



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 sunseting 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 its 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

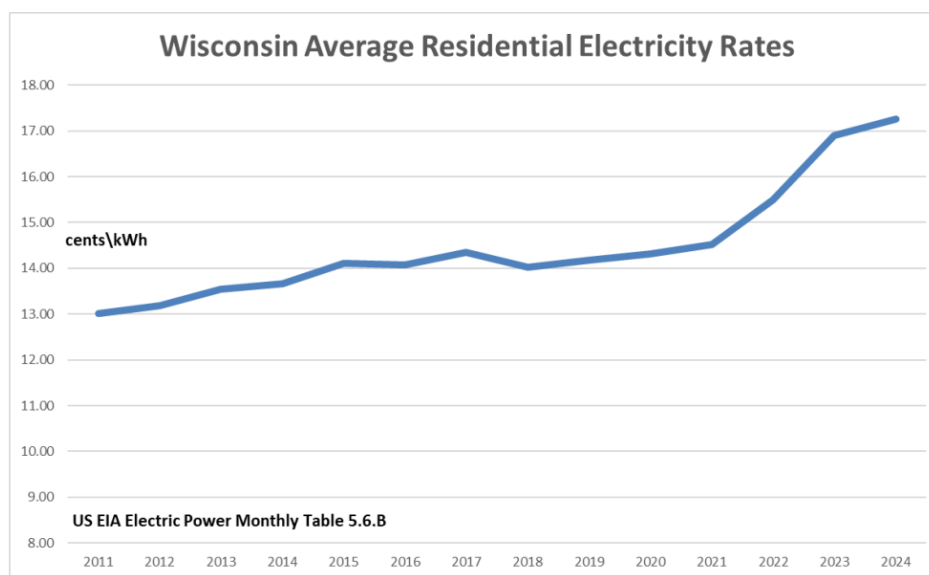
to see the types of innovation and financing package savings a competitive bid would offer for a line that is new to our state?

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 <i>High-Level Scope</i>	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 <i>Construct four new 345 kV transmission line facilities and four new 345 kV substation facilities</i>	2/13/2025	7/28/2025	50961	WI	\$568.3	2033
			50968			
			50972			
			50974			
			50981			
			50987			
			50990			
BECI Bell Center – Columbia – Sugar Creek – Illinois/Wisconsin State Line <i>Construct three new 765 kV transmission line facilities</i>	2/27/2025	8/11/2025	50949	WI	\$1,209.3	2034
			51026			
			51028			

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 statutes 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.