

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;">APPLICATION FOR INTERVENTION</p>
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ITC Midwest LLC (“ITC Midwest”), pursuant to Iowa Rule of Civil Procedure 1.407, applies for intervention in this matter, and in support of its Application states:

1. ITC Midwest, headquartered in Cedar Rapids, Iowa, is an independent, stand-alone transmission company engaged exclusively in the development, ownership and operation of facilities for the transmission of electric energy in interstate commerce. ITC Midwest provides transmission service in Iowa, Minnesota, Illinois and Missouri where it owns and operates approximately 6,700 circuit miles of transmission lines with the overwhelming majority of those lines in Iowa.

2. ITC Midwest is a subsidiary of ITC Holdings Corp., which invests exclusively in the electric power transmission grid to improve electric reliability, facilitate access to renewable and other generation, improve access to power markets, and reduce the overall cost of delivered electric power.

3. In 2011, the Federal Energy Regulatory Commission issued Order 1000, which, among other things, eliminated the federal right-of-first-refusal (“ROFR”) within the Midwest

Independent System Operator, Inc. Open Access Transmission Tariff for certain transmission projects that are part of a regional transmission planning process. In eliminating the federal ROFR, FERC explicitly acknowledged that individual states could decide whether or not to adopt a state-level ROFR.

4. In the 2020 session of the Iowa General Assembly, the legislature passed and the governor signed H.F. 2643, including Division XXXIII, Section 128, titled “Electric Transmission Lines,” which will provide at Iowa Code § 478.16 a state ROFR to “incumbent electric transmission owners” for construction and maintenance of high-voltage transmission lines in Iowa.

5. ITC Midwest is an “incumbent electric transmission owner” under Iowa Code § 478.16. Moreover, the ROFR in section 478.16 is triggered by a proposed new project “which connects to an electric transmission facility owned by the incumbent electric transmission owner.” That is, the hypothetical projects discussed in this action could connect to existing ITC Midwest facilities in Iowa.

6. ITC Midwest is permitted to intervene by right under Iowa Rule of Civil Procedure 1.407(1)(b). ITC Midwest has an interest relating to the “property or transaction” – in this case, ITC Midwest’s existing system to which a new project could be connected, or the right to build a new line – which is the subject of this action. The disposition of this case would directly impact ITC Midwest’s rights with regard to its own system and with regard to its right to build certain new projects that connect to that system. Because the state defendants do not own or operate transmission facilities, they are not in a position, either in terms of commercial interests or technical experience, to adequately protect ITC Midwest’s interests. ITC Midwest is

“so situated that the disposition of the action may as a practical matter impair or impede” ITC Midwest’s ability to protect its interests without intervention.

7. Alternatively, ITC Midwest should be granted permissive intervention under Iowa Rule of Civil Procedure 1.407(2). *See Rick v. Boegel*, 205 N.W.2d 713, 717 (Iowa 1973) (intervention is remedial and is to be liberally construed to reduce litigation and expeditiously determine matters before the court); *see also Lakes Gas Co. v. Terminal Properties, Inc.*, 720 N.W.2d 192 (2006) (Table, text in Westlaw) (citing *Boegel* for same proposition). In this case, ITC Midwest’s defenses will address the same questions of law and the same facts as the “main action.” Both relate to the legal ability of the State of Iowa to enact a ROFR to ensure that incumbent electric transmission owners like ITC Midwest have the right to construct the transmission facilities that connect to *their own systems*. While the challenge is to the action of the state as a policy maker, the real parties in interest are the transmission owners whose operations are impacted by the policy reflected in H.F. 2643, including Division XXXIII, Section 128 and the challenge to that statute in this case.

8. Moreover, this timely intervention at the earliest stages of the case will not “unduly delay or prejudice the adjudication of the rights of the original parties.” *See* IRCP 1.407(2)(c). To the contrary, ITC Midwest’s technical expertise in transmission systems and federal and state regulation thereof will allow the Court a more robust record on which to decide this case.

Accordingly, ITC Midwest respectfully requests that the Court grant its intervention as a party with full rights to participate in this proceeding. In accordance with Iowa Rule of Civil Procedure 1.407(3), an Answer, as well as a joinder in the Motion to Dismiss filed by the State Defendants, accompanies this Application.

Filed this 17th day of November 2020

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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
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