

**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, GERI D. HUSER, GLEN  
DICKINSON and LESLIE HICKY,**  
Defendants,

**MIDAMERICAN ENERGY COMPANY  
and  
ITC MIDWEST LLC,**  
Intervenors.

**Case No. CVCV060840**

**ORDER ON MOTION TO DISMISS  
AND MOTION FOR  
TEMPORARY INJUNCTION**

LS Power Midcontinent LLC, and Southwest Transmission LLC (“Plaintiffs”) are power companies from Missouri but licensed to do business in Iowa. They petition the court, claiming that they will suffer imminent harm from H.F. 2643, or “FY 2021 Omnibus Appropriations Bill.” Specifically, Plaintiffs claim H.F. 2643’s Division XXXIII, Section 128, titled “Electric Lines” will provide a right of first refusal (“ROFR”) for incumbent electric transmission owners for construction and maintenance of Iowa’s electric infrastructure. Plaintiffs claim that they will suffer an economic disadvantage, as they will not be assigned competitive projects in Iowa because of their non-incumbent status under Division XXXIII. As a result, the plaintiffs request a declaration that Division XXXIII is unconstitutional and enjoining its enforcement. Specifically, they allege three counts: 1) violation of the Single-Subject Clause of the Iowa Constitution, Article III, Section 29; 2) violation of the Title Clause of the Iowa Constitution, Article III, Section 29; and 3) Violation of Equal Protection and Privileges and Immunities Clauses of the Iowa Constitution, Article I, Section 6.

On November 13, 2020, Plaintiffs filed a motion for temporary injunction, which the Defendants and the Intervenors resist. On November 16, 2020, Defendants filed a Motion to Dismiss, to which the Intervenors join and the Plaintiffs resist.

A motion to dismiss may be sustained only when the petition fails to state a cause of action upon which any relief could be granted. *Riediger v. Marrland Development Corp.*, 253 N.W.2d 915, 916 (Iowa 1977). Such a motion cannot rely on facts not alleged except for the contents of the petition. *Stearns v. Stearns*, 187 N.W.2d 733, 734 (Iowa 1971). Moreover, a motion to dismiss is sustainable only where it appears to a certainty plaintiff would not be entitled to any relief under any state of facts which could be proved in support of the claims asserted. *Halvorson v. City of Decorah*, 138 N.W.2d 856 (Iowa 1965).

The Defendants first claim the Plaintiffs lack standing. “The issue of standing is wholly distinct from the merits of the underlying claims”. *Alons v. Iowa Dist. Ct.*, 698 N.W.2d 858, 864 (Iowa 2005). In other words, “Whether litigants have standing does not depend on the legal merits of their claims but rather whether, if the wrong alleged produces a legally cognizable injury, they are among those who have sustained it.” *Citizens for Responsible Choices v. City of Shenandoah*, 686 N.W.2d 470, 475 (Iowa 2004). If the Plaintiffs cannot muster standing, then the claim must be dismissed.

All of the Plaintiffs’ claims are subject to standing requirements. *Godfrey v. State*, 752 N.W. 2d 413, 417-18 (Iowa 2008). Under the doctrine of standing, a plaintiff must “(1) have a personal or legal interest in the litigation and (2) be injuriously affected.” *Alons*, 698 N.W.2d at 864 (quoting *Citizens for Responsible Choices*, 686 N.W.2d at 475). For the first element of “legal interest,” the plaintiffs must show a special interest in the challenged action as opposed to a “general interest.” *City of Des Moines v. PERB*, 275

N.W.2d 753, 759 (Iowa 1976). The second element requires the plaintiffs must be “injured in fact.” *Godfrey*, 752 N.W. 2d at 419 (citation omitted).

Additionally, Iowa courts have taken the stance that it should use the standing requirement judiciously when it involves matters related to other branches of government. *Id.* at 427. To do so otherwise, would risk the judiciary asserting a “position of authority” over the acts of another branch of government. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 574 (1992). Therefore, Iowa courts generally favor plaintiffs with particularized injuries as opposed to general ones. *Godfrey*, 752 N.W.2d at 421. Furthermore, the plaintiff must show a causal connection between the injury and the conduct complained of and the injury is “likely” as opposed to “speculative.” *Lujan*, 504 U.S at 561-62.

Plaintiffs’ claim that they have standing stems from the allegation that they are part of the subject matter Division XXXIII addresses and they are non-incumbent energy companies that will be injured due to the ROFR requirements. Plaintiffs’ Resistance to Defendants’ Motion to Dismiss at 8-10. This court finds the Plaintiffs have met the first element as they have a particular interest.

The Plaintiffs must also show they are injuriously affected to establish standing. If the Plaintiffs’ claimed injury is speculative, hypothetical, and anticipatory, it “is not sufficient for standing.” *Alons*, 698 N.W.2d at 870. The Plaintiffs assert they “desire to construct, own and maintain transmission lines” in Iowa in the future. Petition ¶ 27. However, there is no allegation a specific project is planned, when such a project may arise, or that the Plaintiffs have been denied such a project. Defendants point to the case *LSP Transmission Holdings, LLC v. Federal Energy Regulatory Commission (LSP I)*, 700 F. App’x. 1, 2 (D.C. Cir. 2017) (per curiam). The court in *LSP I* found that an electric company could not challenge the selection criteria for transmission projects when they

had no active bids to develop a project, nor has an incumbent rejected a transmission project. *Id.* at 2. The court in *LSP I* concluded that specific injury was not possible for the company, as “nothing distinguishes” the plaintiff from “from any other party who might someday wish to build” a project in that territory. *Id.* The court finds, like in *LSP I*, the Plaintiffs have not shown such a specific injury as a result of H.F. 2643.

The Plaintiffs also allege their injury is the deprivation of the ability to participate in the legislative process and to marshal public opposition to the bill. However, these are generalized grievances and do not confer standing. *Godfrey at 413, Rush v. Reynolds*, No. 19–1109, 2020 WL 825953, at \*5 (Iowa Ct. App. Feb. 19, 2020).

It is the conclusion of the Court the Plaintiffs lack standing to support their petition. As this finding is dispositive, the court declines to address the remaining issues.

It is therefore the ORDER of the Court the Plaintiffs’ Motion for a Temporary Injunction is denied. It is further ORDERED the Defendants’ Motion to Dismiss is granted and this matter is dismissed.

Costs are assessed to the Plaintiffs.

SO ORDERED.



State of Iowa Courts

**Case Number**  
CVCV060840

**Case Title**  
LS POWER MIDCONTINENT ET AL VS STATE OF IOWA ET  
AL  
**Type:** ORDER REGARDING DISMISSAL

So Ordered

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Celene Gogerty, District Judge  
Fifth Judicial District of Iowa

Electronically signed on 2021-03-25 14:04:00