**IN THE SUPREME COURT OF IOWA**

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NO. 20-0837

IOWA DISTRICT COURT
FOR POLK COUNTY
CASE NO CVCV058960

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SIOUX CITY TRUCK SALES, INC., Appellant,

v.

DEPARTMENT OF TRANSPORTATION and PETERBILT MOTORS COMPANY, Appellees

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APPEAL FROM THE IOWA DISTRICT COURT FOR
POLK COUNTY
THE HONORABLE JUDGE WILLIAM P. KELLY, PRESIDING

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# APPELLEE PETERBILT MOTORS COMPANY'S FINAL BRIEF

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## ROUTING STATEMENT

Peterbilt agrees with Appellant that this case should be transferred to the Court of Appeals because it involves the application of existing legal principles. Iowa R. App. P. 6.1101(3)(a).

## STATEMENT OF THE CASE

**Nature of the Case**: Appellant Sioux City Truck Sales, Inc. ("SCTS") seeks to appeal the May 13, 2020 Ruling on Judicial Review ("Ruling") of the district court affirming the Ruling on Appeal dated August 26, 2019 ("DOT Decision") issued by the Director of the Iowa Department of Transportation ("Department").

**Procedural History**: On November 1, 2016, Appellee Peterbilt Motors Company ("Peterbilt"), a division of PACCAR Inc, notified SCTS that it was "dual-assigning" the portion of SCTS's non-exclusively assigned territory in and around Clear Lake, Iowa, pursuant to the Dealer Agreement between the parties. A "dual-assignment" means the territory is assigned to two different Peterbilt dealers, in this case SCTS and Allstate Peterbilt of Clear Lake ("Allstate"). On August 18, 2017, Peterbilt made an official application to the Department to appoint Allstate as a new Peterbilt dealer in Clear Lake, and SCTS filed a protest. The protest was assigned to the Department of Inspections and Appeals for adjudication.

Pursuant to Iowa Code §§ 322A.4 and 322A.16, an in-person hearing (the "Hearing") was held before an Administrative Law Judge ("ALJ") on February 26–28, 2018, to determine whether Peterbilt had "good cause" for the establishment of a dealership in the Clear Lake area. On August 30, 2018, the

ALJ issued a proposed decision ("ALJ Decision") finding that Peterbilt had established "good cause" for the establishment as required by Iowa Code § 322A.4.

SCTS appealed the ALJ Decision to the Department. On August 26, 2019, the Department issued the DOT Decision, which generally affirmed the ALJ Decision in all respects. The DOT Decision constituted final agency action pursuant to Iowa Code §§ 322A.17 and 17A.19.

SCTS then filed a Petition for Judicial Review on September 25, 2019, in the District Court in and for Polk County, Iowa. SCTS's Petition was opposed by Peterbilt, the Department, and intervenor Allstate. The parties appeared for oral argument at an in-person hearing before the district court on March 13, 2020. On May 13, 2020, the district court issued the Ruling, generally affirming the DOT Decision in all respects.

SCTS now appeals the Ruling, raising only a single issue for review: whether the district court, Department, and ALJ properly interpreted the meaning of the word "community" in Iowa Code § 322A.16 in determining that Peterbilt had shown good cause to establish a new dealership pursuant to Iowa Code § 322A.4.

## STATEMENT OF FACTS

### I. FACTUAL BACKGROUND

a. Peterbilt's Decision to Dual-Assign the Clear Lake Area

Clear Lake, Iowa sits in the center of what was previously a hole in the Peterbilt dealer network. It is located on the I-35 interstate north of Des Moines, where "thousands of trucks" travel daily and where Peterbilt trucks have "a material presence." App. 1547. Other truck manufacturers have dealerships in the Clear Lake area, but at the time of the hearing, Peterbilt did not.[1] *Id.* In fact, Clear Lake was more than 100 miles away from the closest existing Peterbilt dealership. This is problematic because warranty service on new Peterbilt trucks can generally only be performed at Peterbilt dealerships. App. 1391 (154:2–9), 1392 (314:1–8). In addition, the proprietary engine used in Peterbilt trucks, the MX Engine, may only be serviced at authorized Peterbilt dealerships. App. 1547.

Peterbilt thus identified the Clear Lake area as far back as 2012 as needing at least a Peterbilt parts and service dealership. App. 1547–48. Even today, neither party disputes that need. When Mr. Brad Wilson, the owner of SCTS, was

[1] Allstate was duly licensed as a dealer by the state following the issuance of the DOT Decision in August 2019, and has since been operating in Clear Lake as a Peterbilt dealership.

asked whether he "think[s] there's a need for a parts and services store in the Clear Lake area," he testified simply: "Yes, I do." App. 1400 (1048:1–4).

The Clear Lake area was assigned to SCTS through the dealer agreements it has for its Des Moines and Sioux City locations. App. 1365–66. The dealer agreement explicitly states that this assignment of territory is "non-exclusive," and under the contract, Peterbilt with 180-day advance written notice "may in its sole discretion alter the area . . . and/or appoint additional dealers in the area without altering the area." App. 1546.

Beginning as early as 2012, Peterbilt began requesting that SCTS establish a dealership location in Clear Lake to meet the current service needs of the area and the anticipated demand for service on the newly-introduced MX Engine. App. 1366. SCTS took no action on this request. *Id.* Over the next four years, Peterbilt continued to request that SCTS establish a presence in Clear Lake, including at a meeting in Spring 2014, App. 1390 (91:20–92:10), and in Fall 2014 after a market analysis showed a strong need for service. App. 1366–67. However, SCTS "still did not express interest" and "declined to establish the proposed dealership." App. 1548.

In June 2016, frustrated by SCTS's inaction, Peterbilt warned SCTS it would appoint a different dealer in Clear Lake if SCTS continued to take no action. App. 1367. This warning "did not alter [SCTS's] position it had no present

interest in establishing a location there." *Id.* SCTS's response "conveyed a lack of desire in the project, which was reasonably interpreted as a no." *Id.* Peterbilt therefore notified SCTS on November 1, 2016 that it was dual-assigning a portion of SCTS's territory, a notice which "complied with the governing contract between the parties." *Id.*

b. SCTS's Response to the Dual Assignment

SCTS had not acted in response to Peterbilt's warning. However, once SCTS received the notice of dual assignment, SCTS suddenly became interested in Clear Lake. Mr. Wilson soon wrote to Mr. Peyton Harrell, Director of Dealer Network Development for Peterbilt, to claim that he had already been "pursuing a new location in Clear Lake." *Id*. "As the Department recognized, this newly-manifested desire to open a Clear Lake dealership was not based on SCTS' assessment of the market, but was instead based on the issued notice of dual assignment and its 'fear of competition with another dealer being in its non-exclusive area.'" App. 1549. In fact, Mr. Wilson admitted as much. App. 1394–95 (863:22–864:3) (noting his proposal for a store was "based on the threatened dual assignment"). Peterbilt, surprised by the about-face, "responded that it would not approve a parts-only store and would, instead, require a Clear Lake location to provide both parts and services to Peterbilt customers." App. 1549.

"Despite this, SCTS submitted a written proposal to Peterbilt to establish a parts-only dealership in Clear Lake on November, 28, 2016." *Id.*

The Peterbilt dealer agreement expressly requires the "prior written approval of Peterbilt" for any new location and for the use of Peterbilt trademarks. App. 1546. However, prior to receiving approval, SCTS decided to sign a lease for its proposed parts-only store in Clear Lake. App. 1550. Peterbilt ultimately informed SCTS it would not approve the parts proposal due to its failure to address the service needs of the market. Mr. Wilson called Peterbilt's denial an "obvious turndown" of the proposal, and the ALJ found that SCTS "was aware Peterbilt did not want" SCTS to open that parts store. App. 1397 (1010:10–12); App. 1367–68. SCTS nonetheless decided to open and operate the parts store anyway. App. 1550.

SCTS did not tell Peterbilt it was proceeding with its Clear Lake plan, and in fact, Peterbilt did not learn of the unauthorized parts location for months. In mid-March 2017, Peterbilt discovered SCTS was secretly operating the unauthorized store, and immediately sent a cease-and-desist letter stating SCTS was in "material breach of [the] dealer agreement" because of the "unauthorized new location." *Id.* SCTS claimed to comply with this letter—although it later became clear it had not fully complied—and requested reconsideration of its parts proposal. *Id.* Shortly thereafter, it sent a different proposal, this time for both parts

and service. *Id.* Peterbilt declined this proposal again, in part due to SCTS's demonstrated reluctance to operate a location in Clear Lake, and in part because it had just learned that SCTS had failed to comply with its cease and desist letter. App. 1550–51.

SCTS did not accept this decision, and for the remainder of 2017, continued to request that Peterbilt grant its already-declined parts and service proposal. App. 1551. However, every time Peterbilt visited SCTS's now-purportedly independent parts store in Clear Lake, it continued to find violations of the dealer agreement. This resulted in more cease-and-desist letters, the final one of which was sent in February 2018, due to SCTS's apparent unauthorized sale of Peterbilt parts and its failure to remove Peterbilt trademarks from a van identified in the original March 2017 cease-and-desist. *Id*.

## II. PROCEDURAL HISTORY

### a. The Hearing

Pursuant to Iowa Code §§ 322A.4 and 322A.16, an in-person hearing was held on February 26-28, 2018 to determine whether Peterbilt had "good cause" to establish Allstate as a Peterbilt dealer in Clear Lake. During the hearing, Peterbilt focused on presenting evidence relating to the good cause factors, while SCTS focused on implausible and unsupported theories involving a conspiracy between Peterbilt witnesses and the President of Allstate, Mr. Vanthournout.

SCTS's counsel also appeared to argue that Peterbilt's market analyses were flawed and/or biased, and that there was no need for a parts and service location in the Clear Lake area.

However, during his testimony, Mr. Wilson, the owner of SCTS, made a number of critical admissions that undercut SCTS's positions. First, as described above, he admitted the need for a parts and service dealership in Clear Lake. App. 1400 (1048:1–4) ("Q: Do you think there's a need for a parts and services store in the Clear Lake area? A: Yes, I do."). Second, he admitted his own proposal was "based on the threatened dual assignment" and not based on his "assessment of the market." App. 1394–95 (863:22–864:3). In other words, SCTS "acknowledged the reason it did not want competition [from an additional dealer appointed in Clear Lake] is that this would likely result in [SCTS] lowering its prices and having reduced profits," not because the additional dealer was unnecessary. App. 1552–53. Third, Mr. Wilson admitted that "customers would always like to have more locations" because it's "more convenient," and that the "additional competitive pressure" "drives the price down." App. 1396 (958:4–15), 1398 (1022:19–25). Finally, SCTS admitted it had no current, viable plan to open its own parts and service location in Clear Lake. App. 1552.

b. The ALJ's Decision

On August 30, 2018, the ALJ issued the Proposed Decision, finding that Peterbilt had proved good cause to establish a new dealership in Clear Lake, and that the public interest "strongly favors the establishment of an additional franchise." App. 1372. The ALJ stated there was "little doubt" that good cause existed on November 1, 2016, when Peterbilt issued its notice of dual assignment, because each of the six factors either support good cause or appear to be inapplicable. *Id.*

Thus, the ALJ found that, for example, SCTS had not "made any determinative investments in the Clear Lake area to be dual assigned," despite the "undisputable need for a dealership due to existing market demand." App. 1373. In particular, SCTS had not conducted any marketing campaigns into the area, and had "directed its capital investments to other areas of its AOR." *Id.* This fact also weighed against "permanency of the investment," as by choosing "to invest in other areas of its AOR and not the Clear Lake area," SCTS "turned this factor into one that gives rise to good cause." *Id.*

In addition, the ALJ found that the "remaining factors easily support the additional franchise." *Id.* For the "effect on the retail motor vehicle business as a whole," the unmet market demand and absence of any evidence of potential injury favored a new dealership. *Id.* Indeed, the ALJ noted that the "only impact

. . . the Tribunal can discern is that the increased market competition would lower prices, which is a good thing for the retail motor vehicle business as a whole." *Id.* The same "holds true for the public welfare factor, as the public is served by the lowering of prices and the meeting of unmet demand." *Id.* Finally, the ALJ found that SCTS's admission of unmet customer need was tantamount to a finding that there is currently inadequate care in the area. *Id.*

The ALJ also looked to the "totality of the existing circumstances," and found that the many years Peterbilt spent asking SCTS to establish a point in Clear Lake meant the existing circumstances strongly favored establishment. App. 1374. In particular, the ALJ found that "[t]he failure of an existing franchisee, whether intentionally or not, to meet existing market demands is good cause to establish another franchise for the purpose of establishing a dealership. In fact, this is one of the strongest, if not the strongest, reason[s] to create a new franchise." *Id.*

The ALJ then considered whether SCTS's after-the-fact decision to submit a parts and service proposal altered any of the good cause factors. *Id*. Here, the ALJ found that SCTS's reluctance to enter the Clear Lake market over the course of years weighed against its later proposals. App. 1374–75. The ALJ specifically credited Mr. Harrell's testimony that "having an unwilling dealer will harm it and the market," calling this "a reasonable and legitimate business concern that has

particular salience in this case, as it is clear that SCTS is only acting because of the dual assignment and that it has tried to do the minimal amount necessary to avoid dual assignment." App. 1374–75. The ALJ also noted SCTS's "years of questionable conduct" prior to the issuance of the notice of dual-assignment, as well as the "lack of a current plan," and found that SCTS's willingness to open a new location was ultimately "only nominal in nature." *Id*.

Finally, the ALJ reviewed SCTS's challenge to the dual assignment. As the ALJ noted, SCTS's briefing barely touched upon either "good cause" or "public interest," but instead rested upon its argument that Peterbilt had acted in bad faith in denying its parts and service proposals. App. 1375–76. The ALJ found these arguments "not persuasive" and that they "belie[] [SCTS's] own poor conduct." App. 1376. In addition, the ALJ found that Peterbilt's decision not to approve SCTS's proposals was "a reasonable and legitimate business decision" in light of SCTS's conduct over the years. *Id.* Finally, the ALJ expressly noted "the quantum of bad faith it took for SCTS to choose to violate the terms of the dealership agreement and open the illegal parts store in its effort to force a resolution to the dual assignment matter on its own terms." *Id.*

The ALJ thus found that SCTS had failed to support its claims of conspiracy and bad faith. Rather, all SCTS had shown was that Peterbilt felt "exasperation over a franchisee failing to meet its contractual duty and provide

needed services to the community." *Id.* To the extent there was any "bad faith in this case, it is this failure" by SCTS to provide the services needed in Clear Lake. *Id.* Everything else, the ALJ found, relies upon either "assertions outside of the scope of the record or unreasonable interpretations of the record." *Id.*

c. The Department's Decision

SCTS appealed the ALJ Decision to the Department. On August 26, 2019, the Department issued the DOT Decision, which found repeatedly that the ALJ Decision was correctly decided and supported by the record. App. 1388. The Department also found that SCTS's "community" argument, the basis of SCTS's appeal here, had not been argued before the ALJ. App. 1386. Even if considered, the community argument was unavailing because "only 23 counties were encompassed in the area for which Peterbilt sought approval for a new franchise," not SCTS's "entire AOR." *Id.* The Department therefore stated it could "find no basis to disagree with the [ALJ's] analysis or its factual underpinnings" and that the ALJ's approach was "logical" and not "contrary to statute." App. 1387.

As a final matter, the Department agreed with the ALJ "that the record does not support the conclusion [Peterbilt] failed to act in good faith or actively engaged in bad faith, either through collusion or conspiracy." *Id.* n.2. Indeed, the Department found specifically to the contrary: "Peterbilt's actions as

demonstrated by the record were commercially reasonable and do not amount to bad faith." App. 1387–88 n.2.

d. Ruling on Judicial Review

SCTS did not accept the DOT Decision, and instead filed for judicial review. On May 13, 2020, following oral argument, the district court issued the Ruling, generally affirming the DOT Decision in all respects. The Ruling addresses several arguments not raised in this appeal, including SCTS's contention that Peterbilt acted in bad faith during the establishment process. App. 1580–88. As with the ALJ and the Department before it, the district court found this contention unavailing, concluding that "substantial evidence . . . supports the Department's finding that Peterbilt acted in good faith." App. 1586.

The Ruling also addressed SCTS's "community" argument, engaging in a deep analysis of the structure and language of Section 322A.16 to determine what "community" should be employed for the good cause test. App. 1569–74. The district court found the use of the modifier "that" to be dispositive of the issue, determining that the modifier "specif[ies]" and "restrict[s]" the community described by the statute. App. 1573. As a result, the district court held "'that community' means the portion of the franchisee's community that the franchiser is seeking to appoint an additional dealer in." *Id.* "[A]s applied to this case, 'that community' for purposes of evaluating the statutory good cause factors means

the 'Clear Lake area,' or the 23 Iowa county portion of SCTS' nonexclusive AOR, and not the entire 71 Iowa county portion of Petitioner's AOR referenced under the Dealer Agreement." *Id.* The district court concluded that this construction best protects "those who are affected by the appointment of an additional dealer" and "is consistent with the directive within Chapter 322A to view its defined terms contextually." *Id.* (citing Iowa Code § 322A.1).

Having conducted its own analysis, the district court found it was "consistent with the Department's" analysis of the relevant community. *Id.* The district court therefore held that the Department was "correct in defining the relevant community as the proposed dealer's area of responsibility, not the AOR as broadly defined, nonexclusive area, in the dealer agreement." App. 1574.

Using this definition, the district court then examined SCTS's vague challenge to good cause, which in relevant part it interpreted as "whether substantial evidence supports the agency's factual findings." App. 1575. The court reviewed the record supporting the ALJ's and Department's findings for each factor, and determined that substantial evidence supported each and every finding challenged by SCTS. App. 1576–80. The district court ultimately concluded that SCTS failed to meet its burden to overturn the DOT Decision, and the agency decision was affirmed. App. 1588–89.

## ARGUMENT

### I. THE ALJ, DEPARTMENT, AND DISTRICT COURT ALL APPLIED A CORRECT DEFINITION OF "COMMUNITY"

a. Preservation for Appellate Review

Although not raised before the ALJ, *see* App. 1388, Peterbilt agrees this issue was preserved for appellate review through SCTS's subsequent challenges.

b. Scope and Standard of Appellate Review

Peterbilt agrees that this challenge involves a matter of statutory construction. SCTS's Brief ("Brief" or "Br.") at 13. On appeal, this Court "appl[ies] the standards of chapter 17A to determine whether [it] reach[es] the same conclusions as the district court." *Watson v. Iowa Dep't of Transp. Motor Vehicle Div.*, 829 N.W.2d 566, 568 (Iowa 2013). In performing that analysis, the Court "may substitute [its] judgment de novo for the agency's interpretation." *Id.* at 569.

c. The Proper Community to Consider Under Section 322A.16 is the Proposed Franchisee's Community

SCTS's sole point of error in its Brief is that the ALJ, the Department, and the district court all erred by construing the relevant "community" to be that of the proposed dealer, Allstate, and not the entirety of SCTS's contractual Area of Responsibility ("AOR"). SCTS then contends that this definitional error caused the district court's review of the relevant good cause factors to be "defective,"

and that reversal is therefore warranted. Br. at 26–30. SCTS's contentions are not persuasive and are belied by the language of the statute.

### 1. The Department and the District Court Correctly Considered Context in Defining the Relevant Community

SCTS begins its argument with the assertion that the district court erred by attempting to interpret the meaning of "community" in Section 322A.16 at all. Br. at 16–19. SCTS points to Section 322A.1, which states that "'[c]ommunity' means the franchisee's area of responsibility as stipulated in the franchise," and argues that "[b]ecause the statutory definition of 'community' is unambiguous, the trial court should not have engaged in a definitional construction." *Id.* at 17. This argument is wrong for two reasons.

First, SCTS fails to acknowledge that Section 322A.1 states explicitly that its definitions only apply "unless the context otherwise requires." Iowa Code § 322A.1. Thus, even assuming *arguendo* the definition of community was unambiguous, the district court was still expressly required to determine whether context requires the definition to be varied in this particular case. *See* App. 1571 ("[A]s the legislature and Iowa Supreme Court *require* consideration of the context in which the term 'community' is used this Court must analyze the portions of Chapter 322A related to 'good cause' and the 'public interest.'")

(emphasis added). This statutory requirement renders SCTS's cited cases and argument regarding ambiguity inapposite. Br. at 16–18.

Second, SCTS skips a critical step of the analysis. Although SCTS acknowledges that the community at issue belongs to the "relevant franchise agreement," it assumes without argument or support that the "relevant" agreement must be that of SCTS itself. *Id.* at 18. There is no basis for this assumption. Section 322A.16 refers to "that community," but it does *not* define the relevant "community" as that of the *protesting* dealer. In fact, "[n]o provision of Chapter 322A clarifies what is meant by 'that community.'" App. 1572. On its face then, "that community," even when read with the legislature's definition ("franchisee's area of responsibility as stipulated in the franchise"), is ambiguous. The "franchisee" in question could be either the *protesting* dealer (SCTS) or the *proposed* dealer (Allstate).

The district court therefore correctly engaged in statutory construction in order to determine what the legislature meant by "that community." This was a reasonable and necessary determination to make in light of the statutory ambiguity, and it aligns with the legislature's requirement that the district court consider "context" when applying the statutory definitions. Iowa Code § 322A.1. SCTS's argument that the district court should have instead ignored this ambiguity—and all context—and simply found in SCTS's favor is not

persuasive. It does not do "violence to the notion of statutory construction" to construe an unclear statute. Br. at 19.

### 2. The Relevant "Community" is the Proposed Dealer's Area of Responsibility

Once Section 322A.16 and Chapter 322A are construed in context, it is clear that SCTS's community is not the one at issue. The ALJ, the Department, and the district court all correctly determined that the community at issue is instead that of the *proposed* dealer, Allstate, not the protesting dealer, SCTS. *See* App. 1372 (ALJ Decision); App. 1387 (DOT Decision); App. 1573–74 (Ruling). SCTS has failed to meet its burden to show why these multiple independent determinations should be overturned.

The analysis begins with the fact that the context surrounding "community" in Section 322A.4 (the statute granting protest rights to dealers) differs from the context surrounding "community" in Section 322A.16 (the good cause statute). Section 322A.4 states:

> No franchiser shall enter into any franchise for the purpose of establishing an additional motor vehicle dealership *in any community in which the same line-make is then represented*, unless the franchiser has first established in a hearing held under the provisions of this chapter that there is good cause for such additional motor vehicle dealership under such franchise, and that it is in the public interest.

Iowa Code § 322A.4 (emphasis added). The stature here refers to *any* community in which the same line-make is then represented. The statutory goal is to ensure that an existing dealer can protest any establishment proposed in its assigned area of responsibility, which is what SCTS did here.

However, the good cause factors in Section 322A.16 use different language.[2] Consider factor one: "Amount of business transacted by *other franchisees* of the same line-make in *that community*." Iowa Code § 322A.16(1) (emphasis added). This factor does not consider all business conducted more broadly in "any community in which the same line-make is then represented," as Section 322A.4 does. Instead, this factor looks to the business conducted in "that" community.

Section 322A.16 does not define which community is "that" community, but the only plausible interpretation is that it is referring to the proposed community of the proposed franchisee (here Allstate), which is what the Department and the district court both determined. If the "community" was that of the existing dealer, there would be no reason to refer to its community at all.

[2] In a particularly confusing series of paragraphs, SCTS asserts that there is no "pattern" to how "noun identifiers" are used in Chapter 322A, but fails to explain why that means its own community must be the one at issue. Br. at 23–26. It is also unclear why SCTS believes it was Peterbilt's role to make arguments to the Department on behalf of SCTS. *Id.* at 25.

The factor could simply consider any business conducted by that dealer; the reference to the community is redundant. Alternatively, the legislature could have specified the "protesting dealer's community" to remove any doubt.

Furthermore, because the statute only considers business conducted by "other" franchisees, the franchisee being analyzed must not be the existing dealer (SCTS). Otherwise, the statute would preclude consideration of business by that resident dealer, and instead consider only business conducted by *other* franchisees in the resident dealer's community. Accordingly, a dealer achieving record volume sales would be unable to present any evidence of that fact when protesting a proposed establishment right next door, while a manufacturer would be unable to present evidence that the existing dealer is failing to cover its market. Such an incongruous outcome cannot have been the intent of the legislature.

However, the statutory language makes perfect sense if the community at issue is that of the proposed dealer. Under this interpretation, the reference to "other" dealers is no longer limiting, but instead comprehends both the resident dealer and any same-brand competitor selling in that area. The dealer achieving record sales now has an avenue to establish that fact, and conversely, a manufacturer can show that the existing dealer is failing to cover its assigned market portion, as was true here. These are some of the primary considerations in determining whether another dealership is warranted.

This interpretation also makes far more sense within the context of this case, because the thrust of Peterbilt's application related to the need for service in Clear Lake, not new trucks or parts. However, even when considering all types of business, it makes little sense to consider them in SCTS's entire AOR. SCTS's parts sales in Council Bluffs, or a competing dealer's new truck sales in Lincoln, Nebraska—both within SCTS's AOR—does not help determine whether a new point is warranted in Clear Lake, Iowa. As the Department explained, SCTS's definition of "community" cannot be correct because using that definition "would lead to the illogical conclusion that service and investment in disparate areas of the AOR somehow equate to service and investment in the area in question, which contradicts SCTS's own admission that the Clear Lake area is not adequately served for parts and service despite its activities and investment throughout its existing AOR." App. 1387 n.1.

SCTS's approach, by contrast, counts any business it transacts, anywhere, in its own favor. This approach does nothing more than reward dealer groups for having numerous locations, even if, like SCTS here, they spend nothing in the community under analysis. App. 1387. Further, it means that customers in Clear Lake could remain without an authorized service point because SCTS sold more parts than usual in Nebraska. This defeats the purpose of the legislation, which is to "ensure that consumers retain continued access to dealer service" in Iowa.

*Craig Foster Ford, Inc. v. Iowa Dep't of Trans.*, 562 N.W.2d 618, 622 (Iowa 1997).

Again, instead of looking at SCTS's entire AOR, it makes far more sense to consider the business transacted in the proposed dealer's area. By doing so, the focus becomes whether the existing dealer is adequately covering the subject area or whether there is, as here, a hole in the market. It also becomes possible to examine whether a new dealer establishment may harm the incumbent dealer, perhaps because it is transacting large amounts of sales into the area already. In short, it puts both the existing and proposed dealer on the same footing. Indeed, the Department found that the good cause consideration "can only be meaningful if the community is defined in the same way for both entities, as SCTS' entire AOR/community is not subject to dual assignment." App. 1556 (quoting App. 1387 (DOT Decision)).

For all of these reasons, the ALJ, Department, and district court were correct to hold that the relevant community in the good cause determination is that of the proposed dealer, not the existing dealer.

### 3. SCTS Fails to Prove That Its Own Community Must Be the Community Addressed By Section 322A.16

SCTS largely avoids discussing the logical consequences that would flow if its own definition of "community" was used. Instead, it creates a strawman

argument—asserting that the district court used context to "substantially narrow 'any community' to mean '*any portion of* the community' without providing any reasoning for doing so." Br. at 20. This is incorrect on several levels.

First, although the district court did refer to "portion[s] of" SCTS's community, App. 1573, it did not divide SCTS's community *per se*. Rather, the district court held that the correct community was the area "the franchiser is seeking to appoint an additional dealer in," *i.e.*, the community of the proposed dealer. *Id.* The district court repeated this several times. *See id.* ("the restrictive 'community' served is the area being considered for dual assignment, or 'that community'"); App. 1574 ("The IDOT was correct in defining the relevant community as the proposed dealer's area of responsibility. . . ."). It is not that the district court subdivided SCTS's community to make the good cause determination, but rather that only a portion of SCTS's community overlaps with the area in which the good cause determination must be made.

Second, SCTS is wrong that the district court did not "provid[e] any reasoning." Br. at 20. The district court in fact engaged in a detailed analysis of the statute, considering both the words used and their grammatical purpose. App. 1572–74. The district court determined that it could not ignore the legislature's use of "that community"—as opposed to, *e.g.*, "the protesting dealer's community"—or the limitations implied by that restrictive relative clause. App.

1572. It also discussed the purpose of Chapter 322A, as well as the fact that "the citizens or 'community' members the Statute exists to protect would be those who are affected by the appointment of an additional dealer." App. 1573. This was sufficient explanation for the district court's decision, and SCTS's challenge fails.

Similarly meritless is SCTS's hyperbolic, "slippery slope" argument that the Department could "re-frame the community of reference as a city block or an entire nation." Br. at 22. Contrary to SCTS's claims, the Department did not narrow or "arbitrarily constrict[]" SCTS's community—it looked at a different community altogether. *Id.* at 23. There is no danger of a slippery slope here; SCTS simply cannot accept that the statute takes into account a community other than its own.

As a final matter, SCTS does not cite a single case that actually supports its preferred reading. Br. at 20–26. In fact, aside from cases relating to general principles of statutory construction and the purpose of Chapter 322A, SCTS does not cite *any* cases in support of its position, at all. *Id.* at 13–31. The failure to cite supporting authority is an independent basis to deny SCTS's appeal. *See* Iowa R. App. P. 6.903(2)(g)(3) ("Failure to cite authority in support of an issue may be deemed waiver of that issue.").

d. SCTS Fails to Show Error in the District Court's Evaluation of the Section 322A.16 Guidelines

Despite having failed to prove that the district court applied the wrong "community," SCTS argues that this purported error renders the good cause analysis "defective." Br. at 26. However, SCTS's analysis of the Section 322A.16 guidelines, also known as the "good cause factors," does not reveal any errors in the district court's analysis.

As an initial matter, even assuming *arguendo* that the wrong community was used—which it was not—SCTS has not established it was injured by that definition. Simply asserting that the wrong community was used is not enough; SCTS must go further to show that applying its preferred definition would change the outcome of the case. "[A]n agency's action should not be tampered with unless the complaining party has in fact been harmed." *City of Des Moines v. Pub. Emp't Relations Bd.*, 275 N.W.2d 753, 759 (Iowa 1979). Thus, SCTS must point to record evidence that was ignored or overlooked due to the Department's and district court's purportedly incorrect definition of community in order to succeed on appeal.

SCTS does not even attempt to make such a showing. In fact, other than a stray reference to the ALJ Decision, it does not provide a single citation to record evidence *at all*. Br. at 26–31. This is because there is no evidence being ignored;

SCTS's protest barely even addressed the good cause factors. *See, e.g.*, App. 1375 (ALJ Decision) ("As a word search of [SCTS's] brief does not reveal the existence of the key statutory phrase 'good cause' and only one fleeting reference to 'public interest' on the eighth-sixth page in the conclusion section, it is unclear the extent to which [SCTS] is challenging that the requirements of Iowa Code section 322A.4 have been met.").

Rather than present evidence relating to good cause, SCTS focused almost entirely on allegations of conspiracy and "bad faith" by Peterbilt—allegations found to be entirely unconvincing in every opinion issued in every level of this litigation. App. 1583–85. The district court determined that substantial evidence supported these findings, and SCTS does not appeal that determination. App. 1586. Thus, SCTS is left with virtually nothing it can present that actually detracts from the good cause findings previously made in this case. Consequently, its analysis of the good cause factors fails to show any error that requires reversal of the DOT Decision on appeal.

### 1. Analysis of the Section 322A.16 Guidelines Does Not Support SCTS's Claim

**Factor 1**. With respect to the first factor, the "[a]mount of business transacted by other franchisees of the same line-make in that community," SCTS argues that the district court erred because it "evaluate[d] the operations of the

very additional dealer that is in issue," Allstate. Br. at 26. SCTS asserts that this was erroneous because "[r]egardless the [*sic*] ultimate definition of 'other franchisees', it is clear that this phrase should not encompass the proposed new dealer." *Id.* However, SCTS provides no explanation or argument for why this should be the case. The statute expressly calls for the consideration of business "transacted by other franchisees of the same line-make," of which Allstate is one.[3] Iowa Code § 322A.16(1). Simply stating that "it is clear" that Allstate's business should not have been considered is not substantive legal argument.

SCTS also misrepresents the record when it claims that the district court's analysis "exclude[d] the operation of SCTS." Br. at 26. In fact, the district court expressly noted that "[t]he ALJ, when considering the evidence pertaining to this factor, determined that *both SCTS and Allstate* had conducted a considerable amount of business in the Clear Lake area." App. 1577 (emphasis added). The district court simply determined, as did the ALJ and the Department, that SCTS's "admission that there is a need for a parts and service dealership in the Clear Lake area and the credible evidence the need has existed for years" outweighed the business SCTS had been transacting in Clear Lake. *Id.* Thus, even if Allstate's

[3] Prior to the Department's approval of Peterbilt's application, Allstate operated an independent (non-franchised) parts and service store in Clear Lake, as well as multiple franchised Peterbilt dealerships in Minnesota. App. 1366–67.

business was excluded from consideration, it would not change the ultimate determination that this factor supports good cause.

SCTS's final argument regarding this factor consists of a block quote from its prior brief, without citations. The assertions made therein were already considered and rejected by the district court, including the claim that the ALJ erred because he was confused by the statute. *See id.* ("no error arises simply because the ALJ questioned the factor's applicability before considering it"). The remainder of this argument is incomprehensible. SCTS has therefore failed to show error regarding this factor that requires the Department's decision to be overturned.

**Factor 2**. This factor looks at "[i]nvestment necessarily made and obligations incurred by other franchisees of the same line-make, in that community, in the performance of their part of their franchises." Iowa Code § 322A.16(2). SCTS's only argument is that the district court erred because it failed to take into account SCTS's "$25 million" in investments. Br. at 28. Once again, SCTS fails to cite to the record. To the extent SCTS is referring to the one-page list of investments it claimed at trial, that list includes investments going back as far as 1971, with no effort made to determine the current, depreciated value of those investments. App. 120; App. 1399 (1041:16–23). The list shows that more than half of this $25 million investment was spent out of state, on dealerships in

Norfolk, Nebraska and Lincoln, Nebraska. App. 120. Almost all of the rest was invested in facilities hundreds of miles away from Clear Lake. SCTS identified a total of just $761,725.21 it had invested into its closest dealership to Clear Lake, Des Moines, with no investments at all in the last *fifteen years*. *Id.* SCTS's owner admitted the list includes nothing relating to Clear Lake, suggesting the dealership has made no investments there at all. App. 1399 (1043:2–4).

For this reason, the ALJ found that SCTS had invested essentially nothing into the Clear Lake area, including having "no specific marketing campaigns to the [Clear Lake] area" and having "directed its capital investments to other areas of its AOR." App. 1373. It strains credulity for SCTS to expect the finder of fact to close its eyes to this lack of investment—and consequently, deprive the people of Clear Lake of a Peterbilt dealership—because SCTS spent heavily on upgrades to its dealership in Norfolk, Nebraska in 2009. App. 120. SCTS fails to show error regarding this factor that requires the Department's decision to be overturned.

**Factor 3**. SCTS's sole claim of error with respect to the third factor, "[p]ermanency of the investment," is that this factor was analyzed with respect to Clear Lake "instead of the correct statutorily defined community." Br. at 28; Iowa Code § 322A.16(3). SCTS calls this "clear legal error" despite the fact that this factor does not even include the word "community." Br. at 28. The

permanency of SCTS's investment in the Clear Lake area is a far more relevant concern than the permanency of its investment in Lincoln, Nebraska. The latter simply has no bearing on whether Peterbilt should be permitted to open a new dealership hundreds of miles away. The Department correctly determined that the third factor supports establishment, and SCTS fails to show that the Department's decision must be overturned.

**Factor 4**. SCTS again alleges error only with the definition of the community for the fourth factor, "[e]ffect on the retail motor vehicle business as a whole in that community." Iowa Code § 322A.16(4). However, this factor is nonsensical when considered across SCTS's entire AOR, which includes most of Iowa and nearly half of Nebraska. The establishment of a dealership in Clear Lake will be helpful for residents in that area, but no single dealership can impact the motor vehicle business three hundred miles away. If looking solely to the Clear Lake area, the record amply supports the finding that this factor favors establishment:

> [T]his factor favor[s] a new dealership because Wilson's testimony in conjunction with the reports and Peterbilt's expert indicate there was a need for a dealership due to unmet market demand and because there is nothing in the record to establish any harmful effects on the market. Indeed, the Clear Lake area is a significant distance from any Peterbilt dealership, and an independent parts store established by Allstate is doing well. There are also numerous other dealerships,

> none of which would appear to be harmed by the addition of a dealership in the area. The only impact as far as the Tribunal can discern is that the increased market competition would lower prices, which is a good thing for the retail motor vehicle business as a whole.

App. 1373. SCTS fails to show error regarding this factor that requires the Department's decision to be overturned.

**Factor 5**. SCTS argues for the fifth factor, "[w]hether it is injurious to the public welfare for an additional franchise to be established," that the ALJ and district court erred because they did not "make any finding on prices – the metric chosen by it to examine – that would prevail in the entire community, not just a selected area." Br. at 29. However, this factor once again does not use the word "community," so this argument is unpersuasive on its face.

The Department was correct to focus on the Clear Lake market, which is the only area that could plausibly be affected by the addition of a dealership in Clear Lake. Because Clear Lake is more than one hundred miles away from any existing authorized Peterbilt dealership, with a need for a parts and service location that even SCTS does not dispute, the Department properly found that there can only be a benefit to the public by adding a new point in Clear Lake. App. 1387. As the ALJ noted, "[t]his case in no way resembles a situation where there is a market saturation and a new franchise would effectively cause the entire

market to suffer in some form of a proverbial tragedy of the commons scenario." App. 1373. SCTS fails to show error regarding this factor that requires the Department's decision to be overturned.

**Factor 6**. The sixth factor is "[w]hether the franchisees of the same line-make in that community are providing adequate consumer care for the motor vehicles of the line-make which shall include the adequacy of motor vehicle service facilities, equipment, supply of parts and qualified service personnel." Iowa Code § 322A.16(6). Here, SCTS again does nothing more than argue that the incorrect community was used. Br. at 29–30. But as with the other factors, it makes little sense to consider this across SCTS's entire, multi-state AOR. The supply of parts in northwestern Iowa, or the equipment in Council Bluffs, simply has no bearing on the admitted hole in the market in Clear Lake.

The record shows that the hole in the market is substantial. As noted above, Clear Lake is located more than one hundred miles from any existing Peterbilt dealership, and even SCTS's owner admitted the Clear Lake area had a need for parts and service that had not been met. App. 1366, 1369. Peterbilt customers also submitted affidavits specifically complaining about SCTS's Des Moines dealership's poor service and failure to serve the Clear Lake market. *See* Exs. 60A–D. Indeed, at the time of the hearing, SCTS's Altoona (Des Moines) AOR had far and away the highest vehicles in operation (VIOs) per technician of any

AOR in the upper Midwest, showing that the Clear Lake area was underserved and that another dealership was necessary. *See* App. 701.

The ALJ therefore found that "[SCTS] admits and the evidence shows a parts and service dealership is needed, which as a matter of logic requires a finding there is inadequate care in the Clear Lake area. If there were adequate care, there would be no need." App. 1373. SCTS fails to show error regarding this factor, or any of the good cause factors, that requires the Department's decision to be overturned.

**2. The Existing Circumstances Demonstrate Good Cause**

The final reason that SCTS's appeal should be denied is that even if the good cause factors were applied incorrectly, SCTS has failed to show that the existing circumstances require any other result. The factors in Section 322A.16 are not considered in a vacuum; rather, the statute states that good cause is determined by "tak[ing] into consideration the *existing circumstances*, including, *but not limited to*," the six good cause factors. Iowa Code § 322A.16 (emphasis added).

SCTS's Brief notably does not address the "existing circumstances." In fact, SCTS makes no challenge at all to the evidentiary findings of the ALJ and Department regarding the existing circumstances, which consequently are now

set in stone. These include findings that establish good cause regardless of the community that is analyzed.

For example, the Department found that SCTS's inaction over the course of years was an existing circumstance favoring good cause. At the time of the hearing, there had been "an unmet need for a parts and service dealer in the Clear Lake area for years,"[4] and yet "SCTS ha[d] no current, viable plan to open a parts and service location in Clear Lake." App. 1382. Despite this, the dealership protested the appointment of Allstate—not because the market did not need a dealership, but because "competition . . . would likely result in [SCTS] lowering its prices and having reduced profits." App. 1553.

The ALJ further found that Peterbilt sought to dual-assign the Clear Lake area "because of SCTS' 'persistent refusal to enter into the Clear Lake market with a dealership,'" based on Peterbilt's "desire to not have a reluctant dealer in the area due to its business belief that such would harm its market presence." *Id.* (quoting App. 1369–70 (ALJ Decision)). The ALJ noted that this was "a

[4] In its Statement of the Facts, SCTS does attempt to cast doubt on the findings of a 2014 Peterbilt analysis called a "white spot report," which suggested there was an unmet need for parts and service in Clear Lake. Br. at 9–10. This effort is unsupported by the record and not part of SCTS's argument, so it may be ignored. It is also misguided in light of SCTS's owner's admission that there was "a need for a parts and services store in the Clear Lake area." App. 1400 (1048:1–4). The district court noted that this admission was "consistent with Peterbilt's White Spot report and the testimony of Peterbilt's expert witness." App. 1552.

reasonable and legitimate business concern that has particular salience in this case, as it is clear [SCTS] is only acting because of the dual assignment and that it has tried to do the minimal amount necessary to avoid dual assignment." App. 1554 (quoting App. 1374–75 (ALJ Decision)).

These findings provide good cause for establishment on their own. In fact, the ALJ found Peterbilt's concern about a reluctant dealer to be "dispositive." App. 1374. The ALJ further found that SCTS's failure, "whether intentionally or not, to meet existing market demands is good cause to establish another franchise for the purpose of establishing a dealership," and stated that "this is one of the strongest, if not the strongest, reason[s] to create a new franchise." *Id.* The ALJ also explained that "Chapter 322A is not a safety net for franchisees" and that "a franchisee who fails to open a needed dealership for whatever reason is frustrating th[e] purpose" of Chapter 322A, which is to ensure "continued access to dealership services." *Id*.

For these reasons, even if SCTS's arguments regarding the definition of its community were persuasive, it would still fail in its ultimate goal of overturning the Department's Decision. SCTS has failed to show error from the purportedly incorrect definition of community, and it does not even bother to challenge the mountain of evidence relied upon by the ALJ, the Department, and the district

court in concluding good cause supported Peterbilt's application. The district court's Ruling should be affirmed.

## CONCLUSION

Peterbilt respectfully requests the district court's Ruling be affirmed and that SCTS's appeal be denied in its entirety.

## REQUEST FOR NON-ORAL SUBMISSION

Peterbilt respectfully suggests that SCTS's appeal has failed to raise any issue containing sufficient merit such that oral argument would be of assistance to the Court.

## CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

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/s/ *Stephen Doohen* November 4, 2020

## CERTIFICATE OF COST

It is certified that the actual cost paid by Peterbilt for submitting this brief was $0.00 as it was filed electronically by EDMS.

## CERTIFICATE OF FILING

I hereby certify that on November 4, 2020, I electronically filed the foregoing document using the EDMS electronic filing system, which will send notification of such filing to all counsel of record.

/s/ *Sandra Light*