

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

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

Intervenors.

**FINAL BRIEF OF AMICUS CURIAE
RESALE POWER GROUP OF IOWA**

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STATEMENT OF THE IDENTITY AND INTEREST OF THE AMICUS CURIAE

The Resale Power Group of Iowa (“RPGI”) is a special-purpose governmental entity, organized in 1986 pursuant to Chapter 28E of the Code of Iowa, 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 utility¹, 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 and intrastate transmission market.

RPGI is a Market Participant in the Midcontinent Independent System Operator (“MISO”) and Southwest Power

¹ Participant members include: City of Afton, Amana Society Service Company, Anita Municipal Utilities, City of Buffalo, Coggon Municipal Light Plant, City of Danville, City of Dysart, Farmers Electric Cooperative - Kalona, Grand Junction Municipal Utilities, City of Guttenberg, Hopkinton Municipal Utilities, La Porte City Utilities, City of Long Grove, Mount Pleasant Municipal Utilities, New London Municipal Utilities, Ogden Municipal Utilities, City of Pocahontas, Sibley Municipal Utilities, State Center Municipal Electric Utilities, Story City Municipal Electric Utility, Tipton Municipal Utilities, Traer Municipal Utilities, Vinton Municipal Electric Utility, City of West Liberty, City of West Point, City of Whittemore.

Pool (“SPP”). RPGI’s load is predominately located in the ITC-Midwest LLC (“ITC-MW”) and MidAmerican Energy Company (“MidAm”) transmission zones. Both are incumbent transmission owners and both are intervenors in this proceeding. RPGI purchases electric transmission service on behalf of its members from ITC-MW and MidAm at formula rates through MISO’s Open Access Transmission Tariff, as approved by the Federal Energy Regulatory Commission (“FERC”).

RPGI sought leave to file a brief supporting the position of Plaintiffs-Appellants LS Power Midcontinent, LLC and Southwest Transmission, LLC (together as “LSP”) because the final resolution of this matter could have tremendous impact on electric utility transmission costs across Iowa. If Iowa Statute § 478.16 remains a valid and enforceable law in Iowa, the result will almost certainly increase the cost of electricity to customers across the State, including rate payers in RPGI communities. By order of this Court on September 28, 2021, RPGI’s request to file this amicus brief was granted.

Iowa's Statute § 478.16 gives incumbent transmission owners the right of first refusal ("ROFR") to develop, construct, and own new MISO interconnection projects. RPGI is concerned that allowing this statute to stand will harm RPGI's interests by decreasing actual and potential competition for constructing electric transmission projects in Iowa, which will drive up electricity prices to consumers. Approval for new electric transmission projects in Iowa is imminent with current short and long range transmission planning ongoing at MISO. Renewable energy projects are gaining traction across the state and the transmission facilities required to carry energy from these new generation resources are currently being proposed and considered for approval as well.

Additionally, given the enactment process for 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 2020 on the final day of the

legislative session², RPGI, with a history of advocating against ROFR provisions introduced in prior legislative sessions, was denied the opportunity to alert legislators to the anti-competitive structure and pricing consequences of this legislation. This statute will have a significant impact on consumers who pay for electricity across this state and is detrimental to the public interest.

**STATEMENT OF AUTHOR
AND CONTRIBUTION RULE 6.906(4)(d)**

Pursuant to Iowa Rule of Appellate Procedure 6.906(4)(d), the undersigned indicates no counsel of record of any party authored this brief or contributed money to fund its preparation or submission. The Resale Power Group of Iowa is the only entity or person that contributed money to fund the preparation or submission of the brief.

² A ROFR provision was previously included in a draft of the 2018 Omnibus Energy Bill but was ultimately dropped from that bill. In 2020, another ROFR bill was proposed, but never made it out of subcommittee. RPGI aggressively lobbied against this ROFR in each of these bills.

ARGUMENT

On June 14, 2020, Iowa’s legislature passed Iowa Code § 478.16, a state-level Right of First Refusal (“ROFR”) providing “[a]n incumbent electric transmission owner” has the “right to construct, own, and maintain an electric transmission line” approved for construction in a federally-registered planning authority and connected to its facility. Iowa Code § 478.16(2). An “incumbent electric transmission owner” is defined as “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,” or 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.”

Id. § (1)(c). Within 90 days of the approval for construction of the line³, the incumbent electric transmission owner must give written notice of whether it intends to construct the transmission line. Only if the incumbent transmission owner declines the opportunity would another entity be eligible to develop and construct the project. *Id.*

As enacted, Iowa Statute § 478.16 provides incumbent transmission owners in Iowa the right of first refusal (“ROFR”) on new electric transmission projects to be built in Iowa that will interconnect with the vast network of the electric transmission system already in place throughout the state. While Plaintiff-Appellant LSP is active in states other than Iowa, the Iowa ROFR Statute effectively ensures that it (and other non-incumbent transmission owners) will be unable to develop, own or operate new intrastate and interstate transmission lines and facilities in Iowa or compete for new expansions of facilities in Iowa.

³ The Iowa Utilities Board grants franchise approvals for transmission lines in Iowa pursuant to Iowa Code § 478.1. Easements are required for transmission line construction. Iowa Code § 478.16(7) specifies the Iowa Utilities Board to adopt rules pursuant to Chapter 17A to administer the ROFR legislation.

The ROFR process will result in decreased actual and potential competition in the electric transmission development, construction, and ownership in Iowa and could have tremendous impact on the long-term cost of delivery of electric energy across Iowa, ultimately increasing the cost of electricity to Iowa consumers. The ROFR precludes the cost savings that would accrue to consumers from competitive bidding processes and the selection of lower cost non-incumbent transmission owners for new transmission projects. These long-term transmission projects are right now being planned, presented, and approved by regulatory agencies, including MISO, SPP, IUB and FERC, which makes the need for corrective action paramount. RPGI advocated against a ROFR statute in the 2020 session and the proposed legislation did not survive the legislative funnel. In the 2020 special session, RPGI would have again advocated against the ROFR statute prior to it being passed and codified by presenting these same arguments to Iowa lawmakers had it been given the opportunity to do so. RPGI was denied sufficient opportunity to have its voice heard during the legislative process, a voice which

represents the public interest's stake in this matter. As it stands, RPGI presents these arguments now to the court in an effort to support Plaintiffs-Appellants, with whom RPGI's, and Iowa electric customers', interests are aligned.

I. Regional Transmission Development and Ownership Benefits from Competition in the Electric Transmission Market to Keep Costs to Consumers Down and Iowa's ROFR Will Harm the Public's Interest

The electric transmission market in Iowa is governed under the Federal Power Act of 1935, which gave the Federal Energy Regulatory Commission ("FERC") the ability to regulate interstate electrical transmission as a function of interstate commerce. 16 U.S.C. 824(a). Since that time, FERC has encouraged and approved independent organizations for the "coordination of facilities for the generation, transmission, and sale of electric energy." *S.C. Pub. Serv. Auth. v. F.E.R.C.*, 762 F.3d 41, 49 (D.C. Cir. 2014) (quoting 16 U.S.C § 824(a)). This FERC action led to the creation of regional transmission organizations ("RTOs"), which are independent, non-governmental, entities who oversee a

coordinated effort for planning transmission grid expansion within their regions.

The RTOs that coordinate electric transmission planning and development in the MISO and SPP. The electric transmission systems that primarily serve RPGI members are operated by MISO⁴, which 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. When an electric transmission project is approved for Iowa, it is MISO, not the state of Iowa, that must give approval for that project, although the IUB does have siting approval.⁵

In the past, MISO tariffs contained a ROFR for potential electric transmission projects, which, similar to Iowa's ROFR statute, meant that if MISO decided that another "transmission

⁴ SPP's transmission system also provides electric transmission service to RPGI members.

⁵ The Iowa Utilities Board has authority for issuing franchises for these transmission projects.

facility was needed . . . the MISO member that served the local area in which the facility would be built had the first crack at building it.” *MISO Transmission Owners v. F.E.R.C.*, 819 F.3d 329, 332 (7th Cir. 2016). Like Iowa’s ROFR statute, this meant that even where non-incumbent competing entities proposed the most cost efficient and technically innovative projects, incumbent transmission owners would still be awarded the project. *S.C. Pub. Serv. Auth.*, 762 F.3d at 72.

In 2011, MISO revised its tariff to remove federal ROFRs pursuant to FERC Order 1000 and instead developed a competitive process by which entities propose, compete, and are selected to construct MISO approved regional transmission projects subject to FERC-approved tariffs. As part of a series of reforms, FERC found the practice of including ROFRs in tariffs undermined the cost-efficient development of regional electric transmission and deprived customers of the benefits and costs savings that competition produces. The ROFR, FERC reasoned, left non-incumbent transmission owners with little incentive to innovate and propose efficient solutions where an entity knew its

bid would ultimately be lost to a previously established local market participant. *MISO Transmission Owners*, 819 F.3d at 332-33.

If the Iowa ROFR is allowed to stand, novel, innovative, and cost-efficient solutions to satisfy electric transmission growth across the State of Iowa will be stifled because non-incumbent transmission owners will be essentially foreclosed from competing for project development opportunities. Simply put, those outside entities would not engage in the bidding process at all because their proposed development efforts would be futile. Without this competition, incumbent transmission owners have no incentive to innovate for more efficient and cost-effective solutions because the transmission project would be developed and built by the incumbent regardless of costs. As construction of 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.

Allowing Iowa's ROFR Statute to stand will harm RPGI members' financial interests in several respects. First, the

absence of competition for new transmission projects proposed by developers in Iowa results in those developers determining the projects' final cost without being tested by the market – the ROFR essentially nullifies the “market” entirely. With guaranteed rates of return on investments imbedded in the MISO cost-allocation framework (see Order No. 1000, 76 Fed. Reg. 49,842, at ¶ 335 (2011)), an incumbent transmission owner has little or no incentive to minimize project costs – every dollar it spends is guaranteed to be recouped in its rate structure with a guaranteed rate of return. Because such costs are passed through its rates to consumers in Iowa and because it knows it will be awarded the project regardless of what the anticipated costs will be, the incumbent transmission owner will take the opportunity the ROFR provides to increase its presence, its projects, and its profits.

Second, the Iowa ROFR Statute makes investing in capital projects more attractive for incumbent transmission owners, again because they have no competitors to prepare, propose, and prioritize more cost-effective and technologically innovative

alternatives. This incentivizes transmission utilities to invest in capital-intensive, and often “gold-plated,” approaches to enhancing the grid’s efficiency and reliability, rather than considering other technical approaches or operational practices that could provide the same level of efficiency and reliability at a lower cost to ratepayers.

Additionally, economic development for RPGI member communities can be stifled by disproportionately high electric transmission rates. Typically, prospective customers are generally unaware of the various individual cost components (generation, transmission, and distribution) of electricity that make up an overall electric rate. The primary concern of a prospective customer is normally centered on the overall electric rate per kilowatt hour of one utility versus another. When even one component (transmission, in this case) of the overall electric cost is exponentially high, however, it is reflected in that overall electric cost and prospective customers take notice.

Municipal utilities in Iowa operate in an intensely competitive environment where even small differences in

delivered power supply costs can have significant consequences. With 181 retail electric utilities operating in the state, there are many locations where an alternative electric service provider, with a lower delivered cost of electricity, can be found nearby – sometimes even just across the street. Retail electric rates are a major factor in a community’s efforts to attract and keep businesses and residents. Since electricity is a significant expense for almost all end users (especially commercial and industrial customers), differences between utilities in retail electric prices can be a significant asset or a crippling detriment to a municipality’s marketing efforts.

RPGI member communities are harmed by businesses and industrial electric users opting not to locate or expand in their communities. Instead, these organizations choose locations outside of ITC-MW’s footprint to avoid higher electricity costs due to the exorbitant transmission rates of ITC-MW. This lack of economic development, in turn, creates an endless cyclical cost creep issue for ratepayers. It is challenging for RPGI members to grow their electric service rate base because ITC-MW’s rates are so much

higher than other transmission providers elsewhere in Iowa. Consequently, if a community's municipal utility charges its customers a higher electric service rate than its competitors, local officials will frequently pressure the municipal utility to identify aggressive ways to lower the community's retail electric rates to levels that are equal to, or lower than, its competitors' rates. Often, even a very small difference in electric service rates can be a major factor in a prospective customer's decision about where to locate its new business. It can also be a major factor in a current customer's decision of whether to remain in, or move out of, a community.

Hence, it becomes difficult to spread ITC-MW's increased costs over a broader range of customers, leaving those already connected to ITC-MW's transmission system disproportionately paying higher and higher rates. With no competition to force ITC-MW to keep costs and rates down as it continues to invest in transmission infrastructure, the cycle has no end in sight. Furthermore, if price differentials between a municipal utility and an adjacent electric cooperative or other utility become too

significant, city leaders may begin to question the value of their local utility. This may lead to significant political pressure to sell the municipal utility.

All of these cost concerns related to ROFRs, and the consequences of higher pricing that results, are not just theoretical. Simply put, competition lowers pricing, as illustrated by two recent competitive processes conducted by MISO to identify an entity to construct, own, and maintain two major transmission lines in states without ROFR statutes. MISO received proposals from eleven (11) different entities for ownership, construction, and development of the Duff-Coleman 345kV project. Duff-Coleman EHV 345 kV Competitive Transmission Project Selection Report, p. 5, 37 (December 20, 2016).⁶ MISO received nine (9) proposals for the Hartburg-Sabine Junction 500 kV Project. Hartburg-Sabine Junction 500 kV Competitive Transmission Project, Selection Report, p. 5 (November 27, 2018).⁷ The winning proposals for both

⁶ Available at <https://cdn.misoenergy.org/Duff-Coleman%20EHV%20345kv%20Selection%20Report82339.pdf>

⁷ Available at <https://cdn.misoenergy.org/Hartburg-Sabine%20Junction%20500%20kV%20Selection%20Report296754.pdf>

projects came in with estimated cost savings of fifteen percent (15%) under MISO's projected costs, contained cost caps, and presented other efficiency and engineering benefits that would never have been explored had an ROFR statute been in effect in those states because incumbent transmission owners simply would have been awarded the project regardless of their own proposed costs.

In addition to intrastate projects, MISO also plans primarily interstate Multi-Value Projects, that are capital improvement projects, each with a total cost of \$20,000,000 or more, that promote reliability, resolve problems, or confer other benefits across all, or a significant portion of, the MISO-operated transmission system. The costs of Multi-Value Projects located in Iowa, Minnesota, Missouri, and Wisconsin are recovered on a cost-share basis through rates that are paid by consumers across all of MISO. With a ROFR, states such as Iowa and Minnesota would make such MISO-wide investments constrained by the lack of competition in ROFR states. Across all of MISO, even with this

cost sharing, ITC-MW rates are the highest of all of the major transmission owners in MISO.

The rates paid by RPGI's members allow ITC-MW to recover the cost of, and earn a rate of return on, these transmission improvements. Since 2008, ITC-MW's zonal network integration transmission service rates to RPGI's members have increased by 313.62% (a compound increase of 11.54% annually), primarily because of transmission system construction costs.⁸ In 2008, transmission service costs comprised approximately 18% of RPGI's total wholesale electric costs. By 2016, transmission costs for RPGI had grown to well over 40% of its total wholesale electric costs. With the ROFR and with the expected increases in renewable energy-based generation in Iowa, the end to this impact of transmission rates on RPGI and its customers has no end in sight.

The Iowa ROFR Statute creates a right that no market participant would otherwise have – an ability to essentially deny

⁸In 2008, the ITC-MW's zonal NITS service rate was \$2.654 kW/month. In 2021, that same rate is \$10.984 kW/month, compared with the MISO average of \$4.064 kW/month.

market entry to a potential competitor, and thereby preserve a monopoly role in the development and ownership of additional transmission facilities. Any time a statute creates a monopoly opportunity, the benefits of a competitive system, including market checks and balances to incentivize fair and reasonable prices for retail customers, tend to disappear. Entities that face competitive pressure will be motivated to find construction, design and other development efficiencies and cost savings that entities with a monopoly simply will not explore because they do not have an incentive to do so. *S.C. Pub. Serv. Auth.*, 762 F.3d at 74. FERC has a long-developed policy position that interstate transmission planning should strive to diversify and encourage competition, with an understanding that such competition is in the public interest. See, *Otter Tail Power Co. v. United States*, 410 U.S. 366, 374 (1973); *Braintree Electric Light Dept. v. FERC*, 500 F.3d 6, (D.C. Cir. 2008). Iowa's ROFR statute turns this policy position on its head.

II. Regional Transmission Planning is Ongoing and New Electric Transmission Projects are Imminent in Iowa

For the purposes of understanding the potential harm of denying relief to LSP and allowing Iowa's ROFR statute to continue to be enforced, it is important to understand the imminence of new projects in Iowa and the long-term planning already underway at MISO, even where such projects may not be constructed immediately. The MISO planning and approval process takes years, but once those projects are approved, Iowa Code § 478.16 automatically determines that incumbent transmission owners in the state can be assigned the newly approved project.

When a ROFR exists under state law, although no federal ROFR is in place, MISO will defer to state procedures. By its passage, Iowa Code § 478.16(2) effectively ends the prospect of competitive processes for developing and constructing new electric transmission lines in Iowa because MISO must assign any eligible new projects to the incumbent seeking to continue to develop in the state. MISO, Business Practices Manual Competitive

Transmission Process, Manual No. 027, at 30.⁹ Non-incumbent transmission providers, like LSP, are therefore effectively cut out of the simultaneously fast-moving, yet long ranging, impending electric transmission planning at a regional level. This is especially so given that newly proposed and approved facilities are likely to connect to already existing transmission lines, giving incumbent transmission owners an ever-expanding monopoly with the ever-increasing need for electric transmission.

Each year, MISO develops a MISO Transmission Expansion Plan (“MTEP”) that evaluates various types of transmission projects to meet local and regional reliability standards and facilitate competition among electric suppliers. Since MTEP 2003, \$25.2 billion in transmission infrastructure has gone into service in MISO. MTEP 2020 alone identified 515 new transmission infrastructure projects with a total projected cost of \$4.159 billion, a portion of which will be recovered from consumers throughout the MISO region, including RPGI’s members and other Iowa ratepayers. This regional planning is long-term

⁹ Available at <https://www.misoenergy.org/legal/business-practice-manuals/>

(forecasting out multiple decades) and continuous and new projects in Iowa are constantly on the threshold of MISO approval.¹⁰

Additional major transmission infrastructure projects in Iowa are imminent, even as long-term planning is underway. MISO is continually evaluating the needs of the region in its LRTP, and is developing potential solutions for multiple scenarios of growth in the electric transmission network across Iowa and the region.¹¹ The general transmission line projects being considered now and the overall strategy for transmission development at MISO is continual and layered, even though approval of any given transmission line may not occur for years. In fact, projects in MISO's "Future 1" projections could be approved as early as

¹⁰ Technical Update, MISO Long Range Transmission Planning ("LRTP") Workshop, April 30, 2021; Q&A Session: Dialogue/Stakeholder Questions, MISO LRTP Workshop, April 30, 2021. Both Available at <https://www.misoenergy.org/events/long-range-transmission-planning-lrtp-workshop---april-30-2021/>

¹¹ Discussion of the MISO Indicative Roadmap Projects Presentation, MISO LRTP Workshop, April 30, 2021. Available at <https://www.misoenergy.org/events/long-range-transmission-planning-lrtp-workshop---april-30-2021/>

March, 2022, even as planning for other projects that may not see approval for decades is also underway.¹²

MISO recently reported that requests by new renewable electric power generation facilities in Iowa for interconnection to the grid far exceed forecasts and are overwhelming available transmission system capacity. Many of these renewable energy generation facilities are located at great distances from customer load centers. MISO recognizes the need for major enhancements to its transmission system to connect these new generation facilities across the state.¹³

A new backbone transmission line is needed to connect a large number of these new facilities over a wide geographic area to balance the variability in renewable resource availability. It is likely that the path for this transmission backbone will run through Iowa and Minnesota – two states that have recently enacted ROFR statutes. This means that non-incumbent

¹² Presentations at MISO LRTP Workshop, April 30, 2021.

¹³ ITC Midwest LLP, Partners in Business Presentation, October 21, 2020, pp. 59-63. Available at www.itc-holdings.com/docs/default-source/partners-in-business/midwest-partners-in-business-documents/itcmw-pib-slides-fall-2020-final-for-website-10-20-20.pdf?2fvrsn=e662cbf6_2

transmission owners like LSP will forego the process of developing and investing in cost saving and technology innovations to present a competitive proposal for this and related projects and ITC-MW, knowing it is likely to be awarded these projects without making such innovative and cost saving investment, can present a proposal that will continue to escalate rates further.

These electric transmission projects are being planned, queued for approval, and scheduled for development now.¹⁴ Waiting until transmission projects are already approved by MISO and development is already underway means it is too late for a non-incumbent transmission owner like LSP to get meaningful relief, which should necessarily come at the very outset of the MISO planning process, when new projects are in the very initial stages of proposal and years away from approvals, development, construction, and operation.

¹⁴ See, MISO LRTP Workshop – September 24, 2021 Meeting Materials, including Economic Analysis Overview, Reliability Results Analysis, and Review Study Schedule. Available at <https://www.misoenergy.org/events/long-range-transmission-planning-lrtp-workshop---september-24-2021/>

III. The Passage of Iowa's ROFR Statute Deprived RPGI of the Ability to Advocate on Behalf of Its Members Against the Bill and Educate Lawmakers on the Negative Consequences of the ROFR

Iowa's ROFR Statute was passed in the final moments of the Iowa legislative session, in the nighttime hours of June 14, 2020 as an omnibus amendment to H.F. 2643, the appropriations bill for fiscal year 2020.¹⁵ Journal, 88th G.A., Reg. Sess. 840 (June 14, 2020). The ROFR is a substantive policy with no appropriation attached. The ROFR was not debated and many Iowa legislators were startled and confused by its inclusion in the bill. The ROFR was passed less than twelve (12) hours after it was introduced with no healthy debate over the merits of the proposed new consequential and substantive rights that it creates for incumbent transmission owners.

RPGI, as an active special-purpose governmental entity would have participated in advocacy opposing the ROFR provisions in the new law, but given the unusual manner in which it was passed, RPGI had no meaningful opportunity to educate

¹⁵ See Footnote 2.

legislators on the consequences of the ROFR and advocate on behalf of its members, Iowa consumers, against such an anti-competitive structure in Iowa.

The ROFR does not simply allow the lowest bidder to win an electric transmission project. It does not require incumbent transmission owners to low price-match if another, outside transmission owner presents a more cost-effective alternative transmission project. Under Iowa Code § 478.16(2), the incumbent transmission owner simply has the right to develop the transmission project, without amending its proposal, regardless of whether cost efficiencies have been presented by other entities. This is important for Iowa legislators to understand.

RPGI would have advocated strongly against the ROFR statute. In fact, RPGI actively advocated against the ROFR in its previous iterations, including during the 2018 legislative session. RPGI spelled out the clear consequences of decreased competition, including rates that had increased 389% (from \$2.654/kW in 2008 to \$10.338 in 2018) during the decade after which Alliant sold its transmission assets to ITC-MW. RPGI explained to legislators

that in 2007, transmission costs were 15% of the total RPGI wholesale supply costs, where as in 2018, they had increased to 44%.

In early 2020, RPGI again met with and sent correspondence to Iowa legislators, explaining its view that HSB 540 was a bad bill because it eliminated competition in electric transmission investment projects, resulting in electric customers losing out on “savings, creativity, and reliability associated with the competitive bidding process.” This bill did not pass through the legislative committee channels.

In June, 2020, RPGI sent immediate correspondence to Governor Kim Reynolds requesting she veto the ROFR provisions *after* the passage of the Appropriations Omnibus Bill. RPGI clearly and concisely explained the reasons it was against the ROFR statute – the same reasons as explained above. Had the ROFR actually been debated and proposed for passage through the proper legislative channels, RPGI would have engaged in this advocacy once again *before* the ROFR became codified into Iowa law.

Over the years, RPGI has been proactive in its participation challenging transmission rates and methodologies in various FERC proceedings, including recently in response to ROFR statutes being considered in various states in the MISO region. RPGI has advocated in the past against the passage of a ROFR statute in Iowa and would certainly have done so again if the proper opportunity had been present.

CONCLUSION

For the reasons set forth above, Resale Power Group of Iowa respectfully requests that this Court reverse the findings in the District Court, remand for further proceedings in order to allow Plaintiffs-Appellants to fully present their case, and enjoin enforcement of Iowa Code § 478.16 during the pendency of this litigation, and provide all other necessary relief as requested by Plaintiffs-Appellants LS Power Midcontinent, LLC and Southwest Transmission, LLC.

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/s/ Kelly Cwiertny
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October 4, 2021
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I certify that on October 4, 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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