,676	8.44%	17,714,156	15,000,000	46,102,832	13.13%	6,053,302	13,388,676	7,335,374
28	21,840,846,529	(12,660,322,256)	9,180,524,273	600,000,000	(405,000,000)	195,000,000	22,440,846,529	(13,065,322,256)	9,375,524,273	232,629,851	1,293,955	233,923,805	237,418,027	1.79%	7,251,191	1.06%	6,347,836	13,599,027	8.44%	16,448,859	15,000,000	45,047,886	13.13%	5,914,787	13,599,027	7,684,239
29	22,386,867,692	(13,206,343,419)	9,180,524,273	600,000,000	(420,000,000)	180,000,000	22,986,867,692	(13,626,343,419)	9,360,524,273	239,608,746	1,332,773	240,941,519	244,540,567	1.77%	7,426,456	1.06%	6,382,964	13,809,420	8.44%	15,183,562	15,000,000	43,992,982	13.13%	5,776,279	13,809,420	8,033,141
30	22,946,539,384	(13,766,015,111)	9,180,524,273	600,000,000	(435,000,000)	165,000,000	23,546,539,384	(14,201,015,111)	9,345,524,273	246,797,008	1,372,757	248,169,765	251,876,784	1.75%	7,601,840	1.07%	6,418,186	14,020,026	8.44%	13,918,266	15,000,000	42,938,292	13.13%	5,637,798	14,020,026	8,382,228
31	23,520,202,869	(14,339,678,596)	9,180,524,273	600,000,000	(450,000,000)	150,000,000	24,120,202,869	(14,789,678,596)	9,330,524,273	254,200,919	1,413,939	255,614,858	259,433,088	1.73%	7,777,497	1.08%	6,453,505	14,231,002	8.44%	12,652,969	15,000,000	41,883,971	13.13%	5,499,365	14,231,002	8,731,637
32	24,108,207,940	(14,927,683,668)	9,180,524,273	600,000,000	(465,000,000)	135,000,000	24,708,207,940	(15,392,683,668)	9,315,524,273	261,826,946	1,456,357	263,283,304	267,216,081	1.71%	7,953,567	1.08%	6,488,923	14,442,489	8.44%	11,387,672	15,000,000	40,830,161	13.13%	5,361,000	14,442,489	9,081,488
33	24,710,913,139	(15,530,388,866)	9,180,524,273	600,000,000	(480,000,000)	120,000,000	25,310,913,139	(16,010,388,866)	9,300,524,273	269,681,755	1,500,048	271,181,803	275,232,563	1.69%	8,130,175	1.09%	6,524,440	14,654,615	8.44%	10,122,375	15,000,000	39,776,990	13.13%	5,222,719	14,654,615	9,431,896
34	25,328,685,967	(16,148,161,695)	9,180,524,273	600,000,000	(495,000,000)	105,000,000	25,928,685,967	(16,643,161,695)	9,285,524,273	277,772,207	1,545,050	279,317,257	283,489,540	1.68%	8,307,438	1.09%	6,560,060	14,867,498	8.44%	8,857,078	15,000,000	38,724,576	13.13%	5,084,537	14,867,498	9,782,961
35	25,961,903,117	(16,781,378,844)	9,180,524,273	600,000,000	(510,000,000)	90,000,000	26,561,903,117	(17,291,378,844)	9,270,524,273	286,105,374	1,591,401	287,696,775	291,994,226	1.66%	8,485,463	1.10%	6,595,782	15,081,245	8.44%	7,591,781	15,000,000	37,673,027	13.13%	4,946,468	15,081,245	10,134,777
36	26,610,950,695	(17,430,426,422)	9,180,524,273	600,000,000	(525,000,000)	75,000,000	27,210,950,695	(17,955,426,422)	9,255,524,273	294,688,535	1,639,143	296,327,678	300,754,053	1.65%	8,664,346	1.11%	6,631,611	15,295,957	8.44%	6,326,484	15,000,000	36,622,441	13.13%	4,808,527	15,295,957	10,487,430
37	27,276,224,462	(18,095,700,189)	9,180,524,273	600,000,000	(540,000,000)	60,000,000	27,876,224,462	(18,635,700,189)	9,240,524,273	303,529,191	1,688,317	305,217,508	309,776,675	1.64%	8,844,178	1.11%	6,667,546	15,511,724	8.44%	5,061,187	15,000,000	35,572,912	13.13%	4,670,723	15,511,724	10,841,001
38	27,958,130,073	(18,777,605,801)	9,180,524,273	600,000,000	(555,000,000)	45,000,000	28,558,130,073	(19,332,605,801)	9,225,524,273	312,635,066	1,738,967	314,374,033	319,069,975	1.63%	9,025,042	1.12%	6,703,590	15,728,632	8.44%	3,795,891	15,000,000	34,524,523	13.13%	4,533,070	15,728,632	11,195,562
39	28,657,083,325	(19,476,559,052)	9,180,524,273	600,000,000	(570,000,000)	30,000,000	29,257,083,325	(20,046,559,052)	9,210,524,273	322,014,118	1,791,136	323,805,254	328,642,074	1.62%	9,207,016	1.12%	6,739,744	15,946,760	8.44%	2,530,594	15,000,000	33,477,354	13.13%	4,395,577	15,946,760	11,551,183
40	29,373,510,408	(20,192,986,136)	9,180,524,273	600,000,000	(585,000,000)	15,000,000	29,973,510,408	(20,777,986,136)	9,195,524,273	331,674,542	1,844,870	333,519,412	338,501,336	1.61%	9,390,172	1.13%	6,776,010	16,166,181	8.44%	1,265,297	15,000,000	32,431,478	13.13%	4,258,253	16,166,181	11,907,928
41	30,107,848,169	(20,927,323,896)	9,180,524,273	600,000,000	(600,000,000)	-	30,707,848,169	(21,527,323,896)	9,180,524,273	341,624,778	1,900,216	343,524,994	348,656,376	1.60%	9,574,576	1.14%	6,812,390	16,386,966	8.44%	-	15,000,000	31,386,966	13.13%	4,121,109	16,386,966	12,265,857
																							Totals	271,663,470	484,509,364	212,845,893

Scenario Two – Competitive Entity Constructs and Operates a Hypothetical New MVP Transmission Line. Same Costs as ATC

	(A)	(B)	(A - B = C)	(Assum. 4 x Assum. 5 = D)	(Assum. 7 x (-D) = E)	(D + E = F)	(A + D = G)	(B + E = H)	(G + H = I)	((PY J x (1 + Assum. 8)) = CY J)	Yr. 1: (Assum. 4 x Assum. 6 = K); Yr. 2 and beyond: ((PY K x (1 + Assum. 8)) = CY K)	(J + K = L)	((PY M x (1 + Assum. 2)) = CY M)	(L / H = N)	(E x N = O)	(M / G = P)	(D x P = Q)	(O + Q = R)	(S)	(F x S = T)	(U)	(R + T + U = V)	(Assum. 3 = W)	(V x W = X)	(R = Y)	(Y - X = Z)	
	Base Values			Regional Project Values			Combined Values																			
Year	Gross Transmission Plant	Transmission Accumulated Depreciation	Net Transmission Plant	Gross Transmission Plant	Transmission Accumulated Depreciation	Net Transmission Plant	Gross Transmission Plant	Transmission Accumulated Depreciation	Net Transmission Plant	Base Transmission O&M	Project Transmission O&M	Combined Transmission O&M	Other Expense	Transmission O&M Annual Allocation Factor	Annual Allocation for Transmission O&M	Other Expense Annual Allocation Factor	Annual Allocation for Other Expense	Annual Expense Charge	Annual Allocation Factor for Return	Annual Return Charge	Project Depreciation Expense	Annual Revenue Requirement	ATC Customer Share %	Portion Charged to ATC Customers	Reduction For Existing Network Customers Through Attachment O	Net ATC Customer (Cost) / Benefit	Difference from ATC Scenario
1			-			-	-	-	-			-							8.00%								
2			-	600,000,000	(15,000,000)	585,000,000	600,000,000	(15,000,000)	585,000,000		600,000	600,000		4.00%	600,000	0.00%	-	600,000	8.04%	47,027,518	15,000,000	62,627,518	13.13%	8,222,993		(8,222,993)	(6,948,596)
3			-	600,000,000	(30,000,000)	570,000,000	600,000,000	(30,000,000)	570,000,000		618,000	618,000		2.06%	618,000	0.00%	-	618,000	8.20%	46,714,690	15,000,000	62,332,690	13.13%	8,184,282		(8,184,282)	(7,174,131)
4			-	600,000,000	(45,000,000)	555,000,000	600,000,000	(45,000,000)	555,000,000		636,540	636,540		1.41%	636,540	0.00%	-	636,540	8.40%	46,612,481	15,000,000	62,249,021	13.13%	8,173,297		(8,173,297)	(7,310,615)
5			-	600,000,000	(60,000,000)	540,000,000	600,000,000	(60,000,000)	540,000,000		655,636	655,636		1.09%	655,636	0.00%	-	655,636	8.52%	46,025,741	15,000,000	61,681,377	13.13%	8,098,765		(8,098,765)	(7,301,120)
6			-	600,000,000	(75,000,000)	525,000,000	600,000,000	(75,000,000)	525,000,000		675,305	675,305		0.90%	675,305	0.00%	-	675,305	8.49%	44,558,372	15,000,000	60,233,678	13.13%	7,908,682		(7,908,682)	(7,278,580)
7			-	600,000,000	(90,000,000)	510,000,000	600,000,000	(90,000,000)	510,000,000		695,564	695,564		0.77%	695,564	0.00%	-	695,564	8.50%	43,332,940	15,000,000	59,028,505	13.13%	7,750,443		(7,750,443)	(7,469,743)
8			-	600,000,000	(105,000,000)	495,000,000	600,000,000	(105,000,000)	495,000,000		716,431	716,431		0.68%	716,431	0.00%	-	716,431	8.49%	42,019,149	15,000,000	57,735,581	13.13%	7,580,682		(7,580,682)	(7,754,782)
9			-	600,000,000	(120,000,000)	480,000,000	600,000,000	(120,000,000)	480,000,000		737,924	737,924		0.61%	737,924	0.00%	-	737,924	8.47%	40,641,211	15,000,000	56,379,135	13.13%	7,402,580		(7,402,580)	(8,026,940)
10			-	600,000,000	(135,000,000)	465,000,000	600,000,000	(135,000,000)	465,000,000		760,062	760,062		0.56%	760,062	0.00%	-	760,062	8.44%	39,224,203	15,000,000	54,984,265	13.13%	7,219,434		(7,219,434)	(8,327,301)
11			-	600,000,000	(150,000,000)	450,000,000	600,000,000	(150,000,000)	450,000,000		782,864	782,864		0.52%	782,864	0.00%	-	782,864	8.44%	37,958,906	15,000,000	53,741,770	13.13%	7,056,294		(7,056,294)	(8,573,944)
12			-	600,000,000	(165,000,000)	435,000,000	600,000,000	(165,000,000)	435,000,000		806,350	806,350		0.49%	806,350	0.00%	-	806,350	8.44%	36,693,609	15,000,000	52,499,959	13.13%	6,893,245		(6,893,245)	(8,809,574)
13			-	600,000,000	(180,000,000)	420,000,000	600,000,000	(180,000,000)	420,000,000		830,540	830,540		0.46%	830,540	0.00%	-	830,540	8.44%	35,428,312	15,000,000	51,258,853	13.13%	6,730,287		(6,730,287)	(9,036,128)
14			-	600,000,000	(195,000,000)	405,000,000	600,000,000	(195,000,000)	405,000,000		855,457	855,457		0.44%	855,457	0.00%	-	855,457	8.44%	34,163,015	15,000,000	50,018,472	13.13%	6,567,425		(6,567,425)	(9,255,169)
15			-	600,000,000	(210,000,000)	390,000,000	600,000,000	(210,000,000)	390,000,000		881,120	881,120		0.42%	881,120	0.00%	-	881,120	8.44%	32,897,719	15,000,000	48,778,839	13.13%	6,404,662		(6,404,662)	(9,467,976)
16			-	600,000,000	(225,000,000)	375,000,000	600,000,000	(225,000,000)	375,000,000		907,554	907,554		0.40%	907,554	0.00%	-	907,554	8.44%	31,632,422	15,000,000	47,539,976	13.13%	6,241,999		(6,241,999)	(9,675,602)
17			-	600,000,000	(240,000,000)	360,000,000	600,000,000	(240,000,000)	360,000,000		934,780	934,780		0.39%	934,780	0.00%	-	934,780	8.44%	30,367,125	15,000,000	46,301,905	13.13%	6,079,440		(6,079,440)	(9,878,927)
18			-	600,000,000	(255,000,000)	345,000,000	600,000,000	(255,000,000)	345,000,000		962,824	962,824		0.38%	962,824	0.00%	-	962,824	8.44%	29,101,828	15,000,000	45,064,652	13.13%	5,916,989		(5,916,989)	(10,078,689)
19			-	600,000,000	(270,000,000)	330,000,000	600,000,000	(270,000,000)	330,000,000		991,709	991,709		0.37%	991,709	0.00%	-	991,709	8.44%	27,836,531	15,000,000	43,828,240	13.13%	5,754,648		(5,754,648)	(10,275,515)
20			-	600,000,000	(285,000,000)	315,000,000	600,000,000	(285,000,000)	315,000,000		1,021,460	1,021,460		0.36%	1,021,460	0.00%	-	1,021,460	8.44%	26,571,234	15,000,000	42,592,694	13.13%	5,592,421		(5,592,421)	(10,469,939)
21			-	600,000,000	(300,000,000)	300,000,000	600,000,000	(300,000,000)	300,000,000		1,052,104	1,052,104		0.35%	1,052,104	0.00%	-	1,052,104	8.44%	25,305,937	15,000,000	41,358,041	13.13%	5,430,311		(5,430,311)	(10,662,422)
22			-	600,000,000	(315,000,000)	285,000,000	600,000,000	(315,000,000)	285,000,000		1,083,667	1,083,667		0.34%	1,083,667	0.00%	-	1,083,667	8.44%	24,040,640	15,000,000	40,124,307	13.13%	5,268,322		(5,268,322)	(10,853,362)
23			-	600,000,000	(330,000,000)	270,000,000	600,000,000	(330,000,000)	270,000,000		1,116,177	1,116,177		0.34%	1,116,177	0.00%	-	1,116,177	8.44%	22,775,344	15,000,000	38,891,520	13.13%	5,106,457		(5,106,457)	(11,043,105)
24			-	600,000,000	(345,000,000)	255,000,000	600,000,000	(345,000,000)	255,000,000		1,149,662	1,149,662		0.33%	1,149,662	0.00%	-	1,149,662	8.44%	21,510,047	15,000,000	37,659,709	13.13%	4,944,720		(4,944,720)	(11,231,956)
25			-	600,000,000	(360,000,000)	240,000,000	600,000,000	(360,000,000)	240,000,000		1,184,152	1,184,152		0.33%	1,184,152	0.00%	-	1,184,152	8.44%	20,244,750	15,000,000	36,428,902	13.13%	4,783,115		(4,783,115)	(11,420,184)
26			-	600,000,000	(375,000,000)	225,000,000	600,000,000	(375,000,000)	225,000,000		1,219,676	1,219,676		0.33%	1,219,676	0.00%	-	1,219,676	8.44%	18,979,453	15,000,000	35,199,129	13.13%	4,621,646		(4,621,646)	(11,608,024)
27			-	600,000,000	(390,000,000)	210,000,000	600,000,000	(390,000,000)	210,000,000		1,256,267	1,256,267		0.32%	1,256,267	0.00%	-	1,256,267	8.44%	17,714,156	15,000,000	33,970,423	13.13%	4,460,317		(4,460,317)	(11,795,690)
28			-	600,000,000	(405,000,000)	195,000,000	600,000,000	(405,000,000)	195,000,000		1,293,955	1,293,955		0.32%	1,293,955	0.00%	-	1,293,955	8.44%	16,448,859	15,000,000	32,742,814	13.13%	4,299,131		(4,299,131)	(11,983,371)
29			-	600,000,000	(420,000,000)	180,000,000	600,000,000	(420,000,000)	180,000,000		1,332,773	1,332,773		0.32%	1,332,773	0.00%	-	1,332,773	8.44%	15,183,562	15,000,000	31,516,336	13.13%	4,138,095		(4,138,095)	(12,171,236)
30			-	600,000,000	(435,000,000)	165,000,000	600,000,000	(435,000,000)	165,000,000		1,372,757	1,372,757		0.32%	1,372,757	0.00%	-	1,372,757	8.44%	13,918,266	15,000,000	30,291,022	13.13%	3,977,211		(3,977,211)	(12,359,440)
31			-	600,000,000	(450,000,000)	150,000,000	600,000,000	(450,000,000)	150,000,000		1,413,939	1,413,939		0.31%	1,413,939	0.00%	-	1,413,939	8.44%	12,652,969	15,000,000	29,066,908	13.13%	3,816,485		(3,816,485)	(12,548,122)
32			-	600,000,000	(465,000,000)	135,000,000	600,000,000	(465,000,000)	135,000,000		1,456,357	1,456,357		0.31%	1,456,357	0.00%	-	1,456,357	8.44%	11,387,672	15,000,000	27,844,029	13.13%	3,655,921		(3,655,921)	(12,737,410)
33			-	600,000,000	(480,000,000)	120,000,000	600,000,000	(480,000,000)	120,000,000		1,500,048	1,500,048		0.31%	1,500,048	0.00%	-	1,500,048	8.44%	10,122,375	15,000,000	26,622,423	13.13%	3,495,524		(3,495,524)	(12,927,421)
34			-	600,000,000	(495,000,000)	105,000,000	600,000,000	(495,000,000)	105,000,000		1,545,050	1,545,050		0.31%	1,545,050	0.00%	-	1,545,050	8.44%	8,857,078	15,000,000	25,402,128	13.13%	3,335,299		(3,335,299)	(13,118,261)
35			-	600,000,000	(510,000,000)	90,000,000	600,000,000	(510,000,000)	90,000,000		1,591,401	1,591,401		0.31%	1,591,401	0.00%	-	1,591,401	8.44%	7,591,781	15,000,000	24,183,182	13.13%	3,175,252		(3,175,252)	(13,310,029)
36			-	600,000,000	(525,000,000)	75,000,000	600,000,000	(525,000,000)	75,000,000		1,639,143	1,639,143		0.31%	1,639,143	0.00%	-	1,639,143	8.44%	6,326,484	15,000,000	22,965,628	13.13%	3,015,387		(3,015,387)	(13,502,817)
37			-	600,000,000	(540,000,000)	60,000,000	600,000,000	(540,000,000)	60,000,000		1,688,317	1,688,317		0.31%	1,688,317	0.00%	-	1,688,317	8.44%	5,061,187	15,000,000	21,749,505	13.13%	2,855,710		(2,855,710)	(13,696,711)
38			-	600,000,000	(555,000,000)	45,000,000	600,000,000	(555,000,000)	45,000,000		1,738,967	1,738,967		0.31%	1,738,967	0.00%	-	1,738,967	8.44%	3,795,891	15,000,000	20,534,858	13.13%	2,696,227		(2,696,227)	(13,891,789)
39			-	600,000,000	(570,000,000)	30,000,000	600,000,000	(570,000,000)	30,000,000		1,791,136	1,791,136		0.31%	1,791,136	0.00%	-	1,791,136	8.44%	2,530,594	15,000,000	19,321,730	13.13%	2,536,943		(2,536,943)	(14,088,127)
40			-	600,000,000	(585,000,000)	15,000,000	600,000,000	(585,000,000)	15,000,000		1,844,870	1,844,870		0.32%	1,844,870	0.00%	-	1,844,870	8.44%	1,265,297	15,000,000	18,110,167	13.13%	2,377,865		(2,377,865)	(14,285,793)
41			-	600,000,000	(600,000,000)	-	600,000,000	(600,000,000)	-		1,900,216	1,900,216		0.32%	1,900,216	0.00%	-	1,900,216	8.44%	-	15,000,000	16,900,216	13.13%	2,218,998		(2,218,998)	(14,484,855)
																							Totals	213,987,502	-	(213,987,502)	(426,833,395)

Scenario Three – Competitive Entity Constructs and Operates a Hypothetical New MVP Transmission Line. 20% Lower Costs Than ATC

	(A)	(B)	(A - B = C)	(Assum. 4 x Assum. 5 = D)	(Assum. 7 x (-D) = E)	(D + E = F)	(A + D = G)	(B + E = H)	(G + H = I)	((PY J x (1 + Assum. 8)) = CY J)	Yr. 1: (Assum. 4 x Assum. 6 = K); Yr. 2 and beyond: ((PY K x (1 + Assum. 8)) = CY K)	(J + K = L)	((PY M x (1 + Assum. 2)) = CY M)	(L / H = N)	(E x N = O)	(M / G = P)	(D x P = Q)	(O + Q = R)	(S)	(F x S = T)	(U)	(R + T + U = V)	(Assum. 3 = W)	(V x W = X)	(R = Y)	(Y - X = Z)	
	Base Values			Regional Project Values			Combined Values																			
Year	Gross Transmission Plant	Transmission Accumulated Depreciation	Net Transmission Plant	Gross Transmission Plant	Transmission Accumulated Depreciation	Net Transmission Plant	Gross Transmission Plant	Transmission Accumulated Depreciation	Net Transmission Plant	Base Transmission O&M	Project Transmission O&M	Combined Transmission O&M	Other Expense	Transmission O&M Annual Allocation Factor	Annual Allocation for Transmission O&M	Other Expense Annual Allocation Factor	Annual Allocation for Other Expense	Annual Expense Charge	Annual Allocation Factor for Return	Annual Return Charge	Project Depreciation Expense	Annual Revenue Requirement	ATC Customer Share %	Portion Charged to ATC Customers	Reduction For Existing Network Customers Through Attachment O	Net ATC Customer (Cost) / Benefit	Difference from ATC Scenario
1			-			-	-	-	-			-							8.00%								
2			-	480,000,000	(12,000,000)	468,000,000	480,000,000	(12,000,000)	468,000,000		480,000	480,000		4.00%	480,000	0.00%	-	480,000	8.04%	37,622,015	12,000,000	50,102,015	13.13%	6,578,395		(6,578,395)	(5,303,997)
3			-	480,000,000	(24,000,000)	456,000,000	480,000,000	(24,000,000)	456,000,000		494,400	494,400		2.06%	494,400	0.00%	-	494,400	8.20%	37,371,752	12,000,000	49,866,152	13.13%	6,547,426		(6,547,426)	(5,537,274)
4			-	480,000,000	(36,000,000)	444,000,000	480,000,000	(36,000,000)	444,000,000		509,232	509,232		1.41%	509,232	0.00%	-	509,232	8.40%	37,289,985	12,000,000	49,799,217	13.13%	6,538,637		(6,538,637)	(5,675,955)
5			-	480,000,000	(48,000,000)	432,000,000	480,000,000	(48,000,000)	432,000,000		524,509	524,509		1.09%	524,509	0.00%	-	524,509	8.52%	36,820,593	12,000,000	49,345,102	13.13%	6,479,012		(6,479,012)	(5,681,367)
6			-	480,000,000	(60,000,000)	420,000,000	480,000,000	(60,000,000)	420,000,000		540,244	540,244		0.90%	540,244	0.00%	-	540,244	8.49%	35,646,698	12,000,000	48,186,942	13.13%	6,326,946		(6,326,946)	(5,696,848)
7			-	480,000,000	(72,000,000)	408,000,000	480,000,000	(72,000,000)	408,000,000		556,452	556,452		0.77%	556,452	0.00%	-	556,452	8.50%	34,666,352	12,000,000	47,222,804	13.13%	6,200,354		(6,200,354)	(5,919,655)
8			-	480,000,000	(84,000,000)	396,000,000	480,000,000	(84,000,000)	396,000,000		573,145	573,145		0.68%	573,145	0.00%	-	573,145	8.49%	33,615,319	12,000,000	46,188,464	13.13%	6,064,545		(6,064,545)	(6,238,646)
9			-	480,000,000	(96,000,000)	384,000,000	480,000,000	(96,000,000)	384,000,000		590,339	590,339		0.61%	590,339	0.00%	-	590,339	8.47%	32,512,969	12,000,000	45,103,308	13.13%	5,922,064		(5,922,064)	(6,546,423)
10			-	480,000,000	(108,000,000)	372,000,000	480,000,000	(108,000,000)	372,000,000		608,050	608,050		0.56%	608,050	0.00%	-	608,050	8.44%	31,379,362	12,000,000	43,987,412	13.13%	5,775,547		(5,775,547)	(6,883,415)
11			-	480,000,000	(120,000,000)	360,000,000	480,000,000	(120,000,000)	360,000,000		626,291	626,291		0.52%	626,291	0.00%	-	626,291	8.44%	30,367,125	12,000,000	42,993,416	13.13%	5,645,036		(5,645,036)	(7,162,685)
12			-	480,000,000	(132,000,000)	348,000,000	480,000,000	(132,000,000)	348,000,000		645,080	645,080		0.49%	645,080	0.00%	-	645,080	8.44%	29,354,887	12,000,000	41,999,967	13.13%	5,514,596		(5,514,596)	(7,430,925)
13			-	480,000,000	(144,000,000)	336,000,000	480,000,000	(144,000,000)	336,000,000		664,432	664,432		0.46%	664,432	0.00%	-	664,432	8.44%	28,342,650	12,000,000	41,007,082	13.13%	5,384,230		(5,384,230)	(7,690,077)
14			-	480,000,000	(156,000,000)	324,000,000	480,000,000	(156,000,000)	324,000,000		684,365	684,365		0.44%	684,365	0.00%	-	684,365	8.44%	27,330,412	12,000,000	40,014,778	13.13%	5,253,940		(5,253,940)	(7,941,684)
15			-	480,000,000	(168,000,000)	312,000,000	480,000,000	(168,000,000)	312,000,000		704,896	704,896		0.42%	704,896	0.00%	-	704,896	8.44%	26,318,175	12,000,000	39,023,071	13.13%	5,123,729		(5,123,729)	(8,187,044)
16			-	480,000,000	(180,000,000)	300,000,000	480,000,000	(180,000,000)	300,000,000		726,043	726,043		0.40%	726,043	0.00%	-	726,043	8.44%	25,305,937	12,000,000	38,031,980	13.13%	4,993,599		(4,993,599)	(8,427,202)
17			-	480,000,000	(192,000,000)	288,000,000	480,000,000	(192,000,000)	288,000,000		747,824	747,824		0.39%	747,824	0.00%	-	747,824	8.44%	24,293,700	12,000,000	37,041,524	13.13%	4,863,552		(4,863,552)	(8,663,039)
18			-	480,000,000	(204,000,000)	276,000,000	480,000,000	(204,000,000)	276,000,000		770,259	770,259		0.38%	770,259	0.00%	-	770,259	8.44%	23,281,462	12,000,000	36,051,721	13.13%	4,733,591		(4,733,591)	(8,895,291)
19			-	480,000,000	(216,000,000)	264,000,000	480,000,000	(216,000,000)	264,000,000		793,367	793,367		0.37%	793,367	0.00%	-	793,367	8.44%	22,269,225	12,000,000	35,062,592	13.13%	4,603,718		(4,603,718)	(9,124,585)
20			-	480,000,000	(228,000,000)	252,000,000	480,000,000	(228,000,000)	252,000,000		817,168	817,168		0.36%	817,168	0.00%	-	817,168	8.44%	21,256,987	12,000,000	34,074,155	13.13%	4,473,937		(4,473,937)	(9,351,455)
21			-	480,000,000	(240,000,000)	240,000,000	480,000,000	(240,000,000)	240,000,000		841,683	841,683		0.35%	841,683	0.00%	-	841,683	8.44%	20,244,750	12,000,000	33,086,433	13.13%	4,344,249		(4,344,249)	(9,576,360)
22			-	480,000,000	(252,000,000)	228,000,000	480,000,000	(252,000,000)	228,000,000		866,933	866,933		0.34%	866,933	0.00%	-	866,933	8.44%	19,232,512	12,000,000	32,099,446	13.13%	4,214,657		(4,214,657)	(9,799,697)
23			-	480,000,000	(264,000,000)	216,000,000	480,000,000	(264,000,000)	216,000,000		892,941	892,941		0.34%	892,941	0.00%	-	892,941	8.44%	18,220,275	12,000,000	31,113,216	13.13%	4,085,165		(4,085,165)	(10,021,814)
24			-	480,000,000	(276,000,000)	204,000,000	480,000,000	(276,000,000)	204,000,000		919,730	919,730		0.33%	919,730	0.00%	-	919,730	8.44%	17,208,037	12,000,000	30,127,767	13.13%	3,955,776		(3,955,776)	(10,243,012)
25			-	480,000,000	(288,000,000)	192,000,000	480,000,000	(288,000,000)	192,000,000		947,322	947,322		0.33%	947,322	0.00%	-	947,322	8.44%	16,195,800	12,000,000	29,143,121	13.13%	3,826,492		(3,826,492)	(10,462,561)
26			-	480,000,000	(300,000,000)	180,000,000	480,000,000	(300,000,000)	180,000,000		975,741	975,741		0.33%	975,741	0.00%	-	975,741	8.44%	15,183,562	12,000,000	28,159,304	13.13%	3,697,317		(3,697,317)	(10,683,695)
27			-	480,000,000	(312,000,000)	168,000,000	480,000,000	(312,000,000)	168,000,000		1,005,013	1,005,013		0.32%	1,005,013	0.00%	-	1,005,013	8.44%	14,171,325	12,000,000	27,176,338	13.13%	3,568,253		(3,568,253)	(10,903,627)
28			-	480,000,000	(324,000,000)	156,000,000	480,000,000	(324,000,000)	156,000,000		1,035,164	1,035,164		0.32%	1,035,164	0.00%	-	1,035,164	8.44%	13,159,087	12,000,000	26,194,251	13.13%	3,439,305		(3,439,305)	(11,123,544)
29			-	480,000,000	(336,000,000)	144,000,000	480,000,000	(336,000,000)	144,000,000		1,066,219	1,066,219		0.32%	1,066,219	0.00%	-	1,066,219	8.44%	12,146,850	12,000,000	25,213,069	13.13%	3,310,476		(3,310,476)	(11,343,617)
30			-	480,000,000	(348,000,000)	132,000,000	480,000,000	(348,000,000)	132,000,000		1,098,205	1,098,205		0.32%	1,098,205	0.00%	-	1,098,205	8.44%	11,134,612	12,000,000	24,232,818	13.13%	3,181,769		(3,181,769)	(11,563,998)
31			-	480,000,000	(360,000,000)	120,000,000	480,000,000	(360,000,000)	120,000,000		1,131,151	1,131,151		0.31%	1,131,151	0.00%	-	1,131,151	8.44%	10,122,375	12,000,000	23,253,526	13.13%	3,053,188		(3,053,188)	(11,784,825)
32			-	480,000,000	(372,000,000)	108,000,000	480,000,000	(372,000,000)	108,000,000		1,165,086	1,165,086		0.31%	1,165,086	0.00%	-	1,165,086	8.44%	9,110,137	12,000,000	22,275,223	13.13%	2,924,737		(2,924,737)	(12,006,226)
33			-	480,000,000	(384,000,000)	96,000,000	480,000,000	(384,000,000)	96,000,000		1,200,039	1,200,039		0.31%	1,200,039	0.00%	-	1,200,039	8.44%	8,097,900	12,000,000	21,297,939	13.13%	2,796,419		(2,796,419)	(12,228,316)
34			-	480,000,000	(396,000,000)	84,000,000	480,000,000	(396,000,000)	84,000,000		1,236,040	1,236,040		0.31%	1,236,040	0.00%	-	1,236,040	8.44%	7,085,662	12,000,000	20,321,702	13.13%	2,668,239		(2,668,239)	(12,451,201)
35			-	480,000,000	(408,000,000)	72,000,000	480,000,000	(408,000,000)	72,000,000		1,273,121	1,273,121		0.31%	1,273,121	0.00%	-	1,273,121	8.44%	6,073,425	12,000,000	19,346,546	13.13%	2,540,201		(2,540,201)	(12,674,979)
36			-	480,000,000	(420,000,000)	60,000,000	480,000,000	(420,000,000)	60,000,000		1,311,315	1,311,315		0.31%	1,311,315	0.00%	-	1,311,315	8.44%	5,061,187	12,000,000	18,372,502	13.13%	2,412,310		(2,412,310)	(12,899,740)
37			-	480,000,000	(432,000,000)	48,000,000	480,000,000	(432,000,000)	48,000,000		1,350,654	1,350,654		0.31%	1,350,654	0.00%	-	1,350,654	8.44%	4,048,950	12,000,000	17,399,604	13.13%	2,284,568		(2,284,568)	(13,125,569)
38			-	480,000,000	(444,000,000)	36,000,000	480,000,000	(444,000,000)	36,000,000		1,391,174	1,391,174		0.31%	1,391,174	0.00%	-	1,391,174	8.44%	3,036,712	12,000,000	16,427,886	13.13%	2,156,981		(2,156,981)	(13,352,544)
39			-	480,000,000	(456,000,000)	24,000,000	480,000,000	(456,000,000)	24,000,000		1,432,909	1,432,909		0.31%	1,432,909	0.00%	-	1,432,909	8.44%	2,024,475	12,000,000	15,457,384	13.13%	2,029,554		(2,029,554)	(13,580,738)
40			-	480,000,000	(468,000,000)	12,000,000	480,000,000	(468,000,000)	12,000,000		1,475,896	1,475,896		0.32%	1,475,896	0.00%	-	1,475,896	8.44%	1,012,237	12,000,000	14,488,134	13.13%	1,902,292		(1,902,292)	(13,810,220)
41			-	480,000,000	(480,000,000)	-	480,000,000	(480,000,000)	-		1,520,173	1,520,173		0.32%	1,520,173	0.00%	-	1,520,173	8.44%	-	12,000,000	13,520,173	13.13%	1,775,199		(1,775,199)	(14,041,056)
																							Totals	171,190,002	-	(171,190,002)	(384,035,895)

As explained throughout this report, the revenue requirement is calculated by multiplying the Company's rate base times a rate of return to produce a "return on rate base" and then the estimated depreciation expense and operating costs (necessary to operate and maintain service) is added to produce the overall cost of service/revenue requirement.

- Columns A, B and C show the components of existing net plant, prior to the addition of a new transmission line. For ATC these represent the projected 2024 balances of existing plant. For the new developer scenarios, as a new developer is assumed to not have any existing plant within ATC's service area, these balances are zero. These columns are necessary to calculate O&M and Other Expense cost allocations to the hypothetical new MVP transmission line under MISO cost allocation guidance.
- Columns D, E and F show the components of net plant for the new transmission line.
- Columns G, H and I add the new transmission line net plant to the existing net plant to arrive at the existing net plant transmission investment plus the new transmission line net plant producing the combined net plant balances. As discussed above, only in Scenario One are there existing Attachment O balances (to serve existing Wisconsin network customers) as the competitors in Scenarios Two and Three are assumed to be new entrants in Wisconsin.
- Column J shows the existing O&M costs. This amount is escalated each year based on the assumptions. As the new developer is assumed to not have any existing projects within MISO, this balance is zero in the new developer scenarios.
- Column K shows the estimated O&M costs associated with the new transmission line. This amount is escalated each year based on the expense growth assumption.
- Column L sums the O&M costs, existing plus new transmission line, to produce total O&M costs.

- Column M is an estimate of other expenses to be recovered. Other Expenses include non-transmission O&M, common and general depreciation expense and taxes other than income. As in Column J, the amount is assumed to be zero for a new developer as they are not expected to have existing projects within MISO.

The allocation factors in the following columns were calculated in accordance with the attachment MM under MISO rules. Calculations were performed to determine the O&M and other expenses attributable to the new transmission line which will reduce these costs for existing Wisconsin network customers.

- Column N is the calculation of the O&M Allocation factor. It is the combined O&M (Column L) divided by the combined (existing and new transmission line) accumulated depreciation (Column H).

- Column O applies the O&M factor to the accumulated depreciation on the new transmission line. This represents a portion of the credit that existing customers will benefit from as it will offload this portion of O&M expense.

- Column P is the calculation of the factor to calculate the percentage of other operating costs that can be offloaded to the new transmission line. It is the other operating costs (Column M) divided by the combined gross transmission plant (Column G). As there are no other costs for the new developer outside of the new transmission project, this amount is zero in the new developer scenarios.

- Column Q applies the other operating expense factor (Column P) to the gross transmission plant for the new transmission line (Column D). For the new developer scenarios, there are no other projects, this allocation factor is not applicable.

- Column R is the sum of the O&M calculated in Column O and the Other operating expense calculated in Column Q. This represents the assumed amounts of ATC's O&M and other operating costs that will be allocated to the new line.

- Column S is the assumed return percentage on investment using an estimated WACC. The Assumed WACC are the same across years in each of the three scenarios.
- Column T is the carrying charge of the net transmission plant based on the balance of net plant for the new transmission line (Column S times Column F).
- Column U is annual depreciation expense on the new transmission line based on the assumed useful life.
- Column V is the revenue requirement on the new transmission line. It is sum of the Annual Expense charge (Column R), Annual return charge (Column T), and depreciation expense (Column U) attributable to the new line.
- Column W is the portion of the new transmission line that will be charged to existing ATC customers in accordance with MVP framework in attachment FF under MISO Rules.
- Column X is the amount of the new transmission line charged to existing ATC customers under the MVP cost allocation framework in accordance with attachment FF.
- Column Y is the reductions of O&M expense for existing network customers recovered through Attachment O. This amount, based on the allocated O&M for the project (Column R) of O&M and Other Expense charges is instead recovered from all customers in the MISO Midwest region. In the case of Scenario One with ATC as the developer, this has the effect of reducing existing customer revenue requirements.
- Column Z shows the net cost or benefit to existing ATC customers as compared to the scenario with no transmission line being built. It is the amount charged for the new line (Column X) less the credit current customers will receive on Attachment O (Column Y).

March 4, 2025

Wisconsin Senate Bill 28 / Wisconsin Assembly 25

Testimony of Joshua Macey, Associate Professor at Yale Law School, in Opposition

My name is Joshua Macey. I am a Professor at Yale Law School. My research focuses on energy law, electricity markets, financial regulation, and bankruptcy. I am a co-author on one of the country's leading Energy Law casebooks. I have published in the country's leading law reviews, including the *Harvard Law Review*, the *Stanford Law Review*, and the *Yale Law Journal*. My work has been cited by multiple courts, including the U.S. Supreme Court. I have also written articles on transmission planning, cost allocation, and siting.

I have three concerns with Wisconsin's proposed ROFR legislation. First, the law is constitutionally dubious and would likely violate the Dormant Commerce Clause. Second, ROFRs are anticompetitive and would raise customer costs and impede innovation. And third, reports defending ROFRs are based on selective and misleading data and case studies.

I. Dormant Commerce Clause

Perhaps the most obvious problem with ROFRs is that they appear to violate the Dormant Commerce Clause. The Dormant Commerce Clause prohibits state laws that discriminate against or unduly burden interstate commerce. The Dormant Commerce Clause is based on the Constitution's Commerce Clause and aims to prevent state economic protectionism and promote a national economy. Specifically, the doctrine prohibits laws that either expressly or purposefully discriminate, as well as laws that place an undue burden on out-of-state interests. When a state law expressly discriminates against out-of-state interests, the law is presumed to be unconstitutional, subject to strict scrutiny, and may go into effect only if it promotes a legitimate governmental interest for which there are no non-discriminatory alternatives. As one court explained when reviewing a state ROFR law, "Limiting competition based on the existence or extent of a business's local foothold is the protectionism that the Commerce Clause guards against."[1] This is a straightforward application of the Dormant Commerce Clause, and it is difficult to see how courts could distinguish the Wisconsin law under consideration today.

II. Competition Reduces Costs and Supports Innovation

In the United States and elsewhere, competitive solicitations for new transmission projects have led to significant cost reductions. For example, a 2019 Brattle Report estimated that ROFRs produce cost savings of forty percent below the lowest-cost incumbent proposal, and that

[1] LSP Transmission Holdings II, LLC v. Huston, No. 1:24-CV-01722-TWP-MG, 2024 WL 5008048, at *8 (S.D. Ind. Dec. 6, 2024).

investments that are made outside competitive processes have average cost escalations of 34%.[2] Studies from outside of the United States have reached similar results, with the World Bank Group finding that winning bids in a sample of fifteen competitively procured projects in Peru were thirty-six percent lower than estimated costs.[3]

Individual examples further emphasize that competition can drive down the costs of initial bids. Since Order No. 1000 went into effect, MISO has selected only two projects through competitive solicitations. Both projects were intended to reduce congestion in the region. One, the Duff-Coleman project, was proposed at $49.8M by Republic Transmission, a non-incumbent subsidiary of LSP. The project's final cost was $54.2M.[4] Although the project came in above LSP's proposal, it still came in below MISO's initial estimate of the project's cost and below the project's costs cap.[5] Importantly, the cost cap was one of the reasons MISO awarded the project to LSP. Another MISO project, the Hartburg-Sabine project, was initially awarded to NextEra. NextEra's $114.8 million bid was $6.8 million lower than the median cost estimate.[6] The NextEra project was ultimately canceled because of a Texas ROFR law.

By contrast, ROFRed lines have frequent cost overruns. Consider, for example, a recent PJM decision allowing an incumbent to construct transmission facilities in response to Maryland's Brandon Shores generator retirements. The transmission upgrades were not selected in a competitive procurement,[7] and the project's costs recently increased $775 million, from $738 million to $1.51 billion.[8] In its most recent Integrated Resource Plan, the NV Energy's Greenlink project announced that the project's cost had increased from approximately $2.5 billion to

---

[2] *See* Johannes P. Pfeifenberger et al., The Brattle Group, Cost Savings Offered by Competition in Electric Transmission: Experience to Date and the Potential for Additional Customer Value, P. 15, 29 (Apr. 2019), https://www.brattle.com/wp-content/uploads/2021/05/16726_cost_savings_offered_by_competition_in_electric_transmission.pdf [hereinafter Brattle Report].

[3] *See* Pedro E. Sanchez & Samuel Oguah, World Bank Group, Private Sector Participation in Transmission Systems: making It Work, https://documents.worldbank.org/en/publication/documents-reports/documentdetail/337861467990990322/private-sector-participation-in-transmission-systems-making-it-work. In ERCOT, the one region in the United States that has consistently relied on competitive solicitations to procure new transmission, projects that were constructed under Texas' Competitive Renewable Energy Zones (CREZ) program were ultimately slightly more expensive than expected but were completed in five years. By contrast, comparable projects in regions where incumbent utilities' control transmission planning have frequently faced decade-long delays. *See* Warrant Lasher, Dir. Of Sys. Planning, ERCOT, The Competitive Renewable Energy Zones Process, ERCOT (Aug. 11, 2014), https://www.energy.gov/sites/prod/files/2014/08/f18/c_lasher_qer_santafe_presentation.pdf.

[4] *See* Concentric Report, supra note 4, at 21.

[5] *See* MISO, Selection Report, Hartburg-Sabine Junction 500 kV Competitive Transmission Project (Nov. 27, 2018), https://cdn.misoenergy.org/Hartburg-Sabine%20Junction%20500%20kV%20Selection%20Report296754.pdf

[6] *See id*.

[7] The project qualified as an immediate-need reliability project and was therefore exempt from competition. *See* https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20231108-3068&optimized=false

[8] *See* Sami Abdulsalam, Director, PJM Transmission Planning, Transmission Expansion Advisory Committee, Reliability Analysis Update, P. 13-15 (Feb. 4, 2024), https://www.pjm.com/-/media/DotCom/committees-groups/committees/teac/2025/20250204/20250204-item-12---reliability-analysis-update.pdf

approximately $4.2 billion—a sixty-six percent increase over initial estimates.[9] Other notable examples include Ameren's Pana-Mt. Zion-Kansas 345 kV line, which was completed two years behind schedule and whose costs were more than $120 million above the original $284 million estimate;[10] ITC Midwest's Cardinal-Hickory Creek Line in Iowa, whose costs increased from $490 to $675 million after nearly a decade of delays;[11] and an Xcel Energy line in Minnesota, whose costs doubled to $1.14 billion.[12]

In addition to creating downward pressure on capital outlays, projects that are selected through competitive processes have an incentive to develop innovative rate designs that limit cost escalations. For example, LSP was selected to build the Duff-Coleman project in part because it included a cost cap in its proposal. With competitive solicitations, regulators can insist on proposals that include provisions to contain costs. If the regulator is worried about cost escalations in the future, it can require the developer to post margin or a financial security to guarantee that it can pay a percentage of cost overruns. Another option is to reduce the return on equity associated with the project for cost increases. Finally, if none of these cost containment measures proves feasible, it can prohibit the developer from bidding on future projects.

Moreover, because ROFRs do not lead to proposals from different developers, the regulator does not receive information about expected project costs. When projects are bid competitively, there is a public evaluation of proposals that includes the project's financing terms. The developer agreement also typically includes milestones, cost containment provisions, and rate concessions. Perhaps most importantly, cost containment provisions are incorporated in FERC-approved formula rate. As a result, competitively procured projects provide are more transparent than non-competitive projects. Thus, if the initial estimate in an incumbent-led process is higher than it should be, the regulator lacks relevant data that could demonstrate that the estimate is high.

It is also worth mentioning that competition creates downward pressure on capital structure that can result in significant cost savings. Studies defending ROFRs have typically focused capital costs associated with new transmission projects. But that is only one part of a project's costs. Another important benefit of competition is that developers have an incentive to propose capital structures and offer rate cap concessions that further reduce customer bills. In recent competitive

---

[9] *See* Robert Walton, *NV Energy Proposes 400 MW Gas Peakers, More Than 1 GW Each of Solar, Storage in 2024 IRP*, UTILITY DIVE (Jun. 11, 2024), https://www.utilitydive.com/news/nv-energy-proposes-400-mw-gas-peakers-1-gw-solar-storage/718548/;

[10] *See* Answer Of The Electricity Transmission Competition Coalition to the Unauthorized Supplemental Reply Comments Of Certain Anti-Competition Incumbent Utilities, Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection, Docket No. RM21-17-000, P. 17 (Aug 17, 2022), https://electricitytransmissioncompetitioncoalition.org/wp-content/uploads/ETCC-Response-to-Incumbent-TO-Comments.pdf.

[11] https://apps.psc.wi.gov/ERF/ERFview/viewdoc.aspx?docid=510563

[12] *See* Walker Orenstein, Price for huge Xcel transmission line more than doubles to $1.14B, The Minnesota Star Tribune (Nov. 16, 2023), https://www.startribune.com/price-for-huge-xcel-transmission-line-more-than-doubles-to-1-14b/600320218?utm_medium=email&refresh=true).

transmission procurements, developers have offered to cap the equity percentage of the capital structure that limits customers' exposure to future cost increases. For example, when Republic Transmission (a subsidiary of LS Power) received a contract for the Duff Coleman project, it included (a) a 45% equity cap, (b) a return on equity cap set at the lesser of 9.8% or MISO's region-wide return on equity, *at the lesser of* 9.80% (inclusive of incentives) or the MISO region-wide base return on equity plus an RTO participation adder, and (c) a commitment to reduce the return on equity if the project did not meet certain milestones.[13] Utilities have no incentive to propose these contract terms when they do not face pressure from a competitor.

Finally, competition is also more likely to result in technological innovation. Incumbent utilities have historically been reluctant to invest in new technologies. This, too, is consistent with their financial incentives. Rate regulated utilities receive a return on large infrastructure investments, so are relatively unmotivated to propose innovative solutions. Even when regulators offer to increase returns to utilities that use advanced technologies, utilities may be disinclined to adopt them since they are worried about risks compared to known approaches.[14]

In short, without competition, utilities lack incentives to minimize costs, optimize designs, or seek efficiency improvements. Notably, even if incumbents win bids in these regions, the threat of competition has created an incentive for them to reduce costs. Second, cost estimates from competitive bidding processes have often been lower than those from projects awarded directly to incumbents, again suggesting that competition creates incentives for developers to reduce their costs. This not only provides benefits for the immediate project, but it can also drive continued cost declines as utilities continue to compete for project awards.

III. Pro-ROFR Reports Rely on Misleading Evidence

In response to this empirical evidence, utility-sponsored research relies primarily on individual case studies to argue that competition leads to cost increases. These studies typically collect a sample of lines that came in above-cost, and based on that evidence, conclude that competitive transmission planning is more costly and prone to delay than incumbent-driven processes.[15]

---

[13] *See* Affidavit of Paul Thessen in Support of Comments of LL Power Grid, Appendix II, Summary of Completed Competitive Processes, Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection, https://www.lspower.com/wp-content/uploads/2023/09/Initial-Comments-of-LS-Power-Affidavit-Only.pdf.

[14] JOskow 22:

[15] For example, a recent study commissioned by incumbent utilities with service territories in the Midwest focused on four competitively planned lines, two of which had cost overruns *See* Developers Advocating Transmission Advancements, Recent Experience with Competitive Transmission Projects and Solicitations (2025), https://www.modernizethegrid.com/wp-content/uploads/2025/02/DATA-Whitepaper-2024_2-5-25_vF_edit.pdf.

These studies are problematic on their own terms, and for three specific reasons. First, as discussed, the most egregious examples of transmission cost overruns have involved lines that *avoided* competitive procurements.

Second, studies critiquing competitively procured transmission projects often ignore or misrepresent the underlying causes of the cost increases. For example, when an ITC representative presented a defense of ROFRs to the Oklahoma legislature, he pointed specifically to the Artificial Island Project in Delaware, which came in sixty-one percent above the cost cap.[16] The problem with this example is that, in the case of the Artificial Island project, the cost overrun occurred because incumbent utility Public Service Gas & Electric's substation upgrades that were assigned to the incumbent came in above projected cost.[17] Similarly, for one of the lines cited in the DATA Report described above—the LS Power lines in the San Jose area—the cost increase was also caused largely by unplanned substation upgrades that were not competitively solicited.[18] In other words, these cost overruns—cited as evidence that competitive procurements lead to cost increases—were actually the responsibility of incumbent utilities that did not participate in a competitive procurement.

Third, studies that have defended ROFRs routinely present data in a misleading manner. Consider the Concentric study that found lower cost escalations associated with ROFR-ed projects.[19] The study compared the final cost of incumbent-led projects not to the initial cost estimate, but rather to more recent estimates that came in higher than the initial proposal. This has the effect of underestimating incumbent cost increases. Imagine if a project was initially estimated to cost $100 million. After a year the utility or RTO updated the projected cost to $150 million. The project was ultimately completed at a cost of $200 million. The cost increase should be $100 million, since the initial estimate was $100 million, and the project ultimately cost $200 million. But the Concentric study would take the second year of the project—when the estimate had already increased to $150 million—and, on that basis, find that the project only increased by $50 million.

In one example, Concentric examined a project that was initially estimated to cost $360 million. The project ultimately cost $493 million—37% higher than the cost estimate.[20] However,

---

[16] *See* Chris Winland, Dir. Of Strat. Planning, ITC Great Plains Oklahoma ROFR Presentation (Oct. 17, 2023), https://oksenate.gov/sites/default/files/2023-10/PRZ_ITC%20Great%20Plains_Oklahoma%20ROFR%20presentation_10.17.23.pdf.

[17] *See* Krysti Shallenberger, *PJM Suspends Artificial Island Transmission Project*, UTILITY DIVE (Aug. 8, 2016), https://www.utilitydive.com/news/pjm-suspends-artificial-island-transmission-project/424009/.

[18] *See* DATA P. 13-16. The DATA Whitepaper argues that this case study shows that ROFRs support streamlined and comprehensive planning processes, but it is unclear why PG&E, the incumbent transmission owner here, was unable to coordinate with the winning bidder. Nor is there evidence that a ROFR would have caused the incumbent to better anticipate substation upgrades.

[19] *See* Emma Nicholson, Meredith Stone, & Danielle Powers, Concentric Energy Advisors, *Building New Transmission: Experience To-Date Does Not Support Expanding Solicitations* (Jun. 2019), https://ceadvisors.com/wp-content/uploads/2019/06/CEA_Order1000report_final.pdf.

[20] *See id.*; *see also See* Johannes Pfeeifenberger, Judy Chang, & Michael Hagerty, Cost Savings Offered by Competition in Electric Transmission: Esperience to Date and Potential Value for Electricity Customers, P. 24-25 (Dec.

Concentric relied on updated cost estimates—that came in higher than the initial one—to find cost increases of 10%. But to determine the real cost increase, one should of course compare the final project cost to the initial estimate—not to a baseline estimate that occurs after the utility has already raised costs. Thus, the study assumed that cost escalations for non-competitive lines should be calculated by comparing the final cost to the *recent* estimates. The study therefore significantly underrepresents the true cost escalations for ROFR-ed projects.[21]

IV. Conclusion

Competition has driven persistent cost savings and supported innovation. Given the significant investment Wisconsin must make in upgrading its electrical system, it would seem to be prudent to preserve competitive options that will protect Wisconsin ratepayers.

11, 2019), https://www.brattle.com/wp-content/uploads/2021/05/17805_cost_savings_offered_by_competition_in_electric_transmission.pdf.

[21] *See* Pfeeifenberger, Chang, & Hagerty, Cost Savings Offered by Competition in Electric Transmission, supra note 20 at 24-25. Another problem with these studies is that, because competition likely leads to lower initial proposals, a straightforward comparison of cost escalations ignores the fact that the initial estimate of the competitive line can be expected to be lower than the estimate of the incumbent-led line.