



44 East Mifflin Street • Suite 402 • Madison, Wisconsin 53703 • 608/257-3151

SEVENTH CIRCUIT REINSTATES INDIANA'S RIGHT OF FIRST REFUSAL LAW FOR IMMEDIATE RELEASE

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Contact: Bill Skewes

Wisconsin Utilities Association, Inc.

608 257 3151

MADISON WI – Today, the Seventh Circuit has reversed its injunction against the Indiana Right of First Refusal (ROFR) law, holding that plaintiff LS Power’s complaint lies with the Midcontinent Independent System Operator, not the Indiana Commissioners. LS Power opposes ROFR laws which grant incumbent providers the first opportunity to build transmission lines.

“WUA is extremely pleased to report that the Seventh Circuit has tossed out a trial court’s injunction against Indiana’s ROFR law,” said Bill Skewes, Executive Director of the Wisconsin Utilities Association which filed amicus briefs in the case and supports ROFR.

In its opinion, the Court explained* that the federal government explicitly allows for state rights of first refusal. And in holding that the challengers lack standing, critically, the Seventh Circuit reasoned that state ROFR laws have passed several “federal checkpoints” at the federal level and cited cases holding that, because this is so, state ROFR laws cannot possibly violate the Dormant Commerce Clause, as opponents have argued.**

Particularly, the Court explained that FERC’s Order 1000 “explicitly allowed States to grant their own” rights of first refusal. And, on top of that, “FERC approved MISO’s tariff,” which requires MISO to comply with state rights of first refusal. Therefore, as the Court explained, the federal government has clearly blessed state rights of first refusal.

It is now officially the law of the Seventh Circuit, including in Wisconsin, that state ROFR laws are entirely constitutional, as WUA argued in its briefs to the Court.

“This is a tremendous victory for the rule of law and for federalism, and it comes at an opportune time for our state. With the baseless constitutional objections to ROFR now officially out of the way, we urge the Legislature to do what many of our neighboring states have already done - pass Senate Bill 28/Assembly Bill 25 and help ensure Wisconsinites maintain a safe, reliable grid and save money. “ said Skewes.

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*See *LSP Transmission Holdings II, LLC v. Huston*, Nos. 24-3248, 24-3249, & 25-1024 (7th Cir.), slip op. at 7.

** *LSP Transmission Holdings II, LLC v. Huston*, Nos. 24-3248, 24-3249, & 25-1024 (7th Cir.), slip op. at 27–28 & n.10.