

BEFORE THE IOWA SUPREME COURT

No. 24-0641

LS POWER MIDCONTINENT, LLC and SOUTHWEST
TRANSMISSION, LLC,

Plaintiffs-Appellees,

vs.

THE STATE OF IOWA, IOWA UTILITIES BOARD, and
ERIK M. HELLAND,

Defendants-Appellants,

and

MIDAMERICAN ENERGY COMPANY and ITC MIDWEST, LLC,

Intervenors/Appellants.

APPEAL FROM THE IOWA DISTRICT COURT
OF POLK COUNTY
HON. COLEMAN MCALLISTER

PLAINTIFFS-APPELLEES' SUPPLEMENTAL BRIEF

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STATEMENT OF FACTS

On December 4, 2023, the Iowa District Court for Polk County declared Iowa Code section 478.16 unconstitutional and entered a permanent injunction precluding proceeding on projects claimed thereunder. The purpose was to cure ills created by an unconstitutionally enacted statute that prejudiced both LSP and the consuming public. The District Court's injunction was clear:

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that to prevent injury to Plaintiffs and return to the status quo prior to Iowa Code § 478.16's and Iowa Administrative Code rule 199-11.14's enactment, the Iowa Utilities Board is permanently enjoined from taking any additional action, or relying on prior actions, related to any and all electric transmission line projects in Iowa that were claimed pursuant to, under, or in reliance on Iowa Code § 478.16 and/or Iowa Administrative Code rule 199-11.14. Such projects include LRTP-7 (Webster-Franklin-Marshalltown-Morgan Valley); LRTP-8 (Beverly-Sub 92); LRTP-9 (Orient-Denny-Fairport); LRTP-12 (Madison-Ottumwa-Skunk River); and LRTP-13 (Skunk River-Ipava).

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that to prevent injury to Plaintiffs and return to the status quo prior to Iowa Code § 478.16's and Iowa Administrative Code rule 199-11.14's enactment, Intervenor MidAmerican Energy Company and ITC Midwest LLC are permanently enjoined from taking any additional action, or relying on prior actions, related to any and all electric transmission line projects in Iowa that were claimed pursuant to, under, or in reliance on Iowa Code § 478.16 and/or Iowa

Administrative Code rule 199-11.14. Such projects include LRTP-7 (Webster-Franklin-Marshalltown-Morgan Valley); LRTP-8 (Beverly-Sub 92); LRTP-9 (Orient-Denny-Fairport); LRTP-12 (Madison-Ottumwa-Skunk River); and LRTP-13 (Skunk River–Ipava).

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that this permanent injunction does not prohibit the Intervenor, if reassigned the above referenced projects, through competitive processes or otherwise **in a manner not relying on claimed existence of § 478.16**, from seeking approval from the State to move forward with the previously claimed projects.

D0136, S.J. Ruling at 21-22 (12/4/2023) (emphasis added). On quorum review, this Court left in place the injunction prohibiting Intervenor/Appellants MidAmerican Energy Company (“MidAmerican”) and ITC Midwest, LLC (“ITC”) and the Iowa Utilities Commission (“IUC”) from continuing projects during this appeal assigned and claimed in reliance on section 478.16. Now, ITC and MidAmerican claim action by a private entity, the Midcontinent Independent System Operator, Inc. (“MISO”), relieves them of the injunction and therefore allows Intervenor to continue the projects at issue—which is exactly what they are doing despite an injunction.

MISO acknowledges it previously assigned Iowa projects in what is known as “Tranche 1” to MidAmerican and ITC relying on section 478.16.¹ *See, e.g.*, Skunk River-Ipava Mitigation Plan at 1 (<https://cdn.misoenergy.org/Skunk%20River%20-%20Ipava%20Variance%20Analysis%20Mitigation%20Plan%20Public%20Notice645357.pdf>); Orient-Denny Mitigation Plan at 1 (<https://cdn.misoenergy.org/Orient%20-%20Denny%20-%20Fairport%20Variance%20Analysis%20Mitigation%20Plan%20Public%20Notice645356.pdf>); Madison-Ottumwa Mitigation Plan at 1 (<https://cdn.misoenergy.org/Madison%20-%20Ottumwa%20-%20Skunk%20River%20Variance%20Analysis%20Mitigation%20Plan%20Public%20Notice645355.pdf>); Webster-Franklin Mitigation Plan at 1 ([---

¹ Intervenors claim approximately 70 percent of these projects were “upgrades” and therefore could have been assigned to Intervenors regardless of section 478.16. Yet, Intervenors fail to show projects were assigned as upgrades and not in reliance on section 478.16. Rather, MISO confirmed in its mitigation plan the entirety of all projects at issue were assigned to Intervenors under “Iowa’s then-existing right of first refusal statute....” *See, e.g.*, Skunk River-Ipava Mitigation Plan at 1.](https://cdn.misoenergy.org/Webster-Franklin-Marshalltown-</p></div><div data-bbox=)

MorganValley%20Variance%20Analysis%20Mitigation%20Plan%20Public%20Notice645353.pdf); and Beverly-Sub 92 Mitigation Plan at 1 (<https://cdn.misoenergy.org/Beverly%20-%20Sub%2092%20Variance%20Analysis%20Mitigation%20Plan%20Public%20Notice645354.pdf>). On May 30, 2024, MISO initiated what is known as “variance analysis” for Iowa projects because of ITC’s and MidAmerican’s “inability to complete some of all of the facilities” (the Iowa projects) “due to” the district court’s permanent injunction. *Id.* The projects at issue are the very projects this Court identified in its prior ruling. *LS Power Midcontinent, LLC v. State*, 988 N.W.2d 316, 333 (Iowa 2023), *reh’g denied* (Apr. 26, 2023). These very projects led this Court to grant its own preliminary injunction because, absent such an order, “LSP faces irreparable harm through the loss of opportunity to land multi-million-dollar electric transmission projects in Iowa.” *Id.* at 338. Despite initiating variance analysis, on July 2, 2024, MISO applied to this Court to file an amicus brief to support Appellants’ arguments regarding the permanent injunction.

On August 29, 2024, after LSP filed its Appellee Brief, MISO announced the outcome of its variance analysis. *See, e.g.*, Skunk River-Ipava Mitigation Plan at 1. MISO made clear under its variance analysis “mitigation plan” that “all facilities and assignments in the current LRTP Tranche 1 Appendix A will remain unchanged.” *Id* at 3. Despite section 478.16 having been unconstitutionally enacted² and therefore void *ab initio*, and despite the district court enjoining any projects proceeding under section 478.16, MISO stated it was continuing the assignment of projects at issue to ITC and MidAmerican because of the claimed existence of section 478.16 when MISO made its original assignment in July 2022:

MISO followed its Tariff by determining that said facilities of the Project were not eligible for the competitive process **due to the then-existing Iowa ROFR**, and therefore, the referenced Iowa facilities contained in the Project were not subject to the transmission developer selection process. As such, upon the MISO Board of Directors’ approval of the LRTP Tranche 1 facilities in Iowa, said Project facilities were designated and assigned to the incumbent Transmission Owner, pursuant to the MISO Tariff and TOA, considering the new Iowa facility to be constructed was connected to ITC’s transmission system. Further, upon

² Section 478.16’s unconstitutionality is undisputed in this appeal.

MISO's assignment of ownership and construction responsibility to ITC, ITC was then obligated to construct the planned project.

Even though there was an inability to complete the referenced Iowa facilities of the Project due to the permanent injunction affecting MidAm's and ITC's Iowa LRTP Tranche 1 projects that relied on the former ROFR statute, application of the TOA remains appropriate by MISO considering MISO's application of the TOA assigns the projects "in a manner not relying on claimed existence of" the Iowa ROFR. **Although the Iowa ROFR is no longer in effect following the District Court Order, MISO must continue to rely on its determination that the Iowa facilities of the Project were not eligible for the competitive transmission process at the time the Project was assigned, per the Tariff.** That is, the Tariff sets forth the procedure MISO must take to determine ownership of MTEP-included transmission facilities, including the assignment of ownership to incumbent Transmission Owners **based on ROFR laws in effect at the time of the assignment.** Therefore, CTEC has elected to implement a mitigation plan to use existing provisions in the TOA to assign the referenced Iowa facilities to the Owner of the transmission system in which the facilities are connected. By applying the TOA, the referenced Iowa facilities contained in the Project shall continue to be assigned to ITC. Further, the TOA is MISO's default procedure for assigning ownership of facilities included in MTEP, and thus, is appropriately situated to address uncertainty about ownership such as present in the planned Project.

Skunk River-Ipava Mitigation Plan at 4 (emphasis added).

MISO made clear its continued assignment to the Intervenors is "based on ROFR laws in effect at the time of the [initial]

assignment.” *See, e.g.,* Skunk River-Ipava Mitigation Plan at 4. Based on MISO’s continued assignment as reflected in the variance analysis, ITC and MidAmerican notified the IUC they intend to continue franchising efforts for the projects they claimed relying on section 478.16, in direct violation of the injunction. E-22543 Notice Cover Letter at 2 (<https://efs.iowa.gov/document/document-permalink/5092439>), E-22544 Notice Cover Letter at 2 (<https://efs.iowa.gov/document/document-permalink/5094655>), E-22549 Notice Cover Letter at 2 (<https://efs.iowa.gov/document/document-permalink/5094608>); *see also* ITC Reply Brief at 15-16, n. 10. On September 16, 2024, ITC and MidAmerican filed reply briefs with this Court in which they relied on MISO’s mitigation plan continuing assignment to Intervenor based on section 478.16 to make new arguments. This Court granted permission for a supplemental brief to address these new arguments.

ARGUMENT

Although ITC’s and MidAmerican’s reply brief arguments regarding MISO’s mitigation plan are not entirely clear, both seem

to argue the plan, in some way, divests Iowa's judiciary of the ability to interpret Iowa law and frees them from the requirement to respect an injunction. Neither appears to argue their appeal is now moot, but both seem to claim MISO's mitigation plan compels them to continue projects seized under the unconstitutionally enacted section 478.16 for which they lobbied and relieves them of the need to respect the district court's permanent injunction.

The question presented is as simple as who determines the scope and enforcement of a permanent injunction issued on a state constitutional claim: a third-party entity not before the Court or answerable to this Court, or this Court. The answer is as simple as the question. The Court should reject ITC and MidAmerican's efforts to rely on MISO's actions to circumvent this Court's authority over them as direct participants in this case. IUC, ITC, and MidAmerican remain subject to the permanent injunction and Iowa's court authority to enforce it. Nothing in MISO's variance analysis and mitigation plan indicates the Iowa projects were reassigned in a manner not relying on section 478.16's claimed existence. MISO's variance analysis does not alter Iowa law,

overcome the injunction in place, or allow ITC or MidAmerican to proceed as if the Court did not enjoin them.³ Nor does MISO's variance analysis relieve the IUC from the injunction as it undertakes its role in allowing or disallowing siting and construction. MISO's action merely confirmed two crucial points: (1) the projects at issue, but for section 478.16, would have been competitively bid; and (2) MISO's current assignment continues to rely on section 478.16, despite it being void *ab initio*. Thus, because ITC and MidAmerican were not, "reassigned the ... projects ... in a manner not relying on claimed existence of § 478.16," any action by MidAmerican, ITC or the IUC to continue those projects violates the injunction.

³ Because the District Court retains jurisdiction to enforce the permanent injunction, even on appeal, on October 22, 2024, LS Power moved for the District Court to enforce the permanent injunction. D0178, Mot. to Enforce at 1 (10/22/2024); *Waterhouse v. Iowa Dist. Court for Linn Cnty.*, 593 N.W.2d 141, 142 (Iowa 1999). That motion remains pending. ITC and MidAmerican's efforts to continue projects and therefore give effect to section 478.16 also violates this Court's preliminary injunction, which remains in place until final resolution of the case. *LS Power v. State*, 988 N.W.2d 316, 340 (Iowa 2023). Therefore, this Court may also enforce its preliminary injunction and prohibit ITC and MidAmerican from continuing.

To be clear, the Court need only review MISO's acknowledgment that its continued assignment to Intervenor is based on the existence of an unconstitutional act. MISO's interpretation of a state court injunction or state law has no legal effect and provides no valid basis to disregard or overrule a judgment. Regardless of what MISO claims its tariff or transmission owner agreement allows, MISO cannot "put into effect unconstitutional provisions of a statute." *Mid-Am. Pipeline Co. v. Iowa State Commerce Comm'n*, 253 Iowa 1143, 1147, 114 N.W.2d 622, 624 (1962). Nor does MISO have authority to encourage or instruct ITC, MidAmerican, or the IUC to act contrary to a state court injunction or state law.

Defendant cites no authority, and this court is aware of none, supporting the proposition that a federal agency may disregard a valid state court order—particularly where, as in the present case, the agency's decision is not supported by statutory authority.

Court orders are presumed valid, and it is beyond the province of an administrative agency to declare an order "unacceptable" and act as though the order did not exist. Defendant may challenge the validity of a court order in the proper forum, but it may not on its own motion declare the order invalid. Defendant, like any government entity or individual, is duty bound to follow

the orders of validly constituted courts and may not reserve the right to follow only those orders with which it agrees. Defendant's disregard for the rule of law cannot be tolerated in a civilized society, which requires all citizens, including the government itself, to respect and abide by the law.

Messina v. U.S. Citizenship & Immigr. Servs., NO. CIV.A.05CV73409DT, 2006 WL 374564, at *5–6 (E.D. Mich. Feb. 16, 2006); *Velazquez v. Holder*, No. C. 09-01146 MEJ, 2009 WL 4723597, at *5–7 (N.D. Cal. Dec. 9, 2009).

Not to state the obvious, but *this court* decides state law. “[I]t is the exclusive prerogative of our court to determine the constitutionality of Iowa statutes challenged under our own constitution.” *Callender v. Skiles*, 591 N.W.2d 182, 187 (Iowa 1999), *as amended on denial of reh’g* (Apr. 12, 1999); *see Racing Ass’n of Cent. Iowa v. Fitzgerald*, 675 N.W.2d 1, 4 (Iowa 2004) (“it is this court’s constitutional obligation as the highest court of this sovereign state to determine whether the challenged classification violates Iowa’s constitutional equality provision.”). Even federal agencies (which MISO is not), like FERC, cannot undo state court judgments. *Messina*, 2006 WL 374564, at *5–6; *see Ohio Valley Env’t Coal. v. Horinko*, 279 F. Supp. 2d 732, 755 (S.D. W. Va. 2003)

(holding federal agency cannot effectively amend state law to give it a meaning not fairly supported).⁴ The actual federal agency, FERC, recognizes state law issues are well outside its purview. *See, e.g., Midwest Independent Transmission System Operator*, 150 FERC ¶ 61,037, at ¶¶ 19, 31 (2015) (rejecting notion FERC and MISO could be arbiters of state law); *Portland Gen. Elec. Co.*, 72 FERC ¶ 61,009, 61,021 (1995). MISO, which filed an *amicus* brief, cannot change or overrule a court’s judgment to adopt its desired view. Further, “[t]he court cannot permit its orders to be ignored.” *Orkin Exterminating Co., Inc. (Arwell Div.) v. Burnett*, 160 N.W.2d 427, 432 (Iowa 1968).

Thus, notwithstanding ITC’s and MidAmerican’s new arguments, MISO’s mitigation plan makes no difference as to the validity of the District Court’s permanent injunction or the enforceability of an unconstitutional enactment. Nor does the mitigation plan—which expressly relies on the claimed existence of

⁴ Courts “do not defer to an agency’s ultimate conclusion about whether state law should be pre-empted.” *PLIVA, Inc. v. Mensing*, 564 U.S. 604, 613 n.3 (2011). Again, MISO is not even a federal agency.

section 478.16 to continue assignment to the Intervenors—provide ITC, MidAmerican, or IUC any lawful basis to continue projects seized in reliance on the unconstitutionally enacted statute.

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CERTIFICATE OF COMPLIANCE

This Brief complies with the typeface requirements and length limitation of Iowa Rules of Appellate Procedure 6.902(1)(e)(1) and 6.903(1)(g)(1) because this Brief has been prepared in a proportionally spaced typeface using Century Schoolbook 14 pt. and contains 2,381 words, excluding the parts of the Brief exempted by Iowa Rule of Appellate Procedure 6.903(1)(g)(1).

/s/ Christopher J. Jessen

CERTIFICATE OF SERVICE

I hereby certify on the 5th day of February, 2025, I electronically filed the foregoing Appellees' Supplemental Brief with the Clerk of the Supreme Court by using the Iowa Electronic Document Management System which will send notice of electronic filing to the following party. Per Rule 16.317(1)(a), this constitutes service of the document for purposes of the Iowa Court Rules.

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