



## Last Session's Rejection of **Transmission Monopoly** (ROFR) Legislation Likely Saves Wisconsin Consumers Millions, Maybe Billions of Dollars

Electricity rates are on the rise in Wisconsin. Thankfully, last session the Legislature rejected the proposed Right of First Refusal ("ROFR") legislation. Doing so helped control the rise of energy costs for your constituents in future years.

Unfortunately, electric rates are still on the rise even without this legislation. Starting January 1, 2023, utility customers will see the following rate increases:

- 9.82% - WPSC (WPS) average increase<sup>1</sup>
- 9.11% - WEPCO (We Energies) average increase<sup>2</sup>
- 9.01% - MGE average increase<sup>3</sup>
- 6.80% - WPL (Alliant) average increase<sup>4</sup>
- 5.20% - NSPW (Xcel) average increase<sup>5</sup>

Passing ROFR legislation would increase these costs in the coming years.

Last session's 2021 Assembly Bill 892/Senate Bill 838, if passed, would have given Wisconsin utilities that already own transmission facilities the right of first refusal to construct, own, and maintain the state's largest new transmission projects. Any company not already providing transmission services in the state would have been **blocked from** competing for construction of the new regional transmission lines. This **construction monopoly** drives up the cost of building these lines. *More expensive lines mean more money to the utility companies and less in the pocket of the consumers.*

These bills would have eliminated a competitive bidding process to build transmission lines, resulting in significant additional costs to the ratepayers.

## **A Competitive Bidding Process Saves BILLIONS for Ratepayers**

### **Maine**

\$1 billion estimated savings<sup>6</sup> - The Maine Public Utilities Commission has estimated savings of over \$1 billion for consumers from two new electricity transmission projects from competitive bidding.

### **New Jersey**

\$900 million estimated savings<sup>7</sup> - New Jersey had the largest-ever competitive bidding process for a transmission project in the country saving \$900 million. A new order from the Board of Public Utilities is asking for a second round of competitive projects, which could save ratepayers *billions*.<sup>8</sup>

### **New York**

\$500 million estimated savings<sup>9</sup> - New York's Empire State Transmission Line was selected by the New York Independent System Operator (NYISO) through a competitive bidding process – the first competitively bid transmission project awarded and built in New York.

### **Kansas and Missouri**

\$58 million estimated savings<sup>10</sup> - The Wolf Creek to Blackberry transmission project, a 94-mile 345 kV line, was competitively bid and the least expensive proposal was selected.

### **Oklahoma**

\$26 million estimated savings<sup>11</sup> - The Minco-Pleasant Valley Draper transmission project, a 48-mile, 345 KV line, was competitively bid with regulators selecting the least costly proposal.

## **ROFR Laws Unconstitutional**

The 5<sup>th</sup> Circuit Court of Appeals issued an opinion throwing out a ROFR law in Texas. The law prevented any company to build, own or operate new transmission lines unless they already owned transmission facilities in the same region of the state.

The Court summed up the problem precisely when it said, “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 dormant Commerce Clause.”<sup>12</sup>

The Court found the law unconstitutional on dormant Commerce Clause grounds explaining that the “electricity grid is on its own an interstate market, state protectionist measures regulating its instrumentalities run a much greater risk of harming out-of-state interests- the ability of companies to compete, the process consumers pay – than the regulations on” other entities like retail wine stores, dairies, or waste processing facilities.”<sup>13</sup>

Whether Wisconsin's proposal would hold up under judicial scrutiny is, at best, an unanswered question.

## **Diverse Organizations Reject any Renewed ROFR Efforts in Wisconsin**

Billions of dollars for transmission line projects are headed to Wisconsin and it would not be a surprise to see some groups again working to block out any competition this session. Our coalition continues to reject ROFR legislation which will add insult to injury on consumers' electric bills, by further raising energy bills for Wisconsin ratepayers even higher.

---

<sup>1</sup> Wisconsin Public Service Commission, *Final Order*, Docket #6690-UR-127 available at <https://apps.psc.wi.gov/ERF/ERFview/viewdoc.aspx?docid=455196>

<sup>2</sup> Wisconsin Public Service Commission, *Final Order*, Docket #05-UR-110, available at <https://apps.psc.wi.gov/ERF/ERFview/viewdoc.aspx?docid=455451>

<sup>3</sup> Wisconsin Public Service Commission, *Final Order*, Docket #3270-UR-124 available at <https://apps.psc.wi.gov/ERF/ERFview/viewdoc.aspx?docid=454855>

<sup>4</sup> Wisconsin Public Service Commission, *Final Order*, Docket #6680-ER-103 (3.8% average rate increase from 2023 fuel surcharge) available at <https://apps.psc.wi.gov/ERF/ERFview/viewdoc.aspx?docid=454719>; *see also* Wisconsin Public Service Commission, *Final Order*, Docket #6680-FR-2021 (3% average rate increase for 2021 under-collected fuel costs) available at

<https://apps.psc.wi.gov/ERF/ERFview/viewdoc.aspx?docid=446047>

<sup>5</sup> Wisconsin Public Service Commission, *Final Order*, Docket #4220-ER-102 (2.8% average increase from 2023 fuel costs) available at <https://apps.psc.wi.gov/ERF/ERFview/viewdoc.aspx?docid=454721>; *see also* Wisconsin Public Service Commission, *Final Order*, Docket #4220-UR-125 (2.4% average rate increase for Test Year 2023) available at <https://apps.psc.wi.gov/ERF/ERFview/viewdoc.aspx?docid=427625>

<sup>6</sup> Maine Public Utilities Commission, *Commission Selects Winning Bids for Northern Main Transmission Line and Renewable Energy Projects*, (10/26/2022) available at <https://www.maine.gov/tools/whatsnew/index.php?topic=puc-pressreleases&id=9382450&v=article088>; *see also* Electricity Transmission Competition Coalition, *Competitive Electricity Transmission Bidding Process Saves Main Consumers over \$1 Billion*, (10/26/2022) available at <https://electricitytransmissioncompetitioncoalition.org/competitive-electricity-transmission-bidding-process-saves-maine-consumers-over-1-billion/>

<sup>7</sup> New Jersey Board of Public Utilities, *New Jersey Board of Public Utilities Selects Offshore Win Transmission Project Proposed by Mid-Atlantic Offshore Development and Jersey Century Power & Light Company in First in Nation State Agreement Approach Solution*, (10/26/2022) available at <https://nj.gov/bpu/newsroom/2022/approved/20221026.html>; *Also see* Electricity Transmission Competition Coalition, *Competitive Electricity Bidding Process Saves New Jersey Ratepayers Billions of Dollars*, (11/1/2022) available at <https://electricitytransmissioncompetitioncoalition.org/competitive-electricity-transmission-bidding-process-saves-new-jersey-ratepayers-billions-of-dollars/>

<sup>8</sup> *Id.*

<sup>9</sup> NextEra Transmission, *New York Gov. Hochul joins NextEra Energy Transmission to celebrate commissioning of Empire State Transmission Line*, (07/11/2022) available at <https://www.streetinsider.com/PRNewswire/New+York+Gov.+Hochul+joins+NextEra+Energy+Transmission+to+celebrate+commissioning+of+Empire+State+Transmission+Line/20311212.html>; *also see* Electricity Transmission Competition Coalition, *Statement from ETCC Chair Paul Cicio on NYISO's New, Competitively Bid Empire State Line Project*, (07/12/2022) available at <https://electricitytransmissioncompetitioncoalition.org/statement-from-etcc-chair-paul-cicio-on-nyisos-new-competitively-bid-empire-state-line-project/>

<sup>10</sup> Electricity Transmission Competition Coalition, "Competition Works" available at <https://electricitytransmissioncompetitioncoalition.org/competition-works/>

<sup>11</sup> Southwest Power Pool, *Minco-Pleasant Valley-Draper RFP* available at <https://www.spp.org/documents/66929/minco-pleasant%20valley-draper%20rfp%20iep%20public%20report.pdf>

<sup>12</sup> *NextEra Energy Capital Holdings, Inc. et al. v. Lake et al.*, Case No. 20-50160 (5<sup>th</sup> Cir. 2022).

<sup>13</sup> *Id.*

## **Contact Information**

Eric Bott, State Director, Americans for Prosperity – Wisconsin

[ebott@afphq.org](mailto:ebott@afphq.org)

608-286-1284

Todd Stuart, Executive Director, Wisconsin Industrial Energy Group

[tstuart@wieg.org](mailto:tstuart@wieg.org)

608-441-5740