

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>Swan Lake Road Farms, LLC,</p> <p>Petitioner,</p> <p>v.</p> <p>Iowa Utilities Commission,</p> <p>Respondent.</p>	<p>Case No.: CVCV068000 IUC Docket No.: E-22501</p> <p>ANSWER OF INTERVENOR ITC MIDWEST, LLC</p>
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For its Answer, ITC Midwest, LLC (“ITC Midwest”) responds as follows, with the assertion in the Petition set forth in full and the response following in bold type:

PARTIES, VENUE, AND JURISDICTION

1. Petitioner Swan Lake Road Farms, LLC (“SLRF”) is an Iowa limited liability company which owns real estate in Johnson County, Iowa.

Admitted.

2. Joan Young Ambrose and Robert Young are siblings and are SLRF’s members and managers.

On information and belief, admitted.

3. Respondent Iowa Utilities Commission (“IUC”) is an administrative agency located at 1375 E. Court Avenue, Des Moines, Polk County, Iowa. At the commencement of the proceeding at issue in this judicial review action, the IUC was still known as the Iowa Utilities Board and was often referred to as the IUB. Effective July 1, 2024, the Iowa Utilities Board was reorganized and renamed the Iowa Utilities Commission. Any references in the proceeding to “Board” or “IUB” or “Iowa Utilities Board” should be construed to refer to the IUC which is the Respondent in this matter. Further, even though the procedural history would technically show certain filings were made to the IUB because that was the name at the pertinent time, SLRF will simply use the term IUC in this petition.

Admitted.

4. Venue in Polk County District Court is proper under Iowa Code § 17A.19(2), which specifically allows venue to be in Polk County.

Admitted.

5. This Court has jurisdiction over this petition for judicial review of an agency action pursuant to Iowa Code § 17A.19.

Admitted.

NATURE OF AGENCY ACTION

6. On March 24, 2023, ITC Midwest LLC (“ITCM”) filed a Petition for Electric Transmission Line Franchise with the IUC. The requested franchise proposed erection of poles in and electric lines over SLRF’s real estate in Johnson County, Iowa. Specifically, ITCM requested a franchise to construct, operate, and maintain (as amended) 4.80 miles of 69,000 Volt Nominal operating voltage (72,500 maximum voltage) electric transmission line in Johnson County.

Admitted.

7. SLRF filed a Petition to Intervene on April 3, 2023 and on August 16, 2023, the IUC granted that Petition to Intervene.

Admitted.

8. On April 10, 2024, the IUC designated Jon Tack to serve as presiding officer for the proceeding.

Admitted.

9. The hearing in the proceeding occurred in-person in Johnson County on April 18, 2024.

Admitted.

10. The record consists of written pre-filed testimony and pre-filed exhibits in addition to in-person testimony which is contained in a transcript filed in the docket.

ITC Midwest admits that the listed materials are part of the record, but ITC Midwest denies that the listed materials are the entire record, which also includes the Petition and Exhibits (as amended from time to time in response to IUC staff review letters), which Petition and Exhibits were supported and verified by affidavit filed with the Petition.

11. On July 24, 2024, presiding officer Tack filed a Proposed Order Granting Petition for Electric Transmission Line Franchise.

Admitted.

12. On August 7, 2024, SLRF filed an appeal of that proposed order to the IUC with a request for stay.

Admitted.

13. As a result of SLRF's August 7, 2024 appeal, the July 24, 2024 Proposed Order Granting Petition for Electric Transmission Line Franchise was not a final order or final agency action.

This paragraph asserts a legal conclusion and does not allege facts to be admitted or denied and no response is necessary. To the extent the paragraph requires a response, it is admitted.

14. On September 17, 2024, the IUC denied SLRF's appeal when it filed its Order Affirming Proposed Order and Denying Request for Stay ("Order").

Admitted.

15. On September 17, 2024, the IUC also granted and filed Franchise No. F23012.

Admitted.

16. SLRF has exhausted its administrative remedies and has timely filed this petition for judicial review.

This paragraph asserts a legal conclusion and does not allege facts to be admitted or denied and no response is necessary. To the extent the paragraph requires a response, it is admitted.

17. The IUC's September 17, 2024 Order (and therefore the franchise granted as a result) contains numerous factual and legal errors.

Denied.

18. The IUC's factual and legal errors are more thoroughly identified in SLRF's pre-hearing and post-hearing briefs and SLRF's appeal of the proposed order to the IUC, all of which are incorporated into this Petition with this reference.

Denied.

THE PARTICULAR AGENCY ACTION APPEALED FROM

19. SLRF appeals:

a. The IUC's September 17, 2024 Order Affirming Proposed Order and Denying Request for Stay, which also encompasses an appeal of presiding officer

b. Tack's July 24, 2024 Proposed Order Granting Petition for Electric Transmission Line Franchise; and

c. The IUC's September 17, 2024 grant of Franchise No. F-23012.

ITC Midwest admits that SRLF purports to appeal the listed actions in subparts (a)-(c). ITC Midwest denies the merits or validity of such appeals.

THE FACTS ON WHICH VENUE IS BASED

20. Venue is in Polk County which is expressly permitted in Iowa Code § 17A.19(2): ("Proceedings for judicial review shall be instituted by filing a petition either in Polk county district court or in the district court for the county in which the petitioner resides or has its principal place of business.").

Admitted.

21. Additionally ITCM and the IUC are based in Des Moines, Iowa and counsel for SLRF, ITCM, and the IUC are all located in Des Moines, Iowa. Polk County is not only a proper venue under the law, it is also the most convenient venue.

ITC Midwest admits the allegations in paragraph 21 except that it clarifies ITC Midwest is not “based in” Des Moines. ITC Midwest is headquartered in Cedar Rapids, Iowa. ITC Midwest does have an office in Des Moines.

GROUND ON WHICH RELIEF IS SOUGHT

22. SLRF seeks judicial review of the IUC’s final decision on the grounds that it violates SLRF’s constitutional rights, misapplied facts, and misapplied the law pertaining to the standards necessary to grant electric transmission franchises. SLRF’s substantial rights have been prejudiced as a result of the IUC’s errors. Specifically:

This paragraph asserts a legal conclusion and does not allege facts to be admitted or denied and no response is necessary. To the extent the paragraph requires a response, it is denied.

a. The IUC’s final decision is unconstitutional as applied and facially based on the IUC’s interpretation, because the decision results in an unconstitutional taking of SLRF’s property. See Iowa Code § 17A.19(10)(a);

This paragraph asserts a legal conclusion and does not allege facts to be admitted or denied and no response is necessary. To the extent the paragraph requires a response, it is denied.

b. The IUC’s final decision is based on Iowa Code § 306.46 which is unconstitutional as applied and facially based on the IUC’s interpretation, because the statute’s application results in an unconstitutional taking of SLRF’s property. See Iowa Code § 17A.19(10)(a);

This paragraph asserts a legal conclusion and does not allege facts to be admitted or denied and no response is necessary. To the extent the paragraph requires a response, it is denied.

c. The IUC's final decision allows ITCM to take property from SLRF without ITCM first seeking and proving elements necessary to obtain eminent domain authority, and such decision is beyond the authority delegated to the IUC by any provision of law and is in violation of SLRF's constitutional rights. See Iowa Code § 17A.19(10)(a) and § 17A.19(10)(b);

This paragraph asserts a legal conclusion and does not allege facts to be admitted or denied and no response is necessary. To the extent the paragraph requires a response, it is denied.

d. The IUC's final decision is based on its erroneous interpretation of Iowa Code § 306.46 and the IUC has not been clearly vested with discretion to interpret and apply. See Iowa Code § 17A.19(10)(c);

This paragraph asserts a legal conclusion and does not allege facts to be admitted or denied and no response is necessary. To the extent the paragraph requires a response, it is denied.

e. The IUC's final decision is based on its determination of facts clearly vested by a provision of law in the discretion of the agency that is not supported by substantial evidence in the record before the court when that record is viewed as a whole. See Iowa Code § 17A.19(10)(f). For example, the IUC has been vested with discretion in regards to application of Iowa Code Chapter 478 (determination of whether to grant an electric transmission franchise) but there was a lack of substantial evidence in this proceeding and the grant of the franchise is thus not supported by substantial;

This paragraph asserts a legal conclusion and does not allege facts to be admitted or denied and no response is necessary. To the extent the paragraph requires a response, it is denied.

f. The IUC failed to consider that the route study relied upon by ITCM assumed ITCM would secure easements from landowners or through eminent domain

along the route that ITCM selected and a rational decision maker in similar circumstances would have considered that issue. See Iowa Code § 17A.19(10)(j);

This paragraph asserts a legal conclusion and does not allege facts to be admitted or denied and no response is necessary. To the extent the paragraph requires a response, it is denied.

g. The IUC failed to consider the substantial safety concerns for the route selected by ITCM and a rational decision maker in similar circumstances would have considered that issue. See Iowa Code § 17A.19(10)(j);

This paragraph asserts a legal conclusion and does not allege facts to be admitted or denied and no response is necessary. To the extent the paragraph requires a response, it is denied.

h. The IUC failed to consider that the route selected by ITCM cannot comply with Johnson County's spacing requirements for utilities in rights-of-way and a rational decision maker in similar circumstances would have considered that issue. See Iowa Code § 17A.19(10)(j);

This paragraph asserts a legal conclusion and does not allege facts to be admitted or denied and no response is necessary. To the extent the paragraph requires a response, it is denied.

i. The IUC failed to consider that ITCM's own witness acknowledged it might not be feasible to build line on the route because ITCM cannot comply with Johnson County's spacing requirements for utilities in rights-of-way and a rational decision maker in similar circumstances would have considered that issue. See Iowa Code § 17A.19(10)(j);

This paragraph asserts a legal conclusion and does not allege facts to be admitted or denied and no response is necessary. To the extent the paragraph requires a response, it is denied.

j. The IUC's final decision granting the franchise to ITCM was not required by law and the negative impact from the grant of the franchise on SLRF's private rights affected is so grossly disproportionate to the benefits accruing to the public interest from

the grant of the franchise that the IUC's decision must necessarily be deemed to lack any foundation in rational agency policy. See Iowa Code § 17A.19(10)(k);

This paragraph asserts a legal conclusion and does not allege facts to be admitted or denied and no response is necessary. To the extent the paragraph requires a response, it is denied.

k. To the extent the IUC has been clearly vested with authority to interpret and apply, in its discretion, Iowa Code § 306.46, the IUC's final decision is the product of irrational, illogical, or wholly unjustifiable interpretation of said statutes. See Iowa Code § 17A.19(10)(l);

This paragraph asserts a legal conclusion and does not allege facts to be admitted or denied and no response is necessary. To the extent the paragraph requires a response, it is denied.

l. The IUC's final decision granting the franchise to ITCM was based upon an irrational, illogical, or wholly unjustifiable application of the facts to law that has clearly been vested by a in the discretion of the IUC. See Iowa Code § 17A.19(10)(m); and

This paragraph asserts a legal conclusion and does not allege facts to be admitted or denied and no response is necessary. To the extent the paragraph requires a response, it is denied.

m. The IUC's final decision was otherwise unreasonable, arbitrary, capricious, or an abuse of discretion for the reasons cited in this Petition and raised by SLRF in its briefing and initial appeal to the IUC. See Iowa Code § 17A.19(10)(n).

This paragraph asserts a legal conclusion and does not allege facts to be admitted or denied and no response is necessary. To the extent the paragraph requires a response, it is denied.

RELIEF SOUGHT

23. SLRF asks this Court to rule that the IUC's grant of the franchise to ITCM was unlawful and improper and to order that the IUC shall reject or dismiss or otherwise deny ITCM's Petition for Electric Transmission Line Franchise.

ITC Midwest admits that SLRF is asking for the described relief but denies that this or any other relief is appropriate, and further states that the Petition fails to state a claim for which relief can be granted and that the IUC actions should be affirmed.

24. Alternatively, if the Court determines that ITCM is entitled to a franchise under Iowa Code Chapter 478 but that ITCM cannot rely upon Iowa Code § 306.46 that the Court order the franchise be denied until such time that ITCM obtains property rights to invade SLRF's property.

ITC Midwest admits that SLRF is asking for the described relief but denies that this or any other relief is appropriate, and further states that the Petition fails to state a claim for which relief can be granted and that the IUC actions should be affirmed.

COUNT I: § 306.46 IS UNCONSTITUTIONAL
(Fifth Amendment of Constitution of the United States of America)

25. SLRF restates all prior paragraphs.

ITC Midwest restates its answers to all prior paragraphs.

26. ITCM did not obtain a voluntary easement from SLRF, nor did ITCM request eminent domain authority to erect poles on and place electric lines over SLRF's real property. Instead, ITCM relied upon Iowa Code § 306.46 to erect the poles on and place electric lines over SLRF's property within the road right-of-way.

ITC Midwest admits Paragraph 26 but denies that it relied solely on Iowa Code § 306.46. It also relied on, among other things, the Iowa Supreme Court decision in *Juckette v. Iowa Utils. Bd.*, 992 N.W.2d 218 (Iowa 2023), and the Polk County District Court decision affirmed in that case.

27. The IUC relied upon Iowa Code § 306.46 to allow ITCM to erect the poles on and place electric lines over SLRF's property within the road right-of-way without an easement or eminent domain authority.

ITC Midwest does not speak for the IUC, but on information and belief ITC Midwest admits Paragraph 27 but denies that the IUC relied solely on Iowa Code § 306.46. ITC Midwest, on information on belief, states that the IUC also relied on, among other things, the Iowa Supreme Court decision in *Juckette v. Iowa Utils. Bd.*, 992 N.W.2d 218 (Iowa 2023), and the Polk County District Court decision affirmed in that case.

28. Iowa Code § 306.46 provides that “A public utility may construct, operate, repair, or maintain its utility facilities within a public road right-of-way.” ITCM and the IUC understand this statute to mean that a public utility, such as ITCM, can erect poles on and place electric lines over the portion of private real estate which is subject to a public road right-of-way easement without compensating the landowner.

As the assertions pertain to ITC Midwest, they are admitted. ITC Midwest cannot speak for the IUC.

29. An easement – such as a public road right-of-way – is a burden on the real estate. However, the servient landowner does not surrender a fee simple by virtue of granting an easement. Instead, all that is relinquished by the landowner by virtue of the easement is whatever rights are contemplated by the specific easement. When a servient landowner conveys a public road right-of-way easement, the landowner retains a fee simple interest in the real estate, subject only to the specific burdens contained in the easement. *See Keokuk Junction Ry. Co. v. IES Indus., Inc.*, 618 N.W.2d 352, 360 (Iowa 2000).

This paragraph asserts a legal conclusion and does not allege facts to be admitted or denied and no response is necessary. To the extent the paragraph requires a response, it is denied.

30. As a matter of law, the installation of electric lines creates an actual burden on real estate. *See Id.* Further, the erection of poles on and electric lines over a portion of real estate that is subject to a road right-of-way easement is an additional burden on the real estate. *Id.* 360-62.

This paragraph asserts a legal conclusion and does not allege facts to be admitted or denied and no response is necessary. To the extent the paragraph requires a response, it is denied.

31. The United States Constitution prohibits the taking of private property without just compensation. The IUC’s application of Iowa Code § 306.46 in this case would result in a taking of SLRF’s real property because ITCM would physically invade SLRF’s real property without

paying just compensation to SLRF. *See Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982) (holding that a statute which allows a third-party to physically invade real property without just compensation is unconstitutional).

This paragraph asserts a legal conclusion and does not allege facts to be admitted or denied and no response is necessary. To the extent the paragraph requires a response, it is denied.

32. The IUC's reliance on Iowa Code § 306.46 was unlawful in that the IUC applied it in violation of the United States Constitution. Iowa Code § 17A.19(10)(a).

This paragraph asserts a legal conclusion and does not allege facts to be admitted or denied and no response is necessary. To the extent the paragraph requires a response, it is denied.

33. The IUC therefore acted beyond its delegated authority and erroneously interpreted Iowa law. Iowa Code § 17A.19(10)(b), (c). *See also* Iowa Code § 17A.19(10)(k), (l), (m), and (n).

This paragraph asserts a legal conclusion and does not allege facts to be admitted or denied and no response is necessary. To the extent the paragraph requires a response, it is denied.

34. SLRF notes that the constitutionality of Iowa Code § 306.46 has not been decided by the Iowa Supreme Court. In *NDA Farms, LLC c. Iowa Utilities Bd., Dept. of Commerce*, No. CV 009448, 2013 WL 11239755, at *9-10 (Iowa Dist. June 24, 2013) the Polk County District Court (Judge Hanson) ruled that Iowa Code § 306.46 was unconstitutional as applied. In *Juckette v. Iowa Utilities Board*, No. CVCV061580 (Iowa Dist. November 7, 2021), the Polk County District Court (Judge Vaudt) ruled that Iowa Code § 306.46 was constitutional as applied. In *Juckette v. Iowa Utilities Board*, 992 N.W.2d 218 (Iowa 2023), the Iowa Supreme Court split 3-3 on the issue of the constitutionality of Iowa Code § 306.46 and affirmed Judge Vaudt's ruling as a matter of law only. *Juckette* is thus not binding precedent on the issue of the constitutionality of Iowa Code § 306.46.

This paragraph asserts a legal conclusion and does not allege facts to be admitted or denied and no response is necessary. To the extent the paragraph requires a response, it is denied.

WHEREFORE, Petitioner Swan Lake Road Farms, LLC respectfully requests the Court enter judgment in its favor and against the Respondent Iowa Utilities Commission on Count I of the Petition, and further request that the Court and enter an order denying ITC Midwest, LLC's Petition for Electric Transmission Line Franchise, or, alternatively, order ITCM to re-petition the IUC for proper eminent domain authority over SLRF's property (see *Juckette v. Iowa Utilities Bd.*, 992 N.W.2d 218, 222 (Iowa 2023) (holding that that standards for obtaining a franchise under Iowa Code § 478.4 are separate from the constitutional-takings analysis necessary to obtain eminent domain)), and for all further additional relief the Court finds necessary and proper under the circumstances.

ITC Midwest denies that Petition is entitled to the relief described or any other relief in this matter. The IUC decision should be affirmed.

COUNT II: IOWA CODE § 306.46 IS UNCONSTITUTIONAL
(Article I, Sec. 18 of Constitution of Iowa)

35. SLRF restates all prior paragraphs.

ITC Midwest restates its answers to all prior paragraphs.

36. The Iowa Constitution prohibits the taking of private property without just compensation. Iowa Const. Art. 1, Sec. 18.

This paragraph asserts a legal conclusion and does not allege facts to be admitted or denied and no response is necessary. The Iowa Constitution speaks for itself.

37. Application of Iowa Code § 306.46 in this case would result in a taking of SLRF's real property because ITCM would physically invade SLRF's real property without paying just compensation to SLRF.

This paragraph asserts a legal conclusion and does not allege facts to be admitted or denied and no response is necessary. To the extent the paragraph requires a response, it is denied.

38. The IUC's reliance on Iowa Code § 306.46 was unlawful in that the IUC applied it in violation of the Iowa Constitution. Iowa Code § 17A.19(10)(a).

Denied.

39. The IUC therefore acted beyond its delegated authority and erroneously interpreted Iowa law. Iowa Code § 17A.19(10)(b), (c). *See also* Iowa Code § 17A.19(10)(k), (l), (m), and (n).

Denied.

WHEREFORE, Petitioner Swan Lake Road Farms, LLC respectfully requests the Court enter judgment in its favor and against the Respondent Iowa Utilities Commission on Count II of the Petition, and further request that the Court and enter an order denying ITC Midwest, LLC's Petition for Electric Transmission Line Franchise, or, alternatively, order ITCM to re-petition the IUC for proper eminent domain authority over SLRF's property (*see Juckette v. Iowa Utilities Bd.*, 992 N.W.2d 218, 222 (Iowa 2023) (holding that that standards for obtaining a franchise under Iowa Code § 478.4 are separate from the constitutional-takings analysis necessary to obtain eminent domain)), and for all further additional relief the Court finds necessary and proper under the circumstances.

ITC Midwest denies that Petition is entitled to the relief described or any other relief in this matter. The IUC decision should be affirmed.

COUNT III: THERE WAS NOT SUBSTANTIAL EVIDENCE IN RECORD WHICH SUPPORTS A FINDING THAT ITCM MET THE STANDARDS NECESSARY TO OBTAIN A FRANCHISE

40. SLRF restates all prior paragraphs.

ITC Midwest restates its answers to all prior paragraphs.

41. ITCM had the burden of proof to establish that the proposed franchise met the requirements for a franchise under Iowa Code Chapter 478.

This paragraph asserts a legal conclusion and does not allege facts to be admitted or denied and no response is necessary. To the extent the paragraph requires a response, it is admitted.

42. ITCM failed to prove, and the IUC erred in finding to the contrary, that the proposed franchise served a public interest.

Denied.

43. ITCM failed to prove, and the IUC erred in finding to the contrary, that the proposed franchise was necessary for a public use.

Denied.

44. ITCM failed to prove, and the IUC erred in finding to the contrary, that the proposed franchise was not unduly injurious.

Denied.

45. ITCM failed to prove, and the IUC erred in finding to the contrary, that the proposed franchise did not unnecessarily interfere with landowner's, including SLRF's, current and future use of real property.

Denied.

46. ITCM failed to prove, and the IUC erred in finding to the contrary, that ITCM considered alternative routes and methods of supply.

Denied

47. The evidence demonstrates that ITCM failed to prove its entitlement to a franchise under the facts and circumstances of this case, and the IUC erred in ruling to the contrary.

Denied

48. For these reasons, the IUC's decision: was not supported by substantial evidence, Iowa Code § 17A.19(10)(f); failed to take into consideration evidence which would have affected

the conclusion of a reasonable factfinder, Iowa Code § 17A.19(10)(j); the IUC's decision was not required by law and the negative effects of granting the franchise outweigh any benefit, Iowa Code § 17A.19(10)(k); was irrational, illogical, and wholly unjustifiable on the factual record and statutes before the IUC, Iowa Code § 17A.19(10)(l), (m); was arbitrary, capricious, and an abuse of discretion, Iowa Code § 17A.19(10)(n).

Denied

WHEREFORE, Petitioner Swan Lake Road Farms, LLC respectfully requests the Court enter judgment in its favor and against the Respondent Iowa Utilities Commission on Count III of the Petition, and further requests that the Court and enter an order denying ITC Midwest, LLC's Petition for Electric Transmission Line Franchise, and for all further additional relief the Court finds necessary and proper under the circumstances.

ITC Midwest denies that Petition is entitled to the relief described or any other relief in this matter. The IUC decision should be affirmed.

REQUEST FOR STAY

The Request for Stay is not a pleading and does not require an answer. It is also premature as the requisite motion before the agency has not yet been ruled on.

Dated this 25th day of November, 2024.

By: */s/ Bret A. Dublinske*

Bret A. Dublinske (AT0002232)
Brant M. Leonard (AT0010157)
FREDRIKSON & BYRON, P.A.
111 East Grand Avenue, Suite 301
Des Moines, IA 50309-1977
Phone: (515) 242-8900
Fax: (515) 242-8950
Email: bdublinske@fredlaw.com
bleonard@fredlaw.com

**ATTORNEYS FOR INTERVENOR ITC
MIDWEST, LLC**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 25th day of November, 2024, the foregoing document was filed with the Clerk of Court using the EDMS system, which will send a notice of electronic filing to all parties registered to receive electronic notice in this docket.

/s/ Ryan Carlile _____
Ryan Carlile