UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

LSP Transmission Holdings II, LLC, *et al.*, *Plaintiffs*, v. James F. Huston, Chairman, Indiana Utility Regulatory Commission, *et al.*, *Defendants*, Northern Indiana Public Service Company, *et al.*, *Intervenor Defendants.*	)	Case No. 1:24-cv-01722-TWP-MKK

MOTION OF INDUSTRIAL ENERGY CONSUMERS OF AMERICA, COALITION OF MISO TRANSMISSION CUSTOMERS, AND WISCONSIN INDUSTRIAL ENERGY GROUP FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE*

The Industrial Energy Consumers of America ("IECA"), the Coalition of MISO Transmission Customers ("CMTC"), and the Wisconsin Industrial Energy Group ("WIEG") (together, "Industrial Consumers" or "Amici") request leave to file the *amici curiae* brief, attached as **Exhibit A**, in the above-captioned proceeding, in support of LSP Transmission Holdings II, LLC, LS Power Midcontinent, LLC, Central Transmission LLC, and LS Power Grid DRS Holdings, LLC's ("Plaintiffs") Motion for Summary Judgment being filed concurrently with this motion.

Counsel for *amici* has notified counsel of all parties of its intention to file this motion and brief. Defendants James F. Huston and the Indiana Utility Regulatory

Commission informed the Industrial Consumers that they take no position on this motion. Plaintiffs stated that they consent to this motion.

1. IECA is a nonpartisan association of leading manufacturing companies with $1.3 trillion in annual sales, over 12,000 facilities nationwide – and with more than 1.9 million employees. IECA was founded on the belief that a robust, diverse and affordable supply of energy is required to sustain economic growth, quality of life for our citizens, and the competitiveness of industry. IECA promotes the interests of manufacturing companies through advocacy and collaboration for which the availability, use and cost of energy, power or feedstock play a significant role in their ability to compete in domestic and world markets. IECA membership represents a diverse set of industries including: defense industries, chemicals, plastics, steel, iron ore, aluminum, paper, food processing, fertilizer, insulation, glass, industrial gases, pharmaceutical, consumer goods, building products, automotive, independent oil refining, and cement all of which use tremendous amounts of electricity in their industrial processes. IECA has members in every state, including Indiana. Most IECA member companies are energy intensive trade exposed, which means that relatively small increases in the price of electricity can have relatively high negative impacts to their global competitiveness – directly impacting jobs and investment. The industrial sector's ability to maintain and reshore jobs and increase U.S. investment is tied directly to electricity costs. IECA companies compete directly with China state owned enterprises whose electricity prices are subsidized by their government. Manufacturers open, close, and relocate their businesses due in large part to the cost of energy and the regulatory environment of a particular area. Pertinent to the State of Indiana, IECA member companies pay electric transmission rates that are assessed by

transmission owners in the electricity grid operated by the Midcontinent Independent System Operator, Inc. ("MISO") and PJM Interconnection, L.L.C. ("PJM"), regional transmission organizations ("RTOs") regulated by the Federal Energy Regulatory Commission ("FERC").

2. CMTC member companies have facilities throughout the MISO grid. For the past 25 years, CMTC has participated in MISO market and transmission issues, and has actively supported competition for transmission projects within the MISO stakeholder process, before FERC, United States Courts of Appeals, and the United States Supreme Court. CMTC members pay electric transmission rates that are assessed by MISO transmission owners. Some CMTC member facilities are assessed transmission charges as a separate, stand-alone charge on invoices assessed by market suppliers. Other CMTC facilities pay for transmission charges on a bundled basis, as a component of retail electricity charges that also include charges for generation and distribution service.

3. WIEG is a voluntary member association consisting of large industrial and commercial customers in the State of Wisconsin, including manufacturing industries in paper, printing, malting, automobile, food processing, chemical, metal casting, and fabricating. WIEG members collectively employ roughly 35,000 people in Wisconsin and consume 5.3 billion kilowatt-hours of electricity each year. Electric transmission charges paid by most WIEG members are passed through by transmission dependent utilities via formula rate schedules for American Transmission Company LLC in MISO's FERC-jurisdictional tariff. Transmission dependent utilities also pass through transmission costs of projects that are cost shared throughout the MISO region. WIEG is very concerned about affordability and the impact the rising trend in transmission costs will have on

customers. WIEG strongly opposed the Wisconsin legislation proposing preferential rights for incumbent utilities during the 2021-2022 and 2023-24 legislative sessions.[1]

4. The outcome of this case will impact the cost of electricity paid by the Industrial Consumers both in Indiana and throughout the interstate electricity grid operated by MISO. MISO coordinates, controls, and monitors electric transmission systems across 15 states. Accordingly, the Industrial Consumers have a significant interest in the outcome of this case and the Court's ruling. The amici curiae brief will assist the Court in resolving the issues presented and understanding the economic impact on large energy users in the State of Indiana and surrounding states.

5. Accordingly, the Industrial Consumers are conditionally filing their brief with this motion for leave.

[1] *See* Wisconsin Business, "Transmission Line Bill Most Lobbied Legislation in '23-'24 Session, Aug. 19, 2024, available at https://www.wisbusiness.com/2024/transmission-line-bill-most-lobbied-legislation-in-23-24-session/, (last accessed Aug. 12, 2025).

WHEREFORE, the Industrial Energy Consumers of America, the Coalition of MISO Transmission Customers, and the Wisconsin Industrial Energy Group respectfully request leave to file the attached amici curiae brief.

Dated: August 12, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2025, a true and accurate copy of the foregoing was served via the Court's CM/ECF system upon all counsel of record.

/s/ Kenneth R. Stark
Kenneth R. Stark

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

LSP Transmission Holdings II, LLC, *et al.*, *Plaintiffs*, v. James F. Huston, Chairman, Indiana Utility Regulatory Commission, *et al.*, *Defendants*, Northern Indiana Public Service Company, *et al.*, *Intervenor Defendants.*	)	Case No. 1:24-cv-01722-TWP-MKK

BRIEF OF AMICI CURIAE INDUSTRIAL ENERGY CONSUMERS OF AMERICA, COALITION OF MISO TRANSMISSION CUSTOMERS, AND WISCONSIN INDUSTRIAL ENERGY GROUP IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

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I. INTRODUCTION

The Industrial Energy Consumers of America ("IECA"), the Coalition of MISO Transmission Customers ("CMTC"), and the Wisconsin Industrial Energy Group ("WIEG") (together, "Industrial Consumers" or "Amici") respectfully submit this amici brief in support of LSP Transmission Holdings II, LLC, LS Power Midcontinent, LLC**,** Central Transmission LLC, and LS Power Grid DRS Holdings, LLC's ("Plaintiffs") Motion for Summary Judgment filed on August 6, 2025.

II. INTEREST OF AMICI

The cost of electricity is one of the top operational expenditures for Industrial Consumers. The Amici have actively supported competition for transmission. Laws that grant incumbent transmission owners a preferential right to develop and own interstate transmission projects, such as Indiana House Enrolled Act 1420 (2023) ("HEA 1420" or "Indiana Preference Law"), harm consumers by preventing the efficiency and price-lowering benefits of competition for transmission projects. The Indiana Preference Law authorizes in-state utilities in Indiana to build new transmission paid for by regional consumers, regardless of whether that utility is the most efficient or cost-effective developer.

IECA is a nonpartisan association of leading manufacturing companies with $1.3 trillion in annual sales, over 12,000 facilities nationwide, more than 1.9 million employees. IECA was founded on the belief that a robust, diverse, and affordable supply of energy is required to sustain economic growth, quality of life for our citizens, and the competitiveness of industry. IECA promotes the interests of manufacturing companies through advocacy and collaboration for which the availability, use, and cost of energy,

power, or feedstock play a significant role in their ability to compete in domestic and world markets. IECA membership represents a diverse set of industries, including: defense industries, chemicals, plastics, steel, iron ore, aluminum, paper, food processing, fertilizer, insulation, glass, industrial gases, pharmaceutical, consumer goods, building products, automotive, independent oil refining, and cement – all of which use tremendous amounts of electricity in their industrial processes.

IECA has members in every state, including Indiana. Most IECA member companies are energy intensive trade exposed, which means that relatively small increases in the price of electricity can have relatively high negative impacts to their global competitiveness – directly impacting jobs and investment. The industrial sector's ability to maintain and reshore jobs and increase U.S. investment is tied directly to electricity costs. IECA companies compete directly with China state owned enterprises, whose electricity prices are subsidized by their government. Manufacturers open, close, and relocate their businesses due in large part to the cost of energy and the regulatory environment of a particular area. Pertinent to the State of Indiana, IECA member companies pay electric transmission rates that are assessed by transmission owners in the electricity grid operated by the Midcontinent Independent System Operator, Inc. ("MISO") and PJM Interconnection, L.L.C. ("PJM"), regional transmission organizations ("RTOs") regulated by the Federal Energy Regulatory Commission ("FERC").

CMTC member companies have facilities throughout the MISO grid. For the past 25 years, CMTC has participated in MISO market and transmission issues, and has actively supported competition for transmission projects within the MISO stakeholder process, before FERC, United States Courts of Appeals, and the United States Supreme Court.

CMTC members pay electric transmission rates that are assessed by MISO transmission owners. Some CMTC member facilities are assessed transmission charges as a separate, stand-alone charge on invoices assessed by market suppliers. Other CMTC facilities pay for transmission charges on a bundled basis, as a component of retail electricity charges that also include charges for generation and distribution service.

WIEG is a voluntary member association consisting of large industrial and commercial customers in the State of Wisconsin, including manufacturing industries in paper, printing, malting, automobile, food processing, chemical, metal casting, and fabricating. WIEG members collectively employ roughly 35,000 people in Wisconsin and consume 5.3 billion kilowatt-hours of electricity each year. Although WIEG members are located in Wisconsin, they will pay a portion of the transmission costs arising from Indiana-based, interstate transmission projects that preferentially assigned to Indiana utilities under the Indiana Preference Law at issue. Therefore, WIEG members are directly harmed by the Indiana Preference Law, WIEG is very concerned about affordability and the impact the rising trend in transmission costs will have on customers. Preference laws benefiting incumbent transmission owners exacerbate those rising transmission costs by preventing competition for billions in needed interstate transmission. WIEG strongly opposed efforts to convince the Wisconsin legislature to grant preferential rights for Wisconsin incumbent utilities during the 2021-2022, 2023-24, and 2024-25 legislative sessions.[1]

[1] *See* Wisconsin Business, "Transmission Line Bill Most Lobbied Legislation in '23-'24 Session, Aug. 19, 2024, available at https://www.wisbusiness.com/2024/transmission-line-bill-most-lobbied-legislation-in-23-24-session/, (last accessed Aug. 12, 2025).

III. ARGUMENT

Amici Industrial Consumers support federal policies seeking to reduce electric transmission costs through increased competition in the development of interstate transmission facilities. The Indiana Preference Law interferes with the transmission of electricity in interstate commerce and harms Industrial Consumers in several ways. First, the Indiana Preference Law precludes competition for high-voltage, interstate, regional transmission projects that connect to facilities in incumbent utilities' service areas. Second, the absence of competition for new transmission projects in Indiana – that are regionally cost allocated throughout a large transmission grid – increases the rates of Industrial Consumers not just in Indiana but in the other states in MISO and PJM. With its preferential right to develop and own a transmission project that is not subject to any cost discipline, the incumbent utility in Indiana, because of its monopoly power, has no incentive to minimize costs, because such costs are passed directly through rates to captive customers without viable alternatives for transmission service. Third, the Indiana Preference Law harms interstate commerce and intrudes upon federal authority, including statutory ratemaking authority given to FERC, over the regulation of transmission in interstate commerce.[2] Fourth, the Indiana Preference Law incentivizes incumbent utilities to disregard value engineering in making choices related to technical approach, project design, equipment and material selection, and other matters – imperative in competition –

[2] *See* Section 201 of the Federal Power Act, 16 U.S.C. § 824. Federal law does not expressly authorize states to interfere with the development of FERC-jurisdictional electric transmission rates. The Federal Power Act reserves the regulation of generation and intrastate transmission to the states, as well as siting, permitting, zoning, construction, and land use matters related to interstate transmission. However, the Federal Power requires FERC to exclusively regulate interstate transmission rates. 16 U.S.C. 824(b)(1) (only excluding from FERC jurisdiction "facilities used in local distribution or only for the transmission of electric energy in ***intra***state commerce") (emphasis added).

which seek to achieve the same functionality, service life, and reliability at a cost lower than MISO and PJM planners' estimates. Fifth, the Indiana Preference Law can impede efficient, innovative, and cost-effective solutions to regional transmission problems.[3]

New transmission projects can have an estimated 40-year life, and FERC allows the transmission owner to recover the costs of that project and earn a return on and of that project investment through a FERC-regulated annual transmission revenue requirement. Because the cost of several new transmission projects will be recovered from consumers over the next 40 years, maximizing transmission competition now is vital to ensuring just and reasonable rates for consumers. Timely adjudication of this lawsuit is in the public interest in light of the MISO Board's recent approval of $30 billion in new transmission and continuing transmission plans by both MISO and PJM.

A. The Planned Spending on Interstate Electric Transmission Projects in the MISO and PJM Regions Requires Maximizing Transmission Competition to Ensure Just and Reasonable Rates for Consumers.

Nationwide, utilities have been substantially increasing their spending on electric transmission,[4] nearly tripling total spending from 2003 to 2023.[5] Transmission developers invested approximately $20-$25 billion annually in transmission facilities in the United States from 2013-2020.[6] FERC found that "transmission investment is likely to

[3] Multi-Value Projects are subject to competitive procedures but with deference to state ROFR/preference laws.

[4] "Utilities continue to increase spending on the electric transmission system," U.S. Energy Information Administration (Sep. 30, 2021), available at https://www.eia.gov/todayinenergy/detail.php?id=47316 (last accessed Aug. 12, 2025).

[5] "Grid infrastructure investments dive increase in utility spending over the last two decades," U.S. Energy Information Administration (Nov. 18, 2024), *available at* https://www.eia.gov/todayinenergy/detail.php?id=63724 (last accessed Aug. 12, 2025).

[6] *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation*, FERC Order No. 1920, 187 FERC ¶ 61,068 at P 46, 89 Fed. Reg. 49,280 (June 11, 2024) ("Order No. 1920").

substantially increase in coming years"[7] and there will be "**sustained transmission spending through at least 2050**."[8] Transmission costs have become an increasing share of customers' overall electricity bills, underscoring the importance of ensuring that transmission investments are efficient and cost-effective.[9] Maximizing opportunities for transmission competition is vital to protecting consumers and ensuring just and reasonable rates.

MISO coordinates, controls, and monitors the interstate transmission systems across 15 states. MISO is one of the largest power grid operators in the world and is responsible for planning regional transmission infrastructure and overseeing 77,000 miles of transmission lines that serve 45 million customers.[10] Each year, MISO develops a MISO Transmission Expansion Plan that evaluates various types of transmission projects to meet local and regional reliability standards and facilitate competition among electric producers.[11] Since 2003, MISO has approved and facilitated $97 billion in transmission infrastructure investment.[12]

In late March 2021, MISO unveiled a long-range transmission package that could cost up to $100 billion, with several high voltage transmission line additions.[13] These long-

[7] Order No. 1920 at P 93.

[8] *Id.* at P 93 (emphasis added).

[9] Order No. 1920 at P 92.

[10] *See* About MISO, available at MISO Fact Sheet (last accessed Aug. 12, 2025).

[11] *See* MISO Transmission Expansion Plan, available at MTEP (misoenergy.org) (last accessed Aug. 12, 2025).

[12] *See* MTEP24 Report at p. 14, *available at* https://cdn.misoenergy.org/MTEP24 Full Report658025.pdf (last accessed Aug. 12, 2025) (the prior 20 years of $67 billion in investment plus the recently approved $30 billion in December 2024).

[13] *See* Xcel Energy, First Quarter 2021 Earnings Report Presentation (Apr. 29, 2021) at Slide 8, available at https://s202.q4cdn.com/586283047/files/doc_presentations/2021/04/1/Xcel-Energy-Earnings-Presentation-2021-Q1-Final.pdf (last accessed Aug. 12, 2025); *see* MISO, Long Range Transmission Planning Strategy

range transmission projects, known as Multi-Value Projects, are additional investments that become part of an annual transmission expansion plan. Multi-Value Projects are capital improvement projects planned by MISO, each with a total cost of $20,000,000 or more, that promote reliability, resolve problems, or confer other benefits across all, or a significant portion of, the MISO system. The costs of Multi-Value Projects located in Indiana and other MISO states have been, or will be, recovered through the rates paid by consumers across MISO's northern and central regions. The Indiana Preference Law increases costs in states without such a right of first refusal ("ROFR") law, including Wisconsin, thereby frustrating efforts of other states to advance pro-competition policies.[14]

On July 25, 2022, MISO approved Tranche 1 of its long-range transmission projects.[15] Of the $10.3 billion in planned investment, only about $1 billion was subjected to a competitive solicitation process due to MISO's application of the state ROFR/preference law and upgrade exemptions.[16] However, that $1 billion did include a competitive project that ran from a substation in northern Indiana.[17] The incumbent utility in the areas of the project did not compete for it. Yet, given the substantial additional investment planned by MISO, the Indiana utilities lobbied for a preferential first right to

(Mar. 23, 2021) at Slide 8, *available at* Long Range Transmission Planning - Preparing for the Evolving Future Grid (misoenergy.org) (last accessed Aug. 12, 2025).

[14] *See Complaint of Industrial Energy Consumers of America v. MISO*, FERC Docket No. EL22-78, at p. 55-61 (filed July 22, 2022).

[15] *See MISO Draft MTEP21*, Chapter 3, at 6, available at MTEP21 Addendum-LRTP Tranche 1 Report with Executive Summary625790.pdf (last accessed Aug. 12, 2025).

[16] "Competitive Transmission Update," MISO, the System Planning Committee of the Board of Directors (June 15, 2022) at Slides 2,5, *available at* Current and Emerging Technologies Update (misoenergy.org) (last accessed Aug. 12, 2025).

[17] *See* "Selection Report: Hiple to IN/MI State Border 345 kV," MISO (May 13, 2025, *available at* https://cdn.misoenergy.org/HIMB_345_kV_Selection_Report628866.pdf (last accessed Aug. 12, 2025) (hereinafter "Competitive Indiana Project").

build an interstate transmission project. Shortly after the Indiana legislature passed HEA 1420 in 2023, the Northern Indiana Public Service Company ("NIPSCO") sold a 19.9% equity interest to Blackstone Inc. at a significant premium.[18]

On December 12, 2024, MISO approved a $30 billion annual plan, the largest portfolio of transmission projects in the nation's history.[19] The 2024 plan[20] includes Tranche 2.1, a $21.8 billion investment for 24 Multi-Value Projects that will be cost allocated throughout the MISO north/central region, including more approximately two billion dollars in projects that connect to facilities owned by Indiana incumbent utilities.[21]

While the initial focus of the litigation concerned MISO's approval of Tranche 2.1, that is not the only relevant suite of projects. In addition to other, upcoming MISO projects, a portion of Indiana is in the PJM grid. As a result, the Indiana Preference Law also impacts consumers throughout PJM.[22] For transmission facilities that are 345 kV and higher, PJM will cost allocate substantial portions of those facilities on a regionwide basis.[23] Since 1997, the PJM Board has approved approximately $48.3 billion in transmission system enhancements.[24] The PJM 2024 plan was approved by the PJM Board in the first quarter

[18] MorningStar, "Blackstone Pays Premium Price for Indiana Utility Share; Top Utilities Pick," available at https://www.morningstar.com/stocks/nisource-blackstone-pays-premium-price-indiana-utility-share-top-utilities-pick (last accessed Aug. 12, 2025).

[19] "MISO Board Approves Historic Transmission Plan to Strengthen Grid Reliability," MISO (Dec. 12, 2024), *available at* https://www.misoenergy.org/meet-miso/media-center/2024/miso-board-approves-historic-transmission-plan-to-strengthen-grid-reliability/ (last accessed Aug. 12, 2025).

[20] *See* MTEP24 Report, *available at* https://cdn.misoenergy.org/MTEP24_Full_Report658025.pdf (last accessed Aug. 12, 2025).

[21] *See* "Long Range Transmission Planning: Tranche 2.1 – Approved") *available at* https://www.misoenergy.org/planning/long-range-transmission-planning/ (last accessed Aug. 12, 2025).

[22] PJM coordinates the transmission of electricity in 13 states and the District of Columbia. *See* https://www.pjm.com/about-pjm/who-we-are/territory-served.aspx (last accessed Aug. 12, 2025).

[23] *See* PJM Open Access Transmission Tariff, Schedule 12, Sec. (b), *available at* https://agreements.pjm.com/oatt/22499 (last accessed Aug. 12, 2025).

[24] *See* PJM 2023 Regional Expansion Plan at p. 4 (Mar. 7, 2024), *available at* https://www.pjm.com/-

of 2025.[25] As a result, the Indiana Preference Law could also materially impact costs associated with the upcoming approval of transmission projects in PJM states.

B. By Impeding Transmission Competition, Incumbent Preference Laws Increase the Energy Costs and Operating Costs of Industrial Consumers

Competition is necessary to spur innovation and help curb exponentially rising electric transmission prices.[26] Cementing monopoly control to incumbent utilities over the ownership, construction, and maintenance of new, federally regulated transmission lines insulates those utilities from competition, thereby imposing higher costs on consumers. Without competition, there are fewer checks and balances on cost estimates, and no pressures or incentives to curb project costs and prevent cost overruns.[27] Regulated utilities with monopolistic rights and guarantees to projects will be incentivized to maximize returns earned on those projects. Given exponential increases in transmission spending

/media/DotCom/library/reports-notices/2023-rtep/2023-rtep-report.pdf (last accessed Aug. 12, 2025).

[25] *See* "PJM Board Approves New Transmission Projects to Support Grid Reliability," (Feb. 2, 2025, *available at* https://insidelines.pjm.com/pjm-board-approves-new-transmission-projects-to-support-grid-reliability/ (last accessed Aug. 12, 2025).

[26] "Comment of United States Department of Justice and Federal Trade Commission," at p. 1, FERC Docket No. RM21-17 (filed Aug. 17, 2022) ("**With a ROFR, consumers will lose the many benefits that competition can bring, including lower rates, improved service, and increased innovation**…") (emphasis added) (hereinafter "DOJ/FTC Joint Comments"). *See also* Reply Comments of NextEra Energy, Inc., Docket No. RM21-17-000 (filed Sep 19, 2022), Attachment A, Reply Affidavit of Dr. John R. Morris (the "Morris Reply Affidavit"), at ¶ 3 ("**A return to regional monopoly control of transmission investment could have devastating consequences for ratepayers**") (emphasis added) (citing Dennis Carlton and Jeffrey Perloff, Modern Industrial Organization 656 (3rd Ed. 2000)).

[27] In December 2024, MISO announced that the costs of planned 345-kV Morrison Ditch-Reynolds-Burr Oak-Leesburg-Hiple line in Illinois and Indiana, which increased from an estimated $261 million to $675 million. The project was approved in 2022 in and assigned to NIPSCO. *See* https://www.rtoinsider.com/94329-cost-overruns-on-lrtp-project-warrant-miso-analysis/ (last visited Aug. 12, 2025); *see also* MISO Variance Analysis Notice, *available at* https://cdn.misoenergy.org/Morrison Ditch-Reynolds-Burr Oak-Leesburg-Hiple Variance Analysis Public Notice658131.pdf (last accessed Aug. 12, 2025).

over the last decade and billions of dollars in planned spending ahead, competition is critical to ensure just and reasonable rates.

Competition incentivizes transmission developers to offer innovative and cost-efficient solutions across four key financial dimensions:

> 1) **Competitive Bidding Lowers Capital Costs** – competition imposes cost discipline by incentivizing transmission developers to sharpen their pencils on project costs and approaches;
>
> 2) **Competitive Bidding Lowers Requested Return on Equity ("ROE")** – competitive bidding brings additional consumer savings by incentivizing robust ROE competition among multiple bidders;
>
> 3) **Competitive Bidding Lowers the Overall Cost of Capital Structures** – competitive bidding encourages financial innovation and lower cost capital structures, with equity percentages that are materially lower than those found in the regulated formula transmission rates of incumbent utilities; and
>
> 4) **Competition Yields Accountability** – the cost containment commitments of winning bidders are legally binding and become part of project rate cases, thereby ensuring accountability for project costs and schedules in the more stringent competitive developer agreements.[28]

In a regulated cost of service model, the monopoly utility has an inherent incentive to spend more to earn a higher return of and on its investment. Through competition, a developer has an inherent incentive to find an innovative and efficient solution, while the incumbent monopoly with exclusive rights has no such incentive. Given the differences in incentives between monopolistic incumbents and competitive non-incumbents,[29] "the [FERC] will not be able to replicate the benefits of competition through regulation."[30]

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[28] *See* "Answer of Electricity Transmission Competition Coalition," FERC Docket Nos. RM21-17, AD22-8, and AD21-15 (filed Feb. 1, 2024) (*citing PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,021, at PP 2, 33-48 (2018) (the competitive developer agreement in PJM is more stringent than Consolidated Transmission Owners Agreement).

[29] *See* DOJ/FTC Joint Comments at p. 7 ("urg[ing] FERC to not displace competition, but instead to consider solutions to utilities misaligned incentives that are consistent with and promote competition").

[30] *See* Affidavit of Paul Thessen in support of comments of LS Power Grid, LLC at 29:1-3, FERC Docket

Because a regulator will generally hesitate to second-guess the business decisions and operations of a regulated entity that provides an essential public service,[31] policymakers and adjudicators must unleash transmission competition to the greatest extent practicable, because "[c]ompetition is still the best way to ensure that our electric grid is built out in a way that lowers rates, increases innovation, and improves sustainability and resiliency."[32]

C. Federal Policy Supports Transmission Competition

Federal policy supports transmission competition. In a 2022 bipartisan letter, United States Senators from Utah and New Mexico encouraged FERC to pursue transmission reforms in a manner that fosters market competition for high-voltage transmission projects to "the greatest extent possible."[33] The letter expressed that preferential ROFR proposals "shield the incumbent electric utility from competition and deprive consumers of the previously recognized, and indeed, indisputable benefits of competition, and, with inflation hitting 40-year highs, will unnecessarily saddle consumers with excessive costs for transmission for decades to come."[34] Recent executive orders issued in 2025 seek to maximize cost-effective energy policies, promote competition, and remove anti-competitive restraints that distort the operation of a free market.[35]

No. RM21-17 (executed Aug. 17, 2022) (hereinafter "Thessen Affidavit").

[31] *See* Thessen Affidavit at 26:15-17:7.

[32] *See* "Federal Trade Commission, DOJ Urge FERC to Preserve Robust Wholesale Electricity Markets: Agencies' Joint Comment Urges the Federal Energy Regulatory Commission not to Restore Incumbent Transmission Owners' Right of First Refusal for new Facilities," FTC Press Release (Aug. 17, 2022) (quoting Director of the Office of Policy Planning) (emphasis added), *available at* Federal Trade Commission, DOJ Urge FERC to Preserve Robust Wholesale Electricity Markets | Federal Trade Commission (ftc.gov) (last accessed Aug. 12, 2025).

[33] United States Senate, September 30, 2022 Letter to FERC Commissioners, *available at* https://www.ieca-us.com/wp-content/uploads/2022.9.30-FINAL-Pro-Competition-Senate-ENR-letter-to-FERC_-Heinrich-Lee.pdf, (last accessed Aug. 12, 2025).

[34] *Id.*

[35] *See generally* "Unleashing American Energy," Exec. Order No. 14154, 90 FR 8353 (Jan. 20, 2025) and

FERC's mission is "to ensure reliable, safe, secure, and economically efficient energy for consumers at a reasonable cost," and "a robust, well-planned electric transmission grid is the single most important step that this Commission can take to fulfill that statutory mandate."[36] Ensuring just and reasonable rates for electricity consumers requires that "a nonincumbent transmission developer of a transmission facility selected in the regional transmission plan for purposes of cost allocation have the same opportunity as an incumbent transmission developer."[37]

In Order No. 1000, FERC ordered the removal of federal ROFRs from FERC tariffs for certain RTO-approved projects subject to regional cost sharing to enhance competition and cost savings for customers.[38] In Order No. 1000, FERC determined that the existence of a federal ROFR facilitates unjust and unreasonable rates through "the development of transmission facilities 'at a higher cost than necessary.'"[39] FERC explained that "it is not in the economic self-interest of incumbent[s] to permit new entrants to develop transmission facilities," even if those facilities "would result in a more efficient or cost-effective solution."[40]

"Reducing Anti-Competitive Regulatory Barriers," Exec. Order No. 14267, 90 FR 15629 (Apr. 9, 2025).

[36] *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation*, 187 FERC ¶ 61,068 (May 13, 2024) ("Order No. 1920"), Phillips, Chairman, Clements, Commissioner, *concurring* ("Joint Order No. 1920 Concurrence") at P 1.

[37] *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000 at PP 332, 335, 136 FERC ¶ 61,051 (2011) ("Order No. 1000"), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132 ("Order No. 1000A"), *order on reh'g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012) ("Order No. 1000-B"), *aff'd sub nom. S. C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

[38] *Id.*

[39] *S. C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41, 72 (D.C. Cir. 2014) (citing Order No. 1000 at PP 228-230) (further noting that higher costs would be passed on to consumers, yielding rates that are not just and reasonable in violation of the FPA).

[40] Order No. 1000 at P 256.

Recently, the Fifth Circuit Court of Appeals determined that a Texas ROFR law was discriminatory and therefore subject to strict scrutiny because it interfered with federal jurisdiction over transmission.[41] On brief before the U.S. Supreme Court, the U.S. Solicitor General's Office informed the U.S. Supreme Court that the Fifth Circuit correctly found that the Texas ROFR law giving incumbent transmission utilities the first opportunity to build transmission discriminates against interstate commerce and is subject to strict scrutiny by imposing a local-presence requirement.[42]

D. Analytical Evidence Demonstrates the Benefits of Transmission Competition

A 2019 report by the Brattle Group, prepared at the request of a competitive transmission developer, but peer-reviewed "from transmission developers, policymakers, regulators, and customer representatives in response to various presentations of the draft results of this study,"[43] concluded that competitive transmission processes can provide between 20% and 30% cost savings to consumers on average.[44] Brattle concluded that even if the competitive projects experienced cost escalations similar to the historical experience with major transmission projects in these regions, there would still be an overall cost savings of 15% in MISO.[45]

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[41] *See NextEra Energy Capital Holdings, Inc. v. Lake*, 48 F.4th 306, 326 (5th Circ. 2022), *cert. denied Lake et al. v. NextEra Energy, et al.*, 22-601 (Dec. 11, 2023), available at https://www.supremecourt.gov/orders/courtorders/121123zor_e29g.pdf (last accessed Aug. 12, 2025).

[42] The U.S. Solicitor's brief is available here: sg-lake-nextera.pdf (law360news.com) (last accessed Aug. 12, 2025).

[43] *See* "Cost Savings Offered by Competition in Electric Transmission: Experience to Date and the Potential for Additional Customer Value," The Brattle Group (April 2019), (hereinafter, "Brattle Report") *available at* Cost Savings Offered by Competition in Electric Transmission: Experience to Date and the Potential for Additional Customer Value (brattle.com) (last accessed Aug. 12, 2025).

[44] *See* Brattle Report at 10; *see also* Brattle Summary of Findings, *available at* Report by Brattle Economists Discusses the Benefits of Competitive Transmission - Brattle (last accessed Aug. 12, 2025).

[45] Brattle Report at 9 (emphasis added).

Incumbent utility interests retained Concentric Energy Advisors in an effort to rebut the Brattle Report and argue that the competitive transmission process does not offer meaningful cost containment or cost savings to consumers.[46] However, Brattle rebutted the Concentric Report by showing that completed competitive transmission projects demonstrate 20-30% cost savings and that Concentric exaggerated the time and resource requirements for competitive solicitations.[47] Further, Brattle's examination of two competitive processes in MISO[48] demonstrates profound benefits of competition. MISO received comprehensive proposals from 11 different respondents for ownership, construction, and maintenance of the Duff-Coleman 345 kV project.[49] MISO received proposals from nine different respondents for the Hartburg-Sabine Junction 500 kV project.[50] The winning proposals in both instances resulted in estimated cost savings of 15% over MISO's projected costs, along with a cost cap, and other benefits and financial innovation that would have been foregone if a ROFR statute had been in effect in those

[46] *See* "Competitive Transmission: Experience To-Date Shows Order No. 1000 Solicitations Fail to Show Benefits," Concentric Energy Advisors (Aug. 2022).

[47] "Response to Concentric Advisors' Report on Competitive Transmission," Brattle Group (Aug. 2019), at pp. 2-6. Concentric updated its 2019 report in 2024, which is available here: https://ceadvisors.com/publications/ (last accessed Aug. 12, 2025).

[48] Duff-Coleman EHV 345 kV Competitive Transmission Project Selection Report, p. 5, 38 (December 20, 2016), *available at* 1 Republic MISO Duff-Coleman EHV 345kv Selection Report Republic Transmission-PDF .pdf (last accessed Aug. 12, 2025); Hartburg-Sabine Junction 500 kV Competitive Transmission Project, Selection Report, p. 5 (November 27, 2018), available at Hartburg-Sabine Junction 500 kV Selection Report296754.pdf (last accessed Aug. 12, 2025).

[49] *Id.* at p. 5.

[50] *See* Hartburg Sabine Selection Report at 6; *see also* Duff-Coleman Selection Report at p. 26, available at 1 Republic MISO Duff-Coleman EHV 345kv Selection Report Republic Transmission-PDF .pdf (last accessed Aug. 12, 2025).

states. The chart on page 26 of the MISO Selection Report for the Duff-Coleman Project reflects rate concession proposals from all the solicitation respondents.[51]

Ten out of 11 respondents to the above MISO solicitation provided some form of cost containment. MISO explained that "all of the proposals came in lower than MISO's initial cost estimate and developers provided a range of cost caps, concessions, and commitments, including caps on construction costs."[52] The winning bid offered an ROE cap of 8.8% inclusive of incentives when MISO wide returns were well over 10% plus incentives.[53]

In the Duff-Coleman project and Hartburg-Sabine Junction competitive solicitations in MISO, both incumbents and non-incumbents proposed cost caps. MISO observed that respondents in the Harburg-Sabine Junction project "offered a variety of cost caps, concessions, and commitments, as well as schedule guarantees, which enhanced competition on project cost, [and] annual transmission revenue requirement."[54] Regarding the Duff-Coleman project, MISO highlighted the "dedication, innovative thinking, and competitive spirit" of the respondents that will "benefit MISO, its members, and ultimately all consumers of electricity in helping us build a stronger and more reliable electric grid for today and tomorrow."[55]

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[51] *See* Duff-Coleman Selection Report at 26, available at: 1_Republic_MISO_Duff-Coleman_EHV_345kv_Selection_Report__Republic_Transmission-PDF_.pdf (last accessed Aug. 12, 2025).

[52] *Id*. at 34.

[53] Thessen Affidavit at p. 28.

[54] Hartburg-Sabine Junction 500 kV Competitive Transmission Project, Selection Report, p. 5.

[55] Duff-Coleman Selection Report at p. 2.

On May 19, 2023, MISO, in a competitive solicitation process, selected Republic Transmission LLC ("Republic"), an affiliate of Plaintiffs, to develop a Tranche 1 Multi-Value Project that runs from northern Indiana to Duck Lake, Michigan. Unlike the other bidders, Republic proposed a 40-year cap on its annual transmission revenue requirement and on its return on equity.[56]

MISO recently awarded a competitive solicitation to incumbent Ameren Transmission Company of Illinois ("ATXI") to serve as developer for the Fairport to Denny to Iowa/Missouri State Border 345 kV project.[57] ATXI partnered with the Missouri Joint Municipal Electric Utility Commission ("MJMEUC") to submit a creative and winning public-private partnership proposal. MISO credited ATXI's agreement to transfer 49% of the project via a joint operating agreement after completion of facility construction to MJMEUC, a local municipal agency that is exempt from income and property taxes.[58] ATXI's ["project implementation] cost cap, 40-year weighted cost of equity cap, and 10-year O&M cap enabled its [present value of proposed revenue requirements] to remain superior under all scenarios modeled by MISO."[59] The annual transmission revenue requirement of $62.2 million for ATXI's proposal was significantly lower than the other proposals, as reflected in Figure 13 in Fairport-Denny-IA/MO Border Selection Report.[60]

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[56] *See* Indiana Competitive Project at p. 3.

[57] *See generally* "Selection Report: Fairport to Denny to Iowa/Missouri State Border 345 kV Competitive Transmission Project," MISO (Oct. 27, 2023), *available at* FDIM 345 kV Selection Report630669.pdf (misoenergy.org) (last accessed Aug. 12, 2025) (hereinafter "Fairport-Denny-IA/MO Border Selection Report").

[58] *Id*. at iii.

[59] *Id*.

[60] *Id*. at 18, 19.

Although ATXI (Developer C) did not offer to cap annual project revenue, MISO determined that ATXI's other cost commitments, including a project implementation cap, a ten-year O&M cap, and a ten-year weighted return on equity caps "significantly limit the degree to which [ATXI's] actual revenue could deviate from its estimates" as reflected in Figure 14 in the Fairport-Denny-IA/MO Border Selection Report.[61]

The ATXI project demonstrates that consumers benefit when incumbents compete with new entrants, as competition can force an incumbent to make a more creative and cost-effective proposal. Here, an incumbent utility partnered with a non-incumbent publicly-owned transmission entity to deliver a cost-effective solution for consumers.

In the PJM region, Public Service Electric & Gas ("PSEG"), an incumbent utility, recently realized success in a competitive solicitation run by PJM to facilitate $5 billion in system upgrades to account for the siting of up to 7,500 MW of new data centers in Maryland and Virginia, combined with widespread effects from the deactivation of more than 11,000 MW of generation.[62] PJM selected PSEG to complete a $447.5 million project to construct a new 40-mile 500 kV line in the service territory of other incumbent utilities.[63] In its financial analysis, PJM noted that PSEG proposed a hard cap on capital costs, foregoing recovery "of any depreciation expense, return on equity, or debt costs associated with any capital expenditures above [PSEG's] cost cap" that was set at 120% of the original

[61] *Id*. at 19.

[62] *See* "PJM Board of Managers Approves Critical Grid Upgrades," PJM Inside Lines (Dec. 11, 2023), *available at* PJM Board of Managers Approves Critical Grid Upgrades | PJM Inside Lines (last accessed Aug. 12, 2025). The full PJM Reliability Analysis Report is available here: 20231205-2022-rtep-window-3-reliability-analysis-report.ashx (pjm.com) (last accessed Aug. 12, 2025) (hereinafter "December 2023 PJM Reliability Analysis Report").

[63] December 2023 PJM Reliability Analysis Report at P 52 (explaining PSEG Proposal).

estimate.[64] Notably, PSEG proposed a binding ROE cap of 9.60% and a binding equity percentage cap of 45%.[65] These values compare to an allowed ROE of 10.4% and a capital structure equity percentage of 55.11% in PSEG's annual informational update for its non-competitive, incumbent projects.[66]

The competitive transmission process works because it incentivizes all participants to offer more competitive, innovative proposals than they would otherwise offer in the absence of competition.[67]

E. The Iowa Judiciary Recently Invalidated a State Preference Law that Impaired Transmission Competition

Regarding a similar law in the State of Iowa, the Iowa Supreme Court observed:

> The [preferential legislation] is quintessentially crony capitalism. This rent-seeking, protectionist legislation is anticompetitive. Common sense tells us that competitive bidding will lower the cost of upgrading Iowa's electric grid and that eliminating competition will enable the incumbent to command higher prices for both construction and maintenance. Ultimately, the ROFR will impose higher costs on Iowans.[68]

The Iowa Supreme Court concluded that "[w]ithout competition, there are fewer checks and balances on cost estimates, and no pressures or incentives to curb project costs

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[64] "Constructability and Financial Analysis Report: 2022 RTEP Window 3," PJM, at p. 101 (Nov. 17, 203), *available at* 20231205-2022-rtep-window-3-constructability--financial-analysis-report.ashx (pjm.com) (last accessed Aug. 12, 2025).

[65] *Id.*

[66] *See* PSEG Annual Informational Update, Docket No. ER09-1257-000, filed Oct. 16, 2023, *available at* https://pjm.com/markets-and-operations/billing-settlements-and-credit/formula-rates (last accessed Aug. 12, 2025).

[67] *See* FTC/DOJ Comments at 13 ("**Even when the incumbent wins, consumers also win, because incumbents tend to make more competitive proposals when they face competition**") (emphasis added).

[68] *LS Power Midcontinent, LLC v. State*, 988 N.W.2d 316, 338 (Iowa 2023), *reh'g denied* (Apr. 26, 2023). Similar to the lobbying efforts in Iowa, NIPSCO stated it chose not to bid on the Hiple to State Border project in 2022 and instead "focused on seeking a legislative solution at the Indiana legislature." Declaration of Orville Cocking, *LSP Transmission Holdings v. Huston*, Case No. 1:24-cv-01722 (S.D. Ind. Dec. 10, 2024).

and prevent cost overruns."[69] The Iowa statute, Iowa Code § 478.16, has since been invalidated for being unconstitutionally promulgated.[70]

IV. CONCLUSION

The Indiana Preference Law harms consumers, undermines competition, and is contrary to the public interest. Amici Industrial Energy Consumers of America, Coalition of MISO Transmission Customers, and Wisconsin Industrial Energy Group respectfully ask this Honorable Court to grant Plaintiffs' summary judgment motion and order all necessary relief, to ensure that transmission project competition is maximized in the MISO and PJM transmission grids.

Dated: August 12, 2025

Respectfully submitted,

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[69] *LS Power Midcontinent, LLC*, 988 N.W.2d at 338.

[70] *LS Power Midcontinent, LLC v. State*, 21 N.W.3d 551, 558, 560-64 (Iowa 2025).

CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2025, a true and accurate copy of the foregoing was served via the Court's CM/ECF system upon all counsel of record.

/s/ Kenneth R. Stark
Kenneth R. Stark