

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

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| IN RE: ITC MIDWEST LLC AND DAIRYLAND POWER COOPERATIVE | DOCKET NO. E-22386 |
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**ORDER GRANTING PETITION FOR ELECTRIC FRANCHISES AND
RIGHT OF EMINENT DOMAIN**

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I. INTRODUCTION

A hearing before the Iowa Utilities Board (Board) in this docket occurred on December 10 through 12, 2019. ITC Midwest appeared through its attorneys, Bret Dublinske and Lisa M. Agrimonti. (HT¹ pp. 7-8.) Dairyland Power Cooperative appeared through its attorney, Jeffrey L. Landsman. (*Id.* at p. 8.) Attorney John Long appeared on behalf of the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice. (*Id.* at p. 8.) The Clean Energy Intervenors² (CEI) were represented by attorneys Michael Schmidt, Sean R. Brady, and Amelia Vohs. (*Id.* at pp. 8-9.) The Midcontinent Independent System Operator (MISO) was represented by Amanda James and Jeffrey L. Small. (*Id.* at p. 8.) Iowa State Representative Charles Isenhardt intervened and individually appeared at hearing as did intervenor and eminent domain landowner Michael Deutmeyer.³ (*Id.* at pp. 9-11.) Intervenors Chris Klopp,

1. "HT" refers to the hearing transcript of the December 10-12, 2019 proceeding.

2. The Clean Energy Intervenors are comprised of the Iowa Environmental Council, which was permitted to intervene in an April 26, 2019 Board order; and the Clean Grid Alliance, Fresh Energy, and the Minnesota Center for Environmental Advocacy, which were permitted to intervene in an August 28, 2019 Board order.

3. Because this order references other Deutmeyers, Michael Deutmeyer will be referred to by his full name.

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Linda Grice, and Dena Kurt appeared pro se. (*Id.* at pp. 11-12.) Eminent domain landowners Matt Goebel⁴ and Roger Bradshaw, with his daughter Lynn Berg, also appeared. (*Id.* at pp. 12-14.)

II. PROCEDURAL BACKGROUND

On November 28, 2017, ITC Midwest LLC (ITC Midwest) filed with the Utilities Board (Board) a request for dates to host public information meetings in Clayton and Dubuque counties, Iowa, pursuant to 199 IAC 11.4. The Clayton County informational meeting occurred from approximately 1:30 to 2:30 p.m. on March 29, 2018, in Guttenberg, Iowa. The Dubuque County informational meeting occurred from approximately 5:30 to 6:30 p.m. on March 29, 2018, in Peosta, Iowa.

On May 11, 2018, ITC Midwest and Dairyland Power Cooperative (collectively, Petitioners) filed with the Board petitions for electric transmission line franchises. As subsequently amended, Petitioners request franchises to construct, operate, and maintain approximately 6.51 miles of 362,000 volt maximum operating voltage (345 kV nominal voltage) electric transmission line and 2.44 miles of 169,000 kV maximum operating voltage (161 kV nominal voltage) electric transmission line in Clayton County and 7.74 miles of 345 kV electric transmission line in Dubuque County. Petitioners filed the petitions under Iowa Code chapter 478 and the petitions have been identified as Docket No. E-22386. In the Dubuque County petition, Petitioners requested the right of

4. Because this case involves different properties owned by Matt Goebel and Joseph Goebel, each will be referred to by his full name.

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eminent domain over five parcels, and in the Clayton County petition, Petitioners requested the right of eminent domain over two parcels.

The proposed project will connect the existing ITC Midwest Hickory Creek substation located in Dubuque County to a new Hill Valley substation near Montford, Wisconsin, and then will connect to the Cardinal substation near Middleton, Wisconsin. Both Wisconsin substations are owned by American Transmission Company (ATC). The existing Hickory Creek substation is connected to an existing east-west ITC Midwest Salem-Hazelton 345 kV line. Petitioners allege the project is necessary for a number of reasons, including the expansion of the existing ITC Midwest high-voltage system in Iowa by adding a new 345 kV connection to Wisconsin, which would provide approximately 1300 MW of additional transfer capacity, and to support the interconnection of at least 8.4 GW of new generation.

Pursuant to Iowa Code § 478.5, any person, company, city, or corporation whose rights may be affected by the proposed transmission line may file a written objection to the project. Fifty individuals filed objections to the proposed project with the Board. Three objectors subsequently withdrew their objections.

Board staff issued five review letters to Petitioners and two follow-up letters to objectors (one to Michael Deutmeyer and one to Dorothy Langel). Board staff also issued an initial staff report on September 16 and eminent domain maps on September 17, 2019; a first supplemental staff report on October 3, 2019; a second supplemental staff report on October 15, 2019; and a third supplemental staff report on December 6, 2019.

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On December 10, 2019, this proceeding came before the Board for hearing. The hearing concluded on December 12, 2019. (HT p. 860.)

Following the hearing, the Board scheduled the submission of post-hearing briefs. On January 28, 2020, Petitioners, OCA, MISO, CEI, Ms. Grice, Ms. Klopp, Michael Deutmeyer, Ms. Kurt, and Representative Isenhardt filed post-hearing briefs. On February 18, 2020, Petitioners, MISO, CEI, Ms. Klopp, Michael Deutmeyer, and Ms. Kurt filed reply briefs.

III. LEGAL STANDARDS

Electric transmission line franchise proceedings are governed by Iowa Code chapter 478 and 199 Iowa Administrative Code 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 represents a reasonable relationship to an overall plan of transmitting electricity in the public interest.” *Id.*

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 constitutes a reasonable effort to meet future needs. *See e.g., Fisher 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

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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). 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). The right-of-way width shall not exceed 100 feet except that transmission lines with voltages of 200 kV or more may have a right-of-way up to 200 feet in width “for good cause.” *Id.*

IV. BACKGROUND FACTS

A. Midcontinent Independent System Operator and Multi Value Projects

MISO is a not-for-profit, regional transmission organization (RTO) providing reliability and market services for more than 65,700 miles of transmission lines in 15 states, including Iowa, and one Canadian province. (MISO Ellis Direct Testimony pp. 1-3.) As an RTO, MISO is responsible for operational oversight and control, market operations, and planning of the transmission systems of its member transmission owners. (*Id.* at p. 2.) MISO is responsible for approving transmission service, new

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generation interconnections, and new transmission interconnections within MISO's regional area of operations, which includes Iowa. (*Id.* at p. 3.) MISO performs planning functions collaboratively with its transmission owners and also performs an independent review and assessment of the transmission system's overall needs. (*Id.* at p. 6.)

Due to a number of factors, including the passage of renewable energy mandates in a number of states in the region, MISO created the Multi Value Project (MVP) type that ultimately resulted in the 2011 MVP portfolio. (*Id.* at p. 18.) The 2011 MVP portfolio is a group of MVP transmission projects across MISO's region designed to enable the reliable delivery of the aggregate of state renewable energy policies and to provide for economic benefits in excess of the portfolio costs, primarily by reducing generator production costs. (*Id.*)

Each project included in the MVP portfolio is a necessary component of the entire transmission portfolio and is intended to provide benefits that broadly span the entire MISO footprint. (*Id.*) Pursuant to the MISO Tariff, each project included in the MVP portfolio must provide benefits across the MISO region and must meet at least one of the following criteria:

Criterion 1. A Multi Value Project must be developed through the transmission expansion planning process for the purpose of enabling the Transmission System to reliably and economically deliver energy in support of documented energy policy mandates or laws that have been enacted or adopted through state or federal legislation or regulatory requirement that directly or indirectly govern the minimum or maximum amount of energy that can be generated by specific types of generation. The MVP must be shown to enable the transmission system to deliver such energy in a manner that is more reliable and/or more economic than it otherwise would be without the transmission upgrade.

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Criterion 2. A Multi Value Project must provide multiple types of economic value across multiple pricing zones with a Total MVP Benefit-to-Cost ratio of 1.0 or higher where the Total MVP Benefit-to-Cost ratio is described in Section II.C.7 of Attachment FF [in the Tariff]. The reduction of production costs and the associated reduction of [Locational Marginal Prices] resulting from a transmission congestion relief project are not additive and are considered a single type of economic value.

Criterion 3. A Multi Value Project must address at least one Transmission Issue associated with a projected violation of a NERC or Regional Entity standard and at least one economic-based Transmission Issue that provides economic value across multiple pricing zones. The project must generate total financially quantifiable benefits, including quantifiable reliability benefits, in excess of the total project costs based on the definition of financial benefits and Project Costs provided in Section II.C.7 of Attachment FF [in the Tariff].

(*Id.* at pp. 16-17) (alterations in original).

The MVP portfolio includes 17 projects. (ITC Midwest Eddy Direct Testimony p. 15.) The MVP-5 project is the last project in the MVP portfolio to go through the regulatory approval process, and the Board previously granted franchises for the other MVP projects in Iowa.⁵ Under the 2017 Triennial Review, the estimated MVP portfolio benefit/cost ratio was between 2.2 and 3.4. (ITC Midwest Eddy Direct Exhibit 3, p. 4.)

B. MVP-5

This docket concerns one of two transmission lines that have been identified as MVP-5. (ITC Midwest Eddy Direct Testimony p. 18.) The other line, which has already

5. In 2017, the Board granted franchises for a transmission line commonly identified as MVP-7. *In re: MidAmerican Energy Company and ITC Midwest LLC*, Docket Nos. E-22269 through E-22271 and E-22279, "Order Granting Petitions for Electric Franchises," (Aug. 18, 2017). In 2016, the Board approved the connecting transmission lines between MVP-3 and MVP-4. *In re: ITC Midwest LLC*, Docket Nos. E-22116 and E-22140 through E-22142, "Order Granting Petitions for Electric Franchises," (Dec. 22, 2016). In 2014, the transmission line referred to as MVP-3 was approved. *In re: MidAmerican Energy Company*, Dockets Nos. E-22103 through E-22108, "Proposed Decision and Order Granting Franchises," (July 24, 2014).

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been constructed, is the Badger-Coulee project between La Crosse, Wisconsin, and Madison, Wisconsin. (*Id.*)

The MVP-5 line implicated in this docket is intended to provide a 345 kV connection between Iowa and Wisconsin that is intended to improve the reliability and flexibility of the transmission system, increase transfer capacity between Iowa and Wisconsin by approximately 1,300 MW, and support the interconnection of at least 8.4 GW of new generation, of which 7.2 GW is expected to be wind generation. (*Id.* at p. 4.) The proposed project is further intended to relieve west-to-east steady state flow overloads on the 345 kV and 100 kV network from Minnesota and Iowa into Wisconsin, as well as from Iowa into Illinois. (MISO Ellis Direct Testimony p. 28.) Specifically, the proposed project is expected to alleviate thermal constraints on the west-to-east 345 kV path across central Wisconsin, overloads along four existing 115 kV and 161 kV Mississippi River crossings, and a number of overloads on lower voltage facilities across southern Wisconsin. (*Id.*) Three of the most severe overloads occur on the following lines: the Turkey River-Stoneman 161 kV transmission line, the Stoneman-Nelson Dewey 161 kV transmission line, and the Townline Road-Bass Creek 138 kV transmission line. (OCA Bents Reply Exhibit 1, ITC Response to OCA DR 2, p. 2.) Additionally, the proposed project will reduce loadings on 56 system elements,⁶ including lines and transformers that are projected to be highly loaded when the

6. The highest loaded Bulk Energy System elements under the modeling are the Dixon – Cherry Valley 138 kV line section, the Wabaco – Alma 161 kV line, the Kewanee – Galesburg 138 kV line, and the North La Crosse (Briggs Road) – Marshland 161 kV line. (MISO Ellis Direct Testimony p. 29). See MISO Ellis Exhibit 2 pp. 73-88 (full list of projected overloads).

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generation required to meet renewable state mandates is considered. (MISO Ellis Direct Testimony p. 29.)

C. Proposed Line Description

Beginning at the southern-most location, the proposed 345 kV line begins at the existing ITC Midwest's Hickory Creek substation located in the Southeast Quarter of the Southeast Quarter of Section 1, Township 89 North, Range 2 West, Dubuque County, and runs north along the east section line approximately three quarters of a mile. (September 16, 2019 Staff Report, p. 3 & Map 1; HT p. 34.) The line then goes west along the south line of Section 36, Township 90 North, Range 2 West approximately 0.8 miles, and then northwesterly 0.4 miles in the Southwest Quarter of said Section 36. (September 16, 2019 Staff Report, p. 3 & Map 1; HT p. 34.) The line continues north along Hickory Valley Road with minimal deviations and then north along the section lines between Sections 14 and 13, Sections 11 and 12, and Sections 2 and 1, all in Township 90 North, Range 2 west approximately 5.25 miles. (September 16, 2019 Staff Report, p. 3 & Maps 1 and 2; HT pp. 33-34.) The line then proceeds northeasterly approximately 0.5 miles in the west half of the Northwest Quarter of Section 1, Township 90 North, Range 2 West to the Dubuque-Clayton county line. (September 16, 2019 Staff Report, p. 3 & Map 2; HT p. 33.) The line continues north in Clayton County, along the section lines between Sections 35 and 36, Sections 26 and 25, Sections 23 and 24, and Sections 14 and 13, all in Township 91 North, Range 2 West, approximately 3.55 miles. (September 16, 2019 Staff Report, p. 3 & Map 3; HT p. 34.) The line then heads east 0.24 miles, north 0.3 miles, and east and northeast 0.82 miles,

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along the division lines of land and the existing ITC Midwest transmission line corridor in Section 13, Township 91 North, Range 2 West, crossing the Canadian Pacific Railroad's track. (September 16, 2019 Staff Report, p. 3 & Map 3; HT pp. 32-33.) The line then parallels the railroad track northwesterly approximately 0.3 miles, then northerly following the east side of Oak Road to the Iowa-Wisconsin state line in the Upper Mississippi River Wildlife and Fish Refuge in Section 7, Township 91 North, Range 1 West, Clayton County for an approximate distance of 1.3 miles. (September 16, 2019 Staff Report, p. 3 & Map 3; HT pp. 32-33.)

The north 2.44 miles of the proposed 345 kV line in Clayton County will be double-circuited with the proposed 161 kV line, which will connect the existing ITC Midwest transmission lines, which in turn connect to ITC Midwest's Turkey River substation. (September 16, 2019 Staff Report, p. 3 & Map 3; HT pp. 32-33.)

D. Eminent Domain Parcels

Petitioners acquired voluntary easements for more than 85 percent of the needed parcels for the proposed line. (ITC Midwest Peterson Direct Testimony p. 3).

Petitioners seek eminent domain over four parcel groups with known landowners and one parcel with an unknown landowner. In order to comply with the National Electrical Safety Code, the Iowa Electrical Safety Code, and North American Electric Reliability Corporation requirements, Petitioners request an easement extending 75 feet on both sides of the centerline. (ITC Midwest Proctor Direct Testimony p. 10). For discussion purposes, the eminent domain parcels are grouped by ownership and identified as follows.

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1. *Exhibit E-2 (Dubuque County)*

Exhibit E-2 (Dubuque) involves property owned by Roger G. Bradshaw and identified as Parcel Tax ID Numbers 03-13-100-001, 03-13-100-003, 03-13-300-001, and 03-13-300-003. (Dubuque Petition, Ex. E-2.) The property is currently used as a stock cow and beef calf operation, which Mr. Bradshaw does not intend on changing in the near future. (HT p. 756.)

Petitioners request a 75-foot-wide easement for a total of 9.08 acres. (Dubuque Petition, Ex. E-2, Maps 1-3.) Mr. Bradshaw's residence is located approximately 500 feet from the proposed line and no dwelling or building on the property is located within 100 feet of the proposed transmission line or easement. (HT p. 761; September 16, 2019 Staff Report, p. 12.)

2. *Exhibits E-3 (Dubuque County) and E-4 (Dubuque County)*

Exhibits E-3 (Dubuque) and E-4 involve property owned by Richard and Helen Deutmeyer and Michael and Julie Deutmeyer. (Dubuque Petition, Exs. E-3 and E-4.) The property at issue in Exhibit E-3 is identified as Parcel Tax ID Numbers 03-14-200-006 and 03-14-400-002, and the property in Exhibit E-4 is identified as 03-14-200-007 and 03-14-200-004. (Dubuque Petition, Exs. E-3 and E-4.) The property is currently being used as agricultural farm ground, pasture ground, and a dairy operation. (HT pp. 726, 737.)

Petitioners request a 75-foot-wide easement in both Exhibits E-3 and E-4 for a total easement area of 6.88 acres (4.59 acres in Exhibit E-3 and 2.29 acres in Exhibit E-4). (Dubuque Petition, Ex. E-3, Maps 1-2, and Ex. E-4, Maps 1-2.) There is no

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dwelling or building located within several hundred feet of the easement area and the dairy operation is located approximately 600 feet from the easement area. (HT pp. 727, 737.)

3. *Exhibits E-5 (Dubuque County) and E-2 (Clayton County)*

Exhibits E-5 and E-2 (Clayton) involve property owned by Joseph A. Goebel, as Trustee of the Joseph A. Goebel Revocable Trust, and Mary F. Goebel, as Trustee of the Mary F. Goebel Revocable Trust. (Dubuque Petition, Ex. E-5; Clayton Petition, Ex. E-2.) The property at issue in Exhibit E-5 is identified as Parcel Tax ID Numbers 03-01-300-001, 03-01-300-003, and 03-12-100-003 and the property in Exhibit E-2 (Clayton) as 21-35-276-001. (Dubuque Petition, Ex. E-5; Clayton Petition, Ex. E-2.) The property is currently being used for agricultural purposes. (September 16, 2019 Staff Report, pp. 12-14.)

With respect to property identified in Exhibit E-5, Petitioners request a 75-foot-wide easement for a total easement area of 9.17 acres, and with respect to the property identified in Exhibit E-2 (Clayton), the total easement area is 1.78 acres. (*Id.*) No dwelling or other building on the property is located within 100 feet of the easement area. (*Id.*)

4. *Exhibit E-6 (Dubuque County)*

Exhibit E-6 involves property owned by Matt and Arica Goebel and identified as Parcel Tax ID Number 03-02-201-002. (Dubuque Petition, Ex. E-6.) Matt and Arica Goebel currently use the property in connection with their dairy operation and Matt

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Goebel indicated they do not intend to change the use of the property in the near future. (HT p. 739.)

Petitioners request a diagonal easement through the southeastern edge of the property for a total easement area of 0.09 acres. (Dubuque Petition, Ex. E-6, Maps 1-2.) Matt and Arica Goebel's residence is approximately 403 feet from the proposed line. (HT pp. 748-49.) No dwellings or buildings are located within 100 feet of the easement area. (September 16, 2019 Staff Report, p. 13.)

Rather than the easement proposed by Petitioners, Matt and Arica Goebel prefer the route go through the western portion of their property. (HT p. 749.) Prior to hearing, Matt and Arica Goebel discussed placement of the proposed line on the western portion of their property with Petitioners. (*Id.* at pp. 743-44, 749-50.) As a result of those discussions, Matt and Arica Goebel signed a voluntary easement for the line to follow their preferred route. (*Id.* at pp. 743-44, 749-50.)

Petitioners did not use Matt and Arica Goebel's voluntary easement and do not propose to run the line along Matt and Arica Goebel's preferred route; rather, Petitioners selected the route described above. Petitioners state they failed to obtain the necessary easements from other landowners to run the line along Matt and Arica Goebel's preferred route. (Id. at pp. 790-91.) Further, Petitioners claim the route preferred by Matt and Arica Goebel would more negatively affect the natural environment compared to the route Petitioners propose. (Id. at p. 793.)

5. *Exhibit E-3 (Clayton County)*

Exhibit E-3 (Clayton) involves property identified as Parcel Tax ID Number 21-35-226-002. (Clayton Petition, Ex. E-3.) Petitioners request an easement approximately 108 feet wide and 20 feet long for a total easement area of 0.05 acres. (Clayton Petition, Ex. E-3, Maps 1-2.)

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The owner(s) of the property are unknown. (HT p. 441.) According to Petitioners, a title search of the property revealed no known ownership. (*Id.* at p. 441.) On September 26, 2019, Petitioners filed with the Board a “Motion for Permission to Provide Notice of Hearing for the Parcel Represented by Clayton County Exhibit E-3 by Publication.” In the filing, Petitioners contend that Marvin and Patricia Errthum have been in possession of and maintained the property since 1966. On October 25, 2019, the Board granted Petitioners’ request to provide notice of the eminent domain proceeding by publication.

V. BOARD ANALYSIS

A. Statutory Requirements

1. *Notice Requirements*

Both the Iowa Code and the Board’s rules set forth a number of notice requirements with which Petitioners must comply before the Board may grant their franchise request. According to Iowa Code § 478.2(3), “the person seeking the franchise for a new transmission line shall give notice of the informational meeting to each person, company, or corporation determined to be the landowner affected by the proposed project and any person, company, or corporation in possession of or residing on the property.” Section 478.2 further requires Petitioners to cause the notice to be published in a newspaper of general circulation in the county at least one week but no more than three weeks before the informational meeting.

With respect to the Clayton County petition, ITC Midwest filed notice of the informational meeting on February 14, 2018; the proof of publication on March 20, 2018;

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and an affidavit about the informational meeting on May 11, 2018, as Exhibit G to the petition. With respect to the Dubuque County Petition, ITC Midwest filed notice of the informational meeting on February 14, 2018; the proof of publication on March 22, 2018; and an affidavit about the informational meeting on May 11, 2018, as Exhibit G to the petition.

For those proceedings in which a hearing is required, Iowa Code § 478.5 requires the petitioner to publish the official hearing notice in a newspaper of general circulation in the county for two consecutive weeks. Petitioners caused publication of the hearing notice in the Clayton County Register for two consecutive weeks, the last of which was on October 30, 2019, and filed the affidavit of publication on November 15, 2019. Petitioners also caused publication of the hearing notice in the Telegraph Herald, a newspaper of general circulation in Dubuque County, for the weeks of October 23 and 30, 2019, and filed the affidavit of publication on November 15, 2019.

If a petition involves the taking of property under the right of eminent domain, Iowa Code § 478.6 requires the petitioner to serve an eminent domain notice on the owners of record and on parties in possession of the property over which eminent domain is sought. Rule 199 IAC 11.5(3) provides that a petitioner that seeks the right of eminent domain shall serve the written notice required by Iowa Code § 478.6, in the form prescribed by the Board, of the time and place of hearing to owners of record and parties in possession of land over which eminent domain is sought.

With respect to the property with unknown owners, Exhibit E-3 (Clayton), on September 26, 2019, Petitioners filed a motion with the Board for permission to provide

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notice of the hearing for that property by publication. On October 2, 2019, OCA filed a response, indicating it did not find notice by publication to be objectionable given the identities of the landowners cannot be determined after a diligent search.

On October 14, 2019, the Board issued an order approving notice by publication, identifying the form of the notice and attachments, and directing Petitioners to serve via certified mail a copy of the notice and attachments on all owners of record and parties in possession of the parcels over which Petitioners request the right of eminent domain. On December 2, 2019, Petitioners filed proof of mailing of the notice and attachments to all owners of record and persons in possession of land over which eminent domain is sought. On December 4, 2019, Petitioners filed an affidavit of publication, establishing that the notice and attachments were published in the Clayton County Register for three consecutive weeks, the last of which was on November 20, 2019.

In addition to the aforementioned statutory notice requirements, rules 199 IAC 11.2(1)(f) and 11.5(4) require a petitioner to provide notice to other parties described in 199 IAC 11.2(1)“b”(6) through (11) that may be affected by the proposed transmission line. Petitioners filed proof of such notice as Exhibit F to both the Dubuque County and Clayton County petitions on May 11, 2018.

Based on the above discussion, the Board finds Petitioners complied with all applicable notice requirements.

2. *Public use and reasonable relationship to an overall plan of transmitting electricity in the public interest*

Iowa Code § 478.4 provides that before granting a franchise, the Board “shall make a finding that the proposed line or lines are necessary to serve a public use and

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represents a reasonable relationship to an overall plan of transmitting electricity in the public interest.” Each requirement will be discussed in turn.

a. Public use

Petitioners state that the proposed project serves the public use by providing a needed 345 kV connection between Iowa and Wisconsin. (ITC Midwest Eddy Direct Testimony p. 4.) The transmission line will improve the reliability and flexibility of the transmission system, will increase transfer capacity between Iowa and Wisconsin by approximately 1,300 MW, and will support the interconnection of at least 8.4 GW of new generation, of which 7.2 GW is expected to be through wind generation. (*Id.*)

With respect to the reliability and flexibility of the transmission system, MISO witness Matthew Ellis testified at hearing that the project “relieves projected thermal overloads on 56 different system elements” and “mitigates stability concerns.” (HT pp. 222-23.) Mr. Ellis further testified the project “strengthens the overall transmission system and increases its ability to serve load under contingency conditions.” (MISO Ellis Direct Testimony pp. 26-27.) Similarly, CEI witness Chad Craven testified the project is a “required reliability upgrade”⁷ and is necessary to provide transient stability to mitigate voltage stability issues in Iowa. (CEI Craven Direct Testimony pp. 3-5.) OCA does not dispute that the proposed project will improve system reliability. (OCA Bents Reply Testimony p. 5.)

7. CEI states that a “required reliability upgrade is an addition or improvement to the transmission system that ensures reliable operation of the Bulk-Power System based on the approved North American Electric Reliability Corporation (NERC) standards and MISO study criteria.” (CEI Craven Direct Testimony p. 4.) Identifying a project “as a mitigation means that additional upgrades on other parts of the transmission system would not be required [that] helps to reduce overall upgrade costs and overbuilding in the transmission system.” (*Id.*)

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Concerning generation, MISO contends that if the project is disapproved, the existing transmission system will not be able to reliably deliver the full output of renewable generators. (MISO Ellis Direct Testimony p. 50.) According to CEI, 37 new generators with a combined capacity of approximately 7.1 GW require the completion of the project in order to operate fully. (CEI Craven Direct Testimony p. 5.) As of August 2019, the reliable interconnection of 5.3 GW of generating units with a signed generation interconnection agreement is dependent on the project. (MISO Ellis Direct Testimony pp. 50-51.) The 5.3 GW figure represents 3.6 GW of generation under development in Iowa. (HT pp. 282-83.)

Further, according to CEI, the project is necessary to support the interconnection of renewable generation in Iowa. (CEI Craven Direct Testimony pp. 3-4.) According to CEI witness Michael Goggin, the project “is necessary for the cost-effective delivery of power from wind” in Iowa and other parts of MISO. (CEI Goggin Direct Testimony p. 2.) On this point, since MISO approved the 2011 MVP portfolio, there have been more than 3,800 MW of wind generation constructed and connected in Iowa. (ITC Midwest Eddy Rebuttal Testimony p. 2.) Additionally, wind development in Iowa has significantly exceeded the projections utilized by MISO during the MVP planning process.⁸ (CEI Goggin Direct Testimony pp. 9-11.) According to Mr. Goggin, the trend of wind development exceeding expectations is likely to continue as renewable development costs continue to decline. (*Id.* at pp. 11-12.)

8. MISO’s 2010 estimate of wind capacity in Iowa in 2026 was 4,650 MW; the actual wind capacity in Iowa as of July 2019 was 8,957 MW and is projected to increase to 11,580 MW in the near future.

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The Iowa Supreme Court has long recognized that “the transmission of electricity to the public constitutes a public use contemplated by section 478.4.” *South East Iowa Co-op Elec. Ass’n v. Iowa Utilities Bd.*, 633 N.W.2d at 820 (citing *Race v. Iowa Elec. Light & Power Co.*, 257 Iowa 701, 704, 134 N.W.2d 335, 337 (1965)). If a transmission line is reasonably designed to meet existing needs, the public use test is satisfied. *Fischer*, 368 N.W.2d at 98. Similarly, 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*, 2002 WL 31882863, at *5.

The uncontroverted evidence demonstrates that the proposed line is necessary to meet current and future transmission needs. The project will increase system reliability and flexibility and will support current and anticipated generation needs. Therefore, the Board finds the public interest element is met.

- b. Reasonable relationship to an overall plan of transmitting electricity in the public interest

In determining whether a transmission line “represents a reasonable relationship to an overall plan of transmitting electricity in the public interest,” Iowa Code § 478.3(2)(a) sets forth the following factors relevant to the inquiry:

- (1) The relationship of the proposed project to present and future economic development of the area.
- (2) The relationship of the proposed project to comprehensive electric utility planning.
- (3) The relationship of the proposed project to the needs of the public⁹ presently served and future projections based on population trends.

9. According to Iowa Code § 478.3(3), “the term ‘public’ is not limited to consumers located in this state.”

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- (4) The relationship of the proposed project to the existing electric utility system and parallel existing utility routes.
- (5) The relationship of the proposed project to any other power system planned for the future.
- (6) The possible use of alternative routes and methods of supply.
- (7) The relationship of the proposed project to the present and future land use and zoning ordinances.
- (8) The inconvenience or undue injury which may result to property owners as a result of the proposed project.

While § 478.3(2)(b) provides the Board with authority to waive the proof required for any requirement that is not applicable to a particular proposed project, Petitioners have not requested a waiver. Consequently, each factor will be discussed in turn.

(1 and 3) Economic Development and Needs of the Public. Concerning the first and third factors, Petitioners allege the project will serve the public's present known needs and reasonably foreseeable future needs as well as facilitating the present and future economic development. (Clayton Petition, Ex. D; Dubuque Petition, Ex. D.)

Petitioners presented evidence demonstrating the proposed line will provide a needed 345 kV connection between Iowa and Wisconsin that will increase transfer capacity between the two states by approximately 1,300 MW and will support the interconnection of at least 8.4 GW of new generation, including new generation in Iowa. (ITC Midwest Eddy Direct Testimony p. 4.) The additional capacity will promote growth of renewable energy in Iowa and will provide Iowa utility customers with access to low-cost renewable energy. See CEI Goggin Direct Testimony p. 13 (stating the project will provide Iowa electric customers access to lower-cost wind energy). This evidence, in and of itself, establishes the project is reasonably related to current and future economic development and the needs of the public.

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Intervenor Klopp disagrees, arguing the project does not foster economic development and asserting the evidence does not sufficiently demonstrate that investment in wind energy will provide an economic gain. (Klopp Post-Hearing Brief p. 9.) Ms. Klopp further contends the third factor cannot be established because there is no need for additional generation. (Klopp Post-Hearing Brief pp. 9-10.)

Even assuming *arguendo* that Ms. Klopp's depiction of the evidence is accurate, Ms. Klopp's contention fails to address the numerous reasons justifying the project unrelated to additional wind generation (*e.g.*, transmission system reliability, system flexibility, and system safety). Mr. Ellis testified that the project is necessary to relieve thermal overloads on 56 different system elements, to mitigate safety concerns, and to strengthen the overall transmission system. (HT pp. 222-23; MISO Ellis Direct Testimony pp. 26-27.) A properly functioning and stable transmission system is closely related to economic development and the needs of the public. *See e.g., Bradley, 2002 WL 31882863, at *5* (holding that reliability of service is in the public interest).

Several intervenors also contend the project is not in the public interest because Iowans have no need for additional generation. (Grice Post-Hearing Brief, pp. 5-7; Klopp Post-Hearing Brief pp. 3-4, 9-10; Kurt Post-Hearing Brief pp. 2-3.) However, in evaluating public interest, the term "public" is not limited to only Iowa customers, Iowa Code § 478.3(3), and the evidence establishes that existing congestion is occurring because of customers' electricity demand. (HT pp. 283-84.)

Intervenor also argue the project is contrary to the general public interest in Iowa. In his Reply Brief, for example, Mr. Deutmeyer postulated that if the project "was

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such a great benefit to landowners, no one would want to pass on the opportunity.” (Deutmeyer Post-Hearing Reply Brief p. 3.) See also Grice Reply Brief pp. 14-15 (arguing that “[t]here is presently broad public outcry in Iowa regarding citizen’s property rights which are being infringed upon by the transmission easements and by the turbines which emit infrasound damaging to human and animal health, shadow flicker, ice throw, blade throw, and just plain noise”).

However, under Iowa law, “[t]he concept of public policy generally captures the communal conscience and common sense of our state in matters of public health, safety, morals, and general welfare.” *Jasper v. H. Nizam, Inc.*, 764 N.W.2d 751, 761 (Iowa 2009) (citing *Truax v. Ellett*, 234 Iowa 1217, 1230, 15 N.W.2d 361, 367 (1944)). Once established, a public policy “becomes a benchmark in the application” of legal principles. *Id.* As applied to this situation, the Iowa Legislature set public policy through the adoption of § 476.53A, which provides:

It is the intent of the general assembly to encourage the development of renewable electric power generation. It is also the intent of the general assembly to encourage the use of renewable power to meet local electric needs and the development of transmission capacity to export wind power generated in Iowa.

In sum, contrary to the arguments presented by these intervenors and pursuant to § 476.53A, public policy and interests are advanced through the “development of transmission capacity to export wind power generated in Iowa.” As Mr. Goggin testified, the additional transfer capacity of the project “creates an additional wind outlet path across MISO, primarily bringing power from Iowa and other states west of the Mississippi River into southern Wisconsin, where it can then go east toward Milwaukee

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or south toward Chicago.” (CEI Goggin Direct Testimony p. 7.) The Board finds Petitioners demonstrated a relationship between the project and current and future economic development and the public needs to establish the first and third factors.

(2) Comprehensive Electric Utility Planning. The second factor examines the “relationship of the proposed project to comprehensive electric utility planning.” Iowa Code § 478.3(2)(a)(3).

MISO developed the project as part of the MVP portfolio through a multi-year, collaborative planning process that involved regulators, wind power developers, transmission line owners, and other stakeholders. (MISO Ellis Direct Testimony pp. 19-20.) Through the planning process, regular updates were provided to MISO’s committees, subcommittees, and stakeholder groups. (*Id.*) As part of the process, MISO conducted more than 200 public meetings, including:

- Regional Generator Outlet Study – 47 meetings;
- Planning Advisory Committee – 37 meetings;
- Sub-regional Planning Meetings – 33 meetings;
- Regional Expansion Criteria and Benefits – 32 meetings;
- Regional Generator Outlet Study II – 22 meetings;
- Cost Allocation and Regional Planning – 19 meetings;
- Candidate MVP Portfolio Analysis – 18 meetings; and
- Planning Subcommittee – 17 meetings.

(ITC Midwest Eddy Direct Testimony p. 14.)

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Further, the evidence demonstrates the present MVP project is a necessary component of the entire transmission portfolio and is intended to provide comprehensive benefits throughout MISO. (MISO Ellis Direct Testimony p. 18.) The project is designed to address existing and future needs. (ITC Midwest Eddy Direct Testimony p. 21.)

Based on the submitted evidence, the Board finds Petitioners demonstrated the proposed project is the product of comprehensive electric utility planning.

(4) Existing Electric System and Parallel Existing Routes. The fourth factor requires the Board to examine the “relationship of the proposed project to the existing electric utility system and parallel existing utility routes.” Iowa Code § 478.3(2)(a)(4).

First and foremost, the proposed route uses parallel existing utility routes. Running east from the Turkey River Substation, the proposed route follows the existing ITC Midwest transmission line corridor, through the Upper Mississippi National Wildlife and Fish Refuge, to the state line. (ITC Midwest Middleton Direct Testimony p. 13; HT pp. 45-48.)

Second, one of the purposes of the proposed route (and a reason for the creation of the entire MVP portfolio) is to ensure greater access to renewable generation, including existing and anticipated generation in Iowa. (CEI Craven Direct Testimony pp. 3-7.) According to CEI witness Nathaniel Baer, the proposed project “is essential to continued renewable energy development in Iowa.” (CEI Baer Direct Testimony p. 10.)

The evidence further demonstrates the proposed project is a “required reliability upgrade” and is necessary to provide transient stability to mitigate voltage stability

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issues in Iowa. (CEI Craven Direct Testimony pp. 3-5.) The project “increases the reliability of the regional transmission system while enhancing the ability of the Iowa transmission system to meet local load serving needs” and “strengthens the overall transmission system and increases its ability to serve load under contingency conditions.” (MISO Ellis Direct Testimony pp. 8, 26-27.)

Through their evidence, Petitioners demonstrated a relationship between the proposed project and the existing electric system and established that the proposed line made use of parallel existing utility routes as required under Iowa Code § 478.3(2)(a)(4).

(5) Future Power Systems. The fifth factor requires review of the “relationship of the proposed project to any other power system planned for the future.” Iowa Code § 478.3(2)(a)(5). The record is replete with evidence establishing the relationship between the proposed project and anticipated future power generation. As noted above, as of 2019, generation from wind in Iowa is nearly double the amount MISO expected when it designed the MVP Portfolio in 2010 and the growth of wind generation is expected to continue. (CEI Goggin Direct Testimony pp. 9-12.)

Evidence submitted demonstrates that a principal objective of the project is to support the interconnection of Iowa’s increasing renewable energy generation. (ITC Midwest Eddy Direct Testimony p. 4; CEI Craven Direct Testimony pp. 3-4.) The project “is necessary for the cost-effective delivery of power from wind” in Iowa. (CEI Goggin Direct Testimony p. 2.) Completion of the project “is a condition of full interconnection service to twenty-nine (29) generating units totaling approximately 5.3

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gigawatts” of generation in or near to Iowa. (MISO Ellis Direct Testimony p. 10.) If the project is not approved, “generators in Iowa will experience wind curtailment” and at other times, “such as when Iowa wind output is low, transmission constraints will limit the import of low-cost resources into Iowa, increasing prices for consumers.” (CEI Goggin Direct Testimony p. 3.)

Petitioners demonstrated the proposed project is not only related to, but also advances, current and future generation.

(6 - 8) Alternative Routes/Methods of Supply, Land Use and Zoning, and Inconvenience and Undue Injury. The final factors require the examination of possible alternative routes,¹⁰ current and future land use, and the inconvenience and undue injury that may result to property owners. Iowa Code § 478.3(2)(a)(6)-(8). Petitioners demonstrated they considered alternative routes, land use, and landowner injury/inconvenience so as to meet these requirements. (ITC Midwest Middleton Direct Testimony pp. 10-11.)

Petitioners performed a route selection study, which is described in a “Route Selection Study” report. (ITC Midwest Middleton Direct Exhibit 1.) To aid in the evaluation of alternative routes, Petitioners developed a total of 35 route segments,

10. Section 478.3(3)(2)(a)(6) requires the examination of possible “alternative routes and methods of supply.” Intervenors contend Petitioners failed to provide evidence of “alternative methods of supply.” (Klopp Post-Hearing Brief p. 10.) As a matter of practice, the Board has long considered the methods of supply and alternative routes collectively as part of the route discussion. *See e.g., In re: ITC Midwest LLC*, Docket Nos. E-21948 through E-21951, Order (July 1, 2011) (finding the petitioners demonstrated possible use of alternative routes and methods of supply by engaging in a route selection process). Regardless, the evidence submitted demonstrates that Petitioners evaluated alternatives and considered this proposed Project as the superior method for addressing the transmission issues. (ITC Midwest Eddy Rebuttal Testimony pp. 4-7.)

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which were combined to form 208 potential complete routes. (ITC Midwest Middleton Direct Testimony p. 11.) In part, Petitioners measured the impact of each route through a number of criteria separated into three categories: (1) engineering criteria (*i.e.*, total line length, line angles greater than 30 degrees, line length not along existing transmission lines, and segment lengths through slopes of greater than 30 percent); (2) environmental criteria (*i.e.*, wetland acres within the right-of-way, woodland acres within the right-of-way, streams/waterways crossed, and line length through farmland); and (3) social criteria (*i.e.*, number of residences with 150 feet of the centerline, number of residences between 151 and 500 feet of centerline, number of public facilities within 300 feet of centerline, number of archaeological sites within the right-of-way, number of historical sites within 1,000 feet of each segment, and length of line not along fence row or property line). (ITC Midwest Middleton Direct Exhibit 1, pp. 36-38.)

In comparing the routes, Petitioners determined that eastern routes created unnecessary conflicts with land use. (*Id.* at p. 51.) Specifically, the eastern routes crossed the greatest amount of open fields while the other routes paralleled existing roads to a greater extent. (*Id.*) The eastern routes would require the creation of a greater number of transmission line features in fields, which in turn would cause a greater disruption in farming operations. (*Id.*) Additionally, the eastern routes tended to be longer than the central routes and also contained more woodland areas within the right-of-way on average. (*Id.*) Consequently, the eastern routes were dropped from consideration, which reduced the potential number of routes from 208 to 144. (*Id.*)

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Next, Petitioners removed from consideration routes in the vicinity of Bluebell Creek (and hence, avoided the steep slope area along the creek) and routes that had a high residential impact (*i.e.*, greater-than-average homes within 151 to 500 feet). (*Id.*) Also, multiple western routes that had 14 or more significant angles, which would increase cost and land disturbance, were removed from consideration. (*Id.*) After these routes were moved, 92 routes remained for consideration. (*Id.*)

The central routes are the shortest with the least impact on land use. To lessen potential adverse impact to landowners and land use, Petitioners removed from further consideration central routes with higher-than-average residential impacts within 150 feet from the proposed line, central routes with greater-than-average impact for homes 151 to 500 feet from the proposed line, and central routes with greater amount of wetlands within the right-of-way. (*Id.* at pp. 51-52.) Fifteen routes remained. (*Id.* at p. 52.)

Of the 15 routes remaining, Petitioners disregarded western routes because the central routes generally impacted fewer homes, were shorter in length, generally required fewer heavy angles, and generally followed fence rows and property lines. (*Id.*) Focusing solely on the remaining central routes, Petitioners next disregarded routes that used Segment 9 because that segment required extra heavy angles without providing commensurate benefits. (*Id.*)

Ultimately, Petitioners selected Route 45 (composed of Segments 1, 3, 4, 6, 10, 15, 18, 21, 27, 33, and 34) as the preferred route. (ITC Midwest Middleton Direct Testimony p. 13.) As explained by an ITC Midwest witness:

In determining the recommended route, Route 45 provided a reasonable alignment that minimized overall Project land use conflicts in the Study area

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between the Hickory Creek Substation and the Iowa state line. Route 45 is also one of the shorter routes analyzed in the Study. Compared to all other routes, Route 45 had a below average number of heavy angles, wetlands within the right of way . . . , and woodland within the [right of way]. Route 45 crossed 0.4 mile of steep slope area. Only four homes were within 150 feet of its alignment, and only five homes were between 151 to 500 feet from its alignment. Route 45 also had no public facilities within 300 feet of its alignment. Thus, Route 45 was determined to minimize overall conflicts with land use while providing a route compliant with IUB requirements outside of the Federal lands. Accordingly, based on this study, Route 45 was selected as the recommended route for the Project.

(*Id.* at pp. 13-14.)

As set forth above, the record conclusively establishes that Petitioners considered alternative routes and, in doing so, included criteria addressing land use and effects on landowners. See ITC Midwest Middleton Direct Exhibit 1, pp. 19-26 (discussion of the land use in the study area). However, several of the property owners question the potential effect the proposed line will have on their property and their current use of the land. At hearing, landowners Michael Deutmeyer, Matt Goebel, and Roger Bradshaw each expressed concerns over the impacts the project may have on their properties and the agricultural use of their land. (HT pp. 730-32, 753-54, 761-64.) Further, Intervenor Klopp and others expressed concerns over the impact the project would have on the land and landowners. (*Id.* at pp. 797-98.) See also Klopp's Post-Hearing Brief pp. 10-11 (argument regarding the "inconvenience or undue injury which may result to property owners as a result of the proposed project").

Issues involving inconvenience and injury raised by the landowners of the parcels over which Petitioners have sought the right of eminent domain will be discussed separately in the eminent domain section below. Similarly, Iowa Code

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§ 478.4 provides the Board with the authority to modify a route as may be “just and proper” and § 478.18(2) requires the Board to consider whether the construction of the transmission line would unnecessarily interfere with the use by the occupant of the land. Likewise, these issues will be addressed with the discussion of the eminent domain parcels.

Intervenors raised concerns regarding potential environmental impacts resulting from the proposed line. For example, Intervenor Kurt argues the proposed “project damages the very soul of a very incredibly unique, fragile and irreplaceable treasure known as the Driftless.” (Kurt Post-Hearing Brief p. 3.) However, the evidence presented suggests the project is designed to minimize “overall impacts to environmental and social resources” (ITC Midwest Middleton Direct Testimony p. 14.) With respect to the Driftless Area in particular, the evidence demonstrates the proposed line “does not extend through any public or protected lands in Clayton or Dubuque Counties associated with the Driftless Area” and the route “does not include any algalic talus slopes” in the project right-of-way. (*Id.* at p. 15.) With respect to the portion of the line that crosses the Upper Mississippi National Wildlife and Fish Refuge, Petitioners consulted with the United States Fish and Wildlife Service regarding its preference for a route crossing the Refuge. (*Id.* at pp. 5-8.)

For purposes of the § 478.3(2)(a)(6) through (8) factors, the record is devoid of substantive evidence establishing that the construction of the proposed transmission line or the transmission line itself will violate any ordinance or will unreasonably affect present or future land use. The evidence further supports a finding that Petitioners

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considered methods of supply and alternative routes, which factored in land use and injury and inconvenience to landowners. Therefore, the Board finds these criteria are met.

For the reasons set forth herein, the Board finds Petitioners established that the proposed line is reasonably related to an overall plan of transmitting electricity in the public interest under § 478.3(2)(a).

3. *Route selected*

Iowa Code § 478.18(2) provides an electric transmission line:

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

See Hanson v. Iowa State Commerce Comm'n, 227 N.W.2d 157, 159 (Iowa 1975)

(defining “[d]ivision lines of the lands” as “section lines, quarter-section lines, and quarter-quarter-section lines, which divide land into 640-acre, 160-acre, and 40-acre tracts respectively”). Consequently, route planning “must begin with routes that are near and parallel to roads, railroad rights-of-way, or division lines of lands”

199 IAC 11.1(7). Although a transmission line must follow a road, railway, or land division route when “practicable and reasonable,” if “such routes contain points of impracticability or unreasonableness, the utility may deviate from the route at those points.” *Hanson*, 227 N.W.2d at 163. *See also* 199 IAC 11.1(7) (providing “deviations based on landowner preference or minimizing interference with land use may be permissible”).

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As set forth in greater detail above, Petitioners utilized a route selection process that involved a total of 35 potential route segments. (ITC Midwest Middleton Direct Testimony pp. 4-13.) Petitioners evaluated each route segment to ensure compliance with Iowa Code § 478.18(3) and Board rule 11.1(7). (ITC Midwest Middleton Direct Testimony p. 4; ITC Midwest Middleton Direct Exhibit 1, p. 16.) As noted in the route selection study, “[t]he first step in determining potential segments involved the location of all roads, active railroad [right of ways], and division lines of land (including section, quarter, and quarter-quarter lines) within the study area and in relation to the substation endpoints.” (ITC Midwest Middleton Direct Exhibit 1, p. 2-15.) According to the report, “potential segments were identified near and parallel to all existing roads, active railroads, and divisions lines of land within the study area that were suitable for inclusion in a route between the substations.” (*Id.* at p. 32.)

The Board finds the route proposed by Petitioners follows the requirements of Iowa Code § 478.18(2) and rule 11.1(7). See September 16, 2019 Staff Report p. 27. Petitioners utilized a rational and reasonable route selection process that resulted in a selected route that comports with Iowa law. The selected route is one of the shorter routes considered with a below average number of acres of wetlands and woodland within the right-of-way. (ITC Midwest Middleton Direct Testimony pp. 13-14.) As properly characterized by Petitioners, the selected route minimized “overall conflicts with land use while providing a route compliant with” the legal requirements. (*Id.*)

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B. Eminent Domain

The remaining issue before the Board is the extent to which Petitioners 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). Petitioners require 53 easements to construct, operate, and maintain the project and successfully negotiated easements for 45 of those parcels. (ITC Midwest Wilkinson Direct Testimony p. 3.) Petitioners further request authority for a 150-foot right-of-way under Iowa Code § 478.15(1). In the interest of clarity, the Board will address Petitioners’ request for a wider right-of-way, public use, Petitioners’ negotiation efforts, and issues with specific eminent domain parcels in turn.

1. *Wider right-of-way*

Pursuant to Iowa Code § 478.15(1), a person securing a franchise as provided in chapter 478 is vested with the right of eminent domain as necessary for public use, “not exceeding one hundred feet in width” for right-of-way. However, if the franchise involves transmission lines of 200 kV or higher voltage and upon a showing of good cause, the Board may grant an applicant’s request for a wider right-of-way, not to exceed 200 feet. *Id.* Petitioners assert that in order to comply with the National Electrical Safety Code, the Iowa Electric Safety Code, and North American Electric Reliability Corporation requirements, an easement extending 75 feet on both sides of the centerline is necessary. (ITC Midwest Proctor Direct Testimony p. 10.)

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Because the transmission line proposed in this matter is a higher voltage than 200 kV, § 478.15(1) permits Petitioners to request a wider easement. The width requested by Petitioners is less than the 200-foot maximum under § 478.15(1). No intervenor or landowner specifically challenged Petitioners' request for a 150-foot-wide easement, and OCA has not objected either. Further, the Board previously granted a 150-foot easement for a 345 kV line approved as part of the MVP Portfolio. *In re: MidAmerican Energy Company and ITC Midwest LLC*, Docket Nos. E-22269 through E-22271, and E-22279, "Order Granting Petitions for Electric Franchises," pp. 18-19 (Aug. 18, 2017). For these reasons, the Board will grant Petitioners' request for a 150-foot right-of-way width.

2. *Public use*

"[T]he transmission of electricity to the public constitutes a public use contemplated by section 478.4." *South East Iowa Co-op Elec. Ass'n*, 633 N.W.2d at 820 (citation omitted). *See also Fischer*, 368 N.W.2d at 98 (holding that a transmission line that is designed to meet existing needs satisfies the public use test). Similarly, 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*, 2002 WL 31882863, at *5.

The Board finds a public use exists that supports the granting of eminent domain. As already discussed in greater detail above, the Board finds the proposed transmission line is necessary to serve a public use and represents a reasonable relationship to an

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overall plan of transmitting electricity in the public interest. *See supra* Issue IV.A.2.a. Further, the proposed project will relieve thermal overloads on 56 different system elements and mitigate stability concerns. (HT pp. 222-23.) The proposed line will strengthen the overall transmission system and increase its ability to serve load under contingency conditions. (MISO Ellis Direct Testimony pp. 26-27.) The proposed line will support the interconnection of new Iowa generation. (CEI Craven Direct Testimony pp. 3-4.) In sum, the record establishes that the proposed transmission line is necessary to increase the reliability of the system and to accommodate anticipated load growth, which under Iowa adjudicatory law are sufficient to support a public use finding under the eminent domain inquiry. *See Bradley*, 2002 WL 31882863, at *5.

The Board appreciates the concerns raised by landowners impacted by the route; however, 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 proposed route.” *In re: Cedar Rapids Utilities*, Docket No. E-21647, “Proposed Decision and Order Granting Franchise,” (July 6, 2005).

3. *Negotiations*

Prior to requesting the right of eminent domain, an acquiring utility must make a good faith effort to negotiate the purchase of an easement. Iowa Code § 6B.2B. While the eminent domain statutes do not define the term “good faith,” the Board has previously determined the Uniform Commercial Code’s (UCC) definition of “good faith” provides a useful framework for assessing a petitioner’s conduct. *In re: MidAmerican Energy Company and ITC Midwest LLC*, Docket Nos. E-22269 through E-22271, and

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E-22279, "Order Granting Petitions for Electric Franchises," p. 14 (Aug. 18, 2017).

Under the UCC, "good faith" is defined to mean "honesty in fact and the observance of reasonable commercial standards of fair dealing." Iowa Code § 554.1201(2)(t).

Petitioners commenced negotiation, by and through their land agent (JCP), with landowners after the March 29, 2018 informational meetings. (ITC Midwest Wilkinson Direct Testimony p. 5.) Petitioners stated they applied a uniform negotiation approach to ensure landowners were treated similarly. (*Id.* at p. 4.) All initial offers from Petitioners to the landowners utilized the same terms and conditions and contained the same payment calculation based on the 2017 Iowa State University Extension land value survey. (*Id.*) While the 2018 land value survey showed the land value for Dubuque and Clayton counties decreased from 2017 by approximately 3 percent, Petitioners used the higher value contained in the 2017 survey. (*Id.* at pp. 4-5.) Petitioners assert they negotiated with landowners fairly, transparently, and consistently. (*Id.* at p. 5.) Preferring to acquire voluntary easements, Petitioners state that they have remained in contact with the eminent domain parcel landowners. (*Id.* at p. 6.)

While issues pertaining to the specific eminent domain landowners will be discussed in greater detail below, the Board finds Petitioners exercised care and followed reasonable business practices in attempting to acquire voluntary easements. While the record contains evidence showing landowner frustration about the negotiation process and concern regarding the reasons other landowners may have entered into voluntary easements (HT pp. 731-32), there is no evidence in the record suggesting

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Petitioners or their land agent acted dishonestly. Accordingly, the Board finds Petitioners acted in good faith in attempting to acquire easements for the eminent domain properties.

4. *Specific eminent domain parcels*

Petitioners request the right of eminent domain over several parcels, each of which will be discussed in turn.

a. Exhibit E-2 (Dubuque County).

Exhibit E-2 (Dubuque) involves four parcels of land owned by Roger G. Bradshaw. (Dubuque Petition, Ex. E-2.) Petitioners state their land agent commenced easement discussions with Mr. Bradshaw and his daughter, Lynn Berg, on or about July 27, 2018. (ITC Midwest Wilkinson Direct Testimony p. 8.) Petitioners state they remained in contact with Mr. Bradshaw until he stated he did not have any more questions regarding the project or reasons for meeting. (*Id.* at p. 9.) Petitioners assert Mr. Bradshaw's primary concerns focused on the impacts the proposed line would have on the wooded area (and the loss of value of any removed trees) as well as potential implications the proposed line would have to his CP-22 Riparian Buffer government contract.¹¹ (*Id.* at p. 8.)

11. Mr. Bradshaw refused to provide Petitioners authorization to speak with the National Resources Conservation Service about his CP-22 agreement. (HT pp. 768-69.) According to Mr. Bradshaw, he refused to provide authorization due to his fear that Petitioners would then place the transmission line in the area covered under the CP-22 agreement. (*Id.*) Mr. Bradshaw did acknowledge, however, that if he had provided authorization, Petitioners would have been provided with information to know whether adjustments should be made to avoid areas covered under the agreement. (*Id.* at p. 769.) Regardless, the record does not contain any evidence showing the impact, if any, of the proposed line on Mr. Bradshaw's CP-22 agreement. See *id.* at p. 779 (ITC Witness Proctor stating that because Mr. Bradshaw refused authorization, Petitioners have no details on the CP-22 contract).

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With respect to trees, on April 25, 2018, Mr. Bradshaw filed an objection to the project, raising several concerns relating to the hardwood trees in the easement area. On December 4, 2019, Ms. Berg filed an objection and a document entitled “Exhibit 1,” both of which pertained to hardwood trees and their value. At hearing, Petitioners explained that in the easement right-of-way, they would clear all trees that are a noncompatible species with the wire zone. (HT pp. 779-80.) A “noncompatible species” means a species that could grow into the wire zone. (*Id.* at p. 780.)

In relevant part, the easement terms proposed by Petitioners provided that the Grantee (*i.e.*, Petitioners) is responsible for all costs incurred for the cutting and removing of trees in the easement area. (Dubuque Petition, Ex. E-2.) The proposed language further provides that Petitioners are responsible “for all damage done to the lands, drainage/field tiles, fences, livestock, or crops” of the landowner. (*Id.*) However, with respect to tree removal, the proposed easement terms provide that “Grantee shall not be required to pay Grantor [*i.e.*, landowner] for the value of non-permitted Structures, trees or vegetation that are removed, trimmed or cut by Grantee.”¹² (*Id.*)

While § 478.17 provides that a transmission line operator and property owner may contract between themselves for damages or a taking of property without compensation, it is axiomatic that in eminent domain proceedings, both the United States and Iowa Constitutions prohibit the governmental taking of or causing damage to

12. By way of comparison, the model “easement for power lines” form in the Iowa Practice Series provides, in part, “[i]f the grantee shall cut or remove trees under the rights hereby granted, and such trees are valuable for either timber or wood, they shall continue to be the property of the grantor, but all other trees and logs, all tops, limbs and brush shall be burned or removed by the grantee.” 1 Ia. Practice Series, Methods of Practice § 14:26 (2019).

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private property without “just compensation.” Further, the Iowa Code sections that permit eminent domain for the construction, operation, and maintenance of transmission lines also provide a mechanism for setting the value of damages. Iowa Code § 478.6 and 478.15(1). In creating this mechanism, the Iowa Legislature did not exclude damages caused to “non-permitted Structures, trees or vegetation.” Accordingly, the Board finds Petitioners’ requested provision to be contrary to Iowa law and directs Petitioners to modify the “Costs and Damages” section as follows:

Costs and Damages

Grantee shall be responsible for all costs incurred by Grantee for removal of non-permitted Structure(s) within the Easement Area, and costs incurred by Grantee for the cutting and trimming of trees and other vegetation within the Easement Area. In accordance with Iowa Code § 478.17 and Grantee’s damage policy, Grantee agrees to pay Grantor for all damages done to the lands, drainage/field tiles, fences, livestock, or crops of the Grantor, as well as for damages done by the Grantee while constructing, reconstructing, patrolling, repairing, maintaining, operating, replacing or removing the 345 kV Line. Grantee shall not be required to pay Grantor for the value of non-permitted Structures unless Grantor provided written permission for the placement of such structures, ~~trees or vegetation that are removed, trimmed or cut by Grantee.~~ However, Grantee shall compensate Grantor for other damages as outlined above caused to the Property by virtue of Grantee’s exercise of its rights to remove such non-permitted Structures and to cut or trim such nonpermitted trees or vegetation.¹³

At hearing, Mr. Bradshaw also expressed concern with his livestock fencing (*i.e.*, whether damage to his fences would be repaired, whether his livestock would be secure during construction). (HT p. 764.) In response, ITC Midwest Witness Proctor explained that Petitioners work with landowners who have fencing concerns. (*Id.* at p. 788.) Mr.

13. Strikethrough indicates required text deletion and underline indicates text addition. Petitioners are directed to make these changes to all easements applicable to eminent domain parcels.

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Proctor explained that potential solutions include pasture rotation (*i.e.*, asking the landowner to put the animals in a different pasture) and if that is not possible, Petitioners utilize a fencing contractor who can install temporary fencing during the construction. (*Id.* at p. 789.) The fencing contractor will also fix or replace the permanent fencing at the conclusion of the fencing. (*Id.*)

Mr. Bradshaw stated that his fencing concerns would be alleviated if Petitioners repaired any fence damage they caused and assisted in ensuring the livestock are secure during the construction. (*Id.* at pp. 764-65.) As noted above, Petitioners agreed to do so. Therefore, as a condition for the granting of eminent domain over the parcels identified in Exhibit E-2 (Dubuque), Petitioners shall be required to repair or replace any fence damage they cause and work with Mr. Bradshaw to ensure his livestock are secure during construction.

In sum, Petitioners demonstrated they negotiated with Mr. Bradshaw in good faith and that they were unable to obtain a voluntary easement. Petitioners also demonstrated that the parcels identified in Exhibit E-2 (Dubuque) are necessary for the public use of constructing, maintaining, and operating the proposed transmission line. Although Mr. Bradshaw prefers the proposed line be constructed off his property to the east, he did not identify an alternative location on his property that he would prefer the line be routed. (*Id.* at pp. 773, 782.) The Board directs Petitioners to modify their proposed easement terms as set forth above and as a condition for the granting of eminent domain over the Exhibit E-2 (Dubuque) parcels, Petitioners shall be required to repair or replace any fence damage they cause and work with Mr. Bradshaw to ensure

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his livestock are secure during construction. Petitioners' request for eminent domain over the parcels identified as Parcel Tax ID Numbers 03-13-100-001, 03-13-100-003, 03-13-300-001, and 03-13-300-003 is granted.

b. Exhibits E-3 (Dubuque County) and E-4 (Dubuque County)

Exhibits E-3 (Dubuque) and E-4 involve property owned by Richard and Helen Deutmeyer and Michael and Julie Deutmeyer. (Dubuque Petition, Exs. E-3 and E-4.) Michael Deutmeyer intervened in this case, fully participated in the hearing, was well prepared, and effectively presented and advocated for his position.

On April 23, 2018, Michael Deutmeyer filed an objection, raising several issues with the proposed project, including stray voltage and damages. On August 20, 2018, Richard and Helen Deutmeyer filed separate objections, expressing concerns over stray voltage issues. On August 30, 2018, Julie Deutmeyer filed an objection, raising concerns over possible health and safety risks and potential diminution of property value. On March 18, 2019, Michael Deutmeyer filed a second objection, raising concerns over the negotiation process.

With respect to the negotiation process, Petitioners state that on June 29, 2018, representatives from ITC Midwest and subject matter experts arrived at Michael Deutmeyer's residence for a pre-arranged meeting to discuss the nature of his objections.¹⁴ (ITC Midwest Wilkinson Direct Testimony p. 8.) Michael Deutmeyer, however, recalled the meeting as follows:

14. In his testimony, ITC Midwest witness Wilkinson referred to Michael Deutmeyer's objection as being filed on March 29, 2018; however, the Board's electronic filing system does not show any objection as being

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I also recall a meeting taking place at my farm in June of 2018. At that time Angela Jordon contacted me requesting a meeting to discuss my initial objection. We set up a time that worked for both of us. When that time came I was surprised to walk out to see 5 people standing in my yard. I was told that they were all there to answer all my questions. It was intimidating[.] It was 5 against one[;] I didn't expect this kind of confrontation. I believe they were there to answer my questions, but to do so in the most intimidating way possible to make me believe I had no other choice. . . . I firmly believe that other landowners do not know they have a choice. I firmly believe that by [ITC Midwest's land agent] using the words "final offer" and "condemnation" they pressure others into signing their easement.

(Michael Deutmeyer March 18, 2019 Objection.) Petitioners assert that during the meeting, they provided information in response to Michael Deutmeyer's concerns regarding potential damages to crops, fencing, and a creek area. (ITC Midwest Wilkinson Direct Testimony p. 8.) With respect to the stray voltage concerns, Petitioners offered to have an expert knowledgeable in such matters discuss those issues with Michael Deutmeyer; however, according to Petitioners, Michael Deutmeyer was not interested. (*Id.*)

Substantively, evidence showing Petitioners' attempts to provide Michael Deutmeyer with information pertinent to his concerns suggests negotiation in a reasonable commercial manner. The Board does, however, appreciate the optics of a portion of those communications, including the June 2018 meeting on Michael Deutmeyer's property. Michael Deutmeyer's reaction to the number of individuals appearing on his property is understandable, and the Board believes a reasonable entity in Petitioners' position could have foreseen such a reaction. Perhaps if Michael

filed on March 29, 2018. (ITC Midwest Wilkinson Direct Testimony pp. 7-8.) The Board assumes Mr. Wilkinson's testimony refers to the objection Mr. Deutmeyer filed on April 23, 2018.

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Deutmeyer had been provided with more information concerning the meeting, such as number of attendees, his reaction would have been different. With that said, there is no evidence in the record demonstrating Petitioners engaged in dishonesty or other commercially unfair practices through the negotiation process, including in its meetings and communications with Michael Deutmeyer. Consequently, the Board finds Petitioners made a good faith effort to negotiate with Michael Deutmeyer for the purchase of an easement.

Several members of the Deutmeyer family also expressed concern regarding “stray voltage”¹⁵ and the impact stray voltage may have on their dairy farm operation.

(HT pp. 730-31; Helen Deutmeyer August 20, 2018 Objection.) According to ITC

Midwest witness J. Michael Silva:

Commonly accepted sources of stray voltage on a farm include a variety of internal electrical wiring problems, as well as farm and distribution supply line related problems: poor electrical connections, corrosion of switches, frayed insulation, faulty equipment, unbalanced loads on farm wiring, improper wiring such as neutral to ground wire connections, and incorrectly sized neutral conductors. The most common cause is neutral to earth voltages on the farm.

(ITC Midwest Silva Direct Testimony p. 16.) However, because transmission lines do not have neutral conductors and do not directly connect to farms, stray voltage is not a typical feature of a transmission line. (*Id.*) Further, the Board has previously recognized that stray voltage is not typically associated with transmission lines. *See In re: ITC Midwest LLC*, Docket No. E-22043, “Proposed Decision and Order Granting

15. The term “stray voltage” is used to generally describe “a conductive voltage between two objects where no voltage should exist. (ITC Midwest Silva Direct Testimony p. 16.)

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Franchise,” p. 21 (March 20, 2013) (stating because stray voltage “is not a feature of the operation of a transmission line, no stray voltage and no problems related to stray voltage would be expected from the proposed transmission line”); *In re: ITC Midwest LLC*, Docket No. E-21948, “Order Denying Petition for Limited Intervention and Granting Petitions for Electric Franchises,” p. 48 (June 1, 2011) (finding the evidence demonstrated “that transmission lines do not have stray voltage issues, since transmission lines do not have neutral grounds”). However, at Michael Deutmeyer’s request, Petitioners will “hire an independent consultant to come out [to Michael Deutmeyer’s property] and take readings on the property before and after the project to” determine whether there are any impacts the parties must evaluate. (HT p. 435.)

Finally, in his April 23, 2018 objection, Michael Deutmeyer raised concerns relating to damages, including for loss of timber and fence repair and replacement. As set forth in the Board’s discussion of Mr. Bradshaw’s parcels, Petitioners shall modify the easement terms relating to tree removal and shall be required to repair or replace any fence damage they caused and work with Michael Deutmeyer to ensure his livestock are secure during construction.

In summary, Petitioners demonstrated they negotiated with Michael Deutmeyer in good faith and that they were unable to obtain a voluntary easement. Petitioners also demonstrated that the parcels identified in Exhibits E-3 (Dubuque) and E-4 are necessary for the public use of constructing, maintaining, and operating the proposed transmission line. While Michael Deutmeyer stated he wished Petitioners had informed him earlier in the process that he could propose alterations to the route, he did not

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identify an alternative location on his property that he would prefer the line be routed. (*Id.* at p. 732.) The Board directs Petitioners to modify the proposed easement terms as set forth above. Petitioners shall be required to repair or replace any fence damage they caused and work with Michael Deutmeyer to ensure his livestock are secure during construction. Further, at Michael Deutmeyer's request, Petitioners shall retain an independent vendor to perform stray voltage readings on the property before and after construction. In light of the above, Petitioners' request for eminent domain over the parcels identified in Exhibit E-3 (Dubuque) as Parcel Tax ID Numbers 03-14-200-006 and 03-14-400-002 and the parcels identified in Exhibit E-4 as 03-14-200-007 and 03-14-200-004 is granted.

c. Exhibits E-5 (Dubuque County) and E-2 (Clayton County)

Exhibit E-5 and Exhibit E-2 (Clayton) involves property owned by Joseph A. Goebel, as Trustee of the Joseph A. Goebel Revocable Trust, and Mary F. Goebel, as Trustee of the Mary F. Goebel Revocable Trust. (Dubuque Petition, Ex. E-5; Clayton Petition, Ex. E-2.) The property is currently being used for agricultural purposes. (September 16, 2019 Staff Report, pp. 12-14.)

On April 4, 2018, Joseph Goebel filed an objection, proposing Petitioners use an alternative route. (Joseph Goebel April 4, 2018 Objection.) On May 22, 2019, Joseph Goebel filed a second objection, expressing concerns regarding Petitioners' negotiation tactics, compensation (*e.g.*, yearly crop damages, value of easement, etc.), and the costs of removal should the transmission line be discontinued. (Joseph Goebel May 22, 2019 Objection.)

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Petitioners state their land agent has been in consistent contact with Joseph Goebel and through those contacts, he “expressed several specific concerns related to crop damage settlements, easement language, compensation, and the process of removal in the event of abandonment.” (ITC Midwest Wilkinson Direct Testimony p. 7.) Petitioners assert that through the easement negotiation process, Joseph Goebel’s concerns have been addressed with the exception of the amount of compensation for the easement. (*Id.*) According to Petitioners, Joseph Goebel “believes that he should receive a higher price per acre than the amount being offered by ITC Midwest.” (*Id.*)

Joseph Goebel did not appear at hearing and did not submit testimony or evidence. Consequently, the record contains no evidence to substantiate Joseph Goebel’s claim in his May 22, 2019 objection that Petitioners were not honest during the easement negotiations. Further, the record contains no evidence suggesting that Joseph Goebel preferred an alternative route over his property or preferred alternative easement language. With respect to Joseph Goebel’s contentions relating to the value of the easement, “the Board does not have jurisdiction to set the amount of compensation to be paid for the easement.” *In re: MidAmerican Energy Company*, Docket No. E-22097, “Proposed Decision and Order Granting Franchises,” p. 71 (Feb. 25, 2014) (citing Iowa Code chapters 6B & 478; *Race v. Iowa Electric Light & Power*, 134 N.W.2d 335, 338 (Iowa 1965)). “The proper place for the landowners to raise their concerns regarding devaluation of their property is before the local compensation

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commission, which will set the amount to be paid for the easement when eminent domain is used.” *Id.*

Based on the record, Petitioners demonstrated they negotiated with Joseph Goebel in good faith and were unable to obtain a voluntary easement. Petitioners also demonstrated the parcels identified in Exhibit E-5 and Exhibit E-2 (Clayton) are necessary for the public use of constructing, maintaining, and operating the proposed transmission line. Petitioners’ request for eminent domain over the parcels identified in Exhibit E-5 as Parcel Tax ID Numbers 03-01-300-001, 03-01-300-003, and 03-12-100-003 and in Exhibit E-2 (Clayton) as 21-35-276-001 is granted.

d. Exhibits E-6 (Dubuque County)

Exhibit E-6 (Dubuque) involves property owned by Matt and Arica Goebel. (Dubuque Petition, Ex. E-6.) Matt Goebel appeared at hearing and provided testimony. Additionally, on April 6, 2018, Matt Goebel filed an objection in which he argued for Petitioners to use an alternative route that did not impact his property. (Matt Goebel April 6, 2018 Objection.) On April 19, 2019, Matt Goebel filed a second objection, complaining of Petitioners’ request for eminent domain. (Matt Goebel April 19, 2019 Objection.) Finally, on November 27, 2019, Matt Goebel and other members of his family filed objections in which they expressed their concerns regarding stray voltage. (Matt Goebel November 27, 2019 Objection.) With his objection, Matt Goebel included a letter purportedly signed by Mark A. Nielsen, President of Wapsie Valley Creamery, Inc. (Matt Goebel November 27, 2019 Objection Attachment.) The letter characterizes

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the quality of the milk produced by the Matt Goebel dairy farm as “outstanding” and reiterates the stray voltage concerns. (*Id.*)

Following the informational meetings, Petitioners and Matt Goebel successfully negotiated the terms of a voluntary easement. (HT pp. 749-50; ITC Midwest Wilkinson Direct Testimony pp. 6-7.) Unfortunately, however, Petitioners were unable to obtain all other necessary easements for the route that used Matt Goebel’s voluntary easement. (ITC Midwest Wilkinson Direct Testimony pp. 6-7.) In evaluating the different potential routes, Petitioners determined that the route using Matt Goebel’s voluntary easement negatively impacted the environment to a greater extent as compared to the proposed route ultimately selected. (HT p. 793.) Specifically, Petitioners note the route using Matt Goebel’s voluntary easement “is heavily forested [with] a lot more forest areas, steeper slopes, areas of erosion, and areas of waterways” (*Id.*) Therefore, Petitioners concluded that the currently proposed route, which seeks the use of eminent domain over 0.09 acres of Matt Goebel’s property is the “superior route.” (*Id.*) While the potential route using the voluntary easement would have been preferable to Matt Goebel, the Board finds Petitioners adequately explained the reasons and rationales for selecting a different route.

With respect to Matt Goebel’s stray voltage concerns and as discussed in greater detail above, because transmission lines do not have neutral conductors and do not directly connect to farms, stray voltage is not a typical feature of a transmission line. (ITC Midwest Silva Direct Testimony p. 16.) However, at Matt Goebel’s request, Petitioners will “hire an independent consultant to come out [to Matt Goebel’s property]

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and take readings on the property before and after the project to” determine whether there are any impacts the parties must evaluate. (HT p. 435.)

Based on the evidence submitted, Petitioners demonstrated they negotiated with Matt Goebel in good faith and that they were unable to obtain a voluntary easement for the route ultimately selected. Petitioners also demonstrated that the parcel identified in Exhibit E-6 is necessary for the public use of constructing, maintaining, and operating the proposed transmission line. At Matt Goebel’s request, Petitioners shall retain an independent vendor to perform stray voltage readings on the property before and after construction. In light of the above, Petitioners’ request for eminent domain over the parcel identified in Exhibit E-6 as Parcel Tax ID Number 03-02-201-002 is granted.

e. Exhibit E-3 (Clayton County)

Exhibit E-3 (Clayton) involves property with unknown owners. (Clayton Petition, Ex. E-3; HT p. 441.) Petitioners state that a title search of the property revealed no known ownership. (HT p. 441.) On September 26, 2019, Petitioners filed with the Board a “Motion for Permission to Provide Notice of Hearing for the Parcel Represented by Clayton County Exhibit E-3 by Publication.” In the filing, Petitioners contend that Marvin and Patricia Errthum have been in possession of and maintained the property since 1966. On October 25, 2019, the Board granted Petitioners’ request to publish notice of the eminent domain proceeding by publication.

In discussing the status of the Exhibit E-3 (Clayton) property at hearing, ITC Midwest’s counsel asserted:

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We have an agreement in principle with the owners who have been using that land [*i.e.*, the Errthums]--two agreements in principle, actually.

One is that they will seek to quiet title in their name in that parcel, which is consistent with how they've been using it all along. And second, because we do have a voluntary easement agreement with them, that they would grant us a voluntary easement over that last 20 feet on the same terms. They were willing to do that when they thought they owned it. Our due diligence and the title search turned up there was a missing piece, there was a gap.

That quiet title action has not been filed yet. They're using their own attorneys for that. My understanding is that that will be filed shortly. It's obviously highly unlikely that that would be completed before this would.

The condemnation right will ensure continuity there regardless of who the underlying owner is, and frankly our easement, and for the most part the easement terms will be the same regardless of the underlying owners. So that's why we've asked for that.

If by chance the quiet title is completed prior to the time we actually would get to the condemnation on that, it would moot it out by taking a voluntary agreement. At this point, because of the timing mismatch and the need for continuity, we think this is an important part of the process. We are still continuing to work with the landowners to pursue an alternative.

(HT pp. 601-02.) The record contains no evidence suggesting the quiet title action has been concluded.

In its October 25, 2019 order, the Board approved Petitioners' request to provide notice to the unknown landowners using the same method of publication utilized in a quiet title action. No person claiming title to the property identified in Exhibit E-3 (Clayton) appeared at hearing or submitted testimony or other evidence. The Errthums have been using the property, anticipate acquiring title to the property through a quiet title action, and once title has been acquired, will grant a voluntary easement to Petitioners. (ITC Midwest Wilkinson Direct Testimony p. 4.)

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In sum, Petitioners demonstrated the parcel identified in Exhibit E-3 (Clayton) is necessary for the public use of constructing, maintaining, and operating the proposed transmission line. Petitioners' request for eminent domain over the parcel identified as Parcel Tax ID Number 21-35-226-002 is granted.

VI. FINDINGS OF FACT

1. The Dubuque County and Clayton County petitions and petition exhibits filed in this docket on May 11, 2018, by Petitioners, as subsequently revised, substantially comply with Iowa Code chapter 478 and chapters 11 and 25 of the Board's administrative rules.

2. Notice was published as required by 199 IAC 11.5 and Iowa Code § 478.5. Notice was also properly sent to the owners of record and parties in possession of the properties for which eminent domain is sought pursuant to Iowa Code § 478.6 and 199 IAC 11.5(3).

3. The 345 kV and 161 kV electric transmission lines as described in the petitions filed by Petitioners on May 11, 2018, as subsequently revised, are necessary to serve a public use. The transmission lines provide significant benefit to the public by increasing electric system reliability and flexibility and anticipated generation needs.

4. The proposed transmission lines represent a reasonable relationship to an overall plan of transmitting electricity in the public interest. Petitioners provided the substantiation required by Iowa Code § 478.3(2)(a) to support this finding.

5. The transmission lines meet or exceed the minimum engineering requirements established by Board rules and Iowa Code chapter 478.

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6. The proposed transmission lines will be constructed in a manner that does not unreasonably interfere with the use of any lands by occupants.

7. The granting of the right of eminent domain over the properties described in Dubuque County Petition Exhibits E-2, E-3, E-4, E-5, and E-6 and Clayton County Petition Exhibits E-2 and E-3, as revised, is necessary for public use subject to the easement modifications stated in the body of this order.

VII. CONCLUSIONS OF LAW

1. The Board has jurisdiction over the parties and subject matter of the petitions pursuant to Iowa Code chapter 478 and chapter 11 of the Board's administrative rules.

2. As required by Iowa Code § 478.4, the Board concludes that the proposed line is necessary to serve a public use and represents a reasonable relationship to an overall plan for transmitting electricity in the public interest.

3. Pursuant to Iowa Code §§ 478.6 and 478.15, the Board concludes that vesting Petitioners with the right of eminent domain is necessary for public use subject to the easement modifications discussed above.

4. Pursuant to Iowa Code § 478.21(1), if a transmission line for which a franchise has been granted is not constructed in whole or in part within two years of the final order granting the franchise, the Board shall revoke the franchise unless the party holding the franchise petitions the Board for an extension of time.

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VIII. ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The petition for a franchise to construct, operate, and maintain 345 kV and 161 kV electric transmission lines in Clayton County, Iowa, filed by ITC Midwest LLC and Dairyland Power Cooperative on May 11, 2018, as revised, is granted, and Franchise No. 20005 will be issued to ITC Midwest LLC and Dairyland Power Cooperative.

2. The petition for a franchise to construct, operate, and maintain a 345 kV electric transmission line in Dubuque County, Iowa, filed by ITC Midwest LLC and Dairyland Power Cooperative on May 11, 2018, as revised, is granted, and Franchise No. 20004 will be issued to ITC Midwest LLC and Dairyland Power Cooperative.

3. ITC Midwest LLC and Dairyland Power Cooperative are vested with the right of eminent domain over the property titled to Roger G. Bradshaw, which is described in Exhibit E-2 (Dubuque County) to the petition, and subject to the conditions discussed in the body of this order, including the easement language modification.

4. ITC Midwest LLC and Dairyland Power Cooperative are vested with the right of eminent domain over the property titled to Richard and Helen Deutmeyer and Michael and Julie Deutmeyer, which is described in Exhibits E-3 (Dubuque County) and E-4 (Dubuque County) to the petition, and subject to the conditions discussed in the body of this order, including the easement language modification.

5. ITC Midwest LLC and Dairyland Power Cooperative are vested with the right of eminent domain over the property titled to Joseph A. Goebel, as Trustee of the

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Joseph A. Goebel Revocable Trust, and Mary F. Goebel, as Trustee of the Mary F. Goebel Revocable Trust, which is described in Exhibits E-5 (Dubuque County) and E-2 (Clayton County) to the petitions, and subject to the conditions discussed in the body of this order, including the easement language modification.

6. ITC Midwest LLC and Dairyland Power Cooperative are vested with the right of eminent domain over the property titled to Matt and Arica Goebel, which is described in Exhibits E-6 (Dubuque County) to the petition, and subject to the conditions discussed in the body of this order, including the easement language modification.

7. ITC Midwest LLC and Dairyland Power Cooperative are vested with the right of eminent domain over the property with an unknown owner(s), which is described in Exhibits E-3 (Clayton County) to the petition, and subject to the conditions discussed in the body of this order, including the easement language modification.

8. 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 necessary.

UTILITIES BOARD

Geri Huser Date: 2020.05.26
19:38:31 -05'00'

Nick Wagner Date: 2020.05.26
11:16:36 -05'00'

ATTEST:

Anna Hyatt Date: 2020.05.26
21:07:27 -05'00'

Richard W. Lozier, Date: 2020.05.26
Jr. 10:49:29 -05'00'

Dated at Des Moines, Iowa, this 26th day of May, 2020.