

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: MIDAMERICAN ENERGY COMPANY	DOCKET NO. E-21822
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**ORDER AFFIRMING PROPOSED DECISION AND
ORDER GRANTING FRANCHISE AND DENYING REQUEST FOR STAY**

(Issued January 26, 2007)

On July 10, 2005, MidAmerican Energy Company (MidAmerican) filed with the Utilities Board (Board) an electric franchise petition for a total of 4.64 miles (later amended to 4.38 miles) of 69,000-volt (69 kV) nominal, 72.5 kV maximum, electric transmission line in Floyd County, Iowa. The petition was identified as Docket No. E-21822. The proposed transmission line would originate in Charles City, Iowa, and terminate at a proposed MidAmerican substation located near a new ethanol plant northwest of Charles City. Pursuant to Iowa Code § 478.1, MidAmerican required a franchise only for the portion of the transmission line located outside of the city limits. MidAmerican did not request eminent domain authority.

Several persons filed written objections, including Larry J. Frahm, a property owner in the area. VeraSun Energy Corporation (VeraSun) intervened in the proceeding; VeraSun is constructing a new ethanol plant that would be served by the proposed transmission line.

The Board assigned the docket to its administrative law judge (ALJ). The ALJ conducted a hearing and issued a proposed decision granting the transmission line

franchise by order issued December 28, 2006 (Proposed Decision). Mr. Frahm timely appealed the ALJ's proposed decision on January 9, 2007. VeraSun filed a response to the appeal on January 18, 2007. MidAmerican and the Consumer Advocate Division of the Department of Justice (Consumer Advocate) each filed responses to Mr. Frahm's appeal on January 23, 2007. No other appeals or cross-appeals of the ALJ's decision were filed.

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.

MR. FRAHM'S APPEAL

Mr. Frahm's only issue on appeal relates to route selection; he contends that alternative routes were not given sufficient consideration from a public interest perspective. Mr. Frahm's home is located about 75 feet from the route selected and he is concerned the line will interfere with his wife's pacemaker.

In support of his appeal, Mr. Frahm cited post-hearing comments filed by Consumer Advocate on December 18, 2006, addressing route selection. Consumer Advocate indicated one alternative route (Gilbert St. to 185th Street west) would be significantly shorter than the one MidAmerican selected and less costly. Mr. Frahm said the alternative route would alleviate concerns regarding his wife's pacemaker because it would be at a greater distance from the Frahm's home. Mr. Frahm

indicated he had discussed this issue with Consumer Advocate and had been notified that Consumer Advocate did not plan to appeal the ALJ's decision, which selected MidAmerican's preferred route and not the alternative suggested as a possibility by Consumer Advocate.

In his notice of appeal, Mr. Frahm also requested a stay of construction and reopening the record to address alternative routes. Mr. Frahm did not request oral argument.

VERASUN'S RESPONSE

VeraSun stated that several alternative routes, including the one suggested by Mr. Frahm in his appeal, were thoroughly considered and rejected by the ALJ. (Proposed Decision, pp. 22-40, 57-60). VeraSun pointed out the decision contained a detailed review of the substantial evidence supporting the ALJ's conclusions.

VeraSun noted the potential for electromagnetic interference (EMF) with Mrs. Frahm's pacemaker was also considered. VeraSun said the ALJ conducted a thorough review of the evidence and concluded there is no basis in the record for concluding that there would be any adverse EMF affects on public health and safety. (Proposed Decision, pp. 13-21, 44-47). VeraSun argued that no new issues were presented by Mr. Frahm's appeal.

In addition, VeraSun said it has consistently emphasized the need of a prompt decision so that the ethanol plant can be operational in April 2007. VeraSun enumerated many benefits from the project, including new jobs and increased

household income in the region. VeraSun asked that an immediate order be issued affirming the ALJ's proposed decision and order.

CONSUMER ADVOCATE'S RESPONSE

Consumer Advocate said the question of route selection was a close one. While the alternative route it referred to in its post-hearing filing was shorter and less expensive, there was evidence presented at hearing that the alternative route presented risks of delay and inconvenience not present with the preferred route. Consumer Advocate said "it does not appear possible to conclude there was error in the conclusion reached (by the ALJ)." Consumer Advocate also noted the evidence supported the ALJ's conclusions regarding the EMF and electronic pacemakers. Consumer Advocate concluded that the "notice of appeal does not provide reasons to believe additional consideration would produce a different result or that there was evidence not considered that might change the result."

MIDAMERICAN'S RESPONSE

MidAmerican pointed out that the Proposed Decision fully considered the alternative route discussed in Consumer Advocate's post-hearing comments and Mr. Frahm's notice of appeal. MidAmerican said that one of the critical factors in selecting the route was to avoid or minimize service interruptions to the ethanol plant, because the plant is to run 24 hours per day, 365 days per year. Due to road projects planned by the county, at least four outages would be necessary to accommodate the road construction if the alternative route was selected. (Tr. 37). In

addition, MidAmerican noted the alternative route was near an airport, raising safety concerns because of the height of the poles. (Tr. 70). Finally, the alternative route advocated by Mr. Frahm would have impacted more residences and required trimming or removal of many older trees. (Tr. 74). MidAmerican noted it had consistently advocated its preferred route and, that once selected, it remained unchanged.

MidAmerican said the appeal does not dispute that the proposed line is necessary to serve a public use or that it represents a reasonable relationship to an overall plan of transmitting electricity. Also, MidAmerican said there is no claim the chosen route fails to comply with any applicable statute or rule. While MidAmerican acknowledged cost is a factor to consider, it is only one of several factors considered, as noted in the Proposed Decision. (Proposed Decision, pp. 59-60).

MidAmerican argued that Mr. Frahm's concern about his wife's pacemaker is not supported by any research studies or actual experience. MidAmerican's expert testified that because of the relatively low voltage of the line, the electric and magnetic fields directly underneath the proposed line would be so low that pacemaker interference is not a concern supported by research data. (Tr. 139-40). The expert also testified there had not been a single report from a medical practitioner that exposure to EMF from power lines caused interference with normal pacemaker functioning. (Tr. 141). MidAmerican noted that studies have shown no effect on pacemakers up to 765 kVs, which is ten times higher voltage than the proposed line. (Tr. 143).

MidAmerican addressed Mr. Frahm's request for stay. MidAmerican said the public interest would not be served in granting a stay because Mr. Frahm has not shown he would likely succeed on the merits and the significant benefits of the ethanol plant would be delayed if a stay were granted. MidAmerican argued Mr. Frahm had not demonstrated any deficiency in the process, but simply disagreed with the route selected.

BOARD DISCUSSION

The Board has reviewed the entire record of this proceeding, including the 252-page transcript of hearing. The factual matters raised on appeal by Mr. Frahm were thoroughly considered by the ALJ in the Proposed Decision and the preponderance of evidence supports the ALJ's findings.

The Proposed Decision contained an extensive discussion of alternative routes. The Board is not persuaded to disturb the findings and conclusions on route selection. While the alternative route which is the subject to this appeal might be initially less costly, any cost savings are more than offset by the disadvantages of the route, including potential service disruptions for county road construction, impact on additional residences, and safety factors regarding the nearby airport. (Proposed Decision, pp. 22-40).

The second issue, potential EMF effects on pacemakers, was also extensively addressed in the Proposed Decision. The expert testimony clearly demonstrated that the line will present no safety or health issues for pacemaker users. The evidence demonstrated that exposure to much higher voltage lines has no detrimental effect

on pacemakers. The Proposed Decision correctly concluded that no additional terms, conditions, or restrictions related to electric and magnetic fields need to be imposed.

The need for this transmission line is uncontroverted. It is also uncontroverted that MidAmerican will construct, operate, and maintain the proposed line in conformance with all applicable safety requirements. The ALJ correctly found, based on substantial evidence, that the proposed transmission line "will not cause interference with Mrs. Frahm's pacemaker, will not cause interference with microwave Internet, satellite, or television and radio reception, and will not adversely affect public health or safety." (Proposed Decision, pp. 46-47).

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, amend, or modify the findings and conclusions contained in the Proposed Decision. The findings are supported by a preponderance of and substantial evidence and the conclusions are supported by applicable law.

None of the parties asked to present oral argument. The Board finds no issues were raised on appeal that necessitate additional briefs or argument. 199 IAC 7.26(5)"f." Oral argument will not be held and briefs will not be required.

The request for stay will also be denied. Mr. Frahm has not shown that he is likely to succeed on the merits or demonstrated any irreparable injury if the stay request is denied. In addition, delay of this project could cause harm to the public

generally by delaying or denying them the benefits from operation of the ethanol plant. Iowa Code § 17A.1919.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The "Proposed Decision and Order Granting Franchise" issued by the administrative law judge on December 28, 2006, is affirmed.
2. The request for stay 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/ Curtis W. Stamp

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 26th day of January, 2007.