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 REPLY BRIEF**

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

By:_____

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Certificate of Service

I hereby certify that on February 21, 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 all parties of record.

/s/ William M. Reasoner

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INTRODUCTION

Swan Lake Road Farms, LLC ("SLRF") has contested the application of ITC Midwest LLC ("ITCM") to construct a new electric transmission line from the initial informational meeting. Despite ITCM choosing to proceed in this case by telling the IUC "trust our word and don't worry if we have no documentation or empirical evidence," SLRF has articulated many reasons why ITCM should not be allowed to expand its monopolistic control in this instance. Despite being derogatorily referred to as a "holdout," SLRF is simply choosing to expend substantial legal fees to protect its property rights which ITCM and the IUC have ignored. Despite ITCM suggesting that there is no question at all about the constitutionality of § 306.46 and the IUC's grant of the franchise, four separate amici have filed a brief in this proceeding focused exclusively on the property rights issue.

SLRF's arguments cannot be shrugged off and must be thoroughly addressed.

THE REMEDY IS TO DENY THE FRANCHISE

Fact: ITCM lacks any right to construct its proposed line on this route unless the IUC's application of § 306.46 is upheld.

Fact: ITCM has no evidence that it obtained any easement, license, or other permission from any affected property owner to construct its proposed line on this route.

Fact: ITCM has not been vested with the right to condemn any property along this proposed route.[1]

Fact: If ITCM constructs its proposed line *under color of authority from the IUC's grant of the franchise*, it takes property from SLRF without ITCM having been vested with any condemnation authority.

There is a reason why the IUC, ITCM, and the four amici chose to not engage on SLRF's constitutional arguments about the grant of franchise: they simply cannot articulate how the state action (grant of a franchise) is constitutional if SLRF is right about § 306.46. IUC, ITCM, and the four amici ignore the ultimate premise of SLRF's constitutional argument; they only address the dispute whether § 306.46 results in a taking. But they ignore the second point. If SLRF is right about § 306.46, the outcome is not simply payment of just compensation to SLRF. Instead, the franchise request must be denied because ITCM skipped the process required in § 478.15. That section dictates what ITCM must prove to obtain a franchise when ITCM needs condemnation authority. Without meeting the elements under that process, ITCM is not vested with eminent

[1] In SLRF's opening brief, it articulated the process for ITCM to obtain eminent domain authority under § 478.15. SLRF articulated that the standards in that proceeding are higher than applied here. None of the resisting entities challenged this notion in their briefs.

domain authority. It is uncontroverted, as explained by SLRF in its opening brief and not addressed by any of the other filers in their briefs, that the process to obtain a franchise with condemnation authority under § 478.15 *is a higher standard* than what was applied in this case.

Put as simply as possible: if SLRF is right about § 306.46, the IUC's grant of the franchise must be overturned because the grant is a state action that preemptively and unconstitutionally and in violation of statutory process gives a private company an ability to take private property. The IUC order itself is unconstitutional because it preemptively allows and, in fact, dictates that an unconstitutional taking occur.

This is not an inverse condemnation case where SLRF is suing to obtain damages for a taking. Instead, this is a challenge to state action that *will* – future tense – result in a taking that violates the constitutional and the statutory process required before a **private** company may become vested with eminent domain authority.

NDA FARMS SHOULD NOT BE IGNORED

ITCM asks this Court to ignore the rationale and outcome of *NDA Farms, LLC v. Iowa Utilities Bd., Dept. of Commerce*, No. CV 009448, 2013 WL 11239755, at *9-10 (Iowa Dist. June 24, 2013) as it relates to § 306.46 simply because an argument in that case was framed as a fight of retroactivity versus how SLRF has framed the issues. ITCM, though, ignores the actual point of SLRF's citation to *NDA Farms*.

In *NDA Farms*, an affected landowner did argue that § 306.46 could not be applied retroactively to treat a right of way as having given a property right to a utility. The analysis on retroactivity does not matter here, though. What matters was the conclusion

in *NDA Farms* that § 306.46, applied as ITCM seeks to apply it here, would constitute a taking. *Id*. at *9-10 ("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)."). Retroactive applications of statutes and how the Courts view retroactivity does not matter for the point SLRF makes about *NDA Farms*.

SLRF cites to *NDA Farms* to show this Court that two separate Polk County judges have come to different conclusions about whether § 306.46 effectuates an unconstitutional taking. Furthermore, the six justices on the Iowa Supreme Court who considered the issue in *Juckette* split 3-3 on their decision. There is a live and ongoing controversy in the judiciary on the constitutionality of § 306.46, and half of the judges who have addressed the issue have sided with the position raised by SLRF in this proceeding.

SLRF OWNS THE RIGHT OF WAY

SLRF still owns the land that is referred to as the right of way. Despite ITCM's effort to suggest that SLRF is an "adjacent" landowner, SLRF's ownership of the ground has never been – and cannot legitimately be – in question. Thus, any placement of a utility pole in the right of way is a placement of the pole on SLRF's real estate.

ITCM makes the argument that the existence of the right of way has deprived SLRF of possession or use of the property. (ITCM Brief, p. 26). This is incorrect and inconsistent with a recent decision from the Iowa Supreme Court. In *Rivera v. Clear*

Channel Outdoor, LLC, 7 N.W.3d 734 (Iowa 2024), the Court held that easements are not possessory:

> "An easement is an interest in land which entitles the owner of the easement to use or enjoy land *in the possession of another*." By definition, then, an easement does not involve possession of the land. Indeed, in *Koenigs v. Mitchell County Board of Supervisors*, we said that "[a] main characteristic of easements is that they are non-possessory interests in land." Likewise, in *Robert's River Rides, Inc. v. Steamboat Development Corp.*, we said that the right of possession shows the difference between a lease and an easement or other similar interests in real estate. If the "right to the possession of the land ... is not conferred, the transaction is to be deemed a license, profit, *or easement*."
>
> We are not alone in these views. *Corpus Juris Secundum* says that "[a]n easement does not convey title to property; it is instead a nonpossessory interest that authorizes its holder to use the property for only particular purposes." A specialized treatise entitled *The Law of Easements & Licenses in Land* says that "[a]n easement is commonly defined as a nonpossessory interest in land of another." The most recent Restatement of Property says that "[a]n easement creates a nonpossessory right to enter and use land in the possession of another and obligates the possessor not to interfere with the uses authorized by the easement." Likewise, the original Restatement from 1944 had said that an easement "is not, itself, a possessory interest" and, therefore, an easement's owner "is not entitled to the protection which is given to those having possessory interests." All of these authorities support our view that an easement holder like Lamar is not a "holder of the record title to the real estate *in possession*" as Iowa Code section 614.17A(1)(*b*) requires.
>
> …
>
> Even so, Lamar notes that the easement grants Lamar an exclusive right to construct and operate billboards "over, under, upon and across" a portion of the parcel. And Lamar's use of the easement involves a large "physical sign driven into the ground and reaching into the sky." This "sign is present, perpetually, and is affixed and attached to the ground permanently with underground concrete footings." The easement—and more so, the sign that it authorizes—imposes a substantial limitation on the landowner's use of the parcel. In Lamar's view, this amounts to "possession under every sense of the word."

> We disagree. An easement may permit a substantial physical presence on the subservient parcel. That physical presence may substantially restrict alternative uses of the parcel. Think of wind tower easements, which permit the construction of truly massive physical structures that effectively prohibit alternative uses of the land occupied by those structures. But this does not alter the nonpossessory nature of easements. An easement is still "considered a nonpossessory interest in land because it generally authorizes limited uses of the burdened property for a particular purpose." Although an easement "may authorize the exclusive use of portions of the servient estate" and although the easement "may involve uses that make *any* actual use of the premises by the transferor unlikely," easements "are still considered nonpossessory interests if the transferor is not excluded from the entire parcel and retains the right to make uses that would not interfere with the easement."

Id. at 737-739 (internal citations omitted). Why does this matter and why cite that much of a case? Because ITCM argued SLRF lost the right to exclude others from SLRF's property because SLRF was deprived of a right of possession over the property. This is clearly incorrect and ignores Iowa law.

Applying *Rivera* here, SLRF has not lost possession of its property that is part of the right of way easement. SLRF "retains the right to make uses that would not interfere with the easement." Even though the right of way might "impose[] a substantial limitation on [SLRF's] use of the parcel," SLRF still retains all other property rights, including the right to exclude.

So, the real inquiry here is whether Iowa property law considers electric transmission poles and lines to be an incidental and subservient use to road right of way easements. *Stare decis* tells us the answer is "no."

IOWA LAW DICTATES ELECTRIC TRANSMISSION LINES ARE NOT INCIDENTAL USES TO THE ROAD RIGHT OF WAY

First and foremost, it must be made clear: SLRF is not challenging the general proposition[2] that it makes sense to construct electric transmission lines along roads. The doomsday scenarios urged by the amici are not on point and really are nothing other than fear mongering efforts to suppress SLRF's real arguments. Yes, as a policy reason, it makes sense that the State could make the political decision to say it will allow utilities to share government held road right of way easements. That is all the Iowa Supreme Court held in *Juckette* and that policy decision has never been challenged by SLRF (and was not even challenged by Ms. Juckette).

The question that amici, IUC, and ITCM ignore, though, is whether the State can enact a statute that deprives landowners of a property right just to satisfy a State policy decision. This is the issue SLRF has with § 306.46; at the expense of a policy decision by the government to share governmental easements (rights of way) with utilities, can the State dictate that private utilities may further burden private property without going through the condemnation[3] process? No, it cannot. This was already decided by the Iowa Supreme Court in *Bormann v. Board of Supervisors In and For Kossuth County*, 584 N.W.2d 309, 322 (Iowa 1998):

> 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

[2] SLRF *is* arguing, separate from the property rights analysis, that the placement of the transmission lines in this context is not appropriate because the pole placements do not comply with Johnson County requirements. This was urged in the opening brief. This is separate and distinct from the general proposition about the policy decision, though.

[3] Again, a condemnation process under § 478.15 which carries with it higher evidentiary and public use burdens and what utilities must prove to get a regular franchise.

> 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.

The Iowa Supreme Court has held that electric lines are not incidental and subservient uses to rights of way easements. *Keokuk Junction Ry. Co. v. IES Indus., Inc.*, 618 N.W.2d 352 (Iowa 2000):

> **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.

ITCM and the amici insist that the legislature abrogated this ruling by enacting § 306.46. But, ITCM and amici ignore *Bormann*; even if the legislature wants to make a policy decision, that policy decision cannot be upheld if it results in an unconstitutional outcome. So, the question becomes: can the legislature, by statute, change the scope and extent of SLRF's property rights? The answer has to be "no."

Changing, by statute, the sticks in SLRF's bundle of rights is the same as removing a stick from SLRF's bundle of rights. That would be an impermissible taking. It is really the same analysis as the Court has already made in *Bormann*. The *Bormann* decision itself relied upon the bundle of sticks approach to property rights and concluded that legislative action to remove or modify a stick in an owner's bundle was unconstitutional. That is exactly what is happening in § 306.46.

For § 306.46 to be lawful as applied by the IUC in its order granting the franchise, the Court would have to overrule *Keokuk Junction*. This cannot be done by saying the legislature abrogated the decision. Instead, the Court would have to overrule the decision and conclude that Iowa property law has always been that electric utilities were always subservient uses to road rights of way. There is no basis for the Court to overturn itself and disturb the precedence of *Keokuk Junction*.

The amicis' recitation of history is not convincing enough to allow the Court to ignore its rules about *stare decisis*. First, the history of building out electric lines in the state and country existed at the time of *Keokuk Junction*'s decision in 2000. In other words,

that historical background of utility construction was the same in 2000 when *Keokuk Junction* was decided as that history is today. That history did not sway the Court in 2000 and should not be the basis for overturning *Keokuk Junction* now.

Second, the simple fact of history does not necessarily mean practices were constitutional. Throughout American history, political dissidents were criminally punished for their speech in what would now be considered clear violations of the First Amendment. Minorities were segregated in schools from other children who happened to have lighter skin colors. The history of conduct in America does not exclusively provide guidance on what is and what is not a constitutional violation.

Third, the very existence of § 478.15 demonstrates that private electric utilities do not have carte blanche to construct utilities in rights of way. If they had such a right because the construction has always been a subservient and incidental use to rights of way, private utilities would not need a statutory scheme to become vested with eminent domain authority.

Fourth, the fact that the amici cite to landowners happy to receive electricity suggests that those landowners likely consented to the utility's construction of facilities[4] on their property. That does not demonstrate that electrical transmission lines have always been incidental and subservient uses to rights of way.

Additionally, the amici appear to suggest that SLRF might have some kind of opposition to providing electricity to all Iowans. That is not the case. SLRF is opposed to

[4] Facilities which appear to be electrical distribution lines, not electrical transmission lines.

electric transmission lines that do not comply with county engineering standards for locations of utilities relative to the road and SLRF opposes ITCM's heavy-handed approach to building infrastructure on private property without voluntary easements or proof to meet the high burden of eminent domain. SLRF favors the availability of affordable electricity to all Iowans. Yet, this does not equate to blanks checks given to companies like ITCM to continue to build infrastructure. This restraint on expansion of infrastructure without meeting the burdens of proof dictated by Chapter 478 – part of which should be a showing that the planned infrastructure will actually be needed to keep electricity affordable to Iowans as opposed to resulting in higher consumer costs for the private benefit of ITCM's bottom line – is outlined in detail in SLRF's opening brief and is addressed again below.

If amici had reviewed SLRF's position as a whole, amici would recognize that SLRF's opposition to this franchise is not a NIMBY approach; rather, SLRF has consistently argued that that ITCM is taking advantage of the system to build out its infrastructure without justifiable reasons so that ITCM can continue to earn more money from increased infrastructure and charge higher transmission fees to captive consumers in Iowa due to the monopolistic nature of Iowa electrical system. One needs to look no further than ITC Holdings Corp.'s 2024 Form 10-K:

> **Capital Investment and Operating Results Trends**
>
> We expect a long-term upward trend in rate base resulting from our anticipated capital investment, in excess of depreciation and any acquisition premiums, from our Regulated Operating Subsidiaries' long-term capital investment programs to improve reliability, increase system capacity and upgrade the transmission network to support new generating

> resources. Investments in property, plant and equipment, when placed in-service upon completion of a capital project, **are added to the rate base of our Regulated Operating Subsidiaries**. We expect increases in rate base to result in a corresponding long-term upward trend in revenues and earnings . . .
>
> Our Regulated Operating Subsidiaries incur significant costs to invest in their transmission systems and maintain the assets on their systems . . .
>
> We also assess our transmission systems against our own planning criteria that are filed annually with the FERC. Based on our planning studies, we see needs to make capital investments to: (1) maintain and replace our current transmission infrastructure to enhance system reliability and accommodate load growth; (2) upgrade physical and technological grid security to protect critical infrastructure; (3) expand access to electricity markets to reduce the overall cost of delivered energy to customers and provide access to competitive markets for economic development; and (4) interconnect new renewable generation resources.
>
> In addition to future investments identified through our planning studies, MISO continues to identify capital investment needs through its LRTP initiative. The objective of this initiative is to ensure grid reliability while integrating the different operating characteristics of new generation resources and increase resiliency of the grid during severe weather events. The MISO LRTP will result in additional capital investments across MISO's Midwest subregion, including investments for our MISO Regulated Operating Subsidiaries. On December 12, 2024 MISO's board of directors approved a portfolio of the second tranche of 24 LRTP projects ("Tranche 2.1") with estimated total associated transmission costs of approximately $22 billion. Based on the MISO portfolio of Tranche 2.1 projects, we expect a range of $3.7 billion to $4.2 billion of additional capital investments for our MISO Regulated Operating Subsidiaries. At this time, this range includes the estimate of future capital investments for projects from the Tranche 2.1 portfolio that are not subject to a competitive bidding process. We currently anticipate that the majority of our investments for the Tranche 2.1 portfolio will occur beyond our five-year plan for forecasted capital expenditures for the years 2025 through 2029.

See https://d3u3c9e6sbajfk.cloudfront.net/wp-content/uploads/2025/02/ITC-2024.12.31-10K-FINAL.pdf (from ITC Holding's website accessed 2/19/2025: https://www.itc-holdings.com/about-our-company-itc-holdings/fixed-income-investors/).

Put differently, ITCM's parent company derives its revenue from ITCM's continued construction of new infrastructure because the costs are added to the rate base, and ITCM expects the rate base to increase to drive "long-term upward trend in revenues and earnings." ITCM's parent company expects expenses in building new infrastructure to be between $3.7 billion to $4.2 billion. *See, supra.* These construction expenses, which are meant to drive revenue for ITCM's parent company, have to be considered in the context of this proceeding. This is not a NIMBY case. SLRF raises (1) property rights issues and (2) significant issues with ITCM's lack of evidence that it has met the necessary standards for a franchise under Chapter 478.

The non-property rights reasons why the franchise should not be granted are discussed in more detail below, but SLRF emphasizes that this case is not a NIMBY argument; this is a constitutional issue. Can the State take action (i.e. grant a franchise) that results in the invasion of SLRF's property without compensation? Can the State take action that would result in an unconstitutional outcome? No, it cannot. While the policy reasons on why the franchise should be denied are separate arguments from the property rights issues, the fact of the monopolistic nature of ITCM should not be ignored.

Further, the amicis' decision to paint SLRF as a "holdout" is disingenuous. There is no evidence in the record that SLRF withheld an easement from ITCM unless ITCM paid some exorbitant amount. There is no evidence or suggestion of any blackmail or extortion by SLRF. The facts in the record show that SLRF has objected to the franchise and the taking of SLRF's property because of its sincere belief that the project is not warranted based on real-life circumstances of the current grid, that the project is meant

to boost ITCM's profits without evidence of real need to the public, and that the route selected presents significant safety concerns. This case has never been about economic gain for SLRF; it is about making sure there is a real check by the IUC on ITCM's quest for economic gain at the expense of Iowans.

SLRF is challenging the state action which deprives SLRF of its property rights. Neither the federal nor Iowa constitutions qualify the constitutional protections against the taking of private property without just compensation to say that the protection goes away if only one landowner decides to raise a property-rights issue. Painting SLRF as a "holdout" when SLRF is engaging in the lawfully proscribed process to challenge state action which deprives SLRF of property without the due process of the procedure to determine if ITCM qualifies for eminent domain and without compensation is simply demeaning and ridiculous.

ITCM FAILED TO MEET ITS BURDEN OF PROOF

ITCM asserts that SLRF failed to present evidence to prove ITCM should not obtain a franchise. This is a glaring problem. ITCM, as the applicant, clearly has the burden of proof. It is ITCM which must present sufficient evidence that it is entitled to the requested franchise. SLRF has zero burden to present evidence to prove the lack of entitlement a franchise. ITCM seeks to be alleviated from its burden of proof and to place on SLRF the burden to prove a negative (i.e. prove that the line is not necessary). This is not correct.

ITCM also relies on the general notion that oral testimony is proof, and because ITCM's employees testified to the conclusions required in Chapter 478, that there was

sufficient evidence in the record for the IUC to grant the franchise. SLRF has never argued that oral testimony is not evidence. SLRF has argued, repeatedly and consistently, that public policy and monopolistic nature of the electrical system in Iowa demands that applicants like ITCM prove with real, verifiable and objective data the reasons why the proposed line is actually **necessary** to serve a public use. This language is not pulled out of thin air; it is from the statute (§ 478.4) the IUC should be using as its guidepost.

Look at IUC's brief: the only piece of data referenced by ITCM is one chart showing alleged overload information. There is no other information providing explanations of the information, nor is there any data showing that *other* electrical transmission constructed in the Johnson/Iowa/Linn County areas did not already alleviate the bare bones concerns propped up by that chart.

ITCM presents only conclusory testimony from ITCM's self-interested employees about the proposed line without showing data. The IUC should not just accept ITCM's self-supporting oral testimony and the IUC should demand additional empirical, documentary evidence that allows IUC and intervenors like SLRF to assess and challenge the conclusions made by ITCM. How else is the IUC able to actually fulfill its statutory duty to determine that the requested franchise is **necessary** for a public use? *See* § 478.4. Put differently, there was not sufficient evidence in the record to support IUC's grant of the franchise.

As SLRF articulated in its opening brief, ITCM benefits from the monopolistic nature of Iowa's electrical system. ITCM builds more and more infrastructure, which leads to higher and higher costs that are ultimately passed on to Iowa electricity

consumers. Those consumers are captive based on location and have no choice to shop for other electrical distribution companies that do not have to pay for ITCM's decision to build more infrastructure. This monopolistic scheme has to be considered by the IUC when it weighs evidence when deciding whether to allow ITCM to build even more infrastructure. Should the IUC be able to find there is sufficient evidence under all the standards in Chapter 478 just because ITCM's own employees testify with conclusory statements about the need for the proposed line? Should the IUC be able to silo its approach in proceedings to ignore the ever-changing landscape of the electrical grid? In other words, should the IUC ignore real-life, on the ground changes to the electrical grid from other franchises and transmission construction in the area? Or should the IUC continue to find there is substantial evidence to allow ITCM to further build out its infrastructure by only reviewing ITCM's self-interested testimony from employees which shows only conclusions without real data supporting the claims?

It was not SLRF's burden to prove that the line should not be built. But, SLRF has presented adequate evidence and arguments to demonstrate that ITCM failed to meet the necessary standard of proof to obtain a franchise to further build out its infrastructure at the future cost of captive Iowa consumers.

Both IUC and ITCM failed to address several of the issues raised by SLRF's opening brief. SLRF showed how the only "substantiation" made by ITCM that it met the necessary to serve the public use standard required by § 478.4 was its conclusory allegations in its petition:

> 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. Even in their resistance briefs, neither ITCM nor IUC pointed to any documentary evidence that would support the self-serving conclusions. ITCM simply asserts that testimony from a witness is evidence. SLRF does not dispute that testimony is not evidence. That is not SLRF's point. The point is, rather, that ITCM has the burden to prove that its proposed project is **necessary** to serve a public use under § 478.4. The IUC should not find there to be substantial evidence of this standard just because ITCM makes conclusory and self-serving statements. IUC should require that ITCM present studies or other empirical evidence that substantiates the allegations on necessity. The IUC should require ITCM to provide data and explanations as to why the existing infrastructure in the area is not adequate. That is the evidence that is lacking in this case and the IUC should be forced to require more verifiable and objective evidence on **necessity** before giving blank checks to ITCM to continue building infrastructure at the cost of Iowans.

Additionally, neither ITCM nor IUC addressed in their briefs the evidence and arguments raised by SLRF that this proposed franchise is actually not actually a part of the overall, regional planning. *See* SLRF Opening Brief, pp. 29-31. SLRF shows how this franchise was not the project approved by MISO in MTEP16 and neither ITCM nor IUC have raised any arguments to the contrary. The reason why is clear: the evidence shows

that ITCM is misrepresenting that this proposed franchise is a project supposedly required by MISO in MTEP16.

Finally, neither IUC nor ITCM addressed the elephant in the room: the IUC has previously asserted that ITCM's excessive transmission rates are an impediment to economic development in Iowa. *See* SLRF Opening Brief, pp. 35-36. IUC was concerned enough with ITCM's business practices and transmission infrastructure that it joined in a complaint against ITCM before the Federal Energy Regulatory Commission. Those concerns were that ITCM's rates were harmful to Iowans and negatively impacted economic development. SLRF showed that nearly 20% of its monthly energy bills are for ITCM's transmission fees. Yet, the IUC disregarded these concerns. Again, this proceeding is not about rates. But, the IUC's concerns about ITCM's rates and the harm ITCM presents to Iowans and Iowa's economic development should have been applied by IUC in the sense that IUC should have required more evidence from ITCM that the project was "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.

SLRF HAS CITED 17A

In its brief, IUC suggests that SLRF has not "invoked" the language of Iowa Code § 17A.19 when articulating the challenges to the IUC's action. IUC Brief, p. 6-7. This ignores the big picture.

In paragraphs 22(a)-(m) of its petition in this judicial review proceeding, SLRF alleged 13 separate reasons why the IUC's final decision violated Chapter 17A. SLRF restated the same reasons in its opening brief at pages 6-8. Each of the citations to Chapter

17A included a brief description of the error in the IUC decision which SLRF expanded upon later in the brief. SLRF did not need to restate each of the provisions under 17A when SLRF detailed the IUC's errors later on in the brief. But, for the sake of clarity, SLRF will cite to the various provisions of § 17A.19 which apply to SLRF's arguments:

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. The state action (granting a franchise) which violates SLRF's constitutional rights prejudices SLRF's substantial rights. *See* § 17A.19.10(a), (b), and (c).

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. *See* § 17A.19.10(f), (j), (k), and (m).

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. *See* § 17A.19.10(f), (j), (k), and (m).

III. ITCM failed to prove, with actual evidence, that it met the other statutory considerations in Iowa Code § 478.3(2)(a). *See* § 17A.19.10(f), (j), (k), and (m).

CONCLUSION

For all the reasons explained in SLRF's opening brief and in this reply, 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.