IN THE IOWA DISTRICT COURT FOR POLK COUNTY

Swan Lake Road Farms, LLC, Petitioner, v. **Iowa Utilities Commission**, Respondent.	Case No.: CVCV068000 IUC Docket No.: E-22501 **PETITIONER SWAN LAKE ROAD FARMS, LLC'S OPENING BRIEF**

COMES NOW, Petitioner Swan Lake Road Farms, LLC, by and through the undersigned counsel, and submits the following Opening Brief.

By:_____

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CERTIFICATE OF SERVICE

I hereby certify that on January 8, 2025, I electronically filed the foregoing document with the Clerk of the Court by using the Iowa Judicial Branch electronic filing system which will send a notice of electronic filing to the following:

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INTRODUCTION

Swan Lake Road Farms, LLC ("SLRF") owns land along the north and south sides of Swan Lake Road in rural Johnson County, Iowa. SLRF is owned by siblings: Joan Young Ambrose and Robert Young. The Youngs' ancestors homesteaded the land in the early 1840s and it has remained in the family longer than Iowa has been a state. (Robert Young DT, 4:1-7).

This judicial review proceeding focuses on two overarching concepts. First, that the action taken by the Iowa Utilities Commission[1] was unconstitutional, and second, that regardless of the constitutional issue, the Iowa Utilities Commission ("IUC") is failing Iowans by granting monopolies rights to construct more infrastructure without actually requiring sufficient evidence required in the statute for such permission.[2] The result is an increased cost burden to ITCM's captive ratepayers and an infringement of the rights of landowners.

OVERVIEW OF STATUTORY REGIME

ITC Midwest LLC ("ITCM") is an electric transmission-only utility company in Iowa. ITCM is a monopoly and provides transmission power to electrical distribution companies which have exclusive territorial rights for electrical distribution all across the

[1] Effective July 1, 2024, the Iowa Utilities Board was 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. While the Certified Record will show certain filings were made to or referenced the IUB (because that was the name at the pertinent time), SLRF will use the acronym "IUC" in this judicial review proceeding.

[2] SLRF is unaware of any recent instance where the IUC has denied a petition for a franchise for a new transmission line, but would be happy to see any citations to such denial and any refutational of the notion that IUC holds a rubber-stamp.

state. Iowans who receive electricity within ITCM's monopolistic territory have no choice over which company supplies their electricity; if they want electricity, they are forced to pay ITCM's allocated transmission charges.

The IUC is tasked by statute with oversight over electrical monopolies like ITCM. Before ITCM can build new transmission infrastructure, it must obtain permission – a franchise – from the IUC. The Legislature has dictated that the IUC must require monopolies like ITCM to present evidence and prove certain elements before the monopoly is given a franchise to build more transmission lines. The statutes are in Iowa Code Chapter 478.

The statutory regime in Chapter 478 is meant to protect Iowans. It requires that before a monopoly can build, build, build it must first prove there is a necessity for the new infrastructure. The burden of proof is the counterbalance to the monopolistic nature of electrical transmission and distribution in Iowa. Iowans who consume electricity pay for that electricity. The rates paid by Iowa consumers accounts for the costs and expenses incurred by the monopolies, including the costs of building new infrastructure in addition to any allowed rates of returns on the cost of construction. Now, this proceeding is not a challenge to the *rates* charged by ITCM. But, the concept of the permission given to build new infrastructure, which is then used to justify rates charged to captive consumers who have no choice from whom to purchase electricity, is vital to understanding why the IUC must faithfully require monopolies like ITCM to prove – with actual evidence – that they have met all statutory requirements before the monopoly

can be vested with the privilege of a franchise at the cost of Iowa's consumers of electricity.

PROCEDURAL HISTORY

On March 24, 2023, 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. SLRF intervened in the contested case proceeding before the IUC. The parties submitted written pre-filed testimony and exhibits prior to the hearing, which was held on April 18, 2024. On July 24, 2024, the presiding officer filed a Proposed Order Granting Petition for Electric Transmission Line Franchise. On August 7, 2024, SLRF timely filed an appeal of that proposed order to the IUC with a request for stay. 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. On September 17, 2024, the IUC denied SLRF's appeal when it filed its Order Affirming Proposed Order and Denying Request for Stay ("Order"). On September 17, 2024, the IUC also granted and filed Franchise No. F-23012. SLRF exhausted its administrative remedies and timely filed the petition for judicial review commencing this proceeding.

GROUNDS UPON WHICH RELIEF IS SOUGHT

Pursuant to Iowa Code § 17A.19, SLRF's petition for judicial review itemized the issues on appeal. These are restated here:

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:

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);

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);

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);

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);

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 evidence;

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);

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);

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);

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);

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);

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);

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 in the discretion of the IUC. *See* Iowa Code § 17A.19(10)(m); and

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).

CONCISE STATEMENT OF ISSUES FOR JUDICIAL REVIEW

Put simply, SLRF contends ITCM is not entitled to the franchise issued by the IUC for the following broadly stated reasons:

First, the franchise results in an unconstitutional taking of SLRF's property and the IUC erred in granting a franchise which relies on constitutional violations; and

Second, the IUC erred by granting a franchise when ITCM did not meet its burden of proof, specifically:

I. ITCM failed to prove the requested line is "necessary to serve a public use" as required by Iowa Code § 478.4;

II. ITCM failed to prove the line represents a "reasonable relationship to an overall plan of transmitting electricity in the public interest" as required by Iowa Code § 478.4; and

III. ITCM failed to prove, with actual evidence, that it met the other statutory considerations in Iowa Code § 478.3(2)(a).

THE FRANCHISE IS UNCONSTITUTIONAL

The franchise granted by the IUC effectuates an unconstitutional result and the franchise should not have been granted.

At the heart of the constitutional issue is Iowa Code § 306.46, which states: "A public utility may construct, operate, repair, or maintain its utility facilities within a public road right-of-way." This seemingly innocuous provision has been used by ITCM and the IUC to result in unconstitutional takings of private property.

In this case, ITCM plans to construct a new transmission line on private property along the whole route. Specifically, ITCM plans to build poles in and place lines over SLRF's real estate, as well as the real estate of every landowner along the proposed route. The new facilities will be located in the portion of SLRF's property that is a road right-of-way. There is zero dispute that SLRF is still the owner of the property where ITCM seeks to construct its transmission lines and poles. Importantly, ITCM does not compensate SLRF for entry and use of SLRF's real property. ITCM also has not been vested with eminent domain authority to enter SLRF's real property. Thus, by granting the franchise,

the IUC has taken SLRF's real property and given a portion of it to ITCM for ITCM's use without (1) determining whether ITCM meets the stringent constitutional criteria to obtain eminent domain authority for this line and (2) without paying any compensation to SLRF.

To build on SLRF's property, ITCM relies on Iowa Code § 306.46. ITCM claims that statute gives the Board and private companies the ability to invade private property for the construction of poles and lines if the construction is located in the right of way on the private property. SLRF maintains that any such governmental action granting ITCM's request for invasion without just compensation is an unconstitutional taking. The Fifth Amendment of the United States Constitution provides, in part, "nor shall private property be taken for public use, without just compensation" and Article I, § 18 of the Iowa Constitution states in part "Private property shall not be taken for public use without just compensation first being made . . ."

In 2004, the Iowa Legislature enacted § 306.46, which states: "A public utility may construct, operate, repair, or maintain its utility facilities within a public road right-of-way." ITCM suggests § 306.46 can be construed to allow a private company, via an order from the IUC, to invade private property so long as the construction is in a right-of-way.

Section 306.46 has been the subject of at least two legal challenges. The Iowa Supreme Court has not yet ruled on the unconstitutionality of the statute and there is, effectively, a "circuit split" of sorts in judicial reviews of the statute.

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), Polk County District Court Judge Robert

Hanson ruled that an IUC order purporting to allow a utility to construct transmission lines in a private right of way without compensation under § 306.46 would effectuate an unconstitutional taking in violation of the constitution. Judge Hanson stated: "As an easement would be required to construct the transmission line, any construction based on the permission from the Polk County Engineer without compensation would constitute a governmental taking without just compensation. *See Keokuk*, 618 N.W.2d at 362; *Bormann v. Bd. of Sup'rs In and For Kossuth Cnty.*, 584 N.W.2d 309, 316-17 (Iowa 1998)." The *NDA Farms* case was appealed, but resolved before a higher court ruled on the constitutionality of § 306.46.

In *Juckette v. Iowa Utilities Board*, 992 N.W.2d 218 (Iowa 2023), in the judicial review of the IUC decision, Polk County District Court Judge Jeanie Vaudt ruled that the IUC order relying on § 306.46 was constitutional despite the fact that the order resulted in invasion of private property by construction of utility facilities in a right-of-way without compensation. The landowner appealed that decision to the Iowa Supreme Court. In the Supreme Court's June 16, 2023 decision, the Court issued no opinion on the constitutionality of § 306.46. The Iowa Supreme Court split 3-3 on the question of whether § 306.46 was constitutional.[3] As a result, by operation of law only, Judge Vaudt's ruling was unchanged.

[3] Justice Mansfield recused himself from the case. Chief Justice Christensen, and Justices McDermott and May concluded § 306.46 would effectuate an unconstitutional taking while Justices Waterman, McDonald, and Oxley disagreed.

Thus, the constitutionality of § 306.46 is unresolved by Iowa's high court. The two known district court decisions which have considered the constitutionality of § 306.46– by Polk County judges Hanson and Vaudt – have disagreed with each other and have created the equivalent of a circuit-split on constitutional grounds.

The Unconstitutionality of § 306.46

The unconstitutionality of § 306.46 is straightforward. There is no need for expansive citations to the fundamental tenets of law that both the federal and Iowa constitutions prohibit the taking of private property without just compensation. Here, though, ITCM has requested that the IUC grant to ITCM the right to build poles on and construct lines over SLRF's private property without ITCM seeking condemnation authority and without paying any compensation to SLRF for the invasion. ITCM relies on § 306.46 under the faulty belief that the Iowa Legislature could somehow grant authority to utilities to take specific parts of property without just compensation. This is absurd.

SLRF owns the area of land referred to by ITCM as the right-of-way at issue in this appeal. This is undisputed. The right-of-way at issue is clearly **private property**.

A right-of-way is merely an easement granted for travel over property. Utilities are not subsumed by a right-of-way easement. Black's Law Dictionary defines right-of-way as follows:

> 1. The right to pass through property owned by another. • A right-of-way may be established by contract, by longstanding usage, or by public authority (as with a highway). Cf. easement. 2. The right to build and operate a railway line or a highway on land belonging to another, or the land so used. 3. The right to take precedence in traffic. 4. The strip of land

> subject to a nonowner's right to pass through. — Also written right-of-way. Pl. rights-of-way.

RIGHT-OF-WAY, Black's Law Dictionary (11th ed. 2019).

Under Iowa Code § 306.3(7) a "public road right-of-way" is defined as "an area of land, the right to possession of which is secured or reserved by the state or a governmental subdivision *for roadway purposes*." (Emphasis added). Further, Iowa Code § 321.1(65) has defined "roadway" as "that portion of a highway improved, designed, or ordinarily used for vehicular travel." Notably, both the Black's Law and statutory definitions are limited to a right of travel over property and does not include a right for a private company to erect utility structures in the right-of-way. *Brown v. Young*, 29 N.W. 941, 941 (Iowa 1886) ("A mere right-of-way over land is, we believe, always regarded as an easement."); *Chicago & N.W. Ry. Co. v. Sioux City Stockyards Co.*, 158 N.W. 769, 772 (Iowa 1916) ("In the absence of some showing to the contrary, a grant or gift of ground for right-of-way is presumed to be of an easement therein only.").

It is fundamental law that an easement holder cannot change the character of the easement or increase the burden on the servient estate beyond what was contemplated in the easement *ab initio*. *Stew-Mc Dev., Inc. v. Fischer*, 770 N.W.2d 839, 847 (Iowa 2009); *Brossart v. Corlett*, 27 Iowa 288, 293 (1869) ("[T]he servient estate shall not be burdened to a greater extent than was contemplated at the time of the creation of the easement."). It must follow, then, that a third-party cannot expand the scope of the easement.

The Eighth Circuit, applying Missouri easement law – which appears identical to Iowa's in respect to the issues here – ruled that an electric cooperative exceeded the scope

of an easement when it attempted to install a fiber-optic cable in an easement area. *Barfield v. Sho-Me Power Electric Coop.*, 852 F.3d 795 (8th Cir. 2017). In *Barfield*, an electric cooperative had easements to construct and operate electric transmission lines over thousands of parcels. *Id*. at 797-98. The cooperative decided to install fiber-optic cables in the easement area and sold excess capacity on those cables to a telecommunications company. *Id*. at 798. The Eighth Circuit ruled that the easements only granted the cooperative the right to use the easements for construction and operation of electrical transmission, and that the cooperative had no right to install fiber-optic cables for use as telecommunications. *Id*. 801-02. The Court stated "a cable can rightfully occupy the easement to serve the purpose authorized in the easement. But that cable cannot also serve the general public for purposes not authorized by the easement. That additional use—here, Tech's use for public-serving commercial telecommunications unrelated to electric transmission—is an expanded use of the kind prohibited" under Missouri law. *Id.* at 802.

The Iowa Supreme Court has held that placement of utilities in an easement is an improper additional servitude on the easement if there is no express right for utility usage in the easement. *Keokuk Junction Ry. Co. v. IES Indus., Inc.*, 618 N.W.2d 352, 357 (Iowa 2000) ("*The easement language is controlling*, and a failure to indicate the right to place utility poles within in it is conclusive that this right does not exist.") (emphasis added); *see also Id.* at 355 ("Once a valid easement has been created and the servient landowner justly compensated, the continued use of the easement must not place a greater burden on the servient estate than was contemplated *at the time of formation*.") (emphasis added) (citing

Cline v. Richardson, 526 N.W.2d 166, 169 (Iowa Ct. App. 1994); 39 Am. Jur. 2d *Highways, Streets, and Bridges* § 183 (1998) ("The general rule is that the law will not by construction effect a grant of a greater interest than is essential for the public use.")); *Keokuk Junction*, 618 N.W.2d at 360 ("When the servient land is burdened by an easement, the servient landowner does not surrender a fee simple. All that is relinquished is so much of the land as is necessary to accomplish the purposes of the easement."). Additionally, the Seventh Circuit – without any need for in-depth analysis – ruled that a statute authorizing the placement of utility facilities in a railroad right-of-way was obviously a physical taking triggering just compensation obligations. *Wisconsin Cent. Ltd. v. Pub. Serv. Commn. of Wisconsin*, 95 F.3d 1359, 1367 (7th Cir. 1996).

In *Keokuk Junction*, the Iowa Supreme Court considered whether IES Industries, Inc. – a public utility company – could construct electric utility poles in a right of way without permission from the owner of the right of way. The district court ruled that IES could build the electric utility poles in the right of way because the district court believed "use of the electric transmission lines constitutes an incidental use or incidental easement rather than a burden which is in addition to the street right-of-way." *Keokuk Junction*, 618 N.W.2d at 354. The Supreme Court also noted that the district court was "specifically persuaded that the power lines in question were 'owned and operated by a public utility which serve[d] the public generally, and that the primary easement in this case [was] a municipality's city street.'" *Id.*

On appeal, the Iowa Supreme Court acknowledged that there were five possible outcomes for the case:

> The possible outcomes are: (1) utility poles are within the highway easement; (2) utility poles are within the highway easement, but only if they are used to furnish power for reasons directly related to travel; (3) utility poles are within the highway easement, but only in relation to urban areas; (4) utility poles are within the highway easement if they (a) are necessary for travel purposes, and (b) the highway is in an urban area; or (5) utility poles are not within the highway easement.

Id. at 356. The Court thoroughly reviewed all possible outcomes and the legal justifications for each. The Court concluded that the fifth outcome was the correct statement of Iowa law:

> We agree with the sound arguments made by the courts adopting the fifth rationale. **We conclude that power lines and utility poles are *not included* within the scope of the general public highway easement**. Specifically, if the city had wanted its easement to include utilities, it could have stated as much. Allowing a utility company that operates for a profit to place its poles on the servient land without having to pay for this right **is manifestly unfair** to the servient landowner whose easement did not include utilities within its purview. To hold otherwise would allow the utility company to get something for nothing. **The sole existence of a public easement should not enable a company for profit to obtain free use**.

Id. at 362 (emphasis added). *Keokuk Junction* makes clear that, under Iowa law, electric **utility poles are not incidental uses to right of way easements**. The construction of electric facilities is thus an increased burden to a right-of-way easement and are not subsumed in such an easement.

Here, SLRF's property right at issue is a right-of-way easement. That easement is for passage over land. An easement for electrical transmission in *Barfield* did not permit usage of the easement for fiber-optic cables. A right-of-way easement in *Keokuk Junction* did not allow for construction of electric poles. The right-of-way here does not allow for use by electric utility infrastructure on SLRF's land. ITCM's attempt to put poles in and

lines over SLRF's property in the easement is an additional servitude and is not permitted under the existing right-of-way.

Both the Federal and Iowa Constitutions prohibit the taking of property rights without just compensation. U.S. Const. Amend. V; Iowa Const. Art. I, § 9. A regulatory taking occurs when a governmental action or statute results in deprivation of a property right. *Bormann v. Board of Supervisors In and For Kossuth County*, 584 N.W.2d 309, 316-17 (Iowa 1998). One category of a regulatory taking is a *per s*e taking caused by a physical invasion of property. *Id*. at 317-18.

In 1982, the United States Supreme Court held that a private entity's physical intrusion onto private property pursuant to a New York statute was an unconstitutional taking. *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982). In *Loretto*, a statute provided that certain private companies providing access to cable television could install cable infrastructure in/on apartment buildings and that owners of the buildings could not interfere with said installation. The Supreme Court held: "We conclude that a permanent physical occupation authorized by government is a taking without regard to the public interests that it may serve. Our constitutional history confirms the rule, recent cases do not question it, and the purposes of the Takings Clause compel its retention." *Id*. at 426. Under *Loretto*, a statute that purports to authorize **any** physical intrusion on real property results in a **per se taking** without regard for the public interests addressed by the statute. The size of the intrusion makes no difference to the Constitutional impropriety of the invasion.

The Supreme Court of the United States recently reiterated the holding in *Loretto*. In *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063, 2072 (2021), the Court held that a statute which granted third parties rights to enter private property was a *per s*e physical taking. The Court stated:

> The right to exclude is "one of the most treasured" rights of property ownership. *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 435, 102 S.Ct. 3164, 73 L.Ed.2d 868 (1982). According to Blackstone, the very idea of property entails "that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe." 2 W. Blackstone, Commentaries on the Laws of England 2 (1766). In less exuberant terms, we have stated that the right to exclude is "universally held to be a fundamental element of the property right," and is "one of the most essential sticks in the bundle of rights that are commonly characterized as property." *Kaiser Aetna v. United States*, 444 U.S. 164, 176, 179–180, 100 S.Ct. 383, 62 L.Ed.2d 332 (1979); see *Dolan v. City of Tigard*, 512 U.S. 374, 384, 393, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994); *Nollan v. California Coastal Comm'n*, 483 U.S. 825, 831, 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987); see also Merrill, Property and the Right to Exclude, 77 Neb. L. Rev. 730 (1998) (calling the right to exclude the "*sine qua non*" of property).
>
> **Given the central importance to property ownership of the right to exclude, it comes as little surprise that the Court has long treated government-authorized physical invasions as takings requiring just compensation. The Court has often described the property interest taken as a servitude or an easement**.

Id. at 2072-73 (emphasis added). The restrictions on taking property without compensation extend even to invasion of an easement. *Id.*; *Kaiser Aetna v. U. S.*, 444 U.S. 164, 180 (1979).

ITCM will argue that the legislature abrogated the holding in *Keokuk Junction* based on the bare-bones, non-sequitur argument that § 306.46 was enacted four years after the ruling in *Keokuk Junction*. That's it. Even setting aside the lack of causal basis for

that assertion, it does not matter. The legislature cannot make a statute which would deprive Iowans of constitutional protections.

The Iowa Supreme Court has ruled that the legislature exceeded its authority when it enacted a statute which essentially took an easement from private property and gave a right to that property to a third-party because the effect was a violation of takings clauses of the Federal and Iowa constitutions. *Bormann,* 584 N.W.2d at 321. In *Bormann*, a statute was enacted to provide immunity to farmers whose activities would ordinarily constitute an actionable nuisance. The Court equated the immunity to an easement forced upon neighbors who could no longer sue for nuisance. *Id*. The Court held the statute amounted to a taking of private property in violation of the Federal and Iowa constitutions. *Id*. The Court ended its opinion as follows:

> We reach this holding with a full recognition of the deference we owe to the General Assembly. That branch of government-with some participation by the executive branch-holds the responsibility to sort through the practical realities and, through the political process, reach consensus in highly controversial public decisions. Those decisions demand our sincere respect. The rule is therefore that "[a] challenger must show beyond a reasonable doubt that the statute violates the constitution and must negate every reasonable basis that might support the statute." *Johnston v. Veterans' Plaza Authority,* 535 N.W.2d 131, 132 (Iowa 1995). The rule finding constitutionality in close cases cannot control the present one, however, because, with all respect, this is not a close case. When all the varnish is removed, the challenged statutory scheme amounts to a commandeering of valuable property rights without compensating the owners, and sacrificing those rights for the economic advantage of a few. In short, it appropriates valuable private property interests and awards them to strangers.
>
> The same public that constituted the other branches of state government to make political decisions with an eye on economic consequences expects the court to resolve constitutional challenges on a purely legal basis. We recognize that political and economic fallout from our holding will be

> substantial. But we are convinced our responsibility is clear because the challenged scheme is plainly-we think flagrantly-unconstitutional.

Id. at 322.

Here, Iowa Code § 306.46 is functionally equivalent to the *Loretto* statute. There, a law authorized a private entity to intrude on private property based on an articulated public purpose. Here, § 306.46 purports to allow construction of a utility in a right-of-way located on private property. Both statutes purportedly allow unilateral permanent access to a private company to invade private property. Both statutes violate the Constitution.

Since neither SLRF nor its predecessors have granted a specific right for a utility to enter the land for placement of poles and lines, ITCM cannot rely on § 306.46 to invade SLRF's land without compensation. Such invasion is an additional servitude on SLRF's property, as explained above, and § 306.46's attempt to permit such burden and additional servitude results in an unconstitutional taking. *See Bormann*, 584 N.W.2d at 321.

Loretto and *Bormann* make clear that a statute – regardless of the legislative desire to reach a laudable goal – cannot result in a loss of a property right without just compensation. If a television cable attached to the exterior of a building is a separate property right and not a subsumed, incidental use of an apartment building, then placement of utility poles in real estate cannot be an incidental use of a right-of-way. If the right to exclude a television cable from a building is a property right as noted in *Loretto*, then the right to exclude poles in and electric lines over property is certainly a property right which requires compensation if such right is taken by statute.

As applied, § 306.46 is unconstitutional because it purports to allow the IUC to permit ITCM to place utility structures in SLRF's property without just compensation. The placement is an additional servitude on SLRF's property beyond the right-of-way in violation of SLRF's constitutional rights.

Iowa's Constitution demonstrates another reason why § 306.46 cannot be interpreted to allow the taking of private property for uses by utilities without just compensation. The first portion of Article I, § 18 states "Private property shall not be taken for public use without just compensation first being made . . ." The second paragraph of the same section, though, explicitly allows the Legislature to pass laws allowing for construction and maintenance of drains, ditches, and levees. The final sentence of the section states: "The general assembly may provide by law for the condemnation of such real estate as shall be necessary for the construction and maintenance of such drains, ditches and levees, and prescribe the method of making such condemnation."

The text of Iowa's Constitution dictates that even though the State has the power to use private property for certain functions like drains, ditches, and levees, the exercise of such power is still subject to condemnation procedures – i.e. the payment of just compensation. An interpretation of § 306.46 to allow an electric company to construct and maintain utility facilities in a right-of-way on private property without just compensation ignores the full text of Article I, § 18. Even though the state may enact laws allowing for certain invasions of private property, the Iowa Constitution still mandates following the condemnation process. There is no reason to believe that framers of the Iowa

Constitution, nor the sovereign when the second paragraph of Article I, § 18 was amended in 1908, would distinguish between the fundamental requirement of payment of just compensation for construction of drains, ditches, and levees from construction of electric transmission poles and lines. Put differently, an interpretation of § 306.46 that the Legislature could grant private utilities the right to take private property located in rights of way *without payment of just compensation* renders the statute unconstitutional.

Because ITCM's petition for franchise relies upon an unconstitutional application of § 306.46 to take private property without compensation, the IUC erred in granting the franchise.

ITCM's Reliance on* Juckette *is Misplaced

ITCM is likely to argue that the Iowa Supreme Court in *Juckette* upheld the constitutionality of § 306.46 and all that was undetermined by the 3-3 split was a right to compensation from a county compensation commission. This is misleading and inaccurate.

In *Juckette*, the landowner argued[4] that the IUC erred in granting a franchise because (1) the project was not for public use and (2) the utility did not have a right to build on the property because § 306.46 was unconstitutional as applied. The Court held that the utility met the statutory requirements for a franchise and that it was a public use. *Juckette*, 992 N.W.2d at 221–22.

[4] For the sake of transparency, undersigned counsel notes that he was the attorney for Linda Juckette and he authored all briefs and argued the case before the Supreme Court. In *Juckette*, ITCM was an amicus curiae and was represented in its briefing by its current legal counsel in this proceeding. Thus, the attorneys here are intimately familiar with the briefing, arguments, and issues that existed in *Juckette*.

That is where the Court's binding ruling ended. Below are the two paragraphs dedicated to addressing § 306.46:

> **III. Private Property and Takings.**
>
> We now turn to Juckette's argument that MidAmerican has no right to place utility structures in the road right-of-way encumbering her land or, alternatively, MidAmerican may not do so without paying compensation. As we noted at the outset, we believe section 306.46 creates a statutory easement that allows utilities like MidAmerican to "construct, operate, repair, or maintain [their] utility facilities within a public road right-of-way," Iowa Code § 306.46(1), including the right-of-way that encumbers Juckette's property. *See Statutory Easement*, *Black's Law Dictionary* 646 (11th ed. 2019) ("An easement created by a legislative body to accommodate the public good, as for utility services."). There is no question, then, that MidAmerican is statutorily authorized to construct electric transmission lines within the Juckette right-of-way.
>
> The only question is whether that construction could result in a taking that requires compensation under the Fifth Amendment to the United States Constitution and article I, section 18 of the Iowa Constitution. As to this question, we are evenly divided. Christensen, C.J., and McDermott and May, JJ., would find that that construction could result in a taking; Waterman, McDonald, and Oxley, JJ., disagree. As a result, the district court is affirmed by operation of law. Iowa Code § 602.4107 (2023); *Effler*, 769 N.W.2d at 884.

Id. at 222.

Never in *Juckette* did any party assert that § 306.46 meant or said something other than what the Court noted. The language of the statute clearly creates – by statute – an easement on private property without any means of compensation to the landowner. The issue, though, is whether that uncompensated creation of an easement is constitutional. If not, then the statute cannot be applied by the IUC to grant franchises allowing for the construction of electrical transmission lines on private property under the guise of § 306.46.

Put differently, the issue in *Juckette* was not simply whether the landowner was entitled to compensation from the county commissioners. Instead, the issue was whether § 306.46 would result in an unconstitutional taking. If so, then the IUC's issuance of the franchise was unlawful. That is the heart of the issue in this present case.

The next logical question, then, is why does it matter? The Court might ask itself why it should deny the franchise if it finds § 306.46 unconstitutional instead of simply ordering that the franchise can stand but SLRF needs to be compensated. The answer is in *Juckette*.

In *Juckette*, the landowner argued that the electrical transmission statute required the IUC to apply the higher "public use" standard used for constitutional eminent domain disputes. Under § 478.4, a utility can only obtain a transmission franchise if it proves that the new line is "necessary for a public use." The landowner urged the Supreme Court to apply the "public use" standard used in a constitutional takings/eminent domain analysis, which is stricter than the standard typically used by the IUC when determining if a franchise is a "public use" for purposes of § 478.4.

The Supreme Court disagreed with the landowner and held that § 478.4's "public use" standard is not the same "public use" standard for constitutional analysis.

Why does this matter? Because for an electrical utility to obtain eminent domain authority, it must meet the heightened "public use" standard in § 478.15. That did not occur here. ITCM never requested eminent domain authority and there has been no proceeding with facts or analysis to determine if ITCM meets the heightened "public use" standard in § 478.15. This is why ***denial*** of the franchise is necessary, not just upholding

the franchise and sending the matter to the county compensation commission to award money to SLRF. The Supreme Court made clear in *Juckette* that there is a separate "public use" standard under § 478.15 that is different than the "public use" standard to obtain a franchise under § 478.4. There is no dispute that ITCM has not sought eminent domain and that there has been no submission of evidence or argument on whether ITCM could qualify for eminent domain under § 478.15. Thus, if the Court agrees with SLRF that § 306.46 unconstitutionally takes private property, the remedy must be the reversal of the franchise awarded to ITCM by the IUC.

The Franchise Effectuated an Unconstitutional Result and Must be Reversed

The franchise issued by the IUC effectuates an unconstitutional outcome: the taking of private property without just compensation. As explained above, sending this to a compensation commission is not the right remedy. The IUC cannot take an action that is unconstitutional. As it stands, the IUC order constitutes an unconstitutional regulatory taking to benefit a monopolistic private for-profit company. This must be reversed.

ITCM FAILED TO MEET ALL ELEMENTS REQUIRED BY CHAPTER 478 TO OBTAIN A FRANCHISE

As discussed above, Iowa Code Chapter 478 is the statutory regime which provides the balancing act between protecting Iowa consumers and allowing monopolistic electrical utilities. Before a monopoly like ITCM can build new utility infrastructure, ITCM is required to meet certain statutory burdens of proof.

This statutory structure makes sense. Iowans are captive consumers of electricity without any choice. Iowans cannot choose between competitor utilities when choosing to consume electricity. Instead, Iowans are stuck with the utility company which has a monopoly in a territorial region. Moreover, Iowans are stuck with the rate structures of those monopolies when paying for energy. The varying costs charged to Iowa consumers by the different monopolistic utilities are inextricably intertwined with the expenses of those utilities. At the most basic level, the more a utility builds to expand its infrastructure, the more its costs grow and the more it can charge consumers to recoup the costs of adding assets on top of allowed rates of return. Thus, unless Iowa Code Chapter 478 is applied by the IUC as a true counterweight, as intended, Iowans are left without any protection from the monopolistic nature of Iowa electrical utilities.

Iowa Code Chapter 478 demands proof of need before Iowa regulators can give monopolies permission to build more infrastructure. Iowa Code § 478.4 requires proof of two elements: (1) that "the proposed line or lines are necessary to serve a public use" and (2) that the proposed line or lines "represent[ ] a reasonable relationship to an overall plan of transmitting electricity in the public interest."

Additionally, Iowa Code § 478.3 contains a list of factors which a utility must prove before obtaining a franchise. The statute requires "substantiation" of each of the following:

> (1) The relationship of the proposed project to present and future economic development of the area.
>
> (2) The relationship of the proposed project to comprehensive electric utility planning.

> (3) The relationship of the proposed project to the needs of the public presently served and future projections based on population trends.
>
> (4) The relationship of the proposed project to the existing electric utility system and parallel existing utility routes.
>
> (5) The relationship of the proposed project to any other power system planned for the future.
>
> (6) The possible use of alternative routes and methods of supply.
>
> (7) The relationship of the proposed project to the present and future land use and zoning ordinances.
>
> (8) The inconvenience or undue injury which may result to property owners as a result of the proposed project.

In this case, ITCM paid only lipservice to the statutory elements and the IUC granted a franchise without the presentation of any real evidence. Specifically, (1) ITCM failed to prove the requested line is "**necessary** to serve a public use" and (2) ITCM failed to prove the line represents a "reasonable relationship to an overall plan of transmitting electricity in the public interest." *See* § 478.4 (emphasis added). Moreover, ITCM's lack of evidence on the other statutory considerations in § 478.3(2)(a) weigh in favor of denial.

SLRF presented extensive testimony and exhibits with detailed facts and assertions addressing ITCM's deficiencies on all factors in § 478.3(2)(a). The IUC failed to consider the evidence submitted by SLRF, though. The testimony and exhibits SLRF submitted should have been used by the Board to guide its inquiry into whether ITCM truly had ***proven*** entitlement to a franchise. The Board failed to consider the holes in ITCM's case as described in SLRF's submitted testimony and exhibits. The Board failed to question ITCM's conclusory and self-serving statements about the reasons behind the proposed line and failed to flesh out whether actual objective data exists to support ITCM's desire to expand its infrastructure. SLRF's submitted testimony and exhibits in

addition to the lack of substance submitted by ITCM showed that ITCM did not meet its burden of proof.

ITCM's "Evidence" Was Non-Existent

Under the statutory regime, ITCM had a burden of proof to establish its entitlement to a franchise. It failed to do so.

A cursory review of ITCM's petition shows that ITCM only repeated the buzzwords of the statute without presenting data or information to support its claims. *See* D0011, p.2-17. Below is the full text of the "substantiation" of ITCM's claims that it attached to its petition that the requested franchise is necessary to serve the public use as required by § 478.4:

> The new line is necessary to serve a public use by better serving current and future load in Johnson County. This transmission line is being built as part of a comprehensive plan to upgrade the transmission system in the North Liberty and Tiffin, Iowa areas. Generally, the transmission system in this area is at its current capacity due to increased load growth in the area and is in need of upgrades to continue to reliably serve the area load.

D0011, p. 15. That is it. There is no documentation or elaboration of the conclusory allegations. The "substantiation" is nothing more than recitation of buzzwords and conclusory, self-serving allegations. There is no proof of the truth of any of the assertions.

ITCM's submitted exhibits and testimony did not present any other evidence in support of its requests. The testimony submitted by ITCM was self-serving and conclusory; there was no citation to any verifiable or empirical data. ITCM's witnesses, their own employees, simply alleged that the franchise was necessary just because it was. There was no explanation of current consumer loads, nor any explanation of area needs

for increased transmission lines. There was no detailed support for the claims that without this line, the area's access to electricity was in doubt at all. ITCM alleged the line was needed for redundancy, but failed to explain why. ITCM never answered SLRF's fundamental questions of why this particular line is necessary in light of all other franchises ITCM has obtained.

SLRF, on the other hand, did present evidence that ITCM's line did not meet the statutory elements of § 478.4 that the requested line is "**necessary** to serve a public use" and that it represents "reasonable relationship to an overall plan of transmitting electricity in the public interest."

First, SLRF showed that ITCM's reliance on MTEP 16 was not justified in this case. MISO (Midcontinent Independent System Operator) is the electric grid operator for the central United States. MISO periodically submits information on its comprehensive planning of the electric grid. This plan is in an MTEP (MISO Transmission Expansion Plan). Here, ITCM relied on MTEP16 for its allegations that the present requested franchise is part of an overall, comprehensive plan. SLRF showed, however, that MTEP16 does not support ITCM's claim.

ITCM claimed that the project sought in this proceeding has been approved by MISO and that it was a base assumption for other plans. *See* D0012, p. 45, Walter Direct Testimony, lines 2-5. ITCM's witness, Mr. Walter, testified that the description of the project sought here is: re-build existing North Liberty REC – Tharp line (double circuit with new North Liberty-Fairfax 161 kV). *See* D0031, Transcript, p. 148:23-149:16. That MTEP16 description does not describe the franchise requested here, which is a request to

build a 69 kV line from the Swan Lake Road substation to existing lines on Highway 965. There is no re-build. There is no construction of a 161 kV line. That reference in MTEP16 does not describe what ITCM seeks to build here and the allegation that this line is somehow required by MISO lacks factual support.

Mr. Walter further testified that since the project, as described above, was approved by MISO, there have been real-life changes to the physical locations of substations and physical changes to assumptions which were made. *See* D0031, Transcript, p. 149:18-150:1. Mr. Walter acknowledged that the data submitted to MISO for the cited project is at least eight years old and that there have been changes to the assumptions originally made (assumptions which were the basis for MISO's original approval). *See* D0031, Transcript, p. 150:2-25. The specific changes include the location of the Swan Lake Substation which is shown on the South Loop Study to be at the intersection of Swan Lake Road and the CRANDIC at a location owned on both sides of the road by SLRF. SLRF did not convey land for a substation and the substation was built around two miles to the southwest.

Mr. Walter also testified that MISO does not require any specific routes and that when MISO approved MTEP 16, the substation locations were not yet known, and that MISO could not require something like this route when there were so many unknown locations. *See* D0031, Transcript, p. 152:1-12. This is a false assertion; ITCM *did* know at least as of September 16, 2016 that the substation would be located at its present location (the intersection of James Avenue NW and 240th Street NW). This is evidenced by ITCM's own documentation which includes references to a conditional use permit for the

substation at that location. *See* D0013, p. 49. Thus, ITCM would have *had* to know the location of the substation at the time of its submissions to MISO for MTEP16 at year-end 2016.

ITCM provided zero explanation how the project description of rebuilding an existing 161 kV line could somehow morph into the attempt to construct a new 69 kV line, especially when the supposed base assumptions MISO approved were for rebuilding existing lines. MTEP16, relied upon by ITCM as the fundamental basis of this project, was outdated and did not actually say what ITCM contended. This is important because ITCM's claim that this project is required by MISO is the fundamental crux of ITCM's claim to the IUC that this project is necessary.

Second, SLRF showed that ITCM's planned route, combined with its sole reliance on use of road right of ways, is impossible to construct in accordance with Johnson County's requirements.

Troy Weary is the leader of the arm of ITCM which interacts with local governments and has oversight of the local permitting process for electric transmission line projects. *See* D0012, p. 34:23 – 35: 3. In his Direct Testimony, Mr. Weary testified that ITCM asked Johnson County to review the route and the staked locations for pole placements and also stated "Johnson County has not informed ITC Midwest of any potential conflicts between their long-range plans and the route for the Project." *See* D0012, p. 37:5-11. This testimony borders on perjury.

On January 27, 2023, Assistant Johnson County Engineer Ed Bartels emailed ITCM and stated "In any case, as completely immovable objects they need to be located as far

from the edge of the traveled way as possible. While we appreciate straight line runs as much as anybody, this road is fairly narrow, so providing as much clear zone as possible is my guiding philosophy." D0029, p. 7.

On February 15, 2023, Johnson County Engineering Technician Adam Gebhart emailed ITCM after he reviewed the staked locations for pole placement and informed ITCM "The other main comment that I would have is the placement of all the structures in relation to the ROW Line. Our permit placement requirements are for all structures to be within 1 ft of the ROW line and the table that you sent shows your placement being no less than a 6.0 ft offset from the ROW Line. We realize that the 1 ft offset is not always possible, but we would like for it to be maintained in as many locations as possible. These are the main concerns with the placement of your line." D0029, p. 11. Mr. Weary confirmed that the utility poles are to be located within 1 to 3 feet of the right-of-way line, which is consistent with the concerns raised by Johnson County in Mr. Gebhart's email to ITCM about the noncompliant pole placements. D0031, p. 190:17-24.

During cross-examination, Mr. Weary was asked whether his testimony that after Johnson County reviewed staking for proposed pole locations that Johnson County had no concerns was consistent with the two emails shown on Joan Young Ambrose Direct Exhibit 13F, p. 138 and p. 142 [D0029, p. 7 and p. 11]. Mr. Weary testified that it was "more of a timing issue" and that ITCM did make adjustments and that "it's just timing." D0031, p. 200:3-25. Yet, the most recent version of the proposed pole locations is shown on Joan Ambrose Direct Exhibit 13G, page 6 [D0029, p. 28]. This version is called "Rev 2 02/23/2023." Mr. Weary testified the pole location chart was revised on February 23,

2023, and confirmed the email from Mr. Gebhart (noting the issues with ITCM's noncompliant pole locations) was sent on February 15, 2023. D0031, p. 201:3 – D0032, p. 2:8. Mr. Weary testified that the revised chart for pole locations still shows the planned pole locations are at least 6 feet away from the right-of-way line. D0032, p. 2:4-8. Mr. Weary confirmed that ITCM's revised pole locations do not show that ITCM can comply with Johnson County's requirements to be within 1 foot of the right of way line. D0032, p. 3:25 – 4:3.

Mr. Weary quite possibly perjured himself when claiming that Johnson County has not expressed concerns with ITCM's pole placements. In fact, Johnson County ***has*** informed ITCM that it requires poles to be placed at least 1-3 feet from the right-of-way line and that ITCM's proposed pole placements do not comply with that requirement and are in fact no closer than 6 feet from the right of way. In fact, *after* Johnson County advised ITCM of the noncompliant pole locations, ITCM revised its pole placement chart, but did not change the pole locations to be located within the required 1-3 feet of the right-of-way line. Less than half of the poles were changed (28 of 66); but, importantly, **all remain non-compliant with the Johnson County utility placement requirement**. It is not truthful for ITCM to claim Johnson County has not expressed concerns with the route proposed in this proceeding.

Mr. Weary's testimony presents reasons why this Board should have denied the franchise petition. As Mr. Weary acknowledged, it just might not be possible for ITCM to build the route it wants because ITCM might not be able to comply with Johnson County's requirements concerning distance from the right-of-way line. D0032, p. 2:15 –

3:16. Rather than allowing ITCM to pursue a franchise for a route with pole placement that the evidence shows is not feasible with Johnson County's requirements, the IUC should have required ITCM to go back to the drawing board and find a new route that *is* feasible under Johnson County's requirements. This was not only the prudent decision to make for regulatory compliance; it is the decision that alleviates the traffic safety concerns raised in detail by SLRF.

Finally, and most fundamentally, ITCM failed to both (1) combat SLRF's submissions with actual evidence and (2) present any empirical evidence beyond self-serving and conclusory statements that the line was necessary. Again, ITCM alleged:

> The new line is necessary to serve a public use by better serving current and future load in Johnson County. This transmission line is being built as part of a comprehensive plan to upgrade the transmission system in the North Liberty and Tiffin, Iowa areas. Generally, the transmission system in this area is at its current capacity due to increased load growth in the area and is in need of upgrades to continue to reliably serve the area load.

D0011, p. 15. ITCM is unable to point to *any* evidence, other than its own bare assertions, that "the transmission system in this area is at its current capacity," or that such alleged capacity was "due to increased load growth in the area," or that the system "is in need of upgrades to continue to reliably serve the area load." There just simply is not empirical or other objective information in the record at all to support these allegations. Without the submission of real evidence, ITCM failed to carry its burden under § 478.4 that the requested line is "**necessary** to serve a public use" and that it represents "reasonable relationship to an overall plan of transmitting electricity in the public interest." The IUC erred by granting a franchise that lacked evidence of the statutory elements.

ADDITIONAL REASONS TO DENY THE FRANCHISE

The IUC also erred by failing to address additional, independent considerations that weighed in favor of denial of ITCM's franchise application: lack of safety, prevention of unneeded costs for captive consumers, and non-feasibility of the route in light of Johnson County's restrictions for secondary roads.

The cost of the project matters to the determination of whether the project is "necessary to serve a public use" and represents a "reasonable relationship to an overall plan of transmitting electricity in the public interest." Iowa Code § 478.4. The relationship between cost and the public interest is highlighted by the hundreds of hours spent on all the hearings, docket reviews, filings, and objections to Alliant Energy's (ITCM's electric utility distribution partner) current and pending rate increases. This is relevant because Alliant Energy transfers its ITCM Regional Transmission Fees directly to its consumers, and in SLRF's statements shown in the record, the transmission fee is approximately 20% of each bill. SLRF's decision to oppose ITCM was solidified by May 10, 2022, the date of the Iowa Coalition for Affordable Transmission (ICAT) filed Complaint with FERC claiming ITC's rates were harmful to Iowans and negatively impacted economic development. Alliant Energy was a party to the Coalition. The Iowa Utilities Board, in a filing signed by IUC General Counsel Jon Tack – the very individual who authored the initial decision in this proceeding – supported the complaint and made the following statements:

> Because the rates paid by Iowa ratepayers are not just and reasonable, Iowa businesses that take service from IPL are at a competitive disadvantage because of those rates … *In addition, the excessive transmission rates serve as*

> *an impediment to economic development in the state*. The IUB is mandated by Iowa law to set just and reasonable rates for electric service; however, the higher transmission rates for IPL's ratepayers puts a number of industrial customers of IPL at a competitive disadvantage in the market place when compared to their peers in other states.

p. 5, and

> Iowa ratepayers should not be required to pay rates for transmission service that are not just and reasonable. The IUB believes the evidence presented by ICAT shows that the rates passed through by ITC Midwest are not just and reasonable …

p. 6. FERC Docket EL-22-56-000, Accession # 20220526-5053 (May 26, 2022). Given the IUC's concern for high transmission costs transferred to captive consumers and the harm high costs cause to Iowa ratepayers, the IUC should have considered the high cost of this current project in light of the other issues identified by SLRF. The IUC should have used this information to weigh whether the proposed franchise should be denied for lack of evidence that the line is "necessary to serve a public use" and represents a "reasonable relationship to an overall plan of transmitting electricity in the public interest." Iowa Code § 478.4.

Additionally, IUC's grant of this franchise set a dangerous precedent that could be construed as allowing the IUC to permit the placement of poles and lines in the entire right-of-way, especially since ITCM cannot claim any good faith effort was made to negotiate with landowners, which is necessary to qualify for condemnation powers. ITCM's reaction to the 100% landowner opposition to this franchise request was to bypass landowners' concerns and complaints. ITCM's goal is clear: ITCM's incentive is to have free access to expand its construction to road rights-of-way to add assets to rate base for

the guaranteed return promised by FERC. The unintentional consequence to granting this franchise is to give ITCM automatic transfer authority from the pocketbooks of captive and cost-burdened consumers through construction expansion without oversight in road rights-of-way all over Iowa.

In light of the statutory elements, the IUC should have denied the franchise petition.

CONCLUSION

For all the reasons explained in this brief in addition to the expansive testimony submitted by SLRF which is part of the Certified Record, the Court should reverse the IUC's order granting the franchise.