

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: ITC MIDWEST LLC and DAIRYLAND POWER COOPERATIVE	DOCKET NO. E-22386
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ORDER DENYING MOTIONS

BACKGROUND

On May 11, 2018, ITC Midwest LLC and Dairyland Power Cooperative (collectively, Petitioners) filed with the Utilities Board (Board) petitions for electric transmission line franchises (Petitions). As subsequently amended, Petitioners requested franchises to construct, operate, and maintain approximately 6.51 miles of 345 kV nominal voltage (362,000 volt maximum operating voltage) electric transmission line and 2.44 miles of 161 kV nominal voltage (169,000 volt maximum operating voltage) electric transmission line in Clayton County and 7.74 miles of 345 kV electric transmission line in Dubuque County, Iowa. Hearing in this matter commenced on December 10, 2019, in Dubuque County, and concluded on December 12, 2019.

On May 27, 2020, the Board issued an Order Granting Petition for Electric Franchises and Right of Eminent Domain (Final Order). The Board found that the electric transmission lines as described in the revised petitions are necessary to serve a public use and represent a reasonable relationship to an overall plan of transmitting

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electricity in the public interest. The Board further concluded that vesting Petitioners with the right of eminent domain is necessary for public use, pursuant to Iowa Code §§ 476.6 and 478.15. On June 3, 2020, the Board issued Franchise Nos. 20004 and 20005 authorizing the construction of the proposed transmission lines.

On June 17, 2020, Chris Klopp filed a Petition for Rehearing of the Board's May 27, 2020 order. On June 30, 2020, Petitioners filed a joint Resistance to Petition for Rehearing. On July 1, 2020, the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, filed a Response to Petition for Rehearing. On July 15, 2020, the Board issued an order denying the petition for rehearing.

On July 8, 2021, the Board issued an Order Requiring Construction Update. On August 9, 2021, ITC Midwest filed a construction update.

In February of 2022 a series of motions requesting stays of construction (Motions) were filed by multiple intervenors. On February 11, 2022, Michael Deutmeyer filed two motions. One of Mr. Deutmeyer's motions posed questions to the Board and OCA while also asking for an immediate pause in construction activities. Mr. Deutmeyer's other motion requests information and documentation from Petitioners. Also on February 11, 2022, Linda Grice and Chris Klopp filed separate motions requesting a stay of construction. On February 16, 2022, Dena Kurt filed a motion requesting a stay of construction.

On February 22, 2022, OCA filed a response to the Motions. On February 25, 2022, Petitioners filed a response to the Motions. On March 4, 2022, Petitioners filed a response to OCA's February 22 filing.

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BOARD DISCUSSION

The Board's Final Order authorized the issuance of the franchises in this docket. The franchises authorize the Petitioners to commence construction of the portion of the project to be located in Iowa. The Board's Final Order is a final decision in a contested case, under Iowa Code § 17A.15.

Under Iowa Code §§ 17A.19, 476.12, and 478.32, any person aggrieved by the Board's granting of a franchise may seek rehearing and may seek judicial review of the Board's final decision granting a franchise. Iowa Code § 476.12 allows a party to apply for rehearing "within twenty days after the issuance of the final decision." Iowa Code §§ 478.32 and 17A.19 require that an aggrieved party file a petition for judicial review of an agency's action within 30 days of the issuance of the final decision or within 30 days of the denial of a petition for rehearing, if one is filed. In this case, the Board issued a denial of rehearing on July 15, 2020. A petition for judicial review of the Board's Final Order was not filed on or before August 14, 2020, 30 days after the denial of the petition for rehearing.

In this case, the Motions ask for a stay of construction. The Board's rules at 199—7.28 set the process for seeking a stay of a decision made by the Board. Subrule 199—7.28(1) allows "[a]ny party to a contested case proceeding may petition the [B]oard for a stay or other temporary remedy pending judicial review of the proceeding." Subrule 199—7.28(1) requires the Board consider the following factors found in Iowa Code § 17A.19(5)(c):

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- 1) The extent to which the applicant is likely to prevail when the court finally disposes of the matter.
- 2) The extent to which the applicant will suffer irreparable injury if relief is not granted.
- 3) The extent to which the grant of relief to the applicant will substantially harm other parties to the proceedings.
- 4) The extent to which the public interest relied on by the agency is sufficient to justify the agency's action in the circumstances.

The Motions do not clearly address the above factors, there is not a court proceeding seeking judicial review of the Board's Final Order, and the time to seek such review has passed.

The Board is aware of ongoing litigation in the federal courts in Wisconsin that has challenged the regulatory processes necessary to start construction of the project across the Mississippi River. This ongoing litigation in federal court is not challenging the Board's Final Order. Because the Motions do not state legal grounds on which the Board may stay construction and the federal litigation does not challenge the Board's order, the Board will deny the Motions.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. Michael Deutmeyer's February 11, 2022 Motion to Stop Construction is denied.
2. Linda Grice's February 11, 2022 Motion to Halt Construction is denied.
3. Chis Klopp's February 11, 2022 Motion to Stay Construction is denied.

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4. Dena Kurt's February 16, 2022 Motion to Pause Construction and Request for Review is denied.

UTILITIES BOARD

Geri Huser Date: 2022.04.19
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Richard Lozier Date: 2022.04.19
09:38:59 -05'00'

ATTEST:

Louis Vander Streek Louis Vander Streek
2022.04.19 13:04:35
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Josh Byrnes Date: 2022.04.19
09:29:44 -05'00'

Dated at Des Moines, Iowa, this 19th day of April, 2022.