

IN THE SUPREME COURT OF IOWA

No. 21-0696

LS POWER MIDCONTINENT, LLC and SOUTHWEST
TRANSMISSION, LLC,

Plaintiffs-Appellants,

vs.

STATE OF IOWA, IOWA UTILITIES BOARD, GERI D. HUSER, GLEN
DICKINSON and LESLIE HICKEY,

Defendants-Appellees,

and

MIDAMERICA ENERGY COMPANY and ITC MIDWEST LLC,

Intervenors.

Polk County Case No. CVCV060840

MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

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ATTORNEYS FOR THE RESALE POWER GROUP OF IOWA, AMICUS CURIAE

Pursuant to Iowa Rule of Appellate Procedure 6.906(1), the Resale Power Group of Iowa (“RPGI”) requests leave to file an Amicus Curiae Brief supporting the position of Plaintiffs-Appellants.

In support of its Motion, RPGI states:

1. RPGI is a special-purpose governmental entity, organized in 1986 pursuant to Iowa law, in order to purchase electric supply, transmission, and related services as an agent for its members. Currently, RPGI’s members include 24 Iowa municipal utilities, one electric cooperative association, and one privately-owned utility, all of which depend on, and benefit from, federal and state policies and regulations designed to reduce electric transmission costs through increased competition in the interstate transmission market.

2. Most RPGI members purchase electric transmission service from ITC Midwest LLC (an Intervenor in this proceeding) at formula rates contained in the open access transmission tariff of the Midcontinent Independent System Operator (“MISO”), which is approved by the Federal Energy Regulatory Commission (“FERC”).

3. MISO is a regional transmission organization (“RTO”) that coordinates, controls, and monitors the transmission systems of 51 utilities across 15 states and the province of Manitoba. MISO is one of the largest

power grid operators in the world. It is responsible for planning regional transmission infrastructure and overseeing more than 65,000 miles of transmission lines that serve 42 million customers. Each year, MISO develops a MISO Transmission Expansion Plan (“MTEP”) that evaluates various new and additional transmission projects to meet local and regional reliability standards and facilitate competition among electric suppliers. Barriers to competition, such as the allowing a right of first refusal (“ROFR”) to incumbent transmission owners and utilities in service areas and states for the ownership, construction, and maintenance of new transmission lines, insulates those already established utilities from competition and results in higher costs for consumers. New transmission planning in Iowa is continuously ongoing at MISO and approval for new transmission projects is imminent.

4. RPGI seeks leave to file a brief supporting the position of Plaintiffs-Appellants LS Power Midcontinent, LLC and Southwest Transmission, LLC. Both are non-incumbent transmission owners with no current projects in Iowa. Both are now, therefore, for all practical purposes, foreclosed from the possibility of being assigned a transmission project in Iowa because any such projects will go to utilities that already have a presence in Iowa due to incumbent utilities ROFR under the new law at

issue in this appeal. The Court’s decision in this matter could have tremendous impact on the long term delivery of power across the State of Iowa and ultimately the cost of that power to Iowa users. RPGI, as a representative of municipal power purchasers and with an understanding of power purchasing dynamics at a state and multi-state level, offers a unique perspective that would assist the Court in “assessing the ramifications of any decision rendered in the present case.” Iowa R. Civ. P. 6.906(5)(a)(3).

5. The case before the Court centers, at its core, on the substantive policy change that provided an ROFR to incumbent transmission owners and utilities under Division XXXIII of H.F. 2642, proposed in the Iowa legislature through amendment S-5163, an omnibus amendment to the fiscal appropriations bill for fiscal year 2021. RPGI, as an active special-purpose governmental entity would have participated in advocacy opposing the ROFR provisions, but given the surprise manner in which it was passed, RPGI had no meaningful opportunity to educate legislators on the consequences of the ROFR and advocate against such a structure in Iowa.

6. RPGI’s interest in the case centers on the ultimate impacts that the ROFR will have on electric utility transmission across Iowa and the almost certain increases in the costs of power to customers across Iowa that would result from the decreased competition the ROFR system would cause.

7. A determination by the Court on the propriety of the legislative process that resulted in the ROFR to incumbent transmission owners in Iowa will potentially have a significant and possibly detrimental impact on the public interest. If the ROFR is allowed to stand, novel, innovative, and cost efficient solutions to electric transmission growth and costs across the State of Iowa will be stifled because non-incumbent transmission owners will be essentially foreclosed from competing for limited project development opportunities and incumbent transmission owners will have no incentive to innovate to keep costs down without such competition to force them to do so. As electric transmission projects, and the planning for those projects, continue to increase rapidly across Iowa, RPGI, and its members, will be directly impacted by the resolution of these issues.

8. RPGI does not request permission to participate in oral argument.

WHEREFORE, the Resale Power Group of Iowa respectfully requests leave to file an Amicus Curiae Brief in support of Plaintiffs-Appellants LS Power Midcontinent, LLC and Southwest Transmission, LLC.

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PROOF OF SERVICE & CERTIFICATE OF FILING

I certify that on September 8, 2021, I electronically filed the foregoing document with the Clerk of Court using the EDMS system with a copy being sent via electronic notice to counsel for record.

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