

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

**SWAN LAKE ROAD FARMS,
LLC,**

Petitioner,

vs.

IOWA UTILITIES COMMISSION,

Respondent,

and

ITC MIDWEST, LLC,

Intervenor.

CASE NO. CVCV068000

RESPONDENT’S BRIEF

COMES NOW, the Iowa Utilities Commission, by and through its undersigned counsel, and hereby submits the above-captioned Respondent’s Brief in Resistance to Petition for Judicial Review.

I. STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

A. The Constitutionality of Iowa Code § 306.46

Authorities:

Iowa Coal Min. Co., Inc., v. Monroe County, 555 N.W.2d 418, 432 (Iowa 1996)

Juckette v. Iowa Utilities Bd., 992 N.W.2d 218 (Iowa 2023)

Juckette v. Iowa Utilities Bd., Polk County Case No. CVCV61580

Iowa Code section 306.46

Iowa Code section 306.46(1)

Iowa Code chapter 478

B. The IUC's Order Granting the Petition for Franchise is Supported by Substantial Record Evidence and Contains No Legal Error for this Court to Correct.

Authorities:

Arndt v. City of Le Claire, 728 N.W.2d 389, 394 (Iowa 2007)
Bradley v. Iowa Dep't of Commerce, 2002 WL 3188263 (Iowa Ct. App. Dec. 30, 2002)
Cedar Rapids Cmty Sch. Dist. v. Pease, 807 N.W.2d 839, 845 (Iowa 2011)
Cookies Food Prods, Inc., v. Lakes Warehouse Distrib., Inc., 430 N.W.2d 447, 448 (Iowa 1998)
Dunlavey v. Econ. Fire and Cas. Co., 526 N.W.2d 845, 853 (Iowa 1995)
Fischer v. Iowa State Commerce Comm'n, 368 N.W.2d 88 (Iowa 1985)
Hanson v. Iowa State Commerce Comm'n, 227 N.W.2d 157 (Iowa 1975)
Hora v. Hora, 5 N.W.3d 635, 645 (Iowa 2024)
Mathis v. Iowa Utilities Bd., 934 N.W.2d 423, 427-28 (Iowa 2019)
Puntenney v. Iowa Utilities Bd., 928 N.W.2d 829 (Iowa 2019)
S.E. Iowa Coop. Elec. Ass'n v. Iowa Utils. Bd., 633 N.W.2d 814 (Iowa 2001)
Tim O'Neill Chevrolet, Inc., v. Forristall, 551 N.W.2d 611, 614 (Iowa 1996)

Iowa Code § 17A.19(10)(f)(1)
Iowa Code § 17A.19(11)
Iowa Code § 478.3
Iowa Code § 478.3(2)(a)
Iowa Code § 478.3(2)(a)(1)
Iowa Code § 478.3(2)(a)(2)
Iowa Code § 478.3(2)(a)(3)
Iowa Code § 478.3(2)(a)(4)
Iowa Code § 478.3(2)(a)(5)
Iowa Code § 478.3(2)(a)(6)
Iowa Code § 478.3(2)(a)(7)
Iowa Code § 478.3(2)(a)(8)
Iowa Code § 478.4
Iowa Code § 478.18
Iowa Code § 478.18(2)
199 IAC 11.3

II. STATEMENT OF THE CASE

A. Nature of the Case and Parties in the Agency Proceeding.

This judicial review arises from final agency action taken by the Iowa Utilities Commission (“IUC” or the “Commission”) in a contested case proceeding. The underlying agency action involves ITC Midwest LLC’s (“ITC Midwest”) petition for an electric transmission line franchise under Iowa Code chapter 478. Pursuant to Iowa Code § 475A.2(2), the Office of Consumer Advocate (“OCA”), a division of the Iowa Department of Justice, was a party in the agency proceeding, acting as “attorney for . . . all consumers generally and the public generally” Petitioner Swan Lake Road Farms, LLC, (“Swan Lake”) became a party through intervention. (Cert. Rec. at 056-57). After full consideration of all the facts and testimony adduced at hearing, the Commission issued a Proposed Order Granting [ITC’s Midwest’s] Petition for Electric Transmission Line Franchise on July 24, 2024. (Cert. Rec. at 02316-46).

B. Course of Proceedings and IUC Disposition.

On January 31, 2022, ITC Midwest filed a request to hold an informational meeting to discuss the proposed construction and operation of an electric transmission line in Johnson County, Iowa. (Cert. Rec. at 02316). On or about February 7, 2022, the IUC (then known as the Iowa Utilities Board) approved the request and the informational meeting was held on April 20, 2022, at the North Liberty Recreation Center in North Liberty, Iowa. *Id.*

On March 24, 2023, ITC Midwest filed a petition with the IUC for electric transmission line franchise to construct, operate, and maintain approximately 4.8 circuit miles of 69,000 kV transmission line in Johnson County, Iowa. *Id.* The IUC assigned the case as Docket No. E-22501. *Id.* ITC Midwest states the entire petition line will be located on public road right-of-way and thus it has not requested the right of eminent domain. *Id.*

On April 3, 2023, Swan Lake filed a petition to intervene in the agency proceeding, which the IUC granted on August 16, 2023. (Cert. Rec. at 02317). On September 25, 2023, the IUC issued an order designating an individual to serve as presiding officer over the docket and setting a scheduling conference, which was held on October 24, 2023. (Cert. Rec. at 02318).

The contested case hearing occurred on April 18, 2024, at the Iowa City Public Library in Iowa City, Iowa. (Cert. Rec. at 02319). Following the submission of post-hearing briefs, the IUC issued its Proposed Order Granting Petition for Electric Transmission Line Franchise on July 24, 2024. (Cert. Rec. at 02316-46). The presiding officer noted that the Proposed Order would become the final agency decision pursuant to Iowa Code section 17A.15(3) and 199 IAC 7.26(2) unless a party filed an appeal with the Commission within 15 days. (Cert. Rec. at 02377).

On August 7, 2024, Swan Lake filed an appeal of the Proposed Order and requested a stay, which ITC Midwest resisted on August 21, 2024. *Id.* Swan Lake raised seven issues on appeal, several of which were closely related, just as they are here. *Id.* The Commission addressed each issue in detail in its Order of September 17, 2024, and

ultimately denied both the appeal and the stay, and affirmed the Proposed Order of July 24, 2024. (Cert. Rec. at 02376-93).

III. STANDARD OF REVIEW

This Court’s review of the Commission’s decision is governed by the standards set forth in Iowa Code § 17A.19. *See* Iowa Code § 17A.19(8) (stating that “in suits for judicial review of agency action . . . [t]he validity of agency action must be determined in accordance with the standards of review provided in this §, as applied to the agency action at the time that action was taken”). A party challenging agency action bears the burden of demonstrating the action’s invalidity and resulting prejudice. Iowa Code § 17A.19(8)(a). This can be shown in a number of ways, including proof the action was based on an erroneous interpretation of law, inconsistent with prior agency precedent, unsupported by substantial evidence in the record when that record is viewed as a whole, or otherwise unreasonable, arbitrary, capricious, or an abuse of discretion. *See id.* at §17A.19(10).

The District Court acts in an appellate capacity to correct errors of law on the part of the agency. *Grundmeyer v. Weyerhaeuser Co.*, 649 N.W.2d 744, 748 (Iowa 2002). Allegations that an agency’s actions should be reversed pursuant to section 17A.19(10)(h) are reviewed under the arbitrary, capricious, or abuse of discrimination standard. *Office of Consumer Advocate v. Iowa Utils. Bd.*, 770 N.W.2d 334, 341 (Iowa 2009) (citing *Finch v. Schneider Specialized Carriers, Inc.*, 700 N.W.2d 328, 332 (Iowa 2005)). “If the claim of error lies with the agency’s findings of fact, the proper question

on review is whether substantial evidence supports those findings of fact” when the record is viewed as a whole. *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 219 (Iowa 2006).

Substantial evidence is defined as evidence of the quality and quantity “that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance.” Iowa Code § 17A.19(10)(f)(1). Evidence in support of an agency decision is not insubstantial merely because it would have supported contrary inferences; nor is evidence insubstantial because of the possibility of drawing two inconsistent conclusions from it. *City of Hampton v. Iowa Civil Rights Comm’n*, 554 N.W.2d 532, 536 (Iowa 1996). The district court’s review “is limited to the findings that were actually made by the agency and not other findings that the agency could have made.” *Burton v. Hilltop Care Ctr.*, 813 N.W.2d 250, 256 (Iowa 2012). “The agency’s decision does not lack substantial evidence merely because the interpretation of the evidence is open to a fair difference of opinion.” *ABC Disposal Sys., Inc., v. Dep’t of Natural Res.*, 681 N.W.2d 596, 603 (Iowa 2004).

IV. ARGUMENT

The IUC notes at the outset that petitioner’s brief contains a myriad of arguments and allegations presented in bullet form that are never developed into cognizant legal arguments supported by law or citations to the record. The undersigned will not attempt to respond to what is essentially a recitation of Iowa Code sections 17A.19(10)(a)-(n), but rather will focus on what seems to be the petitioner’s two main arguments: 1) the alleged unlawful taking of the public easement pursuant to Iowa Code § 306.46, framed as “the

franchise is unconstitutional,” and 2) the alleged inaccuracies and errors in the final agency action granting the franchise, framed as “ICTM failed to meet all elements required by chapter 478 to obtain a franchise.” (Pet. Brief at 9, 25).

Importantly, neither of petitioner’s arguments actually invokes the language of Iowa Code section 17A.19 and asserts that the underlying agency action, i.e. the IUC’s Order granting the franchise, is either 1) unsupported by substantial evidence, 2) based upon an irrational, illogical, or wholly unjustifiable interpretation of law or application of facts to law, or 3) otherwise unreasonable, arbitrary, capricious, or an abuse of discretion. Petitioner’s request for relief should be denied for this reason alone. *See Kopecky v. Iowa Racing and Gaming Comm’n*, 891 N.W.2d 439, 442 (Iowa 2017) (reiterating the holding in *Renda v. Iowa Civil Rights Comm’n*, 784 N.W. 8, 10 (Iowa 2010), that the district court may grant relief if the agency action has prejudiced the substantial rights of the petitioner and if the agency action meets one of the enumerated criteria in Iowa Code section 17A.19(10)(a) through (n). However, should this Court nonetheless decide to address the merits of the petition, the IUC offers the following legal arguments in response to the two set forth by petitioner.

A. The Constitutionality of Iowa Code § 306.46

Petitioner broadly frames this argument as “the franchise is unconstitutional.” (Pet. Brief at 9). Petitioner offers no causal nexus between the underlying agency action in this case and the alleged unconstitutionality of the franchise. Rather, the argument is entirely based on Iowa Code section 306.46 and petitioner’s contention that ITC Midwest, not the IUC, will engage in an unconstitutional taking at some point in the future when the new

transmission line is constructed. To this extent, the issue is not ripe for review in any forum, much less this judicial review action. *See Iowa Coal Min. Co., Inc., v. Monroe County*, 555 N.W.2d 418, 432 (Iowa 1996).

As discussed in both the Proposed Order of July 24, 2024, and the September 17, 2024, Order Affirming the Proposed Order, ITC Midwest neither obtained private easements nor requested the IUC grant it eminent domain authority under Iowa Code chapter 478. (Cert. Rec. at 0239-0240, 02386). ITC Midwest intends to construct the transmission line in the public road right-of-way under the authority of Iowa Code section 306.46(1) which is under the purview of the Iowa Department of Transportation. (See Cert. Rec. at 02386). Consequently, the IUC did not grant ITC Midwest the right of eminent domain over any portion of Swan Lake's property. Thus, as pointed out by the IUC in its Proposed Order, the question remains "whether this franchise contested case proceeding is the appropriate vehicle to challenge the constitutionality of § 306.46." (Proposed Order at 26; Cert. Rec. at 02341). Specifically here the IUC notes that petitioner has avenues to advance this argument outside of the Iowa Administrative Procedure Act when the issue becomes ripe. Nonetheless, to the extent the Court wishes to address the issue in this proceeding, the IUC responds as set forth below.

Clearly the petitioner is seeking to relitigate *Juckette v. Iowa Utilities Bd.*, 992 N.W.2d 218 (Iowa 2023), where this exact issue (under very similar facts) of whether the construction of electric transmission lines within the public road right-of-way pursuant to Iowa Code section 306.46 constitutes a taking reached the Iowa Supreme Court. In examining Iowa Code section 306.46(1), the Court found there was "no question" that a

utility is “statutorily authorized to construct electric transmission lines” within the public road right-of-way. *Id.* at 222; *see also* Cert. Rec. at 02386. However, when examining the next step, the step the petitioner here is seeking to revisit, as to whether that construction could result in a taking requiring just compensation, the Court split 3-3, thus affirming the district court’s judgment without setting legal precedent. *Id.*; *see also* Iowa Code section 602.4107.

As the Commission pointed out in its Proposed Order, it lacks the authority to decide constitutional issues raised at the agency level. (Proposed Order at 26-27; Cert. Rec. at 02341-02342). However, as noted and discussed in detail in the Proposed Order, assuming *arguendo* that the Commission possessed such authority, it would follow the district court’s holding in *Juckette* that Iowa Code section 306.46 does not violate the Takings Clause of the Iowa Constitution. *See Juckette v. Iowa Utilities Bd.*, Polk County Case No. CVCV61580, Order Denying and Dismissing Petition for Judicial Review at 19 (11/7/2021). (Cert. Rec. at 02341-43).

B. The IUC’s Order Granting the Petition for Franchise is Supported by Substantial Record Evidence and Contains No Legal Error for this Court to Correct.

In analyzing whether to issue an electric transmission franchise in any case, including this one, the IUC engages in a multistep, statutory analysis. These analytical steps and necessary findings include: (1) is the proposed line or lines necessary to serve a public use, (2) does the proposed line or lines represent a reasonable relationship to an overall plan of transmitting electricity in the public interest, and (3) is the proposed route layout compliant with Iowa Code § 478.18 and any other applicable provisions of law.

To provide structure for the court's review of the agency's findings and conclusions, this brief will discuss each analytical step in turn, addressing Swan Lake's arguments as relevant in each step.

The IUC does note again, however, that for each of the separate contentions set forth in its brief, Swan Lake fails to argue (or even assert) that its "substantial rights" have been prejudiced as a direct result of any final agency action that falls within the lettered paragraphs of Iowa Code sections 17A.19(10)(a) through (n). Further, not only does Swan Lake fail to explain how or why the challenged decision falls within the scope of any lettered paragraph (a) through (n), it also simply string cites to numerous lettered paragraphs at the conclusion of each argument without any explanation as to how those lettered paragraphs apply to the facts of this case. The undersigned will attempt to deduce which paragraphs apply to each contention; however, Swan Lake's failure to explain, or even assert, what substantial rights have been prejudiced and how that harm is causally connected to the bases for error set forth in 17A.19(10)(a) through (n) is grounds, in and of itself, to deny the petitioner's request for relief.

1. The Iowa Utilities Commission's finding that the proposed line is necessary to serve a public use is supported by substantial record evidence.

Pursuant to Iowa Code § 478.4, before granting a franchise, the IUC must make "a finding that the proposed line or lines are necessary to serve a public use" ITC Midwest asserts that the proposed project is necessary to serve a public use because the existing electric transmission system in the area lacks the "capacity to maintain acceptable loading and voltage levels during contingencies due to continued area load

growth” and requires upgrades to mitigate existing reliability issues and ensure continued reliability as load growth continues. (ITC Midwest Walter Direct Testimony at 6, 9-10; Cert. Rec. at 00131, 00134-35). Based on the totality of evidence submitted in the record, including a joint study between ITC Midwest and CIPCO resulting in a comprehensive plan to both remedy the identified issues and accommodate future load growth, the Commission concluded that ITC Midwest demonstrated that the proposed line is necessary to serve a public use. (Cert. Rec. at 02321-25).

The Iowa Supreme Court has long recognized that the Iowa “legislature gave the [IUC] discretion to make decisions involving electric transmission lines, and [the Court is] not to question the wisdom of the legislature in doing so.” *S.E. Iowa Coop. Elec. Ass’n v. Iowa Utils. Bd.*, 633 N.W.2d 814, 819 (Iowa 2001) (citations omitted). Further, the Court has “frequently relied upon the [IUC’s] expertise in interpreting Iowa Code chapter 478.” *Id.* (citations omitted). However, in interpreting terms that are not “uniquely within the subject matter expertise” of the IUC, no deference is provided. *Mathis v. Iowa Utilities Bd.*, 934 N.W.2d 423, 427-28 (Iowa 2019).

With respect to the appropriate standard of deference to be accorded the IUC’s decision under Iowa Code § 17A.19(11), the IUC respectfully asserts that the Court should give appropriate deference to the IUC’s “public use” determination. *See S.E. Iowa Coop. Elec. Ass’n*, 633 N.W.2d at 819-20 (citation omitted) (stating that in “enacting chapter 478, the legislature intended to entrust the [IUC] with the decision whether a public use existed and, if so, the necessity of the proposed line to serve the public use”); *see e.g., Punttenney v. Iowa Utilities Bd.*, 928 N.W.2d 829, 836 (Iowa 2019)

(providing deference to IUC’s “public convenience and necessity” finding for issuance of a pipeline permit).

The Iowa Supreme Court has already held that the “transmission of electricity to the public constitutes a public use as contemplated by section 478.4.” *Puntenney*, 928 N.W.2d at 820. Therefore, the pertinent issue in an electric transmission franchise case is whether the line proposed in the case is necessary to serve that public use. *Id.* See also *Bradley v. Iowa Dep’t of Commerce*, No. 01-0646, 2002 WL 31882863, at * 3 (Iowa Ct. App. Dec. 30, 2002) (engaging in same analysis). The IUC’s findings on this issue are subject to the “substantial evidence” review. *Bradley*, 2002 WL 31882863, at * 4 (stating in that case that the IUB’s decision was supported by substantial evidence).

For purposes of judicial review proceedings, the term “substantial evidence” means:

the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance.

Iowa Code § 17A.19(10)(f)(1).

“Evidence is not insubstantial merely because different conclusions may be drawn from the evidence” and, to that end, findings may be supported by substantial evidence even though a court may draw a different conclusion. *Cedar Rapids Cmty Sch. Dist. v. Pease*, 807 N.W.2d 839, 845 (Iowa 2011).

In both its pre-hearing filings and at hearing, ITC Midwest presented the testimony of Mr. Robert Walter, who is employed by ITC Midwest as a Manager in the

Planning Department. Mr. Walter testified that this project is part of the long term comprehensive plan to upgrade the existing transmission system in the North Liberty, Coralville, and Tiffin, Iowa, areas to better serve area load during normal and contingency operation. (Cert. Rec. at 00131). This project will provide a connection to an additional 69kV source into the existing 69kV system that runs between Cedar Rapids and North Liberty to ensure long term area reliability. *Id.* Mr. Walter concluded in no uncertain terms that “[c]onstruction of this project will better enable ITC Midwest to reliably deliver the power and energy this area needs, both today and in the future,” and that the project is necessary to serve a public use. (Cert. Rec. at 00133, 00137).

As noted in the IUC’s Proposed Order, although Swan Lake does not appear to directly dispute the validity of the power flow model results, the crux of its argument against necessity is that ITC Midwest failed to provide data demonstrating the overloads were caused by load growth. (Cert. Rec. at 02324). This argument was properly considered and subsequently rejected by the IUC in its Proposed Order.

However, as correctly observed by ITC Midwest, the cause of the system overloads may be somewhat academic as the more pertinent inquiry in determining whether this proposed project is necessary to serve a public use is whether it will alleviate the system overload, regardless of the cause. As recognized in Iowa adjudicatory law, a transmission company can demonstrate a proposed project is necessary by showing that the proposed line will increase reliability of service, and the undersigned is unaware of any authority, and Swan Lake has failed to provide any such authority, standing for the proposition that this is true only if the system reliability concerns are caused by load growth. *See Bradley v. Iowa Dep’t of Commerce*, No. 01-0646, 2002 WL 31882863, at *4 (Iowa Ct. App. Dec. 30, 2002) (affirming the Commission’s finding that a proposed transmission line is necessary to serve a public use where, in part, the proposed line would improve reliability).

Iowa law further recognizes that a transmission company can show a proposed line is necessary to the public use if the line is needed to accommodate occurring or anticipated load growth. (*Id.*) Here, ITC Midwest used data from several sources to support its forecasted load projections. (HT pp. 22-23.) First, ITC Midwest states that it obtained load growth data from load-serving entities, which annually submit their projected load data for the two-, five-, and ten-year horizons to MISO. (*Id.*) Second, as part of its own long-term study for the relevant geographical area, ITC Midwest obtained the 20-year growth projections prepared by the load-serving entities for that area (*i.e.*, the Linn County Rural Electric Cooperative (Linn County REC) and Interstate Power and Light Company). (*Id.* at p. 23.) Further, ITC Midwest obtained historic load data from its own systems. (*Id.*)

Proposed Order at 9-10; Cert. Rec. at 02324-25.

As noted above, because the Iowa Supreme Court has already concluded that the transmission of electricity to the public constitutes a public use for purposes of § 478.4; the issue is simply whether the proposed line is necessary to serve that public use. *S.E. Iowa Coop. Elec. Ass'n v. Iowa Utils. Bd.*, 633 N.W.2d at 820. Based on the evidence submitted, the Commission found the proposed line is necessary to meet current and future transmission needs, that it will increase system reliability, and will support current and anticipated load growth – each of which is a reason Iowa appellate courts have recognized as meeting the “necessary to serve a public use” standard.

In sum, substantial evidence in the record supports the Commission’s findings that the proposed line is necessary to meet current and future transmission needs, will increase system reliability and flexibility, and will support current and anticipated load growth. Iowa appellate courts have recognized each of these reasons constitutes a “public use” under § 478.4. *See Fischer v. Iowa State Commerce Comm’n*, 368 N.W.2d 88, 97-98 (Iowa 1985) (affirming the agency’s § 478.4 public use finding where the evidence

showed the proposed project increased current system reliability and improved the ability to meet future load demands); *Bradley*, 2002 WL 31882863, at * 5 (finding a public use under § 478.4 where the evidence demonstrated the proposed line “is necessary to increase reliability of service, accommodate occurring and anticipated load growth, and reasonably assure the availability, quality, and reliability of service”). Since the IUC conducted its “public use” analysis under the framework established in § 478.4 and applicable appellate decisions, and its conclusion that the proposed line is necessary to serve a public use is supported by substantial evidence, the IUC’s “public use” finding should be affirmed.

2. The Iowa Utilities Commission’s finding that the proposed line represents a reasonable relationship to an overall plan of transmitting electricity in the public interest is supported by substantial record evidence.

In its brief, Swan Lake makes the broad statement that “ITCM failed to prove the line represents a “reasonable relationship to an overall plan of transmitting electricity,” but offers no specific context or authority for these claims. (*See* Petitioner’s Brief at 26-27). Simply asserting that “ITCM’s evidence was nonexistent” is insufficient. *Id.* at 28. Nonetheless, a review of the record shows that the IUC’s “reasonable relationship” finding is, in fact, supported by substantial evidence.

In addition to “public use,” Iowa Code section 478.4 provides that as a condition precedent to the granting of an electric franchise, the IUC must find that the proposed line “represents a reasonable relationship to an overall plan of transmitting electricity in the public interest.” Iowa Code section 478.3(2)(a) sets forth eight factors relevant to this inquiry:

- 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 the Proposed Order, subsequently adopted by the Commission in the Order Affirming Proposed Order, the IUC examined each of these factors in detail and found that “ITC Midwest established that the proposed line is reasonably related to an overall plan of transmitting electricity in the public interest under § 478.3(2)(a).” (Cert. Rec. at 02335). The IUC’s review included everything discussed below.

- *Numbered Paragraphs 1, 3, and 5:* Numbered paragraphs 1, 3, and 5, focus on the relationship between the proposed project and present and future economic development, the public’s present and future needs, and other planned power systems. The IUC found that “ITC Midwest demonstrated that the proposed project took into consideration the anticipated economic development and the anticipated future energy needs so as to meet the requirements set forth in §§ 478.3(2)(a)(1), (3), and (5).” (Proposed Order at 11; Cert. Rec. at 02326). ITC Midwest demonstrated that the proposed line is needed to provide reliable service and to meet current and future energy needs. *Id.* The IUC discussed ITC Midwest’s detailed evidence in this regard, including

upgrades in the distribution system that will require the support of the proposed project and also provide improved restoration services to existing customers in the event of unplanned outages. (Proposed Order at 12-13; Cert. Rec. at 02327-28). Simply put, substantial evidence supports the IUC's conclusion that the proposed line is necessary and that ITC Midwest established the factors found in §§ (1), (3), and (5). (Proposed Order at 13; Cert. Rec. at 02328).

- *Numbered Paragraphs 2 and 4:* Numbered paragraphs 2 and 4 require a review into the relationship of the proposed project to comprehensive utility planning and to the existing electric utility system and parallel existing utility routes. Iowa Code § 478.3(2)(a)(2) and (4). ITC Midwest worked jointly with CIPCO in preparing a work study of the relevant area “to determine the transmission upgrades necessary to adequately serve Alliant Energy’s and CIPCO’s heavy load growth in the North Liberty and Coralville area.” (Cert. Rec. at 02039; 02328). Mr. Walters testified that the proposed line “will provide additional transmission system support to the existing [transmission] system” in order to “ensure long term area reliability.” (Cert. Rec. at 00131; 02330).

The proposed line also makes use of existing utility infrastructure as discussed in Iowa Code § 478.3(2)(a)(4). It will be sited in the road right-of-way and, where feasible, will be collocated with a Linn County REC distribution line. (Cert. Rec. at 02304-05; 02330). As correctly pointed out by ITC Midwest “[t]he very purpose of this project is its positive relationship to the existing electric utility system. It connects a substation with an existing line in a way that helps eliminate existing system violations as well as overloads that show in power flow analysis of potential contingencies.” (Cert. Rec. at 02304).

Based on the totality of the evidence adduced in connection with this issue, the IUC's conclusion that "ITC Midwest demonstrated a relationship between the proposed project to comprehensive electric utility planning and a relationship between the proposed project and the existing utility systems

- *Numbered paragraph 7:* Numbered paragraph 7 requires an examination of the relationship of the proposed project to present and future land use and zoning ordinances. ITC Midwest witnesses Troy Weary and Kyle Whisner testified that the project is consistent with present land uses and zoning ordinances. (Cert. Rec. at 00124, 00114). Swan Lake witness Joan Ambrose, one of the co-owners of the parcel, testified that based on her review, the project is inconsistent with future land use, specifically with the City of North Liberty's Comprehensive Plan. (Cert. Rec. at 00651). Swan Lake further asserts that there is an issue with pole placement, going so far as to suggest that Mr. Weary "quite possibly perjured himself." (Pet. Brief at 33). This notion is absurd.

First, as to the issue of North Liberty, there is no evidence to contravene ITC Midwest's testimony that it has been in contact the City of North Liberty since June of 2022 and city officials have expressed no indication that the project would be in conflict with future land use. (Cert. Rec. at 00124, 02331). Next, regarding pole placement, no poles have been placed, and, further, adjustments to pole placement based on ongoing input from Johnson County in no way mitigates the IUC's overall finding that the project meets the requirements of Iowa Code section 478.3(2)(a)(7). There is no argument that the ITC must obtain a permit from Johnson County's Secondary Roads Department before building this or any similarly-sited proposed line. (See Cert. Rec. at 02176). The

evidence shows that ITC Midwest has properly been in contact with both Johnson County and North Liberty, and will presumably continue to be so as necessary. *Id.*; (Cert. Rec. at 00124, 02331).

It is the hearing officer as trier of fact to determine the credibility of witnesses, weight the evidence, and decide the facts in issue. *Dunlavey v. Econ. Fire and Cas. Co.*, 526 N.W.2d 845, 853 (Iowa 1995). The appellate court gives weight to the findings of the trial court (here, the hearing officer), especially where the credibility of witnesses is a factor. *Hora v. Hora*, 5 N.W.3d 635, 645 (Iowa 2024); *see also Cookies Food Prods, Inc., v. Lakes Warehouse Distrib., Inc.*, 430 N.W.2d 447, 448 (Iowa 1998). The presiding officer at the hearing in the matter at hand specifically found “Mr. Weary’s testimony that ITC Midwest staff discussed the proposed project with North Liberty officials to be credible.” (Cert. Rec. at 02331). It is well settled that it is not the role of the district court on judicial review to reassess the evidence:

Making a determination as to whether evidence “trumps” other evidence or whether one piece of evidence is “qualitatively weaker” than another piece of evidence is not an assessment for the district court or the court of appeals to make when it conducts a substantial evidence review of an agency decision.

Arndt v. City of Le Claire, 728 N.W.2d 389, 394 (Iowa 2007); *see also Tim O’Neill Chevrolet, Inc., v. Forristall*, 551 N.W.2d 611, 614 (Iowa 1996).

The IUC’s finding that “[f]or purposes of Iowa Code § 478.3(2)(a)(7), ITC Midwest established that the proposed project is not inconsistent with present and future land use and zoning ordinances,” is supported by substantial evidence. (Cert. Rec. at 02332).

- *Numbered Paragraphs 6 and 8:* Numbered paragraphs 6 and 8 require a review into possible alternative routes and the inconvenience that may result to property owners. Iowa Code § 478.3(2)(a)(6) and (8). A comprehensive Route Selection Study was completed with respect to this project. (Cert. Rec. at 00168-00252). The study indicates that a number of factors were considered, including the distance from residential and non-residential structures; the impact to social and natural resources, including wetlands; major road crossings, the need for woodland clearing; and the number of line angles. (Cert. Rec. at 00186-88, 02333). Eleven potential complete routes were evaluated. (Cert. Rec. at 00189-90, 02333). Each route was then evaluated in detail based on 16 engineering, environmental and land use, and social factors, and then narrowed down to 2. (Cert. Rec. at 00190-200, 02334). The current route was then selected as it was the shortest. (Cert. Rec. at 00200, 02334).

Petitioner contended at hearing that ITC Midwest failed to consider all potentially available routes and that a more sensible route exists. (Cert. Rec. at 02334). However, no evidence was advanced in support of this argument, and petitioner's brief does not further advance or even really discuss this argument in any meaningful way. *Id.* It is not enough that petitioner simply does not want the project located on or near their property. The IUC's holding that "[f]or purposes of §§ 478.3(2)(a)(6) and (8) factors, the record supports a finding that ITC Midwest considered methods of supply and alternative routes, which took into consideration potential injury and inconvenience to landowners," is clearly supported by substantial evidence. (Cert. Rec. at 02335).

3. The Iowa Utilities Commission's finding that the proposed line is compliant with Iowa Code § 478.18(2) and other provisions of law is supported by substantial record evidence.

After finding ITC Midwest's proposed project is necessary to serve a public use and represents a reasonable relationship to an overall plan of transmitting electricity in the public interest, the IUC next examined whether the proposed routes were compliant with § 478.18(2) and other provisions of law. (Proposed Order at 20-24; Cert. Rec. at 02335-02339). Iowa Code § 478.18(2) provides that an electric transmission line:

shall be constructed near and parallel to roads, to the right-of-way of the railways of the state, or along the division lines of the lands, according to the government survey, wherever the same is practicable and reasonable, and so as not to interfere with the use by the public of the highways or streams of the state, nor unnecessarily interfere with the use of any lands by the occupant.

See also Hanson v. Iowa State Commerce Comm'n, 227 N.W.2d 157, 159 (Iowa 1975) (defining "[d]ivision lines of the lands" as "section lines, quarter-section lines, and quarter-quarter-section lines, which divide land into 640-acre, 160-acre, and 40-acre tracts respectively"). Consequently, route planning must "begin with routes that are near and parallel to roads, railroad rights-of-way, or division lines of lands..." 199 IAC 11.3.

With respect to the route at issue here, Swan Lake raised certain safety concerns concerning pole placements and visibility of the CRANDIC railroad. (Cert. Rec. at 00290-91, 00658-59). ITC Midwest responded that it is required to comply with the Iowa Electrical Safety Code, which incorporates the National Electrical Safety Code, and that, specifically as to railroads, it works directly with the railroad when placing poles and follows the Iowa Department of Transportation Utility Accommodation Manual. (Cert.

Rec. at 02022-23, 02336-37). The IUC properly weighed the evidence and correctly concluded as follows:

While appreciating the concerns and objections that were filed in the docket and expressed at hearing, the scope of the route review under § 478.18(2) is somewhat circumscriptive. Section 478.18(2) requires an inquiry into whether the proposed line will be constructed near and parallel to roads or along division lines of land and an inquiry into whether the proposed line will unnecessarily interfere with the use of the land. As shown in the revised Exhibit B, the proposed line runs near and parallel to roads. Therefore, the proposed route complies with the requirements of Iowa Code § 478.18(2) and the Commission's administrative rules.

Cert. Rec. at 02337.

The IUC's finding that the proposed line complies with Iowa Code § 478.18(2) is supported by substantial record evidence and is not irrational, illogical, or wholly unjustifiable. Therefore, there is no error for this Court to correct and the IUC's action in granting the petition for franchise should be affirmed.

V. CONCLUSION

For all the reasons and authority set forth above, the IUC's conclusion that the proposed line is necessary to serve a public use, that the proposed line represents a reasonable relationship to an overall plan of transmitting electricity in the public interest, and that the proposed line is compliant with Iowa Code § 478.18(2) and other provisions of law is supported by substantial record evidence and should be affirmed. The petitioner has failed to meet its burden to show the necessary basis for reversal of the final agency action. Therefore, the IUC respectfully requests this Court deny the relief requested by petitioner and affirm the final agency decision, and assess costs of this action against petitioner.

Respectfully submitted,

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ALL PARTIES SERVED ELECTRONICALLY