

**IN THE IOWA SUPREME COURT**

No. 24-0641

Polk County No. CVCV060840

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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.

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

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**APPELLANT MIDAMERICAN ENERGY COMPANY'S FINAL  
BRIEF**

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COMPANY**

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**STATEMENT OF ISSUES PRESENTED FOR REVIEW**

- I. THE DISTRICT COURT LACKS SUBJECT MATTER JURISDICTION TO ISSUE A PERMANENT INJUNCTION PROHIBITING APPELLANTS FROM PROCEEDING WITH THE EXISTING TRANSMISSION PROJECTS BECAUSE THE MISO TARIFF IS A MATTER OF FEDERAL LAW.**
  
- II. THE DISTRICT COURT ERRED BY ISSUING AN OVERBROAD PERMANENT INJUNCTION THAT LACKS CERTAINTY AND CLARITY.**

## **ROUTING STATEMENT**

The Iowa Supreme Court should retain this case pursuant to Iowa Rule of Appellate Procedure 6.1101(2)(f) because the case presents substantial questions of enunciating legal principles. Iowa R. App. 6.1101(2)(f). The Iowa Supreme Court should confirm the jurisdictional and preemption principles at issue in this case. The Iowa Supreme Court should also reaffirm that a permanent injunction must be future looking and cannot be so overbroad such that it interferes with legitimate and mandatory actions required as part of a federally regulated tariff. *In re Langholz*, 887 N.W.2d 770, 780 (Iowa 2016).

## **NATURE OF THE CASE**

This case arises out of a challenge by LS Power Midcontinent, LLC (LS Power) and Southwest Transmission, LLC (Appellees or LS Power) to Iowa Code § 478.16, Iowa's right of first refusal (ROFR) law. The Iowa Legislature enacted the ROFR during its 2020 session, granting incumbent electric transmission owners like MidAmerican Energy Company (MidAmerican) a right of first refusal to construct, own, and maintain its transmission projects in the state. *See* H.F. 2643, 88th G.A., 2d Sess. (Iowa 2020) (enrolled). This law is the same as those from other states, including Nebraska, North Dakota, Minnesota, South Dakota, and Oklahoma. (D0118,



MidAmerican's Br. in Supp. of Resistance to LS Power's M.S.J. at 22 (08/04/2023)).

Shortly after the legislature passed this law, LS Power filed a Petition for Declaratory and Injunctive Relief against the State of Iowa, Iowa Utilities Board (IUB), Geri D. Huser, Glen Dickinson, and Leslie Hickey, asserting that it was unconstitutional. (D0001, Petition at 7–10 (10/14/2020)). Appellants, MidAmerican and ITC Midwest LLC (ITC), intervened in the case due to their interests as incumbent electric transmission owners. (D0013, MidAmerican's App. to Intervene at 1–4 (11/17/2020); D0010, ITC's App. to Intervene at 1–3 (11/17/2020)).

The State filed a Motion to Dismiss, asserting that LS Power lacked standing and that its claims were unripe. (D0009, State's M. to Dismiss at 4–9 (11/16/2020)). The State further argued that LS Power's single-subject and title challenges did not precede codification and that the ROFR was not unconstitutional. *Id.* at 9–14. The District Court granted the State's Motion to Dismiss for lack of standing and this was affirmed by the Iowa Court of Appeals. (D0052, M. to Dismiss Order and M. for Temporary Injunction Order at 3 (03/25/2021)).

The case was then appealed to the Iowa Supreme Court, which sua sponte entered an order for a temporary injunction staying enforcement of the

law and remanded the case to the District Court to rule on the constitutional arguments. *LS Power Midcontinent, LLC v. State*, 988 N.W.2d 316, 340 (Iowa 2023). The Iowa Supreme Court held that LS Power had standing, and that it had shown it could succeed on the merits of its claim that the ROFR violated the Iowa Constitution’s title and single-subject requirements. *Id.* at 336, 338. It also concluded that LS Power would be irreparably harmed by the constitutional violation, and that the balance of harms to the parties and consideration of the public interest justified issuance of a temporary injunction. *Id.* at 338–39.

On remand, the District Court granted LS Power’s Motion for Summary Judgment (Summary Judgment Order), finding the ROFR was unconstitutional. (D0136, S.J. Ruling at 16 (12/04/2023) (Attachment A)). The District Court’s Summary Judgment Order also included a Permanent Injunction enjoining MidAmerican and ITC from “taking any additional action, or relying on prior actions, related to any and all electric transmission line projects in Iowa that were claimed pursuant to, under, or in reliance on Iowa Code § 478.16 and/or Iowa Administrative Code rule 199-11.14” that are subject to the Midcontinent Independent System Operator, Inc. (MISO) Tariff and federal authority under the Federal Energy Regulatory Commission (FERC) (hereinafter, Permanent Injunction). *Id.* at 21. The Court also

permanently enjoined the IUB, utilizing the same language. *Id.* At no point during the litigation was MISO or FERC made a party to the litigation by LS Power.

The Summary Judgment Order contained a carve out to address when the Intervenor could potentially move forward with the Tranche 1 LRTP Projects. This provision states:

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

*Id.* at 22.

Following the Summary Judgment Order and issuance of the Permanent Injunction, the State, MidAmerican, and ITC each timely filed Motions to Reconsider, challenging the scope of injunctive relief. (D0139, State's M. to Reconsider at 3–5 (12/19/2023); D0140, MidAmerican's M. to Reconsider at 1–13 (12/19/2023); D0142, ITC's Br. in Supp. of M. to Reconsider at 14–26 (12/19/2023)). MISO also sought leave from the District Court to file an *amicus curiae* brief and filed a corresponding brief in support of its motion. (D0154, MISO's M. for Leave to File *Amicus Curiae* Br. (02/06/2024)); D0153, MISO's *Amicus Curiae* Br. (02/06/2024)).

In its amicus curiae brief, MISO argued that the Permanent Injunction interfered with FERC's exclusive authority over electric energy transmission and explained that LS Power had a federal remedy. (D0153 at 2–3). It further asserted that the Permanent Injunction was preempted by federal law and FERC regulations. *Id.* at 8–14.

The District Court denied the State, MidAmerican, and ITC's Motions to Reconsider on March 19, 2024. (D0159, Ruling on M. to Reconsider at 8 (03/19/2024) (Attachment B)). It also denied MISO's Motion for Leave to File *Amicus Curiae Brief* on the basis that MISO lacked standing as a non-party to the litigation. *Id.* at 6. MidAmerican and ITC each filed a Notice of Appeal on April 17, 2024, and the State filed its Notice on April 18, 2024. (D0161, MidAmerican's Not. of Appeal (04/17/2024); D0160, ITC's Not. of Appeal (04/17/2024); D0162, State's Not. of Appeal (04/18/2024)).

MidAmerican's narrow appeal focuses on the Permanent Injunction entered by the District Court that affects pending and ongoing transmission projects subject to FERC and its federal authority. MidAmerican's appeal does not challenge the District Court's ruling on the constitutionality of the ROFR.

## STATEMENT OF THE FACTS

### **1. MidAmerican's Existing Transmission Planning Projects and Obligations Under the MISO Tariff**

MidAmerican is an Iowa-based public utility company and an incumbent transmission owner because it owns, operates, and maintains electric transmission lines in the state. Iowa Code § 478.16(1)(c)(1). At the state level, the IUB, Illinois Commerce Commission, and South Dakota Public Utilities Commission regulate its retail rates. At the federal level, FERC regulates its wholesale transmission rates. MidAmerican joined MISO, a FERC-approved regional transmission operator (RTO), in 2009. *See* Docket SPU-2009-0003. FERC governs MISO, which has functional control over MidAmerican's transmission facilities. *LS Power*, 988 N.W.2d at 323; *see also* D0118, MidAmerican's App. in Supp. of M.S.J. Resistance, Dec. of Dehn Stevens at 1 (08/04/2023). As to operational control, MISO directs certain actions in its role as Reliability Coordinator for the North American Electric Reliability Coordination (NERC). (D0118, MidAmerican's App. in Supp. of M.S.J. Resistance, Dec. of Dehn Stevens at 1). MidAmerican designs, maintains, repairs, and replaces its transmission facilities, meaning that MidAmerican retains physical control of these assets. *Id.*

As an RTO, MISO assigns certain regionally cost-allocated projects among developers in accordance with its Tariff. *Id.* at 2. MISO's Tariff—

governing rules approved by FERC—guides its actions and outlines the competitive transmission developer selection process. (D0087, LS Power’s App. in Supp. of M.S.J. at 326 (06/02/2023)). The MISO Tariff explains that a transmission owner, like MidAmerican, “shall have the right to develop, own, and operate any upgrade to a transmission facility owned by the Transmission Owner.” *Id.* at 327.

On July 25, 2022, MISO approved the Long-Range Transmission Planning (LRTP) Tranche 1 Portfolio, which 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) (collectively, Tranche 1 LRTP Projects). *Id.* at 650. The Tranche 1 LRTP Projects are located in whole, or in part, in Iowa. *Id.* On October 14, 2022, MidAmerican, ITC, and Cedar Falls Utilities submitted a Notice of Intent to Construct Transmission to the IUB (Notice of Intent). *Id.*

The MISO Tariff requires MidAmerican to “assume the responsibility and obligation to construct the Competitive Transmission Facilities it is selected to construct.” *Id.* at 414. As an existing transmission owner, MidAmerican is responsible and designated to develop upgrades to existing lines and substations it owns. (D0118, MidAmerican’s App. in Supp. of

M.S.J. Resistance, Dec. of Dehn Stevens at 5). A project will not be subject to the Selected Developer Process if there is a determination made under the MISO Tariff that at least 80 percent of the costs of a project are upgrades. *Id.*; *see also* D0087 at 209. Transmission owners, like MidAmerican, are also obligated to replace facilities like the Tranche 1 LRTP Projects after initial construction if there is failure or damage. (D0118, MidAmerican’s App. in Supp. of M.S.J. Resistance, Dec. of Dehn Stevens at 11).

## **2. The District Court’s Permanent Injunction**

LS Power filed a Motion for Summary Judgment on June 2, 2023, arguing that the ROFR violated the constitution and requested a permanent injunction. (D0086, LS Power’s M.S.J. at 1 (06/02/2023); D0084, LS Power’s Br. in Supp. of M.S.J at 15–31 (06/02/2023)). The State and ITC filed Cross-Motions for Summary Judgment and argued that the District Court was without jurisdiction to enjoin issues related to MISO and FERC. (D0109, State’s Br. in Supp. of M.S.J at 37–38 (08/04/2023); D0115, ITC’s Br. in Supp. of M.S.J. at 8–13 (08/04/2023)). MidAmerican joined ITC’s Cross-Motion for Summary Judgment and resisted LS Power’s Motion for Summary Judgment on the same grounds. (D0117, MidAmerican’s Joinder to ITC’s M.S.J. at 1 (08/04/2023); D0118, MidAmerican’s Br. in Supp. of Resistance to LS Power’s M.S.J. at 25–26 (08/04/2023)).

When the District Court on remand granted LS Power’s Motion for Summary Judgment and entered its Permanent Injunction, it stated, “the Court need not concern itself with how its decision may impact MISO or any other party, the Court need only do justice between the parties.” (D0136 at 18). The District Court denied the State’s and Appellants’ Motions for Reconsideration, stating that it “continues to believe that its injunction in no way interferes with FERC or MISO’s role and/or authority” and that its authority to issue injunctive relief was not preempted by federal law. (D0159 at 5). MidAmerican disagrees.

## ARGUMENT

### **I. THE DISTRICT COURT LACKS SUBJECT MATTER JURISDICTION TO ISSUE A PERMANENT INJUNCTION PROHIBITING APPELLANTS FROM PROCEEDING WITH THE EXISTING TRANSMISSION PROJECTS BECAUSE THE MISO TARIFF IS A MATTER OF FEDERAL LAW.**

#### **A. Error Preservation**

MidAmerican, ITC, and the State raised, and the District Court addressed, the issues of lack of subject matter jurisdiction and federal preemption during the summary judgment proceedings before the District Court and in their Motions to Reconsider. (D0118, MidAmerican’s Br. in Supp. of Resistance to LS Power’s M.S.J at 25–26; D0115 at 8–13; D0109 at 36–38; D0136 at 18). Error is preserved.



## **B. 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. 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.”).

### **Argument**

The District Court erred in entering a retroactive injunction. Generally, injunctions should be forward looking. *See Livingood v. City of Des Moines*, 991 N.W.2d 733, 747 (Iowa 2023) (citing *Engel v. Vernon*, 215 N.W.2d 506, 516) (stating, “rights already lost and wrongs already committed are not subject to injunctive relief”); *Bear v. Iowa Dist. Court of Tama Cty.*, 540 N.W.2d 439, 441 (Iowa 1995) (“A permanent injunction is issued primarily to prevent future acts of harm and, unless specified otherwise in the order, is unlimited in respect of time) (citations omitted); *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”). The District Court’s broad Permanent Injunction is backward looking and has the

improper effect of undoing and unraveling action taken pursuant to the MISO Tariff.

The Court's Ruling and Permanent Injunction implied that MidAmerican and ITC acted with unclean hands, but this is simply not the case. (*See* D0136 at 18). MidAmerican, in good faith, sought to comply with the MISO Tariff and its federal obligations. (D0118, MidAmerican's App. in Supp. of M.S.J. Resistance, Dec. of Dehn Stevens at 1). Dehn Stevens, MidAmerican's Vice President of Transmission Development and Planning, illustrates the various ways the Permanent Injunction implicates parts of the Tranche 1 LRTP Projects unrelated to the ROFR. *Id.* at 5–11. Such aspects separate from the ROFR include portions of the transmission lines not subject to competitive bidding. *Id.* at 8. Even if, however, this Court finds that the Permanent Injunction was not improperly retroactive in nature, this Court should still find that it was improperly issued due to lack of subject matter jurisdiction and federal preemption.

**1. FERC has exclusive jurisdiction over terms the terms and conditions of wholesale use of the transmission system.**

The District Court's Rulings on the Motions for Summary Judgment and Motions to Reconsider and Ruling on MISO's Motion for Leave to File an amicus curiae Brief exceed the bounds of authority that state courts have to adjudicate issues exclusively regulated by federal bodies, such as FERC.

The District Court’s Permanent Injunction presents a jurisdictional infirmity because it is a decision that impacts MidAmerican’s compliance with the federally regulated MISO Tariff for the existing Tranche 1 LRTP Projects. *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.”).

When Congress enacted the Federal Power Act of 1935 and established what ultimately became FERC, it gave FERC “jurisdiction to regulate ‘all facilities for such transmission or sale of electric energy.’” *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 did not have subject matter jurisdiction to permanently enjoin MidAmerican’s existing transmission projects.

The Eighth Circuit’s analysis in *City of Osceola, Ark.* confirms this general understanding. There, the City of Osceola entered into an agreement to buy wholesale energy from a provider. 791 F.3d at 905–06. This agreement—like the MISO Tariff and the MISO Transmission Owners Agreement in this case—was “filed with and approved by [FERC].” *Id.* at 906. The city sued the energy provider in state court for breach of contract, seeking “an ‘award of damages as is permissible under the Federal Power Act . . . and decisions of FERC.’” *Id.* at 907. The company removed the case to federal court. *Id.* The federal district court rejected the city’s attempt to remand the case to state court, explaining that although this was a breach of contract matter, by claiming damages under the Federal Power Act and FERC decisions, the case implicated federal law. *Id.* In affirming the lower court’s decision, the Eighth Circuit explained:

The Supreme Court has made it clear that in passing the Federal Power Act, 16 U.S.C. § 824(b), Congress made a bright line distinction between state and federal jurisdiction, giving FERC plenary and exclusive authority over interstate wholesale rates. The authority to determine whether rates are just and reasonable is vested solely in FERC.

*Id.* at 908 (citing *Nantahala Power & Light Co. v. Thornburg*, 476 U.S. 953, 966 (1986)).

The gravamen of LS Power’s Petition arises out of its challenge to the ROFR’s constitutionality. That has been addressed, and the District Court should have ended its analysis there. By issuing the Permanent Injunction and halting the previously assigned Tranche 1 LRTP Projects based on LS Power’s assertion that they were “improperly assigned,” the District Court afforded LS Power a remedy it was without jurisdiction to provide. (D0084 at 25).

Furthermore, the Federal Power Act empowers FERC to regulate “transmission of electric energy in interstate commerce,” which encompasses the MISO Tariff. 16 U.S.C. § 824(b)(1). LS Power claims that FERC and MISO do not prohibit injunctive relief because those entities defer to state law on “siting, permitting, and environmental constraints.” (D0149, LS Power’s Combined Resistance to M. to Reconsider at 17, (01/16/2024)). However, LS Power’s claims are not related to “siting, permitting and environmental constraints,” and this is incorrect and inconsistent with FERC’s authority over the MISO Tariffs it approves, the MISO transmission planning process, and the Federal Power Act.

The United States Supreme Court’s discussion in *New York v. F.E.R.C.* provides substantial insight into the distinct state and federal roles in transmission planning, and it is instructive analyzing the jurisdictional issues

in this case. 535 U.S. 1, 18 (2002). *New York v. F.E.R.C.* addressed whether FERC could impose certain *transmission* requirements on public utilities that separate and keep together the costs of transmission from the cost of electrical energy when billing its retail customers. *Id.* at 4. The State of New York argued that FERC overstepped its jurisdiction because the requirements applied to retail transactions, which it deemed only subject to state oversight. *Id.* at 16. However, in looking to the clear, statutory language outlined in the Federal Power Act, the Supreme Court confirmed that it “unambiguously authorizes FERC to assert jurisdiction over two separate activities—transmitting and selling.” *Id.* at 19–20. It held that FERC properly exercised its power over the issue of transmission. *Id.*

Similarly, here, the fate of the Tranche 1 LRTP Projects—which are subject to the MISO Tariff—is separate from LS Power’s constitutional challenge to the ROFR. LS Power sought an Iowa forum to adjudicate the constitutionality of the Iowa legislation. (D0119, LS Power’s Combined M.S.J. Reply Br. at 30 (09/08/2024) (“A FERC action was not necessary or proper because FERC cannot declare section 478.16 and rule 199-11.14 unconstitutional. Nor can FERC enjoin Iowa law. That is for an Iowa court—this court.”)). Therefore, the District Court’s Permanent Injunction impermissibly interferes with FERC’s federal, exclusive jurisdiction to

address MidAmerican's responsibilities under the MISO Tariff for construction of the Tranche 1 LRTP Projects.

Iowa Code § 478.16 was in effect and was not enjoined when MISO designated MidAmerican, ITC, and Cedar Falls Utilities as incumbent developers for the transmission projects through the federal process. FERC and MISO have not amended the MISO Tariff or changed the assignments under the Tranche 1 LRTP Projects. Because the Tranche 1 LRTP Projects were not designated as Competitive Transmission Facilities, reassignment is not available under the MISO tariff. (D0087 at 430 (explaining that a “Transmission Provider may determine to reassign Competitive Transmission Facilities in accordance with Section IX.E.3.1” of the Tariff’s Attachment FF)). MISO is required by federal law to follow the provisions of its Tariff.

The Tranche 1 LRTP Projects cannot be reassigned under a variance analysis because only competitive projects can be reassigned under the MISO Tariff. (D0087 at 430 (MISO Tariff, Att. FF, § IX.E.3)). MidAmerican’s federal obligations remain unchanged, and the Permanent Injunction improperly prohibits MidAmerican from complying with its federal obligations under the MISO Tariff.<sup>1</sup> For these reasons, this Court should

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<sup>1</sup> See Webster–Franklin–Marshalltown–Morgan Valley Transmission Project Commencement of Variance Analysis, MIDCONTINENT INDEPENDENT SYSTEM OPERATOR, INC., <https://cdn.misoenergy.org/Webster%20->

reverse the District Court’s decision issuing the Permanent Injunction and hold that LS Power must seek any relief through FERC.<sup>2</sup>

**2. The District Court’s Permanent Injunction is conflict preempted.**

Not only did the District Court lack subject matter jurisdiction to adjudicate the case, but the Permanent Injunction is also invalid because of the doctrine of federal preemption. *Lubben v. Chicago Cent. & Pacific R. Co.*, 563 N.W.2d 596, 599 (Iowa 1997) (“Federal preemption is explicit when Congress expressly states its intention to preempt state law . . .”). Although the IUB retains the authority to regulate retail rates, a “bright-line rule” gives FERC plenary power to regulate wholesale transmission. *Cal. ex rel. Lockyer v. Dynege, Inc.*, 375 F.3d 831, 850 (9th Cir. 2004). As the Declaration of Dehn Stevens illustrates, MISO is the federal entity that designates developers like MidAmerican for transmission projects pursuant to the MISO Tariff. (D0118,

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[%20Franklin%20-%20Marshalltown%20-%20Morgan%20Valley%20Variance%20Analysis%20Public%20Notice633079.pdf](#) (last visited June 25, 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.”).

<sup>2</sup> *See id.*



MidAmerican’s App. in Supp. of M.S.J. Resistance, Dec. of Dehn Stevens at 4). By stating that MISO is not the arbiter of Iowa law, LS Power misconstrues the effect of the MISO Tariff. The District Court effectively adopted this position and ignored the federal power of the MISO Tariff when it concluded that it “ha[d] the legal authority to give effect to Plaintiffs’ legal rights as regards the Intervenor” and that “justice requires that the Court grant Plaintiffs permanent injunctive relief that prevents substantial injury or damages to them by virtue of the Iowa Legislature’s enactment of an unconstitutional statute, which granted Intervenor a ROFR.” (D0136 at 18).

Conflict preemption arises when there is a question about whether a state law presents an obstacle to fulfilling the goals of Congress. *State v. Martinez*, 896 N.W.2d 737, 756 (Iowa 2017) (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941) (“A state statute is preempted when it stands ‘as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.’”). Congress distinctly separated the authority of FERC and the States under the Federal Power Act. *City of Salisbury, N.C. v. Fed. Energy Regul. Comm’n*, 36 F.4<sup>th</sup> 1164, 1171 (D.C. Cir. 2022). This means FERC and the States have distinct responsibilities when it comes to exercising control over transmission projects. *Id.* Congress vested FERC with the power to regulate wholesale transmission issues and federal power

projects, and this authority has not changed. *See id.* Just as FERC would not directly assess whether utility companies complied with state law, the District Court should not have entered a Permanent Injunction that interferes with federal law. *Id.* (“It is one thing for FERC to police compliance with state-mandated conditions incorporated into a federal license by operation of federal law, as FERC did here. But it is quite another for FERC to police compliance with state law generally . . .”).

This Court should find that conflict preemption applies here because the District Court’s Permanent Injunction puts 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). On the one hand, the District Court has told MidAmerican it cannot presently proceed to construct the Tranche 1 LRTP Projects. (D0136 at 21). On the other hand, the MISO Tariff, which is regulated by FERC, obligates MidAmerican to construct the projects. The Permanent Injunction encroaches on and jeopardizes MidAmerican’s compliance with its federal obligations under the MISO Tariff. MISO—a non-party to the action—is the federal entity that assigns the transmission projects. (D0118, MidAmerican’s App. in Supp. of M.S.J. Resistance, Dec. of Dehn Stevens at 4). The MISO Tariff requires MidAmerican to construct the facilities that it was designated to

construct. *Id.* at 5. The District Court cannot second guess MISO's decisions and cannot place MidAmerican in a position in which it cannot comply with its federal obligations.

The Fifth Circuit explains the problematic situation that arises when a state court decides—as the District Court did here—whether a tariff is proper:

Furthermore, FERC, not the state, is the appropriate arbiter of any disputes involving a tariff's interpretation. Congress has given FERC exclusive jurisdiction to determine whether wholesale rates are just and reasonable. Additionally, it is FERC's duty under the FPA to make an assessment of the broad public interests involved in determining interstate rates. **If each state could enforce its own findings as to the meaning of a filed tariff, in opposition to the conclusions of a FERC-approved agent, the conflicting interpretations would undermine FERC's ability to ensure that a filed rate is uniform across different states, and intrude upon its exclusive jurisdiction over interstate power transactions.** Therefore, it is within FERC's jurisdiction, not the states', to make a final determination as to whether the tariff has been violated. If a state disputes a utility's interpretation of a tariff, FERC is the proper forum for resolving the disagreement.

*AEP Tex. North Co. v. Tex. Indus. Energy Consumers*, 473 F.3d 581, 585–86 (5th Cir. 2006) (emphasis added). Claims of improper transmission project assignment are preempted and cannot be determined in state court actions. *See id.* The District Court erred when it decided that it did not have to consider MISO or FERC when issuing its Permanent Injunction. Any remedies or

concerns regarding the MISO Tariff and designation of the Tranche 1 LRTP Projects can only be addressed in one, exclusive forum: before FERC.

**II. THE DISTRICT COURT ERRED BY ISSUING AN OVERBROAD PERMANENT INJUNCTION THAT LACKS CERTAINTY AND CLARITY.**

**A. Error Preservation**

MidAmerican, ITC, and the State each raised this argument and briefed this issue when resisting LS Power’s Motion for Summary Judgment and seeking the District Court’s reconsideration of its decision to issue the Permanent Injunction. (D0117 at 1; D0118, MidAmerican’s Br. in Supp. of Resistance to LS Power’s M.S.J. at 25–28; D0115 at 8–13; D0140 at 1–11; D0142 at 21–23; D0139 at 3–5 (12/19/2023)). Error is preserved.

**B. Standard of Review**

A district court’s order issuing a permanent injunction is reviewed *de novo*. *City of Okoboji v. Parks*, 830 N.W.2d 300, 304 (Iowa 2013).

**Argument**

This Court should also find the scope of the Permanent Injunction is overbroad. Though the District Court explained that “a permanent injunction is warranted when necessary to prevent irreparable injury and when a plaintiff has no adequate remedy at law,” it did not analyze how the Tranche 1 LRTP Projects would harm LS Power independent of the ROFR. (D0136 at 13–14

(citing *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); *Skow v. Goforth*, 618 N.W.2d 275, 278 (Iowa 2000)). The District Court even recognized this distinction in its Summary Judgment Order. *Id.* at 14 (“The parties agree that the Court has the power to enjoin enforcement of the ROFR provisions of Iowa Code § 478.16. The parties disagree as to whether or not the Court can grant Plaintiffs’ request for *broader* injunctive relief.”) (emphasis added). Permanent injunctions must also be carefully structured and “drawn narrowly enough to address the harm sought to be redressed.” *In re Langholz*, 887 N.W.2d at 779–780. This one is not, and therefore, this Court should reverse the District Court’s decision entering the overbroad Permanent Injunction.

**1. MidAmerican has specific responsibilities for electric transmission line construction under the MISO Tariff, which do not rely on the ROFR.**

The District Court’s Permanent Injunction is overbroad. 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.

First, the MISO Tariff requires that a determination be made as to whether 80 percent of the project’s costs are upgrades. (D0118, MidAmerican’s App. in Supp. of M.S.J. Resistance, Dec. of Dehn Stevens at

5). If it is, the project does not undergo the Selected Developer Process. *Id.* As an existing transmission owner, MidAmerican retains the right to develop upgrades to the existing lines and substations that it owns. (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). 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.

MidAmerican also retains rights to add to and modify 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). LS Power and the Permanent Injunction fail to recognize this essential aspect of the designation process, which is separate and distinct from the ROFR. LS Power also fails to recognize that the Permanent Injunction has a carve out for projects assigned to MidAmerican that are not in reliance on the ROFR, and that this is a basis that is not subject to 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.**”) (emphasis added.).

The Webster-Franklin-Marshalltown-Morgan Valley Project is an appropriate example of MidAmerican’s responsibilities for construction of the Tranche 1 LRTP projects that does not rely on the ROFR. (D0118, MidAmerican’s App. in Supp. of M.S.J. Resistance, Dec. of Dehn Stevens at 5–6). MISO specified that the Webster to Franklin segment of this project must use an existing transmission corridor. *Id.* at 6. This would be accomplished by rebuilding MidAmerican’s *existing* 161 kV line, resulting in a double-circuit 345/161 kV line. *Id.*

Even if the 345 kV conductor is to be constructed by a competitive developer, the MISO Tariff requires MidAmerican to be responsible for “acquisition of additional right-of-way (if necessary), removal of the existing transmission line plant, construction of new transmission line structures, and transfer or replacement of the existing transmission line conductors, insulators, and shield wires.” (*Id.*; D0087 at 331–32 (MISO Tariff, Att. FF, § VIII.A.2.1.1(c))). Because the easements for the existing 161 kV line generally do not convey rights to add additional transmission circuits and the

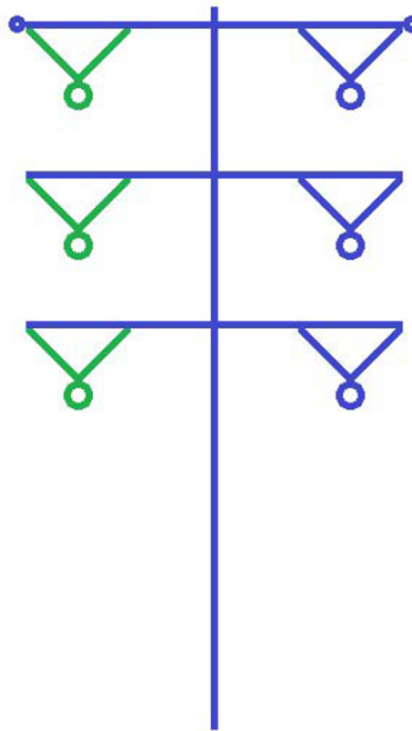
existing easement width (generally 100 feet), is not adequate to accommodate the double-circuit line (which needs an easement width of at least 150 feet), additional right-of-way for the new 345 kV line must be acquired by MidAmerican. (D0118, MidAmerican's App. in Supp. of M.S.J. Resistance, Dec. of Dehn Stevens at 6). MidAmerican remains responsible for obtaining the transmission line franchise for the new 345 kV line from the IUB, and is required to provide specific details on easements, transmission structure designs, and transmission locations. *Id.*

The picture below illustrates a typical double-circuit transmission line, such as this Webster-Franklin line. *Id.* The 345 kV circuit is on the left, and the 161 kV circuit is on the right. *Id.* The 345 kV circuit has two conductors on each of the three phases of the line while the 161 kV line has one conductor per phase. *Id.* There are two shield wires with one on the top of each side of the structures, and these shield wires may contain fiber-optic communication cables to operate the lines. *Id.* at 6–7.





The following diagram graphically depicts the ownership of the various facilities of the Webster-Franklin transmission line if this line was subject to the MISO Selected Developer Process. *Id.* at 7.



LEGEND
345 kV Equipment (Selected Developer)
161 kV Equipment (Incumbent TO)
Transmission Structure (Incumbent TO)

The blue lines represent the facilities that MidAmerican would design, own, and operate. *Id.* at 8. This includes the steel structures, 161 kV conductors, insulators, and related hardware, and both shield wires at the top. *Id.* A Selected Developer would only own the limited facilities represented in green, which are the 345 kV conductors and insulators. *Id.* This graphic demonstrates that a Selected Developer owns a limited portion of the overall facilities. *Id.* It also illustrates how MidAmerican retains the right to install the steel structures that would connect to a potential Selected Developer’s 345 kV

insulators and would need to support the weight and loading of the 345 kV conductor. *Id.*

With or without a ROFR, the Webster Substation modifications will be owned by MidAmerican and Cedar Falls Utilities because those are modifications to an existing substation jointly owned by MidAmerican and Cedar Falls Utilities. *Id.* This is another example of an upgrade, separate from the ROFR. *Id.* MidAmerican maintains an essential role in designing, constructing, owning, and operating the modifications necessary to the Webster Substation. *Id.* at 8–9.

The MISO Tariff also requires MidAmerican to replace facilities, such as the Tranche 1 LRTP Projects, if there is failure or damage. *Id.* at 11. When there is a storm, tornado, or ice storm, MidAmerican is responsible for responding to these events as the transmission owner. *Id.* The overbreadth of the District Court’s Permanent Injunction creates confusion over what is permitted and what construction may proceed, separate and distinct from the ROFR.

As another example, ITC is responsible for the Marshalltown and Morgan Valley Substation modifications because those are modifications to existing substations. *Id.* at 9. ITC would own the Marshalltown–Morgan

Valley line because it is an increase of the operating voltage of an existing circuit. *Id.*

Moreover, the franchise process through the IUB to obtain transmission lines is separate from Iowa Code § 478.16. (D0118, MidAmerican's Br. in Supp. of Resistance to LS Power's M.S.J. at 27). It is initiated pursuant to Iowa Code § 478.2. *Id.* MidAmerican has conducted informational meetings and started developing its franchise petition under the MISO Tariff. *Id.* This process also would have occurred with or without an ROFR. *Id.*

Despite these distinct obligations that do not rely on the fallen ROFR, the District Court dismissed these concerns and failed to consider the ramifications of its Permanent Injunction as it relates to MidAmerican's duties under the MISO Tariff. Not only did it overstep MISO and FERC's federal authority, but it interfered with existing procedures that MidAmerican must comply with and that remain even without a ROFR in place. Thus, this Court should lift the Permanent Injunction.<sup>3</sup>

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<sup>3</sup> This Court should also consider the MISO Variance Analysis process in its evaluation of the overbreadth of the Permanent Injunction, as it will determine the outcome of the Tranche 1 LRTP Projects.

**2. The Permanent Injunction will further delay benefits to Iowa communities.**

The District Court also did not “weigh the relative hardship to each party” before granting LS Power’s request for a permanent injunction. *In re Langholz*, 887 N.W.2d at 779. LS Power did not demonstrate “(1) an invasion or threatened invasion of a right; (2) that substantial injury or damages will result unless the request for an injunction is granted; and (3) that there is no adequate legal remedy available.” *Id.* (citing *Parks*, 830 N.W.2d at 309). As a result, MidAmerican is faced with a Permanent Injunction that is not “structured so it affords relief to the complainant” but instead broadly “interfere[s] with the legitimate and proper actions of the [party] against whom it is granted.” *Id.* at 779–80. Now, Iowa communities will bear the hardship of the overbroad Permanent Injunction.

MISO requires MidAmerican to negotiate and enter into contractual agreements with landowners if it needs to acquire necessary rights-of-way for reconstructing an existing single-circuit transmission line to a double-circuit line that is part of the new Tranche 1 LRTP Project. (D0140 at 9). So far, MidAmerican has contacted all landowners of the 154 parcels for which an easement is needed to reconstruct its existing line to accommodate the new 345 kV line between the Webster and Franklin substations. *Id.* at 9. As of the time of this writing, it has executed and recorded 108 of these easements. *Id.*

The Permanent Injunction jeopardizes this contractual process, even though the MISO Tariff requires this regardless of whether there is a ROFR.

Finally, the Tranche 1 LRTP Projects are essential for the reliability of the electric grid not only in Iowa, but also in the overall region. (D0114, ITC's App. in Supp. of M.S.J. at 50, 100 (08/04/2023)). Benefits include congestion and fuel savings, improved and increased transfer capability, avoided risk of load shedding, less carbon dioxide emissions, reduced loading, and optimized renewable resource build-out. *Id.* at 50. When generation capacity shortfalls occur, this connectivity reduces the likelihood of shedding load. *Id.* The Tranche 1 LRTP Projects also furthers the state's goal to continue investing in renewable energy resources. *Id.* Additionally, if Iowa communities need adequate energy supply during severe weather events, this connectivity provides access to a robust, enhanced, and resilient electric grid. *Id.* These reliability benefits statewide, as well as to the communities and the customers in these areas, cannot be understated. *Id.* If the Permanent Injunction is not lifted, or at a minimum narrowed or clarified, Iowa communities will lose these opportunities and benefits of the high voltage transmission that would be delivered through the Tranche 1 LRTP Projects.

## **JOINDER IN APPELLATE BRIEF FILED BY ITC MIDWEST LLC**

MidAmerican also joins the Appellate Brief anticipated to be filed by ITC on June 25, 2024 and joins the arguments set forth therein.

### **CONCLUSION**

The District Court erred by 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 dissolve the Permanent Injunction or alternatively, narrow the scope of the Permanent Injunction to clearly articulate: (1) that it is only for prospective relief, (2) the portions of the Tranche 1 LRTP Projects that MidAmerican may not construct, and (3) the actions MidAmerican may take in connection with permitted construction of the Tranche 1 LRTP Projects.

## **REQUEST FOR ORAL ARGUMENT**

MidAmerican requests to be heard at oral argument because this case concerns important principles related to state and federal court jurisdiction and federal preemption.



**CERTIFICATE OF FILING AND SERVICE**

The undersigned hereby certifies that the foregoing Appellants’ Brief on June 25, 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

June 25, 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 7,266 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  
Tara Z. Hall

June 25, 2024  
Date

**ATTORNEY'S COST CERTIFICATE**

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

*/s/ Tara Z. Hall* \_\_\_\_\_  
Tara Z. Hall

June 25, 2024 \_\_\_\_\_  
Date