

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, ERIK HELLAND,
GLEN DICKENSON and LESLIE HICKEY,
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

Brief of *Amicus Curiae* Midcontinent Independent System Operator,
Inc.

Respectfully submitted,

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AMICUS CURIAE IDENTIFICATION

The Midcontinent Independent System Operator, Inc. (MISO) with this Brief of *Amicus Curiae* regarding the above-captioned action in support of the named Intervenors-Appellants¹ in this case (this Brief):² MISO is a Regional Transmission Organization (RTO) approved by the Federal Energy Regulatory Commission (FERC) and responsible for the operation of a regional transmission system and the administration of wholesale electricity markets in a vast region comprising 15 states, including Iowa. See *Midwest Indep. Transmission Sys. Operator, Inc.*, 97 FERC ¶ 61,326 (2001). MISO is a “public utility” under the Federal Power Act (FPA) and its activities and Tariff are subject to the exclusive oversight and regulation of the FERC. See 16 U.S.C. § 824(e); see also *Big Rivers Elec. Corp. v. Midcontinent Indep. Sys. Operator, Inc.*, 158 FERC ¶ 61,132, at P 35 (2017) (“MISO is a public utility subject to the FPA.”) Regional transmission planning is one of the core activities MISO is required

¹ Defendant-Appellants have requested an extension of the briefing schedule and have not filed a brief in the case. To the extent the Defendant-Appellants raised the issues identified herein before the District Court and, to the extent Defendant-Appellants continue to press their arguments before this Court, MISO also supports Defendant-Appellants.

² All capitalized terms in this filing that are not otherwise defined have the same meaning as they have under the current MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) available on MISO’s website: <https://www.misoenergy.org/legal/rules-manuals-and-agreements/tariff/>.

to engage in as an RTO under FERC's regulations. See 18 C.F.R. § 35.34(k)(7) ("The [RTO] must be responsible for planning, and for directing or arranging, necessary transmission expansions, additions, and upgrades that will enable it to provide efficient, reliable and non-discriminatory transmission service and coordinate such efforts with the appropriate state authorities.")

MISO has a unique perspective and information that will assist the Court in assessing the ramifications of the ultimate resolution of this litigation. Cf. IOWA R. APP. 6.906. MISO also is in the unique position to explain the transmission planning process and impacts of the District Court's orders below on not only the LRTP Tranche 1 projects, but also past, present and future MISO planning efforts.

DISCLOSURE STATEMENT

Consistent with Iowa R. App. P. 6.906(4)(d), no party or party's counsel authored the brief in whole or in part or contributed money to fund the preparation or submission of the brief, and no other person contributed money to fund the preparation or submission of the brief.

ARGUMENT

I. INTRODUCTION

MISO submits this brief as *amicus curiae* in support of the issues presented for review by Intervenor-Appellants ITC Midwest LLC (ITC) and MidAmerican Energy Company (MidAmerican) (together, Intervenor-Appellants). See ITC Br. at 8 and MidAmerican Br. at 7. MISO supports the assertion that the District Court's permanent injunction (Injunction Order) prohibiting further action on the Long Range Transmission Planning Tranche 1 (LRTP Tranche 1) projects located in Iowa was beyond the District Court's jurisdiction for the reasons outlined below.

MISO urges this Court to reverse the District Court's decision insofar it enjoins permitting of the LRTP Tranche 1 projects in Iowa that have been assigned to Intervenor-Appellants pursuant to the Tariff. MISO takes no position on the constitutionality of Iowa Code Section 478.16 and limits this Brief to federal transmission planning issues that MISO is in the best position to address given its unique status as the RTO in the Midwest region, including Iowa.

First, the Injunction Order impermissibly intrudes on the FERC's exclusive authority over the transmission of electric energy

in interstate commerce under the FPA. *See* 16 U.S.C. §824(a). The Tariff sets forth the detailed steps MISO must take to determine ownership of projects included in the MISO Transmission Expansion Plan (MTEP). *See* Tariff, Attachment FF § VIII; *see also* Tariff, Rate Schedule 1, Appendix B. The transmission planning activities conducted by MISO, including the application of the state right-of-first-refusal (ROFR) exception set forth in the Tariff,³ are subject to FERC’s exclusive jurisdiction. *See* 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 . . . [FERC] shall have jurisdiction over all facilities for such transmission or sale of electric energy. . .”). 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. *Hughes v. Talen Energy Mrktg. LLC*, 578 U.S. 150, 165

³ MISO’s state ROFR exception provides as follows: “VIII.A.1. State or Local Right of First Refusal. The Transmission Provider shall comply with any Applicable Laws and Regulations granting a right of first refusal to a Transmission Owner. The Transmission Owner will be assigned any transmission project within the scope, and in accordance with the terms, of any Applicable Laws and Regulations granting such a right of first refusal. These Applicable Laws and Regulations include, but are not limited to, those granting a right of first refusal to the incumbent Transmission Owner(s) or governing the use of existing developed and undeveloped right of way held by an incumbent utility.” Tariff, Attachment FF § VIII.A.1.

(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.”) (quoting from *Nantahala Power & Light Co. v. Thornburg*, 476 U.S. 953 (1986)). The District Court’s Injunction Order violates this command by: (1) preventing Intervenors-Appellants from complying with the requirements of MISO’s transmission planning process contained in the Tariff, and (2) interfering and conflicting with FERC’s exclusive authority to interpret the Tariff to determine the scope and application of the ROFR exception in light of the District Court’s determination that the Iowa Law and the implementing regulations are unconstitutional. As such, the Injunction Order is preempted under the Supremacy Clause of the U.S. Constitution.⁴ See U. S. Const., Art. VI, cl. 2.

Second, one of the fundamental measures of whether or not a permanent injunction should be granted or denied is whether it furthers or frustrates public policy. See, e.g., *Worthington v. Kenkel*,

⁴ To be clear, MISO is *not* arguing that state ROFR statutes are preempted by the FPA. The State of Iowa is free to enact or repeal a ROFR statute, just as the Iowa Judiciary is entitled to determine the constitutionality of such a statute. Rather, MISO’s limited argument is that the District Court erroneously adopted an overly broad (and as further explained, unnecessary) retroactive remedy that intrudes on FERC’s exclusive authority over regional transmission planning and application of ROFR-related provisions in the MISO Tariff.

684 N.W.2d 228, 233 (Iowa 2004). The injunction in question in this case is counter to public policy.

Third, another basic tenet of issuing injunctive relief is making a careful calculation of the balance of the harms between those who have an interest in the outcome of the action. *See, e.g., Matlock v. Weets*, 531 N.W.2d 118, 122 (Iowa 1995). Here, there is adequate evidence that MISO — although not a formal named party to this action — has a significant interest in the outcome of this litigation, as well as a significant interest in ensuring reliable power for those Iowans who MISO covers as part of its utility management system.

Fourth, LS Power Midcontinent, LLC and Southwest Transmission LLC (Appellees) in this case have a federal remedy. FERC has authority over the application and interpretation of the Tariff. If there is a dispute about whether the Tariff has been applied correctly, including whether the District Court's holding that to the Iowa Law is unconstitutional should be applied retroactively to LRTP Tranche 1, that dispute must be brought before, and resolved by, FERC. FERC has authority under the FPA to resolve such disputes by taking into account applicable policy and equitable considerations. *See* 16 U.S.C. § 825h (“[FERC] shall have power to

perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of [the FPA].” In contrast, state courts have no role in interpreting, applying and enforcing filed FERC tariffs. *See AEP Texas North Co. v. Texas Indust. 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”). Because the District Court’s retroactive injunction conflicts with the exclusive authority that the FPA grants solely to FERC, this Court should reverse.

Finally, the District Court improperly denied MISO leave to file its brief as *amicus curiae* for the reasons described by ITC. *See* ITC Br. at 51-55.

II. THE DISTRICT COURT’S INJUNCTION DIRECTLY IMPACTS THE MISO PLANNING PROCESS SUBJECT TO FERC’S EXCLUSIVE JURISDICTION.

It is important here to begin with the MISO planning framework. In Order No. 1000,⁵ FERC required each transmission owning and

⁵ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order 1000, 136 FERC ¶ 61,051 (2011), *order on reh’g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh’g & clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff’d sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

operating public utility, including RTOs such as MISO, to participate in regional transmission planning that satisfies certain specific planning principles designed to prevent undue discrimination and preference in transmission service, and that produces a regional transmission plan, which in MISO is known as the MTEP. MISO performs its regional planning responsibilities in accordance with its FERC-approved Tariff. *See* Tariff, Rate Schedule 1, Appendix B and Tariff, Attachment FF. The Tariff conforms to FERC's guiding mandates and requirements, including the Order No. 1000 requirement to provide for a Competitive Developer Selection Process for specified types of transmission projects. The Tariff includes a detailed set of rules for the administration of the Competitive Developer Selection Process and applicable exceptions, such as the ROFR exception, subject to FERC's exclusive oversight. *See* Tariff, Attachment FF § VIII. By following these Tariff procedures, MISO provides an open and transparent regional planning process, which results in recommendations for transmission expansion that are included in the MTEP, and ensures that all participants in this process are treated fairly and without undue discrimination or unlawful preference.

MISO develops the MTEP based on “expected use patterns and analysis of the performance of the Transmission System in meeting both reliability needs and the needs of the competitive bulk power market, under a wide variety of contingency conditions.” Tariff, Attachment FF § I.C. MISO is registered with the North American Electric Reliability Corporation (NERC) as a Planning Coordinator and, as such, fully evaluates and plans for the reliability of the MISO Transmission System in accordance with NERC’s planning standards. In addition, the MTEP process integrates many other factors, including plans and analyses to provide for a reliable Transmission System and to expand trading opportunities, better integrate the grid, alleviate congestion, and to meet the transmission needs driven by public policy requirements of its member jurisdictions. The MISO Board of Directors (MISO Board) reviews and approves projects for inclusion in the annual MTEP.

Pursuant to the Tariff, an MTEP is prepared on an annual basis and each subsequent MTEP takes into account and builds on the previous MTEPs. *See* Tariff, Attachment FF § I.C.8.e (“Each planning study will use the best known topology based upon the most recently approved MTEP. Planning studies will include all projects approved

by the [MISO] Board, and shall identify, as appropriate, ... any system needs already identified in the most recent approved MTEP.”) Once projects are approved by the MISO Board for inclusion in the MTEP, all subsequent near-term and long-term planning models have those projects in-service as planned for in MTEP. See Tariff, Attachment FF § I.C.8.e. Accordingly, the LRTP Tranche 1 portfolio, which was added into the MTEP 2021 report, was incorporated into the models that created the MTEP 2022 and MTEP 2023 reports and is also included in the current model for MTEP 2024.

Because MISO plans transmission projects on an incremental basis, with each annual MTEP building on prior MTEPs and including interdependent projects, certainty and predictability are paramount. As FERC recognized, “to foster successful project development . . . transmission owners must be allowed to rely on the planning provisions in previous MTEPs” and “[i]n order to plan future projects, MISO’s planning cycles necessarily assume that previously approved projects in its models will be in operation even if they have not yet been placed in service.” *Am. Transmission Company, LLC v. Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,090, at P 55 (2013). In this case, certainty and predictability are especially

critical because the projects impacted by the District Court's Injunction Order are part of a first-of-its-kind portfolio of regional transmission projects that the MISO Board approved as part of MISO's LRTP Initiative. The individual projects included in the LRTP Tranche 1 portfolio are designed to be interdependent with each other and to be embedded in MISO's larger regional transmission grid. The delays and uncertainty resulting from the District Court's injunction can adversely affect the development of other LRTP Tranche 1 projects that are interdependent with the affected Iowa projects.

These adverse effects are not limited to LRTP Tranche 1 and impact other ongoing and subsequent projects. Of particular note, MISO and its stakeholders are currently in the process of developing the LRTP Tranche 2 portfolio. MISO began this development directly after the LRTP Tranche 1 portfolio was approved and MISO is planning to have LRTP Tranche 2 approved later this year. The LRTP Tranche 2 portfolio is built upon models that include the LRTP Tranche 1 portfolio and with the LRTP Tranche 1 projects achieving their timely in-service dates. In addition, the LRTP Initiative is incorporated into MISO's generator interconnection system planning

activities.⁶ The Tariff requires MISO to analyze the upgrades needed to accommodate the injection of power from the proposed generators and these prospective generator interconnection upgrades are modeled based upon the assumption of the LRTP Tranche 1 projects being in-service. Enjoining the Intervenor-Appellants from proceeding with the assigned LRTP Tranche 1 projects will undermine the certainty of these planning assumptions.

Lastly, the Tariff process requires MISO to designate ownership and construction responsibilities for projects approved by the MISO Board. Once the designation of ownership and construction responsibility is determined, that entity with the designated responsibility has an obligation to construct the planned project. See Tariff, Attachment FF § V (“Designation of Entities to Construct, Implement, Own, Operate, Maintain, Repair, Restore, and/or Finance MTEP Projects”) and Attachment FF § VIII.G (“Obligation to Construct Competitive Transmission Project”); *see also* Tariff, Rate Schedule 1, Appendix B § VI (“The designated Owner or Selected Developer, as defined in the Tariff, has the responsibility and

⁶ See Tariff, Attachment X § 1 (definition of Base Case Data); *see also Post-Technical Conference Comments of the Midcontinent Independent System Operator, Inc.* at P. 42 (FERC Docket No. ER20-588-000) (June 30, 2020).

obligation to construct the facilities it is designated to construct.”). The District Court’s Injunction Order directly impacts these federal obligations.

III. THE DISTRICT COURT’S INJUNCTION ORDER IS PREEMPTED BY THE FEDERAL POWER ACT AND FERC REGULATIONS.

The Supremacy Clause of the U.S. Constitution “makes the laws of the United States ‘the supreme Law of the Land; . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.’” *Hughes*, 578 U.S. at 162 (quoting U. S. Const., Art. VI, cl. 2). Under the Supremacy Clause, “federal law preempts contrary state law.” *Id.* For purposes of a preemption analysis, “state law” means not only state legislative or regulatory enactments but also decisions of state courts. *See Nantahala*, 476 U.S. at 964.

The U.S. Supreme Court has explained that “a state law is preempted where ‘Congress has legislated comprehensively to occupy an entire field of regulation, leaving no room for the States to supplement federal law,’” as well as ‘where, under the circumstances of a particular case, the challenged state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.’” *Hughes*, 578 U.S. at 163 (internal

quotations omitted). In addition, “federal regulations have no less pre-emptive effect than federal statutes.” *Fidelity Federal Savings & Loan Assn. v. De la Cuesta*, 458 U.S. 141, 153 (1982). The Tariff is a form of federal regulation. See *City of Osceola, Ark. v. Entergy Arkansas, Inc.*, 791 F.3d 904, 907-08 (8th Cir. 2015) (FERC-filed tariffs “are the equivalent of a federal regulation.”)

The District Court’s Injunction Order is preempted because: (1) Congress and FERC occupied the field of regulating the transmission of electric energy in interstate commerce, which includes regional transmission planning, so comprehensively that preemption can be inferred (*i.e.*, field preemption exists); and (2) the District Court’s Injunction Order conflicts with federal regulation (*i.e.*, conflict preemption exists). To be clear, MISO objects solely to the retroactive application of the District Court’s injunction remedy. MISO acknowledged before the District Court, and acknowledges again here, that currently there is no ROFR in effect in Iowa as the result of this Court’s and the District Court’s constitutional holdings. Barring any legislative changes or reversals by this Court, no ROFR rights will be accorded to Iowa projects to be included in new transmission portfolios under the MISO Tariff, such as LRTP Tranche 2.

The District Court erred, however, by imposing a retroactive remedy that seeks to undo, or interfere with, MISO's *past decisions* validly made two years ago pursuant to federal regulation, subject to the exclusive oversight of FERC.

A. The District Court's Injunction Order Is Field Preempted.

Under section 201(a) of 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). The FPA delegates to FERC exclusive control over the sale and transmission of wholesale energy in interstate commerce. 16 U.S.C. §§ 824-824w; *see also Miss. Power & Light Co. v. Miss. ex rel. Moore*, 487 U.S. 354, 371-72 (1988) (“FERC has exclusive authority to determine the reasonableness of wholesale rates.”); *New England Power Co. v. New Hampshire*, 455 U.S. 331, 340 (1982) (finding that Congress assigned to FERC the “exclusive authority to regulate the transmission and sale at wholesale of electric energy in interstate commerce”).

FERC's exclusive regulatory authority extends over “all facilities for such transmission or sale of electric energy” and to all “public

utilities” owning or operating such facilities, such as MISO. See 16 U.S.C. §§ 824(b)(1) and 824(e). By enacting the FPA, Congress intended “to draw a bright line easily ascertained, between state and federal jurisdiction,” and did so by making FERC’s jurisdiction plenary. See *Nantahala*, 476 U.S. at 966 (internal citation omitted). When Congress has thus occupied a field, state laws in that same field are preempted. See *Oneok, Inc. v. Learjet, Inc.*, 575 U.S. 373, 377 (2015).

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. *S. Carolina Pub. Serv. Authority v. FERC*, 762 F.3d 41, 56 (D.C. Cir 2014) (transmission planning processes are practices under the FPA that “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.”). Moreover, FERC’s exclusive jurisdiction is not limited to “rates per se” and includes non-rate terms and conditions of public utility tariffs. See *Nantahala*, 476 U.S. at 967. The MTEP rules in the Tariff are such “non-rate” terms and

conditions and practices affecting rates subject to FERC's exclusive jurisdiction. Congress, therefore, clearly intended that the transmission of electric energy in interstate commerce be subject to exclusive federal regulation and assigned to FERC the exclusive authority to ensure that RTOs' transmission planning processes remain just and reasonable. The District Court's injunction intrudes on this authority.

The Tariff describes the detailed steps MISO must take to determine ownership of MTEP-included transmission facilities, including the assignment of ownership to incumbents based on ROFR laws in effect at the time of the assignment. See Tariff, Attachment FF § VIII.A.1. Like all other tariff provisions, the ROFR assignment provision has a force of federal law and is subject to FERC's exclusive jurisdiction. See *City of Osceola*, 791 F.3d at 907-08.

Once FERC prescribed how MISO determines the ownership of MTEP-included transmission facilities, a state may not second-guess FERC by forbidding the incumbents from complying with MTEP designations or by rendering them de facto invalid. See *Hughes*, 578 U.S. at 165 ("This Court invalidated the States' attempts to second-

guess the reasonableness of interstate wholesale rates. “Once FERC sets such a rate, . . . a State may not conclude in setting retail rates that the FERC-approved wholesale rates are unreasonable. 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.”) (internal quotations omitted). In this case, the District Court’s Injunction Order did precisely that by specifically barring the Intervenor-Appellants “from taking any additional action, or relying on prior actions relating to any and all electric transmission line projects in Iowa that were claimed pursuant to, under, or in reliance on [the Iowa Law].” Injunction Order at 21-22. By “returning the parties to the status quo” before the enactment of the Iowa Law, the District Court second-guessed FERC by concluding, in effect, that the assignment of the LRTP Tranche 1 projects in Iowa to the Intervenor-Appellants based on the ROFR exception in the Tariff is void and of no effect. See Injunction Order at 18. But that decision is solely for FERC to make.

While MISO respects the District Court’s determination that the Iowa Law is unconstitutional, that determination simply does not have the effect of making the LRTP Tranche 1 projects in Iowa subject

to the Competitive Developer Selection Process pursuant to the Tariff.⁷ Such an action can proceed only at the direction of FERC because it involves interpretation of the Tariff and potential for FERC to exercise its remedial authority. Under the FPA, the District Court may not interfere with this exclusive federal process by preempting FERC's decision-making.

B. The District Court's Injunction Order Is Conflict Preempted.

Because the Injunction Order is field preempted, there is no need to engage in further preemption analysis and the injunction should be dissolved. Nonetheless, conflict preemption also exists in this case and presents an independent ground for reversing the Injunction Order. *See Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372 (2000) ("Even if Congress has not occupied the field, state law is naturally preempted to the extent of any conflict with a federal statute."). The U.S. Supreme Court held that "conflict pre-emption exists where compliance with both state and federal law is impossible, or where the state law stands as an obstacle to the

⁷ And, as explained by Intervenors-Appellants, some portions of the LRTP Tranche 1 projects would be assigned to the incumbent utilities regardless of the ROFR.

accomplishment and execution of the full purposes and objectives of Congress” and that “in either situation, federal law must prevail.” *Oneok*, 575 U.S. at 377; *see also Crosby*, 530 U.S. at 372 (“We will find preemption where it is impossible for a private party to comply with both state and federal law.”)

In this case, the District Court’s Injunction Order impermissibly thwarts Congress’ objective to vest with FERC exclusive jurisdiction over the transmission and sale at wholesale of electric energy in interstate commerce. The Injunction Order does not change the Tariff obligations to construct the LRTP Tranche 1 projects in Iowa but nonetheless stands as an obstacle to the Intervenors-Appellants’ compliance with their Tariff obligations.⁸ By barring the Intervenors-Appellants from moving forward with approved MTEP projects, the Injunction Order impermissibly interferes with the implementation of a comprehensive federal scheme established by FERC for regional transmission planning in the MISO region. In addition, the District

⁸ The Appellees’ references before the District Court to the variance analysis process under the Tariff, Attachment FF Section IX, are unavailing. Action pursuant to those provisions is also subject to the terms of the Tariff and FERC’s authority and are not within the scope or context of this Court’s authority to review. The variance analysis process and any action taken pursuant to the Tariff further demonstrates that the Injunction Order is preempted by federal law. The individual notices of Variance Analysis for the LRTP Tranche 1 projects in Iowa can be found on MISO’s website at: <https://www.misoenergy.org/planning/transmission-planning/mtep/#nt=%2Fmtepestudytype%3AVariance%20Analysis&t=10&p=0&s=&sd=>.

Court's injunction puts the Intervenor-Appellants in an untenable situation by requiring them to choose whether to comply with the Injunction Order or the federal obligations they incurred under the Tariff. This untenable choice is a hallmark of conflict preemption.

Further, the U.S. Supreme Court has recognized that “a conflict in technique can be fully as disruptive to the system Congress erected as conflict in overt policy.” *Arizona v. United States*, 567 U.S. 387, 406 (2012) (quoting from *Motor Coach Employees v. Lockridge*, 403 U.S. 274, 287 (1971)). Such a “conflict in technique” may include “a multiplicity of tribunals and a diversity of procedures,” which are “as apt to produce incompatible or conflicting adjudications as are different rules of substantive law.” *Lockridge*, 403 U.S. at 287 (internal citation omitted). In other words, conflict preemption includes “conflict in its broadest sense,” such as “conflict with a complex and interrelated federal scheme of law, remedy, and administration.” *Lockridge*, 403 U.S. at 287-88. The Injunction Order presents such a “conflict in its broadest sense” because it conflicts with FERC’s exclusive authority to interpret and apply the Tariff, including the ROFR provision, under a uniform “federal scheme of law.” As noted above, state courts have no authority over

FERC-jurisdictional tariffs. Further, the FPA provides the exclusive means to review, modify and set aside such FERC determinations by federal circuit courts of appeal. See 16 U.S.C. § 8251(b). Congress provided no role for state courts in this process.

Any change to the current assignments must come through MISO's FERC-approved Tariff process subject to FERC's exclusive jurisdiction and oversight. FERC has broad remedial powers under section 309 of the FPA "to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of [the FPA]." 16 U.S.C. § 825h. This federal remedy not only makes the Injunction Order unnecessary under Iowa law (as further explained in section IV, *infra*) but also collides with the District Court's ban on the Intervenors-Appellants to proceed with the projects designated by MISO. In interpreting the ROFR exception, as well as other applicable provisions in the Tariff, FERC could reasonably conclude that they do not permit retroactive re-assignments based on the District Court's finding of unconstitutionality or that retroactive re-designation would be inconsistent with the policy goals of the FPA or balancing of equities

FERC performs in such remedial contexts. By substituting its own balancing of equities for FERC's future analysis, the District Court created a "conflict with a complex and interrelated federal scheme of law, remedy, and administration." Dissolving the injunction would cure this conflict and would allow FERC to assess the public interest, and the competing equities presented by Petitioners' and Intervenors-Appellants' respective claims, under its FPA authority. This Court, therefore, should correct the District Court's error by removing the injunction.

IV. PUBLIC POLICY CONSIDERATIONS SUPPORT LIFTING THE CURRENT INJUNCTION.

The injunction in this case "to prevent injury to Plaintiffs and return to the status quo" prior to the Iowa Law's enactment does not reflect the required balancing of interests in determining whether injunctive relief is appropriate.

In Iowa, in order to secure an injunction of the nature at issue in this case, one must show: "(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 remedy available." *City of Okoboji v. Parks*, 830 N.W.2d

300, 309 (Iowa 2013) (citations omitted). In addition to these essential factors, it is a longstanding rule that the Court must also weigh public policy considerations that may be relevant to the injunctive relief requested. *See, e.g., In re Langholz*, 887 N.W.2d 770, 777 (Iowa 2016).

To establish that an injunction is not against a public policy interest, the party seeking the injunction must prove that position by clear and convincing evidence. *See, e.g., Langholz*, 887 N.W.2d at 777. A court should only grant an injunction "with caution and only when clearly required." *Hockenberg Equip. Co. v. Hockenberg's Equip. & Supply*, 510 N.W.2d 153, 158 (Iowa 1993).

In this matter, an injunction is clearly and convincingly against the public interest. MISO is expressly charged with planning and managing an extensive energy grid infrastructure across dozens of major markets. At any given time, MISO is helping manage the wholesale energy delivery to nearly 45 million people within its territorial region.⁹ The injunction in question in this case, if

⁹ *See* MISO's Response to the Reliability Imperative (2024), available at: <https://cdn.misoenergy.org/2024%20Reliability%20Imperative%20report%20Feb.%2021%20Final504018.pdf?v=20240221104216>.

sustained, would stand as an obstacle to timely completion of much-needed transmission to serve not only Iowa but the region as a whole.

The LRTP Initiative is a central component of MISO's Reliability Imperative, which is designed to address the urgent and complex challenges to electric system reliability in the MISO region.¹⁰ The LRTP Initiative studies the needs of the MISO Transmission System 20 years in the future¹¹ and the projects impacted by the District Court's Injunction Order are an integral part of MISO's first LRTP portfolio, LRTP Tranche 1.

The in-service dates of the LRTP Tranche 1 projects range from between December 2028 and June 2030.¹² While this may seem like a long period of time, high voltage transmission development takes a substantial period of time and continued and timely permitting is necessary to achieve the projects' planned in-service dates.¹³ MISO estimated that LRTP Tranche 1 will provide billions of dollars in

¹⁰ See the Reliability Imperative section of the MISO website, available at: https://www.misoenergy.org/meet-miso/MISO_Strategy/reliability-imperative/#:~:text=The%20Reliability%20Imperative%20is%20the%20term%20MISO%20uses,to%20electric%20system%20reliability%20in%20the%20MISO%20region.

¹¹ For more information on MISO's LRTP planning process see *Comments of the Midcontinent Independent System Operator, Inc.*, at P. 7-8 & 37-39, FERC Docket No. RM21-17-000 (Oct. 12, 2021).

¹² See *LRTP Tranche 1 Appendix A-4 Schedule 26A Indicative*, available at: <https://cdn.misoenergy.org/LRTP%20Tranche%201%20Appendix%20A-4%20Schedule%2026A%20Indicative625788.xlsx>

¹³ See e.g. *MTEP 2023 Report*, Figure 1.3.-2, which identifies that the most recent MTEP Report, in which 100% of the projects have achieved In-Service is MTEP 2014, available at: <https://cdn.misoenergy.org/MTEP23%20Full%20Report630587.pdf>

benefits above its estimated costs by providing cost-effective solutions for future generation resources to serve load throughout the footprint, enabling consumers to have access to lower-cost energy production, while augmenting reliability by addressing future conditions which are anticipated to have greater uncertainty.¹⁴ The LRTP Tranche 1 portfolio includes multiple 345 kV lines that span multiple states in the MISO region and the individual projects within the tranche were designed to operate together. Accordingly, the benefits of the portfolio are premised on the timely in-service of all the projects within the portfolio.

MISO strongly urges this Court to correct the District Court's injunction decision in light of these factors and circumstances to avoid potentially ruinous practical public policy consequences. *See generally Nelson v. James H. Knight DDS, P.C.*, 834 N.W.2d 64 (Iowa 2013) (granting a motion to reconsider); *IA Elec. Light & Power Co. v. Lagle*, 430 N.W.2d 393, 396 (Iowa 1988) (recognizing a district court's right to grant a motion to reconsider).

¹⁴ *See LRTP Tranche 1 Portfolio Detailed Business Case*, June 25, 2022, available at: <https://cdn.misoenergy.org/LRTP%20Tranche%201%20Detailed%20Business%20Case625789.pdf>

V. THE HARM TO ENERGY USERS AND ENERGY PROVIDERS RESULTING FROM THE SUBJECT INJUNCTION WOULD VASTLY OUTWEIGH THE BENEFITS OF LEAVING THE INJUNCTION IN PLACE.

In order to establish a basis for injunctive relief, the Court must consider the "relative hardships on the parties by the grant or denial of injunctive relief." *See Opat v. Ludeking*, 666 N.W.2d 597, 604 (Iowa 2003) (citing *Myers v. Caple*, 258 N.W.2d 301, 304 (Iowa 1977)). An injunction "should only be ordered to prevent damage likely to occur in the future; it is not meant to punish for past damage." *Langholz*, 887 N.W.2d at 780 (citing 42 AM.JUR.2D *Injunctions* § 11 (2010)).

Here, the District Court determined an administrative legislative defect — admittedly of a state constitutional nature — rendered the Iowa Law unconstitutional on state constitutional grounds. As noted previously, MISO takes no position on the constitutionality of the Iowa Law itself. However, the District Court's injunction creates deleterious ripple effects, in addition to being procedurally improper.

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. The injunction hinders further energy grid build-out plans and energy reliability/sustainability

plans that the District Court itself recognized in its Order. See Injunction Order, at pp. 9-10. The LRTP Tranche 1 projects are planned, approved and, importantly and significantly, included in MISO's ongoing planning process. The timely completion of these projects should not be disrupted in pursuit of a remedy that only FERC may grant.

While Appellees may contend that they will suffer some form of harm if the ROFR statute is not enjoined, whatever harm Appellees may potentially suffer is not as severe, concrete, and particularized as the harm energy users, energy providers, MISO and its customers may suffer based upon available evidence already in the record. See, e.g., *Greenfield v. City of Davenport*, Case No. 09-0173, 2009 WL 2960622, at *1 (Iowa Ct. App. Sept. 2, 2009) (quoting *Alons v. IA Dist. Ct.*, 698 N.W.2d 858, 867-68 (Iowa 2005)). Balancing the relative hardships in this case, a reconsideration and re-examination of the subject injunction is appropriate. See, e.g., *Green v. Advance Homes, Inc.*, 293 N.W.2d 204, 208 (Iowa 1980) ("The relative hardship which would be incurred by the parties upon award of the injunctive relief should be weighed by the court.").

VI. APPELLEES HAVE A FEDERAL REMEDY.

The district court should only issue an injunction “when the party seeking it has no adequate remedy at law.” *Planned Parenthood of Mid-Iowa v. Maki*, 478 N.W.2d 637, 639 (Iowa 1991). Appellees have federal remedies and to the extent they disagree with MISO’s actions under the Tariff, Appellees may avail themselves of those remedies. Appellees have made clear that they seek reversal of MISO’s assignment of the Iowa projects to the Intervenors-Appellants based on the fact that the District Court held the Iowa Law unconstitutional. See Combined Resistance To Motion To Reconsider, at P. 22-23. Section 306 of the FPA permits Appellees to seek relief from FERC by complaint and Appellees are free to argue that MISO’s assignment of the Iowa projects to the Intervenors-Appellants violated the tariff in light of the District Court’s unconstitutionality holding.¹⁵ See 16 U.S.C. § 825e. Section 309 of the FPA grants FERC broad remedial powers “to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate

¹⁵ To be clear, MISO believes that its actions with respect to the Iowa projects at issue here have been fully consistent with the Tariff and intends to oppose any such complaint, if filed at FERC.

to carry out the provisions of [the FPA].” 16 U.S.C. § 825h. As a specialist agency, FERC is not only vested with exclusive jurisdiction over the application of the Tariff (as discussed in Section I, *supra*), but FERC is in the best position, with its utility industry expertise and regulatory experience, to assess the multitude of impacts associated with changes or delays to the Iowa projects, weigh competing claims, balance the equities, and provide remedies, if any are warranted. *See TNA Merch. Projects, Inc. v. FERC*, 857 F.3d 354, 360 (D.C. Cir. 2017) (FPA section 309 “permits FERC to advance remedies not expressly provided by the FPA, as long as they are consistent with the [FPA.]”); *Sacramento Mun. Util. Dist. v. FERC*, 616 F.3d 520, 541 (D.C. Cir. 2010) (“[a]gency discretion is often at its zenith” when the agency is fashioning remedies, quoting *Towns of Concord, Norwood Wellesley v. FERC*, 955 F.2 67, 76 (D.C. Cir. 1992)).

In the Order Denying Reconsideration, the District Court held that “a grant of injunctive relief is the only way to ensure that Plaintiffs have a remedy for the state constitutional violation that they have established in this case” because “FERC could conclude that it will not permit retroactive re-assignment of the projects at issue based on this Court’s finding of unconstitutionality.” Order

Denying Reconsideration at 5. This holding was in error. The possibility that FERC might decide not to grant retroactive relief does not indicate that Petitioners do not have a federal remedy. *See Lewis Investments, Inc. v. City of Iowa City*, 703 N.W.2d 180 (2005) (“if a plaintiff has an adequate remedy at law, injunctive relief as an independent remedy is not available”). As discussed above, the remedy exists, but it must be pursued in accordance with applicable FPA requirements, such as: filing a complaint, bearing the burden of proof, and convincing FERC that exercising remedial authority retroactively is appropriate and consistent with federal policy under the circumstances of this case. The outcome is not assured for any party and the possibility that Appellees might lose at FERC does not give the District Court the authority to preempt FERC altogether from deciding whether retroactive relief is justified in this case under federal law.

An effective federal remedy exists for Appellees, and that remedy is in accord with the dividing line that Congress drew in the FPA by granting FERC the exclusive authority over the transmission of electric energy in interstate commerce. *See* 16 U.S.C. § 824. Common sense and judicial economy counsel to avoid an intrusive

and overlapping injunction with potential deleterious impacts when a finer remedy exists at the federal level.

CONCLUSION

The additional insight contained in this Brief may provide a new perspective for the Court to warrant serious reconsideration of the Injunction Order. As described herein, the Injunction Order impermissibly intrudes on FERC's exclusive authority over the MISO Tariff. Accordingly, the Court should grant the relief requested by the Intervenors-Appellants.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on July 2, 2024, the foregoing document was electronically filed with the Clerk of Court using the EDMS system, which will send a notice of electronic filing to all counsel of record registered with the EDMS system.

/s/ Amanda A. James

CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitations of Iowa Rs. App. P. 6.903(1)(g) and 6.903(1)(i)(1) or (2) because:

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/s/ Amanda A. James
Signature

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Date