



WISCONSIN LEGISLATURE

P.O. BOX 8952 • MADISON, WI 53708

18 February 2025

President Donald J. Trump
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear President Trump:

We, the undersigned write to express our collective concern regarding the recent surge of right of first refusal (ROFR) legislation developing in multiple Midwest states. With more than \$20 billion allocated to Midwest states over the upcoming months and \$100 billion in total for MISO states, the push by utilities to advocate for such protectionist measures is alarming. This legislation not only undermines principles of competition but also appears contradictory to the American First agenda your administration has begun to implement.

The Federal Energy Regulatory Commission (FERC) issued FERC Order 1000 on July 21, 2011 to enhance competition and innovation in the electric transmission sector by eliminating the federal Right of First Refusal for incumbent utilities. This order required public utility transmission providers to remove the federal ROFR from FERC-approved tariffs and agreements for transmission facilities selected in a regional transmission plan for cost allocation. The primary goal of Order 1000 was to promote competition in the construction of new transmission infrastructure, which was expected to lead to cost saving and improve efficiency. By removing the ROFR, FERC intended to open the market to new entrants, thereby fostering innovation and reducing costs for consumers. Both the Department of Justice and the Federal Trade Commission have advised the Federal Energy Regulatory Commission (FERC) against reinstating the federal ROFR, emphasizing the crucial role of competition in the design and construction of interstate electric transmission facilities.

Despite the aforementioned, incumbent utilities continue to advocate for state ROFR laws. While attempts to reinstate a federal Right of First Refusal (ROFR) have not succeeded, they have managed to convince state legislators and governors in the Midwest to support this policy. Wisconsin, for example, is expected to receive \$1.8 billion in



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transmission line projects that are currently subject to competition under Midcontinent Independent System Operator (MISO) Tranche 2.1, aimed at enhancing grid reliability and facilitating renewable energy integration in the Midwest.

We write to you today because we believe the current environment negatively impacts states that continue to protect competition. We believe ROFR legislation stands in stark opposition to numerous executive orders issued by you and your administration, which emphasized the critical importance of protecting and enhancing competition to foster innovation and reduce costs.

Moreover, it is crucial to recognize that this legislation contradicts the executive orders and beliefs of Secretary Chris Wright and Secretary Doug Burgum, both of whom have advocated for competitive practices in their respective domains. Upholding the spirit of competition is essential for ensuring that taxpayers and ratepayers receive the best possible value for their investments.

In 2019, the United States Department of Justice (DOJ) expressed concerns about the Right of First Refusal (ROFR) law in Texas. The DOJ's Antitrust Division commented on the Texas House Bill 3995, which aimed to restrict which entities could develop facilities for the transmission of electricity in Texas. According to the letter, "these restrictions would limit competition, thereby, potentially raising prices and lowering the quality of service for electricity consumers. The DOJ emphasized competition as a core organizing principle of the American economy, stating vigorous competition among sellers in an open marketplace benefits consumers by providing lower prices, higher quality goods and services, increased access to goods and services and greater innovation.

Additionally, similar ROFR legislation has been deemed unconstitutional in several other states, including Iowa, Indiana, and Texas.

In 2022, the United States District Court for the Western District of Texas held that ROFR laws "are unconstitutional because they violate the dormant Commerce Clause and are therefore invalid and unenforceable, to the extent that they grant in-state transmission owners the exclusive right to build or acquire transmission lines."



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In December 2023, the Iowa District Court for Polk County determined that the ROFR law violated the state constitution and was therefore void and unenforceable. The court found the law discriminated against interstate commerce and was passed in a manner that violated single-subject and title provisions of the Iowa Constitution, also known as the anti-logrolling provision. According to the court in this case, “the Iowa Supreme Court had previously opined that the ROFR law is ‘quintessentially crony capitalism.’ This rent-seeking protectionist legislation is anticompetitive.”

Most recently, in December 2024, the United States District Court for the Southern District of Indiana issued a preliminary injunction against the state’s ROFR law, finding that it violated the dormant Commerce Clause. According to the court, Indiana’s ROFR law, “facially discriminates against out-of-state economic interests, and it cannot survive strict scrutiny.”

Studies consistently show ROFR policies significantly increase costs for consumers. One study found that competitive bidding could save consumers between twenty percent and thirty percent on transmission projects compared to ROFR policies. These savings highlight the importance of fostering a competitive environment in the energy sector.

In nearly every state that has passed ROFR laws, litigation follows. We are concerned the ROFR law proposed here is unconstitutional and our constituents will have to shoulder the cost to defend the law.

In addition to legal uncertainty, we are concerned with the impact of this legislation on our constituents. States like Wisconsin are being forced to shoulder bloated costs due to ROFR laws in other states. Current practices at MISO allow states to shift costs of regional projects to regional states. With ROFR in other states, our constituents are on the hook for their bad policy. The incentives are fundamentally flawed and should be realigned to reward states that protect competition, not the opposite. We must look for ways to drive down costs for our constituents, not inflate them. It is imperative that we promote competition across the region to safeguard our ratepayers from unjustified cost increases and to uphold the principles of fairness and efficiency that are the bedrock of our economic system.

As a group, we hope your administration can provide answers to the following questions:



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- Are state ROFR laws inconsistent with your administration's Executive Order to unleash American energy?
- Does your administration have a position on the constitutionality of these ROFR laws?
- Does your administration expect the projects approved under MISO will continue as scheduled?
- Will states continue to be forced to pay a portion of projects in other states, specifically states which eliminated competition by passing ROFR, through the use of MISO tariffs?
- Will the White House intervene to put a stop to the ROFR legislation in the Midwest?

We ask that your administration respond as soon as possible, as we are facing a potential vote in the next few weeks on adopting ROFR. Your response to these questions will allow us to make a more informed decision with respect to the pending ROFR legislation.

Sincerely,

Representative Rob Brooks

Wisconsin's 59th Assembly District

Representative Rick Gundrum

Wisconsin's 58th Assembly District

Representative Dan Knodl

Wisconsin's 24th Assembly District

Representative Lindee Brill

Wisconsin's 27th Assembly District



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Representative Nate Gustafson

Wisconsin's 55th Assembly District

Representative Joy Goeben

Wisconsin's 5th Assembly District

Representative Chanz Green

Wisconsin's 74th Assembly District

Representative Scott Allen

Wisconsin's 82nd Assembly District

Representative William Penterman

Wisconsin's 38th Assembly District

Representative Travis Tranel

Wisconsin's 49th Assembly District

Representative Clint Moses

Wisconsin's 92nd Assembly District

Representative Chuck Wichgers

Wisconsin's 84th Assembly District

Senator Rob Hutton

Wisconsin's 5th Senate District

Representative Jerry O'Connor

Wisconsin's 60th Senate District



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Representative Dave Armstrong

Wisconsin's 67th Assembly District

Representative Dave Murphy

Wisconsin's 56th Assembly District

Representative Elijah Behnke

Wisconsin's 6th Assembly District

Representative Rob Kreibich

Wisconsin's 28th Assembly District

Senator Steve Nass

Wisconsin's 11th Senate District

Representative Dave Maxey

Wisconsin's 83th Assembly District

Senator John Jagler

Wisconsin's 13th Senate District

Representative Jim Piwowarczyk

Wisconsin's 98th Assembly District

Senator Chris Kapenga

Wisconsin's 33rd Senate District

Senator Romaine Quinn

Wisconsin's 25th Senate District