

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

SWAN LAKE ROAD FARMS, LLC,

Petitioner,

vs.

IOWA UTILITIES COMMISSION,

Respondent.

CASE NO. CVCV068000

RESPONDENT'S ANSWER

COMES NOW Respondent Iowa Utilities Commission (“IUC”), by and through its undersigned counsel, and for its Answer, respectfully state as follows:

PARTIES, VENUE, AND JURISDICTION

1. The allegations contained in Paragraph 1 are admitted.
2. The allegations contained in Paragraph 2 are admitted.
3. The allegations contained in the first sentence of Paragraph 3 are admitted. The allegations contained in the second sentence of Paragraph 3 are admitted. With respect to the third sentence of Paragraph 3, the IUC denies that the IUC was “reorganized” on July 1, 2024, and admits the remaining allegations in this sentence. Sentences four and five of Paragraph 3 are clarifications of name-use within the Petition for which no response is required.
4. The allegations contained in Paragraph 4 are admitted.
5. The allegations contained in Paragraph 5 are admitted.

NATURE OF AGENCY ACTION

6. The allegations contained in Paragraph 6 not admitted herein are denied. It is admitted that ITC Midwest LLC (“ITC Midwest”) filed a petition for an electric transmission line franchise with the IUC on March 24, 2023. It is further admitted that within its petition, as amended, ITC Midwest requested a franchise for 4.80 circuit miles, or 2.4 double circuit miles, of electric

transmission line in Johnson County, Iowa. It is further admitted that ITC Midwest's requested franchise covered the placement of utility facilities within the public road right-of-way—a portion of which Petitioner claims ownership.

7. The allegations contained in Paragraph 7 are admitted.

8. The allegations contained in Paragraph 8 are admitted.

9. The allegations contained in Paragraph 9 are admitted.

10. The allegations contained in Paragraph 10 are denied to the extent this Paragraph intends to limit the "certified record" to pre-filed testimony, pre-filed exhibits, and the hearing transcript. It is admitted that the pre-filed testimony, pre-filed exhibits, and the hearing transcript are items that will be included in the certified record.

11. The allegations contained in Paragraph 11 not admitted herein are denied. It is admitted that on July 24, 2024, presiding officer Jon Tack issued a Proposed Order Granting Petition for Electric Transmission Line Franchise.

12. The allegations contained in Paragraph 12 are admitted.

13. The allegations contained in Paragraph 13 are admitted.

14. The allegations contained in Paragraph 14 not admitted herein are denied. It is admitted that on September 17, 2024, the IUC denied Petitioner's requested relief when it filed its Order Affirming Proposed Order and Denying Request for Stay.

15. The allegations contained in Paragraph 15 are admitted.

16. The allegations contained in Paragraph 16 are admitted.

17. The allegations contained in Paragraph 17 are denied.

18. Paragraph 18 does not set forth an averment of fact for which a response is required, and the incorporated documents speak for themselves.

THE PARTICULAR AGENCY ACTION APPEALED FROM

19. Paragraph 19 does not set forth an averment of fact for which a response is required. In the event a response is required, the IUC denies Petitioner's grounds for appeal.

THE FACTS ON WHICH VENUE IS BASED

20. The allegations contained in Paragraph 20 are admitted.

21. The allegations contained in Paragraph 21 are admitted.

GROUND ON WHICH RELIEF IS SOUGHT

22. The allegations contained in Paragraph 22, including each and every subpart, are denied.

RELIEF SOUGHT

23. Paragraph 23 contains Petitioner's requested relief for which no response is required. In the event a response is required, the IUC requests the Court deny Petitioner's requested relief.

24. Paragraph 24 contains Petitioner's alternative requested relief for which no response is required. In the event a response is required, the IUC requests the Court deny Petitioner's alternative requested relief.

COUNT I: CONSTITUTIONALITY OF § 306.46

25. The IUC re-alleges and incorporates by reference Paragraphs 1 through 24 of this Answer as if set forth herein.

26. The allegations contained in Paragraph 26 not admitted herein are denied. It is admitted that ITC Midwest did not obtain a voluntary easement from Petitioner and has not requested the power of eminent domain in the underlying agency proceeding. It is further admitted that within its filings before the agency, ITC Midwest expressed its intent to rely on Iowa Code § 306.46.

27. The allegations contained in Paragraph 27 not admitted herein are denied. It is admitted that within the final agency action, the IUC recognized ITC Midwest's intent to construct the

transmission line in the public road right-of-way under the authority of Iowa Code § 306.46.

28. The allegations contained in Paragraph 28 not admitted herein are denied. It is admitted that Iowa Code § 306.46(1) provides that “A public utility may construct, operate, repair, or maintain its utility facilities within a public road right-of-way.”

29. The allegations contained in Paragraph 29 are legal assertions and arguments for which no response is required. In the event a response is required, IUC denies the allegations contained in Paragraph 29 as being an incomplete discussion of property law.

30. The allegations contained in Paragraph 30 are legal assertions and arguments for which no response is required. In the event a response is required, IUC denies the allegations contained in Paragraph 30 as being an incomplete discussion of property law.

31. The allegations contained in Paragraph 31 are legal assertions and arguments for which no response is required. In the event a response is required, IUC denies the allegations contained in Paragraph 31 as being an incomplete discussion of property law.

32. The allegations contained in Paragraph 32 are denied.

33. The allegations contained in Paragraph 33 are denied.

34. The allegations contained in Paragraph 34 are legal assertions and arguments for which no response is required. In the event a response is required, the IUC states the cited Iowa Supreme Court and Iowa District Court decisions speaks for themselves.

COUNT II: THE CONSTITUTIONALITY OF IOWA CODE § 306.46

35. The IUC re-alleges and incorporates by reference Paragraphs 1 through 34 of this Answer as if set forth herein.

36. The allegations contained in Paragraph 36 are legal assertions and arguments for which no response is required. In the event a response is required, the IUC states the Iowa Constitution

speaks for itself.

37. The allegations contained in Paragraph 37 are denied.

38. The allegations contained in Paragraph 38 are denied.

39. The allegations contained in Paragraph 39 are denied.

COUNT III: SUBSTANTIAL EVIDENCE

40. The IUC re-alleges and incorporates by reference Paragraphs 1 through 39 of this Answer as if set forth herein.

41. The allegations contained in Paragraph 41 are admitted.

42. The allegations contained in Paragraph 42 are denied.

43. The allegations contained in Paragraph 43 are denied.

44. The allegations contained in Paragraph 44 are denied.

45. The allegations contained in Paragraph 45 are denied.

46. The allegations contained in Paragraph 46 are denied.

47. The allegations contained in Paragraph 47 are denied.

48. The allegations contained in Paragraph 48 are denied.

REQUEST FOR STAY

49. The allegations contained in Paragraph 49 are not part of a pleading, but rather, part of a motion distinct from the pleading. Therefore, a response is not required. In the event a response is required, the allegations contained in Paragraph 49 are admitted.

50. The allegations contained in Paragraph 50 are not part of a pleading, but rather, part of a motion distinct from the pleading. Therefore, a response is not required. In the event a response is required, the allegations contained in Paragraph 50 are admitted.

51. The allegations contained in Paragraph 51 are not part of a pleading, but rather, part of a

motion distinct from the pleading. Therefore, a response is not required. In the event a response is required, the allegations contained in Paragraph 51 not specifically admitted are denied. It is admitted that the IUC denied Petitioner's request for stay.

52. The allegations contained in Paragraph 52 are not part of a pleading, but rather, part of a motion distinct from the pleading. Therefore, a response is not required. Further, the allegations contained in Paragraph 52 are an expression of Petitioner's intent of future action for which no response is required. In the event a response is required, it is admitted that on October 11, 2024, Petitioner filed a Request for Stay with the IUC.

53. The allegations contained in Paragraph 53 are not part of a pleading, but rather, part of a motion distinct from the pleading. Therefore, a response is not required. In the event a response is required, it is admitted that the IUC denied Petitioner's request for stay on September 17, 2024.

54. The allegations contained in Paragraph 54 are not part of a pleading, but rather, part of a motion distinct from the pleading. Therefore, a response is not required. Further, the allegations contained in Paragraph 54 are an expression of Petitioner's intent of future action for which no response is required.

55. The allegations contained in Paragraph 55 are not part of a pleading, but rather, part of a motion distinct from the pleading. Therefore, a response is not required. In the event a response is required, the allegations contained in Paragraph 55 are denied.

56. The allegations contained in Paragraph 56, and all of its subparts, are not part of a pleading, but rather, part of a motion distinct from the pleading. Therefore, a response is not required. In the event a response is required, the allegations contained in Paragraph 56, and all of its subparts, are denied. Petitioner has not met the grounds set forth for issuance of a stay set forth in Iowa Code § 17A.19(5)(c) and discussed in *Teleconnect v. Iowa State Commerce Comm'n*, 404 N.W.2d 158

(Iowa 1987): 1) Petitioner is not likely to prevail on the merits; 2) Petitioner will not suffer irreparable injury if relief is not granted; 3) other parties may be harmed by undue delays in the expansion of necessary electric service; and 4) the public has a strong interest in efficient and reliable utility services.

WHEREFORE, Respondent Iowa Utilities Commission respectfully requests this Court deny the relief requested by Petitioner, including the request for stay; affirm the final agency decision; and assess costs of this action against Petitioner.

Respectfully submitted,

/s/ Michelle Rabe
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**ATTORNEY FOR RESPONDENT
IOWA UTILITIES COMMISSION**

**ALL PARTIES SERVED ELECTRONICALLY
THROUGH EFS**