

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: SOO GREEN HVDC LINK PROJECTCO, LLC	DOCKET NO. E-22436
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**ORDER ESTABLISHING INITIAL PROCEDURAL SCHEDULE,
CLARIFYING SCOPE OF PETITION, AND GRANTING PETITION TO INTERVENE**

On September 24, 2020, SOO Green HVDC Link ProjectCo, LLC (SOO Green), filed a petition with the Utilities Board (Board) in Docket No. E-22436 for an electric transmission line franchise to build approximately 173.76 miles of +/- 525 kilovolt underground high voltage direct current electric transmission line through Allamakee (2.13 miles), Cerro Gordo (7.6 miles), Chickasaw (22.19 miles), Clayton (44.26 miles), Dubuque (25.81 miles), Floyd (19.71 miles), Jackson (29.02 miles), and Winneshiek (23.04 miles) counties, Iowa.

The Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, filed its appearance in the docket on September 11, 2020. The Iowa Farm Bureau Federation (Farm Bureau) filed an appearance on December 17, 2020, and a petition to intervene on September 14, 2022. Multiple parties, including the Iowa Environmental Council, Mr. Mark R. Lawson, the Environmental Law & Policy Center (ELPC), and the Iowa Association of Business and Industry have filed appearances in the docket, but have not yet petitioned to intervene.

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The Board held a scheduling conference on September 16, 2022, at which representatives of SOO Green, OCA, ELPC, and Farm Bureau participated. At the scheduling conference, the parties agreed to a bifurcated procedural schedule that includes an oral argument on December 15, 2022, to allow expeditious determination of certain key legal issues in the docket. For the oral argument, initial briefs will be due November 10, 2022, and reply briefs will be due November 22, 2022.

At the scheduling conference, Farm Bureau raised concerns regarding sufficient opportunity for parties to seek to intervene. To ensure full participation of all interested parties, the Board will grant an extended time period to intervene, with an intervention deadline of October 27, 2022. The Board also continued the scheduling conference for the remaining procedural dates to take place after the intervention deadline. The scheduling conference will resume immediately following the oral argument on December 15, 2022.

The December 15, 2022 oral argument will address: (1) whether the Board has statutory authority to review and base a franchise determination upon the sufficiency of underlying land rights upon which a transmission line is proposed to be located if eminent domain is not invoked; and (2) if yes, whether SOO Green possesses the necessary land rights for the construction of its proposed electric transmission line. Briefs should be focused on these issues. The Board will allocate time for oral argument based on the number of registered participants.

At the December 15, 2022 continued scheduling conference, parties who have been granted intervention should be prepared to discuss a date for a hearing and related procedural schedule. Based on initial feedback, the Board has tentatively

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reserved June 22 or June 29, 2023, as target dates for the hearing. The hearing will be held in Elkader, Iowa, which is the county seat of the county containing the midpoint of the transmission line.

PENDING REQUEST FOR CLARIFICATION

On January 13, 2021, SOO Green filed a request for clarification or, in the alternative, a declaratory order (Request), asking the Board to clarify whether SOO Green may franchise the two 345 kV electric converter transmission lines located entirely within its AC switching yard in Cerro Gordo County. SOO Green correctly states Iowa Code § 478.1(2) establishes two criteria which absolve a party from needing a franchise: electric lines constructed entirely within the boundaries of property owned by a person primarily engaged in the transmission or distribution of electric power, or entirely within the boundaries of property owned by the end user of the electric power. SOO Green notes the Board's rules at 199 Iowa Administrative Code (IAC) 11.1(4) mirror the statutory language.

SOO Green states the statute and rule use the term "engaged" to describe whether a transmission line does or does not need a franchise. SOO Green states:

[I]t is unclear whether the Legislature intended the exception to apply to traditional load serving entities who currently own existing transmission and distribution owning entities (present tense), or whether the Legislature was prescient and contemplated merchant transmission providers who would at the time of franchising not own facilities, but would after proposed facilities were constructed (present and future tense).

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This ambiguity was noted in conjunction with an observation that Iowa Code § 478.1(2) was adopted prior to Federal Energy Regulatory Commission Order 888, which allowed the creation of transmission-only companies. SOO Green states a reasonable interpretation is that the exemption applies to those who own the qualifying facility at the time of franchising, and not those who would own it in the future.

SOO Green also states that viewing only the +/- 525 kV line by itself would make the western terminus the AC converter station; however, this terminus would not be sufficient to energize the line. SOO Green states the two 345 kV converter lines are necessary to make the entire project operational. For this reason, SOO Green seeks to franchise the entire project, including the two 345 kV converter lines. SOO Green states this also has the additional benefit of avoiding doubt or collateral challenges to the project, and affirmatively petitioned the Board to grant permission to include in the franchise petition the two 345 kV lines.

In its January 29, 2021 response, OCA states it agrees with SOO Green's request that the Board find in the affirmative that SOO Green must franchise the two 345 kV converter lines. OCA asserts that it is reasonable to interpret Iowa Code § 478.1(2) and 199 IAC 11.1(4) not to apply "to entities that do not currently own transmission or distribution facilities, but are seeking to construct such facilities."

On February 5, 2021, SOO Green filed a Motion to Continue the Scheduling Conference, requesting a delay in consideration of the docket. On February 16, 2021, SOO Green filed a Revised Scheduling Proposal, requesting the docket be delayed by 12 months. The request for delay was granted in the Order Canceling Scheduling

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Conference issued March 2, 2021. The Board did not rule on the Request prior to delaying the docket. It now considers the pending Request.

The Board has reviewed the applicable statute and rules and finds that SOO Green may seek to franchise the two 345 kV converter lines. While Iowa Code § 478.1(2) could be read not to apply to electric transmission lines such as SOO Green, the Board does not need to make that determination in order to address the issues in this docket. Even if SOO Green does fit within the exceptions provided in Iowa Code § 478.1(2), the statutory language is permissive to the franchise petitioner when it comes to the two exceptions stated. Iowa Code § 478.1(2) states “[a] franchise shall not be required ...” (*emphasis added*). This statutory provision is a legislative directive establishing the scope of the Board’s mandatory jurisdiction over electric transmission line franchising; however, this language does not foreclose a petitioner requesting additional voluntary franchising. A petitioner is free to request a franchise for an electric transmission line even though the Board may not be able to require one. In this case, both petitioner SOO Green and OCA agree that it is in the best interests of the public that the two 345 kV converter lines be franchised as part of the overall project. Therefore, it is not necessary to reach a determination of whether the exceptions in Iowa Code § 478.1(2) apply in this instance, only that it is allowable for SOO Green to avail itself of the franchise process if it so wishes.

The Board finds the public interest would be served by allowing SOO Green to seek to franchise the two 345 kV converter lines located within the AC switching yards, in addition to any and all electric transmission lines located outside of the AC switching yard. This finding is not a determination that the 345 kV converter lines will be

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franchised — that matter will be addressed in due course as part of the full franchise petition evaluation.

MARKING OF TESTIMONY AND EXHIBITS

For clarity, with respect to all filings in this docket, prepared testimony and exhibits shall be filed in accordance with all applicable Board rules and regulations, including, but not limited to, 199 IAC chapter 14 and consistent with the following Board naming conventions:

- Prefiled direct and reply testimony shall be identified by “(name of party) (witness last name) Direct/Reply Testimony.”
- Exhibits supporting direct and reply testimony shall be identified by “(name of party) (witness last name) Direct/Reply Exhibit (exhibit number).” Exhibits are numbered sequentially.
- Exhibits offered at oral argument or hearing shall be identified as “(name of party) Oral Argument/Hearing Exhibit (number of exhibit).”
- Information in an exhibit may be formatted and identified based upon the filing party’s internal policies, to the extent such policies are consistent with 199 IAC 14.5, and shall be identified with the exhibit number on each page of the exhibit.
- Testimony and supporting documents should be titled using the naming convention above when entering the document titles in the Board’s electronic filing system (EFS). Documents that do not comply with this naming convention will not be accepted for filing.
- Exhibits not filed in EFS prior to the hearing shall be filed in EFS within three days of the conclusion of the hearing.
- Testimony and exhibits may not be combined into one document. Rather than having each party provide a paper copy of its prefiled testimony and exhibits to the court reporter, at the hearing the Board will ask the parties to stipulate all prefiled testimony and exhibits be made a part of the record.

SETTLEMENT PROCEDURES

If the parties to this proceeding reach a settlement that resolves any of the contested issues, the settlement must comply with the provisions of 199 IAC 7.18. The Board will include in the final procedural schedule a date by which proposed settlements

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must be filed to allow the Board sufficient time to determine whether the hearing should be canceled. If a proposed settlement is not filed on or before the date specified in the procedural schedule, the Board will conduct the hearing as scheduled, unless the Board orders otherwise. If a settlement is reached among the parties, the Board is required to consider whether the “settlement is reasonable in light of the whole record, consistent with law, and in the public interest.”

In addition, 199 IAC 7.18(1) requires that a motion for the Board to approve a settlement contain a statement adequate to advise the Board of the scope of the settlement and the grounds on which adoption is requested. Non-unanimous settlements must follow the procedures described in 199 IAC 7.18(2) (5). Also, each party to a partial settlement shall file a statement summarizing its position on, and proposed resolution of, each issue that remains in dispute.

To ensure that the Board has the necessary evidence in the record in this docket to fulfill the requirements of 199 IAC 7.18, the parties to any unanimous or non-unanimous settlement shall either cite to those portions of the record that support the terms of the settlement or provide the Board with additional evidence to support the terms of the settlement. The Board understands that negotiations between the parties are confidential and not admissible pursuant to Board rule and Iowa R. Evid. 5.408; however, this does not preclude the Board from requesting additional information about the terms of a settlement. Based upon a review of the terms of a settlement, the record, and any additional information requested by the Board, a settlement may be approved as filed, rejected, or the Board may approve the settlement with modifications that will then need to be considered by the parties.

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PETITION TO INTERVENE

On September 14, 2022, Farm Bureau, by and through its attorney Christina L. Gruenhagen, filed a petition for intervention. Farm Bureau states it has approximately 153,000 members and supporters across Iowa, some of whom own or lease land on the proposed transmission line route. Farm Bureau states it has an interest in making sure affected persons will be appropriately compensated for their property interests, inconveniences, and all construction damages and future damages, among other issues. Farm Bureau believes its interests in this proceeding are unique and require representation not provided by the current parties. Farm Bureau states that current parties in this matter do not represent the same interests of Farm Bureau and its members, and that Farm Bureau has no other means to protect its and its members' interests in this matter other than by intervention. Farm Bureau believes its intervention will assist in the development of a sound record by presenting relevant evidence and argument as appropriate in the Board's evidentiary hearing.

The Board's subrule at 199 IAC 7.13(3) provides that "[a]ny person having an interest in the subject matter of a proceeding may be permitted to intervene at the discretion of the board...." In determining whether to grant intervention, the Board shall consider factors including, but not limited to, the prospective intervenor's interest in the subject matter of the proceeding, the effect a final decision in the proceeding may have upon the prospective intervenor's interest, and the extent to which the prospective intervenor may be expected to assist in the development of a sound record. *Id.*

Farm Bureau has stated that it has a substantial interest in the outcome of this proceeding and will assist in the development of a more complete record. Therefore,

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applying the 199 IAC 7.13(3) factors, the Board finds Farm Bureau has stated sufficient grounds for granting its petitions to intervene.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The initial procedural schedule established for this docket is attached to this order and identified as Attachment A.
2. An oral argument is scheduled for 9 a.m. Thursday, December 15, 2022, in the Utilities Board's Hearing Room, located at 1375 E. Court Ave., Des Moines, Iowa. The hearing will address: (1) whether the Utilities Board has statutory authority to review and base a franchise determination upon the sufficiency of underlying land rights upon which a transmission line is proposed to be located if eminent domain is not invoked; and (2) if yes, whether SOO Green HVDC Link ProjectCo, LLC, possesses the necessary land rights for the construction of its proposed electric transmission line. Participation in the oral argument will be in-person only. Persons with disabilities who will require assistive services or devices to observe or participate in this technical conference should contact the Utilities Board at (515) 725-7300 at least five business days in advance to request arrangements.
3. Persons desiring to participate in the December 15, 2022 oral argument shall file a pleading on or before December 1, 2022, indicating they will participate.
4. The continued scheduling conference to determine the remaining procedural schedule and hearing date for Docket No. E-22436 will be held immediately following the December 15, 2022 oral argument in the Utilities Board's Hearing Room.

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5. Parties who have been granted intervention in the docket and desire to participate in the December 15, 2022 scheduling conference but did not indicate that they will participate in the oral argument shall file a pleading on or before December 7, 2022, indicating they will attend the scheduling conference.

6. The Utilities Board grants SOO Green HVDC Link ProjectCo, LLC's, request for clarification and will allow inclusion of the identified 345 kV converter lines in the petition as a voluntary request for franchising.

7. The petition to intervene filed by Iowa Farm Bureau Federation on September 14, 2022, is granted.

UTILITIES BOARD

Geri Huser

Date: 2022.09.23
14:39:47 -05'00'

Richard Lozier

Date: 2022.09.23
15:40:41 -05'00'

ATTEST:

**Louis Vander
Streek**

Louis Vander Streek
2022.09.26 15:37:59
-05'00'

Josh Byrnes

Date: 2022.09.23
15:06:39 -05'00'

Dated at Des Moines, Iowa, this 26th day of September, 2022.

Attachment A

E-22436 Bifurcated Procedural Schedule	
Activity	Date
Scheduling Conference	9/16/2022 (held as scheduled)
Intervention Deadline	10/27/2022
Initial Briefs	11/10/2022
Reply Briefs	11/22/2022
Oral Argument	12/15/2022
Scheduling Conference, continued	12/15/2022, immediately following Oral Argument