

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>LS POWER MIDCONTINENT, LLC, and SOUTHWEST TRANSMISSION, LLC,</p> <p style="text-align: center;">Plaintiffs,</p> <p>v.</p> <p>THE STATE OF IOWA, IOWA UTILITIES BOARD, GERI D. HUSER, GLEN DICKINSON and LESLIE HICKEY,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">CASE NO. CVCV060840</p> <p style="text-align: center;">ANSWER OF ITC MIDWEST LLC TO PLAINTIFF’S PETITION FOR DECLARATORY AND INJUCTIVE RELIEF</p>
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Intervenor, ITC Midwest LLC, (“ITC Midwest”) for its Answer to Plaintiff’s Petition, states as follows:

THE PARTIES

1. Plaintiff LS Power Midcontinent, LLC, is a limited liability company with its principal place of business in St. Louis, Missouri. Plaintiff Southwest Transmission, LLC, is a limited liability company with its principal place of business in St. Louis, Missouri. Plaintiffs are licensed to do business in Iowa.

ANSWER: On information and belief, ITC Midwest admits the allegations of this Paragraph.

2. Defendant Iowa Utilities Board is the policymaking body for the utilities division and is charged with administration, rulemaking and enforcement of Iowa Code Chapter 478, including recently adopted Iowa Code Section 478.16.

ANSWER: Paragraph 2 states a legal conclusion rather than a fact, and ITC Midwest believes no response is necessary. To the extent a response is required, ITC Midwest admits the allegations of this Paragraph.

3. Defendant Geri Huser is the Chair of the Iowa Utilities Board and is sued in her official capacity. Upon information and belief, Defendant Huser is a resident of the State of Iowa.

ANSWER: ITC Midwest admits the allegations of this Paragraph.

4. Defendant Glen Dickinson is the Director of the Legislative Services Agency, a nonpartisan central legislative staff agency under the direction and control of the Legislative Council. The Legislative Services Agency's duties include publication of the Iowa Acts. Iowa Code ch.2A. Glen Dickinson is sued in his official capacity. Upon information and belief, Defendant Dickinson resides in the State of Iowa.

ANSWER: ITC Midwest admits the allegations of this Paragraph.

5. Defendant Leslie Hickey is the Iowa Code Editor. The Iowa Code Editor is appointed by the Director of the Legislative Services Agency. The Editor's duties include publishing the Iowa Acts. Iowa Code § 2B.13. Leslie Hickey is sued in her official capacity. Upon information and belief, Defendant Hickey resides in the State of Iowa.

ANSWER: ITC Midwest admits the allegations of this Paragraph.

6. Jurisdiction and venue are appropriate in this Court.

ANSWER: ITC Midwest admits the allegations of this Paragraph.

THE LAW

7. The Iowa Constitution, Article II, Section 29, prohibits "logrolling" by requiring a legislative Act to have only one subject:

Sec. 29. Acts—one subject—expressed in title. Every Act shall embrace but one subject, and matters properly connected therewith; which subject shall be expressed in the title. But if any subject shall be embraced in an Act which shall not be expressed in the title, such Act shall be void only as to so much thereof as shall not be expressed in the title.

ANSWER: Paragraph 7 states a legal conclusion rather than a fact, and ITC Midwest believes no response is necessary. Further, ITC Midwest asserts that the document speaks for itself. To the extent a response is necessary, ITC Midwest admits that Section 29 includes the quoted language and denies the balance of the allegations.

8. The Iowa Constitution, Article II, Section 29, requires the title of the bill to contain the subject matter of the bill to prevent fraud and surprise.

ANSWER: Paragraph 8 states a legal conclusion rather than a fact, and ITC Midwest believes no response is necessary. Further, ITC Midwest asserts that the document speaks for itself. To the extent a response is necessary, denies the allegations of this Paragraph.

9. The Iowa Constitution, Article I, Section 6, requires all laws of the State to operate uniformly and prohibits any law that is not equally applied to all:

Sec. 6. Laws uniform. All laws of a general nature shall have a uniform operation; the General Assembly shall not grant to any citizen, or class of citizen, privileges or immunities, which upon the same terms shall not equally belong to all citizens.

ANSWER: Paragraph 9 states a legal conclusion rather than a fact, and ITC Midwest believes no response is necessary. Further, ITC Midwest asserts that the document speaks for itself. To the extent a response is necessary, ITC Midwest admits that Section 6 includes the quoted language and denies the balance of the allegations.

FACTUAL BACKGROUND

10. H.F. 2643, identified as “FY 2021 Omnibus Appropriations Bill,” was passed into law during the 88th General Assembly by the Iowa Legislature on June 14, 2020, and signed into law by Governor Reynolds on June 30, 2020. (Ex. 1)

ANSWER: ITC Midwest admits the allegations of this Paragraph.

11. H.F. 2643’s title reads:

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.

(Ex. 1, at 1)

ANSWER: ITC Midwest admits the allegations of this Paragraph.

12. H.F. 2643 contains thirty-four separate divisions, including sections related to appropriations, locations of civil trials, public health emergency regulations, mental health and disability regionalization, appointment of clerks of district court, alarm system contractor fees and fines, repeal of hemp regulations, returns on search warrants, voting and electric transmission lines.

ANSWER: ITC Midwest admits the allegations of this Paragraph.

13. Specifically, H.F. 2643’s Division XXXIII, Section 128, titled “Electric Transmission Lines” and to be codified at Iowa Code § 478.16, provides a right of first refusal to “incumbent electric transmission owners” for construction and maintenance of Iowa’s high-voltage transmission lines. (Ex. 1, at 48-51)

ANSWER: ITC Midwest admits the allegations of this Paragraph.

14. Though the subject matter of Division XXXIII previously had been filed in a House study bill (HSB 540), the subcommittee never formally met on the proposed study bill, it

never advanced beyond subcommittee member consideration and it ultimately died without further consideration on February 21, 2020.

ANSWER: On information and belief, ITC Midwest admits the allegations of this Paragraph.

15. Additionally, in the immediately preceding legislative session (the 87th General Assembly), the subject matter of Division XXXIII was passed by the Iowa Senate, as SF 2311, but was stricken from the bill when it was considered by the House.

ANSWER: ITC Midwest admits the allegations of this Paragraph.

16. Division XXXIII was not contained in H.F. 2643 as originally passed by the House and referred to the Senate on June 12, 2020.

ANSWER: ITC Midwest admits the allegations of this Paragraph.

17. Instead, Division XXXIII was added through an omnibus Senate Amendment, S-5163, first taken up on the Senate floor at approximately 1:35 a.m. on the final day of the 2020 Iowa legislative session, June 14, 2020, and adopted by the Senate at approximately 5:45 a.m. that same day.

ANSWER: ITC Midwest admits the allegations of this Paragraph.

18. Although Senate Amendment S-5163 added new and different Divisions to H.F. 2643, including many not related to appropriations, the title page was never amended.

ANSWER: Paragraph 18 states a legal conclusion rather than a fact, and ITC Midwest believes no response is necessary. To the extent a response is necessary, ITC Midwest admits that the title was not amended and denies the balance of the allegations.

19. H.F. 2643, as amended, passed in the Senate several minutes later, at 5:47 a.m., and subsequently passed in the House, without debate, that afternoon at 1:07 p.m.

ANSWER: ITC Midwest admits that H.F. 2643 was subsequently approved in both the Iowa Senate and the Iowa House; ITC Midwest denies any further characterizations in this Paragraph.

20. The amendment to H.F. 2643 to include Division XXXIII, which was not reflected in the title of the bill, the late-night amendment and the short period of time between the amendment and the passing of the bill, prevented citizens and the general public from being informed of and weighing in to their legislators about the provisions regarding the right-of-first-refusal contained therein. As noted in letters addressed to Iowa Governor Kim Reynolds from LS Power Midcontinent, LLC (Ex. 2) and AARP (Ex. 3), the legislation was passed in the “dark of night” (Ex. 2, at 1) and at the “last minute without any meaningful opportunity for input from AARP Iowa or any members of the public” (Ex. 3, at 1).

ANSWER: ITC Midwest denies the allegations of this Paragraph.

21. Division XXXIII provides, “[a]n incumbent electric transmission owner has the right to construct, own, and maintain an electric transmission line that has been approved for construction in a federally registered planning authority transmission plan and which connects to an electric transmission facility owned by the incumbent electric transmission owner.” (Ex. 1, at 49)

ANSWER: ITC Midwest believes the document speaks for itself, but to the extent a response is appropriate ITC Midwest admits the allegations of this Paragraph.

22. Within 90 days of approval for construction of the line, the incumbent electric transmission owner must give written notice about whether it intends to “construct, own, and maintain” the transmission line. (Ex. 1, at 50)

ANSWER: ITC Midwest believes the document speaks for itself, but to the extent a

response is appropriate ITC Midwest admits the allegations of this Paragraph.

23. Only if the incumbent electric transmission owner declines may the Iowa Utilities Board “determine whether another person may construct the electric transmission line.” (Ex. 1, at 50)

ANSWER: ITC Midwest believes the document speaks for itself, but to the extent a response is appropriate ITC Midwest admits the allegations of this Paragraph.

24. An “incumbent electric transmission owner,” as defined by Division XXXIII, 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*,” defined as “an individual or entity who, as of the effective date of this Act, 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.”

(Ex. 1, at 49)

ANSWER: ITC Midwest believes the document speaks for itself, but to the extent a response is appropriate ITC Midwest admits the allegations of this Paragraph.

25. The definition of “incumbent electric transmission owner” excludes by its terms any individual or entity that does not own, operate or maintain an electric transmission line “in this state” as of the date of the Act. (See Ex. 1, at 49)

ANSWER: ITC Midwest believes the document speaks for itself, but to the extent a response is appropriate ITC Midwest admits the allegations of this Paragraph.

26. As such, the Act distinguishes between electric transmission entities currently operating in Iowa and those not presently operating in Iowa, allowing the former a right of first refusal on construction and maintenance of new electric transmission lines and effectively denying the latter the opportunity to compete or break into the marketplace, thus precluding competition and allowing the existence of a monopoly to incumbent electric transmission owners.

ANSWER: Paragraph 26 states a legal conclusion rather than a fact, and ITC Midwest believes no response is necessary. Further, ITC Midwest asserts that the document speaks for itself. To the extent a response is necessary, ITC Midwest denies the allegations of this Paragraph.

27. LS Power Midcontinent, LLC, and Southwest Transmission, LLC, desire to construct, own and maintain transmission lines within this State. Both companies are subsidiaries of LS Power Development, LLC, a development, investment and operating company focused on the power and energy infrastructure sector. Since its inception in 1990, LS Power Development, LLC, and its affiliates have developed, constructed, managed and acquired more than 42,000 MW of competitive power generation and 630 miles of high-voltage electric transmission infrastructure.

ANSWER: ITC Midwest lacks sufficient information to admit or deny this paragraph.

28. The Midcontinent Independent System Operator (“MISO”) and the Southwest Power Pool (“SPP”) are non-governmental agencies empowered to plan and operate the expansion of interstate, high-voltage transmission grids for the State of Iowa and regulated by the Federal Energy Regulatory Commission (“FERC”). MISO’s scope of operations today

includes 66,000 miles of high-voltage transmission with an aggregate value of \$38 billion in fifteen U.S. States and one Canadian province, including the vast majority of State of Iowa. SPP's scope of operations today includes 60,000 miles of high-voltage transmission in fourteen U.S. states, including parts of the western half of the State of Iowa.

ANSWER: ITC Midwest admits the allegations of this Paragraph.

29. Both SPP and MISO today have FERC-approved procedures in place which provide for competitive processes for the creation of future regional transmission needs located in the State of Iowa, including transmission requirements needed to address renewable and clean public policy advancement.

ANSWER: ITC Midwest admits the allegations of this Paragraph.

30. Qualified entities that win the competitive bidding process in MISO or SPP are then subject to Iowa Utilities Board ("IUB") permitting and route selection approval processes, safety regulations and land use laws.

ANSWER: ITC Midwest admits the allegations of this Paragraph.

31. It is estimated that the MISO and SPP footprint may require more than \$30 billion in grid expansion over the next 10 years, some of which will be in the State of Iowa and some of which would have been eligible for competitive processes in Iowa but for Division XXXIII.

ANSWER: ITC Midwest denies the allegations of this Paragraph as the assertions are purely speculative.

32. MISO and SPP studies, encouraged by the Midwestern Governors Association in September 2020 to act with a sense of urgency, also are underway to plan for more transmission between the boundaries of SPP and MISO, including in Iowa.

ANSWER: ITC Midwest admits the allegations of this Paragraph.

33. LS Power Midcontinent, LLC, is a MISO-approved Qualified Transmission Developer, eligible to be awarded competitive transmission projects by MISO. Southwest Transmission, LLC, is a SPP-approved Qualified RFP Participant, also eligible to be awarded competitive transmission projects by SPP.

ANSWER: ITC Midwest admits the allegations of this Paragraph.

34. LS Power Midcontinent, LLC, and Southwest Transmission, LLC, are now prevented from being assigned a competitive project in Iowa and prevented from participating in an Iowa transmission competitive process in MISO and SPP as a result of Division XXXIII.

ANSWER: ITC Midwest denies the allegations of this Paragraph.

35. LS Power Midcontinent, LLC, and Southwest Transmission, LLC, face actual, imminent injury as a result of Division XXXIII in H.F. 2643.

ANSWER: ITC Midwest denies the allegations of this Paragraph.

**COUNT I – VIOLATION OF THE SINGLE-SUBJECT CLAUSE
OF THE IOWA CONSTITUTION, ARTICLE III, SECTION 29**

36. Under Iowa law, “logrolling” is the practice of procuring diverse and unrelated matters to be passed as one “omnibus” due to the consolidated votes of the advocates of each separate measure, when no single measure could have passed on its own merits.

ANSWER: Paragraph 36 states a legal conclusion rather than a fact, and ITC Midwest believes no response is necessary. To the extent a response is necessary, ITC Midwest denies the allegations of this Paragraph.

37. The Iowa Constitution, Article III, Section 29, prohibits logrolling by requiring that “Every act shall embrace but one subject, and matters properly connected therewith.”

ANSWER: Paragraph 37 states a legal conclusion rather than a fact, and ITC Midwest believes no response is necessary. Further, ITC Midwest asserts that the

document speaks for itself. To the extent a response is necessary, ITC Midwest admits that Section 29 includes the quoted language and denies the balance of the allegations.

38. H.F. 2643, as adopted, embraced two or more dissimilar and discordant subjects that by no fair intendment can be considered as having any legitimate connection with, or relation to, each other.

ANSWER: ITC Midwest denies the allegations of this Paragraph.

39. Division XXXIII's provisions were purposely placed into one bill to engage in logrolling constituting fraud, deceit and surprise, as set out in Iowa law, upon the public and other members of the legislature.

ANSWER: ITC Midwest denies the allegations of this Paragraph.

40. The Amendment of HF 2643 was offered and adopted to consolidate votes of the advocates of Division XXXIII when Division XXXIII could not have passed on its own merits. Division XXXIII was an undesirable rider.

ANSWER: ITC Midwest denies the allegations of this Paragraph.

41. As such, the enactment of Division XXXIII of H.F. 2643 violates the Iowa Constitution.

ANSWER: ITC Midwest denies the allegations of this Paragraph.

**COUNT II – VIOLATION OF THE TITLE CLAUSE
OF THE IOWA CONSTITUTION, ARTICLE III, SECTION 29**

42. The Iowa Constitution, Article III, Section 29, requires that a subject of the bill be expressed in the title and, if any subject is “embraced in an Act which shall not be expressed in the title, such Act shall be void only as to so much thereof as shall not be expressed in the title.”

ANSWER: Paragraph 42 states a legal conclusion rather than a fact, and ITC Midwest believes no response is necessary. Further, ITC Midwest asserts that the

document speaks for itself. To the extent a response is necessary, ITC Midwest admits that Section 29 includes the quoted language and denies the balance of the allegations.

43. H.F. 2643, as adopted, failed to include in its title an accurate description of the bill's subject matter, which included Division XXXIII related to electric transmission lines.

ANSWER: ITC Midwest denies the allegations of this Paragraph.

44. The violation of the title requirement constituted fraud, deceit and surprise, as set out in Iowa law, upon the public and other members of the legislature.

ANSWER: ITC Midwest denies the allegations of this Paragraph.

45. As such, enactment of Division XXXIII of H.F. 2643 violates the Iowa Constitution.

ANSWER: ITC Midwest denies the allegations of this Paragraph.

**COUNT III – VIOLATION OF THE EQUAL PROTECTION
AND PRIVILEGES AND IMMUNITIES CLAUSES
OF THE IOWA CONSTITUTION, ARTICLE I, SECTION 6**

46. Article I, Section 6 of the Iowa Constitution was intended to prevent forms of special status that are bestowed by the government to which a person would not otherwise be entitled.

ANSWER: Paragraph 46 states a legal conclusion rather than a fact, and ITC Midwest believes no response is necessary. Further, ITC Midwest asserts that the document speaks for itself. To the extent a response is necessary, ITC Midwest denies the allegations in this Paragraph.

47. Article I, Section 6 further directs that all persons similarly situated should be treated alike.

ANSWER: Paragraph 47 states a legal conclusion rather than a fact, and ITC Midwest believes no response is necessary. Further, ITC Midwest asserts that the

document speaks for itself. To the extent a response is necessary, ITC Midwest denies the allegations in this Paragraph.

48. Division XXXIII of H.F. 2643 grants a perpetual right of first refusal to incumbent electric transmission owners to construct, own and maintain new transmission lines.

ANSWER: Paragraph 48 states a legal conclusion rather than a fact, and ITC Midwest believes no response is necessary. Further, ITC Midwest asserts that the document speaks for itself. To the extent a response is necessary, ITC Midwest denies the allegations in this Paragraph.

49. In so doing, Division XXXIII of H.F. 2643 provides a special status to electric transmission owners located within the State of Iowa as of the date of enactment.

ANSWER: ITC Midwest denies the allegations of this Paragraph.

50. Division XXXIII of H.F. 2643 bears no plausible policy reason for this classification that is realistically conceivable and has a basis in fact.

ANSWER: ITC Midwest denies the allegations of this Paragraph.

51. The classification is arbitrary and bears no relationship to any purpose to be achieved.

ANSWER: ITC Midwest denies the allegations of this Paragraph.

52. Division XXXIII of H.F. 2643 distinguishes among similarly situated electric transmission owners without a reasonable basis for doing so while creating an anti-competitive and monopolistic regulatory scheme.

ANSWER: ITC Midwest denies the allegations of this Paragraph.

53. As such, Division XXXIII of H.F. 2643 violates the Iowa Constitution.

ANSWER: ITC Midwest denies the allegations of this Paragraph.

REQUEST FOR INJUNCTIVE RELIEF

54. Plaintiffs LS Power Midcontinent, LLC, and Southwest Transmission, LLC, are entitled to temporary and permanent injunctive relief invalidating Division XXXIII of H.F. 2643 and enjoining Defendants from publishing or enforcing it. Iowa R. Civ. P. 1.501-1.511.

ANSWER: ITC Midwest denies the allegations of this Paragraph.

55. Defendants are acting and threatening to act under color of state law to deprive Plaintiffs LS Power Midcontinent, LLC, and Southwest Transmission, LLC, of their rights protected under the Iowa Constitution.

ANSWER: ITC Midwest denies the allegations of this Paragraph.

56. Plaintiffs LS Power Midcontinent, LLC, and Southwest Transmission, LLC, will suffer irreparable injury and will continue to suffer real and immediate irreparable harm as a result of the existence, operation, enforcement and threat of enforcement of Division XXXIII of H.F. 2643.

ANSWER: ITC Midwest denies the allegations of this Paragraph.

57. Plaintiffs LS Power Midcontinent, LLC,, and Southwest Transmission, LLC are entitled to temporary and permanent injunctive relief including restraining publication of Division XXXIII. (Ex. 4)

ANSWER: ITC Midwest denies the allegations of this Paragraph.

58. No petition for the same relief, or part thereof, has been previously presented to or refused by any court or justice.

ANSWER: Paragraph 58 states a legal conclusion than a fact, and ITC Midwest believes no response is necessary. To the extent a response is necessary, ITC Midwest denies the allegations in this Paragraph.

AFFIRMATIVE DEFENSES

1. Plaintiffs lack standing to bring their claims.
2. Plaintiffs' claims are not ripe.

Filed this 17th day of November 2020

By: /s/ Bret A. Dublinske

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CERTIFICATE OF SERVICE

The undersigned certifies that on the 17th day of November, 2020, the foregoing document was electronically filed with the Clerk of Court using the EDMS system which will send a notice of electronic filing to all counsel of record registered with the EDMS system.

/s/ Sarah McCray
Sarah McCray