

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

**LS POWER MIDCONTINENT LLC. AND
SOUTHWEST TRANSMISSION LLC.,**

Plaintiffs,

vs.

**STATE OF IOWA, IOWA UTILITIES
BOARD, GERI D. HUSER, GLEN
DICKINSON, AND LESLIE HICKEY,**
Defendants.

Case No. CVCV060840

**ORDER ON PETITIONS FOR
INTERVENTION**

The Plaintiffs (“LS Power” herein) petitioned for declaratory and injunction relief with regard to Iowa Code §478.16, which provides a right of first refusal to incumbent electric transmission owners (“IETO” herein) for the construction and maintenance of Iowa’s high-voltage transmission lines. The Defendants (“the State” herein) are represented by the Iowa Attorney General.

MidAmerican Energy Company (“MidAmerican” herein) and ITC Midwest LLC. (“ITC” herein) filed separate petitions to intervene. LS Power resists intervention. The State takes no position on the appropriateness of intervention by either MidAmerican or ITC.

Both MidAmerican and ITC claim a right of intervention under I.R.Civ.P. 1.407(1)(b). Upon a timely application, anyone shall be permitted to intervene in an action when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant’s ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties. I.R.Civ.P. 1.407(1)(b). They also both claim, in the alternative, they should be allowed to permissively intervene under I.R.Civ.P. 1.407(2).

RIGHT OF INTERVENTION

LS Power does not dispute both MidAmerican and ITC claim an interest relating to the property or transaction which is the subject of the action and that they both are so situated that the disposition of the action may as a practical matter impair or impede their ability to protect that interest. The only disputed element of the right of intervention is whether MidAmerican or ITC's interests are adequately represented by existing parties, which in this case is the State.

With regard to a petition of intervention, all allegations of that petition are presumed true. *Rick v. Boegel*, 205 N.W.2d 713, 717 (Iowa 1973). Further, the intervention rule is remedial and is to be liberally construed. *Id.*

Determination of whether representation is adequate is made by comparing the interests of the proposed intervener with the interests of the current parties of the action. *Aventure Communications Tech. v. Iowa Utilities Bd.*, 734 F.Supp. 2D 636, 651 (N.D. Iowa 2010). Generally, only a minimal showing that representation may be inadequate is required for intervention but the burden is greater if the named party is a government entity which represents interest common to the public. *Id.* A party may meet that burden by showing that its interest at risk in the litigation are not shared by the general citizenry. *Little Rock Sch. V. North Little Rock Sch.*, 378 F.3d 774, 780 (8th Cir. 2004).

Like the interveners in *Aventure*, both MidAmerican and ITC have peculiar interest distinct from the public interest, in that their interests are "unique operational, competitive, and financial interests". *Aventure* at 651, see *Great Lakes Communication Corp. v. Iowa Utilities Board*, 2009 WL 3806176 (N.D. Iowa 2009). Both interveners have a right of first refusal as IETOs under the challenged statute. As noted in MidAmerican's affidavit in support of intervention, their ability to produce energy directly effects its ability to generate

revenue and congestion in electrical service delivery increases its costs. ITC asserts, like MidAmerican, new projects could have a direct impact on the company as these projects may connect to their own electrical systems. The State of Iowa do not own or operate these types of systems and do not share either interveners' financial interests. If LS Power is successful in its claims, this ruling will have a direct impact on both interveners. This case is distinguishable from cases such as *Baker v. Wade*, as the *Baker* case involved a denied request for intervention on an issue that effected society in general. *Baker v. Wade*, 743 F.2d 236 (5th Cir. 1984) (challenge to a statute criminalizing homosexual conduct). LS Power's petition strikes at a core element of the operations of MidAmerican and ITC. As such, this court finds both MidAmerican and ITC have met their burden under I.R.Civ.P. 1.407(b) for intervention of right.

Even assuming there was not a basis for intervention of right, the court considers whether permission intervention applies.

PERMISSIVE INTERVENTION

MidAmerican and ITC also request permissive intervention. Both claim there are common questions of law and fact which exist with regard to their positions on the constitutionality of Iowa Code §478.16 and related issues in this case and should therefore be allowed to permissively intervene. I.R.Civ.P. 1.407(2). Certainly, both interveners are IETOs whose operations would be impacted by the outcome of this litigation, especially in light of the challenge to their own right of first refusal granted by the statute in question. As there are common questions of fact and law between this particular case and the positions of the interveners, the court finds intervention by both MidAmerican and ITC is appropriate and should be granted.

The court also finds the interventions will not unduly delay or prejudice the adjudication of the original parties' rights as both petitions for intervention were filed shortly after the initiation of the case. There is nothing in the record to establish any prejudicial effect towards LS Power.

ORDER

It is therefore the ORDER of the Court that MidAmerican's Petition for Intervention is granted. It is further ORDERED that ITC's Petition for Intervention is also granted.

SO ORDERED.



State of Iowa Courts

Type: OTHER ORDER

Case Number **Case Title**
CVCV060840 LS POWER MIDCONTINENT ET AL VS STATE OF IOWA ET AL

So Ordered

A handwritten signature in blue ink, appearing to read 'Celene Gogerty'. The signature is written in a cursive style and is positioned above a horizontal line.

Celene Gogerty, District Judge
Fifth Judicial District of Iowa