IN THE IOWA SUPREME COURT

Supreme Court No. 24–0641

District Court No. CVCV060840

LS POWER MIDCONTINENT, LLC and SOUTHWEST TRANSMISSION, LLC,
Plaintiffs–Appellees,
vs.
STATE OF IOWA, IOWA UTILITIES BOARD, and ERIK HELLAND,
Defendants–Appellants,
and
MIDAMERICAN ENERGY COMPANY and ITC MIDWEST LLC,
Intervenors–Appellants.

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
THE HONORABLE COLEMAN J. MCALLISTER

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ROUTING STATEMENT

The Supreme Court should retain this appeal. On remand from a prior ruling by this Court, the District Court held that Iowa Code section 478.16 (Iowa's right of first refusal or "ROFR" statute) violates the single subject and title clauses under article III, section 29 of the Iowa Constitution and imposed an unlawful injunction as a remedy. This appeal challenges the District Court's error in entering that injunction, purportedly based on the unconstitutionality of section 478.16 alone, forbidding the Iowa Utilities Board ("IUB"), ITC Midwest LLC ("ITC"), and MidAmerican Energy Company ("MEC") from working on certain Iowa transmission projects approved and assigned under a federally regulated process.

These projects are part of an integrated multistate portfolio that the region's electricity customers urgently need to maintain the reliable operation of the power grid. Specifically, the District Court Order precludes work on and franchising of Iowa long range transmission planning ("LRTP") projects that Midcontinent Independent System Operator ("MISO") already assigned to ITC and MEC "pursuant to, under, or in reliance on Iowa Code § 478.16." D0136, R. M.S.J. at 21–22 (12/04/2023) (Attachment A).[1] These projects were, however, lawfully assigned

[1] The Court did limit its injunction in part. The injunction does not constrain Intervenors from seeking state approval for the LRTP projects reliant on the ROFR, if MISO reassigned the above referenced projects, "through competitive processes or otherwise in a manner not relying on claimed existence of § 478.16." D0136 at 22.

consistent with MISO's federally approved Open Access Transmission, Energy and Operating Reserve Markets Tariff ("Tariff").[2]

Because the District Court lacked subject-matter jurisdiction to enter a retroactive injunction that contravenes MISO's federal tariff, this case presents a fundamental and urgent issue of broad public importance requiring the Supreme Court's prompt and ultimate determination. *See* Iowa R. App. P. 6.1101(2)(d).

NATURE OF THE CASE

This appeal follows the District Court's grant of summary judgment for LS Power Midcontinent, LLC and Southwest Transmission, LLC (together, "LS Power") and entry of a permanent injunction. This is not the first time this case has been before this Court. But *this appeal raises entirely new issues regarding the proper scope of a statewide injunction, particularly when it conflicts with areas of exclusive federal jurisdiction*, and the circumstances in which a District Court should consider an amicus brief. These new issues did not arise until the District Court issued its erroneous final order.

By way of background, in *LS Power Midcontinent, LLC v. State*, 988 N.W.2d 316 (Iowa 2023), LS Power challenged the constitutionality of Iowa Code

[2] As explained below, approximately seventy percent (based on capital costs) of the LRTP projects components were assigned to ITC under the MISO Tariff on a basis of being "upgrades." This is independent from, and does not rely upon, the Iowa ROFR and thus outside the scope of the injunction.

section 478.16, a provision enacted in 2020 as part of H.F. 2643 giving "incumbent" electric transmission owners a ROFR to construct, own, and maintain a transmission line that is approved by MISO and connects to the incumbent's existing transmission facility. *See id.* at 323–24; H.F. 2643, 88th G.A., 2d Sess. (Iowa 2020). It is uncontested that under that provision, LS Power was not an "incumbent," but intervenors ITC and MEC were. *LS Power Midcontinent, LLC*, 988 N.W.2dat 324.

After holding that LS Power had standing, *see id.* at 333, this Court temporarily stayed "enforcement" of section 478.16, *see id.* at 340. The Court reasoned that LS Power was likely to succeed on the merits of its "title" and "single subject" claims under the Iowa Constitution. *See id.* at 336, 338.[3] The Court also concluded that LS Power would be irreparably harmed from the enforcement of section 478.16, that the balance of harms favored a stay, and that the public interest did as well. *See id.* at 338–40. Having applied those factors, the Court severed section 478.16 from the remainder of H.F. 2643 and entered a temporary injunction prospectively staying enforcement of section 478.16. *See id.* at 340. An injunction against enforcement is, by its terms and the nature of its root verb "enforce," forward-looking.

[3] Neither the District Court nor this Court reached the merits of LS Power's equal protection claim. *LS Power Midcontinent, LLC*, 988 N.W.2d at 338; D0136 at 13 n.13.

Significant to this appeal, the Supreme Court properly confined the scope of that injunction. LS Power sought additional retrospective relief in its response to rehearing petitions by suggesting the Supreme Court clarify that ITC and MEC were enjoined "from taking further action on projects unlawfully assigned." Appellants' Response to Petitions for Rehearing at 11, *LS Power Midcontinent, LLC*, 988 N.W.2d 316 (No. 21–0696) (Apr. 19, 2023). This Court correctly declined to do so. Petitions for Rehearing Denied at 1, *LS Power Midcontinent, LLC*, 988 N.W.2d 316 (No. 21–0696 (Apr. 26, 2023). That is, this Court *already rejected* a request for the very same injunction, even on a temporary basis, that LS Power sought and received from the District Court.

On remand, LS Power moved for summary judgment, and the State, ITC, and MEC filed cross-motions for summary judgment. D0086, Pls.' M.S.J. (06/02/2023); D0111, Defs.' Res. M.S.J. & Cross-M. M.S.J. (08/04/2023); D0113, ITC M.S.J. (08/04/2023); D0117, MEC M.S.J. Joinder (08/04/2023). LS Power sought a permanent injunction "striking down Iowa Code Section 478.16, striking down Iowa Administrative Rule 199-11.14," D0086 at 1, and forbidding the IUB, ITC, and MEC "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 section 478.16 and/or Iowa Code Administrative Code rule 199-11.14," D0131, Pl.'s Proposed Remedy Language at 9–10

(10/06/2023). The State, MEC, and ITC resisted LS Power's motion, asking the District Court to reject the constitutional arguments. As to the injunction on appeal, the State, MEC, and ITC urged the District Court to deny LS Power's request for an injunction that expanded the scope of this Court's narrow temporary injunction staying enforcement of section 478.16 only. *See, e.g.*, D0115, ITC Mem. I.S.O. M.S.J. & Res. Pl.'s M.S.J. (08/04/2023).

The District Court held a hearing on September 29, 2023. D0169, M. Hrg. Tr. at 1 (09/29/2023). At the hearing, the District Court ordered each party to file language embodying its proposed remedies sought in the District Court's ruling. D0169 at 59:25–60:7). Each party filed a proposal. D0129, MEC Not. (10/06/2023); D0131; D0132, ITC Not. (10/06/2023); D0133, Defs.' Not. (10/06/2023). As relevant here, ITC's proposal specified that LS Power was not "entitled to any injunctive remedy relating to the Iowa Tranche 1 transmission projects, which were already approved by the Midcontinent Independent System Operator, Inc. ("MISO") on July 25, 2022, and assigned pursuant to procedures in the MISO Tariff" to ITC and MEC. D0132 at 2. ITC's proposal also clarified that "the IUB has the responsibility to and is authorized to continue implementing all sections of Iowa Code Chapter 478 with the exception of Iowa Code § 478.16." *Id.*

The District Court entered its ruling on December 4, 2023. D0136. In its ruling, the District Court denied the summary judgment motions of ITC, MEC, and

the State of Iowa. D0136 at 20. The District Court instead granted LS Power's motion and permanently enjoined enforcement of Iowa Code section 478.16 and Iowa Administrative Rule 199-11.14. D0136 at 21. Repeating LS Power's remedy proposal verbatim, the District Court also permanently enjoined the IUB, ITC, and MEC from, among other things,

> 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).[4]

D0136 at 21.[5]

The Court's Order did include a safe harbor provision that allowed development of the Iowa LRTPs claimed on the basis of the ROFR—if MISO took certain actions:

> this permanent injunction does not prohibit the Intervenors, 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.

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[4] These transmission projects are referred to herein as the "Iowa LRTPs."

[5] Notably, this injunction language, requested by LS Power, is far beyond the specific relief sought in the Petition in this case. D0001, Pet. at 10 (10/14/2020) (requesting that the court "permanently enjoin Defendants as well as their officers, agents, employees, attorneys and all persons in active concert or participation with them from enforcing or publishing the changes contained in Division XXXIII of H.F. 2643").

D0136 at 22.

ITC timely moved to reconsider or enlarge the District Court's order, seeking to narrow the injunction under Iowa Rule of Civil Procedure 1.904(2). *See* D0143 ITC M. Reconsider (12/19/2023). MEC and the IUB likewise timely moved to reconsider. *See* D0141, MEC M. Reconsider (12/19/2023); D0139, M. Reconsider (12/19/2023). These motions noted that the injunction granted by the District Court was impermissibly retroactive and directly conflicted with MISO's Federal Energy Regulatory Commission ("FERC") approved Tariff. LS Power resisted, *see* D0149, Comb. Res. M. Reconsider (01/16/2024), and ITC and MEC filed replies, *see* D0150, MEC Reply (02/02/2024); D0151, ITC Reply (02/02/2024). On February 6, 2024, MISO moved for leave to file an *amicus curiae* brief and also filed its brief. *See* D0153, MISO Br. (02/05/2024); D0154, MISO M. Leave (02/06/2024). The Court accepted responsive briefing from the parties on February 21, 2024, including responses to MISO's proposed amicus brief. *See* D0152, Order (02/07/2024). The parties filed responses. *See* D0155, Pls.' Comb. Res & M. Strike (02/21/2024); D0156, MEC's Resp. (02/21/2024); D0157, ITC Resp. (02/21/2024); D0158, Defs.' Resp. (02/21/2024).

On March 19, the District Court entered its Ruling on Defendant and Intervenors' Motions for Reconsideration and Ruling on Motion for Leave to File Amicus Curiae Brief Filed by MISO. *See* D0159, Ruling (03/19/2024)

(Attachment B). There, the Court denied the reconsideration motions of ITC, MEC, and the IUB. *See* D0159 at 8. In so ruling, the District Court dismissed with minimal explanation the idea that the injunction interfered with the operations of MISO's Tariff. The District Court also denied MISO leave to file its amicus curiae brief wherein MISO itself explained how the injunction interfered with its Tariff processes relating to regional transmission system planning, and that "[a]ny change to the current assignments must come through MISO's FERC-approved Tariff process subject to FERC's exclusive jurisdiction and oversight." D0153 at 14. ITC timely appealed. *See* D0160, Not. Appeal (04/17/2024).

STATEMENT OF THE FACTS

This appeal concerns the proper scope of a permanent injunction, the preservation of the line between state and federal jurisdiction, and the circumstances in which a District Court should accept an amicus brief. To provide background for the District Court's expansive injunction, ITC starts with an overview of relevant law and then discusses its application to the facts and issues in the underlying case.

ITC is a transmission owner member of MISO. D0114, ITC App. I.S.O. M.S.J. at 3 ¶ 2. ITC actively participates in the MISO Transmission Expansion Plan ("MTEP") planning process, including providing project alternatives for consideration. D0114 at 3 ¶ 2. ITC also independently plans for transmission to meet its transmission service obligations. D0114 at 3 ¶ 2.

Federal law governs wholesale rates and other terms and conditions of transmission service for electricity in interstate commerce. 16 U.S.C. § 791a *et seq.*; D0114 at 4 ¶ 6; *see also LS Power Midcontinent, LLC*, 988 N.W.2d at 323 ("The Federal Energy Regulatory Commission (FERC) regulates interstate, high-voltage transmission. FERC in turn oversees regional transmission organizations (RTOs)."). This comprehensive authority over the transmission of electric energy in interstate commerce extends to matters of transmission planning and related transmission planning activities by jurisdictional public utilities, such as MISO. *See S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41, 56 (D.C. Cir 2014) (holding that transmission planning processes are practices under the FPA (Federal Power Act) that "directly affect rates" and that FERC "is obligated by the plain text of [the FPA] to ensure that such practices are just and reasonable and not unduly discriminatory or preferential").

In much of the middle-United States, including Iowa, MISO is the federally registered authority responsible for transmission planning. MISO assigns transmission projects in accordance with a FERC-approved Tariff that has the force of federal law. MISO's Tariff is reviewed, approved, and enforced by FERC pursuant to the Federal Power Act. 16 U.S.C. § 791a *et seq.* Thus MISO's Tariff is subject to the filed tariff doctrine. The Tariff includes provisions governing how the ownership of needed projects is assigned. Two sections of MISO's Tariff are

relevant here, each of which exempts the Iowa LRPTs from competitive bidding and requires MISO to assign a facility to the incumbent.

First, Section VIII.A.1 of Attachment FF of MISO's Tariff[6] requires that MISO comply with any state law providing incumbent transmission owners like ITC with a ROFR to construct transmission facilities. Attachment FF outlines that projects should be awarded in parts, or project elements, which MISO refers to as "facility IDs."[7] The list also identifies those facilities IDs that are classified as "upgrades."

Second, and entirely separate from the MISO Tariff provisions addressing state ROFRs, Attachment FF—Section VIII.A.2 provides incumbent transmission owners with rights to develop, own, and operate upgrades to existing facilities. Thus, under the FERC-approved MISO Tariff, MISO was required to assign upgrade elements of the Iowa LRTP to incumbents. The Status Report demonstrates that seventy percent of the facility IDs assigned to ITC are "upgrades."[8]

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[6] MISO Tariff, Attachment FF is available at https://misodocs.azureedge.net/miso12-legalcontent/Attachment_FF_-_Transmission_Expansion_Planning_Protocol.pdf.

[7] MISO's MTEP Appendix A Status Report listing all facility IDs for the LRTPs is available at https://cdn.misoenergy.org/MTEP%20Appendix%20A%20Status%20Report575959.xlsx.

[8] *See* MISO MTEP Appendix A Quarterly Status Report through 04/29/2024 at https://cdn.misoenergy.org/MTEP%20Appendix%20A%20Status%20Report575959.xlsx. Only projects in Iowa that show both Column G, "Project Type" as "MVP"

The requirements of Attachment FF—Section VIII.A.2 reflect the provisions of MISO's organizing document, the *Agreement of Transmission Facilities Owners to Organize the Midcontinent System Operator, Inc. A Delaware Non-Stock Corporation* ("TOA").[9] The TOA states, in relevant part: "Each Owner has the exclusive right to upgrade, modify, alter, or replace its own facilities and its interests in real estate . . . regardless of whether facility costs are regionally allocated."[10] TOA § VI. The TOA was separately approved by FERC and is also enforceable under federal law. *See* TOA § I.A.2 (stating that FERC issued an order approving the TOA).

In 2020, Iowa adopted the "ROFR Statute" providing that "[a]n incumbent electric transmission owner has the right to construct, own, and maintain an electric transmission line that has been approved for construction in a federally registered planning authority transmission plan and which connects to an electric transmission facility owned by the incumbent electric transmission owner." Iowa Code § 478.16(2); *see* 2020 Iowa Acts ch. 1121 § 128; *LS Power Midcontinent, LLC*, 988 N.W.2d at 323. The ROFR Statute required that an incumbent electric transmission

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and Column N, "Facility Type" as "Line New" could potentially ever have been subject to competitive bidding under the current MISO Tariff.

[9] https://cdn.misoenergy.org/MISO%20TOA%20(for%20posting)47071.pdf.

[10] MISO Rate Schedule 1. The Tariff also provides that if eighty percent of an LRTP consists of upgrade facilities, the entire project is assigned to the incumbent. This provision is not at issue in ITC Midwest's appeal.

owner seeking to exercise this right notify the IUB of its intent to "construct, own and maintain the electric transmission line" within 90 days after the electric transmission line has been approved for construction in a registered planning authority transmission plan. Iowa Code § 478.16(3).[11]

While RTOs like MISO determine the need for and assignment of regional projects, states retain siting authority over transmission facilities that comprise those approved transmission projects. *See* Order No. 1000, *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, 136 F.E.R.C. ¶ 61,051 (2011) (explaining that "integrated resource planning, [and] authority over siting, permitting, [and] construction of transmission solutions" are "traditionally reserved to the states"). In Iowa, that occurs through a franchise process at the IUB. Thus, like many other complex infrastructure systems, electric

[11] This ROFR Statute was struck down by the District Court, and ITC does not appeal that decision. Thus, the ROFR Statute is no longer in effect in Iowa. D0136. Nonetheless, the ROFR Statute underlies MISO's decision with respect to those facility IDs that are not upgrades under the MISO Tariff, and no party disputes that the ROFR was in effect when MISO made ownership designations. MISO is not clairvoyant—it had no way to know that Iowa Courts would *later* strike down the ROFR Statute. MISO was *required* to apply the ROFR Statute in effect when it designated the projects. Once designated, however, challenges or changes to designations are solely a matter of federal law under federal tariffs, regardless of subsequent state court action. While this is true as a jurisdictional matter, it is also consistent with the principles of the filed tariff doctrine. *See, e.g.*, *AT&T Commc'ns of the Midwest, Inc. v. Iowa Utils. Bd.*, 687 N.W.2d 554, 562 (Iowa 2004) ("The filed-rate doctrine provides that the legal rights of the utility in the customer are measured exclusively by the published tariff.").

transmission is regulated by both federal and state law—but federal law defines the scope of the state's role. Fundamentally, this is a case about the limits of state authority with respect to regional transmission planning and what impact a state district court injunction can (or cannot) have on processes established by, and decisions made pursuant to, a federal tariff.

Consistent with all the applicable laws in effect at the time, on July 25, 2022, MISO approved the LRTP Tranche 1[12] projects. Pursuant to the terms of the Tariff, MISO determined that the Project did not contain any Competitive Transmission Facilities and MISO assigned ownership of the Iowa LRTPs to the incumbent transmission owners, ITC and MEC, in accordance with that Tariff.[13] D0114 at 4

[12] On July 25, 2022, the Board of Directors of MISO approved the MISO Transmission Expansion Plan 2021 ("MTEP21") Addendum: Long Range Transmission Planning ("LRTP") Tranche 1 Portfolio. D0114 at 3 ¶ 3, 6–7; *LS Power Midcontinent, LLC*, 988 N.W.2d at 329. The Tranche 1 Portfolio includes the Iowa LRTPs. D0114 at 3–4 ¶ 4.

[13] *See MISO Skunk River-Ipava Transmission Project [LRTP 13] Commencement of Variance Analysis* (May 30, 2024) ("Variance Notice") ("The District Court Order did not change the assigned ownership of the Project, nor did the District Court Order cause any Project facility classification to be modified to a Competitive Transmission Facility. ITC is still listed as the owners of the Project in MISO's MTEP Appendix A and the District Court Order did not suspend ITC['s] obligation to construct the Project as imposed upon ITC pursuant to the Tariff.") (available at https://cdn.misoenergy.org/Skunk%20River%20-%20Ipava%20Variance%20Analysis%20Public%20Notice633080.pdf.

¶ 5, 8–10. MISO's assignment was based on the entirety of the Iowa LRTPs being subject to the ROFR and on individual facility IDs being upgrades.[14]

Under MISO's Tariff and the TOA, once MISO assigned ownership of certain LRTPs, the assigned owner had the responsibility and obligation "to construct the facilities it is designated to construct." *See* Tariff, Attach. FF § V ("Designation of Entities to Construct, Implement, Own, Operate, Maintain, Repair, Restore, and/or Finance MTEP Projects"); *see also* Tariff, Rate Schedule 1, Appendix B § VI ("The designated Owner or Selected Developer, as defined in the Tariff, has the responsibility and obligation to construct the facilities it is designated to construct."); Article IV, Section I.C of the TOA; D0114 at 4 ¶ 8. Thus, once MISO assigned the Iowa LRTPs to ITC and MEC, they were required to construct the facilities under the Tariff.

Consistent with their federal obligations, ITC, MEC, and Cedar Falls Utilities timely submitted to the IUB their intent to "jointly construct, own, and operate the" Iowa LRTPs ("ROFR Notice") on October 14, 2022. D0114 at 4 ¶ 7, 23–26. The ROFR does not require the IUB to take any action in response to Iowa Code

[14] As is discussed above, however, looking at specific facilities rather than the entirety of projects, seventy percent (based on projected costs) of the facility IDs included qualify as upgrades and would belong to ITC regardless of the ROFR.

section 478.16(3) notice, and the IUB took no action in response to the ROFR Notice. D0114 at 4 ¶ 9.

ARGUMENT

I. THE DISTRICT COURT LACKED SUBJECT-MATTER JURISDICTION TO CONTRAVENE MISO'S TARIFF AND THE TOA.

A. Issue Preservation.

ITC preserved error by moving for summary judgment, D0113; resisting LS Power's summary judgment motion, D0115; obtaining a summary judgment ruling, D0136; and obtaining a ruling on reconsideration, D0159. *See Tetzlaff v. Camp*, 715 N.W.2d 256, 258–59 (Iowa 2006); *Boyle v. Alum-Line, Inc.*, 710 N.W.2d 741, 751 n.4 (Iowa 2006) ("When a district court fails to rule on an issue properly raised by a party, the party who raised the issue must file a motion requesting a ruling in order to preserve error for appeal." (citation omitted)).

B. Standard of Review.

Summary judgment rulings are reviewed for correction of errors at law. *Young v. Iowa City Cmty. Sch. Dist.*, 934 N.W.2d 595, 601 (Iowa 2019); *see* Iowa R. App. P. 6.907. "We review subject matter jurisdiction rulings for correction of errors at law." *Schaefer v. Putnam*, 841 N.W.2d 68, 74 (Iowa 2013) (citing *Klinge v. Bentien*, 725 N.W.2d 13, 15 (Iowa 2006)).

C. Argument.

The FPA vests exclusive jurisdiction to review decisions made under federal electric transmission tariffs in FERC and the federal courts of appeals, so state courts lack subject-matter jurisdiction to interfere with an RTO's designation of ownership and construction responsibilities pursuant to its federal FERC-approved tariff. As a result, the District Court lacked subject-matter jurisdiction to issue a retroactive injunction for two reasons. First, the injunction attempts to "undo" MISO's ownership designations for the Iowa LRTPs to ITC and MEC pursuant to MISO's FERC approved Tariff. Second, it interferes with ITC's obligations under the Tariff and the TOA to complete its MISO-assigned projects.[15]

Congress vested FERC with exclusive jurisdiction over MISO's Tariff and the TOA. Despite the District Court's protestations to the contrary, its injunction directly contravenes the dictates of MISO's Tariff and interferes with ITC's obligation under the Tariff and TOA. The District Court's order provides that ITC, MEC, and the IUB cannot proceed with the LRTP projects to the extent they rely on the ROFR unless MISO takes some further action. By seeking to nullify MISO's assignment of projects pursuant to the FERC-authorized Tariff and procedures and

[15] *See* Variance Notice ("ITC . . . is still listed as the owner[] of the Project in MISO's MTEP Appendix A and the District Court Order did not suspend ITC['s] obligation to construct the Project as imposed upon ITC . . . pursuant to the Tariff.").

require MISO to do something else to assign certain LRTP project components to ITC, the District Court issued an injunction beyond its subject-matter jurisdiction.

Under the FPA, "the transmission of electric energy in interstate commerce and the sale of such energy at wholesale in interstate commerce" is subject to federal regulation. 16 U.S.C. § 824(a). By enacting the FPA, Congress drew a "bright line easily ascertained, between state and federal jurisdiction . . . by making [federal] jurisdiction plenary and extending it to all wholesale sales in interstate commerce except those which Congress has made explicitly subject to regulation by the States." *Fed. Power Comm'n v. S. Cal. Edison Co.*, 376 U.S. 205, 206–07 (1964). To preserve exclusive federal jurisdiction over wholesale sales and interstate transmission, the FPA vests exclusive subject-matter jurisdiction for any challenge to a FERC decision with FERC in the first instance and then with the federal courts of appeals. 16 U.S.C. § 824(a); 16 U.S.C. § 825l. MISO assigns projects pursuant to a FERC-approved Tariff—Attachment FF. *See* Tariff, Rate Schedule 1, Appendix B (Planning Framework); Tariff, Attachment FF (Transmission Expansion Planning Protocol); *see also* D0153, MISO Br. at 2 (explaining that MISO assigns projects pursuant to a Tariff).

Attachment FF includes a detailed set of rules for the Administration of the Competitive Developer Selection Process and applicable exceptions. *See generally* Tariff, Attach. FF § VIII; D0153,MISO Br. at 5. First, MISO must "comply with

any Applicable Laws and Regulations granting a right of first refusal to a Transmission Owner." Tariff, Attachment FF § VIII.A.1. Then, "[a] Transmission Owner shall have the right to develop, own, and operate any upgrade to a transmission facility owned by the Transmission Owner." Tariff, Attach. FF § VIII.A.2. Last, "[i]f 80% or more of the total cost of the transmission facilities included in the Eligible Project are upgrades . . . then the Transmission Provider shall designate the applicable incumbent Transmission Owner(s) to develop, own, and operate all transmission facilities comprising the Eligible Project." Tariff, Attach. FF § VIII.A.2.a.

MISO assigned the Iowa LRTPs in conformance with these Tariff provisions. The District Court sought to usurp FERC's approved Tariff when it held that MISO had to actively reassign the Iowa LRTPs to ITC and MEC to maintain the outcome MISO determined was required by its federal tariff:

> this permanent injunction does not prohibit the Intervenors, 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 at 22.

As a matter of federal law, because the FPA vests exclusive jurisdiction in FERC and the federal courts of appeals over the implementation of MISO's Tariff, state courts lack subject matter jurisdiction to interfere with MISO's designation of

ownership and construction responsibilities pursuant to its federal FERC-approved Tariff. Thus, the District Court lacked subject matter jurisdiction to issue an injunction that interferes with the Iowa LRTPs—interstate transmission projects assigned to ITC and MEC pursuant to MISO's FERC-approved tariff and the FERC-approved TOA.

II. THE DISTRICT COURT ERRED IN ISSUING THE PERMANENT INJUNCTION BARRING ACTS OUTSIDE THE SCOPE OF THE ROFR.

A. Issue Preservation.

ITC preserved error by moving for summary judgment, D0113; resisting LS Power's summary-judgment motion, D0115; obtaining a summary-judgment ruling, D0136; and obtaining a ruling on reconsideration, D0159. *See Tetzlaff*, 715 N.W.2d at 258–59; *Boyle*, 710 N.W.2d at 751 n.4.

B. Standard of Review.

"A petition for injunctive relief traditionally invokes the court's equitable jurisdiction, and our review is de novo." *Harder v. Anderson, Arnold, Dickey, Jensen, Gullickson & Sanger, L.L.P.*, 764 N.W.2d 534, 536 (Iowa 2009). "While weight will be given to findings of the trial court, this court will not abdicate its function as triers de novo on appeal." *Nichols v. City of Evansdale*, 687 N.W.2d 562, 566 (Iowa 2004) (citation omitted).

C. Argument.

Even assuming the District Court did not exceed its jurisdiction in issuing an injunction intruding on exclusive federal jurisdiction, the injunction is improper for two independent reasons. First, although a court may enjoin enforcement of an unconstitutional act, an injunction is fundamentally a prospective remedy. *See, e.g.*, *In re Langholz*, 887 N.W.2d 770, 780 (Iowa 2016) ("A permanent injunction should only be ordered to prevent damage likely to occur in the future; it is not meant to punish for past damage." (citation omitted)); *Universal Loan Corp. v. Jacobson*, 237 N.W. 436, 437 (Iowa 1931) ("It is quite fundamental that rights already lost and wrongs already committed are not subject to injunctive relief."). An injunction "looks to the future rather than to the past." *Jenkins v. Pedersen*, 212 N.W.2d 415, 420 (Iowa 1973). The District Court's injunction is impermissibly retroactive and should be reversed.

Second, in deciding whether to issue an injunction, courts must weigh the relative harms to the parties and consider the injunction's consequences for the public. *See Myers v. Caple*, 258 N.W.2d 301, 305 (Iowa 1977) (harm to parties); *see Weinberger v. Romero–Barcelo*, 456 U.S. 305, 312 (1982) (consequences to the public). Although the District Court purportedly weighed the relative harms to the parties, it failed to properly consider the concrete and extreme harm to ITC, while placing too much weight on the speculative harms alleged by LS Power. The District

Court also failed to adequately consider the harm to the public due to its injunction. As a result, the Court should reverse.

1. The District Court's permanent injunction is impermissibly retroactive.

The District Court's Order confirms that the aim of its injunction was not solely prospective. Most significantly, the Court noted that its injunction is ordered "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." D0136 at 21 (emphasis added). ITC does not dispute that the District Court was empowered to invalidate and prevent *future* enforcement of the ROFR by state actors based on its finding of unconstitutionality, but this remedy is unnecessarily duplicative now that the ROFR has been invalidated.

Moreover, state law precludes the District Court from reversing MISO's completed ownership designations. *See Universal Loan Corp.*, 237 N.W. at 437 ("[I]f the act sought to be enjoined has already been committed, equity will not interfere, since the granting of an injunction under such circumstances would be a useless act." (citation omitted)). One cannot *return* to the status quo; the Court's order seeks to redo the past. Status quo means "the existing state of affairs." *Status quo*, *Merriam Webster*, available at https://www.merriam-webster.com/dictionary/status%20quo. The "existing state of affairs" is one in which MISO has assigned ownership of the LRTPs to ITC and MEC under a federal

tariff process. This "harm" occurred in the past, as LS Power acknowledges, and no injunction entered by this Court can undo those designations. *See LS Power Midcontinent, LLC*, 988 N.W.2d at 329; *In re Langholz*, 887 N.W.2d at 780 ("A permanent injunction should only be ordered to prevent damage likely to occur in the future; it is not meant to punish for past damage." (citation omitted)). In a 2022 Brief to this Court, LS Power admitted as much by acknowledging that a project can only be competitively awarded within 365 days of MISO approval. *See* Appellants' Reply in Support of Temporary Injunction at 17, *LS Power Midcontinent, LLC*, 988 N.W.2d 316 (No. 21–0696) (June 13, 2022); *see also* D0041, LS Power's Combined Reply to Intervenors' Resistances to Plaintiffs' Motion for Temporary Injunction at 22 ("[O]nce a project arises, it will be *automatically assigned* to the incumbent entity to elect whether it wishes to build and maintain it. At that point, the harm is complete and irreparable.") (internal citation omitted); Appellants' Brief in Support of Motion for Temporary Injunction at 29, *LS Power Midcontinent, LLC*, 988 N.W.2d 316 (No. 21–0696) (May 27, 2022) ("[E]ffective July 25, 2022, the ROFR will exempt at least a billion in transmission from RTO competition, *forever foreclosing LS Power from any opportunity to obtain relief from this Court* for the illegally approved ROFR." (emphasis added)).

Under the MISO Tariff, the Court's invalidation of the ROFR can and will be given prospective effect. In determining the ownership of approved transmission

facilities, MISO considers whether there is an existing state law right-of-first-refusal provision in effect as of the date of the assignment decision.[16]

This means that MISO will not be able to consider the stricken ROFR in its *future* decisions when assigning ownership of Tranche 2 LRTP projects. By enjoining enforcement prospectively, the ROFR passed in 2020 is no longer effective, and MISO may not assign ownership of future Iowa transmission facilities to the incumbent transmission owner under Attachment FF of its Tariff on that basis. However, the Court must recognize that the determination of ownership of LRTP Tranche 1 projects have already been made under MISO's FERC-jurisdictional Tariff. MISO is legally mandated to follow its Tariff.[17]

MISO's planning process and ownership designations are set forth in the Tariff and are subject to FERC's exclusive jurisdiction. *See S.C. Pub. Serv. Auth.*, 762 F.3d at 56 (transmission planning processes are practices under the FPA that

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[16] MISO Tariff, Attach. FF, § VIII.A.1.

[17] *See Cogentrix Energy Power Mgmt., LLC v. FERC*, 24 F.4th 677, 681 (D.C. Cir. 2022) (citing *Towns of Concord, Norwood, & Wellesley v. FERC*, 955 F.2d 67, 71 & n.2 (D.C. Cir. 1992) ("The filed rate doctrine forbids utilities from charging rates other than those properly filed with the [FERC]. A 'corollary' to the filed rate doctrine is the rule against retroactive ratemaking, which 'prohibits the Commission from adjusting current rates to make up for a utility's over- or under-collection in prior periods.'"); *see also Ark. La. Gas Co. v. Hall*, 453 U.S. 571, 572 (1981) ("[T]he Louisiana Supreme Court's ruling amounts to nothing less than the award of a retroactive rate increase based on speculation about what the Commission might have done had it been faced with the facts of this case. This is precisely what the filed rate doctrine forbids.")

"directly affect rates" and FERC "is obligated by the plain text of [the FPA] to ensure that such practices are just and reasonable and not unduly discriminatory or preferential.") MISO is legally mandated to follow its Tariff. To the extent that LS Power believes that MISO has *not* complied with its Tariff, LS Power may file a complaint with FERC and seek relief under the Federal Power Act, alleging that MISO has not properly followed its filed Tariff.[18]

The District Court cannot turn back the clock and create an alternate reality. Because the District Court's injunction was impermissibly retroactive, this Court should reverse.

2. The factors governing whether to grant a permanent injunction do not support the District Court's Order.

In rendering its decision on an injunction, the District Court stated it was applying the following law:

> [A] permanent injunction is warranted when necessary to prevent irreparable injury and when a plaintiff has no adequate remedy at law. *Hockenberg Equip. Co. v. Hockenberg's Equip. & Supply Co.*, 510 N.W.2d 153, 158 (Iowa 1993); *Myers v. Caple*, 258 N.W.2d 301, 304 (Iowa 1977). Consequently, Plaintiffs are entitled to a permanent

[18] *See e.g., Notice of Complaint,* LS Power Development LLC v. PJM Interconnection, LLC, Docket No. EL21-72-000 *(May 14, 2021)* (Federal Energy Regulatory Commission notice that LS Power Development, LLC and Doswell Limited Partnership filed a formal complaint against PJM Interconnection, L.L.C., alleging violations of the PJM Reliability Assurance Agreement). ITC neither concedes nor believes that MISO has misapplied its Tariff; what matters is that FERC is the appropriate venue for LS Power to seek the relief it requests and which the District Court provided in this case, whether that request would ultimately be successful or not.

> injunction if they establish: "(1) an invasion or threatened invasion of a right; (2) substantial injury or damages will result unless an injunction is granted; and (3) no adequate legal remedy is available." *Skow v. Goforth*, 618 N.W.2d 275, 278 (Iowa 2000). In determining whether a permanent injunction should be issued, the Court must weigh the relative hardships on the parties by the grant or denial of injunctive relief. *Myers*, 258 N.W.2d at 305.

D0136 at 13–14. But the District Court improperly applied the standard for a *temporary* injunction, and then did so incorrectly, by attempting to "return" to the status quo. *Compare Ohlensehlen v. Univ. of Iowa*, 509 F. Supp. 3d 1085, 1094 (S.D. Iowa 2020) (noting that the purpose of a preliminary injunction is to "preserve the status quo until the merits are determined" (citation omitted)), *with In re Langholz*, 887 N.W.2d at 779 (explaining that the purpose of a permanent injunction is to "prevent irreparable injury to the plaintiff . . . when there is no other adequate remedy at law").

LS Power had an adequate remedy at law. LS Power could have initiated a complaint proceeding at FERC, for example, wherein it could have attempted to demonstrate that MISO violated specific Tariff provisions or FERC regulations. This Court should not endorse LS Power's attempt to circumvent the administrative agency with the authority to act. *See Reiter v. Cooper*, 507 U.S. 258, 270 (1993) ("Where relief is available from an administrative agency, the plaintiff is ordinarily required to pursue that avenue of redress before proceeding to the courts; and until that recourse is exhausted, suit is premature and must be dismissed.").

After stating the incorrect rule, the Court went on to analyze the "status quo" applicable to a temporary injunction with particular attention to what LS Power's position hypothetically *would* have been if litigation had gone differently (a "status quo" that never existed) instead of whether there would be a substantial injury to LS Power as compared to ITC, MEC, and the public as required for a permanent injunction. *See* D0136 at 17–20. But an injunction is not intended to punish ITC for past acts, particularly where ITC did nothing wrong but rather worked to fulfill its federal obligations under the Tariff and TOA. The District Court erred by not applying the proper test and adequately considering "the relative hardships on the parties." Because the District Court failed to apply the proper standard for a permanent injunction and failed to adequately analyze the factors, this Court should reverse.

a) LS Power does not have a "right" to compete for the Iowa LRTPs.

The District Court's Order identified LS Power's supposed lost chance to "compete for the Iowa LRTPs on a level playing field," reasoning that it could "prevent substantial injury" by granting the requested injunctive relief LS Power requested. D0136 at 19. LS Power's suggestion that all of the Iowa LRTPs could be subject to competition in the absence of the ROFR is unsupported by the record. The injunction does not and cannot require MISO to vary from its Tariff and take any action to modify the already approved Iowa LRTPs. Further, ITC is entitled to

construct seventy percent of its assigned LRTP facilities under the MISO Tariff *regardless* of the ROFR because seventy percent of the LRTP facilities are upgrades to ITC's existing facilities. MISO assigned the remaining thirty percent of the ITC LRTP facility IDs to ITC as non-competitive projects as required by the Tariff. To summarize how speculative LS Power's purported "right" is, the decision tree under the MISO Tariff is as follows:

1) If a facility ID is an upgrade, there is no competitive bid on those facilities and the facilities are assigned to the incumbent;
2) If there is a state ROFR in effect, there is no competitive bid on the entire project, which is assigned to the incumbent;
3) If there is no state ROFR, but 80% of the facilities that comprise the project are upgrades, there is no bid and the entire project is assigned to the incumbent.

Only if *none* of those conditions is true for a given facility ID is that facility potentially subject to competitive bidding. LS Power has not made a record in this case to show that any particular facility ID is subject to a competitive bid. As a result, LS Power has not shown harm to any "right" to bid.

Moreover, MISO has no authority under the Tariff to now competitively bid any portion of the ITC Tranche 1 Iowa LRTPs. LS Power has cited no contrary authority. As a result, LS Power's alleged harm is, at best, limited to those thirty

percent facilities that under the MISO Tariff that could have potentially been competitively bid absent a ROFR, only a fraction of the Iowa LRTPs. Once the Projects were assigned to ITC, they cannot be reassigned to another developer under the Tariff.[19] The Iowa LRTPs cannot be reassigned or made competitive projects even under a variance analysis, which LS Power advocated for in its brief in response to ITC's motion for reconsideration in the District Court and in response to ITC's motion to stay in this court. This is not possible because projects assigned to an incumbent cannot now be reclassified as competitive projects. Only competitive projects can be reassigned under the Tariff. MISO Tariff, Attach. FF, § IX.E.3. LS Power has made no adequate record in this case establishing its "right to compete" for any particular facility assignment.

b) The concrete harm to ITC of the permanent injunction's effect outweighs any speculative harm to LS Power.

ITC is stuck between two conflicting, legally binding orders: MISO expects ITC to build the Iowa LRTPs that MISO designated ownership and construction responsibility to ITC for, but the District Court ordered ITC to stop work on portions

[19] *See also Midcontinent Independent System Operator, Inc.'s Filing to Modify its Order No. 1000 Compliant Variance Analysis and Project Reporting Processes*, MISO, (Docket. No. ER16-469), Transmittal Letter at 30 n.9 (Dec. 4, 2015) ("[C]urrently effective Variance Analysis Tariff language contemplates only reassignment to the incumbent Transmission Owner and does not provide for reassignment from an incumbent."); D0149 at 13.

of the same projects to the extent they rely on the ROFR. While ITC can and will proceed with constructing the components of the Iowa LRTPs that are upgrades, there are no good choices for ITC here. It can either fail to comply with MISO's federally binding designation, *see City of Osceola v. Entergy Ark., Inc.*, 791 F.3d 904, 907 (8th Cir. 2015) ("[F]iled tariffs are 'the equivalent of a federal regulation,'" (citation omitted)), or it can fail to comply with the state court's order and risk sanction for violating an injunction, *see* Iowa R. Civ. P. 1.1511 ("Violation of any provision of any temporary or permanent injunction shall constitute contempt and be punished accordingly."); *E. Buchanan Tel. Coop. v. Iowa Utils. Bd.*, 738 N.W.2d 636, 641 (Iowa 2007) ("An injunction is a judicial remedy enforceable through a court's authority to find a party in contempt." (citation omitted)).

The harm to ITC from the injunction is extreme and concrete. Absent further action from MISO, ITC is precluded from completing thirty percent of the Iowa LRTPs assigned to ITC as required under the TOA and the Tariff. *See* D0118, MEC App. at 808; D0144, Mathis Decl. ¶ 4. The injunction prevents ITC from fulfilling its obligations under the Tariff and TOA and risks delaying those needed upgrades for the electric grid. *See* D0142, ITC Br. I.S.O. M. Reconsider at 9–13 (12/19/2023) (describing MISO's approval of the Iowa LRTPs); D0114 at 50; *see also* D0153 at 18 ("If the injunction stands as is, further planning, both since the LRTP Tranche 1

projects were approved, as well as current and future planning efforts, will be at risk.").

By contrast, the only potential harm LS Power has alleged is the inability to bid for the non-upgrade portions of the Iowa LRTPs. In truth, however, even that alleged harm is speculative and illusory. For one thing, LS Power has no right to compete for the Iowa LRTPs under the MISO Tariff, and LS Power made no showing that [1] any part of the Iowa LRTPs would have been competitively bid even if the ROFR never existed, [2] that it would bid on any such projects, or [3] that it was reasonably expected to win such a bid. To the contrary, large portions of the project were assigned to incumbents as upgrade elements.[20]

Moreover, MISO's amicus brief below makes clear that it cannot rebid the Iowa LRTPs, regardless of any Iowa Courts decision, because MISO cannot do so unless a party takes the issue to FERC and prevails there as FERC is the only entity that has jurisdiction to review MISO's actions under its Tariff. D0153 at 2 ("Once FERC approved how MISO determines ownership of MTEP-included transmission facilities, a state cannot second-guess FERC by prohibiting the incumbents from complying with the designations.").[21]

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[20] As noted, the Tariff provides that upgrades to existing facilities automatically are assigned to incumbents. MISO Tariff, Attach. FF, § VIII.A.1.

[21] LS Power largely created this stalemate by choosing a forum without jurisdiction over MISO's federal Tariff and choosing not to name MISO as a party

c) The injunction harms the public.

The court failed to consider the impact to the reliability of the MISO transmission grid on the public. *See Weinberger*, 456 U.S. at 312 ("[C]ourts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction." (citation omitted)).

First, the public will be damaged by an unknown delay in completing construction of the Iowa LRTPs that MISO determined are needed to reliably operate the regional transmission grid. MISO, the regional transmission operator ensuring that the transmission system can reliably operate, developed and approved the Tranche 1 portfolio to address "urgent" system reliability needs. As MISO found, the Midwest regions face resource retirements and changes, leading MISO to prioritize Tranche 1 before other regions. D0114 at 50. Because transmission

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despite it being patently obvious that MISO's assignment of the LRTPs is the real target of its litigation. While LS Power's state forum selection has left it with no lawful ability to reverse MISO's decision, that is not something this Court should protect LS Power from. *See Lehigh Clay Prods., Ltd. v. Iowa Dep't of Transp*., 512 N.W.2d 541, 546 (Iowa 1994) (denying a new trial and noting that the State had to "live with its strategical decisions" after inexperienced expert witness inadequately testified and was not as effective as opposing expert); *Adams v. AlliedSignal Gen. Aviation Avionics*, 74 F.3d 882, 887 (8th Cir. 1996) ("At some point, a litigant must bear the consequences of conscious strategic or tactical decisions of this kind."); *Gander Mountain Co. v. Cabela's, Inc.*, No. 04–CV–3125 (PJS/RLE), 2007 WL 2026751, at *8 (D. Minn. July 10, 2007), *aff'd*, 540 F.3d 827 (8th Cir. 2008) (explaining that a party "must live with the consequences of its litigation strategy").

projects take years to complete, MISO determined that it was necessary proceed with Tranche 1 "now." D0114 at 55.

This Court's injunction could have substantial direct consequences caused by delays in constructing the Iowa LRTPs. Far from the speculative harm LS Power may experience, energy consumers in Iowa and the region will suffer "severe, concrete, and particularized" harm by ITC's inability to complete its LRTPs. D0153 at 16. After all, the LRTPs are part of the larger LTRP Tranche 1 portfolio of projects connecting Iowa to surrounding states needed to maintain the reliability of the transmission system—"nearly 45 million people [are] within [MISO's] territorial region" both inside and outside Iowa. D0153 at 16.

The 2020 MISO Response to the Reliability Imperative report[22] stressed the importance of for long range transmission planning to the MISO region. The report emphasized that "building additional transmission is especially crucial to support the continued growth of large-scale wind and solar." MISO also described a coalescence of factors making reliability challenges more urgent; "[p]ower plant retirements, lower overall reserve margins, and increasing outage levels of conventional generation have required MISO to operate with less available capacity

[22] https://cdn.misoenergy.org/MISO%20Response%20to%20the%20Reliability%20Imperative%20FINAL504018.pdf

than in the past." A recent update to MISO's Response to the Reliability Imperative report (February 2024) furthers the point.[23] In the 2024 update, MISO intensified its call to action—to address "the urgent and complex risks to electric reliability in the MISO region, utilities, states and MISO must all act with *more urgency* and *more coordination* to avoid a looming mismatch between the pace of adding new resources and the retirement of older resources in the MISO region." (Emphasis added.)

If the Iowa LRTPs are delayed, so too will be the benefits of the entire LRTP Tranche 1 portfolio. As MISO noted in its amicus brief in the District Court, the injunction "hinders further energy grid build-out plans and energy reliability/sustainability plans." D0153 at 18. Indeed, the District Court's injunction disregards the determination of MISO—the FERC-approved regional-transmission organization—that Iowans and individuals in fourteen other states need system upgrades "now." A delay in additional high-capacity transmission also has the potential to hinder Iowa's economic development. Large projects create large electrical loads and can only proceed with adequate electrical supply. Delaying

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23 https://cdn.misoenergy.org/2024%20Reliability%20Imperative%20report%20Feb.%2021%20Final504018.pdf?v=20240221104216

critical electrical infrastructure can delay such projects—or even deter them from coming to Iowa at all.

The harm to the public from the injunction does not end with energy consumers. *See* D0153 at 18. The injunction will also impact generators who interconnect to the transmission system to provide energy to the public. *See* D0153 at 7 ("Each year, MISO accepts applications from independent generators to connect to the Transmission System."). Landowners who attended public meetings, negotiated, and otherwise engaged in the Iowa LRTPs will also be harmed by the uncertainty the injunction creates in the timing of completing the Iowa LRTPs. All in all, the delay caused by the District Court's sweeping injunction will cause "potentially ruinous practical public policy consequences." D0153 at 17.

There is no public interest in this injunction. The only potential public benefit the court cited was the possibility of lower costs as result of competitive bidding for, *at best*, a small portion of the Iowa LRTPs, an assumption with which ITC vehemently disagrees. *See* D0136 at 8–9. The coalition Developers Advocating for Transmission Advancements, of which ITC Holdings Corp. is a member, conducted a study of competitively bid projects since Order 1000 and concluded:

> The resulting analysis reveals that, rather than Order No. 1000 competitive solicitations leading to cost savings, final costs for projects selected through competitive solicitations tend to *exceed* cost Baselines by at least 6% (see Figure 1). Furthermore, with certain reasoned adjustments, recoverable costs of competitive transmission projects, on average, exceed cost Baselines by 12-19%.

D0144, *Revisiting the Evidence on Cost Savings from Transmission Competition, December 2023* at 3. Indeed, driven by concerns that uncertainty in investments was resulting in too little regional transfer capacity being constructed, on May 13, 2024, FERC issued a transmission planning order that *created a new federal ROFR* for "right-sizing" existing facilities, increasing their capacity and including those upgraded lines in regional planning in lieu of building new lines.[24]

Moreover, the competitive process is not available for the Iowa LRTPs under these circumstances. MISO's Tariff does not authorize competitive bidding at this stage in the planning process for *already assigned projects*. As noted previously, under Section VIII.C of Tariff Attachment FF, if a Project is to be competitively bid, MISO must release Requests for Proposals within 365 days of project approval:

> *In all events*, the schedule of RFP releases developed by the Transmission Provider shall provide that all RFPs are released not later than three hundred and sixty five [sic] (365) Calendar Days after the date the Transmission Provider Board approved the Competitive Transmission Facilities for inclusion in Appendix A of the MTEP.

(Emphasis added.) MISO approved the Tranche 1 projects on July 25, 2022, meaning the deadline for MISO to issue a new request for proposals for any Tranche 1 projects expired on July 25, 2023, under federal law.[25] There also is no

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[24] Order No. 1920, *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation*, 187 F.E.R.C. ¶ 61,068, ¶¶ 1702-1709. (2024).

[25] LS Power cited the same rule to this Court in its June 2022 Brief to this Court explaining that there is "a maximum period of 365 days to have all RFPs

basis for MISO to bid out project IDs that were classified as non-competitive.[26] There simply is no mechanism to bid the projects now, and no authority for a court to contravene the Tariff. Interpretation of the MISO Tariff is within the exclusive jurisdiction of FERC in the first instance, as are claims that the Tariff has been violated by MISO. The injunction's sole impact is creating delay that harms the availability of power delivery to the public and the reliability of that power delivery.

Moreover, the court's finding that the 2020 ROFR is unconstitutional means MISO cannot consider the ROFR in future ownership designations. As a result, there is no future harm based on the ROFR that needs to be enjoined. Therefore, the District Court should have concluded that the balance of the harms weighs against an injunction. This Court should reverse the District Court's retroactive injunction.

III. THE INJUNCTION AGAINST ITC AND THE IUB IS OVERBROAD, AND THE SCOPE OF THE INJUNCTION IS BROADER THAN THE HARM TO BE REMEDIED.

released." Appellants' Reply in Support of Temporary Injunction at 17, *LS Power Midcontinent, LLC*, 988 N.W.2d 316 (No. 21–0696).

[26] *See also Midcontinent Independent System Operator, Inc.'s Filing to Modify its Order No. 1000 Compliant Variance Analysis and Project Reporting Processes*, MISO, (Docket. No. ER16-469), Transmittal Letter at 30 n.9 (Dec. 4, 2015) ("[C]urrently effective Variance Analysis Tariff language contemplates only reassignment to the incumbent Transmission Owner and does not provide for reassignment from an incumbent."); D0149 at 13.

A. Issue Preservation.

ITC preserved error by moving for summary judgment, D0113; resisting LS Power's summary-judgment motion, D0115; obtaining a summary-judgment ruling, D0136; and obtaining a ruling on reconsideration, D0159. *See Tetzlaff*, 715 N.W.2d at 258–59; *Boyle*, 710 N.W.2d at 751 n.4.

B. Standard of Review.

"A petition for injunctive relief traditionally invokes the court's equitable jurisdiction, and our review is de novo." *Harder*, 764 N.W.2d at 536. "While weight will be given to findings of the trial court, this court will not abdicate its function as triers de novo on appeal." *Nichols*, 687 N.W.2d at 566 (citation omitted).

C. Argument.

Even if a permanent injunction were the proper remedy, it should be no broader than necessary to remedy the underlying wrong. *See Carroll Airport Comm'n v. Danner*, 927 N.W.2d 635, 654 (Iowa 2019) ("Courts must structure permanent injunctions so that [they] will provide relief to the plaintiff without 'interfer[ing] with the legitimate and proper actions of the person against whom it is granted.'" (citation omitted)). The injunction's scope "should be set forth with certainty and clearness so that persons bound by the decree may readily know what they must refrain from doing without speculation or conjecture." *In re Langholz*, 887 N.W.2d at 780 (citation omitted). The Supreme Court "interpret[s] court decrees like any other written instrument." *TSB Holdings, L.L.C. v. Bd. of Adjustment for*

City of Iowa City, 913 N.W.2d 1, 16 (Iowa 2018) (citation omitted). That means "the determining factor is the intent of the court," as gleaned primarily from the words of the ruling. *Id.* (citation omitted). If the decree is ambiguous, courts may "resort to the pleadings and other proceedings if the meaning of the decree is ambiguous." *Id.* (citation omitted). Because the District Court's injunction is overly broad, it should be reversed.

This Court considered the proper scope of a declarative remedy (albeit, not an injunction) issued after a statute is found unconstitutional in violation of section 29, article 3 of the Iowa Constitution in *National Benefit Accident Association v. Murphy*, 269 N.W. 15 (Iowa 1936). The case involved a challenge to the statute governing the method for incorporation of certain insurance companies. *Id.* at 17. There, the plaintiff insurance company challenged the Attorney General's decision to deny an amendment to its articles of incorporation, asserting that the statute the attorney general relied on was unconstitutional because it was enacted in violation of section 29, article 3 of the Iowa Constitution. *Id.* at 16. The district court found the statute unconstitutional and ordered that the plaintiff insurance company could resume business. *Id.* at 19. The Iowa Supreme Court reversed, holding that "the court has no authority except to require the [defendants] to perform the duties which the law thus imposes upon them." *Id*. The District Court made the same error here when it not only declared a statute unconstitutional but also sought to fashion a broad

remedy. The only additional remedy that would be proper here would be to direct the IUB to perform its duties in light of the Court's ruling. *See id.*

The rule of law that applies to injunctions generally is consistent with the holding of *National Benefit Accident Association*. "An injunction should be limited to the requirements of the case," *Matlock v. Weets*, 531 N.W.2d 118, 123 (Iowa 1995) (citation omitted), and "the scope of the violation determines the scope of the remedy provided in the permanent injunction," *In re Langholz*, 887 N.W.2d at 780 (citation omitted). An injunction should be "drawn narrowly enough to address the harm sought to be redressed," *id.* (citation omitted), providing relief to the claimant "without 'interfer[ing] with the legitimate and proper actions of the person against whom it is granted,'" *Carroll Airport Comm'n*, 927 N.W.2d at 654 (citation omitted). *See also Walmart Inc. v. Cuker Interactive, LLC*, 949 F.3d 1101, 1112 (8th Cir. 2020) ("An injunction must not be 'broader than necessary to remedy the underlying wrong.'" (citation omitted)). The scope "should be set forth with certainty and clearness so that persons bound by the decree may readily know what they must refrain from doing without speculation or conjecture." *In re Langholz*, 887 N.W.2d at 780 (citation omitted). An injunction cannot enjoin more conduct than the harm to be remedied in the case or be unclear about what conduct it proscribes. *See Easley v. Anheuser-Busch, Inc.*, 758 F.2d 251, 263 (8th Cir. 1985) (reversing injunction that "[r]ead literally, . . . applies to all forms of race

discrimination against every employee or applicant for every job at every Anheuser-Busch plant"); *see also State ex rel. Dobbs v. Burche*, 729 N.W.2d 431, 436 (Iowa 2007) (striking phrases in an injunction that were overbroad because they did not remedy the harm in the case).

The wrong alleged and found was the unconstitutional enactment of the ROFR, and a judgment invalidating the statute gives LS Power all it is entitled to. But rather than limit the remedy to the violation, i.e., invalidating the ROFR consistent with controlling *state law*, *e.g.*, *In re Langholz*, 887 N.W.2d at 780, the District Court's injunction prevents ITC from exercising rights granted to it under *federal law* and risks delaying needed upgrades for the electric grid. The injunction is broader than necessary to remedy the unconstitutionality of a single provision of the Iowa Code. This Court should reverse.

The overbreadth of the Court's injunction is also evident because it encompasses the scope that was already presented *unsuccessfully* by *LS Power* before this Court. In its response to rehearing petitions, LS Power suggested the Supreme Court should clarify that the Tranche 1 projects were enjoined:

> Intervenors appear to seek profit from a constitutional violation. Since oral argument—and, at least once, after this Court issued its injunction and in apparent violation of it—Intervenors asked IUB for public meetings to advance unlawfully assigned projects.

Appellants' Response to Petitions for Rehearing at 11, *LS Power Midcontinent, LLC*, 988 N.W.2d 316 (No. 21–0696) (emphasis added). LS Power argued that "[b]ecause

a temporary injunction is to preserve the status quo," the Iowa Supreme Court could "enjoin the [IUB] and Intervenors from taking further action on projects unlawfully assigned." Appellants' Response to Petitions for Rehearing at 11, *LS Power Midcontinent, LLC*, 988 N.W.2d 316 (No. 21–0696). LS Power then added a footnote:

> Although this appears to be the Court's intent, LS Power does not object to clarifying projects should not proceed to the detriment of competition . . .

Appellants' Response to Petitions for Rehearing at 11 n.2, *LS Power Midcontinent, LLC*, 988 N.W.2d 316 (No. 21–0696). That is, LS Power sought from this Court the same result it sought (and received) from the District Court. Importantly, this Court agreed that the statute would likely be found unconstitutional yet declined to provide the clarification sought by LS Power.[27]

Because the injunction against ITC and the IUB is overbroad the Court should reverse the injunction.

IV. THE DISTRICT COURT ERRED IN DENYING MISO LEAVE TO FILE ITS AMICUS CURIAE BRIEF.

A. Issue Preservation.

Error was preserved when MISO sought leave to file its amicus curiae brief, D0153, D0154; ITC supported the request, D0157; and the District Court denied

[27] *See* Order Denying Rehearing, *LS Power Midcontinent, LLC*, 988 N.W.2d 316 (No. 21–0696) (Apr. 26, 2023).

leave, D0159. *See Metz v. Amoco Oil Co.*, 581 N.W.2d 597, 600 (Iowa 1998) ("Our preservation rule requires that issues must be presented to and passed upon by the district court before they can be raised and decided on appeal." (citation omitted)).

B. Standard of Review.

No decision appears to address the review standard applying to a district court's denial of leave to file an amicus. But "[a]n appellate court has broad discretion in determining whether to allow an amicus curiae brief." Iowa R. App. P. 6.906(5). And federal district courts have recognized their discretion to allow an amicus by analogy to the counterpart federal appellate rules. *See, e.g.*, *Jin v. Ministry of State Sec.*, 557 F. Supp. 2d 131, 136 (D.D.C. 2008). The Court should thus apply an abuse of discretion standard. Under that standard, a "district court abuses its discretion when it 'exercises its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable,'" and an "erroneous application of the law is clearly untenable." *First Am. Bank v. Fobian Farms, Inc.*, 906 N.W.2d 736, 744 (Iowa 2018) (citation omitted).

C. Argument.

Even though the impact of the District Court's ruling on MISO was central to the litigation, the District Court denied MISO leave to file its amicus brief, citing two reasons. First, the District Court reasoned that it lacked "legal authority to allow amicus participation at the trial court level." D0159 at 7. Second, invoking the Iowa Rules of Appellate Procedure, the District Court found that MISO had "not

established the existence of any of the factors set forth in the subparagraphs of Rule 6.906(5)." D0159 at 7. The District Court was incorrect on both points and deprived itself of the "unique perspective and information that [to] assist [it] in assessing the ramifications of the ultimate resolution of this litigation." D0154¶ 4.

1. Iowa District Courts have discretion to permit amicus briefs.

To start, the District Court was correct that an appellate rule authorizes amici in the appellate courts, while no similar rule exists in the civil-procedure rules. *See* D0159 at 7. Yet the same is true in the federal system. Federal Rule of Appellate Procedure 29 authorizes appeals courts to accept amici, but no rule authorizes federal district courts to accept them. *See Sierra Club v. Fed. Emergency Mgmt. Agency*, No. H-07-0608, 2007 WL 3472851, at *1 (S.D. Tex. Nov. 14, 2007) ("No statute, rule, or controlling case defines a federal district court's power to grant or deny leave to file an *amicus* brief." (citation omitted)). All the same, federal district courts "have wide discretion in deciding whether to grant a third party leave to file an amicus brief." *United States v. Sutton*, No. 21-0598 (PLF), 2023 WL 3478484, at *1 (D.D.C. May 16, 2023) (citation omitted). Exercising that discretion, federal district courts routinely allow amicus briefs. *See, e.g.*, *Richland/Wilkin Joint Powers Auth. v. U.S. Army Corps of Eng'rs*, 38 F. Supp. 3d 1043, 1055 (D. Minn. 2014); *see also Wash. All. of Tech. Workers v. United States Dep't of Homeland Sec.*, 50 F.4th 164, 193 (D.C. Cir. 2022) ("As the district court noted, it has broad discretion to

allow amicus briefs when they provide 'unique information or perspective' that 'can help the [c]ourt beyond the help that the lawyers for the parties are able to provide.'" (citation omitted)).[28] This Court should reaffirm that district courts have discretion to permit relevant amicus briefs, and that district courts should particularly do so where they are from a party with a clear interest in and a perspective uniquely relevant to the outcome.

2. The District Court abused its discretion in denying MISO leave to file its amicus brief.

The District Court recognized that Iowa Rule of Appellate Procedure 6.906(5)(a) identifies a series of circumstances when an appellate court should permit an amicus brief to be filed. *See* D0159 at 7. According to the District Court, however, none of those justifications was present below. *See* D0159 at 7. That is incorrect.

The Iowa Rules of Civil Procedure do not prescribe the circumstances when a district court may permit an amicus. Under Iowa Rule of Appellate Procedure 6.906(5)(a)(3), however, an amicus should be allowed if "[t]he proposed

[28] In denying MISO's motion to file an amicus brief, the District Court stated, "No party has cited any Iowa Code provision, any Iowa Rule of Civil Procedure, or any reported Iowa appellate decision which authorizes amicus participation at the trial court level." D0159 at 6. This is incorrect. ITC cited the Iowa Rules of Appellate Procedure and a district court decision applying the Federal Rules of Appellate Procedure in District Court to the District Court. *See* D0157 at 3. The District Court declined to engage in any analysis distinguishing its decision from federal district court cases reaching a different conclusion.

amicus curiae has a unique perspective or information that will assist the court in assessing the ramifications of any decision rendered in the present case." That is precisely the case here. As the RTO responsible for planning and operating the transmission grid in a fifteen-state region that includes Iowa, MISO was uniquely positioned to speak to the potential consequences of the Court's injunction and the conflict between the injunction and federal law. As MISO noted in its amicus brief, the Tranche 1 portfolio, which includes the Iowa LRTPs, will provide numerous benefits including enabling cost-effective future generation, access to lower-cost energy production, and improved reliability. D0153 at 17. By contrast, the injunction will cause "severe, concrete, and particularized" harm to energy customers and energy providers in Iowa and the rest of MISO's footprint. D0153 at 18. This insight should have informed the District Court in balancing the relative hardships of equitable relief.

As MISO says, it submitted an amicus brief with one purpose: to "urge[] this Court to reconsider those portions of its Injunction Order that enjoin permitting of the LRTP Tranche 1 projects in Iowa that have been assigned to Intervenor Utilities pursuant to the Tariff." D0153 at 2. That was the exact question before the District Court on the motion to reconsider. In its Order on the motions for reconsideration, the District Court stated that it went through "great pains" in its Summary Judgment Order to "to point out that in issuing its Ruling, this Court was only seeking to do

justice between the parties to this action and the Court need not concern itself with how its decision might impact MISO." D0159 at 5. This is a position the District Court could only maintain by denying MISO's motion to submit an amicus brief because MISO's brief (and MISO surely is in the best position to know) explains that *the District Court was in fact impacting MISO*, regardless of the "great pains" it may have taken. D0153 at 2.

The District Court ultimately refused MISO's request to explain the effects of the District Court's Order. MISO's unique perspective included confirmation that the District Court lacked jurisdiction. As MISO observed in its brief, D0153 at 2, MISO's transmission planning processes fall squarely within FERC's exclusive jurisdiction. *See S.C. Pub. Serv. Auth.*, 762 F.3d at 56 (reasoning that "transmission planning practices directly affect rates" and that FERC "is obligated by the plain text of Section 206 [of the FPA] to ensure that such practices are just and reasonable and not unduly discriminatory or preferential"). Iowa thus has no power to regulate, directly or indirectly, MISO's Tariff. *See AEP Tex. N. Co. v. Tex. Indus. Energy Consumers*, 473 F.3d 581, 585 (5th Cir. 2006) ("FERC, not the state, is the appropriate arbiter of any disputes involving a tariff's interpretation."); *see also Hughes v. Talen Energy Mktg., LLC*, 578 U.S. 150, 165 (2016) ("A State must rather give effect to Congress' desire to give FERC plenary authority over interstate

wholesale rates, and to ensure that the States do not interfere with this authority." (citation omitted)). Only FERC may do that.

In addition to providing helpful guidance to the District Court on challenging issues, no party was prejudiced by MISO's amicus brief. To blunt any potential prejudice, the District Court authorized responsive briefing, which gave LS Power a chance to respond to MISO's legal position. *See* D0155. Moreover, while MISO adds value through its unique perspective and responsibility for managing and planning the grid, MISO did not raise surprising legal arguments. MISO's arguments were consistent with those raised by the State, ITC, and MEC in their motions for reconsideration, and MISO's brief focused on the narrow question of the permissible scope of this Court's injunction. LS Power would not have suffered prejudice from allowing leave.

Because of MISO's expertise on the specific issues before the District Court and because its brief would have assisted in resolving the significant legal issues of federal preemption, federal jurisdiction, and harm to the public, the District Court erred in denying MISO leave to file its amicus curiae brief. This Court should reverse. *See First Am. Bank*, 906 N.W.2d at 744 (reasoning that an erroneous application of law is an abuse of discretion).

CONCLUSION

For the reasons stated, this Court should reverse the District Court's decision and remand with instructions to dissolve its injunction for lack of jurisdiction.

REQUEST FOR ORAL SUBMISSION

ITC hereby respectfully requests oral argument in this appeal, and respectfully requests the Court allow thirty minutes of argument per side.

Respectfully submitted on June 25, 2024.

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COST CERTIFICATE

I hereby certify that the cost of printing the foregoing brief was the sum of $0.00.

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Iowa Rule of Appellate Procedure 6.903(1)(i)(1) because this brief contains 10,176 words, excluding the parts of the brief exempted by Iowa Rule of Appellate Procedure 6.903(1)(i)(1).

This brief complies with the typeface requirements of Iowa Rule of Appellate Procedure 6.903(1)(g) and the type style requirements of Iowa Rule of Appellate Procedure 6.903(1)(h) because this brief has been prepared in a proportionally spaced typeface using Times New Roman in 14 point.

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CERTIFICATE OF SERVICE

The undersigned certifies the foregoing document was electronically filed with the Clerk of the Supreme Court using the Electronic Document Management System (EDMS) on June 25, 2024, which will send a notice of electronic filing to all registered counsel of record.

Dated: June 25, 2024

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