

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: MIDAMERICAN ENERGY COMPANY	DOCKET NOS. E-21752 E-21753 E-21754
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**ORDER ESTABLISHING PROCEDURAL SCHEDULE, PROPOSING TO TAKE
OFFICIAL NOTICE, AND NOTICE OF HEARING**

(Issued April 3, 2006)

On September 6, 2005, MidAmerican Energy Company (MidAmerican) filed three petitions with the Utilities Board (Board) requesting franchises to erect, maintain, and operate a total of 16.9 miles of 161,000 volt (161 kV) electric transmission line proposed to be constructed in Dallas, Madison, and Warren Counties in Iowa. The petitions are identified as Docket Nos. E-21752 (Dallas County), E-21753 (Madison County), and E-21754 (Warren County). The proposed transmission line would originate at the MidAmerican Booneville substation and terminate at the MidAmerican Norwalk substation located within the corporate limits of the city of Norwalk, Iowa. MidAmerican filed revisions to the petitions and additional information on October 31, November 9, November 14, November 28, and December 21, 2005. It filed additional revisions and information on January 4, January 26, and February 20, 2006.

MidAmerican requests that it be vested with the power of eminent domain pursuant to Iowa Code § 478.6 (2005). As of the date of this order, MidAmerican

requests eminent domain authority over three parcels in Warren County (Docket No. E-21754). It does not request eminent domain in the other two counties. As of the date of this order, there are four remaining objections to the petition: one in Madison County (Docket No. E-21753) and three in Warren County (Docket No. E-21754).

Iowa Code § 476.6 requires a hearing to be held in an electric transmission line franchise proceeding if objections to a franchise petition are filed or if eminent domain is requested. The same code section and the Board rule at 199 IAC 11.5(3) require the Board to prescribe the form of the notice to be served on owners of record and parties in possession of the property over which the use of the right of eminent domain is sought. MidAmerican filed its proposed eminent domain notice for Board approval on March 31, 2006.

On March 29, 2006, the Board issued an order consolidating the three dockets and assigning this case to the undersigned administrative law judge to set a procedural schedule, conduct a hearing, issue a proposed decision, and exercise the authority provided in 199 IAC 7.3. Although there is no request for eminent domain or objection filed in Dallas County (Docket No. E-21752) and, therefore, no hearing is required, the Board found that since each docket is a segment of a larger, interrelated project with common questions of law and facts, all three dockets should be consolidated for hearing. The Board found that the hearing should be held in Winterset, Iowa, pursuant to Iowa Code § 478.6.

THE BOARD'S AUTHORITY AND JURISDICTION

The Board has the authority to grant franchises to construct, erect, maintain, and operate transmission lines capable of operating at an electric voltage of 69 kV or more along, over, or across any public highway or grounds outside of cities for the transmission, distribution, or sale of electric current. Iowa Code § 478.1. The Board may grant franchises in whole or in part upon such terms, conditions, and restrictions, and with such modifications as to line location and route, as may seem to it just and proper. Iowa Code § 478.4. To obtain a franchise, the petitioner must show that the proposed line or lines are necessary to serve a public use and represent a reasonable relationship to an overall plan of transmitting electricity in the public interest. Iowa Code § 478.4.

The Board also has the authority to vest the holder of a franchise with the right of eminent domain to the extent the Board may approve, prescribe, and find necessary for public use, not exceeding one hundred feet in width for right-of-way. Iowa Code §§ 478.6, 478.15. The burden of proving the necessity for public use is on the company seeking the franchise. Iowa Code § 478.15.

The conduct of this case is governed by Iowa Code chapters 17A and 478, and by Board rules at 199 IAC 11.

THE ISSUES

In Exhibit D in each of its petitions, MidAmerican discusses the purposes of the proposed line. Among other things, MidAmerican states that:

The proposed line was identified as one of the additions to MidAmerican's electric transmission system that is required to meet the regional reliability criteria related to the construction of the Council Bluffs Energy Center Unit 4 and the placement of the Council Bluffs to Grimes 345 kV electric transmission line on common structures. This line is currently under construction.

In addition, the proposed line is needed to meet current and future demands for electricity. The southern Des Moines metropolitan area has experienced considerable growth in recent years. The population of Cumming grew by 36% between 2000 and 2004 and the population of Norwalk grew by 12% during the same time period, according to U.S. Census Bureau estimates. MidAmerican projects continued population growth in the area at similar growth rates.

MidAmerican must demonstrate that the proposed transmission line is necessary to serve a public use. Iowa Code § 478.4. It must also show the proposed line represents a reasonable relationship to an overall plan of transmitting electricity in the public interest. Iowa Code § 478.4. MidAmerican must demonstrate that the transmission line is proposed to be constructed near and parallel to roads, to railroad rights of way, or along division lines of land, wherever practical and reasonable, and so as not to interfere with the public use of the highways or streams of the state, nor unnecessarily interfere with the use of any lands by the occupant as required by Iowa Code § 478.18, or demonstrate that the route selected is in conformance with prior decisions of the Iowa Supreme Court and the Board. Gorsche Family Partnership v. Midwest Power, et al., 529 N.W. 2d 291 (Iowa 1995); Anstey v. Iowa State Commerce Commission, 292 N.W. 2d 380 (Iowa 1980); Hanson v. Iowa State Commerce Commission, et al., 227 N.W. 2d (Iowa 1975); In re:

MidAmerican Energy Company, Docket Nos. E-21621, E-21622, E-21625, E-21645, and E-21646, "Proposed Decision and Order Granting Franchises," (December 8, 2004). MidAmerican must also show that the proposed lines conform to the construction and safety requirements of Iowa Code §§ 478.19 and 478.20 and applicable Board rules at 199 IAC 11 and 25. In particular, MidAmerican must show that the proposed double circuit construction for about four miles at the west end and the paralleling of 0.6 miles of existing transmission line at the east end of the proposed line will meet applicable safety standards including those related to reliability and is acceptable under the requirement that MidAmerican show the proposed line represents a reasonable relationship to an overall plan of transmitting electricity in the public interest. In addition, the undersigned will determine whether any terms, conditions, and restrictions on the franchise, if granted, should be imposed, and whether modifications of line location and route would be just and proper. Iowa Code § 478.4.

Before MidAmerican can be vested with the power of eminent domain, it must demonstrate that the taking of private property described in its petitions is necessary for public use. Iowa Code §§ 478.6, 478.15. If the requested franchises are granted, MidAmerican is entitled to be vested with the power of eminent domain only if and to the extent as the Board may approve, prescribe, and find necessary for public use. Iowa Code §§ 478.6, 478.15.

Any person whose rights may be affected by the proposed transmission line may file an objection with the Board. Iowa Code § 478.5. Objections must be filed in writing with the Board no later than 20 days after the date of last publication of the notice required by Iowa Code § 478.5. As of the date of this order, it appears that the following objections to the proposed transmission line remain. Ms. Linda Juckette filed an objection on February 7 and 13, 2006,¹ in Docket No. E-21753 (Madison County). Mr. Matthew Guy Clarke filed two separate objections on March 28, 2005, and February 1, 2006, in Docket No. E-21754 (Warren County). Mr. John W. and Ms. Deborah F. White filed an objection on June 14, 2005, in Docket No. E-21754 (Warren County). Mr. John A. White filed an objection on May 11, 2005, in Docket No. E-21754 (Warren County). The issues raised in these objections, and any issues that may be raised in objections filed in the future, are also issues in the case.

PREPARED TESTIMONY AND EXHIBITS

All parties will be given the opportunity to present evidence and argument on all issues involved in this proceeding and to respond to evidence presented by opposing parties. Parties may choose to be represented by counsel at their own expense. Iowa Code § 17A.12(4). The proposed decision and order that the undersigned administrative law judge will issue in this case must be based solely on evidence contained in the record and on matters officially noticed in the record. Iowa

¹ Ms. Juckette first filed her objection on February 7, 2006, and then filed a corrected objection on February 13, 2006.

Code §§ 17A.12(6) and (8). Unless contrary arrangements are made on the record at the hearing, all evidence will be received at the hearing, and the record will be closed to any further evidence at the conclusion of the hearing.

The submission of prepared evidence prior to hearing will help to identify disputed issues of fact to be addressed at the hearing. Prepared testimony contains all statements that a witness intends to give under oath at the hearing, set forth in question and answer form. When a witness who has submitted prepared testimony takes the stand, the witness does not ordinarily repeat the written testimony or give a substantial amount of new testimony. Instead, the witness is cross-examined by the other parties concerning the statements already made in writing. The use of prepared testimony prevents surprise at the hearing and helps each party to prepare adequately for the hearing, so that a full and true disclosure of the facts can be obtained. Iowa Code §§ 17A.14(1), 17A.14(3) and 478.4. This procedure also tends to diminish the length of the hearing and spares the parties the expense and inconvenience of additional hearings.

MidAmerican must file prepared direct testimony and exhibits prior to the hearing in conformance with the procedural schedule set forth below. At a minimum, MidAmerican's prepared testimony must address the issues listed above and the issues identified in the attached report by Mr. Dennis Hockmuth dated March 17, 2006. In addition to addressing the issues raised by Mr. Hockmuth, MidAmerican must file a copy of any "plan and profile" drawings prepared for this project and

copies of the "Proposed 161 kV Transmission Line" maps referred to on page six of Mr. Hockmuth's report with its prepared testimony. MidAmerican must also address the issues identified in the remaining written objections that have been filed in this docket, including addressing each of the alternate routes suggested in the objections. In its prepared testimony, MidAmerican must state what could be done to address the objectors' concerns, discuss the consequences of any actions that might be taken in response to the concerns, and state what it would be able and willing to do to address the concerns. MidAmerican must discuss the various routes it considered and explain why it chose the proposed route.

In addition, if additional objections are filed in this case, MidAmerican's prepared direct testimony must respond to issues raised in all written objections that are received by MidAmerican at least seven (7) days before the deadline for filing MidAmerican's prepared testimony. New written objections filed with the Board and received by MidAmerican less than seven (7) days before the deadline for filing MidAmerican's prepared direct testimony, or received by MidAmerican after it files its prepared direct testimony and at least seven (7) days prior to the deadline for filing MidAmerican's prepared rebuttal testimony, must be addressed in MidAmerican's prepared rebuttal testimony.

MidAmerican has the burden to prove that its proposed transmission line meets all the statutory and regulatory requirements discussed above. Failure to file

adequate prepared testimony and exhibits to support its petitions for franchise may result in delays of these proceedings or denial of the requested franchises.

The Consumer Advocate Division of the Department of Justice (Consumer Advocate), and any objectors may also file prepared testimony and exhibits before the hearing in accordance with the procedural schedule in this order.

Parties other than MidAmerican who choose not to file prepared testimony and exhibits before the hearing will not be precluded from participating in the proceedings. If an objector, for example, does not intend to present evidence going substantially beyond the information contained in the letter of objection, it is unnecessary for the objector to file prepared testimony. However, when a party (including an objector) has a substantial amount of information to present to the Board about the petitions, if the information has not been previously disclosed to the Board, it should be presented in the form of prepared testimony and exhibits according to the procedural schedule established below. Similarly, if the Consumer Advocate takes the position that MidAmerican should not be granted the franchises, or that restrictions on the grant should be imposed, it must file prepared testimony or a brief in support of its position according to the procedural schedule.

PARTIES AND OBJECTORS

MidAmerican and the Consumer Advocate are parties to this proceeding. Iowa Code §§ 17A.2(8) and 475A.2. As of the date of this order, it appears that five objections to the petitions filed with the Board remain. These remaining objections

were filed by Ms. Linda Juckette, Mr. Matthew G. Clarke (two), Mr. John W. and Ms. Deborah White, and Mr. John A. White.

The objectors, and anyone else who files an objection pursuant to this order and Iowa Code §§ 478.5, is presumed to be a party to this case. However, no objector is entitled to party status merely because that person has written a letter. To qualify as a party, the objector must be able to demonstrate some right or interest that may be affected by the granting of the franchise. Iowa Code §§ 478.5, 17A.2(5) and (8). An objector's status as a party may be challenged at the hearing, and an objector who cannot demonstrate a right or interest that may be affected by the granting of the franchise will no longer be considered a party. Therefore, at a minimum, objectors should be prepared to give evidence at the hearing that will explain the nature of their specific rights or interests they believe should be protected, and that shows how their rights or interests will be affected by the transmission line. As discussed above, to the extent that this evidence goes substantially beyond information already communicated to the Board in an objection letter, it should be written down and filed as prepared testimony according to the procedural schedule established below.

Objections must be made in writing and filed with the Executive Secretary of the Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

Because objectors will be presumed to be parties up to the time of the hearing, an objector will receive copies of all documents that are filed in the relevant docket² after the letter of objection has been filed with the Board. If a person files an objection after some or all of the prepared testimony and exhibits have already been filed, that person will not receive copies of the previously filed documents. If a person files an objection after some or all of the prepared testimony and exhibits or other documents have already been filed with the Board by other parties, the objector should make direct contact with the parties who have already filed prepared testimony and exhibits in order to obtain a copy of those materials. Alternatively, the objector may view documents in the Board's Records and Information Center, 350 Maple Street, Des Moines, Iowa.

The official file of this case will be available for inspection at the Utilities Board Records and Information Center, 350 Maple Street, Des Moines, Iowa.
199 IAC 1.9(1). Copies may be obtained, and there will be a charge to cover the cost of copying.

If it has not already done so, MidAmerican must serve a copy of the most current petition in the relevant docket on each of the remaining objectors who filed an objection prior to the date of this order.

After an objector has filed a letter of objection, all further communications from the objector to the Board having to do with this case (including motions or prepared testimony and exhibits) must be sent to the Executive Secretary. A party (including

² The relevant docket is that of the county to which the objection applies.

objectors) must file an original and ten copies of each communication with the Executive Secretary, and the party must send one copy to each of the other parties to this case, except three copies must be served on the Consumer Advocate. 199 IAC 1.8(4), 7.4(6). Along with the communication being sent, the party must file with the Board a certificate of service that conforms to 199 IAC 2.2(16), that verifies a copy of the document was served upon the other parties.

These procedures are necessary to comply with Iowa Code § 17A.17, which prohibits ex parte communication. Ex parte communication is when one party in a contested case communicates with the judge without the other parties being given the opportunity to be present. In order to be prohibited, the communication must be about the facts or law in the case. Calls to the Board to ask about procedure or the status of the case are not ex parte communication. Ex parte communication may be oral or written. This means the parties in this case may not communicate about the facts or law in this case with the undersigned administrative law judge unless the other parties are given the opportunity to be present, or unless the other parties are provided with a copy of the written documents filed with the Board.

The parties should examine Iowa Code chapter 478, and Board rules at 199 IAC 11 and 25, 199 IAC 1.8, 7.1(3), 7.22, 7.26, and 7.27 for other substantive and procedural rules that apply to this case. There are links to the Iowa Code and the administrative rules on the Board's website at www.state.ia.us/iub.

PROPOSAL TO TAKE OFFICIAL NOTICE

Mr. Dennis Hockmuth, Utility Regulatory Engineer for the Board, has prepared a report in the form of a memo dated March 17, 2006, concerning MidAmerican's petition pursuant to Iowa Code § 478.4. A copy of the report is attached to this order. Pursuant to Iowa Code § 17A.14(4), the undersigned administrative law judge proposes to take official notice of the report and of the facts contained therein, thus making them a part of the record of this case. Iowa Code §§ 17A.12(6)(c), 17A.14(4). Any party objecting to the taking of official notice of the report must file such objection as soon as possible, and no later than five days prior to the hearing. The parties will have the opportunity to contest any information contained in the memo in prefiled testimony and at the hearing, and they may also cross-examine Mr. Hockmuth concerning the contents of his report at the hearing.

EMINENT DOMAIN

As of the date of this order, MidAmerican has requested the right of eminent domain for three parcels of property in Warren County (Docket No. E-21754). These three parcels are designated as Tracts IA-WR-049.000, IA-WR-056.000, and IA-WR-090.000 (Exhibits E-2, E-3, and E-4, respectively). MidAmerican must notify the Board of any changes regarding the requests and keep Exhibit E of the petition in Docket No. E-21754 current. MidAmerican must also serve written notice on the owners and persons in possession of those parcels as required by Iowa Code

§ 478.6 and 199 IAC 11.5(3). The eminent domain notice filed by MidAmerican on March 31, 2006, is approved with the following modifications.

In the eminent domain letter, page two, paragraph "d," the following language must be added after the second unnumbered paragraph stating the date of second publication: "Objectors will be presumed to be parties to this proceeding unless it is established at hearing that the objector has no right or interest that may be affected by the granting or denial of the franchise. Objectors will receive copies of all documents that are filed in the relevant docket after the letter of objection has been filed with the Board. Persons who file objections in response to this notice will not receive copies of previously filed documents. If a person files an objection after prepared testimony and exhibits or other documents have already been filed with the Board by other parties, the objector should make direct contact with the other parties to obtain a copy of those materials. Alternatively, the objector may view documents in the Board's Records and Information Center, 350 Maple Street, Des Moines, Iowa." In addition, the first sentence of the following paragraph must be modified to read: "The Board has assigned this case to its administrative law judge to preside over the hearing and issue a proposed decision."

IT IS THEREFORE ORDERED:

1. If it has not already done so, MidAmerican must serve a copy of the most current petition in the relevant docket on each of the remaining objectors who filed written objections prior to the date of this order.

2. Each person who files a written objection to one of MidAmerican's petitions in this docket will be presumed to be a party in the proceeding unless it is established at hearing that the objector has no right or interest that may be affected by the grant or denial of the franchises.

3. Objections must be made in writing and filed with the Executive Secretary of the Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069. Objections must be filed no later than 20 days after the date of last publication of notice unless good cause is shown for the late filing. Objectors must file an original and ten copies of all subsequent communications to the Board with the Executive Secretary, and must send a copy of each communication to the other parties in the case, except three copies must be served on the Consumer Advocate. Along with the communication being sent, the party must file with the Board a certificate of service as discussed in this order.

4. The following procedural schedule is established:

a. On or before April 25, 2006, MidAmerican must file prepared direct testimony and exhibits, "plan and profile" drawings, and the "Proposed 161 kV Transmission Line" maps relating to its petitions for franchises as discussed in this order. In its prepared testimony, MidAmerican must address the issues discussed in the body of this order. If it files exhibits, MidAmerican should use exhibit numbers one and following. If it chooses to file a prehearing brief, MidAmerican must file it on or before April 25, 2006.

b. On or before May 16, 2006, the Consumer Advocate and any objector may file prepared responsive testimony. If the Consumer Advocate takes the position that MidAmerican should not be granted the franchises, or that restrictions on the grant should be imposed, it must file prepared testimony or a brief in support of its position on or before May 16, 2006. If it files exhibits, the Consumer Advocate should use exhibit numbers one hundred and following. If any objector files exhibits, the objector should use exhibit numbers starting with the person's initials and numbers 200 and following, such as "Exhibit LJ-200" etc.

c. On or before May 23, 2006, MidAmerican may file prepared rebuttal testimony and exhibits and a reply brief.

d. A public hearing for the presentation of evidence and the cross-examination of witnesses concerning the issues identified in this notice of hearing will be held beginning at 10:30 a.m. on Tuesday, May 30, 2006, in the Winterset Public Library Meeting Room, Winterset Public Library, 123 North 2nd Street, Winterset, Iowa 50273. Each party must provide a copy of its prepared testimony and its exhibits to the court reporter at the hearing. Persons with disabilities who will require assistive services or devices to observe this hearing or participate in it should contact the Utilities Board at (515) 281-5256 as soon as possible and at least ten business days in advance of the hearing date to request that appropriate arrangements be made.

5. Required number of copies. All parties must file an original and ten copies of all documents filed with the Board. 199 IAC 1.8(4), 7.4(4).

6. The undersigned administrative law judge proposes to take official notice of Mr. Hockmuth's report dated March 17, 2006, attached to this order, and of the facts contained therein. Any party objecting to the taking of official notice of the report should file such objection as soon as possible, and must file such objection no later than five days prior to the hearing.

7. Pursuant to Iowa Code § 478.6, a copy of this order will be served by ordinary mail upon MidAmerican, the remaining objectors who filed written objections prior to the date of this order, and the persons listed in Exhibit E of the petition in Docket No. E-21754 (Warren County) (the owners of record and the parties in possession of the parcels over which MidAmerican requests the right of eminent domain). This order will be delivered to the Consumer Advocate.

8. MidAmerican must notify the Board of any changes regarding the requests for eminent domain and keep Exhibit E for the petition in Docket No. E-21754 current.

9. Board staff will provide MidAmerican with a notice to be published and MidAmerican must publish the notice in each county as required by Iowa Code § 478.5 and 199 IAC 11.5(2). MidAmerican must file proof of publication of notice with the Board. MidAmerican must also serve notice as required by 199 IAC 11.5(2)"b" and file copies with the Board as required by the rule.

10. The eminent domain notice filed by MidAmerican on March 31, 2006, is approved with the modifications discussed in the body of this order. MidAmerican must serve the notice as modified on each of the owners of record and party in possession of the parcels over which MidAmerican requests the right of eminent domain. Iowa Code § 478.6; 199 IAC 11.5(3).

UTILITIES BOARD

/s/ Amy L. Christensen
Amy L. Christensen
Administrative Law Judge

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 3rd day of April, 2006.

IOWA UTILITIES BOARD
Safety & Engineering Section

Docket No.: E-21752, E-21753, E-21754
Utility: MidAmerican Energy Comp.
Date: March 17, 2006

TO: The Docket Files

FROM: Dennis P. Hockmuth, P.E.

SUBJECT: MidAmerican Energy Company's Booneville Substation to the Norwalk Substation 161,000 Electric Transmission Line in Dallas, Madison, and Warren Counties.

I. Background and History

On April 25 and 26, 2005, in compliance with Iowa Code § 478.2, MidAmerican Energy Co. (MidAmerican) held informational meetings in Dallas, Madison, and Warren Counties for a proposed 161,000 volt (161 kV) electric transmission line from the Booneville substation in southern Dallas County to a new substation location near Norwalk, Iowa, in Warren County. For Iowa Utilities Board (Board) administrative purposes the following docket numbers were assigned for the project segments in the affected counties³:

Docket No. E-21752 – Dallas County
Docket No. E-21753 – Madison County
Docket No. E-21754 – Warren County

The length of the proposed project was approximately 16.9 miles, depending upon the location of final route within the corridor MEC had selected. The route presented at these meetings was primarily a new route on new right-of-way, although a portion in Madison County, and all of the route in Dallas County, was proposed to be located on existing electric line easements.

There was landowner opposition to this proposal. Seven individual objections were filed with the Board. Frequently stated reasons for objecting were interference with land use, impact on property values, visual impact, concern over the possible health risk of electromagnetic fields, effect on personal electrical equipment, and opposition to tree removal.

As the filings approached their final form after corrective and update amendments, and the list of properties for which the right of eminent domain is requested appeared final, staff examined the route, eminent domain parcels, and the properties of objectors located on the current proposed route on January 12, 2006.

³ A separate franchise is required in each county traversed by the project, therefore a separate docket number is assigned to the line segment in each affected county. 199 IAC 11.3(4).

II. The Petitions

On September 6, 2005, MidAmerican filed petitions for electric franchise for a 161 kV electric transmission line located in Dallas, Madison, and Warren Counties. The docket numbers assigned to the petitions, and the length of electric line for which franchise is sought in each petition, are, from north to east:

Docket No. E-21752 – Dallas County – 1.6 miles.
Docket No. E-21753 – Madison County – 8.1 miles.
Docket No. E-21754 – Warren County – 7.2 miles.

The total project line length is 16.9 miles.

There followed several exchanges of letters between Board staff to MidAmerican, and MidAmerican provided answers and petition amendments which responded to staff questions on the filing, corrected errors, and clarified or updated content. Dockets No. E-21752, E-21753, and E-21754 were considered by staff to be in sufficient order to set for hearing following amendments filed on January 26, 2006.

Each petition includes the following content:

FORM OF PETITION

This document requests granting of a franchise, introduces the exhibits, and makes certain statements concerning the project and process.

When the petitions were first filed, the right of eminent domain (ED) (condemnation) was requested in Dockets No. E-21753 and E-21754. However, that request was later withdrawn in Docket No. E-21753 (Madison County), and is now requested only in Docket No. E-21754 (Warren County).

Exhibit A

Contains a legal description of the route based on the government land survey system (section, township, range). This information is included in the published notice of the franchise petition, and is attached to franchises issued by the Board as the record of the approved line location. 199 IAC 11.2(1) "a".

Exhibit B

A map of the route showing the proposed electric line location and its relationship to natural, public, utility and private features of the area being crossed. 199 IAC 11.2(1) "b".

Exhibit C

Engineering information and drawings. 199 IAC 11.2(1) "c".

Exhibit D

Contains information required by Iowa Code § 478.3, including on need and planning issues. 199 IAC 11.2(1) "d".

Exhibit E

Contains property-specific information on the rights and extent of taking being sought through eminent domain. 199 IAC 11.2(1)"e".

Exhibit F

A showing that notice of the petition filing was made to the owners of potentially affected utilities and other infrastructure near the route. 199 IAC 11.2(1)"f".

Exhibit G

An affidavit required by Iowa Code § 478.3 stating that required informational meetings were held and providing copies of the forms of notice used. 199 IAC 11.2(1)"g".

Iowa Code § 478.6 states that a public hearing must be held if an objection is filed or if eminent domain is requested. Objections are on file in two of the three counties (there are none in Docket No. E-21752 – Dallas County), and eminent domain is requested in Docket No. E-21754 – Warren County. Since objections are on file and/or eminent domain is requested, a hearing is required in two of the dockets.

Staff recommends all three of these dockets be consolidated for hearing. All three are interrelated as part of a larger project, and the "public use" and "reasonable relationship" tests of Iowa Code § 478.4, as well as the routing of any one segment, might be influenced by other segments.⁴

IOWA CODE § 478.6 further states that when a hearing is required, if a proposed line is more than a mile long the hearing must be held in the county seat of the county at the midpoint of the proposed line. The midpoint of the total project in these dockets falls in Madison County, so the hearing must be in Winterset.

III. Description of Project

The project as proposed consists of 16.9 miles of 161 kV electric transmission line originating at the MidAmerican Booneville substation and terminating at the MidAmerican Norwalk substation inside the corporate limits of Norwalk, Iowa. The proposed route plans to double circuit a proposed new 161 kV circuit with an existing 345 kV transmission circuit on common structures and on existing electric transmission line right-of-way for the first approximately 4 miles east and south of the Booneville substation. The remainder would be a single circuit 161 kV line on new right-of-way. There will be about 3 miles of single phase distribution underbuild installed on the electric transmission line in Warren County only.

The west 4 miles of the line will be built as a double circuit on the existing steel H-frame 2-pole structures, 109 to 149 feet tall, with an average spacing of 1250 feet and a maximum spacing of up to 1587 feet in both Dallas and Madison counties. The remainder of the line will consist of wooden poles, 65 to 120 feet tall, with an average

⁴ Gannon vs. Iowa State Commerce Commission, Polk County District Court, Case No. 92922 (1970).

spacing of 450 feet and a maximum spacing of 705 feet in each county. On the single circuit route single pole direct embedded steel structures will be used at slight angles and anchor steel structures, bolted to a concrete base, will be used at 90° corners and on deadend poles to avoid down guys. The latter structures will be 70 to 85 feet tall.

The proposed 4 miles of double circuit (345/161 kV) in Dallas and Madison Counties would be supported on existing steel H-frame 2-pole structures that are close to 30 years old, and currently carry conductors for only one circuit. A new crossarm would be added to the existing poles so the conductors of a second circuit can be added. The conductors will be supported on vertical suspension insulators about 6.5 feet below the cross arm. MidAmerican states in Exhibit D that “Many of the existing H-frame structures have been analyzed and are structurally adequate to be modified with the addition of a new crossarm and shieldwire mast.” This leaves unclear if there are some structures that are not adequate, and what will be done at those locations.

MidAmerican should provide evidence in prefiled testimony or at hearing that all double circuit structures will be structurally sound and capable of supporting the added weight and ice and wind loads of the 161 kV circuit conductors and new crossarms.

On single poles the conductors will be supported on horizontal, standoff post insulators about 5.5 feet from the pole.

Under worst case conditions the conductors would be at least 23 feet above the ground or roads being crossed. Each circuit will be protected from lightning by a shield wire at the top of the structure, at least 10 feet above the top conductor. The shield wires will also contain fiber optic cable that will carry communications for the monitoring and operating of MidAmerican’s electrical facilities.

The width of the proposed right-of-way easement is 80 feet in the 161 kV route, and somewhat wider for the existing 345/161 kV double circuit route. The filings do not indicate whether the existing 4 miles of 345 kV line will be maintained in operation during the addition of the 161 kV circuits. *MidAmerican should explain in prefiled testimony or at hearing how the service provided by the existing transmission line will be maintained.*

Staff review has concluded that the design of the proposed facilities as described in Exhibit C is consistent with the National Electrical Safety Code and other safety provisions adopted by the Board in rule 199 IAC 25.2.

IV. Requirements of Iowa Code Section 478.4

Under Iowa Code § 478.4, to grant a franchise the Board “*shall 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.*”

a. Necessary to serve a public use

In the petition Exhibits D MidAmerican includes the following statements:

The proposed line was identified as one of the additions to MidAmerican's electric transmission system that is required to meet the regional reliability criteria related to the construction of the Council Bluffs Energy Center Unit 4 and the placement of the Council Bluffs to Grimes 345 kV electric transmission line on common structures. This line is currently under construction.

In addition, the proposed line is needed to meet current and future demands for electricity. The southern Des Moines metropolitan area has experienced considerable growth in recent years. The population of Cumming grew by 36% between 2000 and 2004 and the population of Norwalk grew 12% during the same time period, according to U.S. Census Bureau estimates. MidAmerican projects continued population growth in the area at similar rates.

Besides the termini at the Booneville and Norwalk substations, MidAmerican anticipates one or more new electric distribution substations will be needed along the proposed line route in future years to serve existing and expected new electric customer loads located near the line route. These distribution substations would be feed from the newly proposed line.

MidAmerican should expand on the brief Exhibit D summary statements in its prefiled hearing testimony or at hearing. The additional information should include:

- *Why a new 161 kV volt line was selected.*
- *An explanation of how this line would relieve constraints, enhance reliability, and provide voltage support.*
- *Why this line may also eventually supply other substations en route, and the benefits of any such connections.*

b. Represents a reasonable relationship to an overall plan of transmitting electricity in the public interest

Petition Exhibits D items A through H contain responses to a series of issues that Iowa Code §478.3(2) requires petitioners to address in a franchise filing. They deal with the relationship of the proposed project to economic, electrical system, public, and land use considerations, present and future. The allegations by MidAmerican in these items contain statements to support a "reasonable relationship" finding.

The proposed route and design would create approximately four miles of 345/161 kV double circuit electric transmission line. MidAmerican's proposed line will also parallel its existing double circuit 345/161 kV line for a 0.6 mile segment in Section 24, T77N, R25W, at the eastern end of the route. Placing both circuits on common structures, or placing a circuit closely parallel to another line, maximizes the risk of losing both circuits

in a single incident.⁵ MidAmerican's decision to use double circuiting and parallel routing was not explained or supported in its exhibit filings.

To aid in verifying that double-circuiting and paralleling a portion of this project will not adversely impact the reliability of the transmission network, MidAmerican should provide in its prefiled testimony or at hearing information on:

- *Has MAPP or any other planning agency concluded that this route and design would meet their reliability standards.*
- *What other related upgrades or projects will be undertaken and how they would enhance network reliability.*

V. The Route

The location of the proposed route is described in Petition Exhibits A, B, and D. Current land use on the route is predominantly agricultural. Based on comments in some of the objections filed, however, at least some landowners anticipate residential development will occur in this area in the future. At the informational meetings, MidAmerican included in its presentation possible sites for future substations to serve anticipated load growth in the area.

MidAmerican briefly describes certain factors in its route selection process in Exhibit D, including Iowa Code § 478.18(2), minimizing impact on land use, and the need to remain near projected future substation locations. Staff asked for a copy of any route study done, and was provided with 148 pages of tables that appear to apply a series of weighting factors to various routes and segments. However, it included no explanation of what factors were used or how they were applied, did not show the alternatives examined, and contained no conclusions explaining why the proposed route was selected. *In prefiled testimony or at hearing MidAmerican should further explain what factors it used in route selection and why the route now proposed was selected.*

"Plan and profile" drawings of the proposed line route are commonly prepared for a project of this type. In past projects the route details provided by these drawings have been useful to staff. It is not known if a plan and profile for this route has been completed. *MidAmerican should be instructed to file in these dockets a copy of any "plan and profile" drawings prepared for this project.*

MidAmerican has provided staff with a set of maps based on aerial photographs which show considerable route detail, as well as property lines and ownership. These maps were very useful for route review but were not filed in any of the dockets. These maps should be part of the public record. *MidAmerican should be directed to file copies of the "Proposed 161 kV Transmission Line" maps in these dockets.*

Iowa Code § 478.18(2) contains these provisions for the routing of electric lines:

⁵ An incident could be an event such as a tornado, ice storm, structural failure, or sabotage/terrorism.

A 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.

The majority of the proposed route follows division lines of land, but portions do not. In Dallas County the existing route to be double circuited runs generally near but is not parallel to division lines of land. The 0.6 mile segment at the east end would be on a diagonal route parallel to but separate from an existing 345/161 kV circuit that does not follow division lines of land. However, that does not mean the Board cannot find a route of this nature is reasonable. Route planning that begins with examining routes meeting Iowa Code 478.18(2) criteria is consistent with 199 IAC 11.1(7) and court precedent. See Anstey v. Iowa State Commerce Commission, 292 N.W. 2d 380 (Iowa 1980). Following an existing route can have certain benefits in that the additional impact on lands and land use, if any, may be less than if the line were installed on a new route. The Board has in the past found it reasonable to utilize an existing route that did not follow division lines of land based primarily on findings that interference with land use would be minimized.⁶ However, although MidAmerican states in Petition Exhibit D that it “evaluated potential routes starting with routes near and parallel to roads, railway right-of-way, and land division lines,” it does not explain in the petition exhibits how the proposed route was selected, why it chose to double circuit part of the route, and why portions of the route that do not follow division lines of land are justified. *MidAmerican should address these issues in prefiled testimony or at hearing.*

Madison and Warren Counties also contain route segments that are offset somewhat from division lines of land. In Madison County, the proposed line deviated from land division lines to address property owner concerns or to avoid natural terrain obstacles, according to Exhibit D. In one case, the centerline of the proposed transmission line parallels the half section line at a location 120 feet north of that line to address property owner concerns. At a second case, the centerline of the proposed transmission line deviates around a meander creek, allowing the impact to the waterway area to be minimized. In both cases, voluntary easements were obtained for these deviations.

In Warren County, MidAmerican proposed to deviate from a location paralleling land divisions to address property owner concerns. As explained in Exhibit D, the centerline of the proposed transmission line parallels the half section line at a location 100 feet south of that line to address property owner concerns. (Apparently the concerns of adjoining property owners – see discussion under Objections.) A voluntary easement was obtained for this deviation.

Staff is aware of no standard or precedent for how far from a division line of land a route can be and still be considered “near and parallel.” In these instances the offsets were made to accommodate landowners, or for engineering reasons to avoid a physical

⁶ “Decision and Order Granting Franchise” in Dockets No. E-21043, E-21044, E-21045, issued to MidWest Power on March 9, 1993. See also Gorsche v. Midwest Power, 529 N.W.2d 291 (Iowa 1995).

feature of concern. Voluntary easements have been obtained at all these locations. Staff believes these routings are reasonable and justified even if, *arguendo*, they were not considered “near” division lines of land.

Two other locations have been previously discussed where the route does not follow division lines of land (in Dallas County, and 0.6 miles at the east end). Staff understands that MidAmerican has voluntary easements for these route segments.

Staff believes the route proposed by MidAmerican for this project is reasonable and acceptable, although as described above additional information is requested on certain issues. This is, however, contingent upon the Board concluding that reliability will not be adversely affected by the double circuit construction for about 4 miles at the west end and the paralleling of 0.6 miles of existing transmission line at the east end of the route.

VI. Eminent Domain

Iowa Code § 478.15 gives the Board the authority to grant the right of eminent domain “to such extent as the utilities board may approve, prescribe and find to be necessary to serve a public use.”

As of the date of this report, eminent domain is requested for three properties in Warren County (Docket No. E-21754), designated as Tracts IA-WR-049.000, IA-WR-056.000, and IA-WR-090.000 (Exhibits E-2, E-3, and E-4, respectively). Only one of the persons (Exhibit E-4) with ownership interest in these parcels has filed an objection. The right of eminent domain is not currently requested in Dallas or Madison Counties.

The proposed easements are for single poles on an 80 ft. wide strip of land. In the first two tracts, which are adjoining properties, the proposed electric transmission line would be along a road (30th Ave.). The centerline of the easement would be on the road right-of-way line, and the poles would be located three feet from the centerline of the easement onto private property. According to Exhibit E, 40 feet of that easement is on private property and 40 feet is on public road right-of-way. Some of the conductors will overhang the public road right-of-way. The easement length on each tract would be approximately one-half mile. Land use is currently agricultural. Two persons on the ownership lists have an interest in both parcels. One of those parcels (Exhibit E-3) has a third person on the ownership list.

On the third tract, the 80 foot wide easement bisects open farmland for about a quarter of a mile. The nearest buildings will be over 200 feet from the proposed line.

The rights MidAmerican seeks do not appear unreasonable or unnecessary for its purposes. Nor does available information show any of the Iowa Code §§ 478.15 and .20 limitations apply to these parcels.

It appears at least arguable that, under Iowa Code §§ 478.15 and 6B.2B, for eminent domain to be “necessary” a party seeking eminent domain must have made a good faith

effort to obtain voluntary easements. *MidAmerican should address this consideration in prefiled testimony or at hearing.*

Under Iowa Code 478.6 and 199 IAC 11.5(3), owners of record and parties in possession of property over which the right of eminent domain is sought must be served a certified mail written notice of the hearing, using a form of notice prescribed by the Board. Customarily, the petitioner submits a proposed form of notice for Board approval. Staff understands that MidAmerican intends to submit a proposed form similar to a form of notice letter used in an earlier MidAmerican project. That form of notice and attachments will need to be reviewed and approved by the Board or hearing officer.

VII. Objections

There were no objections filed in Dallas County, 2 were filed in Madison County, and 7 were filed in Warren County. One objector (by a common letter) filed in both Madison and Warren County. A different objector made two filings in Warren County. Since the original objection filings, three objections (one being the duplicate filing in the 2 counties) have been withdrawn. At this time, there are one remaining objector in Madison County and three objectors in Warren County. MidAmerican has requested eminent domain on only one of the objector's properties (E-21754, Exhibit E-4).

Of the remaining four objectors, the most common objection was impact on property values. Other items mentioned were visual impact, concern over the possible health risk of electromagnetic fields, and interference with land use. Two objections supported relocating the new line to the north or south of MidAmerican's proposed route. One objector indicated that MidAmerican's negotiator was rude and misleading.

Docket No. E-21753 – Madison – 1 objection.

On February 7 & 13, 2006, an objection was filed by Attorney Frank Murray Smith for Linda Juckette, who has a rural subdivision with multiple lots located "in the proposed corridor" just west of Cumming in the Northeast Quarter of Section 13, T77N, R26W, Madison County. The objector stated, "The value of this subdivision will be greatly compromised if transmission lines are close to, or worse, go through this subdivision." The proposed route as shown in the docket would be along the south edge of this property. Staff has noted a large building at least 300 feet north of the proposed line. MidAmerican is not requesting eminent domain to obtain an easement on this property. This presumably means MidAmerican will not place the proposed line on her property or has obtained an easement from Ms. Juckette for this project. However, the signing of an easement does not negate or diminish an objection.⁷

Docket No. E-21754 – Warren County – 3 objections.

⁷ "Decision and Order Granting Franchise" in Dockets No. E-21043, E-21044, E-21045, issued to MidWest Power on March 9, 1993.

On March 28, 2005 & February 1, 2006, Matthew G. (Guy) Clarke filed 2 different objections. He is also an owner of one of the parcels over which MidAmerican has requested eminent domain (Exhibit E-4). His property, also owned by James G. Clarke and Mary G. Clarke, is located 1-2 miles southwest of Norwalk. It appears that the proposed line would be over 200 feet from the nearest house on that parcel. He indicates that he intends to develop that property and the transmission line would cause a great depreciation in land value. He has concern of the aesthetic view of the line and would require that MidAmerican bury the 161 kV transmission line at his direction and location initially and relocated at his direction in the future, and that MidAmerican be responsible for other future actions to accommodate development. If a franchise is granted MidAmerican should be required to hire a consultant of his choosing to work with him on line location on his property. He also indicated that the MidAmerican's negotiator was rude and misleading to his father, James G. Clarke, and himself. Further, he felt a separate request for electric service nearby was delayed about 3 months due to his failure "to sign a lease."

On May 11, 2005, John A. White filed an objection. His property is southwest of Cumming, Iowa just west of Interstate 35, in the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 18, T77N, R25W. He expresses health risks associated with electromagnetic fields (EMF). That would be "elevated risk of childhood leukemia, adult brain cancer, neurologic disease, and miscarriage" and "would rather avoid" the line. He also indicates "property values would be negatively affected." Further, he suggests that MidAmerican choose an alternate route, a half-mile north or a mile & a half south of his property. Staff noted that a new house was built about 100 feet north of Mr. White south property line, with a new garage about 40-50 feet north of the south line. In Petition Exhibit D, MidAmerican indicates that the proposed line will be parallel to and 100 feet south of the half section line. MidAmerican states it has a voluntary easement for this routing. This apparently places the line on an adjacent property, and not on Mr. White's property.

On June 14, 2005, John W. & Deborah F. White filed an objection. Their property is either within or just southwest of Cumming, Iowa west of Interstate 35, and in the same quarter section as the John A. White property. They express concern over the "aesthetics of having many 100 foot poles across our back view, . . . devaluation of our property value, the known and unknown medical and health risks associated with living with the constant electric/magnetic field generated." They are also concerned over "the probability of additional requests for more easements and/or condemnation" for future substations. They suggest the line be placed farther north or south "to more centrally locate the line for future proposed development" or put the line underground. In Petition Exhibit D, MidAmerican indicates that the proposed line will be parallel to and 100 feet south of the half section line. MidAmerican states it has a voluntary easement for this routing. This apparently places the line on an adjacent property, and not on the Whites' properties.

Although MidAmerican has located the route 100 feet south of the Whites' properties in apparent response to these objections, the objections have not been withdrawn.

MidAmerican should address all of the above objections in its prefiled testimony or at hearing.

VIII. Conclusion

Board staff finds the petitions in these dockets to be sufficiently in order to be set for hearing.

IOWA CODE section 478.6 states that a public hearing must be held if an objection is filed or eminent domain is requested. As objections are on file, and eminent domain is requested, a public hearing is required.

The three dockets are all interrelated as parts of a larger project. It is recommended these dockets be consolidated for hearing.

IOWA CODE § 478.6 states that when a hearing is required, if the proposed line is more than a mile long the hearing must be held in the county seat of the county at the midpoint of the proposed line. The line exceeds a mile in length, and the midpoint of the project is in Madison County, therefore the hearing must be held in Winterset.

IOWA CODE section 478.6 and 199 IAC 11.5(3) require the Board to prescribe the form of written notice to be served upon the owners or occupants of eminent domain parcels. Staff understands MidAmerican will submit a draft letter similar to a form of notice letter used in an earlier MidAmerican project. A decision on acceptance will be required from the Board, or from a Presiding Officer if the dockets are so assigned.

In these dockets, particular consideration will be needed of whether the reliability aspect of double circuiting and paralleling this line with another major electric transmission line is acceptable under the “reasonable relationship” test of Iowa Code § 478.4

This report identifies, in *italic print*, a number of areas that Staff recommends MidAmerican be instructed to address in prefiled testimony or at hearing to improve the record on which a decision will be based.