

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

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| IN RE: MIDAMERICAN ENERGY COMPANY | DOCKET NOS. E-21752 E-21753 E-21754 |
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**ORDER AFFIRMING PROPOSED DECISION AND
ORDER GRANTING FRANCHISES**

(Issued September 12, 2006)

On September 6, 2005, MidAmerican Energy Company (MidAmerican) filed with the Utilities Board (Board) three electric franchise petitions for a total of 16.9 miles of 161,000-volt electric transmission line in Dallas, Madison, and Warren counties. A separate petition was filed for each county through which a segment of the proposed transmission line will be built. The petitions are identified as Docket Nos. E-21752 (Dallas County), E-21753 (Madison County), and E-21754 (Warren County). The proposed transmission line originates at MidAmerican's Booneville substation and terminates at MidAmerican's substation located in Norwalk. On March 29, 2006, the Board issued an order consolidating the three dockets for purposes of hearing and procedural schedule and assigned the dockets to an administrative law judge (ALJ). MidAmerican requested eminent domain over three parcels in Warren County.

Matthew G. Clarke filed an objection to the franchise petitions. Mr. Clarke has an interest in one of the eminent domain parcels in Warren County.

The ALJ conducted a hearing and issued a proposed decision granting the transmission line franchises by order issued July 26, 2006 (Proposed Decision). Mr. Clarke, one of the parties to the proceeding, timely appealed the ALJ's proposed decision on August 10, 2006. MidAmerican filed a response to the appeal on August 24, 2006. No other appeals or cross-appeals of the ALJ's decision were filed.

Mr. Clarke filed a reply to MidAmerican's response on August 31, 2006, and asked for additional time to file a further reply because he had not received on a timely basis a copy of MidAmerican's response. The Board granted Mr. Clarke's request by order issued September 5, 2006. Mr. Clarke filed his additional reply on September 5, 2006.

Iowa Code § 17A.15(3) provides that on appeal from the proposed decision of an ALJ, the Board has all the power that it would have had if it had initially conducted the hearing. The Board may reverse or modify any finding of fact based upon a preponderance of evidence and may reverse or modify any conclusion of law that the Board finds in error.

The Board has reviewed the entire record of this proceeding, including the 384-page transcript of hearing. The factual matters raised on appeal by Mr. Clarke were thoroughly considered by the ALJ in the proposed decision and order and the preponderance of evidence supports these findings. The legal issues raised by Mr. Clarke primarily relate to issues Mr. Clarke has with the eminent domain process. This process is governed by Iowa Code chapters 6A and 6B. The Board is not

involved in the process of determining just compensation for an easement on any particular property; the Board's only involvement is granting MidAmerican the right to pursue eminent domain for a particular parcel or parcels to complete the transmission line, if voluntary negotiations are unsuccessful. The actual amount of compensation to be paid for an easement across a parcel is determined by negotiations or, if eminent domain is necessary, by a county compensation board with appeal rights to the district court. With that background, the Board will briefly address the major issues raised by Mr. Clarke in his appeal of the ALJ's proposed decision.

The ALJ's proposed decision found that the proposed transmission line is needed for two reasons. First, the line is necessary as part of a comprehensive transmission plan needed to transport electricity from MidAmerican's new coal generating plant, Council Bluffs Energy Center Unit 4, and to address reliability criteria. (Proposed Decision, pp. 8-9, 16-18). Second, the line is needed to serve up to three future substations to accommodate increased population and electric loads in the area surrounding the proposed line. (Proposed Decision, pp. 10, 16).

Mr. Clarke focuses his appeal on the second reason, apparently not disputing the first reason, which would be sufficient in and of itself to support MidAmerican's proposal to build the transmission line. The testimony demonstrated that not only would the line transport electricity from the new coal generating plant, but it would provide needed support for three future substations that are expected to be built. The first substation is tentatively expected to be built in 5 to 10 years and the second

and third substations in 10 to 25 years. (Tr. 49, 67-68, 100, 105-07). On the basis of the immediate needs of the new plant and the expected needs for three future substations, the Proposed Decision properly found that the proposed transmission line is necessary to serve a public use. (Proposed Decision, p. 56).

On page 4 of the notice of appeal, Mr. Clarke claims that the ALJ found the line was needed as part of a federal mandate. There is no reference to a federal mandate in the Proposed Decision and the Board is unaware of any federal mandate that addressed the transmission line in question. In fact, in his September 7, 2006, reply, Mr. Clarke acknowledged that the proposed line was not required as part of a federal mandate.

Mr. Clarke also raised issues regarding the potential effects of electric and magnetic fields. MidAmerican presented extensive expert scientific testimony on these issues showing through a witness's calculations that the electric and magnetic field levels expected at the edge of the right-of-way are within the range of typical levels encountered in homes and offices. (Tr. 216-17). No evidence to the contrary was presented at hearing by Mr. Clarke, and the Proposed Decision correctly concluded that no additional terms, conditions, or restrictions related to electric and magnetic fields need to be imposed. (Proposed Decision, pp. 26, 56).

Mr. Clarke expressed concerns about placement of the proposed line on his property and the line's interference with the use of lands by the occupant. As noted in the Proposed Decision, MidAmerican is to construct the line "so as not to

unnecessarily interfere with the use of any lands by the occupant." This does not mean that Mr. Clarke may determine where the line is placed on his property; Iowa Code § 478.18 only requires that the line be constructed so as not to cause unnecessary interference. Any compensation for interference will be a subject for negotiations and, if necessary, for the compensation commission.

The ALJ thoroughly considered arguments regarding alternate line locations. Mr. Clarke's proposals were inconsistent with Iowa Code § 478.18 and increased line costs and distance solely to bypass his property. MidAmerican complied with applicable Iowa law regarding the planning of line route and location. (Proposed Decision, pp. 27-28). Most importantly, Mr. Clarke's proposal would put the line in a location where it would not help accommodate future load growth. (Tr. 187-88, 359-60, 363). Mr. Clarke's interests in his property cannot be elevated above the public interest. Iowa Code § 478.3 does not limit the public interest to individual objectors or even to consumers in this state.

Mr. Clarke takes issue with the condemnation process, alleging it is unconstitutional because MidAmerican will offer a compensation jury a low appraisal. As indicated earlier, the Board is not involved in the process of setting the amount of the condemnation award. If MidAmerican and Mr. Clarke are unable to agree on a voluntary easement, the condemnation procedures contained in Iowa Code chapters 6A and 6B will be utilized. Mr. Clarke has not raised any persuasive arguments for the Board to consider the constitutionality of the condemnation process.

Mr. Clarke finally objected to the denial of his request to delete two individuals as parties to this proceeding. The Proposed Decision thoroughly addressed this issue, particularly at pages 36-37, and the Board agrees with the ALJ's decision.

In conclusion, after a thorough review of the Proposed Decision and the evidentiary record in this proceeding, the Board will affirm the Proposed Decision. No evidence or argument has been presented to persuade the Board to reverse or amend the findings and conclusions contained in the Proposed Decision. As the Board has noted, complaints about the eminent domain compensation process are outside the Board's jurisdiction. The findings are supported by a preponderance of the evidence and the conclusions supported by applicable law.

In his September 7, 2006, reply, Mr. Clarke asked to present oral argument and call witnesses. However, he made no statement explaining the manner in which briefs and arguments presented to the ALJ are inadequate for purposes of appeal and the Board finds no issues were raised on appeal that necessitate additional briefs or argument. 199 IAC 7.26(5)"f." The request for oral argument will be denied.

The request to call witnesses will also be denied. The Board does not find there to be any new relevant factual allegations raised in the appeal that were not thoroughly considered in the Proposed Decision. Further, no timely motion to reopen the record was made. 199 IAC 7.26(4).

IT IS THEREFORE ORDERED:

1. The "Proposed Decision and Order Granting Franchises" issued by the administrative law judge on July 26, 2006, is affirmed.
2. The request to present oral argument and call witnesses is denied.
3. Any argument in the appeal not specifically addressed in this order is rejected either as not supported by the evidence or as not being of sufficient persuasiveness to warrant comment.

UTILITIES BOARD

/s/ John R. Norris

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Curtis W. Stamp

Dated at Des Moines, Iowa, this 12th day of September, 2006.