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LS Power Midcontinent, LLC v. State

Supreme Court of Iowa - March 24, 2023 - N.W.2d - 2023 WL 2618192

Competitor electric transmission companies brought action against Iowa Utilities Board (IUB), IUB's chair, director of Legislative Services Agency, and the State's code editor, seeking declaratory judgment that statute granting incumbent electric transmission owners a right of first refusal to construct and maintain lines to be connected to existing facility violated the single-subject, title, and equal protection provisions of the Iowa Constitution and seeking temporary injunction prohibiting enforcement of the statute.

The District Court dismissed for lack of standing. Companies appealed. The Court of Appeals affirmed. Companies applied for further review, and application was granted.

The Supreme Court held that:

- Companies had standing to pursue action challenging constitutionality of statute;
- Briefing and existing record were adequate for Supreme Court to decide whether to issue temporary injunction staying enforcement of statute, and, thus, Supreme Court would exercise its discretion to decide injunction issue;
- Companies were likely to succeed on merits of claim that title of appropriations bill granting right of first refusal violated constitutional title requirement, as required to obtain temporary injunction;
- Title "legal and regulatory responsibilities" as catchall for disparate subjects does not meet constitutional requirement that the title of an act express the subject matter of the act; abrogating *Rush v. Reynolds*, 2020 WL 825953;
- Companies were likely to succeed on merits of claim that title of appropriations bill violated single-subject requirement of constitution, as required to obtain temporary injunction;
- Companies would likely suffer irreparable harm in absence of temporary injunction; and
- Public interest supported temporary injunction.

Competitor electric transmission companies had particularized injury distinct from general population, as required for standing to pursue action against Iowa Utilities Board (IUB) and state officials seeking declaratory judgment that statute granting incumbent electric transmission owners a right of first refusal to construct and maintain lines connected to existing facility violated state constitution's single-subject, title, and equal protection provisions; unlike members of general public, companies were approved to complete transmission projects in the state, and statute injured companies by precluding them from bidding on new projects unless incumbent failed to exercise its right of first refusal.

Competitor electric transmission companies suffered competitive injury at time of enactment of statute granting incumbent electric transmission owners a right of first refusal to construct and maintain lines connected to existing facility, and did not need to identify specific project lost to incumbent to have standing to pursue action against Iowa Utilities Board (IUB) and state officials seeking declaratory judgment that statute violated state constitution's single-subject, title, and equal protection provisions; companies were qualified and competent to supply transmission lines for in-

state projects, but statute effectively blocked companies from competing unless incumbent declined to exercise its right of first refusal.

Competitor electric transmission companies' competitive injury was traceable to state's actions, as required for standing to pursue action against Iowa Utilities Board (IUB) and state officials seeking declaratory judgment that statute granting incumbent electric transmission owners a right of first refusal to construct and maintain lines connected to existing facility violated state constitution's single-subject, title, and equal protection provisions; state's grant of right of first refusal to incumbent caused harm to companies by blocking companies from competing unless incumbent declined to exercise its right of first refusal.

Favorable decision would redress competitor electric transmission companies' competitive injury, as required for standing to pursue action against Iowa Utilities Board (IUB) and state officials seeking declaratory judgment that statute granting incumbent electric transmission owners a right of first refusal to construct and maintain lines connected to existing facility violated state constitution's single-subject, title, and equal protection provisions; blocking enforcement of right of first refusal would allow companies to supply transmission lines for in-state projects.

Competitor electric transmission companies' injury in the form of lost future profits was sufficiently imminent for standing to pursue action against Iowa Utilities Board (IUB) and state officials seeking declaratory judgment that statute granting incumbent electric transmission owners a right of first refusal to construct and maintain lines connected to existing facility violated state constitution's single-subject, title, and equal protection provisions; companies alleged that regional transmission organizations would approve $30 billion in new electric transmission projects over the next ten years and that organizations had begun studying ways to expand transmission grid in midwest, including in the state, and companies would lose profits when incumbents received new projects.

Briefing and existing record were adequate for Supreme Court to decide whether to issue temporary injunction staying enforcement of statute granting incumbent electric transmission owners a right of first refusal to construct lines connected to existing facility, pending resolution of constitutional claims, and, thus, Supreme Court would exercise its discretion to decide injunction issue, instead of remanding issue to district court, following its decision that competitor electric transmission companies had standing to pursue action challenging statute; appellate briefing squarely addressed injunction issue, companies briefed merits of constitutional claims on appeal, all parties briefed merits of claims below, and claims turned on question of law that did not require further record development.

Competitor electric transmission companies were likely to succeed on merits of claim that title of appropriations bill granting incumbent electric transmission owners a right of first refusal to construct lines connected to existing facility violated constitutional title requirement, as required for temporary injunction staying enforcement of statutory right of first refusal pending resolution of constitutional claims; title, "An Act relating to state and local finances by making appropriations, providing for legal and regulatory responsibilities, providing for other properly related matters, and including effective date and retroactive applicability provisions" did not give notice of right of first refusal provision, and title failed to clearly communicate subject matter of bill.

Competitor electric transmission companies were likely to succeed on merits of claim that title of appropriations bill granting incumbent electric transmission owners a right of first refusal to construct lines connected to existing facility violated single-subject requirement of state constitution, as required for temporary injunction staying enforcement of statutory right of first refusal pending resolution of constitutional claims; bill contained medley of appropriations provisions and granted substantive rights, and right of first refusal failed to garner sufficient votes

for enactment as standalone bill.

Competitor electric transmission companies would likely suffer irreparable harm through loss of opportunity to land multi-million-dollar electric transmission projects in the state in absence of temporary injunction against Iowa Utilities Board (IUB) and state officials staying enforcement of statute granting incumbent electric transmission owners a right of first refusal to construct lines connected to existing facility, pending resolution of claims challenging constitutionality of statute.

Balance of harms favored temporary injunction against Iowa Utilities Board (IUB) and state officials staying enforcement of statute granting incumbent electric transmission owners a right of first refusal to construct lines connected to existing facility, pending resolution of constitutional challenges to statute brought by competitor electric transmission companies; companies were harmed by loss of opportunity to compete for new projects, intervenors, who were shielded from competition by statute, argued that new projects were years away and faced no harm while case was pending, and companies were likely to succeed on claims, thereby diminishing any harm resulting from state not being allowed to enforce statute.

Public interest supported temporary injunction against Iowa Utilities Board (IUB) and state officials staying enforcement of statute, granting incumbent electric transmission owners a right of first refusal to construct lines connected to existing facility, pending resolution of constitutional challenges to statute brought by competitor electric transmission companies; public had interest in reliable electric service at reasonable rates, and statute would decrease competition and increase cost of electricity.

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