

IN THE IOWA SUPREME COURT

No. 24-0641

Polk County No. CVCV060840

LS POWER MIDCONTINENT, LLC and SOUTHWEST
TRANSMISSION, LLC,
Plaintiffs-Appellees,

vs.

STATE OF IOWA, IOWA UTILITIES BOARD, ERIK HELLAND,
Defendants-Appellants,

and

GLEN DICKINSON and LESLIE HICKEY,
Defendants,

and

MIDAMERICAN ENERGY COMPANY and ITC MIDWEST, LLC
Intervenors-Appellants.

**APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
THE HONORABLE COLEMAN MCALLISTER,
DISTRICT COURT JUDGE**

APPELLANT MIDAMERICAN ENERGY COMPANY'S REPLY BRIEF

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. THE MISO TARIFF AND MISO'S ASSIGNMENT OF THE TRANCHE 1 LRTP PROJECTS ARE A MATTER OF FEDERAL LAW AND THE DISTRICT COURT LACKED SUBJECT MATTER JURISDICTION TO ISSUE A PERMANENT INJUNCTION PROHIBITING APPELLANTS FROM PROCEEDING WITH THE TRANCHE 1 LRTP PROJECTS.

A. Standard of Review

B. Argument

1. Issuance Of The Permanent Injunction Was Improper Because FERC, Not The District Court, Has Jurisdiction Over The Tranche 1 LRTP Projects.

2. The District Court Should Not Have Entered A Retroactive Injunction

3. It Is Impossible To Comply With The District Court's Order And Federal Requirements.

II. THE DISTRICT COURT ERRED BY ISSUING AN OVERBROAD PERMANENT INJUNCTION THAT DISREGARDS MIDAMERICAN'S INDEPENDENT OBLIGATIONS UNDER THE MISO TARIFF FOR ELECTRIC TRANSMISSION LINE CONSTRUCTION.

1. The Permanent Injunction Should Be Narrowed Because It Will Jeopardize The Transmission System And Could Cause Reliability, Economic, And Public Policy Impacts

ARGUMENT

The precise question is whether the District Court exceeded its jurisdiction when entering a permanent injunction (Permanent Injunction) impacting projects governed and overseen by the Federal Energy Regulatory Commission (FERC) and assigned by the Midcontinent Independent System Operator (MISO) instead of limiting its ruling to the constitutional issues raised by LS Power. (D0136, S.J. Ruling at 21 (12/04/2023)). MidAmerican urges this Court to find the District Court exceeded its jurisdiction and seeks to narrow the Permanent Injunction.

The court's ruling that the legislature's passage of Iowa Code § 478.16 (Iowa's right of first refusal (ROFR) law) did not pass constitutional muster granted LS Power substantial and meaningful relief by enjoining the applicability of the statute. The District Court erred, however, by entering an overbroad Permanent Injunction that reaches back in time to divest MidAmerican of projects that MISO had already assigned to it or that MidAmerican has a separate right or obligation to construct under the MISO Tariff. (D0087, LS Power's App. in Supp. of M.S.J. at 327 (06/02/2023) (MISO Tariff, Att. FF, § VIII.A.2)). Contrary to LS Power's assertion, MidAmerican is not asserting a constitutional violation should go unremedied. The ROFR statute was deemed unconstitutional; MidAmerican is not challenging this portion of the District Court's ruling. The District Court's ruling on the constitutionality of the statute was an appropriately tailored, prospective

remedy. However, the District Court did not stop there and went on to provide LS Power an overbroad remedy that the District Court was without jurisdiction to issue. The District Court erred in finding that the Permanent Injunction did not interfere “with FERC or MISO’s role and/or authority” and that its authority to issue injunctive relief was not preempted by federal law. (D0159, Ruling on M. to Reconsider at 5 (03/19/2024)). As outlined below, the Permanent Injunction should be narrowed and MidAmerican should not be prohibited from moving forward with construction of the Tranche 1 LRTP Projects¹, portions of which were assigned to MidAmerican by MISO on July 25, 2022. (D0118, MidAmerican’s Br. in Supp. of Resistance to LS Power’s M.S.J at 25 (08/04/2023); D0118, MidAmerican’s App. in Supp. of M.S.J. Resistance, Dec. of Dehn Stevens at 4 (08/04/2023)).

I. THE MISO TARIFF AND MISO’S ASSIGNMENT OF THE TRANCHE 1 LRTP PROJECTS ARE A MATTER OF FEDERAL LAW AND THE DISTRICT COURT LACKED SUBJECT MATTER JURISDICTION TO ISSUE A PERMANENT INJUNCTION PROHIBITING APPELLANTS FROM PROCEEDING WITH THE TRANCHE 1 LRTP PROJECTS

A. Standard of Review

The Court will review subject matter jurisdiction rulings and summary judgment rulings for correction of errors at law. *Iowa Individual Health Ben.*

¹ The Long-Range Transmission Planning (LRTP) Tranche 1 Portfolio consists of the following transmission lines: 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).

Reinsurance Ass'n v. State Univ. of Iowa, 876 N.W.2d 800, 804 (Iowa 2016) (explaining that rulings on subject matter jurisdiction is for correction of errors at law); *Nelson v. Lindaman*, 867 N.W.2d 1, 6 (Iowa 2015) (“We review a district court decision granting or denying a motion for summary judgment for correction of errors at law.”). MidAmerican disagrees with LS Power’s proposed standard of review as it relates to the issuance of the Permanent Injunction. The District Court’s disposition of the case on summary judgment should have been limited to the constitutional question, but instead, it went a step further and permanently enjoined MidAmerican from proceeding with the Tranche 1 LRTP Projects. An appeal of an injunction is in equity, and thus, requires a de novo standard of review. *Matlock v. Weets*, 531 N.W.2d 118, 121 (Iowa 1995) (“A request for an injunction invokes the court’s equitable jurisdiction. Because the appeal of the injunction is in equity, our review is de novo.”) (internal citations omitted).

But even if this Court finds that the district court’s issuance of a permanent injunction should be examined for correction of errors at law because it was issued as part of an overarching summary judgment ruling, the District Court incorrectly applied the law by overstepping the bounds of its jurisdiction such that MidAmerican prevails under either standard of review. *See Bailey v. Batchelder*, 576 N.W.2d 334, 338 (“Once a court discovers it does not have subject matter jurisdiction, it has no

choice but to dismiss the case, no matter where in the stage of the proceedings this jurisdictional defect comes to light.”).

B. Argument

1. Issuance Of The Permanent Injunction Was Improper Because FERC, Not The District Court, Has Jurisdiction Over The Tranche 1 LRTP Projects.

A significant portion of LS Power’s Brief focuses on the passage of the ROFR and the District Court’s finding that the manner in which the ROFR was passed was unconstitutional. The District Court’s ruling should have ended there. However, the District Court went on to enter a Permanent Injunction in excess of its jurisdiction because it purported to adversely impact MidAmerican’s compliance with the federally regulated MISO Tariff for the existing Tranche 1 LRTP Projects. (D0084, LS Power’s Br. in Supp. of M.S.J. at 25 (06/02/2023)); *City of Osceola, Ark. v. Entergy Ark., Inc.*, 791 F.3d 904, 908 (8th Cir. 2015) (explaining that a tariff contained in an agreement filed with and approved by FERC is “the equivalent of a federal regulation.”). FERC, not the district court, is the appropriate forum to resolve any disputes related to the Tranche 1 LRTP Projects. *See NextEra Energy Cap. Holdings, Inc. v. Lake*, 48 F.4th 306, 311 (5th Cir. 2022) (citing 16 U.S.C. § 824(b)(1); *Nat’l Ass’n of Regul. Util. Comm’rs v. FERC*, 964 F.3d 1177, 1181 (D.C. Cir. 2020)); *Save the Colo. v. Spellmon*, 50 F.4th 954, 957 (10th Cir. 2022) (“Federal courts of appeals have exclusive jurisdiction over petitions challenging

decisions made by the Federal Energy Regulatory Commission.”); *Ass’n of Pub. Agency Customers, Inc. v. Bonneville Power Admin.*, 126 F.3d 1158, 1173 (9th Cir. 1997) (“Interstate transmission is clearly a federal matter”). The District Court afforded LS Power a remedy it was without jurisdiction to provide and seeks to improperly prohibit MidAmerican from complying with its federal obligations under the MISO Tariff.²

LS Power incorrectly claims federal preemption was an affirmative defense that should have been pled. However, subject matter jurisdiction—“the authority of a court to hear and determine cases of the *general class* to which the proceedings in question belong”—can be raised at any time. *Alliant Energy-Interstate Power and Light Co. v. Duckett*, 732 N.W.2d 869, 874 (Iowa 2007); *Pierce v. Pierce*, 287 N.W.2d 879, 881 (Iowa 1980). A state court is deprived of subject matter jurisdiction if Congress vests the exclusive jurisdiction with a federal body, such as FERC. *See Teamsters Local 358 v. Des Moines Register*, 438 N.W.2d 598, 599 (Iowa 1989)

² *See Webster–Franklin–Marshalltown–Morgan Valley Transmission Project Commencement of Variance Analysis*, MIDCONTINENT INDEPENDENT SYSTEM OPERATOR, INC., <https://cdn.misoenergy.org/Webster%20-%20Franklin%20-%20Marshalltown%20-%20Morgan%20Valley%20Variance%20Analysis%20Public%20Notice633079.pdf> (last visited September 16, 2024) (“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 and MidAm are still listed as the owners of the Project in MISO’s MTEP Appendix A and the District Court Order did not suspend ITC and MidAm’s obligation to construct the Project as imposed upon ITC and MidAm pursuant to the Tariff.”).

(affirming district court’s dismissal of an action based on a lack of subject matter jurisdiction due to federal preemption). The Federal Power Act provides that “the business of transmitting and selling electric energy for ultimate distribution to the public is affected with a public interest” such that federal regulation is necessary. 16 U.S.C. § 824(a). This federal regulation extends to matters not subject to regulation at the state level. *Id.* MISO’s assignment of projects pursuant to a FERC-approved Tariff is a matter that is exclusively federally regulated. 16 U.S.C. § 824(b)(1). Therefore, Appellants properly raised the issue that the District Court lacked subject matter jurisdiction.

2. The District Court Should Not Have Entered A Retroactive Injunction.

Throughout its Brief, LS Power claims it is entitled to additional remedies from the District Court, including retroactive remedies to undo MISO’s assignment of the Tranche 1 LRTP Projects. (LS Power’s App. Br. at 33–34, 36 (08/26/2024)). However, LS Power glosses over the fact that the District Court provided LS Power with a substantial remedy when it found that the passage of the ROFR was unconstitutional. Therefore, the ROFR cannot be relied upon for future projects. The District Court had jurisdiction to analyze the constitutionality of the passage of the ROFR. However, the District Court did not have jurisdiction to issue the retroactive Permanent Injunction to purportedly unwind the Tranche 1 LRTP Projects previously assigned by MISO in compliance with the MISO Tariff. This

overreaching entry of the Permanent Injunction was federally preempted because the District Court usurped FERC’s authority under the Federal Power Act to regulate wholesale transmission issues and federal power projects. *City of Salisbury, N.C. v. Fed. Energy Regul. Comm’n*, 36 F.4th 1164, 1171 (D.C. Cir. 2022). MidAmerican is not claiming LS Power is “too late to provide any remedy;”³ LS Power received a substantial remedy in the finding that the statute is unconstitutional; MidAmerican’s argument is that the District Court exceeded its jurisdiction by issuing an additional and inappropriately retroactive remedy in the Permanent Injunction.

In seeking to justify the inappropriate and retroactive injunction, LS Power cites case law generally addressing a court enjoining an unconstitutional statute. However, LS Power cites no case law involving the interplay between a state court reviewing the passage of a state statute and projects awarded to a litigant by a specialized federal agency⁴ prior to a state court’s declaration that a statute is unconstitutional. (LS Power’s App. Br. at 28–29). LS Power also fails to cite a case in which a state court took projects away that had previously been assigned by MISO pursuant to a ROFR.

³ LS Power’s App. Br. at 30.

⁴ Illustrating the complex nature of MISO’s work and the missteps and consequences that can result from wading into the specialized waters of the world of FERC and MISO, LS Power cites provisions of Selected Developer Agreements that were never even executed by MidAmerican. Thus, these provisions cited do not even apply to issues to be decided by this Court. (LS Power’s App. Br. at 46 n.20).

The cases cited by LS Power are factually and procedurally distinguishable. In *Central States Theatre Corporation v. Sar*, a case cited by LS Power in its Brief, the Iowa Supreme Court addressed the request for an injunction related to the *enforcement* of an unconstitutional statute *against* a litigant. 245 Iowa 1254, 1267-68, 66 N.W.2d 450, 457-58 (1954); LS Power’s App. Br. at 28. In *Central States*, a drive-in theater operator filed an action seeking to enjoin defendants from interfering with operation of a drive-in theater, for which he had previously been denied a license under a discretionary statute. *Id.* *Stoner McCray System v. City of Des Moines* also involved the question of enforcement of an unconstitutional statute. 247 Iowa 1313, 1324, 78 N.W.2d 843, 850, 851 (1956); LS Power App. Br. at 28. In *Stoner McCray System*, an owner of billboards sought to enjoin the city from enforcing a zoning ordinance the owner alleged was unconstitutional. *Id.* The relief afforded in these two cases was prospective relief regarding how to handle treatment of the drive-in and billboards in the future.⁵ In these cases, the courts did not address

⁵ The case of *Brodkey v. Sioux City*, 229 Iowa 1291, 291 N.W. 171, 176 (Iowa 1940) is also inapposite because it addressed a city’s purchase of parking meters it intended to install and collect revenue from pursuant to an unconstitutional ordinance. LS Power App. Br. at 28. The relief sought in *Brodkey* was prospective in nature to prohibit the city from imposing parking charges pursuant to the ordinance.

The criminal cases cited by LS Power regarding the judiciary’s role in addressing allegedly unconstitutional acts (and not statutes) are also unpersuasive. See LS Power App. Br. at 33 (citing *Montgomery v. La.*, 577 U.S. 190, 204 (2016))

whether a litigant could “keep” projects assigned to it by a federal agency or whether the Courts could undo assignments of projects made by a federal agency. The cases cited by LS Power are factually distinguishable and do not overcome the fatal defect that the District Court provided a remedy outside its jurisdiction.

3. It Is Impossible To Comply With The District Court’s Order And Federal Requirements.

The Permanent Injunction should be dissolved or narrowed because it purports to put MidAmerican in a position where it is “impossible . . . to comply with both state and federal requirements.” *Freeman v. Grain Processing Corp.*, 848 N.W.2d 58, 75 (Iowa 2014). This is further illustrated by MISO’s recent publicly posted Variance Analysis Outcome - Mitigation Plan decisions addressing the Tranche 1 LRTP Projects (Mitigation Plan).⁶ On August 29, 2024 MISO issued public notices stating that “it has determined that the most suitable outcome to

(addressing a defendant’s criminal murder conviction; *Lafler v. Cooper*, 566 U.S. 156, 170 (2012) (addressing a criminal prisoner’s claims for postconviction relief).

⁶ In its Brief, LS Power referenced MISO’s ability to perform a variance analysis. LS Power’s App. Br. at 52-53; *Madison-Ottumwa-Skunk River Transmission Project Notice of Variance Analysis Outcome – Mitigation Plan*, MIDCONTINENT INDEPENDENT SYSTEM OPERATOR, INC., 1 (2024), <https://cdn.misoenergy.org/Madison%20-%20Ottumwa%20-%20Skunk%20River%20Variance%20Analysis%20Mitigation%20Plan%20Public%20Notice645355.pdf>; *Beverly – Sub 92 Transmission Project Notice of Variance Analysis Outcome – Mitigation Plan*, MIDCONTINENT INDEPENDENT SYSTEM OPERATOR, INC., 1 (2024), <https://cdn.misoenergy.org/Beverly%20-%20Sub%2092%20Variance%20Analysis%20Mitigation%20Plan%20Public%20Notice645354.pdf>.

alleviate the inability to complete the facilities is to implement a Variance Analysis mitigation plan in accordance with the procedures contained in Attachment FF, Section IX of the MISO Tariff.” *Madison-Ottumwa-Skunk River Transmission Project Notice of Variance Analysis Outcome – Mitigation Plan*, MIDCONTINENT INDEPENDENT SYSTEM OPERATOR, INC., 1 (2024), <https://cdn.misoenergy.org/Madison%20-%20Ottumwa%20-%20Skunk%20River%20Variance%20Analysis%20Mitigation%20Plan%20Public%20Notice645355.pdf>; *Beverly – Sub 92 Transmission Project Notice of Variance Analysis Outcome – Mitigation Plan*, MIDCONTINENT INDEPENDENT SYSTEM OPERATOR, INC., 1 (2024), <https://cdn.misoenergy.org/Beverly%20-%20Sub%2092%20Variance%20Analysis%20Mitigation%20Plan%20Public%20Notice645354.pdf>.

“Pursuant to Attachment FF, Section IX.B, MISO’s ‘Competitive Transmission Executive Committee [CTEC] shall have the **exclusive and final authority** to oversee and implement Variance Analysis, including the decision to implement any of the appropriate Variance Analysis Outcomes’ set forth within the MISO Tariff.” *Id.* at 2 (emphasis added).

The Mitigation Plan outlined the following:

The District Court Order specifically acknowledged that MISO was not a party to the action and did not order MISO to take any action. Further, the District Court Order did not change the assigned ownership of the Project, nor did the District Court Order cause any of the facilities’

classification to be modified to a Competitive Transmission Facility. ITC and MidAm are still listed as the owners of the Project in MISO's MTEP Appendix A, and the District Court Order did not suspend ITC and MidAm's obligation to construct the Project as imposed upon ITC and MidAm pursuant to the Tariff.⁷

Id.

The Mitigation Plan acknowledged that “per the District Court Order, the Project can still be designated to ITC and MidAm provided it is assigned in a manner not in reliance on the Iowa ROFR.” *Id.* at 3.

The Mitigation Plan advised that:

The most appropriate Variance Analysis outcome shall be a mitigation plan which will: (i) assign ownership of the Iowa facilities through existing provisions set forth within the Transmission Owner Agreement (TOA), 15 and (ii) expediently resolve the reliability concerns created by potential or actual construction delays of the LRTP Tranche 1 Project. By implementing said mitigation plan, all facilities and assignments listed in the current LRTP Tranche 1 Appendix A will remain unchanged.

Id. The CTEC elected “to implement a mitigation plan to use existing provisions of the TOA to assign the referenced Iowa facilities to the Owner of the transmission system in which the facilities are connected.” *Id.* at 4.

Following the issuance of the Mitigation Plan, MidAmerican remains obligated to construct the Tranche 1 LRTP Projects. The Permanent Injunction states that “this permanent injunction does not prohibit the Intervenors, if reassigned

⁷ Tariff, Rate Schedule 1, MISO Transmission Owner Agreement, Appendix B, § VI.

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) (emphasis added). A variance process was initiated and completed by MISO and the Mitigation Plan confirmed the Tranche 1 LRTP Projects are now assigned to MidAmerican and ITC based on existing provisions set forth in the MISO Transmission Owner Agreement and not in reliance on the ROFR.⁸ (Mitigation Plan at 4). Based on principles of federal preemption, this the District Court was without jurisdiction to re-examine the decisions of MISO or to usurp FERC’s authority under the Federal Power Act to regulate wholesale transmission issues and federal power projects. 16 U.S.C. § 824(b)(1) (“The provisions of this subchapter shall apply to the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce. . . [t]he Commission shall have jurisdiction over all facilities for such transmission or sale of electric energy . . .”); *Ass’n of Pub. Agency Customers v. Bonneville Power Admin.*, 126 F.3d 1158, 1173 (9th Cir. 1997) (“Interstate transmission is clearly a federal matter.”); *Cal. ex rel. Lockyer v. Dynegy, Inc.*, 375 F.3d 831, 843 (affirming district court’s denial of

⁸ The Mitigation Plan states that “CTEC’s selected mitigation plan to assign ownership of the Iowa facilities in the Project [Tranche 1 LRTP Projects] through existing provisions in the TOA will not require any changes to the currently listed ownerships documented in Appendix A of the LRTP Tranche 1 portfolio. *Id.* at 5.

motions to remand to state court due to tariffs filed with FERC and concerned obligations exclusively arising under the FPA, and holding that the state's claims were federally preempted).

The Tranche 1 LRTP Projects have been assigned by MISO in the Mitigation Plan “in a manner not relying on claimed existence of § 478.16” and MidAmerican remains obligated under MISO’s FERC-approved Tariff to continue development of the Tranche 1 LRTP Projects. (D0136 at 22). Thus, even if the Permanent Injunction is not dissolved, the Permanent Injunction as issued by the District Court does not prohibit MidAmerican from moving forward with construction of the Tranche 1 LRTP Projects. Any further claim by LS Power that it is entitled to retroactive remedies and attempt to unwind the assignment of the Projects cannot be addressed in state court, because of the lack of jurisdiction, and can only be addressed by FERC.

II. THE DISTRICT COURT ERRED BY ISSUING AN OVERBROAD PERMANENT INJUNCTION THAT DISREGARDS MIDAMERICAN’S INDEPENDENT OBLIGATIONS UNDER THE MISO TARIFF FOR ELECTRIC TRANSMISSION LINE CONSTRUCTION

LS Power continues to ignore the important fact that with or without a ROFR in Iowa, MidAmerican still has the obligation and right under the MISO Tariff to construct certain portions of the Tranche 1 LRTP Projects. (MidAmerican App. Br.

at 29).⁹ While MidAmerican has pointed this out in each of its briefs, LS Power’s Brief and the overbroad Permanent Injunction fail to appropriately recognize these important rights derived from the specialized MISO Tariff. The MISO Tariff provides that if 80 percent of a project’s costs are upgrades, then the project does not undergo the Selected Developer Process. (D0118, MidAmerican’s App. in Supp. of M.S.J. Resistance, Dec. of Dehn Stevens at 5). MidAmerican retains the right to develop upgrades to the existing lines and substations that it owns regardless of the Permanent Injunction entered by the District Court. (D0087 at 327); *see also Agreement of Transmission Facilities Owners to Organize the Midcontinent System Operator, Inc. A Delaware Non-Stock Corporation (TOA), Att. FF, § VIII.A.2*).¹⁰ MidAmerican also retains rights under the MISO Tariff to add to and modify

⁹ As MidAmerican explains in its opening Brief, the MISO Tariff first requires that a determination be made as to whether 80 percent of the project’s costs are upgrades. (MidAmerican App. Br. at 29 (citing D0118, MidAmerican’s App. in Supp. of M.S.J. Resistance, Dec. of Dehn Stevens at 5)). Additionally, the TOA provides that “[e]ach 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 located.” *Id.* (citing TOA § VI). With or without a ROFR, MidAmerican can make modifications to an existing substation, such as to the Webster Substation. *Id.* at 33–35. In the event of extreme weather, such as a storm, tornado, or ice storm, MidAmerican remains responsible for replacing damaged facilities.

¹⁰ The TOA states: “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.” TOA, § VI. The TOA is enforceable under federal law as it was approved by FERC. *See* TOA, § I.A.2.

existing substations, as well as modify transmission lines needed to connect to a new substation. (D0118, MidAmerican’s App. in Supp. of M.S.J. Resistance, Dec. of Dehn Stevens at 5). The overbroad Permanent Injunction fails to recognize this essential aspect of MISO’s project designation process, which is separate and distinct from the ROFR.

The Permanent Injunction and LS Power’s arguments disregard the fact that at least certain portions of the Tranche 1 LRTP Projects will never be competitively bid and also fail to acknowledge the Permanent Injunction has a carve out for projects assigned to MidAmerican not in reliance on the ROFR. (D0136 at 22 (“It is therefore ordered, adjudged, and decreed that 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.**”¹¹) (emphasis added.); D0118, MidAmerican’s App. in Supp. of M.S.J. Resistance, Dec. of Dehn Stevens 1, 5–11; MidAmerican’s App. Br. at 11). Despite MidAmerican extensively briefing and illustration regarding the

¹¹ On September 11, 2024 MidAmerican provided notice to the Iowa Utilities Commission in Docket No. E-22543 regarding the Variance Analysis Outcome and stating “as permitted by the district court’s injunction, MidAmerican will initiate activities associated with the [Tranche 1 LRTP Projects] that are reserved to MidAmerican under the federal MISO Tariff, including efforts in this docket to obtain a franchise for the Webster to Franklin project.”

MISO assignments based on upgrades and addition and modifications of existing substations, as well as modification of transmission lines needed to connect to a new substation, the District Court's Permanent Injunction also does not sufficiently recognize this important basis for MISO's assignment to MidAmerican for portions of the Tranche 1 LRTP Projects. (D0118, MidAmerican's App. in Supp. of M.S.J. Resistance, Dec. of Dehn Stevens at 5). On this basis, the Permanent Injunction should be dissolved or modified.

In its Brief, LS Power claims MidAmerican improperly secured easements following this Court's March 24, 2023 decision. (LS Power's App. Br. at 63). This Court's decision stayed enforcement of the ROFR and remanded this issue to the District Court for adjudication of the constitutional claims. *LS Power Midcontinent, LLC v. State*, 988 N.W.2d 316, 340 (Iowa 2023). However, the easements referenced by LS Power had been sent to landowners prior to the Court's March 24, 2023 decision and the easements will be necessary for any party to pursue development of the Tranche 1 LRTP Projects. As set forth above, MidAmerican also has a right, that is not in reliance on the ROFR, to construct certain portions of the Tranche I LRTP Projects. (D0118, MidAmerican's App. in Supp. of M.S.J. Resistance, Dec. of Dehn Stevens at 5). The easements LS Power references are related to these portions of the Projects. MidAmerican has a right to proceed with the Tranche I LRTP Projects pursuant to the Mitigation Plan and based on the upgrades, additions,

modifications of existing facilities, which make up the Projects. *Id.* The overbroad Permanent Injunction must be dissolved or narrowed because it fails to acknowledge these important distinctions which enable MidAmerican to move forward with construction of the Tranche I LRTP Projects.

1. The Permanent Injunction Should Be Dissolved or Narrowed Because It Will Jeopardize The Transmission System And Could Cause Reliability, Economic, And Public Policy Impacts.

In its Brief, LS Power focuses on the alleged benefits of competition as a significant issue impacting the public issue and potential harm but once again disregards the numerous other public interest and potential harms implicated by the overbroad Permanent Injunction. MISO, a “public utility” under the Federal Power Act and a Regional Transmission Organization (RTO), is subject to the exclusive oversight and regulation of FERC. 16 U.S.C. § 824(e). MISO is responsible for the regional transmission system operation and administration of wholesale electricity markets in a 15-state region, including Iowa. *See Midwest Indep. Transmission Sys. Operator, Inc.*, 97 FERC ¶ 61,326 (2001). Jeopardizing and delaying moving forward with the Tranche 1 LRTP Projects has implications that extend far beyond the borders of Iowa and the wholesale electricity market.

MISO filed a Motion for Leave to file a brief of *amicus curiae*. In its brief, MISO identifies the harm to energy users and energy producers resulting from the overbroad Permanent Injunction because this puts future planning efforts at risk.

(Br. for MISO as *Amicus Curiae*, at 33–34 (07/02/2024)). The Permanent Injunction “hinders further energy grid build-out plans and energy reliability/sustainability plans.” *Id.* In its Mitigation Plan, MISO recognized that “delaying the Iowa facilities’ in-service dates could adversely affect the Transmission System and the MTEP, including potential reliability, economic and public policy impacts.” (Mitigation Plan at 3). The Mitigation Plan adopted by MISO was found to “expediently resolve the reliability concerns created by potential or actual construction delays of the LRTP Tranche 1 Project.”¹² *Id.*

The District Court failed adequately weigh this significant hardship and harm to the public interest prior to granting the Permanent Injunction.¹³ These important considerations cannot be overlooked. (D0114, ITC’s App. in Supp. of M.S.J. at 50, 100 (08/04/2023) (explaining that this project aims to meet goals for reliable and economic delivery of energy); D0118, MidAmerican’s Br. in Supp. of Resistance to LS Power’s M.S.J at 24 (explaining that MidAmerican aims to be responsive to Iowa retail electric customers, who have an interest in reliability and affordable transmission rates); D0150, MidAmerican’s Reply in Supp. of M. for Reconsideration at 10) (02/02/2024) (explaining that the transmission projects are

¹² D0087 at 428–29 (MISO Tariff, Att. FF, § IX. E.2.B).

¹³ MidAmerican’s App. Br. at 37–38 (06/25/2024).

needed to improve the reliability of the electrical grid upon which Iowans rely)). These important considerations highlight MidAmerican's claim that MISO and ultimately FERC are the correct forum to resolve any ongoing disputes regarding the Tranche 1 LRTP Projects and LS Power's claims that the projects cannot be constructed by MidAmerican and ITC Midwest. For these reasons, the Permanent Injunction should be dissolved or narrowed.

JOINDER IN APPELLATE BRIEF FILED BY ITC MIDWEST LLC

MidAmerican also joins the Reply Brief anticipated to be filed by ITC on September 16, 2024 and joins the arguments set forth therein.

CONCLUSION

The District Court erred by entering the Permanent Injunction and determining it had jurisdiction to permanently enjoin MidAmerican from proceeding with required construction of the Tranche 1 LRTP Projects under the federally approved MISO Tariff. This Court should narrow the scope of the Permanent Injunction to clearly state that it only provides prospective relief for future LRTP projects and does not impact MidAmerican's present obligations and rights to construct the Tranche 1 LRTP Projects.

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CERTIFICATE OF FILING AND SERVICE

The undersigned hereby certifies that the foregoing Appellants’ Reply Brief on September 16, 2024, was electronically filed with the Clerk of the Iowa Supreme Court, by using the Iowa Judicial Branch electronic filing system, which will send notice of electronic filing to all parties and attorneys of record.

/s/ Tara Z. Hall
Tara Z. Hall

September 16, 2024
Date

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(i)(1) because this brief contains 4,600 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(i)(1). This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(g)(1) and the type-style requirements of Iowa R. App. 6.903(1)(h) because this brief has been prepared in a proportionally spaced typeface using Word 2018 in Times New Roman 14, is set in a plain style, with case names italicized or underlined.

/s/ Tara Z. Hall
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September 16, 2024
Date

ATTORNEY'S COST CERTIFICATE

I hereby certify that the cost of printing the foregoing Reply Brief was the sum of \$0.00.

/s/ Tara Z. Hall
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September 16, 2024
Date