

Iowa Supreme Court rules against Right of First Refusal

The Iowa Supreme Court released a decision on Friday, March 24, 2023 on a lawsuit brought by LS Power regarding electric transmission development Right of First Refusal legislation passed in an amendment to the final appropriation bill of the 2020 Iowa legislative session. The court remanded the case back to the lower court and granted a temporary injunction to prevent enforcement of the law.

In its decision, the Iowa Supreme Court did not mince words:

- “The ROFR was ultimately enacted through an amendment to the final appropriations bill of the 2020 legislative session.” **“The appropriations bill, over fifty pages long and containing thirty-four divisions, was a potpourri of various unrelated subjects.”**
- “The **unpopularity of the ROFR is clear**: it had already failed earlier in the same session and in the previous general assembly. The affidavits of legislators from both parties confirm the ROFR lacked the votes to become law as a standalone bill. The appropriations bill, necessary to fund the operations of the government, presented a ready vehicle to carry the ROFR across the finish line. Rolling it all into one bill brought legislative success, but triggered LSP’s constitutional challenge.”
- “We are not surprised the ROFR lacked enough votes to pass without logrolling. **The provision 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. The data back this up: amicus Coalition of MISO Transmission Customers offers data collected from two recent bid-based projects that indicate competition reduces costs by fifteen percent compared to MISO’s estimates. As the Coalition summarizes, ‘Without competition, there are fewer checks and balances on cost estimates, and no pressures or incentives to curb project costs and prevent cost overruns.’”