

## IOWA UTILITIES BOARD

IN RE:  SOO GREEN HVDC LINK PROJECTCO, LLC	DOCKET NO. E-22436
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### ORDER GRANTING PETITION FOR ELECTRIC TRANSMISSION LINE FRANCHISE AND RIGHT OF EMINENT DOMAIN

#### PROCEDURAL BACKGROUND

On September 24, 2020, SOO Green HVDC Link ProjectCo, LLC (SOO Green), a Delaware limited liability company, filed a petition with the Utilities Board (Board) in Docket No. E-22436 for an electric transmission line franchise to build approximately 173.67 miles of +/- 525 kilovolt underground high voltage direct current (HVDC) electric transmission line (Project) through Allamakee (2.13 miles), Cerro Gordo (7.6 miles), Chickasaw (22.19 miles), Clayton (44.17 miles), Dubuque (25.81 miles), Floyd (19.71 miles), Jackson (29.02 miles), and Winneshiek (23.04 miles) counties in Iowa. The Project and proposed franchise also includes two single-circuit 345 kV lines linking the HVDC transmission line switchyard to the Killdeer-Colby 345 kV line owned by ITC Midwest LLC (ITC Midwest) in Cerro Gordo County, Iowa.

The Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, is automatically a party to the docket. The following additional parties are currently intervenors in the docket: Iowa Farm Bureau Federation (Farm Bureau); Mr. Mark R. Lawson; Mr. John Bickel and Ms. Mary Ellen Bickel; Mr. Edwin A. James, Ms. Bonnie B. James, and the James Family Revocable Trust of 2019 (James Family); Ms.

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Inge Marie Bickel Osborne and James Robert Osborne; the Iowa Environmental Council and the Environmental Law and Policy Center (Environmental Intervenors); Mr. Gary J. Wegmann; Mr. Thomas J. Millenkamp; and Mr. Thomas Gantz. Some intervenors have withdrawn their objections but have not petitioned to withdraw as parties to the docket.

The west endpoint and terminus of the 525 kV HVDC line is proposed to be located at a SOO Green 525 kV converter station in the Northwest Quarter of Section 14, Township 96 North, Range 21 West of the 5th Principal Meridian (PM), Cerro Gordo County, located within the Midcontinent Independent System Operator, Inc. (MISO), system. Said converter station will in turn connect to a 345 kV switchyard located within the SOO Green converter station property, via two single-circuit 345 kV lines that are also proposed to be franchised, and thence to the Killdeer-Colby 345 kV line owned by ITC Midwest. The Board has previously ruled<sup>1</sup> that it is allowable for SOO Green to include the two single-circuit 345 kV connector lines in the Project petition. The east endpoint of the line within the state of Iowa is a connection point with the line at the west corporate limits of Sabula, Iowa, at a point approximately 0.01 miles east and 0.14 miles south of the northwest corner of irregular Section 29, Township 84 North, Range 7 East of the 5th PM, Jackson County, Iowa. The east terminus of the line is a connection point within SOO Green's Yorkville converter station in the Northwest Quarter of Section 18, Township 37 North, Range 7 East of the 3rd PM, Kendall County, Illinois, which will in turn connect to the Plano 765 kV substation owned by Commonwealth Edison Co. within the corporate limits of Yorkville, Illinois, located within the PJM Interconnection, LLC (PJM), system. (Mr. Raj Rajan Direct, p. 5.)

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<sup>1</sup> See "Order Establishing Initial Procedural Schedule, Clarifying Scope of Petition, and Granting Petition to Intervene" p. 5, issued September 26, 2022, in this docket.

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The majority of the electric transmission line will be located on the private rights-of-way (ROW) of the railroad alignment owned in various forms by Canadian Pacific Kansas City Limited (Canadian Pacific Railroad.) Canadian Pacific Railroad was formed on April 14, 2023, through the acquisition by Canadian Pacific Railway of the Kansas City Southern Railway Company during the pendency of this docket. (SOO Green Post-Hearing Brief, p. 3.) Approximately 18 miles of the line will be located on public road ROW of Iowa Highway 18 in Clayton County, Iowa. (Rajan Direct, p. 5.)

SOO Green alleges the electric transmission line is necessary as a part of the electric transmission system in the area because it will improve reliability by creating a high-voltage path across the seam between the MISO system and the PJM system and support the creation and export of renewable generation in Iowa. (*Id.*, pp. 8-10.) This connection will relieve transmission constraints in MISO and provide electric generators in Iowa with access to the large and diverse markets in the PJM system. SOO Green stated that it intends to operate as a merchant transmission project and users of SOO Green's transmission capacity will pay for its services. (*Id.*, p. 13.) As a result, the transmission line would operate without "cost recovery from ratepayers within Iowa and no complicated inter-regional transmission system operator cost allocation process." (*Id.*, p. 13.) SOO Green states the proposed electric transmission line will be constructed in accordance with the requirements of the National Electrical Safety Code and the Iowa Electrical Safety Code. (*Id.*, p. 29.)

SOO Green alleges the proposed electric transmission line is necessary to serve a public use and represents a reasonable relationship to an overall plan of transmitting electricity in the public interest. (*Id.*, pp. 24-28.) Pursuant to Iowa Code § 478.3(2), SOO Green also states the proposed electric transmission line would enable approximately

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2,100 MW of additional transfer capacity between MISO and PJM. (*Id.*, p. 6.) This additional transmission capacity is asserted to uniquely support long-distance transmission of renewable generation that has already been developed in rural Iowa and to encourage further growth of renewable generation investment by providing firm transmission service to customers. (*Id.*, p. 7.) SOO Green also lists supporting claims regarding economic benefits, grid benefits, ratepayer benefits, and environmental benefits. (*Id.*, p. 9.) SOO Green states the use of Canadian Railroad ROW will minimize the impact on landowners and align closely with the Board's preference for infrastructure to be near or parallel existing railroad or road ROW as less disruptive to existing land uses. (*Id.*, p. 18.)

In May 2020, in light of the emerging pandemic, a series of virtual-only informational meetings were held with respect to each of Allamakee, Cerro Gordo, Chickasaw, Clayton, Dubuque, Floyd, Jackson, and Winneshiek counties. The petition covering all eight counties was filed in September 2020. At the request of SOO Green, consideration of the docket was paused from February 2021 through July 2022, with a revised procedural schedule issued in September 2022.

During the pendency of the petition, objections were filed by:

- Dr. Glen Hepker on May 5, 2020, which was withdrawn on June 4, 2020
- Mr. Don Zimmer on May 8, 2020
- Mr. Gary Wegmann on May 14, 2020
- Mr. Thomas Gantz on May 14, 2020, which was withdrawn on February 6, 2023
- Ms. Laurie Stonewall on June 18, 2020
- Mr. David Hammerand on August 10, 2020, which was withdrawn on February 23, 2023
- Mr. Arthur Anderson on September 2, 2020
- Mr. Tom Millenkamp and related trust on September 4, 2020
- The James Family on January 11, 2021
- Mr. John and Mrs. Mary Bickel on January 11, 2021
- Mrs. Marie and Mr. James Osborne on February 9, 2021
- Mr. Mark Lawson on February 15, 2021

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- Mississippi Valley Effigy Mounds, L.C., on October 18, 2022, which was withdrawn on March 14, 2023
- Mr. Trent Moore on April 26, 2021, which was withdrawn on March 13, 2023
- Mr. Matt Tappe on February 20, 2023
- Mr. Daniel Gantz a/k/a DECEM Properties, LLC, on March 3, 2023
- Mr. Matthew and Mrs. Stephanie Kutsch on February 23, 2023, and March 20, 2023, which were withdrawn on May 9, 2023
- Mile 600, L.L.C., on April 24, 2023, which was withdrawn on June 27, 2023
- Ms. Cheryl Ohden on August 7, 2023
- Mr. Chad Shimek on August 21, 2023

Supportive comments were filed by the Center for Rural Affairs on June 9, 2020, and the Iowa Association of Business and Industry on August 25, 2021.

All objections and comments were duly considered by the Board. In addition, testimony regarding the project was provided by SOO Green, OCA and IEC, which is addressed in the Findings of Fact of this order. OCA supports granting the franchise with certain conditions. Environmental Intervenors support granting the franchise without conditions. Farm Bureau did not take a position regarding the granting of the franchise, and did not provide testimony, but in briefing brought forward concerns regarding the sufficiency of SOO Green's underlying ROW rights. Farm Bureau also proposed three conditions of approval, if the franchise is granted.

Board Safety and Engineering staff (Staff) inspected the route of the proposed electric transmission line and issued a report on April 19, 2023, identifying no material issues. Staff has identified additional informational items to be provided by SOO Green, to the extent available, in order to fully describe the technical specifications of construction and configuration within the proposed route. These items have been identified in a review letter issued on August 31, 2023, but Staff has identified no material deficiencies in SOO Green's petition or petition exhibits. The information requested is not directly related to the findings the Board needs to make in granting a franchise, and

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the Board has sufficient information upon which to base a decision without additional filings.

As required by Iowa Code § 478.5, notice of the petition was published for two consecutive weeks in newspapers of general circulation in each of Allamakee (May 31 and June 7), Cerro Gordo (May 31 and June 7), Chickasaw (June 1 and 8), Clayton (May 31 and June 7), Dubuque (June 1 and 8), Floyd (June 2 and 9), Jackson (May 31 and June 7), and Winneshiek (June 1 and 8) counties. Pursuant to subrules 199—11.5(4) and 11.10(1), on May 30, 2023, SOO Green sent notice of eminent domain proceedings to all landowners and affected persons of land over which eminent domain was sought and published the required notice.

Pursuant to Iowa Code § 478.4, the Board held a hearing on whether to grant the franchise in Elkader, Iowa. The Board has reviewed the testimony and evidence provided by the various parties and considered the post-hearing briefs.

### **LEGAL STANDARDS**

Electric transmission line franchise proceedings are governed by Iowa Code chapter 478 and 199 Iowa Administrative Code (IAC) chapter 11. When a petition for franchise is filed, the Board, after considering the evidence, “may grant the franchise in whole or in part upon the terms, conditions, and restrictions, and with the modifications as to location and route as may seem to it just and proper.” (Iowa Code § 478.4.) Before granting a franchise, the Board must “make a finding that the proposed line or lines are necessary to serve a public use and represent a reasonable relationship to an overall plan of transmitting electricity in the public interest.” (*Id.*)

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The Iowa Supreme Court has held that the transmission of electricity to the public constitutes a public use. (*Vittetoe v. Iowa S. Utils.Co.*, 123 N.W.2d 878, 880 (Iowa 1963).) The public use test is satisfied when proposed system changes will meet existing needs and constitute a reasonable effort to meet future needs. (See, e.g., *Fischer v. Iowa State Commerce Comm'n*, 368 N.W.2d 88, 98 (Iowa 1985) (affirming the issuance of a franchise where evidence supported a finding that the proposed project increased current system reliability and improved the ability to meet future load demands).) A public use may be found where the “proposed transmission line is necessary to increase reliability of service, accommodate occurring and anticipated load growth, and [to] reasonably assure the availability, quality, and reliability of service.” (*Bradley v. Iowa Dep’t of Commerce*, No. 01-0646, 2002 WL 31882863, at \*5 (Iowa Ct. App. Dec. 30, 2002).) Further, “cost savings are a legitimate consideration in determining whether the construction of transmission lines is necessary to serve a public use” and economic considerations alone may be sufficient to establish a public use. (*South East Iowa Co-op Elec. Ass’n v. Iowa Utilities Bd.*, 633 N.W.2d 814, 820, 822-23 (Iowa 2001).)

In cases where the right of eminent domain is sought, upon the granting of a franchise, the franchise holder “shall thereupon be vested with the right of eminent domain to such extent as the utilities board may approve, prescribe and find to be necessary for public use....” (Iowa Code § 478.15(1).)

### **SCOPE OF JURISDICTION**

A matter of dispute in the docket is the scope and nature of the underlying real property rights held by SOO Green and the Board’s jurisdiction regarding the same.

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Iowa Code Chapter 478 references the intersection of real property interests and the franchising of electric lines in several places.<sup>2</sup> Notably, but not conclusively, the statute does not state that the Board has a responsibility to determine the sufficiency of real property rights before granting a franchise. The Board is vested with two primary elements of authority regarding real property: determining the appropriate route for the transmission line and determining whether to grant eminent domain if requested by the petitioner. (See Iowa Code §§ 478.6, 478.15, and 478.18.)

More generally, Iowa Code § 478.4 sets forth the primary statement of the Board's scope of review and findings required for the granting of a franchise. The Board's inquiry under that statute is focused on whether the proposed transmission line is of "public use" and bears "reasonable relationship to an overall plan of transmitting electricity in the public interest." Iowa Code § 478.3 provides a non-exhaustive list of elements the Board may consider in support of the two required findings.

Under the statute and existing Board review process, a petitioner is required to duly consider the sufficiency of their underlying real property rights, and as part of the petition either assert that the petitioner does not need eminent domain to appropriately construct the proposed transmission line or seek eminent domain along the requested route as part of the petition. The Board does not evaluate those assertions at first, but instead focuses on the appropriateness of the franchise under the two primary findings required in Iowa Code § 478.4.

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<sup>2</sup> See, e.g., § 478.1(4) (A person ... who cannot secure the necessary voluntary easements ... may petition the Board ... for a franchise ... and for the use of the right of eminent domain); § 478.2(4) (A person seeking rights ... shall not negotiate or purchase any easements ... prior to the informational meeting); § 478.3(1)(g) (Petition shall set forth ... whether or not the exercise of the right of eminent domain will be used...); § 478.15(1) (Any person ... having secured a franchise ... shall thereupon be vested with the right of eminent domain to such extent as the utilities board may approve, prescribe and find to be necessary for public use....)



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If the two primary findings are supported by the record, the Board then considers the appropriateness of the proposed route. As part of that review, consistent with Iowa Code § 478.18, the Board considers preferred routing factors such as the transmission line being constructed near and parallel to road and railroad ROW, or along the division lines of the lands. The goals of the review are to ensure safety, the fitness of the transmission line for its intended purpose, avoid unnecessarily impact on landowners, and minimize interference of public use of highways or waterways.

Further, the Board reviews, pursuant to Iowa Code § 478.15(1), to what extent the eminent domain (if any) requested by the petitioner is necessary for public use along the route as reviewed and approved by the Board. The Board retains routing authority and can grant or deny eminent domain separate from granting a franchise, if it determines that the taking of such property by eminent domain is not necessary for public use. The Board does not on its own identify additional parcels or potential deficiencies in title to be remedied by the eminent domain process.

Overall, the inquiry under Iowa Code § 478.4 is whether the proposed line serves a public use and is in the public interest, under Iowa Code § 478.18 regarding the appropriateness of the route, and the inquiry under Iowa Code § 478.15(1) is whether the taking of particular parcels of property is necessary for public use. In such reviews, the Board has jurisdiction over routing decisions for utility infrastructure and the granting or not of eminent domain to effectuate the construction of transmission assets. These areas are logically and clearly within the realm of responsibility assigned to the Board by statute.

Farm Bureau argues that the Board has further jurisdiction to consider whether SOO Green has acquired the necessary underlying land rights upon which to construct

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the utility infrastructure due to the existence of objections to the sufficiency of real property rights, which are matters to be addressed under Iowa Code § 478.4. (“IFBF Brief re Land Rights” filed November 10, 2022, p. 4.) Farm Bureau also argues that the Board’s ability to determine the route necessarily means determining the sufficiency of the underlying real property rights. (*Id.*)

The Board declines to adopt such a broad reading of chapter 478 regarding the effect of objections within the record. The review of objections is for matters for which the Board already has jurisdiction. The existence of complaints on a subject does not create new subject-matter jurisdiction for the Board to review unless such issues were already within the purview of the Board.

Determining the proper routing of an electric transmission line is an inquiry regarding safety, fitness for its intended purpose, and minimizing disruption and impact to existing parcels, roads and waterways under Iowa Code § 478.18. The only area where the Board addresses real property rights directly is in the context of whether or not eminent domain is appropriate under Iowa Code § 478.15(1), and that narrowly deals with the question of the necessity of public use. A determination of whether the utility has acquired the underlying land rights is beyond this scope of the Board’s jurisdiction. It does not follow that review of routing necessarily creates plenary real property jurisdiction for the Board, as argued by Farm Bureau; rather, the nature of the review is tailored to the utility subject matter expertise of the Board. The Board makes no assertion of unique expertise in real property rights, particularly railroad ROW.

This understanding of the Board’s jurisdiction was recently affirmed by the Iowa Supreme Court in *Juckette v. Iowa Utilities Board*, 992 N.W.2d 218 (June 16, 2023), which held that the Board had validly granted an electric transmission franchise despite a

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dispute regarding underlying real property rights. In that case, MidAmerican Energy Company (MidAmerican) petitioned for a franchise that included requested eminent domain over other real property but not the Juckettes' parcel, which was already encumbered by a road ROW. The Juckettes argued that the road ROW did not grant sufficient rights to MidAmerican to allow the placement of transmission poles, and that Iowa Code § 306.46 unconstitutionally represented a taking of their property by purporting to do so. They asserted that it was an unconstitutional taking for the poles to be placed on their land without additional compensation, and approval by the Board of a franchise would be a government-approved inverse condemnation. The Board granted MidAmerican's franchise, held that Iowa Code § 306.46 allowed construction in the ROW in question on its face, and declined to rule on whether MidAmerican's placement of transmission poles in the road ROW would necessitate additional compensation to the Juckettes, stating that "[t]he Board ...is obligated to make factual findings relevant to the constitutional issues..." but held that "it is exclusively up to the judiciary to determine the constitutionality of legislation." (Docket No. E-22417 "Order Denying Application for Rehearing" issued March 18, 2021, p. 11, and citing *ABC Disposal Sys., Inc., v. Dept of Nat'l Res.*, 681 N.W.2d 596, 604-05 (Iowa 2004).) In that order, the Board left such questions for courts of general jurisdiction in Iowa.

The Polk County District Court agreed with the Board's jurisdictional approach, holding, "Neither Iowa Code chapter 478 nor the governing administrative rules require a franchise petitioner prove it possesses all necessary land rights as a condition precedent to issuing a franchise." (*Juckette v. Iowa Utilities Board*, Case No. CVC061580 at Slip. Op. 12 (Nov. 7, 2021), p. 12.) The Iowa Supreme Court upheld the lower court's affirmation of the Board's award of the electric transmission franchise, while split on

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whether the Juckettes were entitled to additional compensation. The Court affirmed the conclusion that, even absent the resolution of the underlying real property issues raised directly in that docket, the requirements of Iowa Code chapter 478 were satisfied and the Board appropriately granted the transmission line franchise.

In conclusion, the Board does not have statutory authority to determine the sufficiency of a petitioner's land rights, even if asserted in the context of objections or routing. The petitioner has asserted in good faith and presented arguments that it has sufficient rights along the proposed route, and has requested eminent domain over six parcels held by objectors to remove doubt regarding constructability. It is a matter for another forum to decide whether SOO Green is correct in its evaluation of the respective rights of the parties for those parcels over which it did not request eminent domain.

### **FINDINGS OF FACT**

Based upon the testimony, exhibits, information, and statements in the docket, the Board makes the following Findings of Fact:

1. The petition and petition exhibits filed by SOO Green on September 24, 2020, for an electric transmission line franchise in Allamakee, Cerro Gordo, Chickasaw, Clayton, Dubuque, Floyd, Jackson, and Winneshiek counties, as revised, substantially comply with Board rules in 199 IAC chapters 11 and 25 and Iowa Code chapter 478.
2. Notice of the informational meetings, petition, hearing and eminent domain were published as required.
3. The +/- 525 kV HVDC electric transmission line Project as described in the petition filed by SOO Green, as revised, is necessary to serve a public use. The electric transmission line is necessary to provide adequate electric utility service and is assistive to Iowa electric customers by supporting reliability and regional transmission

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organization cross-seam transmission. (Rajan Direct, p. 7-12.) As participants in regional transmission organizations, reliability is increased by improved ability to both send and, more importantly, receive power if MISO is experiencing generation shortfalls. The transmission line will also provide improved market access for existing Iowa generation, for which members of the public may be responsible for as part of a utility's rate base and may provide economic benefit on that basis. (McGuckin Direct, p. 5.)

4. SOO Green provided the substantiation indicated in Iowa Code §§ 478.3(2)(a)(1)-(8.) The proposed electric transmission line represents a reasonable relationship to an overall plan of transmitting electricity in the public interest, to wit:

*a. The relationship of the proposed project to present and future economic development of the area.* SOO Green witness Mr. David Loomis conducted an Economic Impact Analysis for both the State of Iowa (Loomis Direct Exhibit 1) and the United States (Loomis Direct Exhibit 2.) The state analysis concludes that the expected earnings benefit to Iowa during the project will include \$726 million during construction, between \$1.3 billion and \$1.6 billion from additional wind and solar manufacturing and generation facilities in Iowa, \$340 million in long-term earnings during the 30-year operating period of the project, and \$2.1 billion in earnings to support the operations and maintenance of future wind and solar construction. (Loomis Direct, pp. 5-7; *see also* Loomis Direct Exhibit 1.) The Board finds that current and future economic development in Iowa would be supported by the construction and operation of the Project.

*b. The relationship of the proposed project to comprehensive electric utility planning.* SOO Green explains that the project is being reviewed by MISO and PJM as part of their respective interconnection studies. (McGuckin Direct, p. 5.) The

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project's underlying model presumes that the SOO Green line will relieve congestion and improve transmission across the seams, and proposes to do so without a guaranteed return from ratepayers to accomplish that purpose. (Rajan Direct, p. 13.) OCA witness Mr. Anthony Alvarez concurs, stating that "the proposed Project will alleviate grid congestion and provide a path for renewable energy generated in Iowa to reach new markets. It also modernizes the grid and encourages renewable electric power development in Iowa." (Alvarez Direct, pp. 8-9.) The Board finds that the Project has a positive and reasonable relationship with comprehensive electric utility planning.

c. *The relationship of the proposed project to the needs of the public presently served and future projections based on population trends.* OCA affirms that the public would be well served by the Project, noting that the capability to import or export 2,100 MW of energy between MISO and PJM would "...not only relieve[] transmission constraints in MISO, enabling Iowa renewable energy to reach PJM consumers ... [and] allowing for PJM produced energy to reach MISO consumers, and to improve the reliability of MISO grid." (Alvarez Direct, p. 4.) Furthermore, SOO Green asserts that the population in Iowa increased by 7.4% between 2010 and 2020. (Rajan Direct, pp. 26-27.) While this statistic seems more reflective of national and not Iowa-specific statistics, it is clear that Iowa's population has grown in that time period and that additional generation is being constructed to serve that population, as well as continued overall population and load growth in MISO and PJM. Transmission supportive of delivering that electricity to load is consistent with the needs of the public, especially cross-seam transmission that improves reliability.

d. *The relationship of the proposed project to the existing electric utility system and parallel existing utility routes.* The Project is being proposed to relieve

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congestion and more effectively transmit power from a high generation area to the higher load-serving area. (Rajan Direct, p. 15.) OCA witness Alvarez concurs with that assertion, stating that the project will serve the stated intent and policy objectives in Iowa law by relieving grid congestion and providing a path for renewable energy generated in Iowa to reach new markets. (Alvarez Direct, pp. 8-9.)

The proposed route is less intrusive than a standard above-ground transmission line and follows statutorily-encouraged transmission routes along railroads and existing public road rights-of-way. OCA concluded that SOO Green has minimized the impact of the line on Iowa landowners, farmers, and communities by routing the line primarily underground, and in road and railroad ROW. (Alvarez Direct, pp. 13-14.)

*e. The relationship of the proposed project to any other power system planned for the future.* SOO Green asserts that the MISO region is expected to include additional renewable generation in the long term. Additionally, SOO Green asserts that Iowa has set a goal of promoting renewable generation and that these developments of renewables require additional transmission to move the energy to loads and markets.

The Board finds it likely that substantial additional renewable generation will be built in MISO and PJM and cross-seam transmission will aid in delivering geographically dispersed intermittent generation electricity to load centers.

*f. The possible use of alternative routes and methods of supply.* The Project route exists on either railroad rights-of-way or public road rights-of-way. (Rajan Direct, p. 5.) The undergrounding of the transmission along such ROW in lieu of constructing additional poles along public rights of way or crossing farmer fields is a new approach that limits the impact of routing on existing land owners. As stated by the Environmental Law and Policy Center in its Statement in Lieu of Testimony, page 1:

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SOO Green represents an innovative model for transmission development that utilizes underground installation along existing transportation corridors to avoid the impacts and challenges of building high-voltage above-ground transmission line corridors in order to bring new renewable energy to market. The undergrounding of the transmission line provides reliability and resiliency benefits such as avoiding impacts from extreme cold, precipitation, and powerful winds, as well as severe drought and the accompanying wildfire risks. An underground line avoids the visual impact of overhead transmission lines, minimizes tree clearing, and avoids and minimizes impact on sensitive wildlife habitats and ecosystems.

This perspective was affirmed in the testimony of Iowa Environmental Council witness

Mr. Steven C. Guyer, who stated:

Because SOO Green is a high voltage direct current line, it will not have the electromagnetic fields (EMF) associated with traditional above ground alternating current lines. In fact, because the cables are insulated and grounded no electric field exists outside the cable, and the magnetic fields in the two cables cancel each other with a residual magnetic field weaker than typical household appliances. By locating underground in the railroad and Highway 18 right of ways, the line avoids sensitive wildlife habitats and minimizes tree clearing.

(Guyer Direct, p. 3.) SOO Green witness Dr. William Bailey provided extensive testimony about the minimal and, when compared to traditional above-ground transmission, advantageous impacts of buried HVDC transmission lines. (Bailey Direct, pp. 7-20.)

Furthermore, Iowa Code §478.18(2) requires an electric transmission line to be constructed near and parallel to roads, railroads, and along division lines of land, wherever practicable and reasonable as to not unnecessarily interfere with the use of the land. Division line of the lands has been held to mean section lines, quarter-section lines, and quarter-quarter-section lines. (*Hanson v. Iowa State Commerce Comm'n*, 227



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N.W.2d 157, 159 (Iowa 1975).) SOO Green's proposed route conforms well with the statutory direction of minimizing impact to existing land owners by utilizing areas already significantly impacted by existing use.

*g. The relationship of the proposed project to the present and future land use and zoning ordinances.* This criterion is aimed at ensuring that the proposed transmission line will not impair the ability of the land to be used for its zoned purpose. In this instance, the land is already heavily restricted due to the presence of the railroad ROW easement, and the addition of electric transmission lines will not materially impair the present or future use of the subject properties. The Board concludes that the Project bears a positive relationship to present and future land use and zoning ordinances.

*h. The inconvenience or undue injury which may result to property owners as a result of the proposed project.* As discussed by SOO Green witness Mr. Neil Jones, the Project's proposed route is specifically designed to minimize inconvenience or undue injury to adjacent landowners. (Jones Direct, pp. 5-8.)

Property owners in fee who are burdened by the railroad ROW may have some claim of inconvenience or injury through construction of the transmission line. For those who have not affirmatively objected, but also have not signed a Cooperation Agreement and Mutual Release (CAMR), they have the right to assert the issue in a different forum. SOO Green's request for eminent domain over the six parcels held by the objecting intervenors along the Project route creates a mechanism for compensation for inconvenience or injury, undue or not, for such parties to the extent they have independent rights that have not already been compensated for by the railroad easement consideration. (Jones Direct, p. 9-10.)

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The Board does not have jurisdiction over setting compensation, but does determine the threshold question of whether the proposed transmission line results in undue injury sufficient that a franchise should not be granted. Here, with the line being buried underground along an alignment that is already heavily burdened such that a typical property owner would not be seeking to substantially utilize the area, the Board concludes that any inconvenience or injury is minor.

5. The electric transmission line, as proposed, will meet or exceed the minimum engineering requirements established by Board rules and Iowa Code chapter 478. While an HVDC line is new to Iowa, they are not new to the industry, and SOO Green witness Ewgenij Starschich provided extensive evidence of similar projects successfully implemented and operating. (Starschich Direct, pp. 3-8.) SOO Green witness Mr. Ray Strelesky testified regarding construction and operation of the transmission line in the railroad ROW, and the requirements to effectively allow transmission and railroad operation simultaneously. (Strelesky Direct, pp. 3-6.)

6. The route proposed by SOO Green is reasonable and appropriate, and complies well with the requirements of Iowa Code § 478.18(2) and the Board's administrative rules. The only alternative route proposed, offered by Mr. Millenkamp to SOO Green but not filed directly as testimony, was discussed by Mr. Jones in his testimony. (See Jones Direct, pp. 14-15.) The Board's additional inquiry at the hearing supported the conclusions offered in Mr. Jones' direct testimony that the proposed alternative route was impracticable, would impact a greater number of landowners, and that its primary purpose was to avoid Mr. Millenkamp's parcel, rather than to improve the overall routing of the Project. (See Hearing Transcript, p. 85.)

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### **EMINENT DOMAIN**

The remaining routing issue before the Board is the extent to which SOO Green should be vested with the power of eminent domain pursuant to Iowa Code §§ 478.6 and 476.15. Upon the granting of a franchise, a franchise holder “shall thereupon be vested with the right of eminent domain to such extent as the utilities board may approve, prescribe and find to be necessary for public use ...” Iowa Code § 478.15(1.)

The properties over which SOO Green seeks eminent domain are in two of the eight counties impacted by the Project. In Clayton County, eminent domain is sought for parcels owned by Inge Marie Bickel Osborne and James Robert Osborne (Exhibits E-1 & E-2 in Clayton County); Edwin James, Bonnie James, and the James Family Revocable Trust (Exhibit E-3 in Clayton County); and John and Mary Ellen Bickel (Exhibit E-4 in Clayton County.) Collectively, the owners of the parcels identified in Clayton County Exhibits E-1 through E-4 are referred to as the Clayton County Group. In Dubuque County, eminent domain is sought for parcels owned by Mr. Gary Wegmann (Exhibit E-4 in Dubuque County) and Mr. Thomas Millenkamp (Exhibit E-5 in Dubuque County.) Collectively, the owners of the parcels identified in Dubuque County Exhibits E-4 and E-5 are referred to as the Dubuque County Group.

SOO Green contends it made good-faith efforts to negotiate voluntary easements with the landowners; however, those efforts were unsuccessful. (Jones Direct, pp. 15-16.) The Clayton County Group asserts that SOO Green lacks requisite land rights. (See “John and Mary Ellen Bickel, Edwin and Bonnie James and The James Family Revocable Trust of 2019, and Inge Bickel and James Osborne Notice of Nonparticipation in Hearing Scheduled for July 11-12, 2023” filed June 29, 2023.) As stated above, the Board lacks jurisdictional authority to adjudicate that claim, and the request for eminent

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domain renders it moot in this proceeding. The amount of appropriate consideration for any taking can be established in other forums.

In addition to objecting to the sufficiency of SOO Green's real property rights, the Dubuque County Group filed objections which argue that an HVDC line is unprecedented and creates a safety concern; an HVDC line does not qualify as a public necessity or public purpose because it conveys power to electrical markets outside of Iowa; the company has not negotiated in good faith; the presence of the transmission line would decrease their property value; the transmission line will cause unwanted heat, noise, fire and arcing; the transmission line will require signage of hazardous conditions; and the transmission line creates health concerns in connection with microwave and electromagnetic fields. (See "Millenkamp Prehearing Brief" filed June 30, 2023, pp. 3-5; see also "Wegmann Prehearing Brief" filed June 30, 2023, pp. 3-5.)

As discussed in detail above, the Board finds the proposed transmission line is necessary to serve a public use and represents a reasonable relationship to an overall plan of transmitting electricity in the public interest. The proposed line is necessary to increase service reliability and to effectively realize economic benefits from current and future investments in renewable generation.

A public use may be found where the "proposed transmission line is necessary to increase reliability of service, accommodate occurring and anticipated load growth, and [to] reasonably assure the availability, quality, and reliability of service." *Bradley v. Iowa Dep't of Commerce*, No. 01-0646, 2002 WL 31882863, at \*5 (Iowa Ct. App. Dec. 30, 2002.) While appreciating the concerns raised by the Clayton County Group and the Dubuque County Group, the Board is also mindful that "public interest means all the public" and "does not mean one member of the public, or one family living along the

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proposed route.” (See *In re: Cedar Rapids Utilities*, Docket No. E-21647, “Proposed Decision and Order Granting Franchise,” pp. 24-25 (July 6, 2005).) The additional impacts of the transmission line in the railroad ROW that is already of limited use to the landowners are less than if the structure was being constructed above ground, including health, safety, and market-value impacts. SOO Green’s expert testimony demonstrates that health concerns are mitigated by the underground HVDC configuration of the transmission line. (Bailey Direct, pp. 7-20.)

The totality of evidence in the record demonstrates the transmission line will improve reliability of service and is necessary to accommodate electrical generation currently impacted by congestion, and enable additional investment in electrical generation in Iowa. Iowa electrical users will benefit from the availability of power to come in from PJM. The route proposed is optimized to mitigate impacts on existing land owners and the uses of land. The Board finds that the granting of eminent domain for the proposed route over the property described in Exhibits E-1, E-2, E-3 and E-4 in Clayton County and Exhibits E-4 and E-5 in Dubuque County is necessary to serve the public use.

### **CONCLUSIONS OF LAW**

Based upon the testimony, exhibits, information, and statements in the docket, the Board makes the following Conclusions of Law:

1. The Board has jurisdiction over the parties and subject matter of the franchise petition pursuant to Iowa Code chapter 478 and Board rules at 199 IAC chapter 11. The Board lacks jurisdiction over underlying real property issues.

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2. The Board has found, in accordance with Iowa Code § 478.4, that the proposed electric transmission line is necessary to serve a public use and represents a reasonable relationship to an overall plan of transmitting electricity in the public interest.

3. Pursuant to Iowa Code §§ 478.6 and 478.15, the Board has found that vesting SOO Green with the right of eminent domain is necessary for public use.

4. Pursuant to Iowa Code § 478.21, should an electric transmission line for which a franchise has been granted not be constructed in whole or in part within two years from the date the franchise is granted, or within two years after final unappealable disposition of judicial review of a franchise order or of condemnation proceedings, the Board shall revoke the franchise unless the company holding the franchise petitions the Board for an extension of time.

5. The Board retains jurisdiction of the subject matter in this docket pursuant to Iowa Code chapter 478 and may at any time during the period of the franchise make such further orders as necessary.

### **CONDITIONS OF APPROVAL**

Both OCA and Farm Bureau propose certain conditions of approval if the Board approves this franchise. SOO Green, in its post-hearing briefs, requests an express statement of authority by the Board regarding additional eminent domain. Having concluded that a franchise is appropriate, the Board now considers the proposed conditions.

*1. OCA Condition – Merchant Line & Farm Bureau Condition – Merchant Line*

OCA proposes a condition of approval for the franchise linked to the business model of SOO Green as a merchant line, requesting:

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It is a condition of the franchise that costs related to the franchised line will not be incurred by or charged to a public utility in Iowa consistent with a tariff or agreement that is subject to the jurisdiction of the federal energy regulatory commission, other than a voluntary agreement made by the Iowa public utility specifically related to the franchised line. Franchisee must file a petition to amend its franchise before franchisee seeks to recover any costs of the transmission line from an Iowa public utility or its retail customers in violation of this condition.

(OCA Post-Hearing Brief, p. 3.) OCA argues that “[b]ecause SOO Green premised its petition on its use of a merchant transmission model, OCA has been unable to assess rate impacts of a hypothetical deviation from that model.” (*Id.*, p. 3, *citing* Alvarez Direct, p. 12.) OCA argues that SOO Green could place the line under a MISO tariff, allowing direct cost recovery from consumers.

Farm Bureau proposes a similar condition of approval, arguing that SOO Green

...continues to assert that it will not recover any of the transmission line cost from Iowa ratepayers. *See e.g.*, Hr’g Tr. at 1415. However, SOO Green simultaneously continues to request that the Board allow flexibility for SOO Green to change from being a merchant line. *See e.g.*, SOO Green Post-Hearing Brief at 25.

(Farm Bureau Post-Hearing Reply Brief, p. 6.) Farm Bureau argues that the change from a merchant line economic model to something else would be a material change that should require some degree of oversight.

SOO Green resists this interpretation, arguing that there is not an effective mechanism for SOO Green to directly charge customers and that the practical impacts of such a condition could impair regulatory certainty of the line. (SOO Green Post-Hearing Reply Brief, pp. 6-7.) SOO Green offers as an alternative that

...it would agree to provide notice and seek approval – absent the full amendment process – of a change to a non-merchant

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model. The Board, without creating a condition, can simply observe that it grants the franchise based on the material representations of the applicant and that it retains jurisdiction for all purposes permitted by Chapter 478 for the life of the project which would allow it to investigate in response to such a notice by SOO Green in the future.

(*Id.*, pp. 7-8.) SOO Green argues that this would create sufficient certainty without creating undue regulatory confusion.

The Board is persuaded that some degree of condition relating to the Project as a merchant line is appropriate. Testimony and the benefits underlying the Project support a conclusion that it is necessary to serve a public use and represents a reasonable relationship to an overall plan of transmitting electricity in the public interest were premised in significant part on its operation as a merchant line. (See, e.g., Alvarez Direct p. 9.) Several of the Board's findings of fact and conclusions of law are predicated on SOO Green's operation as a merchant line. The Project could also become a cost for Iowa ratepayers if it is transferred to another owner with merely the notice requirement from SOO Green as described in Iowa Code § 478.10.

However, the scope of the condition proposed by OCA and Farm Bureau seems overbroad and could result in unnecessary confusion. The Board will adopt a variation of SOO Green's proposal that it must provide notice of, and seek approval for, a change from its merchant line business model. To the extent such a circumstance arises during the term of the franchise, SOO Green or a successor entity must provide notice of the proposed change in this docket and file a petition with the Board for prior approval. Absent such an approval, if the franchised line is not operated as a merchant line, the granted franchise will automatically terminate.



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2. *Farm Bureau Condition – MISO and PJM Interconnection First*

Farm Bureau requests that the Project franchise not be granted until SOO Green has reached a transmission connection agreement with MISO and PJM. (Farm Bureau Post-Hearing Reply Brief, p. 4.) Farm Bureau references potential other factors that could delay construction of the Project, and cites the Cardinal-Hickory Creek project as an example. (*Id.*, p. 5.)

The Board is mindful that for many infrastructure projects, a series of distinct but sometimes interconnected regulatory approvals must be obtained. For one of the scope and size of this Project, crossing state lines and waterways and interacting with two regional transmission organizations, that complexity increases significantly. The issues before the Board are somewhat narrow, and have been adequately addressed by the evidence in the record. The fact that another permit process may slow the project, or PJM may not allow interconnection on reasonable terms, does not in and of itself invalidate the analysis and conclusions reached by the Board. The Board must offer regulatory certainty to electric transmission applicants, especially for multi-jurisdictional projects that can take years. Unlike the simple generating certificate process, it is important for the Board to provide certainty and let its yes be a yes, and its no be a no, without making an electric transmission franchise conditional on other approvals over the lengthy multiparty review process. Franchises for electric transmission lines are issued for 25 years, and Iowa Code § 478.21 provides sufficient safeguards for lack of appropriate implementation of a granted franchise. The Board declines to impose this condition.

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3. *Farm Bureau Condition – Eminent Domain for 6 Parcels Only*

There is no question that this order only grants eminent domain for the six parcels that were specifically identified in the filed Exhibit E documents, duly noticed, reviewed, and considered. Farm Bureau asserts that the larger question is whether the Board has continued authority to grant eminent domain after entering its final decision and order. However, Farm Bureau concludes that “[a]t this time, Farm Bureau simply requests the Board limit the extent of SOO Green’s eminent domain authority to the six parcels for which SOO Green requested eminent domain, and clearly state in its order that eminent domain authority is not granted for the remaining 280 parcels.” (Farm Bureau Post-Hearing Reply Brief, p. 3.) The Board agrees with Farm Bureau that it is unnecessary to make a determination regarding the timing of eminent domain requests. The Board further declines to characterize Farm Bureau’s statement as a condition of approval. Pursuant to statute, Board rules, and procedures, eminent domain is only granted as described in this order, and all other issues can be addressed if and when appropriate at a later date.

4. *SOO Green Condition – Express Additional Authority for Eminent Domain*

Similarly, SOO Green requests an express statement in this order that it may seek additional eminent domain to quiet title for those parcels along the proposed Project route that have not signed a CAMR. For the same reasons set forth above in discussing Farm Bureau’s proposed condition, the Board declines to make an unnecessary determination regarding the timing of eminent domain requests and declines to grant the requested affirmation.

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### **GRANTING OF CONFIDENTIALITY**

In considering applications for confidential treatment, the Board remains focused on compliance with Iowa Code § 22.2's statement that "[e]very person shall have the right to examine and copy a public record and to publish or otherwise disseminate a public record or the information contained in a public record" and the direction of the Iowa Supreme Court, recently articulated in *Ripperger v. Iowa Pub. Info. Bd.*, 967 N.W.2d 540, 551 (Iowa 2021), that "[t]here is a presumption in favor of disclosure and a liberal policy in favor of access to public records." This principle is applicable whether or not there has been a specific objection raised by a party.

Farm Bureau Hearing Exhibit 1 and certain information contained in SOO Green's Post-Hearing Brief filed August 4, 2023, Farm Bureau's Post Trial Brief filed August 4, 2023, and SOO Green's Reply Brief to Post-Hearing Briefs, are alleged to contain confidential information and were filed as such in the docket. The information provided in the exhibit and those three filings relate to information subject to a discovery protective order and were discussed with the Board during a confidential session of the Hearing. The Board has reviewed the information and concluded that it meets the standards for treatment as confidential under Iowa Code § 22.7(3) as a trade secret. The Board will treat the cover letter reservations of confidentiality under Board rules by Farm Bureau as contingent applications for confidential treatment on the same grounds as asserted by SOO Green. All such petitions for confidential treatment are approved.

## ORDERING CLAUSES

### IT IS THEREFORE ORDERED:

1. The petition for electric transmission line franchise filed by SOO Green HVDC Link ProjectCo, LLC, on September 24, 2020, for the project in Allamakee, Cerro Gordo, Chickasaw, Clayton, Dubuque, Floyd, Jackson, and Winneshiek counties in Iowa, as revised, is granted.

2. Franchise No. F-22085 covering the eight counties referenced in Ordering Clause 1 will be issued to SOO Green HVDC Link ProjectCo, LLC, to construct, erect, operate, and maintain an electric transmission line as specifically described in Exhibit A, attached to the franchise issued concurrently with this order.

3. Within 90 days after the completion of the construction authorized by Franchise No. F-22085, SOO Green HVDC Link ProjectCo, LLC, shall file a notice of construction completion with the Utilities Board pursuant to 199 Iowa Administrative Code 11.10, and the notice shall include the franchise and docket numbers, the date the franchise was issued, and the expected completion date of any underbuild construction.

4. SOO Green HVDC Link ProjectCo, LLC, is vested with the right of eminent domain as requested over the properties described in Exhibits E-1, E-2, E-3, and E-4 of the Clayton County petition and Exhibits E-4 and E-5 of the Dubuque County petition.

5. The Utilities Board retains jurisdiction of the subject matter in this docket pursuant to Iowa Code chapter 478 and may at any time during the period of the franchise make such further orders as may be necessary, including but not limited to modification of the franchise line to something other than a merchant line or review of requests for additional eminent domain authority.

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6. The franchise granted pursuant to Ordering Clauses 1 and 2 hereof is subject to a condition that the franchised line operate as a merchant line as defined in Iowa Code § 478.6A, and the holder of the franchise must both provide prior notice and receive prior Utilities Board approval before changing the business model of operation of the franchise. Failure to comply will result in the automatic termination of the franchise.

7. The applications for confidential treatment filed by SOO Green HVDC Link ProjectCo, LLC, in Docket No. E-22436 on August 4 and August 11, 2023, are granted.

8. The deemed applications for confidential treatment filed by Iowa Farm Bureau Federation in Docket No. E-22436 on July 13, 2023, regarding Farm Bureau Hearing Exhibit 1 and on August 4, 2023, regarding Farm Bureau Post Trial Brief, are granted.

**UTILITIES BOARD**

Erik M. Helland Date: 2023.09.13  
11:20:43 -05'00'

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Joshua Byrnes Date: 2023.09.13  
11:30:01 -05'00'

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ATTEST:

Keetah Horras 2023.09.13  
14:18:58 -05'00'

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Sarah Martz Date: 2023.09.13  
11:15:02 -05'00'

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Dated at Des Moines, Iowa, this 13th day of September, 2023.