

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

LS POWER MIDCONTINENT, LLC and
SOUTHWEST TRANSMISSION, LLC,

Plaintiffs,

vs.

THE STATE OF IOWA, IOWA UTILITIES
BOARD, ERIK M. HELLAND, GLEN
DICKINSON and LESLIE HICKEY,

Defendants,

MIDAMERICAN ENERGY COMPANY and
ITC MIDWEST LLC,

Intervenors.

Case No. CVCV060840

RULING ON MOTIONS FOR SUMMARY
JUDGMENT

Introduction

This case involves a constitutional challenge to Iowa Code § 478.16, which the Iowa Legislature adopted in 2020. Section 478.16(2) grants incumbent electric transmission owners¹ a right of first refusal² (“ROFR”) to construct, own, and maintain an RTO-approved electric transmission line that will be connected to an existing facility. The statute at issue was contained in an omnibus amendment made to H.F. 2643, the final appropriations bill of the 2020 legislation session, which was passed on the last day of the 2020 legislative session. Following the session, Governor Reynolds signed the statute containing the ROFR into law.

The omnibus amendment containing the statute at issue was over 50 pages

¹ An “incumbent electric transmission owner” is defined at Iowa Code § 478.16(1)(c). Intervenors are each incumbent electric transmission owners related to a tranche of recently assigned electric transmission projects in Iowa that are projected to cost over two billion dollars in total.

² The Court recognizes that the right created in the Act and codified at § 478.16(2) is more properly described as a right of preemption; however, for clarity purposes, the Court will follow the lead of the Iowa Supreme Court and refer to the right granted by § 478.16(2) as a right of first refusal. *See, LS Power Midcontinent, LLC v. State*, 988 N.W.2d 316, 323, Fn. 2. (Iowa 2023).

long and contained thirty-four separate subdivisions. Plaintiffs seek summary judgment on their claim that § 478.16 is unconstitutional because it was enacted as part of a bill that violated both Article III, Section 29's single subject and title clauses. Plaintiffs also seek injunctive relief striking down § 478.16 and any administrative rules issued in reliance on § 478.16. Finally, Plaintiffs seek injunctive relief prohibiting the Intervenors from proceeding on five separate new electric transmission projects approved subsequent to the enactment of § 478.16, which Plaintiffs contend Intervenors were awarded solely by virtue of the ROFR provisions of § 478.16.

Defendants and the Intervenors also seek summary judgment in their favor. Alternatively, in the event the Court grants summary judgment in favor of Plaintiffs, Defendants and the Intervenors contend that Plaintiffs request relief that this Court lacks the legal authority to grant. Specifically, Defendants and the Intervenors both contend that this Court is powerless to prevent Intervenors from proceeding on the projects that were awarded them by a non-party to this action, that being, the Regional Transmission Organizations (RTOs), which are empowered by the Federal Energy Regulatory Commission to award new electronic transmission projects in Iowa.

The Court convened a hearing on the parties' respective motions for summary judgment on September 29, 2023. Following the hearing, the Court gave the parties additional time to file briefing regarding their respective positions and what relief they believe is available to Plaintiffs should they succeed on the merits of their motion. With the parties' filing of the additional briefing, this matter was fully submitted to the Court on October 6, 2023.

Plaintiffs LS Power Midcontinent, LLC and Southwest Transmission, LLC (collectively "LS Power") appeared at the hearing by and through counsel, Michael Reck and Chris Jessen. Defendants State of Iowa; Iowa Utilities Board; Erik M.

Helland, the Chairman of the Iowa Utilities Board; Glen Dickinson; and Leslie Hickey (Collectively the “State”) appeared by and through counsel, David Ranscht and Daniel Johnson. Intervenor MidAmerican Energy Company (“MidAmerican”) appeared by and through counsel, Tara Hall and Gretchen Kraemer. Intervenor ITC Midwest LLC (“ITC”) appeared by and through counsel, Lisa Agrimonti and Brett Dublinske.

Overview of How Electricity Transmission is Regulated

To understand the issues presented, it is necessary to understand generally how electricity transmission is regulated in the United States. The electricity market is highly regulated, interdependent, and involves three main components: generation (making power), transmission (carrying power), and distribution (dispersing power wholesale or retail). This case revolves around transmission of electricity.

Electricity transmission is regulated by both federal and state authorities. At the state level, the Iowa Utilities Board (“IUB”) regulates the siting and construction of electric transmission lines in Iowa pursuant to the authority granted it by the Iowa Legislature as set out in Iowa Code Chapter 478. At the federal level, Congress has created and empowered the Federal Energy Regulatory Commission (“FERC”) to regulate interstate, high-voltage transmission of electricity.

In 1999, acting on its regulatory authority, FERC issued Order No. 2000 encouraging the formation of Regional Transmission Organizations (“RTOs”). An RTO is an independent, nongovernmental entity that operates across multiple states, and which oversees the transmission component of the electricity market by planning any necessary expansion of interstate, high-voltage grids in their area. Midcontinent Independent System Operator (“MISO”) and Southwest Power Pool (“SPP”) are the RTOs which oversee electronic transmission projects in Iowa.

Importantly, before a company can bid on a new electricity transmission project

in Iowa, a prospective bidder must first be a qualified member of MISO or SPP before it is authorized to bid on that RTO's planned projects. LS Power Midcontinent, LLC, is qualified through MISO, and Southwest Transmission, LLC, is qualified through SPP to bid on new projects in Iowa.

History of the Right to First Refusal

Prior to 2011, the MISO and SPP formation documents contained a ROFR for electric transmission projects where the member of the RTO who served the local area where another transmission facility was needed had what amounted to the first crack at building any new project. This changed in 2011, when FERC issued Order No. 1000, which directed RTOs to remove federal-level ROFR from tariffs to allow for a more competitive bidding process. In response, MISO and SPP adjusted their tariffs to remove the relevant portions of their federal ROFR. In sum, at the current time, the governing federal regulations do not contain a ROFR.

Because the Federal Power Act, which was the federal legislation that created FERC, leaves room for state regulation, FERC Order No. 1000 left the door open to the State of Iowa to adopt a ROFR at the state level. Efforts were undertaken to do so by introduction of ROFR legislation in the Iowa Legislature. The first attempt to enact an ROFR in Iowa failed when in 2018, the Iowa Senate passed a bill creating a ROFR in favor of an incumbent electric transmission owner, but the Iowa House failed to pass the legislation. The second attempt to pass the ROFR legislation also failed when in January of 2020, a standalone bill with the ROFR included was introduced in the Iowa House, but the bill died in subcommittee.

As the Iowa Supreme Court has noted, the opponents to a state-level ROFR, advocated against adoption of a state-level ROFR because they contended that ROFRs stifle competition because they create a right no market participant would otherwise

have – an ability to essentially deny market entry to a potential competitor.³

Opponents of a state-level ROFR also contended that a ROFR preserves a monopoly role in the development and ownership of additional transmission facilities in incumbent transmission owners.⁴ In fairness, Intervenors have pointed out what they contend are benefits to a state-level ROFR system.⁵

The ROFR at issue in this case was ultimately enacted through an amendment to the final appropriations bill filed on the last day of the 2020 legislative session.⁶ Because of the late hour of the bill's introduction, literally in the middle of the night of the last legislation day, those opposed to the ROFR bill lacked time and notice to express their opposition to the ROFR as they had done the two prior times the ROFR had been proposed.⁷ Additionally, as the Iowa Supreme Court has noted, the debate over the ROFR was marked by confusion, inaccuracies and even what the Iowa Supreme Court has determined were misrepresentations made by the floor manager about the legislation containing the ROFR.⁸

Procedural History of this Litigation

The Plaintiffs are both in the business of developing, constructing, and managing wholesale electric transmission projects. They currently have no projects in Iowa, but they desire to bid against incumbent Iowa operators on future projects. After the Governor signed § 478.16 into law, Plaintiffs filed its Petition in this matter seeking a declaratory judgment that § 478.16 was unconstitutional and seeking

³ See, *LS Power Midcontinent, LLC v. State*, 988 N.W.2d 316, 324 (Iowa 2023).

⁴ See, *LS Power Midcontinent, LLC v. State*, 988 N.W.2d 316, 324 (Iowa 2023).

⁵ See, MidAmerican Energy's Statement of Additional Material Facts (DO118) filed August 4, 2023.

⁶ See, S-5163, 88th G.A., 2 Sess. § 128 (Iowa 2020).

⁷ See, *LS Power Midcontinent, LLC v. State*, 988 N.W.2d 316, 328 (Iowa 2023).

⁸ See, *LS Power Midcontinent, LLC v. State*, 988 N.W.2d 316, 326-28 (Iowa 2023). To be clear, this Court is expressly not finding that any inaccurate information and/or misrepresentations conveyed by the Floor Manager about the Act during its debate were intentionally made by the Floor Manager with the intent to deceive. Such statements could as easily been the product of an honest mistake or simple confusion.

injunctive relief preventing the implementation of § 478.16, specifically including its ROFR provisions.

After the filing of the petition, the State filed a motion to dismiss claiming Plaintiffs lacked standing to bring this action. Additionally, MidAmerican and ITC applied for and were granted the right to intervene in this action as interested parties. Both MidAmerican and ITC joined in the State's motion to dismiss.

After a hearing held on March 21, 2021, this Court denied Plaintiffs' request for injunctive relief and granted the State and Intervenor's joint request to dismiss Plaintiffs' petition due to what this Court found was Plaintiffs lack of standing. Plaintiffs timely appealed this Court's dismissal order, and the appeal was first taken up by the Iowa Court of Appeals. Before the Iowa Court of Appeals heard oral arguments, Plaintiffs filed a motion for temporary injunction with the Iowa Court of Appeals. In their motion, Plaintiffs informed the Iowa Court of Appeals that MISO was scheduled to approve a new slate of projects on July 25, 2022. Plaintiffs requested that the Iowa Court of Appeals enjoin the application of Iowa Code § 478.16(3) to these projects. The Iowa Court of Appeals ultimately heard and decided this request as part of Plaintiffs' appeal.

On July 8, 2022, the Iowa Court of Appeals affirmed the decision of this Court dismissing this action. The Iowa Court of Appeals also denied Plaintiffs request to enjoin the application of Iowa Code § 478.16(3) to the slate of projects set to be approved by MISO on July 25, 2022. Those projects were ultimately awarded to Interveners by MISO. The Iowa Court of Appeals decision was not to be the end of this litigation because Plaintiffs sought and were granted further review of the Iowa Court of Appeals decision by the Iowa Supreme Court.

On March 24, 2023, the Iowa Supreme Court issued its opinion reversing the

decision of the Iowa Court of Appeals and the District Court to dismiss this action and to deny Plaintiffs request for injunctive relief. In its opinion, the Iowa Supreme Court first concluded that this Court and the Iowa Court of Appeals has erred in their determination that Plaintiffs lacked standing to bring this action.⁹ Consequently, the Iowa Supreme Court vacated the decision of the Iowa Court of Appeals and reversed this Court's dismissal order. The Iowa Supreme Court also elected to exercise its discretionary authority to decide whether to stay enforcement of § 478.16 pending resolution of Plaintiffs constitutional claims on remand.¹⁰

Regarding Plaintiffs claim that the Title of the Act at issue, H.F. 2643, violated Article III, Section 29's title requirements, the Iowa Supreme Court stated:

The title of H.F. 2643 is "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." 2020 Iowa Acts ch. 1121.

At the end of the act was a new law that insulated in-state electric transmission entities from out-of-state competition through the ROFR. *Id.* § 128.

No part of the title gives notice of that provision. (emphasis added).¹¹

LS Power Midcontinent, LLC v. State, 988 N.W.2d 316, 335 (Iowa 2023).

After reviewing the title of the act and the text of the bill, the Iowa Supreme Court concluded that Plaintiffs were likely to succeed on its constitutional claim for the following reasons:

In our view, this title is so amorphous that it is difficult to discern the shape and contours of the subject of the bill to which the ROFR might be "utterly incongruous." (citation omitted) And it is difficult to identify the "general subject" to determine whether the title adequately directs attention to the ROFR provision. (citation omitted).

⁹ See, *LS Power Midcontinent, LLC v. State*, 988 N.W.2d 316, 333 (Iowa 2023).

¹⁰ See, *LS Power Midcontinent, LLC v. State*, 988 N.W.2d 316, 333 (Iowa 2023).

¹¹ Obviously, there are no new facts that could change the Iowa Supreme Court's holding on this issue on remand as the title and text of the act at issue have not changed since enactment.

The title probably fails to “clearly and unmistakably communicate” the subject matter of H.F. 2643, and it likely fails to provide fair notice of the ROFR. (citation omitted).

H.F. 2643 likely was enacted with a title that does not comply with article III, section 29. We conclude that LSP is likely to succeed on the merits on its “title” challenge to Iowa Code section 478.16.

The Iowa Supreme Court next took up Plaintiff’s claim that H.F. 2643 also violated Article III, Section 29’s single subject requirement. After analyzing the text of H.F. 2643, the Iowa Supreme Court stated:

We are skeptical that any single subject could encompass the breathtaking sweep of matters included in H.F. 2643. The title itself gives us pause on single-subject grounds: “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.

Id. at 338.

As noted by the Iowa Supreme Court, the single subject requirement of Article III, Section 29 prevents “logrolling.” *Id.* at 336. Logrolling occurs when:

[A] provision unrelated to the core of a bill and not itself capable of obtaining majority support is tied to a popular bill having majority support. Logrolling also occurs when several matters, none of which individually has majority support, are joined in one bill and passage procured by combining the minority in favor of each into a majority willing to enact them all.

Id. at 336.

In finding Plaintiffs were likely to succeed on its claim that the ROFR at issue violated Article III, Section 29’s single subject requirement, the Iowa Supreme Court, in a rather strongly-worded holding, concluded as follows:

It is undisputed the ROFR lacked the votes to pass as a standalone measure. LSP argues the passage of the ROFR presents a textbook example of logrolling and violates the single-subject requirement. 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."

We conclude that LSP has shown a likelihood of success on the merits of its claim that the ROFR's enactment violates the single-subject requirement of article III, section 29 of the Iowa Constitution.¹²

Id. at 338.

Ultimately, the Iowa Supreme Court issued a temporary injunction staying enforcement of § 478.16 and also remanded this case back to this Court to decide the merits of Plaintiff's constitutional claims. Following the remand, the parties each filed motions for summary judgment, which the Court will address next. Before doing so, the Court must first summarize important developments that have occurred during the three years this litigation has been pending that must inform this Court's decision making.

Important Developments During Pendency of this Action

During the three years this litigation has been slowly winding its way through each level of Iowa's court system, there have been important national developments surrounding electricity transmission. Namely, in 2022, Congress appropriated billions of dollars in funding for electric transmission projects meant to upgrade our nation's electric grid. The first phase of new electricity transmission projects, which are to be located at least in part in Iowa, were approved in 2022. These projects include:

- A \$755 million project in the Cedar Rapids area.
- A \$231 million project spanning from Cedar Rapids to Atalissa, Iowa.

¹² Again, there are no new facts that have been prevented on remand that would lead to a different holding than that previously announced by the Iowa Supreme Court.

- A \$390 million project spanning from Orient, Iowa, into Missouri.
- A \$673 million project spanning from Madison County, Iowa, to Mount Pleasant, Iowa.
- A \$594 million project spanning from Mount Pleasant into Illinois.

Because of the ROFR provision of § 478.16 and this Court's Order wrongly dismissing this action, Plaintiffs were shut out from competing for these projects before they were awarded. These awards occurred before the Iowa Supreme Court issued its temporary injunction staying enforcement of § 478.16. As the Court understands it, MidAmerican and ITC are among the incumbent transmission owners who have been assigned these new projects as they each timely exercised the ROFR created by § 478.16 on each project where they were the incumbent electric transmission owner.

The reason these developments are important is because the parties vehemently disagree as to whether this Court now has the authority to issue any ruling that would impact these now MISO-approved projects. Plaintiffs contend that the Court must act to level the playing field and return the parties to the status quo that would have been in place if the Iowa Legislature had not adopted the unconstitutional ROFR. In contrast, the State and Intervenors argue that even if the Court concludes that Intervenors were awarded such projects as a result of an unconstitutionally enacted ROFR, this Court is now powerless to effectuate any change to such an award. The Court must decide this issue and the parties' respective motions for summary judgment in light of the following legal principles.

Summary Judgment Standard

Summary judgment is appropriate "when the moving party demonstrates there is no genuine issue of material fact and that he or she is entitled to judgment as a

matter of law.” *Boelman v. Grinnell Mut. Reinsurance Co.*, 826 N.W.2d 494, 501 (Iowa 2013); Iowa R. Civ. P. 1.981(3). A fact is “material” when it “might affect the outcome of the suit.” *Kolarik v. Cory Int’l Corp.*, 721 N.W.2d 159, 162 (Iowa 2006) (internal quotation marks omitted). “A fact question is generated if reasonable minds can differ on how the issue should be resolved.” *Walker v. Gribble*, 689 N.W.2d 104, 108 (Iowa 2004). “The burden is on the party moving for summary judgment to prove the facts are undisputed.” *Id.* (internal quotation marks omitted).

In determining whether summary judgment is appropriate, the Court shall consider the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits. Iowa R. Civ. P. 1.981(3). “On a motion for summary judgment, the Court must: ‘(1) view the facts in the light most favorable to the nonmoving party, and (2) consider on behalf of the nonmoving party every legitimate inference reasonably deduced from the record.’” *Hoyt v. Gutterz Bowl & Lounge L.L.C.*, 829 N.W.2d 772, 774 (Iowa 2013) (quoting *Van Fossen v. MidAmerican Energy Co.*, 777 N.W.2d 689, 692 (Iowa 2009)).

When a motion for summary judgment is made and supported as provided by the rule, an adverse party may not rest on the mere allegations or denials in the pleadings. Iowa R. Civ. P. 1.981(5); *Bitner v. Ottumwa Community School District*, 549 N.W.2d 295, 299-300 (Iowa 1996). The response must be supported by affidavits or as otherwise provided by the rule and must set forth specific facts showing that there is a genuine issue for trial. Iowa R. Civ. P. 1.981(5). The Court has reviewed and considered the motions, briefs, and appendix documents offered in both support and resistance to each parties’ respective motion for summary judgment.

Analysis

Because the Iowa Supreme Court has already determined that Plaintiffs are likely to succeed on their constitutional claims, this Court must start its analysis with what information, if any, the parties have presented since the Iowa Supreme Court ruled that might lead to a different result. Plaintiffs position is that no new information has been or could be presented by any party to change the outcome of this case as its constitutional claims must be resolved solely based on this Court's review of the title and text of H.F. 2643, the enabling legislation for § 478.16.

As Plaintiffs correctly point out, the Iowa Supreme Court has already analyzed both the title and text of H.F. 2643 and found that Plaintiffs were likely to succeed on their constitutional challenge. Plaintiffs contend that this Court must reach the same result and grant its request for summary judgment on their Article III, Section 29's single subject and title claims. Plaintiffs contend that this Court need not address Plaintiffs remaining constitutional challenges as they are not necessary to grant them the relief they seek.

At the hearing, both the State and the Intervenors acknowledged that no material additional facts have been presented by any party since this case was remanded. Nevertheless, the State resists the grant of summary judgment in favor of Plaintiffs. The State's position can best be summarized as being that it believes that the Iowa Supreme Court got its legal analysis of Plaintiffs' claims wrong and this Court should correct the Iowa Supreme Court's error. This Court declines the State's invitation as this Court is, of course, bound to follow the law as determined by the highest court in this state.

After its review of the record presented, the Court concludes that after remand no party has presented any additional information that would lead this Court to reach

a different conclusion than the one reached by the Iowa Supreme Court when it issued the preliminary injunction in this case. As the parties concede, this Court's analysis of Plaintiffs' constitutional claims must begin and end with the title and text of H.F. 2642. Obviously, the title and text of a bill enacted over three years ago has not changed since this case was remanded. This Court now has the benefit of the Iowa Supreme Court's analysis of H.F. 2642.

Based on its own review of the title and text of H.F. 2642 and given the lack of any additional information that could lead to a different conclusion than that already reached by the Iowa Supreme Court, the Court concludes that the enactment of § 478.16 violated the title and subject requirements of Article III, Section 29. The Court therefore strikes down Iowa Code § 478.16 as unconstitutional. Given this finding, the Court agrees with Plaintiffs that the Court need not address the other constitutional claims Plaintiffs raised in their Petition.¹³

The Court denies the State's and Intervenors' respective motions for summary judgment on Plaintiffs' Article III, Section 29's single subject and title claims. Given this Court's finding that § 478.16 was unconstitutionally enacted, the Court need not address the State's and Intervenors' motions for summary judgment on Plaintiffs' remaining constitutional claims as the Court need not reach such claims.

The Proper Scope of Injunctive Relief

Under Iowa law, a permanent injunction is warranted when necessary to prevent irreparable injury and when a plaintiff has no adequate remedy at law. *Hockenberg Equip. Co. v. Hockenberg's Equip. & Supply Co.*, 510 N.W.2d 153, 158 (Iowa 1993); *Myers v. Caple*, 258 N.W.2d 301, 304 (Iowa 1977). Consequently,

¹³ Plaintiffs also brought claims in Count III based on Article 1, Section 6's privileges and immunities and equal protection provisions. Defendants have moved for summary judgment on these claims. Again, the Court concludes that it need not address such claims based on the Court's findings on Counts I and II.

Plaintiffs are entitled to a permanent injunction if they establish: “(1) an invasion or threatened invasion of a right; (2) substantial injury or damages will result unless an injunction is granted; and (3) no adequate legal remedy is available.” *Skow v. Goforth*, 618 N.W.2d 275, 278 (Iowa 2000). In determining whether a permanent injunction should be issued, the Court must weigh the relative hardships on the parties by the grant or denial of injunctive relief. *Myers*, 258 N.W.2d at 305.

The parties agree that the Court has the power to enjoin enforcement of the ROFR provisions of Iowa Code § 478.16. The parties disagree as to whether or not the Court can grant Plaintiffs’ request for broader injunctive relief. Plaintiffs also seek a declaration striking down the administrative rule implementing Iowa Code § 478.16. *See*, Iowa Administrative Code 199-11.14.

Plaintiffs contend such administrative rule is void *ab initio* and must be declared *ultra vires* by this Court because it was enacted solely pursuant to the authority granted by what this Court has now declared was an unconstitutional statute. The State and Intervenors resist as they take the position that rulemaking is agency action, which they contend is exclusively reviewable through Iowa Code Chapter 17A.

The State and Intervenors therefore contend that this Court lacks authority to strike down the administrative rule at issue. Instead, the State and Intervenors contend that Plaintiffs must pursue any remedy seeking to invalidate Rule 199-11.14 through the provision of Chapter 17A. In its briefing, the State suggests that Plaintiffs could obtain the relief they seek by petitioning for judicial review of Rule 199-11.14 or by filing a petition for rulemaking requesting that the Iowa Utilities Board repeal the rules enacted pursuant to the authority of § 478.16.

Any analysis of the Plaintiffs request to enjoin Rule 199-11.14 must begin with a review of the text of the Rule which provides:

99—11.14(478) Federally registered planning authority transmission projects.

11.14(1) Purpose. The purpose of this rule is to implement the requirements of Iowa Code section 478.16.

11.14(2) Definitions. For the administration and interpretation of this rule, the following words and terms, when used in this rule, shall have the following meanings:

“Electric transmission line” means a high-voltage electric transmission line with a capacity of 100 kilovolts or more and any associated electric transmission facility, including any substation or other equipment.

“Electric transmission owner” means an individual or entity who, as of July 1, 2020, owns and maintains an electric transmission line that is required for rate-regulated electric utilities, municipal electric utilities, and rural electric cooperatives in this state to provide electric service to the public for compensation.

“Federally registered planning authority” means any independent system operator or regional transmission organization approved by the Federal Energy Regulatory Commission.

“Incumbent electric transmission owner” means any of the following:

1. A public utility or a municipally owned utility that owns, operates, and maintains an electric transmission line in this state.
2. An electric cooperative corporation or association or municipally owned utility that owns an electric transmission facility in this state and has turned over the functional control of such facility to a federally approved authority.
3. An electric transmission owner.

11.14(3) Notification of decision of incumbent transmission owner.

a. Upon approval of an electric transmission line, in a federally registered planning authority transmission plan, which connects to a transmission facility owned by an incumbent transmission line owner, the incumbent electric transmission owner shall notify the board in writing within 90 days of its intent to construct, own, and maintain the approved electric transmission line.

b. If the incumbent electric transmission owner does not intend to construct, own, or maintain an electric transmission line approved in a federally registered planning authority transmission plan, the incumbent electric transmission owner shall notify the board in writing within 90 days of the date the federally registered planning authority approves the transmission line.

c. If an electric transmission line approved by a federally registered planning authority connects to two or more incumbent electric transmission owners' facilities, all incumbent electric transmission owners shall notify the board within 90 days of their intent to construct, own, and maintain the approved electric transmission line individually and equally.

d. In the event where two or more incumbent electric transmission owners may construct an electric transmission line approved by a federally registered planning authority but one incumbent electric transmission owner notifies the board of its intent not to construct, own, or maintain the approved electric transmission line, the other incumbent electric transmission owner or owners shall notify the board of their intent to construct the entire project within 90 days of federally registered planning authority's approval of the transmission line.

11.14(4) *Effect of incumbent's decision to decline to construct.* Upon receipt by the board of notice of the incumbent electric transmission owner's intent not to construct, operate, or maintain the electric transmission line approved by a federally registered planning authority, or the failure of the incumbent electric transmission owner to provide such notice, the board may issue a franchise to another person to construct the electric transmission line approved by a federally registered planning authority subject to the requirements of Iowa Code chapter 478.

11.14(5) *Reports to the board.*

a. Within 30 days of the issuance of a franchise, the electric transmission owner who is constructing, owning, and maintaining the electric transmission line approved by a federally registered planning authority shall file with the board the estimated cost to construct the electric transmission line.

b. Until construction of the electric transmission line approved by a federally registered planning authority is complete, the electric transmission owner who is constructing, owning, and maintaining the electric transmission line approved by a federally registered planning authority shall provide quarterly reports to the board detailing the estimated cost to construct the electric transmission line approved by a federally registered planning authority. If the estimated cost to construct the electric transmission line approved by a federally registered planning authority changes from the last report, the electric transmission owner who is constructing, owning, and maintaining the electric transmission line approved by a federally registered planning authority shall provide an explanation as to the change.

11.14(6) *Compliance with board rules.* Nothing in this rule shall modify or alter any other requirements established in this chapter of the board's rules. These rules are intended to implement Iowa Code Chapter 478.

It is clear from the text of the rule that it was enacted solely to implement Iowa Code § 478.16. This Court has now declared § 478.16 unconstitutional. This Court has also granted a permanent injunction enjoining enforcement of § 478.16. It seems

logical to the Court that if § 478.16 is unconstitutional and unenforceable, then an administrative rule specifically enacted to implement the requirements contained in an unconstitutional statute must likewise be unenforceable and subject to being enjoined. The Court concludes that Chapter 17A of the Iowa Code does not deprive this Court of its broad equitable power to enjoin the enforcement of Rule 199-11.14 and the Court will do so. The Court sees no logic in requiring Plaintiffs to expend the costs and expense of initiating a separate administrative challenge to Rule 199-11.14, when the result is so clear.

The final issue before the Court concerns Plaintiffs' request for injunctive relief regarding projects that were approved before the Iowa Supreme Court issued its temporary injunction in March of this year. These include LRTP-7 (Webster-Franklin-Marshalltown-Morgan Valley); LRTP-8 (Beverly-Sub 92); LRTP-9 (Orient-Denny-Fairport); LRTP-12 (Madison-Ottumwa-Skunk River); and LRTP-13 (Skunk River-Ipava) (collectively the "Iowa LRTPs").

Regarding the Iowa LRTPs, Plaintiffs seek to enjoin the Iowa Utilities Board from taking any additional action, or relying on prior actions, related to any and all electric transmission line projects in Iowa that were claimed pursuant to, under, or in reliance on Iowa Code section 478.16 and/or Iowa Administrative Code Rule 199-11.14.

Regarding the Iowa LRTPs, Plaintiffs also seek to permanently enjoin the Intervenor from taking any additional action, or relying on prior actions, related to any and all electric transmission line projects in Iowa that were claimed pursuant to, under or in reliance on Iowa Code section 478.16 and/or Iowa Administrative Code Rule 199-11.14, including, but not limited to, furthering, seeking, requesting, or participating in any way any franchising or public meetings for the Iowa LRTPs.

Plaintiffs contend that this relief is necessary to remedy injury suffered by

Plaintiffs due to the unconstitutional enactment of § 478.16. Plaintiffs further contend that by doing so the Court will be, in essence, returning the parties to the status quo before the enactment of the unconstitutional statute, which will allow Plaintiffs to compete on a level playing field.

The State and Intervenors resist claiming that this power lacks the authority to grant the relief Plaintiffs request regarding the Iowa LRTPs because such projects have already been approved by MISO, and MISO is not a party to this action. The State and Intervenors further contend that this Court lacks jurisdiction over MISO's tariff, so the Court lacks authority to impact the Iowa LRTPs that were assigned to the Intervenors.¹⁴

While it is true that MISO is not a party to this action, the Intervenors are clearly parties to this action. As a result, the Court concludes that it has the legal authority to give effect to Plaintiffs' legal rights as regards the Intervenors. In other words, the Court need not concern itself with how its decision may impact MISO or any other party, the Court need only do justice between the parties. In this case justice requires that the Court grant Plaintiffs permanent injunctive relief that prevents substantial injury or damages to them by virtue of the Iowa Legislature's enactment of an unconstitutional statute, which granted Intervenors a ROFR.

In considering this issue, the Court has been mindful that Plaintiffs timely brought this action seeking to invalidate § 478.16 in 2020 well before the Iowa LRTPs were approved and assigned to Intervenors. At that time, Plaintiffs sought injunctive

¹⁴ The State and Intervenors also argue that Plaintiffs requested relief is beyond what they identified in their Petition. However, as noted in *Henry Walker Park Ass'n*, 249 Iowa at 1257, 91 N.W.2d at 711, prayers for general relief are to be construed liberally. Under a prayer for general relief, a court may grant relief "consistent with the pleadings and the evidence." *Id.* at 1258, 91 N.W.2d at 711. Any relief granted, however, must also be such "as will not surprise the opposing party." *Jorge Constr. Co. v. Weigel Excavating & Grading Co.*, 343 N.W.2d 439, 442 (Iowa 1984). The Court concludes that the relief granted herein is consistent with the pleadings, the evidence presented, and will not surprise Intervenors.

relief enjoining the ROFR contained in § 478.16. In 2021, this Court wrongly dismissed Plaintiffs' petition and denied their requested injunction.

Plaintiffs appealed this Court's decision. While their appeal was pending, Plaintiffs requested that the Iowa Court of Appeals enjoin the application of the ROFR provisions of § 478.16 to the Iowa LRTPs, which were set to be approved by MISO on July 25, 2022. On July 8, 2022, the Iowa Court of Appeals compounded this Court's error when they wrongly affirmed this Court's dismissal of Plaintiffs' petition. The Iowa Court of Appeals also denied Plaintiffs' request for injunctive relief.

Because of the errors made by this Court and the Iowa Court of Appeals, no injunctive relief was granted, and the Iowa LRTPs were approved by MISO on July 25, 2022. It is important to note that at the time the Iowa LRTPs were approved by MISO, the Intervenors understood this litigation was not final. Plaintiffs were still empowered to seek further review by the Iowa Supreme Court. They did so, and ultimately, the Iowa Supreme Court corrected the decisions wrongly made by the inferior courts in this litigation.

Had this Court made the correct decision initially, Plaintiffs would have been able to compete for the Iowa LRTPs on a level playing field. The ROFR contained in the unconstitutionally enacted statute prevented Plaintiffs from doing so. This Court has the authority, now, to correct its earlier error and prevent substantial injury and damage to Plaintiffs by granting them the relief they seek.

Doing so will serve Plaintiffs interests by granting them long delayed justice. Doing so will also serve the public interest because the Iowa Supreme Court has already concluded that: "[c]ommon 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.”¹⁵

For all these reasons, the Court grants Plaintiffs’ motion for summary judgment and grants Plaintiffs’ request for permanent injunctive relief. Regarding the State’s motion for summary judgment, the Court determines it should be denied, with one exception. The Court agrees with the State that Defendants Glen Dickinson and Leslie Hickey, who are personnel of the Legislative Services Agency, have no role in enforcing or administering the ROFR provisions of Iowa Code § 478.16. The State’s motion to grant summary judgment as to any claims against Defendants Glen Dickinson and Leslie Hickey are granted. The motion for summary judgment filed by Intervenors is denied.

RULING

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the motion for summary judgment filed by Defendants Glen Dickinson and Leslie Hickey is GRANTED and judgment is entered in favor of Defendants Glen Dickinson and Leslie Hickey.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the motions for summary judgment filed by Defendants State of Iowa, Iowa Utilities Board, and Erik Helland, in his capacity as Chairman of the Iowa Utilities Board, are DENIED.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the motion for summary judgment filed by Intervenor MidAmerican Energy Company is DENIED.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the motion for summary judgment filed by Intervenor ITC Midwest LLC is DENIED.

¹⁵ See, *LS Power Midcontinent, LLC v. State*, 988 N.W.2d 316, 338 (Iowa 2023).

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the motion for summary judgment filed by Plaintiffs LS Power Midcontinent, LLC and Southwest Transmission, LLC, as to Counts I and II of the Petition are GRANTED. The Court takes no action on Count III of the Petition as, in light of the Court's Ruling, the Plaintiffs have indicated that they are no longer seeking to advance any claim under Count III. Court costs are taxed one-half to Defendants and one-half to Intervenors.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Court permanently enjoins operation or enforcement of Iowa Code § 478.16 and Iowa Administrative Rule 199-11.14. They shall be given no legal effect and shall provide no rights or authority to anyone claiming any rights under either Iowa Code § 478.16 or Iowa Administrative Rule 199-11.14.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that to prevent injury to Plaintiffs and return to the status quo prior to Iowa Code § 478.16's and Iowa Administrative Code rule 199-11.14's enactment, the Iowa Utilities Board is permanently enjoined from taking any additional action, or relying on prior actions, related to any and all electric transmission line projects in Iowa that were claimed pursuant to, under, or in reliance on Iowa Code § 478.16 and/or Iowa Administrative Code rule 199-11.14. Such projects include LRTP-7 (Webster-Franklin-Marshalltown-Morgan Valley); LRTP-8 (Beverly-Sub 92); LRTP-9 (Orient-Denny-Fairport); LRTP-12 (Madison-Ottumwa-Skunk River); and LRTP-13 (Skunk River-Ipava).

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that to prevent injury to Plaintiffs and return to the status quo prior to Iowa Code § 478.16's and Iowa Administrative Code rule 199-11.14's enactment, Intervenors MidAmerican Energy Company and ITC Midwest LLC are permanently enjoined from taking any additional action, or relying on prior actions, related to any and all electric transmission line

projects in Iowa that were claimed pursuant to, under, or in reliance on Iowa Code § 478.16 and/or Iowa Administrative Code rule 199-11.14. Such projects include LRTP-7 (Webster-Franklin-Marshalltown-Morgan Valley); LRTP-8 (Beverly-Sub 92); LRTP-9 (Orient-Denny-Fairport); LRTP-12 (Madison-Ottumwa-Skunk River); and LRTP-13 (Skunk River-Ipava).

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that this permanent injunction does not prohibit the Intervenor, if reassigned the above referenced projects, through competitive processes or otherwise in a manner not relying on claimed existence of § 478.16, from seeking approval from the State to move forward with the previously claimed projects.

SO ORDERED.



State of Iowa Courts

Case Number
CVCV060840

Case Title
LS POWER MIDCONTINENT ET AL VS STATE OF IOWA ET
AL
ORDER FOR JUDGMENT

Type:

So Ordered

Coleman McAllister, District Judge
Fifth Judicial District of Iowa

Electronically signed on 2023-12-04 15:18:55