

# NMPP Energy

**State Issues – Iowa**

**Julie Smith, Iowa Legislative Counsel**

Where are we  
in Session?



## 90th Iowa General Assembly 2024 IOWA LEGISLATIVE SESSION TIMETABLE\*



**Note: This Session Timetable is subject to change**

**\*See SCR4 and HR 3 (2023), SR 3 (2019), and SR 113 (2020)**

JANUARY 8	First day of session (Iowa Code Sec. 2.1)
JANUARY 19 (Friday of the 2 <sup>nd</sup> week)	Final day for individual Senator and Representative requests for bill and joint resolution drafts to the Legislative Services Agency (Senate Rule 27 and House Rule 29)
FEBRUARY 16 (Friday of the 6 <sup>th</sup> week)**	Final date for Senate bills and joint resolutions to be reported out of Senate Committees and House bills and joint resolutions out of House committees (Joint Rule 20)
FEBRUARY 19 - 23 (7 <sup>th</sup> week)	Senate considers only Senate bills, Senate joint resolutions, and unfinished business House considers only House bills, House joint resolutions, and unfinished business (Joint Rule 20)
FEBRUARY 26 - MARCH 8 (8 <sup>th</sup> and 9 <sup>th</sup> weeks)	Debate not limited by rule
MARCH 15 (Friday of the 10 <sup>th</sup> week)**	Final date for Senate bills and joint resolutions to be reported out of House committees and House bills and joint resolutions out of Senate committees (Joint Rule 20)
MARCH 18 - 22 (11 <sup>th</sup> week)	Senate considers only House bills, House joint resolutions, and unfinished business House considers only Senate bills, Senate joint resolutions, and unfinished business (Joint Rule 20)
MARCH 25 (Beginning of the 12 <sup>th</sup> week)	Only the following bills and resolutions are eligible for consideration: (Joint Rule 20) <ul style="list-style-type: none"><li>• Bills passed by both Houses</li><li>• Appropriations Bills</li><li>• Ways and Means Bills</li><li>• Government Oversight Bills</li><li>• Legalizing Acts</li><li>• Administrative Rules Review Committee Bills</li><li>• Committee Bills related to delayed or suspended Administrative Rules [Iowa Code Sec. 17A.8(9)]</li><li>• Bills co-sponsored by Majority and Minority Leaders of one House</li><li>• Conference Committee Reports</li><li>• Companion Bills sponsored by Senate and House Majority Leaders</li><li>• Concurrent or Simple Resolutions</li><li>• Joint Resolutions nullifying Administrative Rules</li><li>• Bills on the Veto Calendar (Joint Rule 23)</li><li>• Unfinished Business</li></ul>
APRIL 1 (Beginning of the 13 <sup>th</sup> week)	House amendments need not be filed on the day preceding floor debate (House Rule 31.8)
APRIL 16	100 <sup>th</sup> calendar day of the session [Per diem expenses end - Iowa Code Sec. 2.10(1)]

## Background – Republican SUPER Majorities

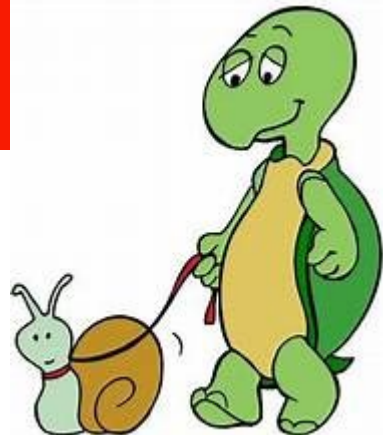
- Senate 34-16 and House 64-36
- Is Iowa NOW a RED state?
- First in Nation Caucus
  - Governor endorsed De Santis (after saying she would stay out of it)
  - TRUMP ads played constantly showing Governor endorsing him
  - Trump – 51%, DeSantis 21.3%, Haley 19.1%, Ramaswamy 7.6%
- Governor filed MANY policy bills – many of which aren't moving



**LEGISLATION**

What the  
HECK?

- SLOW session – House kept sending bills over (150) SENATE is NOT taking them up – sent 51 bills to the House
  - Whitver on the fact that the Senate hasn't debated many bills – “we don't need to pass 200 bills, 300 bills to keep Iowa strong, and so we've only passed 40-some – that's fine with me”
  - Grassley on the fact that the Senate has killed their bills – several house bills that have been rejected by the Senate will show up in appropriations bills or other legislation
  - Jochum – “it was one of the more bizarre funnel weeks”
  - Konfrst – R's are not communicating and are in “disarray”. Process will be a lot less predictable



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Ratemaking Review  
ROFR

**TWO Main Energy Issues**

# House File 617 NOI-2023-0001

- In 2023, House File 617 required IUB review Utility Ratemaking Procedures
- IUB opened Notice of Inquiry NOI-2023-0001.
- The IUB was required to initiate and coordinate an independent review of current Iowa law and procedures relating to utility ratemaking.
  - London Economics International (LEI) was hired to conduct the comprehensive study. The IUB filed LEI's recommendations for consideration during the 2024 legislative session on December 21, 2023.
  - 232 pp – if you want some light reading

## Review of Current Iowa Code Provisions and Ratemaking Procedures



Julia Frayer  
Ma. Cherrylin Trinidad  
Donald Osborne-Moss  
Hannah Braun  
Max Lee  
Luna Dou  
Jun-Soo Park

London Economics International LLC  
717 Atlantic Avenue, Suite 1A  
Boston, MA 02111

December 20, 2023

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## Charette – intense period of design or planning activity

- Public policy charrette #1: evaluate the adequacy and efficiency of Iowa's current ratemaking laws, procedures, and administrative rules;
- Public policy charrette #2: receive inputs from stakeholders on the ratemaking procedures of other MISO and SPP states that they have observed that should be explored in this Study; and
- Public policy charrette #3: receive input from stakeholders on specific feedback on potential changes to Iowa's ratemaking laws and procedures, and how the changes would be implemented.



Participants – wait  
what???

Leiglsators and  
Staff

Figure 113. List of stakeholders

Stakeholders	Stakeholders
AARP	Iowa Environmental Council
Black Hills/Iowa Gas Utility Company	Iowa House of Reps. members and staff
Clean Energy Districts of Iowa	Iowa Senate members and staff
Environmental Intervenors	Iowa Solar Energy Trade Association
Environmental Law and Policy Center	Iowa Utilities Board
Former IUB staff member	Iowa Utility Association
Grid Strategies	Iowa-American Water Company
GridLab	ITC Midwest
Interstate Power & Light Company	Large Energy Group
Iowa Association of Electric Cooperatives	MidAmerican Energy Company
Iowa Association of Municipal Utilities	Midwest Energy Efficiency Alliance
Iowa Business Energy Coalition	Missouri River Energy Services
Iowa Business for Clean Energy	Office of Consumer Advocate
Iowa Community Action Association	PolicyWorks
Iowa Economic Alliance	Sierra Club
Iowa Economic Development Authority	Voltus



# LEI Recommendations

- **Consider a maximum stay out provision for general rate cases.** Currently IOUs are not required to file a rate case. Allow regulatory staff to submit evidence for these contested cases and cost-of-service studies.
- **Enact a statute that requires rate-regulated electric utilities to file an integrated resource plan.** An IRP process should require the consideration of energy efficiency and demand response programs alongside other resource options in short-term and long-term planning. Recommendation includes analysis of transmission investment and assets.
- **Align necessity and advantages of advance ratemaking with the resource plan.** Analyze whether advanced ratemaking is necessary or should be revised. LEI suggested reevaluating the necessity for a higher rate of return on equity, consider limiting generation assets available for advanced rate-making, require a rigorous analysis of the need for the new generation assets and impact on grid.
- **Review tracker and rider mechanisms** – over past 10 years trackers and riders have made up an increasing portion of electric, gas and water rates. IUB should do a “holistic” review of trackers for each utility.
- **Initiate study on evaluating the current spending cap and alternative energy efficiency and demand response opt-out options.** Legislature should consider a revenue decoupling mechanism for IOUs.
- **Examine implementation of a performance-based regulation framework and various components, which include multi-year rate plans, performance mechanisms and earning sharing mechanisms.**



## 2024 session – The House version -HF 2554

- Allows IOUs to seek advanced ratemaking approval for generating facilities greater than 40 MW. Current law is 300 MW. Vastly expands ability to use advanced ratemaking. Includes alternative energy production facilities, energy storage facilities or significant alterations to existing plants
- IUB MAY require an integrated resource plan as a condition
- IUB required to conduct further review of performance-based regulation frameworks and various components to ensure utility services are safe, adequate, reliable and affordable and provide at nondiscriminatory, just and reasonable rates based on cost of service – report due by October 1, 2026.
- Intent language to “**encourage the development of nuclear electric power generation within the state using nuclear reactors and to use nuclear power to meet local and regional electric needs.**”

## The Senate version - SF 2244

- Prohibits utility from setting a different rate for a customer of the same service class unless the utility shows a measurable difference in the cost of providing service
- Requires IOUs to file an integrated resource plan within one year – conducted as a contested case proceeding
  - Includes all utility facilities and resources for provision of electric service, all contractual arrangements including demand response, peak load management, distributed generation, power purchase agreements and wholesale market purchases.
  - Include projected demand for service by customer class and characteristic load shape and proposed facilities and resources to meet the demand over the next ten years.
- This bill passed out of Senate Commerce Committee

## Who was Registered HOW

- Everyone registered UNDECIDED on the House bills except for the Sierra Club which registered Against
- The groups registered against the Senate bill are MidAmerican Energy, RECs, Iowa Utility Association, Iowa Association of Municipal Utilities, Central Iowa Power Cooperative, Iowa Association of Business and Industry.
- Groups registered FOR the bill are Iowa Business Energy Coalition, Iowa Business for Clean Energy, Microsoft Corp., Iowa Economic Alliance.
- Several parties are registered Undecided on the bill including Alliant Energy.



## What Happened?

- House passed HF 2554 to the Senate by a vote of 64-33
- The Senate – rather than using SF 2244 that had already PASSED out of Commerce Committee - sent HF 2554 to Senate Commerce and assigned the bill to a different Senator.
- The Senate Commerce Committee this time adopted a strike after amendment

## The Strike-After Amendment – Senate amended House Bill

- Starting January 1, 2026, utility has option to file a multiyear rate plan IF the utility has an integrated resource plan that has been approved by the IUB
- Similar language in regard to advanced ratemaking changes – including intent to encourage development of nuclear energy
- Requires utility to provide “support of reasonability” with an electric resource plan – must be completed no more than 24 months prior to filing for advanced ratemaking
- Requires utility to file a “resource plan” every five years. Grants IUB power to review for “completeness”. A resource plan must consider all reasonable resources for meeting the probable future demand for energy, including supply resources and conservation and management of demand.
- All groups UNDECIDED except Sierra Club and Iowa Business Energy Coalition which are AGAINST

Now WHAT ???







## Right of First Refusal – ROFR

- Bills provide that an incumbent transmission owner has the right to construct, own and maintain an electric transmission line that has been approved for construction in a federally registered planning authority transmission plan and that directly connects to an electric transmission facility owned by the incumbent electric transmission owner.
- Bills added Intent language – “Development and investment in high-voltage transmission is urgently needed to ensure the reliable, adequate, secure and stable delivery of electricity to customers. ...It is the intent of the General Assembly to express a preference for further investment in Iowa transmission infrastructure by electric transmission owners who have already dedicated significant resources to develop the infrastructure on which Iowans rely.”
- HF 2551 and SF 2372 are exactly the same bill



## Right of First Refusal – ROFR

- Many groups are lined up on either side of the issue.
  - Groups registered FOR the bills - ITC Midwest, MidAmerican Energy, Central Iowa Power Cooperative, IBEW, Federation of Labor and the RECs.
  - Groups opposed to the bills - AARP, Iowa Retail Federation, Iowa Economic Alliance, Iowa Business Energy Coalition, LS Power Midcontinent, Resale Power Group of Iowa, Americans for Prosperity, Americans for Fair Energy Prices, NextEra Energy.
  - IAMU, MRES, Iowa Environmental Council, Iowa Hotel and Lodging Association, Iowa Restaurant Association, Alliant Energy are registered
- Undecided on the bills.
- The House has included the ROFR bill on its Daily House Debate Calendar for several days in a row but has NOT called the bill up. WHICH MEANS the R's don't have the votes

## ROFR Background

- In 2020 – ROFR passed as a section within a big amendment to a bigger hodgepodge bill
- LS Power Midcontinent and Southwest Transmission brought suit against the state of Iowa. MEC and ITC Midwest intervened in support of the 2020 legislation – NextEra and RPGI supported LS Power
- Initially the District Court and then the Court of Appeals upheld the ROFR law. So it wasn't until March 24, 2023 that the provision was held unconstitutional.
- The Supreme Court struck down the constitutionality of the ROFR amendment as it was adopted during the 2020 legislative session because the title violated the Iowa Constitution.
  - Not everything was expressed in the title and NOT single subject matter

Constitutional

## IOWA CONSTITUTION ARTICLE III, SEC. 29

### Constitutional Title Analysis

Sec. 29. **Acts — one subject — expressed in title.** Every Act shall embrace but one subject, and matters properly connected therewith; which subject shall be expressed in the title. But if any subject shall be embraced in an Act which shall not be expressed in the title, such Act shall be void only as to so much thereof as shall not be expressed in the title.

### TITLE OF HF 2643

HOUSE FILE 2643  
BY COMMITTEE ON APPROPRIATIONS  
(SUCCESSOR TO HSB 710)

(As Amended and Passed by the House June 12, 2020)  
[ = New Language by the House  
\* = Language Stricken by the House

#### A BILL FOR

1 An Act relating to state and local finances by making  
2 appropriations, providing for legal and regulatory  
3 responsibilities, providing for other properly related  
4 matters, and including effective date and retroactive  
5 applicability provisions.  
6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:



YIKES – CAN  
THEY DO THAT?

- The Supreme Court reversed both lower court decisions and remanded the case to the District Court.
- On Dec. 4, 2023, the District Court issued an opinion that upheld the Supreme Court's decision. The court granted a permanent injunction of the ROFR statute - Iowa Code Section 478.16 and the accompanying administrative rules.
- The Court barred MEC and ITC from continuing any action on the five transmission projects - \$2.64B awarded by MISO in 2022



# Impact

- Not often an Iowa Supreme Court decision impacts the workings of the legislature
- Background –legislature 2X failed to enact ROFR
  - Added as part of a big amendment to final appropriations bill in 2020 – bill was over 50 pp long, 34 divisions, a “potpourri of various unrelated subjects” (Standings)
  - Title – “remarkably general”
  - Sponsor of amendment was “confused”, misrepresented legislative history”, “misrepresented other facts”
  - Opinions was highly critical of the workings of the legislature
- Ct said “legislators were unsure of what they were voting on. Senators had not seen the ROFR until 1;33 a.m. on the final day of session, caucused for one hour, sponsor could NOT produce a bill history, nor could he accurately describe the ROFR’s demise in the House” and “the provision is quintessentially crony capitalism.”
- Finally passed the Senate at 5:47 a.m. and the House at 1:07 p.m. Sunday with no debate on ROFR



## Personal Observations

- Why does it matter that the bill passed in the middle of the night?
- Why is the Supreme Court talking about “crony capitalism” – Judges don’t make the law
- Since when do legislators KNOW what they are voting on – should there be a test afterwards?
- It was in the MIDDLE OF COVID!!!
- As a consequence –
  - Changed debate – IF a bill is brought up that is contentious or a lawsuit could follow – legislators are refusing to YIELD to answer questions
  - Titles are longer, bills are shorter
  - Standings bill – funds ongoing appropriations - usually a XMAS tree bill, but now no additional policy language
  - Senate and House adjourned the 2023 session in the DAYLIGHT
- Legislators are STILL MAD - the floor manager in the House said they needed to pass ROFR to represent the legislature against the Supreme Court
- Is that the dumbest thing I have every heard of ... maybe



# MISO filed Amicus Brief 2/6/24



## IN THE IOWA DISTRICT COURT FOR POLK COUNTY

**LS POWER MIDCONTINENT, LLC and  
SOUTHWEST TRANSMISSION, LLC,**

*Plaintiffs,*

v.

**STATE OF IOWA, IOWA UTILITIES  
BOARD, and ERIK M. HELLAND,**

*Defendants,*

**MIDAMERICAN ENERGY COMPANY  
and ITC MIDWEST, LLC**

*Intervenors.*

**CASE NO. CVCV060840**

***AMICUS CURIAE* BRIEF OF  
MIDCONTINENT INDEPENDENT  
SYSTEM OPERATOR, INC.  
("MISO")**

**COMES NOW**, Midcontinent Independent System Operator, Inc. (hereinafter "**MISO**")

with this Brief of *Amicus Curiae* regarding the above-captioned action in support of the named Defendants and Intervenors in this case (this "**Brief**"):<sup>1</sup>

### **INTRODUCTION**

The issue presented to the Court in this case is whether Iowa Code § 476.16(2) ("**ROFR**") granting incumbent utility companies in the State of Iowa a right-of-first-refusal to construct, own, and maintain a Regional Transmission Organization ("**RTO**")-approved electrical transmission line that will be connected to an existing facility is valid. Ruling on Motions for Summary Judgment, Case No. CVCV060840 (Dec. 4, 2023) ("**Injunction Order**"). The ROFR was enacted by the Iowa Legislature in 2020, *see* HF2643 (2020), and, after multiple rounds of litigation, including review of related issues and remand by the Iowa Supreme Court, this Court has

<sup>1</sup> All capitalized terms in this filing that are not otherwise defined have the same meaning as they have under the current MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff ("**Tariff**"). The Tariff can be found at MISO's website: <https://www.misoenergy.org/legal/rules-manuals-and-agreements/tariff>.

## Iowa is BEST — RIGHT?

- **Opponents of ROFR say**, because the legislation eliminates competitive bidding, energy customers may be subjected to higher rates due to higher project costs.
- Rod Pritchard, the manager of marketing and communications for ITC Midwest, said local companies are better-suited to build out Iowa's transmission lines. He noted that ITC Midwest repaired 145 transmission lines about a week after they were damaged in the 2020 derecho. Those damaged lines spanned 2,100 miles and 26 counties.
- “Our employees live in Iowa. They're here when the lights go out and are available to respond on a moment's notice,” Terry said. “That's what really separates us from an out-of-state developer that really is just looking for an opportunity to invest in a line and earn a return, but doesn't have that same invested interest in the success of the transmission system overall.”

Now WHAT?

