

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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PROPOSED DECISION AND ORDER GRANTING FRANCHISES

(Issued July 26, 2006)

APPEARANCES:

MR. ROBERT P. JARED, attorney at law, MidAmerican Energy, 106 East Second Street, P.O. Box 4350, Davenport, Iowa 52808, appearing on behalf of MidAmerican Energy Company.

MR. JOHN F. DWYER, attorney at law, Iowa Department of Justice, Office of Consumer Advocate, 310 Maple Street, Des Moines, Iowa 50319, appearing on behalf of the Iowa Department of Justice, Office of Consumer Advocate.

MR. FRANK MURRAY SMITH, attorney at law, Frank Smith Law Office, 4215 Hubbell Ave., Des Moines, Iowa 50317, appearing on behalf of Ms. Linda Juckette.

MR. MATTHEW G. CLARKE, P.O. Box 314, Norwalk, Iowa 50211, appearing pro se.

STATEMENT OF THE CASE

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) nominal, 169 kV maximum, 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).

MidAmerican filed revisions to the petitions and additional information on October 31, November 9, 14, 28, and December 21, 2005. It filed additional revisions and information on January 4 and 26, and February 20, 2006.

As proposed, the transmission line would originate at the MidAmerican Booneville substation in Dallas County and terminate at the MidAmerican Norwalk substation located within the corporate limits of the city of Norwalk, Iowa. (petitions for franchises; Hockmuth report; Tr. 131.) MidAmerican proposes to double circuit the proposed new 161 kV line with an existing 345 kV line on common structures and on existing electric transmission line right-of-way for the first approximately 4.1 miles east and south of the Booneville substation. (petitions for franchises; Hockmuth report; Tr. 131.) The proposed line would then continue as a single circuit 161 kV line on new right-of-way in an easterly and southerly route through Madison and Warren Counties for approximately 12.2 miles. (petitions for franchises; Hockmuth report; Tr. 131.) The proposed line would then parallel an existing double circuit 345/161 kV line northeasterly for approximately 0.6 mile and terminate at the existing MidAmerican Norwalk substation in Warren County. (petitions for franchises; Hockmuth report; Tr. 131.) MidAmerican plans to install a 7.2 kV distribution underbuild on the proposed line for approximately 2.8 miles in Warren County. (E-21754 petition; Hockmuth report.)

MidAmerican requests that it be vested with the power of eminent domain pursuant to Iowa Code § 478.6 (2005). As of the hearing, MidAmerican requested eminent domain authority over three parcels of land in Warren County (Docket No. E-21754). (petition Exhibit E, Docket No. E-21754; Tr. 7.) These three parcels are

designated as Tracts IA-WR-049.000, IA-WR-056.000, and IA-WR-090.000. (petition Exhibits E-2, E-3, E-4, Docket No. E-21754.) MidAmerican does not request eminent domain authority in Dallas or Madison Counties. (petitions for franchises.)

As of the date of the hearing, there remain four objections to the proposed route: one in Madison County (Docket No. E-21753) and three in Warren County (Docket No. E-21754.) One of the objectors, Mr. Matthew G. Clarke, also has an interest in one of the eminent domain parcels: Tract No. IA-WR-090.000. (Clarke objections; Exhibit MC-300; petition Exhibit E-4, Docket No. E-21754.)

On March 29, 2006, the Board issued an order consolidating the three dockets listed above and assigning them to the undersigned administrative law judge.

On March 31, 2006, MidAmerican filed a proposed eminent domain notice.

On April 3, 2006, the undersigned issued a procedural order and notice of hearing and proposed to take official notice of a March 17, 2006, report concerning the proposed transmission line by Mr. Dennis Hockmuth, Utility Regulatory Engineer for the Board.

MidAmerican filed prepared direct testimony and exhibits of Mr. James Averweg, Mr. Brian K. Knights, Mr. Dehn A. Stevens, Mr. James P. Swanson, Ms. Meghan E. Wagner, Mr. Brian D. Weber, and Mr. Brian O. Williams on April 25, 2006. It filed a prehearing brief on April 25, 2006.

Mr. John and Mrs. Deborah White, who previously filed an objection in Docket No. E-21754 (Warren County), filed an addition to their previously filed objection on May 2, 2006.

On May 9, 2006, the undersigned issued an order regarding rebuttal testimony that required MidAmerican to file rebuttal testimony on certain issues.

MidAmerican filed proofs of publication on May 11, 2006.

On May 16, 2006, Ms. Linda Juckette filed prepared direct testimony and exhibits of Mr. Charles J. Bishop, Ms. Linda K. Juckette, and Mr. Michael D. Olson. Ms. Juckette also filed a motion for extension, a motion to initiate condemnation proceedings, an answer, and a prehearing brief on May 16, 2006. Ms. Juckette filed an exhibit and proof of service on May 18, 2006. She filed another exhibit and proof of service on May 22, 2006.

On May 22, 2006, the undersigned administrative law judge issued an order granting the motion for extension and stating that the ruling on the motion to initiate condemnation proceedings would be made as a part of the proposed decision in the case.

MidAmerican filed certified return receipts for the eminent domain notices on May 22, 2006. It filed prepared rebuttal testimony of Mr. Knights and Mr. Weber on May 23, 2006. MidAmerican also filed a reply brief, motion to strike, and resistance to the motion to initiate condemnation proceedings on May 23, 2006.

MidAmerican caused notice of the hearing to be published in Dallas County in the Dallas County News, a newspaper of general circulation in the county, on April 20 and April 27, 2006. (proof of publication.) MidAmerican caused notice of the hearing to be published in Madison County in the Winterset Madisonian, a newspaper of general circulation in the county, on April 19 and April 24, 2006. (proof of publication.) MidAmerican caused notice of the hearing to be published in Warren

County in The Record Herald and Indianola Tribune, a newspaper of general circulation in the county, on April 19 and 26, 2006. (proof of publication.)

The hearing was held on May 30, 2006, beginning at 10:30 a.m., in the Winterset Public Library Meeting Room, Winterset Public Library, 123 North 2nd Street, Winterset, Iowa. MidAmerican was represented by its attorney, Mr. Robert P. Jared. Mr. Averweg, Mr. Knights, Mr. Stevens, Mr. Swanson, Ms. Wagner, Mr. Weber, Mr. Williams and Mr. Leslie K. Ferguson (in rebuttal) testified on behalf of MidAmerican. MidAmerican's Exhibits 1 through 15 were admitted at the hearing. The Consumer Advocate Division of the Department of Justice (Consumer Advocate) was represented by its attorney, Mr. John F. Dwyer. Ms. Linda Juckette was represented by her attorney, Mr. Frank Murray Smith. Mr. Bishop, Ms. Juckette, and Mr. Olson testified on behalf of Ms. Juckette. Ms. Juckette's Exhibits LJ200, LJ201(a)-LJ201(g), LJ202(a)-LJ202(f), LJ203(a)-LJ203(b), LJ204(a)-LJ204(f), LJ205, and LJ207 were admitted at the hearing. Mr. Matthew G. Clarke appeared pro se and testified on his own behalf. Mr. Clarke's Exhibit MC-300¹ was admitted at the hearing. Mr. Dennis Hockmuth testified as the engineer selected by the Board to examine the proposed route pursuant to Iowa Code § 478.4. The remaining objectors and persons with an interest in the eminent domain parcels did not testify at the hearing. The parties did not object to the taking of official notice of Mr.

¹ Exhibit MC-300 consists of a two-page handwritten statement; a black and white copy of a map entitled "Land Use Plan, Norwalk 2005 Comprehensive Plan Update"; and a larger color copy of the same map.

Hockmuth's report dated March 17, 2006 (Hockmuth report), and it was officially noticed.

At the hearing, Ms. Juckette filed a written resistance to MidAmerican's motion to strike, and she was directed to file it with the Board's Records and Information Center. MidAmerican and Ms. Juckette presented argument on the motion to strike. The undersigned denied the motion to strike and reserved ruling on the substantive arguments in the motion regarding the Board's eminent domain authority and related issues. These issues are ruled on in this proposed decision. Ms. Juckette's motion to initiate condemnation proceedings and MidAmerican's resistance to it are also ruled on in this decision.

As directed, Ms. Juckette filed a resistance to MidAmerican's motion to strike with the Board on May 31, 2006.

Mr. Clarke filed a brief on June 19, 2006. He filed Exhibit MC-400 on June 20, 2006.

Ms. Juckette filed a brief on June 20, 2006.

On June 20, 2006, the Consumer Advocate filed a letter that stated: "In these consolidated dockets, the Office of Consumer Advocate believes MidAmerican Energy Company has met the requirements of Iowa Code chapter 478 and established the proposed lines are necessary to serve a public purpose and represent a reasonable relationship to an overall plan of transmitting electricity in the public interest. This office will therefore not object to the granting of permits for the lines and will not be submitting a brief on issues raised by individual objectors."

MidAmerican filed a brief on June 21, 2006, with a request to file the brief one day late. The request was granted in an order issued June 21, 2006.

NEED FOR THE PROPOSED LINE

In order to obtain a franchise, MidAmerican must prove that the proposed transmission line is necessary to serve a public use. Iowa Code § 478.4. Transmission of electricity to the public is "a public use" within the meaning of the statute. Vittetoe v. Iowa Southern Utilities Company, 123 N.W.2d 878, 880 (Iowa 1963). Therefore, one issue in this case is whether the proposed transmission line is "necessary" to serve that public use.

The need for the proposed 161 kV transmission line at issue in this case is related to the need for and construction of the Council Bluffs Energy Center 4 (CBEC-4) generating plant and the new 345 kV Council Bluffs to Grimes electric transmission line. (petitions for franchises, Exhibits D; Tr. 45-46, 57-67, 69-88; Exhibits 1-5). However, the need for the CBEC-4 generating plant is not an issue in this case. The Board previously approved MidAmerican's application for a certificate to construct and operate the CBEC-4 generating plant and issued a certificate to MidAmerican for this purpose in Docket No. GCU-02-1. Similarly, the need for the new 345 kV Council Bluffs to Grimes electric transmission line is not an issue in this case. The Board previously approved MidAmerican's petitions for franchises for the new 345 kV Council Bluffs to Grimes electric transmission line in Docket Nos. E-21621, E-21622, E-21625, E-21645, and E-21646. Therefore, the only question

regarding need relates to whether the proposed 161 kV Booneville to Norwalk transmission line is necessary for the transmission of electricity to the public.

MidAmerican presented evidence that the proposed 161 kV Booneville to Norwalk transmission line is needed for two reasons.

First, the proposed line is needed as a part of the comprehensive transmission plan needed to transport electricity from the CBEC-4 generating plant. (Tr. 45-46, 57-67, 69-88; petitions for franchises, Exhibits D; Exhibits 1-5.) MidAmerican is a member of Mid-Continent Area Power Pool (MAPP), one of the North American Electric Reliability Council (NERC) regional reliability councils. (Tr. 59.) As a member of MAPP, MidAmerican must meet MAPP reliability criteria when the company proposes an interconnection with the regional electric transmission system. (Tr. 59-60.) MidAmerican was required to conduct a system reliability study and gain approval from MAPP's Design Review Subcommittee in order to connect the CBEC-4 generating plant to the regional transmission system. (Tr. 59-60.) MidAmerican's system reliability studies showed that with the addition of the Council Bluffs to Grimes 345 kV transmission line included as a part of a comprehensive set of electric system additions, the addition of the CBEC-4 generating plant met MAPP's reliability criteria. (Tr. 45-46, 57-67, 69-88; petitions for franchises, Exhibits D; Exhibits 1-5.)

Due to routing considerations, the Council Bluffs to Grimes 345 kV transmission line is being constructed on double-circuit structures with existing transmission lines. (Tr. 45.) MidAmerican's system reliability studies further concluded that the double-circuit structure plan met MAPP reliability criteria if a new 161 kV electric transmission line is constructed to connect the Booneville and

Norwalk substations and if the Booneville 345-161 kV transformer is assigned an emergency overload rating of approximately 111 percent. (Tr. 45-46, 64; Exhibit 5; petitions for franchises, Exhibits D.) MidAmerican received the required approvals from the MAPP Design Review Subcommittee for the CBEC-4 generating plant and 345 kV Council Bluffs to Grimes line contingent on, among other things, that MidAmerican would construct a Booneville-Norwalk 161 kV line. (Tr. 61-67; Exhibits 1-5; petitions for franchises, Exhibits D.)

The Booneville to Norwalk line will relieve loading on the Booneville to Ashawa 161 kV line under the condition when the Madison County to Norwalk 345 kV line is assumed to be initially out of service followed by a forced outage of both circuits on the double-circuit Council Bluffs to Grimes line. (Tr. 66.) Under this condition, the Booneville to Ashawa 161 kV line loads above its capability, which would violate MAPP reliability criteria. (Tr. 66.) Adding the Booneville to Norwalk line will provide an additional path for power to flow away from the Booneville substation so that the Booneville to Ashawa 161 kV line does not load above its capability. (Tr. 66-67.) MidAmerican therefore proposes to construct the 161 kV line at issue in this case and has worked with the transformer manufacturer to establish an overload rating of the Booneville transformer in excess of the required 111 percent value. (petitions for franchises; Tr. 64.)

MidAmerican considered other options but they were rejected for various reasons. (Tr. 67, 83-84.) MidAmerican considered the option of increasing the capability of the Booneville to Ashawa 161 kV line but rejected it because the line already has a comparatively high rating and further increasing its rating would require

completely rebuilding the line and would not make sense from a long-term planning perspective. (Tr. 67, 83.) MidAmerican also considered the option of building a different transmission line from Booneville to another substation in the Des Moines metro area. (Tr. 67, 83.) This option was rejected because the other line was not needed in the foreseeable future and MidAmerican projected that the Booneville to Norwalk line would be needed to serve local area load growth. (Tr. 67, 83-84.) MidAmerican preferred the proposed option because it relieved the loading issue and it fit into MidAmerican's longer range view of where load is growing in the area and where new facilities would be needed to serve this growing load. (Tr. 84.) MidAmerican concluded that additional MAPP approval was not required for the proposed line. (Tr. 86-87.)

MidAmerican also presented evidence that the proposed line is needed for a second reason: to serve up to three future 161-13 kV electric distribution substations in between Booneville and Norwalk that will be needed to accommodate increased population and electric loads in the area. (petitions Exhibits D; Tr. 46, 97-124, 133, 348-356; Exhibit 6.)

MidAmerican provided evidence that the population in the Booneville-Norwalk area is growing. (petitions Exhibits D; Tr. 46, 97-124.) It stated that, according to U.S. Census Bureau estimates, the population of Cumming grew by 36 percent between 2000 and 2004 and the population of Norwalk grew by 12 percent during the same time period. (petitions Exhibits D.) Increases in population and associated land development in the parts of Warren County north and west of Norwalk have been expanding for several years, which results in increasing electrical use in the

area. (Tr. 97-98, 104-105.) For example, the population of Linn Township in the northwestern corner of Warren County increased from 5,493 in 1990 to 6,002 in 2000. (Tr. 97.) MidAmerican projects continued population growth in the area at similar growth rates. (petitions Exhibits D; Tr. 98, 104-118.)

MidAmerican witness Mr. Swanson testified that the resulting increased electrical load will require MidAmerican to construct up to three electrical distribution substations in the area at some point in the future. (Tr. 98.) Mr. Swanson testified there are three locations between Booneville and Norwalk where distribution substations may be needed: (1) approximately one mile north of highway G14 near Interstate 35; (2) approximately one mile east and one mile south of the town of Cumming; and (3) approximately four miles west of Interstate 35 and approximately one mile south of the Dallas-Madison County line. (Tr. 98, 107-118; Exhibit 6.) These are approximate locations. (Tr. 107.)

Mr. Swanson testified MidAmerican regularly conducts studies of its service area to determine appropriate additions to its electrical system. (Tr. 99.) MidAmerican chose these three future substation locations as a part of a study of the area. (Tr. 99.) MidAmerican's practice for spacing distribution substations in the urban Des Moines area has been to plan for distribution substations that serve loads within a circular area having a 3 to 3.5-mile diameter. (Tr. 100-101.) Mr. Swanson testified this spacing normally works well even when an area has been fully developed. (Tr. 100-101.) He testified a fully developed circular area 3.5 miles in diameter has approximately 9.6 square miles of area. (Tr. 100-101.) MidAmerican's experience has shown that the typical load density of a fully developed area has

approximately eight megawatts (MW) of load per square mile. (Tr. 100-101.)

Therefore, there could be as much as 77 MW of load within a fully developed circular area of this size. (Tr. 100-101.) MidAmerican's typical 161-13 kV distribution substation can normally have up to three 33 MVA transformers, which can serve 77 MW of distribution load plus a limited amount of additional capacity for serving loads transferred from adjacent substations during maintenance or unplanned outages. (Tr. 100-101.)

Mr. Swanson testified that MidAmerican looks at the general expansion of the Des Moines metropolitan area, and it observes that development occurs progressively moving away from highly populated areas. (Tr. 109.) MidAmerican builds substations to serve circular areas that are contiguous to areas served by other existing or planned substations. (Tr. 109; Exhibit 6.) MidAmerican does not have a definite population size target for when it needs a substation. (Tr. 105.) When a substation is needed depends on whether the population is business or residential and the density of the population. (Tr. 105.) Mr. Swanson testified the concept is to be able to serve the load when it arrives rather than to have an accurate prediction of when the areas would be developed. (Tr. 109-110.) MidAmerican does not try to guess exactly where the population will grow other than that it will grow contiguous to existing population areas. (Tr. 110.) MidAmerican plans to locate the three substations so it can serve the entire area without gaps. (Tr. 99, 110; Exhibit 6.)

Mr. Swanson testified there would be a significant cost advantage to having the proposed Booneville to Norwalk line located in the area to provide an electrical

source to these three substations. (Tr. 98.) MidAmerican located the proposed line so it will be within 1.5 miles of each of these three substation sites. (Tr. 98.) Mr. Swanson testified this is close enough to each site for the purposes of planning the distribution substations. (Tr. 98.) He further testified that if the line is not properly located, it would be necessary for MidAmerican to build longer 13 kV distribution circuits to serve some loads in the area or additional short 161 kV transmission tap lines to connect the substations to the proposed 161 kV transmission line. (Tr. 99.)

The timing of the need for the three future substations depends on how quickly electric load grows in the area. (Tr. 100, 105-106.) MidAmerican estimates that the first substation could be needed within five to ten years, and the second and third substations could be needed within 10 to 25 years. (Tr. 100.) These substations will need an electrical transmission source, and the proposed transmission line will be able to provide such a transmission source. (Tr. 46, 98; Hockmuth report.) MidAmerican does not know of another reasonable way to serve the substations in this area without building a transmission line similar to the line proposed in this case. (Tr. 67, 106-107.)

Mr. Swanson testified that another benefit of the proposed line is that it will increase the reliability of the Norwalk and Booneville substations by providing them with a third 161 kV transmission source. (Tr. 102-103.)

Although Mr. Clarke filed objections and a brief opposing MidAmerican's petition, he stated in his objection that he understands the need for the line to go somewhere. (Clarke objection March 28, 2005.)

In cross-examination, closing argument at the hearing, and her post-hearing brief, Ms. Juckette argued that MidAmerican failed to produce substantial evidence showing the need for the proposed line. Ms. Juckette challenged MidAmerican's assessment of the second reason for the need for the proposed line. (Tr. 115-118, 348-356, 377; post-hearing brief.) Ms. Juckette argues that "MidAmerican produced no evidence of the current electrical usage of the area to be served, the electrical capacity currently available to serve the area, whether the area currently uses the entire available electrical capacity, or whether there is excess or reserve electrical capacity. Further, MidAmerican produced no evidence showing projected electrical power demand for the area at issue and whether or when such projected electrical demand would surpass MidAmerican's current electrical capacity to the area. In short, MidAmerican failed to present substantial evidence showing that the public needs the proposed transmission line now or in the foreseeable future to serve a defined geographical area." (Ms. Juckette post-hearing brief, p. 7.)

Ms. Juckette did not present her own evidence on the need issue and did not argue that the testimony and exhibits that were presented by MidAmerican with respect to the need for the line were incorrect. (Tr. 267-319, 348-356, 377; Exhibits LJ-200 through LJ-205, LJ-207; post-hearing brief.) Rather, Ms. Juckette's challenge was to the sufficiency of the evidence that was presented by MidAmerican with respect to the second reason for the line. (Tr. 267-319, 348-356, 377; post-hearing brief.) Ms. Juckette did not challenge the first reason for the line presented by MidAmerican and acknowledged that MidAmerican offered evidence that the line would help meet future reliability criteria. (Tr. 267-319, 348-356, 377; Exhibits LJ-200

through LJ-205, LJ-207; post-hearing brief.) However, Ms. Juckette argued, "even if this evidence supports such a finding, such evidence is outweighed by MidAmerican's failure to show that the proposed transmission line, or even the overall plan, is necessary and in the public interest to provide electrical service to a defined geographical area." (Ms. Juckette post-hearing brief, pp. 7-8.)

MidAmerican must maintain reliable electric service in the areas it serves. Iowa Code § 476.3. The method it used to assess the need for and plan for service to this growing area was reasonable. There is no requirement that MidAmerican assess the need for electricity and plan for necessary expansion using the method Ms. Juckette proposed.

Ms. Juckette's concerns were primarily related to the location of the line and the impact of the line on the valuation and use of her property. (Tr. 267-319, Exhibits LJ-200 through LJ-205, LJ-207.) These concerns are discussed below. Mr. Clarke's, Ms. Juckette's, and the remaining objectors' concerns generally relate to location, valuation, impact on uses of the property, and electric and magnetic field issues rather than the need for the proposed line. (written objections; Tr. 267-319, 320-342, 357-373; Exhibits LJ-200 through LJ-205, LJ-207, MC-300; Ms. Juckette's Motion to Initiate Condemnation Proceeding and pre- and post-hearing briefs.)

The Consumer Advocate believes that MidAmerican has met the requirements of Iowa Code chapter 478 and established the proposed lines are necessary to serve a public purpose. (Consumer Advocate letter.)

MidAmerican presented substantial evidence supporting the need for the proposed line. (petitions Exhibits D; Tr. 45, 46, 57-67, 69-88, 97-124, 133, 348-356;

Exhibits 1-6.) MidAmerican presented sufficient evidence that demonstrates the proposed transmission line is needed for the two reasons given and is necessary to serve a public use. (petitions Exhibits D; Tr. 45-46, 57-67, 69-88, 97-124, 133, 348-356; Exhibits 1-6.)

RELATIONSHIP TO OVERALL PLAN OF TRANSMITTING ELECTRICITY IN THE PUBLIC INTEREST

To obtain a franchise, MidAmerican must prove that the proposed transmission line is reasonably related to an overall plan of transmitting electricity in the public interest. Iowa Code §§ 478.3(2), 478.4.

MidAmerican witness Mr. James Averweg testified that the proposed line is one component of the improvements to Iowa's and the region's energy infrastructure that MidAmerican is making to meet the energy needs of its customers and the customers of the other joint owners of CBEC-4. (Tr. 45.) Mr. Averweg testified the proposed Booneville to Norwalk line is an important part of the comprehensive transmission plan for the CBEC-4 generating facility. (Tr. 45.)

In its petitions in Exhibits D, MidAmerican stated:

The proposed project is an integral part of, and compatible with, comprehensive electric utility planning for the immediate service area and for MidAmerican's entire system. The project will not only provide outlet capability for Council Bluffs Energy Center Unit 4, but will also provide locations along which 161-13 kV distribution substations can be located to serve the area's increasing electric load.

As discussed above, MidAmerican was required to conduct a system reliability study and gain approval from MAPP's Design Review Subcommittee in order to connect the CBEC-4 generating plant to the regional transmission system. (Tr. 59-

60.) MidAmerican's system reliability studies showed that with the addition of the Council Bluffs to Grimes 345 kV transmission line included as a part of a comprehensive set of electric system additions, the addition of the CBEC-4 generating plant met MAPP's reliability criteria. (Tr. 45-46, 57-67, 69-88; petitions for franchises, Exhibits D; Exhibits 1-5.) MidAmerican's system reliability studies further concluded that the double-circuit structure plan for the 345 kV line met MAPP reliability criteria if a new 161 kV electric transmission line is constructed to connect the Booneville and Norwalk substations and if the Booneville 345-161 kV transformer is assigned an emergency overload rating of approximately 111 percent. (Tr. 45-46, 64; Exhibit 5; petitions for franchises, Exhibits D.) MidAmerican received the required approvals from the MAPP Design Review Subcommittee for the CBEC-4 generating plant and 345 kV Council Bluffs to Grimes line contingent on, among other things, that MidAmerican would construct a Booneville-Norwalk 161 kV line. (Tr. 61-67; Exhibits 1-5; petitions for franchises, Exhibits D.)

Also as discussed above, MidAmerican considered several options to address the loading issue, but chose its preferred option of constructing the proposed line because it both relieved the loading issue and it allowed MidAmerican to construct a line to serve up to three substations needed to serve future load growth in the area. (Tr. 84; Exhibits 1-6.)

In its petition, a utility company seeking a franchise must include information showing the relationship of the proposed project to economic development, comprehensive electric utility planning, needs of the public both present and future, existing electric utility system and parallel routes, other power systems planned for

the future, possible alternative routes and methods of supply, present and future land use and zoning, and inconvenience or undue injury to property owners. Iowa Code § 478.3(2). MidAmerican provided this information in its petitions. (Petitions Exhibit D; Hockmuth Report.) This information, along with information supplied at the hearing, supports a finding that the proposed transmission line represents a reasonable relationship to an overall plan of transmitting electricity in the public interest. Iowa Code § 478.3(2). (Tr. 27-31, 33-36, 45-46, 49-51, 57-67, 69-88, 374; petitions for franchises, Exhibits D; Exhibits 1-6; Hockmuth Report.)

The evidence presented in this case shows that the proposed 161 kV transmission line meets MAPP reliability requirements and represents a reasonable relationship to an overall plan of transmitting electricity in the public interest. (Tr. 27-31, 33-36, 45-46, 49-51, 57-67, 69-88, 374; petitions for franchises, Exhibits D; Exhibits 1-6; Hockmuth report.)

CONSTRUCTION AND SAFETY REQUIREMENTS

In order to obtain a franchise, MidAmerican must show that the proposed transmission line will conform to the construction and safety requirements of Iowa Code §§ 478.19 and 478.20 and the Utilities Board rules at 199 IAC chapters 11 and 25.

MidAmerican proposes to construct a 161 kV transmission line 16.9 miles long originating at the MidAmerican Booneville substation and terminating at the MidAmerican Norwalk substation inside the city limits of Norwalk, Iowa. (petitions for franchises; Hockmuth report; Tr. 131.) MidAmerican proposes to double circuit the

proposed new 161 kV line with an existing 345 kV line on common structures and on existing electric transmission line right-of-way for the first approximately 4.1 miles east and south of the Booneville substation. (petitions for franchises; Hockmuth report; Tr. 131.) MidAmerican proposes to build this portion of the line 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. (Hockmuth report; petitions for franchises.) All but one of the existing structures are structurally adequate to support the additional 161 kV line. (Tr. 139; Exhibit 12.) MidAmerican will replace the one structure that is not adequate. (Tr. 139.) Two additional structures will be replaced because of inadequate spacing or vertical clearance to ground. (Tr. 139.) MidAmerican will also replace two guyed angle structures along the route to decrease exposure to structural failures that could result in outages. (Tr. 139.) Any existing structures determined to be inadequate to handle the addition of the proposed line equipment will be replaced with structures that meet necessary requirements. (Tr. 140.)

The proposed line would then continue as a single circuit 161 kV line on new right-of-way in an easterly and southerly route through Madison and Warren Counties for approximately 12.2 miles. (petitions for franchises; Hockmuth report; Tr. 131.) The proposed line would then parallel an existing double circuit 345/161 kV line northeasterly for approximately 0.6 mile and terminate at the existing MidAmerican Norwalk substation in Warren County. (petitions for franchises; Hockmuth report; Tr. 131.) MidAmerican plans to install a 7.2 kV distribution underbuild on the proposed line for approximately 2.8 miles in Warren County. (E-21754 petition; Hockmuth

report.) This part of the line will be constructed on wooden poles, 65 to 120 feet tall with an average spacing of 450 feet and a maximum spacing of 705 feet. (petitions for franchises; Hockmuth report.)

The design of the proposed line conforms to the National Electrical Safety Code requirements and Board rules. (Petitions; Hockmuth report; Tr. 27-31, 130, 374.) The proposed line will be constructed, operated, and maintained in accordance with all applicable federal and state construction and safety standards. (petitions for franchises; Hockmuth report; Tr. 27-31, 130-131, 141, 374; Exhibits 1-5, 12.)

MidAmerican has shown that the proposed line will conform to the construction and safety requirements in Iowa Code §§ 478.19 and 478.20 and 199 IAC chapters 11 and 25. (petitions for franchises; Hockmuth report; Tr. 27-31, 130-131, 141, 374; Exhibits 1-5, 12.) No additional terms, conditions, or restrictions regarding construction and safety requirements need to be imposed pursuant to Iowa Code § 478.4.

ELECTRIC AND MAGNETIC FIELDS

Electric and magnetic fields are invisible lines of force that surround anything that produces, transmits, or uses electricity, such as appliances and electric transmission lines. (Tr. 215.) There are also natural sources of electric and magnetic fields, such as the Earth and our own bodies, that produce electric fields as a result of the normal functioning of our circulatory and nervous systems. (Tr. 215.) The electric and magnetic fields associated with electricity are often called power-frequency EMF. (Tr. 215.)

Electric fields are the result of voltages applied to conductors and equipment. (Tr. 215.) They are measured in volts per meter (V/m) or kilovolts per meter (kV/m). (Tr. 215.) One kV/m equals 1,000 volts/m. (Tr. 215.) Magnetic fields are produced by the flow of electric currents and are measured in units called milligauss (mG). (Tr. 215.) Most research has focused on magnetic fields because electric fields are blocked by objects, such as trees and buildings, and therefore are of less concern. (Tr. 215.)

Typical sources of EMF in homes are appliances, wiring, electric current flowing on water pipes, and nearby electric distribution and transmission lines. (Tr. 215.) If a home is very close to a transmission line or distribution line (which run next to most residences), the lines could be the dominant, but not the only, source of magnetic fields in the home. (Tr. 215.) However, since magnetic fields decrease rapidly as you get further away from the source of the field and most homes are set far away from transmission lines, the contribution of transmission lines to a home's

magnetic field level may be low to nonexistent. (Tr. 215-6.) Therefore, household appliances are usually the strongest sources of magnetic fields in homes. (Tr. 216.)

A study by the United States Environmental Protection Agency conducted in 1992 showed the median magnetic field at six inches from a sampling of appliances was 90 mG (copier), 150 mG (drills), 600 mG (can opener), 300 mG (hair dryer), and 6 mG (baby monitor). (Tr. 216.) A 1993 survey of 992 US homes showed there was a wide range of average all-room magnetic levels. (Tr. 216.) Seventy-five percent of the homes had an average all-room magnetic field level less than or equal to approximately one mG. (Tr. 216.) One percent of the homes had an average all-room magnetic field level greater than approximately seven mG. (Tr. 216.)

MidAmerican witness Ms. Meghan Wagner is a Scientist with Exponent, Inc. (Exponent), a research and consulting firm. (Tr. 213, 223.) Ms. Wagner has a Master of Public Health in Epidemiology. (Tr. 213, 223.) The majority of her work at Exponent has focused on evaluating the literature on the possible health effects of EMF. (Tr. 214.) Electrical engineers at Exponent calculated the electric and magnetic field levels associated with the operation of existing transmission lines and after the construction of the proposed Booneville to Norwalk 161 kV line at issue in this case. (Tr. 216.) The scientists made calculations for three sections along the proposed route. (Tr. 216.)

In Section 1, the proposed line would be located on a right-of-way (ROW) next to existing 345 kV and 161 kV lines. (Tr. 216; petitions for franchises.) The electric and magnetic field levels at the edge of the ROW in Section 1 will remain the same or drop below the current levels. (Tr. 216.) In Section 2, the proposed line will be

constructed on a new section of ROW. (Tr. 216; petitions for franchises.) Along the edge of the ROW, the highest electric and magnetic field levels would be below 1 kV/m and 2 mG, respectively. (Tr. 216.) In Section 3, the proposed line would be suspended below an existing 345 kV line on new and modified supporting structures. (Tr. 216; petitions for franchises.) The electric and magnetic field levels at the edge of the ROW in Section 3 will decrease from 0.70 kV to 0.64 kV, and from 14 mG to 0.7 mG, respectively. (Tr. 216.)

The electric and magnetic field levels associated with the proposed line at the edges of the ROW in Section 2 at average loadings would be approximately 0.5 kV and approximately 1 mG. (Tr. 216-7.) These levels are within the range of typical levels of electric and magnetic fields found in homes, offices, and other locations frequented by people during the day. (Tr. 217.) Homes located 100 feet from the centerline of the proposed line would have magnetic levels even lower than those at the edge of the ROW. (Tr. 215-7.)

The two states that have set standards to limit magnetic fields from new transmission lines are New York with a limit of 200 mG and Florida with a limit of 150 mG at the edge of the ROW at maximum loading. (Tr. 217.) The rationale of these standards is to ensure that the magnetic field levels of new transmission lines do not exceed magnetic field levels produced by existing transmission lines. (Tr. 217.) The standards were not based on health effects. (Tr. 217.)

There has been extensive research on the possible health effects of EMF. (Tr. 217.) These include hundreds of epidemiology studies, animal studies, and studies of cells and tissues in the laboratory. (Tr. 217.) Scientists have a large and high

quality body of research to consult when forming conclusions about the possible health effects of EMF. (Tr. 217.) When forming conclusions about whether EMF poses a health risk, it is important to evaluate the entire body of research because no single study is capable of addressing all the issues that must be considered and each study has strengths and weaknesses. (Tr. 217-8.)

Numerous national and international organizations responsible for public health have convened groups of scientists to review the research and come to a conclusion about the possible risks associated with EMF. (Tr. 218.) These include the U.S. National Institute of Environmental Health Sciences (NIEHS, 1998), the International Agency for Research on Cancer (IARC, 2002), the International Commission on Non-Ionizing Radiation (ICNIRP, 2003), the National Radiological Protection Board of Great Britain (NRPB, 2001; NRPB 2004), and the Health Council of the Netherlands (HCN, 2001; HCN, 2004; HCN, 2005). (Tr. 218.) The conclusions of these reviews were consistent: they agreed that the body of evidence does not support the conclusion that EMF is the cause of any adverse health effect, including adult and childhood cancer, Alzheimer's disease, amyotrophic lateral sclerosis, reproductive effects, and childhood leukemia. (Tr. 218-9.)

There are no federal or state health-based standards for electric or magnetic fields. (Tr. 219.) There are general recommendations from scientific organizations regarding EMF exposure for the general public and workers. (Tr. 219.) Exposure to high levels of EMF, not typically found in our communities, can cause stimulation of nerves and muscles, a shock-like effect. (Tr. 219.) To protect against these effects, the ICNIRP recommends that public exposure to magnetic fields be limited to

833 mG and occupational exposure be limited to 4,200 mG. (Tr. 220.) The International Committee on Electromagnetic Safety (ICES) recommends that magnetic field exposures of the general public be limited to 9,040 mG. (Tr. 220.) The ICNIRP recommends that electric field exposure of the general public be limited to 4.2 kV/m and the ICES recommends a limit of 5 kV/m. (Tr. 220.) Both organizations recommend much higher limits for occupational electric field exposures. (Tr. 220.)

The electric and magnetic field levels associated with the proposed transmission line are well below the ICNIRP and ICES recommendations. (Tr. 220.) MidAmerican witness Ms. Wagner concluded that the EMF produced by the proposed project will not adversely affect public health or safety. (Tr. 220.)

When asked whether she agreed that there is a general perception in the public that electromagnetic fields pose a health risk, Ms. Wagner testified that "some people have concerns that electric and magnetic fields may pose a health risk, but usually if you talk to them about the characteristics of magnetic fields and the scientific process in general, and also the conclusions of the panels that have looked at the research, you can alleviate those concerns." (Tr. 224.) She also testified that there have been a lot of studies that have looked at the possible effects of EMF on cows, and the studies have not found any effects on their health, behavior or productivity. (Tr. 225.) She testified that radio and television interference are possible, but she believed MidAmerican's policy is that if either of these effects is occurring, MidAmerican will take steps to mitigate the effects. (Tr. 226.)

No one presented any expert or scientific evidence that contradicted the expert testimony presented by MidAmerican.

MidAmerican has presented sufficient proof that the electric and magnetic field levels that will be produced at the edge of the right-of-way of the proposed line will not adversely affect public health and safety. (Tr. 211-26.) Based on the record, no additional terms, conditions, or restrictions related to electric and magnetic field levels need to be imposed pursuant to Iowa Code § 478.4.

LINE LOCATION AND ROUTE

The Board has the authority to impose modifications of the location and route of the proposed line that are just and proper. Iowa Code § 478.4. Iowa Code § 478.18 and Board rule 199 IAC 11.1(7) require transmission lines to be constructed near and parallel to roads and railroads and along division lines of land wherever practical and reasonable. The same section and rule require the utility to construct the line so as not to interfere with the use of the public of the highways or streams of the state and so as not to unnecessarily interfere with the use of any lands by the occupant. "When a route near and parallel to these features has points where electric line construction is not practical and reasonable, deviations may be proposed at those points, when accompanied by proper evidentiary showing, generally of engineering reasons, that the initial route or routes examined did not meet the practical and reasonable standard. Although deviations based on landowner preference or minimizing interference with land use may be permissible, the petitioner must be able to demonstrate that route planning began with a route or

routes near and parallel to roads, railroad rights-of-way, or division lines of land."

199 IAC 11.1(7). The Iowa Supreme Court has interpreted "division lines of land" to mean section lines, quarter section lines, and quarter-quarter-section lines. Hanson v. Iowa State Commerce Comm'n, 227 N.W.2d 157 (Iowa 1975).

The requirement in Iowa Code § 478.18 means that MidAmerican must start its planning using railroad or land division routes. Hanson, at 163. The route must follow a railroad or land division route wherever practical and reasonable. Id. If such routes contain points of impracticality or unreasonableness, MidAmerican may deviate from the route at those points. Id. The Iowa Supreme Court struck down a proposed diagonal route that the Court called "a wholesale departure from railroad and land division routes" when the utility had not begun its planning along division lines of land and railroad routes. Id. The Court noted that diagonal routes running directly from the origin to the termination of the line would be the cheapest, simplest, and most convenient location, but stated that the legislature chose the system of requiring lines to follow division lines of land wherever practical and reasonable, and utilities must follow that requirement. Hanson, at 162. The Court approved a route that deviated from division lines of land when the planning began with division line locations and deviations were based on engineering considerations of practicality and reasonableness in Anstey v. Iowa State Commerce Comm'n, 292 N.W.2d 380 (Iowa 1980). The Court also upheld the Board's conclusion that a new transmission line should follow an existing right-of-way and that new construction along division lines of land was not practical or reasonable under the circumstances in Gorsche Family Partnership v. Midwest Power, et al, 529 N.W.2d 291 (Iowa 1995). However, the

Gorsche decision did not overrule or change the Hanson and Anstey decisions and does not authorize utilities to build transmission lines on new diagonal routes that neither follow existing routes nor division lines of land, roads, or railroads as required by Iowa Code § 478.18.

In addition, no transmission line outside of cities "shall be constructed, except by agreement, within 100 feet of any dwelling house or other building, except where such line crosses or passes along a public highway or is located alongside or parallel with the right-of-way of any railway company." 199 IAC 11.1(7); Iowa Code § 478.20.

MidAmerican's proposed route begins at the MidAmerican Booneville substation in Dallas County and terminates at the MidAmerican Norwalk substation located within the corporate limits of the city of Norwalk, Iowa. (petitions for franchises; Hockmuth report; Tr. 131.) MidAmerican proposes to double circuit the proposed new 161 kV line with an existing 345 kV line on common structures and on existing electric transmission line right-of-way for the first approximately 4.1 miles east and south of the Booneville substation through Dallas and Madison Counties. (petitions for franchises; Hockmuth report; Tr. 131.) The proposed route then continues as a single circuit 161 kV line on new right-of-way along division lines of land in an easterly and southerly route through Madison and Warren Counties for approximately 12.2 miles. (petitions for franchises; Hockmuth report; Tr. 131.) The proposed route then parallels an existing double circuit 345/161 kV line corridor northeasterly for approximately 0.6 mile and terminates at the existing MidAmerican Norwalk substation in Warren County. (petitions for franchises; Hockmuth report; Tr. 131.)

The area considered for the routing of the line was determined by the need to place the proposed line as near as possible to the growing load in the area so that future electric substations could be located near or along the route to efficiently serve electricity to the growing area. (Tr. 133.) MidAmerican's route selection started with a consideration of routes near and parallel to roads or division lines of land. (Tr. 132; petitions Exhibits D.) There were no active railroad corridors between the Booneville and Norwalk substations, so they were not considered as potential routes. (Tr. 132.)

MidAmerican conducted a comprehensive route study to examine the potential routes as a tool to help determine the relative impacts of potential routes. (Tr. 132, 148-9, 153-4; Exhibits 7, 8.) MidAmerican considered over 15,000 route combinations in the route study. (Tr. 154.) MidAmerican considered the following factors to determine the desirability of one route option over another in the route study: the length of the line for each route option; the number of angle structures required for each route option; the amount of treed areas impacted by the route option; the number of existing residences within 200 feet of the route option; the number of cemeteries impacted; the number of churches and schools within 200 feet of the route option; the number of grain bins within 200 feet of the route option; the amount of potential wetland sites impacted with each route option; and the number of businesses near each route option. (Tr. 132, 154-5, 171; Exhibit 7.) Additional routes other than along roads and division lines of land were considered if a potential existed to lower the overall route impacts on these factors. (Tr. 132.) The number of angles and the length of the route options were also considered. (Tr. 155-6.) In the route study, the highest relative weights were given to existing residences,

businesses, churches, schools, and cemeteries near the route options. (Tr. 132, 171.)

The route proposed by MidAmerican in this case has the lowest impact on the compilation of all factors considered by MidAmerican. (Tr. 133, 146, 155-7, 171-2; Exhibit 7.) Using the route study, MidAmerican attempted to find a reasonable route that met applicable requirements of Iowa law, and its witness Mr. Stevens testified the current proposed route meets those requirements. (Tr. 148-9.) The proposed route follows division lines of land and roads wherever reasonable and practical. (Tr. 148-9.)

In Madison and Warren Counties, MidAmerican's proposed route deviates from division lines of land. (Hockmuth report; Tr. 137.) MidAmerican considered options following division lines of land in these areas. (Tr. 137.) Any deviations made were based on either property owner concerns or site conditions found during on-site review of the corridor. (Tr. 137.) One such site condition was the presence of a meandering stream crossing the division line of land in Madison County. (Tr. 137.) The deviation was made to reduce the impact to the stream. (Tr. 137.) MidAmerican has obtained voluntary easements to accommodate these deviations. (Tr. 137.)

MidAmerican also made deviations from division lines of land in Dallas County on the west end of the proposed route. (Hockmuth report; Tr. 138, 151.) At this location, MidAmerican considered routes following two roads but chose to follow the existing Booneville to Madison County 345 kV transmission line corridor to avoid impacting additional land. (Tr. 138, 151-2, 160.) Following the existing corridor and using existing structures would also reduce the cost of the proposed line. (Tr. 152.)

On the east end of the proposed route for the last 0.6-mile section in Warren County, MidAmerican considered several route options to the north of the existing 345/161 kV transmission line corridor. (Tr. 138, 161-2.) MidAmerican determined that the proposed overall route paralleling this existing corridor represented the least overall impact to the area based on the criteria used in the route study. (Tr. 138.) MidAmerican proposes to construct the line on a parallel and separate easement corridor to reduce the concern that a structural failure of one line would affect the paralleling line. (Tr. 138.) The route would also keep the proposed line from crossing under the existing 345/161 kV line to minimize the concern that damage to one line would result in damage to the other line. (Tr. 138.)

MidAmerican will use steel structures on off-road sections of the proposed line to minimize the need to access land to inspect the structures in the future. (Tr. 149.) To address aesthetic concerns, MidAmerican attempted to reduce the number of structures needed for the proposed line. (Tr. 150-1.) To do this, MidAmerican increased the span of the structures as much as possible considering terrain and easement width. (Tr. 151.) MidAmerican also used steel single-pole structures instead of double-pole structures that have been used in the past on 161 kV lines. (Tr. 151.)

The following objectors proposed alternate routes to the one chosen by MidAmerican so that the route of the line would not cross or be near the objector's property: Mr. Clarke, Ms. Juckette, Mr. John A. White, and Mr. John W. and Mrs. Deborah White. (Clarke objections; Juckette objection; John A. White objection; John W. and Deborah White objections; Tr. 172-198, 271-82, 292-5, 298-9, 311, 326-

7, 330-7, 357-64, 368-73; Exhibit 8, Exhibit LJ-205; Exhibit MC-300.) MidAmerican addressed each of the alternate routes proposed by the objectors. (Tr. 133-6, 143-51, 157-9, 164-9, 172-98, 358-64, 366-73; Exhibits 7,8,9.) Each of the alternate routes is less preferable than the route proposed by MidAmerican for one or more of several reasons: the route would not allow MidAmerican to fully address future load growth in the area and alleviate planning concerns, the route is a diagonal route not following the requirements of Iowa law, the route would require additional angle structures, the route would be longer, the route would have more homes within 200 feet, and the route would have more grain bins within 200 feet. (Tr. 133-6, 143-51, 157-9, 164-9, 172-98, 358-64, 366-73; Exhibits 1-15.)

Although each of the objector's alternate routes would mean the proposed line would not be on or near the objector's property, thus providing a benefit to the individual objector, the alternate routes would be less preferable to the public at large. (Tr. 133-6, 143-51, 157-9, 164-9, 172-98, 271-82, 292-5, 311, 326-6, 330-7, 357-64, 366-73; Exhibits 1-15; Exhibit LJ-205; Exhibit MC-300.) When considering the public interest, the term public is not limited to the individual objectors, and is not even limited to consumers located in this state. Iowa Code § 478.3(3). Requiring MidAmerican to follow a route that is longer, with more angle structures, and/or going within 200 feet of more residences or grain bins, for the benefit of one or more objectors would add unnecessary cost to the project to the detriment of the public, would not be in the public interest, and would not be just or proper. Similarly, requiring MidAmerican to follow a route that does not meet the two needs for the line is not in the public interest and would not be just or proper.

MidAmerican has obtained all required environmental reviews and permits for the proposed transmission line. (Tr. 198-210; MidAmerican Exhibits 13-15.) MidAmerican has demonstrated that the route it selected is reasonable and in compliance with the requirements of Iowa law. (petitions for franchises; Hockmuth report; Exhibits 1-15; Exhibit LJ-205; Exhibit MC-300; objections; Tr. 131-8, 143-69, 171-98, 271-82, 292-5, 298-9, 311, 326-7, 330-7, 357-64, 366-73.) MidAmerican has proven the proposed route is the most practical and reasonable alternative and it should be approved. (petitions for franchises; Hockmuth report; Exhibits 1-15; Exhibit LJ-205; Exhibit MC-300; objections; Tr. 131-8, 143-69, 171-98, 271-82, 292-5, 298-9, 311, 326-7, 330-7, 357-64, 366-73.)

EMINENT DOMAIN

Once the Board grants a franchise to MidAmerican for the construction, maintenance, and operation of the proposed transmission line, MidAmerican is entitled to be vested with the power of condemnation, also called the right of eminent domain, to the extent the Board approves and finds necessary, within the width and acre limits in § 478.15. Iowa Code §§ 478.6 and 478.15. MidAmerican has the burden to prove there is a necessity for public use. Iowa Code § 478.15.

In this case, MidAmerican requests the right of eminent domain over three parcels of land in Warren County (Docket No. E-21754), designated as Tracts IA-WR-049-000, IA-WR-056-000, and IA-WR-090-000. (E-21754 Petition Exhibits E-2, E-3, and E-4; Hockmuth report; Tr. 231-3.) MidAmerican requests a right-of-way easement for an 80-foot-wide strip of land across each of the three parcels.

(E-21754 Petition Exhibits E-2, E-3, and E-4; Hockmuth report.) The specific rights requested for the easements are stated in Exhibits E-2, E-3, and E-4. (E-21754 Petition Exhibits E-2, E-3, and E-4.)

Mrs. Dorothy Gates and Mr. Richard Gates (Gates Parcel)

Mrs. Dorothy Gates (life tenant) and Mr. Richard Gates (remainderman) are the owners of eminent domain tract number IA-WR-049-000. (E-21754 Petition Exhibit E-2; Tr. 231.) MidAmerican has contacted or attempted to contact the Gates several times to discuss the proposed project and has not been able to obtain a voluntary easement from the Gates. (Tr. 231-2, 263-6.) MidAmerican believes that negotiations with the Gates are at an impasse and the grant of eminent domain authority is necessary. (Tr. 231-3, 266.) The Gates did not appear at the hearing.

Mrs. Dorothy Gates, Mr. Richard Gates, Mrs. Phyllis Givens, and Mr. Grant Givens (Gates/Givens Parcel)

Mrs. Dorothy Gates (life tenant), Mr. Richard Gates (remainderman), Mrs. Phyllis Givens (remainderman) and Mr. Grant Givens (spouse) are the owners of eminent domain tract number IA-WR-056-000. (E-21754 Petition Exhibit E-3; Tr. 232.) MidAmerican has contacted or attempted to contact the Gates several times to discuss the proposed project and has not been able to obtain a voluntary easement from the Gates and Givens. (Tr. 232, 263-6.) MidAmerican believes that negotiations with the Gates and Givens are at an impasse and the grant of eminent domain authority is necessary. (Tr. 231-3, 266.) The Gates and Givens did not appear at the hearing.

Mr. James G. Clarke, Mrs. Mary G. Clarke, and Mr. Matthew G. Clarke (Clarke Parcel)

Mr. James G. Clarke (life tenant), Mrs. Mary G. Clarke (spouse), and Mr. Matthew G. Clarke (remainderman) are the owners of eminent domain tract number IA-WR-090-000. (E-21754 Petition Exhibit E-4; Tr. 233.) MidAmerican has contacted or attempted to contact the Clarkes several times to discuss the proposed project and has not been able to obtain a voluntary easement from the Clarkes. (Tr. 233-6, 264-6.) MidAmerican believes that negotiations with the Clarkes are at an impasse and the grant of eminent domain authority is necessary. (Tr. 233, 264-6.) Mr. James Clarke and Mrs. Mary Clarke did not appear at the hearing. Mr. Matthew Clarke filed objections and other documents and testified at the hearing.

Mr. Matthew Clarke is both an owner (remainderman) of an eminent domain parcel and an objector in this case. He filed written objections to the proposed line on March 28, 2005, and February 1, 2006. (Clarke objections.) Mr. Clarke testified at the hearing and filed Exhibit MC-300 at the hearing. He filed a brief on June 19, 2006, and Exhibit MC-400 on June 20, 2006. Mr. Clarke was unrepresented by counsel.

The proposed line would bisect the Clarke property that is currently open farmland. (Hockmuth report; E-21754 Petition Exhibit E-4.) The nearest buildings are over 200 feet from the proposed line. (Hockmuth report; E-21754 Petition Exhibit E-4.)

Mr. Clarke has a number of reasons for his objection to the proposed line. (Clarke objections; Exhibit MC-300; Tr. 88-9, 120-2, 181-97, 225-6, 257-62, 320-342, 346-7, 357-64, 368-71.) Mr. Clarke plans to develop the property and he believes

the proposed line will hinder his ability to do so. He says the line will run across the best building spots and would be an eyesore. He has a concern about electromagnetic fields causing health problems. He objects to the proposed line because he says it will reduce the value of his property, he will not be able to plant trees in the easement, and there would be poor radio and cell phone reception. Mr. Clarke wants MidAmerican bury the line across his property and compensate him for the reduction in value. He asks that MidAmerican be required to move the line in the future at his direction and that MidAmerican be made liable for any needed grading, moving, or burying once the area is developed. Mr. Clarke asks that MidAmerican be required to hire a consultant of his choosing to state where the line might best be located across the property. He also complained that MidAmerican negotiators were rude and misleading. Mr. Clarke stated he suffered for nearly three months in trying to get MidAmerican to provide electric service to his property at 5208 45th Ave. in Norwalk and believes the delay was due to his refusal to grant an easement. Mr. Clarke suggested alternative routes for the line to avoid his property. (Clarke objections; Exhibit MC-300; Tr. 88-9, 120-2, 181-97, 225-6, 257-62, 320-342, 346-7, 357-64, 368-71.) Mr. Clarke argues the proposed line will unnecessarily interfere with his use of his land and is a taking. (post-hearing brief.) Mr. Clarke argues that the taking has occurred far beyond the 80-foot wide easement sought by MidAmerican. (post-hearing brief.)

In his brief, Mr. Clarke moved that Mrs. Clarke and the Clarke's tenant farmer be removed from the proceedings. The motions are denied. The motions are untimely and Mrs. Clarke and the tenant are entitled to participate under Iowa law.

Mr. Clarke filed Exhibit MC-400 on June 20, 2006, in support of his motions.

Although it was untimely filed, Mr. Clarke is unrepresented, so Exhibit MC-400 is admitted.

MidAmerican will pay for any damages caused to the Clarkes' property from construction as required by Iowa law. (Tr. 237.) Iowa Code § 478.17. As discussed below, MidAmerican will compensate the Clarkes for the easement in an amount set by a local compensation commission, and this amount is to compensate the Clarkes for the negative effects of having the transmission line on their property, including any negative effect on property value. (Tr. 240.) Iowa Code chapters 6B, 478.

MidAmerican's evidence shows that the transmission line will not adversely affect the Clarkes' health or the health of people who may live near the line if Mr. Matthew Clarke develops the property in the future. (Tr. 211-26.) The delay in connecting electric service to Mr. Clarke's property was caused by an electrical code violation under the control of Mr. Clarke, and once it was corrected, MidAmerican connected service to Mr. Clarke within seven days. (Tr. 234, 343-5.) The technician who connected Mr. Clarke's service was not aware that MidAmerican was planning to construct a transmission line across the Clarke property. (Tr. 345.) The cost to bury the transmission line across the Clarke property could be as much as ten times as much as the cost of overhead construction, and a mile of underground construction could be anywhere between five and seven million dollars. (Tr. 195-7.) The length of the proposed line across the Clarke property is a little over a quarter mile. (E-21754 petition Exhibit E-4.) It would not be fair, just, or proper to require other MidAmerican ratepayers to pay for the cost to bury the line across the Clarke property or to pay in

the future for moving the line at Mr. Clarke's direction. MidAmerican has designed the line to minimize aesthetic concerns. (Tr. 150-1.) MidAmerican's policy is to take steps to mitigate problems with radio and television interference if they exist. (Tr. 225-6.) As discussed above, the routes proposed by Mr. Clarke were not preferable to the route selected by MidAmerican.

The concerns expressed in Mr. Clarke's objections do not provide a reason to deny or impose restrictions on MidAmerican's petitions for franchises.

Mr. Clarke is correct that there will be a taking of the Clarkes' property for the easement because it involves a "permanent physical invasion of the property." Shriver v. City of Okoboji, 567 N.W.2d 397, 404 (Iowa 1997). However, there is no unconstitutional taking because the Clarkes will be compensated for the taking pursuant to the compensation commission process as discussed below. There is no taking extending beyond the 80-foot wide easement sought by MidAmerican because there is no permanent physical invasion, there is no zoning ordinance or other regulation restricting the Clarke's use of the property, the Clarkes are not denied all economically beneficial use of their land, an electric transmission line is not a nuisance, there is no odor or pollution caused by the line that invades the Clarkes' property, and there is no property right to a view under Iowa law. Penn Central Transp. Co. v. City of New York, 438 U.S. 104 (1978); Kingsway Cathedral v. Iowa Dept. of Transp., 711 N.W.2d 6 (Iowa 2006); Gacke v. Pork Xtra, 684 N.W.2d 168 (Iowa 2004); Bormann v. Bd. Super. Kossuth Cty., 584 N.W.2d 309 (Iowa 1998); Shriver, at 403-4; Fitzgarrald v. City of Iowa City, 492 N.W.2d 659 (Iowa 1992); Mohr v. Midas Realty Corp. et al., 431 N.W.2d 380 (Iowa 1988); Osborn v. City of Cedar

Rapids, 324 N.W.2d 471 (Iowa 1982); Phelps v. Board of Sup'rs. of Muscatine Cty., 211 N.W. 2d 274 (Iowa 1973). See *a/so*, Reiss v. Consolidated Edison Co. of New York, 650 N.Y.S.2d 480 (N.Y.A.D. 3 Dept. 1996) (property owner abutting utility's right-of-way not allowed to recover); DeKalb County v. Georgia Power Co., 292 S.E.2d 709, 711 (Ga. 1982) (adjoining landowners have no right of action against utility for inverse condemnation for line constructed along and within road right-of-way fronting their properties).

Iowa Code § 478.17 provides that companies operating transmission lines shall have reasonable access to the lines for the purposes of constructing, reconstructing, enlarging, repairing, or locating the poles, wires, or construction and other devices used in or upon the line. The same section also requires that the company pay landowners for all damages to their land or crops caused by the company when it is on the landowner's property for these purposes. Iowa Code § 478.17. MidAmerican will compensate landowners and/or tenants for any property damages caused by MidAmerican in constructing the line. (Tr. 237.) Once construction has been completed, clean-up performed, and repairs made, MidAmerican will meet with property owners and tenants to mutually determine a fair damage settlement, a receipt and release form will be signed, and MidAmerican will pay property owners for the damage. (Tr. 237.) Landowners and tenants will have five years to renegotiate construction or maintenance damages not apparent at the time of the damage settlement. (Tr. 237.) This should provide sufficient protection to the property owners for any damage that may occur. MidAmerican should attempt to

work with the landowners regarding placement of poles within the easements so as to minimize interference with the owners' use of their land.

The purpose of payment for the easements across the eminent domain parcels is to compensate the landowners for the negative effects of having the transmission line on their property, including any negative effect on property value. If a property owner does not agree with the amount offered by MidAmerican for the easement, the owner may refuse to grant the easement, wait for MidAmerican to request eminent domain, and then present evidence and argument regarding the appropriate payment for the easement to the local compensation commission. Iowa Code chapters 6B and 478. The Board does not have jurisdiction to set the amount of compensation to be paid for the easement. Iowa Code chapters 6B, 478; Race v. Iowa Electric Light & Power Co., 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 commission, which will set the amount to be paid for the easement when eminent domain is used. (Tr. 240.) Iowa Code chapter 6B.

MidAmerican has proven that it has been unable to obtain voluntary easements from the owners of the eminent domain parcels. (Tr. 231-7, 263-6.) The extent of the easement rights requested for each parcel is reasonable and necessary for the public use of constructing, maintaining, and operating the proposed transmission line. (Docket No. E-21754 Petition; Hockmuth report; Tr. 231-7, 263-6.) MidAmerican has complied with the requirements of Iowa Code §§ 478.6 and 478.15. (Tr. 231-7, 263-6; Hockmuth Report; Docket No. E-21754 Petition Exhibits E-2, E-3,

E-4.) If the Board issues the requested franchises, MidAmerican is entitled to be vested with the power of eminent domain with respect to the Gates, Gates-Givens, and Clarke Parcels to the extent requested in the petitions.

OBJECTIONS

Iowa Code § 478.5 provides that any person whose rights may be affected has the right to file a written objection to the proposed project or the grant of a requested franchise.

As of the date of the hearing, there remain four objections to the proposed route: one in Madison County (Docket No. E-21753) filed by Ms. Linda Juckette and three in Warren County (Docket No. E-21754) filed by Mr. Matthew G. Clarke, Mr. John A. White, and Mr. John W. and Mrs. Deborah F. White. (written objections; Tr. 267-342; Exhibits LJ-200 – LJ-205, LJ-207; MC-300, MC-400; Clarke and Juckette briefs.)

Some of the objections raise a concern regarding health hazards and EMF, although the objectors did not present any scientific or expert evidence regarding this concern. (written objections; Hockmuth report.) As discussed above, MidAmerican's evidence showed that the electric and magnetic field levels that will be produced at the edge of the right-of-way of the proposed line will not adversely affect the public health and safety. (Tr. 211-26.)

Mr. Matthew G. Clarke's objection

Mr. Matthew G. Clarke's objection is discussed above.

The Whites' Objections

Mr. John A. White filed an objection on May 11, 2005. Mr. White expressed concerns about the health risks associated with EMF. He stated whether or not you believe the risk, he would still rather avoid it. Mr. White also stated his property values would be negatively affected. Mr. White suggested an alternate route that would avoid his property. (written objection.)

Mr. John W. and Mrs. Deborah White filed objections on June 14, 2005, and May 2, 2006. Mr. and Mrs. White objected to the proposed line and MidAmerican's request for an easement. They expressed concerns about the aesthetics of having many 100-foot poles across their back view, the devaluation of their property, the health risks of EMF, and the probability of additional requests for more easements for the future substations to be built. The Whites suggested alternate routes that would avoid their property or putting the line underground. The Whites expressed frustration with MidAmerican's agents and the amount of money they were offered for an easement. They said MidAmerican's right-of-way agent gave them misleading information. They want to know why the route of the proposed line was moved 100 feet south of their property for only a portion of the length paralleling the Whites' properties. The Whites requested that all poles and lines be on the neighbor's property to the south, since he signed a voluntary easement, and not on the Whites' property. They do not believe locating the line 30 feet south of their property in some

locations will prevent the sway of the lines onto their property and want the 100-foot distance to be honored.

MidAmerican originally requested an overhang easement from the Whites. (Tr. 239-40.) MidAmerican moved the proposed line to avoid the Whites' property. MidAmerican obtained a voluntary easement from the property owner to the south of the Whites so the line will be located 100 feet south of the White's property line near Mr. John A. White's house. MidAmerican is no longer seeking an easement from the Whites, so the poles and the line, including overhang and sway, will not be located on the White's property. (Tr. 134-5, 167-8, 178, 236-7, 239-41; Exhibit 10.)

The concerns expressed in the Whites' objections are addressed in other parts of this decision. The alternate routes proposed are also addressed above. It is not clear whether the White's objection with regard to reduction in property value still remains since the line has been moved so an overhang easement is no longer needed. In any case, the Whites did not present evidence of any reduction in the value of their property as the line is currently proposed.

The Whites' objections do not provide a reason to deny the requested franchises. Nor do their objections provide a reason to require any additional terms or modifications of the requested franchises.

Ms. Linda Juckette's Objection

Ms. Juckette filed an objection on February 13, 2006. She also filed prefiled testimony of Mr. Charles J. Bishop, herself, and Mr. Michael D. Olson, and Exhibits LJ-200 through LJ-205 and LJ-207. She also filed a motion for extension, motion to initiate condemnation, an answer, and pre- and post-hearing briefs.

Ms. Juckette objects to the route of the proposed line. She owns a farm in Madison County that was platted as Rolling Acres in 1979 and consists of 20 lots. (Tr. 271, 288; objection; Hockmuth report; Exhibit LJ-200.) Ms. Juckette owns all lots except lots one, seven, and eight. (Tr. 280.) Ms. Juckette has not sold any of the lots she owns. (Tr. 279.) Ms. Juckette's home and an apartment/garage building are approximately 1600 feet from the proposed transmission line. (Tr. 282, 295.) Although he was not sure, Ms. Juckette's engineer, Mr. Bishop, estimated the horse barn was in the range of 200 to 250 feet from the proposed line. (Tr. 282.)

Ms. Juckette and her husband (now deceased) purchased the farm in 1993. (Tr. 288.) They built the following improvements to the property: a \$1.4 million home, an apartment with three-car garage, fencing (\$117,000), two ponds, a barn (\$509,000), auto watering system, and trees. (Tr. 288; Exhibits LJ-201 through LJ-204, LJ-207.) Ms. Juckette intends to develop the property as a world-class horse facility and sell lots for high-end homes on large lots with common access to the horse facilities. (Tr. 288-90.)

MidAmerican originally considered a route very close to the southern edge of Ms. Juckette's property and requested a 30-foot overhang easement from Ms. Juckette. (Tr. 236-7, 243-4, 290-1.) Ms. Juckette refused to grant a voluntary easement, so MidAmerican moved the line so it will be 30 feet south of Ms. Juckette's property at the west end and 10 feet south of her property at the east end when the line gets close to the road. (Tr. 236-7, 244, 249-51, 290-1, 310; Exhibit 10; Exhibit LJ-200.) There will be five poles within 30 feet of the southern boundary of Ms. Juckette's property. (Tr. 251-3; Exhibit 10, p. 17.) MidAmerican eliminated a

potential route to avoid the front yards of Ms. Juckette's home and many of her neighbors. (Tr. 237.)

Ms. Juckette testified that moving the line did not reduce the damage to her property. (Tr. 291.) In her opinion, the line will reduce the value of her property by at least \$500,000 because there will be a substantial negative impact because of the public perception, right or wrong, that there are health hazards associated with the EMF created by the line and because of the impact on the view. (Tr. 291-301.) She testified that screening the poles would be nearly impossible because they are so tall and close to her property line, and it would take years for trees to grow. (Tr. 292.) Ms. Juckette's engineer testified the poles would be 63.5 feet in height near her property. (Tr. 273.)

Ms. Juckette testified the likely purchasers of the lots would be upper middle class to upper class individuals who demand higher standards and would not find the view acceptable. (Tr. 292.) She also testified the development is set up for horse lovers, horses are expensive to acquire and maintain, and it is doubtful that owners of expensive horses would want to take any chances of health hazards to themselves or their horses by building close to the proposed line. (Tr. 292.) Ms. Juckette did not present any scientific or expert testimony to prove there is any health risk from the proposed line. Ms. Juckette testified she would not be able to use the property for the use she plans if the route of the proposed line remains where it is. (Tr. 100-1.) In that case, she testified, the property would be more in line for development with less valuable homes. (Tr. 301.)

Ms. Juckette presented the testimony of an appraiser and his appraisal to support her position that the proposed line would cause her substantial damage and reduce her property value. (Tr. 302-19; Exhibit LJ-207.) Ms. Juckette's appraiser, Mr. Michael Olson, testified it was his opinion that if the electric transmission line is located as proposed, it will damage Ms. Juckette's property by reducing its value by \$160,000, primarily due to a loss in development potential and desirability to prospective buyers. (Tr. 310-9; Exhibit LJ-207.) It is his opinion that there will be a substantial negative impact: "a) because of the public perception, right or wrong, of the potential health hazards associated with an electric transmission line of this size, and b) more importantly, because of the impact on the view." (Tr. 310-1.) Mr. Olson acknowledged that any damage to Ms. Juckette's property is not compensable under eminent domain in the classic sense of a physical invasion of the property. (Tr. 311.) He testified, however, that the line would substantially diminish the value of Mrs. Juckette's property and affects its use for its intended purpose. (Tr. 311.) He testified that six of the lots back up to the area where the transmission line could be seen. (Tr. 316.) Mr. Olson testified he did not believe Ms. Juckette would be able to use her property for a world-class horse facility as she intended, but it might be able to be developed for other purposes. (Tr. 317.)

Ms. Juckette requested that MidAmerican be required to move the line as far south of her property as possible so it would remove the line from sight and suggested alternate routes. (Tr. 292, 271-6, 280-1; Exhibits LJ-200, LJ-205.) Alternatively, she requested that MidAmerican pay her for her damages. (Tr. 293.)

Ms. Juckette argues that MidAmerican failed to show the proposed line is necessary to serve a public use. (post-hearing brief.) This argument is addressed above. Ms. Juckette requests that the Board deny MidAmerican's petition for franchise, or alternatively, that the Board condition the grant of the franchise by requiring MidAmerican to: a) relocate the proposed line as recommended by Mr. Bishop along 130th Street so it cannot be seen from Ms. Juckette's property; b) initiate condemnation proceedings to compensate Ms. Juckette for the taking of her property rights and the deprivation of her investment-backed expectations; or c) pay Ms. Juckette \$160,000 as compensation for Ms. Juckette's damages. (post-hearing brief.) Ms. Juckette argues that Iowa Code §§ 478.4 and 478.6 grant the Board considerable discretion to condition, restrict, and modify its approval of a franchise and the power to grant Ms. Juckette's requested relief.

Ms. Juckette further argues her investment of approximately \$2,750,000² to establish the infrastructure and plan for the development of her property vest her property right to develop her land in accordance with her investment-backed expectations. She argues this vested right and interest distinguish her from other parties claiming a general interest in the proposed line, thus giving her standing to object to the proposed line.

Ms. Juckette argues she has suffered a taking of her property by the presence of the proposed line. She argues she has a constitutionally protected private

² \$1,400,000 for her home, \$509,000 for the horse barn, \$117,000 for special horse fencing, and additional expenses for construction of two ponds and planning, platting, and developing. (post-hearing brief, p. 12.)

property interest, that is, her investment-backed expectations in developing her property. She argues she made legitimate and valuable expenditures prior to MidAmerican's filing of its petition in connection with the development of her land, which create a property right that cannot be arbitrarily interfered with or taken away without just compensation. She argues as a result of her expenditures, she has acquired a vested right in the development of her property without governmental interference unless she is compensated for that interference. She argues the proposed line will deprive her of the economically beneficial and productive use of her land in accordance with her investment-backed expectations and development plan. She argues that although MidAmerican moved the proposed line to avoid her property, this did not diminish the impact of the line on her property at all.

She argues the proposed line eliminates her investment-backed expectations and causes her \$160,000 in damages because the line will eliminate the view, scenery, and rural setting essential to development of her property and because of public perception, right or wrong, regarding the harmful effects of EMF that will deter "wealthy discriminating buyers" who would otherwise invest in her property.

Ms. Juckette argues that Iowa law recognizes Ms. Juckette's constitutionally protected private property interest in her investment-backed expectations to develop her property, the line will deprive her of this interest, and her protected property rights are at stake. She argues granting MidAmerican's petition will result in a taking of her property rights. She argues to constitute a taking, there need not be a physical invasion. She argues a taking can be caused by flooding, polluting, or filling one's dwelling with smells and noise so it cannot be occupied in comfort. She argues a

taking may also be by anything that substantially deprives one of the use and enjoyment of her property. She argues the loss of development potential may be a significant factor in determining whether a taking has occurred, and frustration of investment-backed expectations may amount to a taking. Ms. Juckette argues it is undisputed that the proposed line will defeat her substantial investment-backed expectations in developing her property, result in the loss of her ability to develop her property, and damage her in the amount of \$160,000. She argues that in light of applicable Iowa eminent domain law holding that non-physical invasions of one's property may constitute a taking, particularly where investment-backed expectations are at stake, and her undisputed showing that the line will destroy her investment backed expectations, she has shown she will suffer a compensable taking if the petition is granted. Ms. Juckette argues that if MidAmerican's petition is granted, she will be denied a protected property right without just compensation. Ms. Juckette argues that construction of the proposed line will deprive her of her ability and right to develop her property and this deprivation is a compensable taking.

Ms. Juckette argues her proposed alternate route for the line is more reasonable than the proposed route because it better uses existing transmission line and public right-of-way, thereby minimizing landowner impact. She argues Iowa Code §§ 478.4 and 478.15 provide the Board with the power to grant her requested relief.

MidAmerican's Position Regarding Ms. Juckette's Objection

MidAmerican's right-of-way agent, Mr. Knights, did not agree that the presence of the proposed line would have a negative impact on Ms. Juckette's

property values or would have a negative impact on her intended use of her property, although Mr. Knights is not an appraiser and MidAmerican did not present expert testimony to contradict Ms. Juckette's evidence regarding the reduction in property value. (Tr. 253.) MidAmerican argues that whatever development potential Ms. Juckette's property may have is unrealized. MidAmerican argues that a prior owner platted the property and Ms. Juckette has not sold any of the lots she owns. It argues that Ms. Juckette's proposed routes were less preferable than the proposed route because they would add length, require additional angle structures, and be within 200 feet of more existing homes and grain bins. MidAmerican argues it must consider impacts on all landowners and cannot limit its focus to the desires of a single landowner to the detriment of many others. It argues Ms. Juckette's engineer did not consider placement of future substations to serve local load in his proposed routes.

MidAmerican argues that Ms. Juckette's concern regarding the view of the line will not be solved by moving the line an additional 70 feet away because the line could still be seen. MidAmerican further argues that such a move would place an additional burden on the neighboring landowner and would not be reasonable. MidAmerican argues it accommodated Ms. Juckette's concerns by moving the line to eliminate the overhang on Ms. Juckette's property.

MidAmerican argues that Ms. Juckette's claim of a regulatory taking is inconsistent with Iowa law, is presented in an improper forum, and must be rejected. MidAmerican argues that the injection of valuation arguments into a franchise proceeding is inappropriate, because the value of easements, including assessing

any diminution in value of directly affected properties is a matter for the compensation commissions in accordance with Iowa Code chapters 6A and 6B. MidAmerican argues it is not aware of a single instance, and Ms. Juckette does not cite any, in which an electric utility seeking to build a transmission line has been required to compensate property owners whose land was not directly crossed or otherwise directly affected by the line.

MidAmerican argues Ms. Juckette is asking the Board to radically expand Iowa eminent domain law. It also argues Ms. Juckette's claim is presented in an improper forum and has sought to turn this franchise proceeding into a condemnation case in which the value of the alleged diminution in value of properties not crossed by the line would be determined.

MidAmerican argues that there is no regulatory taking in this case. It is not aware of a single instance in which an electric utility has been required to compensate property owners whose land was not directly crossed or otherwise directly affected by the line, and MidAmerican argues that Ms. Juckette did not cite any such case. MidAmerican argues that under current law, only property owners whose land is directly affected by the proposed line, meaning a physical invasion, are entitled to compensation for easements.

MidAmerican argues Ms. Juckette is asking the Board to replace this objective standard with a subjective one depending on the subjective sensibilities of adjacent landowners, neighbors, and the general public. It argues the public policy reasons against such an extension are profound, not the least of which is the subjective uncertainty of who would be included in the universe of potential claimants.

MidAmerican argues that it is not within the jurisdiction of the Board, or the responsibility of MidAmerican, to provide a forum or fashion a remedy for every perceived issue or problem. It argues that the Board, as an administrative agency, only possesses those powers granted to it by the General Assembly. MidAmerican argues that if Ms. Juckette believes the construction of the line near, but not on, her property will result in a diminution in value of her property, she should present such an expansion of Iowa law to the proper forum and at a more appropriate time. MidAmerican argues that an electric transmission franchise proceeding before the Board is not the proper forum to radically expand and rewrite Iowa eminent domain law by bringing such a claim.

Analysis of Ms. Juckette's Objection

Even if all of Ms. Juckette's evidence is accepted as true, Ms. Juckette's evidence does not prove that there was a compensable taking of her property under Iowa law. MidAmerican moved the proposed line so it will not cross Ms. Juckette's property and MidAmerican is not seeking an easement across her property. Therefore, there is no physical invasion of Ms. Juckette's property.

The underlying basis of Ms. Juckette's taking theory is that the transmission line will impact her view and some members of the public believe there is a health threat from the line, whether or not there is a basis in fact for that belief. Therefore, she argues, certain members of the public will not choose to purchase lots from her. Ms. Juckette argues her property is in a unique position and she has a protected property interest because she has invested considerable sums in her plans to

construct a world-class horse facility. She argues that she will no longer be able to go forward with her plans for the world-class horse facility.

This does not provide a basis for the relief Ms. Juckette is requesting. Iowa law does not recognize a property interest in having a view, even when the interference with the view is more complete than the presence of a power line. Shriver v. City of Okoboji, 567 N.W.2d 397, 404 (Iowa 1997) (garage blocked view of the lake). There is no taking because there is no permanent physical invasion, there is no zoning ordinance or other regulation restricting Ms. Juckette's use of her property, Ms. Juckette is not denied all economically beneficial use of her land, an electric transmission line is not a nuisance, there is no odor or pollution caused by the line that invades her property, and there is no property right to a view under Iowa law. Penn Central Transp. Co. v. City of New York, 438 U.S. 104 (1978); Kingsway Cathedral v. Iowa Dept. of Transp., 711 N.W.2d 6 (Iowa 2006); Gacke v. Pork Xtra, 684 N.W.2d 168 (Iowa 2004); Bormann v. Bd. Super. Kossuth Cty., 584 N.W.2d 309 (Iowa 1998); Shriver, at 403-4; Fitzgarrald v. City of Iowa City, 492 N.W.2d 659 (Iowa 1992); Mohr v. Midas Realty Corp. et al., 431 N.W.2d 380 (Iowa 1988); Osborn v. City of Cedar Rapids, 324 N.W.2d 471 (Iowa 1982); Phelps v. Board of Sup'rs. of Muscatine Cty., 211 N.W. 2d 274 (Iowa 1973). See also, Reiss v. Consolidated Edison Co. of New York, 650 N.Y.S.2d 480 (N.Y.A.D. 3 Dept. 1996) (property owner abutting utility's right-of-way not allowed to recover); DeKalb County v. Georgia Power Co., 292 S.E.2d 709, 711 (Ga. 1982) (adjoining landowners have no right of action against utility for inverse condemnation for line constructed along and within road right-of-way fronting their properties).

Ms. Juckette is asking the Board to significantly expand the law related to taking theory and what is a compensable property interest under Iowa law to provide her with the relief she requests. The undersigned is not aware of any case in which a landowner has been compensated for the presence of a transmission line near, but not on, the landowner's property. Iowa law has created a system in which landowners who own property that will be crossed by the line will be compensated. Iowa Code chapters 6B and 478. There is no provision under Iowa law to compensate landowners in Ms. Juckette's position. The Board is a statutorily created state agency. Its powers are granted through delegation from the legislature. It would be highly inappropriate for the Board to expand the law in the way Ms. Juckette requests.

Furthermore, it would not be in the public interest to do so. If Ms. Juckette's theory were accepted, any landowner who had invested in the use of his or her property to develop it in a certain way could challenge the presence of a transmission line if they could see the line or if some members of the public thought there was a health threat from the line. Transmission lines could not be built or they would be extremely expensive.

Members of the public, including Ms. Juckette and any persons who choose to build in her future development, need and use electricity. Transmission lines must go somewhere as a part of the system that provides that electricity. This means that some people will be able to see the lines. Some people will have a fear that the lines may affect their health. In this case, MidAmerican has proven that the proposed line will not adversely affect public health and there was no contradictory scientific or

expert evidence presented. Being able to see the line or a fear that has no basis in scientific evidence does not provide a reason to deny or restrict the request for a franchise.

In this case, MidAmerican has shown that the proposed line is necessary, its route is superior to alternatives proposed, the line would comply with all requirements, and it is in the public interest to grant the franchise.

Ms. Juckette's objection does not provide a reason recognized under Iowa law to deny the requested franchises. Nor does it provide a reason to require any additional terms or modifications of the requested franchises. Ms. Juckette's request for an order requiring MidAmerican to initiate condemnation proceedings is denied. Ms. Juckette's request for compensation as a condition of the grant of the franchises is denied. Ms. Juckette's request that MidAmerican be required to move the line is denied.

MidAmerican's petitions for franchises in Docket Numbers E-21752, E-21753, and E-21754 should be granted. MidAmerican has shown that eminent domain as requested in Docket No. E-21754 is necessary for the public use of constructing, maintaining and operating the proposed transmission line. Its requests for eminent domain should be granted to the extent requested in the petition in Docket No. E-21754.

FINDINGS OF FACT

1. MidAmerican held informational meetings in Dallas, Madison, and Warren Counties in Docket Nos. E-21752, E-21753, and E-21754 as required by

Iowa Code § 478.2. (petitions for franchises; Hockmuth Report; Docket Nos. E-21752, E-21753, E-21754 files; Tr. 237-8.)

2. MidAmerican has agreed to pay all costs and expenses of this franchise proceeding pursuant to Iowa Code § 478.4. (petitions for franchise).

3. The evidence presented in this case shows the proposed transmission line is necessary to serve a public use. (petitions Exhibits D; Tr. 45-46, 57-67, 69-88, 97-124, 133, 348-356; Exhibits 1-6.)

4. The evidence presented in this case shows that the proposed 161 kV transmission line meets MAPP reliability requirements and represents a reasonable relationship to an overall plan of transmitting electricity in the public interest. (Tr. 27-31, 33-36, 45-46, 49-51, 57-67, 69-88, 374; petitions for franchises, Exhibits D; Exhibits 1-6; Hockmuth report.)

5. The evidence presented in this case shows that the proposed transmission line will conform to the construction and safety requirements in Iowa Code §§ 478.19 and 478.20 and 199 IAC chapters 11 and 25. (petitions for franchises; Hockmuth report; Tr. 27-31, 130-131, 141, 374; Exhibits 1-5, 12.) No additional terms, conditions, or restrictions regarding construction and safety requirements need to be imposed pursuant to Iowa Code § 478.4.

6. The evidence presented in this case shows the electric and magnetic field levels that will be produced at the edge of the right-of-way of the proposed line will not adversely affect the public health and safety. (Tr. 211-26.) Based on the record, no additional terms, conditions, or restrictions related to electric and magnetic field levels need to be imposed pursuant to Iowa Code § 478.4.

7. MidAmerican has obtained all required environmental reviews and permits for the proposed transmission line. (Tr. 198-210; MidAmerican Exhibits 13-15.) MidAmerican has demonstrated that the route it selected is reasonable, is preferable to the alternates proposed by the objectors, and is in compliance with the requirements of Iowa law. (petitions for franchises; Hockmuth report; Exhibits 1-15; Exhibit LJ-205; Exhibit MC-300; objections; Tr. 131-8, 143-69, 171-98, 271-82, 292-5, 298-9, 311, 326-7, 330-7, 357-64, 366-73.) MidAmerican has proven the proposed route is the most practical and reasonable alternative and it is approved. (petitions for franchises; Hockmuth report; Exhibits 1-15; Exhibit LJ-205; Exhibit MC-300; objections; Tr. 131-8, 143-69, 171-98, 271-82, 292-5, 298-9, 311, 326-7, 330-7, 357-64, 366-73.)

8. As discussed in the body of this order, MidAmerican has proven that it has been unable to obtain voluntary easements from the owners of the eminent domain parcels. (Tr. 231-7, 263-6.) The extent of the easement rights requested for each parcel is reasonable and necessary for the public use of constructing, maintaining, and operating the proposed transmission line. (Docket No. E-21754 Petition; Hockmuth Report; Tr. 231-7, 263-6.) MidAmerican has complied with the requirements of Iowa Code §§ 478.6 and 478.15. (Tr. 231-7, 263-6; Hockmuth Report; Docket No. E-21754 Petition Exhibits E-2, E-3, E-4.) If the Board issues the requested franchises, MidAmerican is entitled to be vested with the power of eminent domain with respect to the Gates, Gates-Givens, and Clarke Parcels to the extent requested in the petitions.

10. As discussed in the body of this order, the objections do not provide a reason to deny the requested franchises. Nor do they provide a reason to require any additional terms or modifications of the requested franchises.

CONCLUSIONS OF LAW

1. 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.

2. 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.

3. Iowa Code § 478.18 requires transmission lines to be constructed near and parallel to roads and railroads and along division lines of land wherever practical and reasonable. The same section requires the utility to construct the line so as not to interfere with the use of the public of the highways or streams of the state and so as not to unnecessarily interfere with the use of any lands by the occupant.

The requirement in Iowa Code § 478.18 means that MidAmerican must start its planning using railroad or land division routes. Hanson v. Iowa State Commerce Comm'n, 227 N.W.2d 157, 163 (Iowa 1975). The route must follow a railroad or land division route wherever practical and reasonable. Id. If such routes contain points of impracticality or unreasonableness, MidAmerican may deviate from the route at those points. Id. The Iowa Supreme Court struck down a proposed diagonal route that the

Court called "a wholesale departure from railroad and land division routes" when the utility had not begun its planning along division lines of land and railroad routes. Id. The Court noted that diagonal routes running directly from the origin to the termination of the line would be the cheapest, simplest, and most convenient location, but stated that the legislature chose the system of requiring lines to follow division lines of land wherever practical and reasonable, and utilities must follow that requirement. Hanson, at 162. The Court approved a route that deviated from division lines of land when the planning began with division line locations and deviations were based on engineering considerations of practicality and reasonableness in Anstey v. Iowa State Commerce Comm'n, 292 N.W.2d 380 (Iowa 1980). The Court also upheld the Board's conclusion that a new transmission line should follow an existing right-of-way and that new construction along division lines of land was not practical or reasonable under the circumstances in Gorsche Family Partnership v. Midwest Power, et al, 529 N.W.2d 291 (Iowa 1995). However, the Gorsche decision did not overrule or change the Hanson and Anstey decisions and does not authorize utilities to build transmission lines on new diagonal routes that neither follow existing routes nor division lines of land, roads, or railroads as required by Iowa Code § 478.18.

In addition, no transmission line outside of cities "shall be constructed, except by agreement, within 100 feet of any dwelling house or other building, except where such line crosses or passes along a public highway or is located alongside or parallel with the right-of-way of any railway company." 199 IAC 11.1(7); Iowa Code § 478.20.

MidAmerican's proposed route is the most practical and reasonable alternative, it complies with Iowa law, and it is approved.

4. To obtain a franchise, the petitioner must show that the proposed line is necessary to serve a public use and represents a reasonable relationship to an overall plan of transmitting electricity in the public interest. Iowa Code § 478.4.

5. The Board 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 within the width and acre limits in Iowa Code § 478.15. 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.

6. MidAmerican has met the requirements of Iowa Code chapter 478 and 199 IAC 11 and 25, and franchises should be issued to MidAmerican for the transmission line described in the petitions.

7. Mr. Clarke is correct that there will be a taking of the Clarkes' property for the easement because it involves a "permanent physical invasion of the property." Shriver v. City of Okoboji, 567 N.W.2d 397, 404 (Iowa 1997). However, there is no unconstitutional taking because the Clarkes will be compensated for the taking pursuant to the compensation commission process or through voluntary negotiation. There is no taking extending beyond the 80-foot wide easement sought by MidAmerican because there is no permanent physical invasion, there is no zoning ordinance or other regulation restricting the Clarke's use of the property, the Clarkes are not denied all economically beneficial use of their land, an electric transmission line is not a nuisance, there is no odor or pollution caused by the line that invades the

Clarkes' property, and there is no property right to a view under Iowa law. Penn Central Transp. Co. v. City of New York, 438 U.S. 104 (1978); Kingsway Cathedral v. Iowa Dept. of Transp., 711 N.W.2d 6 (Iowa 2006); Gacke v. Pork Xtra, 684 N.W.2d 168 (Iowa 2004); Bormann v. Bd. Super. Kossuth Cty., 584 N.W.2d 309 (Iowa 1998); Shriver, at 403-4; Fitzgarrald v. City of Iowa City, 492 N.W.2d 659 (Iowa 1992); Mohr v. Midas Realty Corp. et al., 431 N.W.2d 380 (Iowa 1988); Osborn v. City of Cedar Rapids, 324 N.W.2d 471 (Iowa 1982); Phelps v. Board of Sup'rs. of Muscatine Cty., 211 N.W. 2d 274 (Iowa 1973). See also, Reiss v. Consolidated Edison Co. of New York, 650 N.Y.S.2d 480 (N.Y.A.D. 3 Dept. 1996) (property owner abutting utility's right-of-way not allowed to recover); DeKalb County v. Georgia Power Co., 292 S.E.2d 709, 711 (Ga. 1982) (adjoining landowners have no right of action against utility for inverse condemnation for line constructed along and within road right-of-way fronting their properties).

8. As discussed in the body of this decision, the proposed transmission line will not result in a compensable taking of Ms. Juckette's property. Iowa law does not recognize a property interest in having a view. Shriver v. City of Okoboji, 567 N.W.2d 397, 404 (Iowa 1997). There is no taking because there is no permanent physical invasion, there is no zoning ordinance or other regulation restricting Ms. Juckette's use of her property, Ms. Juckette is not denied all economically beneficial use of her land, an electric transmission line is not a nuisance, there is no odor or pollution caused by the line that invades her property, and there is no property right to a view under Iowa law. Penn Central Transp. Co. v. City of New York, 438 U.S. 104 (1978); Kingsway Cathedral v. Iowa Dept. of Transp., 711

N.W.2d 6 (Iowa 2006); Gacke v. Pork Xtra, 684 N.W.2d 168 (Iowa 2004); Bormann v. Bd. Super. Kossuth Cty., 584 N.W.2d 309 (Iowa 1998); Shriver, at 403-4; Fitzgarrald v. City of Iowa City, 492 N.W.2d 659 (Iowa 1992); Mohr v. Midas Realty Corp. et al., 431 N.W.2d 380 (Iowa 1988); Osborn v. City of Cedar Rapids, 324 N.W.2d 471 (Iowa 1982); Phelps v. Board of Sup'rs. of Muscatine Cty., 211 N.W. 2d 274 (Iowa 1973). See *also*, Reiss v. Consolidated Edison Co. of New York, 650 N.Y.S.2d 480 (N.Y.A.D. 3 Dept. 1996) (property owner abutting utility's right-of-way not allowed to recover); DeKalb County v. Georgia Power Co., 292 S.E.2d 709, 711 (Ga. 1982) (adjoining landowners have no right of action against utility for inverse condemnation for line constructed along and within road right-of-way fronting their properties).

9. To the knowledge of the undersigned, there are no reported cases in which a landowner has been compensated for the presence of a transmission line near, but not on, the landowner's property. Iowa law has created a system in which landowners who own property that will be crossed by the line will be compensated. Iowa Code chapters 6B and 478. There is no provision under Iowa law to compensate landowners whose property is near, but not crossed by, a proposed transmission line.

IT IS THEREFORE ORDERED:

1. Official notice is taken of the report dated March 17, 2006, filed by Mr. Dennis Hockmuth.

2. Motions and objections not previously granted or sustained are overruled. Arguments in written filings or made orally at the hearing that are not addressed specifically in this proposed decision and order are rejected, either as not

supported by the evidence or as not being of sufficient persuasiveness to warrant comment.

3. Pursuant to Iowa Code chapter 478 and 199 IAC 11 and 25, the petitions are hereby granted. If this proposed decision and order becomes the final order of the Board, franchises will be issued to MidAmerican to construct, erect, operate, and maintain the electric transmission line as specifically described in the amended petitions. If this proposed decision and order becomes the final order of the Board, the franchises will be issued to MidAmerican after the proposed decision and order becomes the final order of the Board.

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

5. This proposed decision and order will become the final order of the Board unless the Board moves to review it or a party files an appeal to the Board within 15 days of its issuance. 199 IAC 7.8(2).

6. A copy of this proposed decision and order will be served by ordinary mail upon MidAmerican, the Consumer Advocate, and the remaining objectors and persons with an interest in an eminent domain parcel on the Board's service list.

7. Exhibit MC-400 is admitted. Mr. Clarke's motions to remove Mrs. Mary Clarke and Mr. Steve Swackhammer (tenant) are denied for the reasons given in the body of this decision.

8. Ms. Juckette's request for an order requiring MidAmerican to initiate condemnation proceedings is denied for the reasons given in the body of this

decision. Ms. Juckette's request for compensation as a condition of the grant of the franchises is denied for the reasons given in the body of this decision. Ms. Juckette's request that MidAmerican be required to move the line is denied for the reasons given in the body of this decision.

9. If this proposed decision and order becomes the final order of the Board, MidAmerican's requests for eminent domain are granted to the extent requested in the petition in Docket No. E-21754.

UTILITIES BOARD

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

ATTEST:

/s/ Margaret Munson
Executive Secretary, Deputy

Dated at Des Moines, Iowa, this 26th day of July, 2006.