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Competition-Limiting Bill Criticized As Protectionist And Inflationary

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A policy enacted by Michigan Governor Gretchen Whitmer (D) in 2022 that reduces competition and drives up utility bills is not the sort of thing that many would expect Wisconsin Republicans, who have a supermajority in their state Senate and near supermajority in the Assembly, to be inclined to adopt. Such a proposal, however, is reportedly being considered by GOP leadership in both chambers of the Wisconsin Legislature.

Assembly Bill 470, legislation now pending in the Wisconsin Senate and Assembly, would limit competition for new utility transmission line construction projects by mandating that incumbent utility companies be entitled to the right of first refusal (ROFR) on new projects in the state. Critics of Wisconsin's ROFR bill say it's a protectionist measure whose enactment would have the state shielding incumbent utility companies from competition, with the result being higher costs for ratepayers.

"Some states have instituted their own ROFR requirements, while others have rejected them," writes Josiah Neeley, resident energy fellow and Texas state director for the R Street Institute. "Utilities in non-ROFR states continue to push for them, while consumer advocates, free market groups and some environmental advocates are opposed."

Wisconsin is connected to an electricity grid spanning 15 midwestern and southern states that is managed by the Midcontinent Independent System Operator (MISO). Nearly half of the MISO member states have a ROFR law of some form on the books. Efforts are underway, however, to undo these ROFR mandates legislatively and through legal action.

Variance in cost between sources of energy gets considerable media coverage and is frequently the topic of debate. But transmission costs account for an under appreciated and growing share of energy prices. Neeley cites research showing that maintaining a competitive bidding process for new transmission projects by avoiding ROFR mandates "results in a 20-30% cost savings for transmission projects."

"The cost of delivering energy comprises as much as 50% of retail energy bills for customers in some states, such as California," noted a 2022 Cato Institute journal article by Jim Rossi, who is the Judge D.L. Lansden Chair in Law at Vanderbilt University Law School. "Utility spending on electricity delivery costs was 68% higher in 2020 than in 2010 (in constant 2020 dollars),

reflecting the replacement costs for aging equipment and incremental investments in reliability, resilience, and grid security. With the growing use of low- carbon power generation, it is inevitable that grid infrastructure costs will rise further.”

Opponents of state ROFR legislation like AB 470 point to research that documents how competitive bidding processes for new transmission projects are associated with relatively lower ratepayer costs. “The cost reductions from competitively developed transmission can provide important rate relief to residential and smaller commercial customers, especially as they face significant increases in the energy cost components of their monthly bills because of rising fuel costs,” Professor Rossi added.

Wisconsin’s current system of open competition for transmission project bidding produces somewhere between 22% and 42% savings for ratepayers, according to one independent assessment. Enactment of AB 470, detractors argue, would result in higher overall energy costs, which would be passed along to ratepayers, acting much like a tax hike on electricity usage.

“These savings may be even more important for energy-intensive industrial and large commercial customers, who are particularly sensitive to excessive transmission costs,” Rossi added. “In a recent complaint to FERC, business and industrial customers estimate that lack of competitive bidding in MISO states with transmission ROFR laws will increase their transmission costs by 18%. As manufacturers save on their energy inputs, lower production costs are also passed through in lower retail product prices.”

In the coming months, Many Wisconsin Republicans will be making the case to voters that President Joe Biden’s record and the progressive policy agenda in general have exacerbated inflation. Badger State Republicans are being cautioned that if they lob such criticism at President Biden or other Democrats while also having voted to impose ROFR in their state, they could be accused of throwing rhetorical stones from a figurative glass house.

“Wisconsin lawmakers have passed landmark conservative reforms that have saved taxpayers billions of dollars over the past decade,” says Grover Norquist, president of Americans for Tax Reform. “Passage of AB 470 would be uncharacteristic of Wisconsin Republicans and would somewhat counteract the cost savings achieved through Act 10, prevailing wage repeal, multiple rounds of income tax relief, and other reforms intended to reduce taxpayer costs. It would be an even greater shame to see Republicans in Madison pass protectionist legislation that reduces competition and increases utility bills when considering how their constituents have suffered from multiple years of high inflation.”

Wisconsin isn’t the only state where ROFR legislation is now pending. An ROFR bill has also been filed in the Kansas Legislature. Kansas is a state, like Wisconsin, where Republicans control the state legislature but not the governor’s mansion. While the fate of those ROFR bills remains to be seen, a ruling by the Fifth Circuit Court of Appeals questioning whether Texas’s ROFR law violates the U.S. Constitution’s dormant Commerce Clause, could call into question the validity of all ROFR laws in the future.