

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: AMES MUNICIPAL ELECTRIC SYSTEM	DOCKET NOS. E-21743 E-21744
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ORDER DENYING MOTION TO REOPEN HEARING

(Issued October 25, 2007)

On September 12, 2007, the undersigned administrative law judge issued a "Proposed Decision and Order Denying Franchises" (proposed decision) that denied the petitions for franchises filed by Ames Municipal Electric System (Ames) in these dockets. On September 27, 2007, Ames filed a "Motion to Reopen Hearing" with supporting affidavits and an exhibit. Ames also filed an "Amendment to Petition" in Docket No. E-21744. On October 2, 2007, the Utilities Board (Board) issued an "Order Reassigning to Administrative Law Judge and Setting Time for Responses" that reassigned the case to the undersigned to consider the pending motion to reopen the hearing and, if appropriate, to set a procedural schedule, conduct a further or additional hearing, and issue a new or revised proposed decision. The Board set the deadline for responses to the motion as October 11, 2007.

On October 2, 2007, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a "Response to Motion to Reopen Hearing by the Office of Consumer Advocate." On October 9, 2007, Mr. Leonard Larson filed an "Objection to Re-open Hearing" on behalf of himself and Mrs. Sue Larson, Mr. Noel

and Mrs. Leona Larson, and Mr. James and Mrs. Arlene Bates. Ms. Cassie Cole filed a "Response to Ames' Motion to Re-open Hearing and Response to Amendment to Petition to Delete Parcel S-8 (City of Huxley) from Eminent Domain List" on October 10, 2007. Mr. Norman Albaugh, Mr. Michael Albaugh, and Ms. Connie Veasman filed a "Response to Ames Municipal Electric System's Amendment to Petition and Motion to Reopen Hearing" on October 11, 2007. The City of Huxley (Huxley) filed an "Affidavit of John E. Haldeman In Response to Motion to Reopen Hearing" on October 11, 2007.

Ames' Motion to Reopen

Ames moves the Board to reopen the hearing and the record and states in support that additional evidence should be taken to address the following issues:

1. The fact that the route study (Ames Exhibit 3) did consider and was made consistent with Section 478.18(2), Code of Iowa, and applicable rules of the Iowa Utilities Board, particularly where the route follows Interstate 35 and the existing CIPCO transmission line, and where the route follows NE 29th Street near the Ankeny substation.
2. To consider more fully and completely the adverse consequences of double circuiting the proposed Ames line with the existing CIPCO line, and to triple circuit with the MEC line along NE 29th Street in Polk County.
3. Removing the City of Huxley and Parcel S-8 from the condemnation list filed as Exhibit E to the Petition.

Ames requests that it be allowed to present the additional testimony of several witnesses. Ames states that Mr. Stephen Rodick, the author of Ames' route study, and Mr. Jerry Borland, who was involved in authorizing the route study, would offer

testimony to confirm that all routes started with the criteria required by Iowa Code § 478.18(2). Ames states that Mr. Dennis Haselhoff, who designed the proposed line along the suggested route, would present evidence that the proposed Ames line along Interstate 35 actually follows more closely a division line of land. Ames states that Mr. Richard Myers would offer testimony regarding preliminary discussions of the selected route with Board staff engineers. Ames states that Mr. Donald Kom, director of the Ames Municipal Electric System, would offer additional testimony: a) regarding the adverse consequences of double circuiting the proposed line with the existing CIPCO line; b) regarding the impracticability of triple circuiting the proposed line with the MidAmerican Energy Company (MEC) line; and c) authorizing the removal of Huxley and Parcel S-8 from the eminent domain list. Ames attached the affidavits of these witnesses and a proposed revised Exhibit 16 to its motion. All of these proposed witnesses except Mr. Rodick previously testified during the hearing in this case.

In his affidavit, Mr. Rodick states that he prepared the Ames routing study and is prepared to submit testimony to establish that the routing study commenced with the Iowa Code § 478.18(2) and applicable rule requirements. He states in his affidavit that it was apparently unclear from the routing study itself and from the testimony submitted at the hearing that all of the alternative routes listed in the study followed the defined lines required by Iowa Code § 478.18(2) and 199 IAC 11.1(7). He states this requirement was so basic that it was not understood that the route

study had to state it, but that the requirement was the basis for identifying alternative routes. He states that if the alternative routes are followed, it can be seen that each route and segment follows roads, railroads, and division lines of land as required. After starting from this point, he states, the other criteria established and were used to determine which of the alternative "legal" routes would be the most preferred. He further states that additional testimony would show that the proposed route along the CIPCO line followed Interstate 35 right-of-way and division lines (a quarter-section line) of land as nearly practicable, which he states would be allowed by the statute and implementing rules.

Mr. Borland states in his affidavit that he is prepared to submit additional testimony to clarify that the route study complied with legal requirements, that he was involved in retaining Mr. Rodick to prepare the routing study, and that before hiring Mr. Rodick, he personally downloaded and reviewed the applicable Iowa Code and Iowa Administrative Code requirements and reviewed each document in its entirety. He states that he studied them to make sure he understood the state routing requirements. He states they used this knowledge in engaging the services of Mr. Rodick to perform the actual transmission line routing study. Mr. Borland states that in initial meetings with Mr. Rodick and Mr. Myers, the transmission line routing requirements were discussed in excruciating detail to ensure that nothing in the routing study could be construed to violate any of the requirements. He states that he understands that no statement exists in the routing study that recites the Iowa

Code and Iowa Administrative Code Section numbers. He states this does not mean that the routing study did not consider these requirements, and from the routing study itself, one can plainly see that each segment follows the requirements and that the scoring criteria also follow these requirements.

In his affidavit, Mr. Haselhoff states that he is prepared to submit additional new testimony to clarify two points. First, that the east right-of-way line of Interstate 35, which Ames believes is a "road" as such term is used in Iowa Code § 478.18(2), lies west of the actual quarter section line. He states that with reference to Ames Exhibit 16, the quarter section/division line would lie easterly of the Interstate 35 right-of-way line. Thus, he states, it was understood in route planning and design that the proposed Ames route was also following a "division line of land." Mr. Haselhoff states that section lines can be seen on the Exhibit E filings for each of the property plats and as shown on the revised Exhibit 16 map, which Ames filed with its motion. Mr. Haselhoff further states that the proposed route along NE 29th Street (crossing Parcels P-2 and P-3) is not within road right-of-way, but on private easement, and that he has been advised that the MEC transmission line route is on private easement, and as such would be consistent with Iowa statutes, Board rules, and prior precedent. Mr. Haselhoff states that he was present at meetings with Board staff engineers held prior to the filing of the franchise petition. He states that both of these routing issues were discussed and no objections to the proposed routes at these locations were voiced.

In his affidavit, Mr. Myers states that he is prepared to submit additional testimony that prior to the final route selection, he participated in discussions with other Ames representatives and engineers and staff of the Board. He states that the various routes were discussed and the preferred route was shown. Mr. Myers states that, in particular, the routing coming out of the Ankeny substation was disclosed, and it was specifically noted that the intended route along NE 29th Street would be in private easement across the street from the existing MEC line, which was also in private easement along the east side of the street. Mr. Myers states that no objections were raised with respect to such routing. Mr. Myers states that Board rule 199 IAC 11.6(1) was noted to require common use construction only if the lines are located within public road right-of-way, and to his knowledge, the Board has not required independently-owned transmission lines in private easements to be jointly constructed. Mr. Myers states it was also pointed out that the preferred route would follow the east side of Interstate 35 right-of-way, and for a stretch which would parallel the existing CIPCO line. Mr. Myers states that again, no objections were raised regarding this proposed segment of the route.

In his affidavit, Mr. Kom states that he is prepared to provide additional new testimony to clarify several issues. Mr. Kom states that Ames withdraws the Huxley Parcel S-8 from the eminent domain list on Docket No. E-21744 Petition Exhibit E, "while keeping such parcel on the route." Mr. Kom states that Ames no longer requests the authority to condemn a right-of-way across Huxley Parcel S-8 and will

not contest such authority further in this or other proceedings, if the route is approved as proposed to cross the Huxley parcel. Mr. Kom states that it is anticipated that the two cities will be able to reach mutual agreement for location of the proposed electric line across Parcel S-8. Mr. Kom further states that additional factors, which were not considered with respect to suggested double circuiting and triple circuiting the proposed Ames line with the CIPCO line, would be submitted. In particular, Mr. Kom states, through the submission of additional testimony and power flow simulations, he would demonstrate that by double circuiting a portion of the proposed Ames line with the existing CIPCO line, reliability will be much less than if built as a single circuit. Mr. Kom also states that the reason Ames did not consider a joint triple-circuit line with MEC along NE 29th Street was because transmission planning studies are performed ahead of routing studies and only consider options for system improvements. He states that while MEC completed a transmission plan for Ames in November 2002, that plan only provided a range of options for Ames, and the final plan was not selected by Ames until 2003. Mr. Kom states that Ames commissioned a routing study in September 2003, and Ames has determined that MEC obtained an order granting a franchise for its existing double-circuited line on July 22, 2003, before Ames could even begin its routing study. Therefore, he states, it is inconceivable that these lines could have been jointly planned, franchised, and constructed together.

Along with its motion and supporting affidavits, Ames filed an amendment to its petition in Docket No. E-21744. In its amendment, Ames requests that Parcel S-8, owned by the City of Huxley, be deleted and removed from the eminent domain list reflected in Docket No. E-21744 Petition Exhibit E.

The Consumer Advocate's Response

In its response, the Consumer Advocate notes that Ames' motion to reopen is stated to be for the purpose of offering "additional" evidence to address several issues, which are whether the route study was done in accordance with applicable statutes and rules, the impact on system reliability of double circuiting the proposed line with CIPCO's existing line, the adverse consequences of triple circuiting the proposed line with MEC's existing line, and to remove Parcel S-8 from the list of properties for which Ames requests eminent domain authority. The Consumer Advocate states that ordinarily there would be no strong objection to reopening a hearing if there is reason to believe that new evidence has been identified that might significantly affect the outcome of an issue. However, the Consumer Advocate states, the affidavits submitted with Ames' motion do not appear to describe significant new evidence, but simply state that additional evidence will be offered on these issues. The Consumer Advocate argues that additional evidence is not necessarily the same as new evidence, which the Board's rules require to be in the affidavits submitted with a motion to reopen.

With regard to the issue of double-circuiting the proposed line with the existing CIPCO line along Interstate 35, the Consumer Advocate states that Mr. Kom's affidavit says that Ames would submit "[a]dditional factors which were not considered with respect to double circuiting and triple circuiting the proposed Ames line with the CIPCO line." The Consumer Advocate states that Mr. Kom's description of the supposed "additional factors which were not considered" says, "[t]hrough the submission of additional testimony and power flow simulations, I will demonstrate that by double-circuiting ... with the existing Boone Junction-Bondurant transmission line, the reliability will be much less than if built as a single circuit." However, the Consumer Advocate argues, evidence to the effect that double circuiting with the CIPCO line would result in "much less reliability" has already been introduced into the record through the testimony of Mr. Kom and other witnesses and exhibits. The Consumer Advocate argues the proposed decision describes that evidence in detail and the affidavit does not describe "new" evidence that would be significantly different from what is already in the record.

With regard to the issue of triple circuiting the proposed line with the existing MEC line along NE 29th Street, the Consumer Advocate states that Mr. Kom basically offers an argument as to why Ames could not jointly plan the line with MEC. The Consumer Advocate states this argument is based on comparing the relative time periods pursued by MEC and Ames for the two lines. The Consumer Advocate states that according to the affidavit, Ames commissioned its route study in

September 2003 after MEC obtained its franchise on July 23, 2003, and it is implied that Ames could not commission its route study before that time. However, the Consumer Advocate argues, the only new evidence described appears to be the date when MEC obtained its franchise. The Consumer Advocate argues the hearing could be reopened to receive this evidence, but it is difficult to see how it could have any significant impact on the issue because the proposed decision found, based on evidence in the record as to Ames' planning process, that Ames should have considered the triple circuit option earlier. The Consumer Advocate argues that the fact that Ames commissioned its route study a little more than a month after MEC received its franchise is entirely consistent with that finding. Moreover, the Consumer Advocate argues, the evidence of when MEC obtained its franchise would appear to have no impact on the ultimate conclusion that the route study and results were pursued in conflict with Iowa Code § 478.18.

With regard to whether the route study was done in accordance with the relevant statutory and rule requirements, the Consumer Advocate argues that the affidavits of Mr. Borland, Mr. Rodick, Mr. Myers, and Mr. Haselhoff do nothing more than make the argument that the route planning was done with the requirements of the code and regulations in mind. The Consumer Advocate notes that Mr. Borland states he personally reviewed the code requirements and discussed them with Mr. Rodick and Mr. Myers. However, argues the Consumer Advocate, this is not in any significant way different from testimony received in evidence at the hearing. The

Consumer Advocate argues that Mr. Borland's concluding statement, "[f]rom the routing study itself, one can plainly see that each segment follows the requirements and the scoring criteria follow these requirements," is merely argument based on evidence in the record. The Consumer Advocate notes in a footnote that Mr. Rodick's affidavit is to some degree in conflict with that conclusion when he states, "[a]pparently it was unclear from the route study itself ... that all of the alternative routes in the study followed the defined lines required by" the code and regulations. The Consumer Advocate questions whether Mr. Rodick's affidavit describes any new evidence, noting that Mr. Rodick states that routes in full compliance with the law were established before using the other criteria to determine which of the alternatives would be preferred. However, the Consumer Advocate argues, Mr. Rodick's statement is merely a conclusion that does not add anything additional to what was presented at hearing and is already in the record. The Consumer Advocate argues that at the hearing, the undersigned administrative law judge specifically covered this area and counsel for Ames followed with additional questions on the same subject.

The Consumer Advocate notes that Mr. Myers' affidavit and part of Mr. Haselhoff's affidavit describe as proposed new evidence the fact that Board engineering staff in meetings with Ames were aware of the proposals to parallel the CIPCO and MEC lines and raised no objections. The Consumer Advocate argues that this additional evidence should be rejected for both substantive and policy reasons. The Consumer Advocate argues that reactions of Board staff in discussions

with utilities concerning their proposed projects should not be admissible in hearings on related matters absent exceptional circumstances where no other evidence is available on an important issue. The Consumer Advocate argues that admitting such evidence would interfere with the ability of staff members to assist utilities in preparing for projects requiring Board approval. The Consumer Advocate argues that, to the extent such discussions would be discouraged, a valuable function of the regulatory process would be lost with no benefit to the public interest or individual parties. The Consumer Advocate argues that Board staff does not have complete information needed to form opinions as to whether a proposed project meets applicable legal requirements at the time the discussions are held. The Consumer Advocate argues that it would not advance the decision making process to introduce such evidence. Furthermore, the Consumer Advocate argues, there is little value to such testimony because of the many possible reasons a staff member might refrain from commenting on a particular feature of a utility's plans. Therefore, argues the Consumer Advocate, the invitation to hear such evidence should be declined.

The Consumer Advocate argues the affidavit of Mr. Haselhoff essentially states that the section of the proposed route paralleling Interstate 35 follows a division line of land. The Consumer Advocate further argues that Mr. Haselhoff's affidavit states that both Ames' proposed line and the existing MEC line are on private easement along NE 29th Street and therefore the proposed route is in compliance with the law. The Consumer Advocate argues that the only new

evidence offered is the information about whether the MEC line is in private easement or road right-of-way. The Consumer Advocate argues that the value of this evidence is unclear and without a more informative explanation of its relevance, reopening the hearing for the purpose of considering it seems unwarranted. The Consumer Advocate argues that the proposed decision found that Ames failed to prove its proposed route is practicable and reasonable and in compliance with the law, and it is not clear how the information concerning MEC's line adds anything significant to the facts upon which that finding is based.

The Consumer Advocate argues that the proposed "additional evidence" does not appear to be new in the sense of its being not known or knowable at the time of the hearing. Instead, argues the Consumer Advocate, it appears to be an attempt to add more of the same evidence or to elaborate on evidence already introduced. Therefore, the Consumer Advocate argues, good cause for reopening the hearing has not been shown.

Leonard and Sue Larson, Noel and Leona Larson, and James and Arlene Bates

The Larsons and Bates object to the request to reopen the record and support the Consumer Advocate's response. They argue that Ames has not discovered new evidence that must be introduced, but instead, appears to be trying to introduce additional evidence of the same type already introduced at the hearing. They argue that Ames, not being happy with the proposed decision, is requesting a second chance to meet the burden it should have met at the initial hearing. They argue that

a party who fails to meet its burden during the initial hearing should not be afforded the opportunity to reopen the record and try again unless there is some compelling reason why the evidence the party now wishes to introduce was not available during the initial hearing. They argue that Ames has not demonstrated any such compelling reason and the record should stand as presented.

Ms. Cassie Cole

Ms. Cole requests the Board to deny Ames' petition, stating that Ames' process to secure a franchise has been going on for over two years, and argues that Ames' unwillingness to work in good faith with impacted property owners culminated in the hearing. She argues that the property owners facing eminent domain had expressed their concerns on numerous occasions to Ames and its agents before the hearing. Ms. Cole states she is disappointed that Ames apparently did not come to the hearing with all the supporting testimony and documentation they needed or believed they had. Ms. Cole argues that all the individual landowners who came to the hearing had to take a day of vacation or be away from their normal activities to be able to reiterate their concerns to the administrative law judge. However, she argues, Ames' employees and agents were on the "payroll" and suffered no personal financial consequence or loss of personal time. Ms. Cole argues that as a result of the hearing and the post-hearing briefs, the undersigned issued the proposed decision denying the requested franchises. Ms. Cole noted that the Consumer Advocate argued that Ames had not shown good case to reopen the hearing based

on the lack of new evidence that would not have been able to be known at the hearing.

Ms. Cole stated she is very concerned that Ames deleted Huxley Parcel S-8 from the eminent domain list. She argues that by submitting this request, one might infer that Ames has talked with Huxley and is either close to an agreement or has reached an agreement with Huxley. However, Ms. Cole argues, there is no indication from Huxley that Ames has contacted Huxley or reached an agreement. Ms. Cole argues this appears to be an attempt to obfuscate what Ames believes to be the only issue that has stopped them from receiving the requested franchises.

Ms. Cole asks the Board not to grant Ames' request to reopen the hearing and requests the Board to reaffirm the Board's and the Consumer Advocate's previous conclusions. Ms. Cole states that this has been a long and arduous process and she would like to think there would soon be an end.

Norman Albaugh, Michael Albaugh, and Connie Veasman

The Albaughs and Ms. Veasman note Ames' deletion of Parcel S-8 from the eminent domain list even though the proposed line would still go through Huxley's parcel and ask whether this means that Huxley has settled with Ames. They note Mr. Kom's affidavit states his belief that it is inconceivable that Ames and MEC could have jointly planned, franchised, and constructed their lines together. They state that, as they outlined in their post-hearing submission, the Ames Area Transmission Planning Study was published on November 21, 2002, with supporting data dated

July 2002, with the majority of the transmission plans starting at the not-yet-constructed MEC substation. They argue that although MEC's franchise may not have been granted until July 22, 2003, MEC and Ames were working together on plans from the MEC substation long before that for a mutually beneficial goal without practical and economical consideration for the use of a common easement and common structures along NE 29th Street. They argue that MEC and Ames were working together for their mutual benefit without consideration of the interference, environmental impact and economic consequences on the property owners. They agree with the Consumer Advocate and request that Ames' motion be denied.

City of Huxley

Huxley filed the affidavit of Mr. John Haldeman in response to Ames' motion. Mr. Haldeman states his affidavit is filed to clarify Mr. Kom's statement that "It is anticipated that the two cities will be able to reach a mutual agreement for location of the proposed electric line across Parcel S-8." Mr. Haldeman states that Huxley wants to make it clear that it has not approved an agreement with Ames. Further, states Mr. Haldeman, since the hearing in this case, Huxley has not made any representations to Ames concerning the reaching of an agreement. Mr. Haldeman states that the City Council of Huxley has not indicated an intent to reach an agreement with Ames, and it is unknown what the City Council of Huxley would do with any proposal presented to it at a later date. Mr. Haldeman states that any implication otherwise from Mr. Kom's affidavit is not correct.

Applicable Board Rule and Analysis

Ames filed its motion to reopen the record pursuant to 199 IAC 7.24. Rule 199 IAC 7.24 provides that the Board or the presiding officer in a case may reopen the record for the reception of further evidence and includes the requirements for doing so. When the record was made before the Board, motions must be filed prior to issuance of the final decision. Among other things, the rule states that such motions must substantially comply with the form prescribed in 199 IAC 2.2(12). Subrule 199 IAC 2.2(12) states that in support of the motion to reopen the record, the motion shall set forth a "clear and concise statement of the facts claimed to constitute grounds requiring reopening of the proceeding, including material changes of fact or law alleged to have occurred since the conclusion of the hearing." As the Board stated in its order reassigning the case to the undersigned, rule 7.24 does not apply to this case because this is an electric transmission line franchise proceeding under Iowa Code chapter 478. 199 IAC 7.1(3).

However, there is a somewhat similar rule that does apply to this case in 199 IAC 7.26(4), which states the following: "The board shall not consider any claim of error based on evidence which was not introduced before the presiding officer. Newly discovered material evidence must be presented to the presiding officer pursuant to a motion to reopen the record, unless the board orders otherwise." Therefore, based on this rule, the Board stated in its order that "this matter should be

assigned to the ALJ for consideration of the motion to reopen the record and for such further proceedings as may be appropriate, and the Board will do so."

Subrule 7.26(4) allows the presentation of newly discovered material evidence pursuant to a motion to reopen. Even if rule 7.24 were applicable to this case, it requires that the moving party include material changes of fact or law alleged to have occurred since the conclusion of the hearing. Ames has not alleged that any of the additional evidence it proposes to present is newly discovered. Nor has it alleged any material changes of fact or law that have occurred since the conclusion of the hearing. After carefully reviewing the affidavits, it appears that all of the additional evidence Ames wishes to present on reopening was available to Ames well before Ames filed its prepared testimony and before the hearing in this case. Therefore, Ames' motion to reopen the record does not meet the requirements of either 199 IAC 7.26(4), which does apply to this case, or of 199 IAC 7.24, which does not.

The Board has stated that it "considers the reopening of the record after the hearing to be an unusual event that should only be granted when the circumstances warrant the presentation of additional evidence to ensure the record is complete and accurate." In re: Aquila, Inc., d/b/a Aquila Networks, Docket No. SPU-03-7, "Order Denying Motion to Reopen Record," (September 12, 2003) (Aquila). In that case, Aquila argued that the evidence it wished to present on reopening was not in existence prior to the hearing and therefore could not have been offered at the hearing. In its order, the Board found that the evidence offered was merely

cumulative and not of sufficient probative value to justify reopening the record. The Board stated that, although the evidence may have been admissible at the hearing if it had been available, it did not represent a material change in the facts presented and was only cumulative to evidence already presented.

When examining the cases in which the Board has previously granted or denied a request to reopen, none of the cases involved the use of the motion as was done in this case, that is, that the moving party presented its case, a decision was issued adverse to the moving party, and the moving party then requested reopening of the record so that it could present additional, not newly discovered, evidence to further support its case. In re: Community Cable Television v. Iowa Telecommunications, Inc., Docket No. FCU-06-48, "Order Reopening Record and Admitting Exhibits," (February 8, 2007); In re: Cedar Falls Utilities, Docket No. E-21647, "Order Denying Application for Rehearing and Reopening Record," (November 4, 2005); In re Arbitration of: Sprint Communications Company, L.P., et al, Docket No. ARB-05-2, "Order Reopening Docket for Reconsideration and Setting Procedural Schedule," (August 19, 2005); In re: Midwest Renewable Energy Projects LLC v. Interstate Power and Light Company, Docket No. AEP-05-1, "Order Granting Motions to Reopen Record, Establishing Procedural Schedule, and Denying Objection," (June 13, 2005); In re: IES Utilities, Inc., Docket Nos. TF-03-180 & TF-03-181, "Order Granting Motion to Reopen Record," (April 14, 2004); In re: Aquila, Inc., d/b/a Aquila Networks, Docket No. SPU-03-7, "Order Denying Motion to Reopen

Record," (September 12, 2003); In re: MidAmerican Energy Company, Docket No. EPB-02-156, "Order Granting Motion to Reopen the Record," (February 6, 2003); In re: US West Communications, Inc., n/k/a Qwest Corporation; Docket Nos. INU-00-2 and SPU-00-11, "Order Denying Petition to Intervene and Motion to Reopen Proceedings," (June 11, 2002); In re: Fibercomm, et al, Docket No. FCU-00-3, "Order Denying Motion to Reopen Hearing and Record," (September 6, 2001); In re: Iowa Southern Utilities Company, Docket No. RPU-83-44, "Order Denying Motion to Reopen Record," (March 3, 1989).

Reopening the case under these circumstances, in addition to being contrary to what is contemplated under the rules and prior cases, would be unfair to the opposing parties and would interfere with the orderly presentation of evidence in contested cases before the Board. Parties must present all their evidence to support their cases through the use of prepared testimony in compliance with the procedural schedule and through evidence presented during the hearing. They should not be allowed to present their evidence, wait for the decision to be issued, and then tailor additional evidence to buttress their case once they know the content of the decision. Allowing this would be unfair to opposing parties and would result in a lack of finality to decisions in contested cases. Reopening the record under these circumstances would be inappropriate.

In addition, even if Ames were allowed to present its proposed additional evidence, it would not change the decision in this case. As discussed extensively in

the proposed decision, the proposed route does not meet the requirements of the statute and prior cases at the location where Ames' proposed line would parallel the existing CIPCO line, and nothing proposed to be presented changes that conclusion. Ames' proposed revised Exhibit 16, attached to Ames' motion to reopen, now shows a division line of land. However, this exhibit does not show anything different than that previously presented in Docket No. E-21744 Petition Exhibit E and other evidence presented by Ames. The revised Exhibit 16 merely shows more clearly that along the entire segment where the proposed Ames line would parallel the existing CIPCO line, the existing CIPCO line is to the east of the division line of land, often very close to it, and the proposed Ames line is significantly farther to the east of both the existing CIPCO line and the division line of land. The evidence previously presented showed this, and the proposed decision already discussed it. As discussed in the proposed decision, Ames' consideration of the existing CIPCO route was not done within the meaning of the prior cases. Gorsche Family Partnership v. Midwest Power, et al., 529 N.W. 2d 291 (Iowa 1995) (Gorsche); In re: MidAmerican Energy Company, Docket Nos. E-21752, E-21753, & E-21754, "Proposed Decision and Order Granting Franchises" (July 26, 2006) and "Order Affirming Proposed Decision and Order Granting Franchises" (September 12, 2006) (MidAmerican I); In re: MidAmerican Energy Company, Docket Nos. E-21621, E-21622, E-21625, E-21645, & E-21646, "Proposed Decision and Order Granting Franchises" (December 8, 2004) (became the final decision of the Board because the proposed

decision was not appealed; franchises were issued on December 29, 2004) (MidAmerican II). As stated in the proposed decision, Ames treated the existing CIPCO line as if it were a road and proposes to place its new line next to the CIPCO line, at an average of 80 feet to the east of the existing line, not using common structures. As also stated in the proposed decision, the location of the Ames line as proposed would place an extraordinary burden on these landowners. As previously found, this location is contrary to the requirements of Iowa Code § 478.18, 199 IAC 11.1(7), and the prior cases. Ames previously argued that its proposed line met the requirements of the statute at this location, and the proposed decision found adversely to Ames. Nothing Ames proposes to present changes this result. The evidence Ames proposes to present on this point is merely cumulative to that already presented and does not change the result in the case.

Ames requests permission to provide additional evidence on other issues that were extensively litigated and argued. Ames had the opportunity to present sufficient evidence on all of these issues, and it did so. For the most part, the evidence Ames proposes to present is not different in character from the evidence already presented and is merely cumulative to evidence already presented and considered in reaching the proposed decision. The only proposed evidence that is somewhat different from that previously presented is that of Mr. Rodick and Mr. Borland. Mr. Rodick did not testify during the hearing, although Ames did not explain why he did not. If their affidavits are accepted as true, it appears that Ames did know of the Iowa Code

§ 478.18 and rule requirements regarding routing and did consider them in planning the route. However, the routing study speaks for itself, and what it says is that Ames considered the existing CIPCO transmission corridor (but not using common structures with the existing transmission line) to be one of the preferred routes to be used when beginning the planning of the proposed route. Mr. Borland testified that this was the case at the hearing. Ames previously argued that it began planning for the route according to the requirements of Iowa Code § 478.18 and 199 IAC 11.1(7), and the proposed decision found against Ames on this point. Even if Mr. Rodick's and Mr. Borland's statements are accepted as true, this would not change the result. Ames did not begin planning for the route according to the statutory and rule requirements because it included existing routes from the beginning as preferred routes and did not consider existing routes within the meaning of the prior cases. Simply offering additional testimony to support evidence presented at the hearing and making the same arguments previously made will not correct the initial planning decisions Ames made based on an incorrect assumption of what was required by Iowa Code § 478.18(2) and 199 IAC 11.1(7), and on an incorrect interpretation of the Gorsche, MidAmerican I, and MidAmerican II cases.

Ames proposes to present evidence that when its representatives had early discussions with Board staff about the proposed route, Board staff did not voice objections. This evidence should be excluded as irrelevant and speculative. Board staff is not the decision maker in these cases. Even if Board staff had affirmatively

told Ames it thought the route was acceptable, which was not the case, it would not matter. Any statements by Board staff do not bind the Board or the undersigned administrative law judge in reaching decisions in contested cases. In addition, there are many reasons staff might not voice an objection to a route in preliminary meetings, and it cannot be inferred that staff is expressing any opinion either way by its lack of voicing an objection to a proposed route. It also must be noted that in any preliminary meetings, Board staff would not have had complete information in the case that would be available to the Board or the undersigned when reaching a decision. It also must be noted that in the staff report, staff raised questions about the segment of the proposed route that paralleled the CIPCO route and asked that Ames provide evidence on certain questions regarding that section of the route. Therefore, even if reopening of the record were allowed, this particular type of proposed additional evidence must be excluded. See In re: Midwest Renewable Energy Projects v. Interstate Power and Light Company, Docket No. AEP-05-1, "Order on Rehearing," pp. 5-7, (June 12, 2006).

Ames proposes to present the additional testimony of Mr. Kom and additional power flow simulations, which Mr. Kom states would demonstrate that if Ames double circuited a portion of the proposed line with the existing CIPCO line, reliability would be much less than if the line were built as a single circuit. Ames already presented evidence and argument on this point. The proposed evidence appears to be cumulative to that already presented and Ames offers no explanation why the

proposed evidence would be different in character to that already presented or why the evidence was not previously presented. The proposed decision stated that it did not mandate that Ames double circuit its proposed line with the existing CIPCO line. Finding of fact number nine found, among other things, that although the evidence did not support a conclusion that double circuiting the proposed line with the CIPCO line would violate reliability standards, the evidence did not clearly demonstrate that Ames should do so. Even if the evidence were allowed, it would not change these findings. Even if the evidence were admitted and Mr. Kom's conclusion that reliability would be much less if the line were double circuited than if it were single circuited is accepted as true, it would also not change the conclusion that the proposed route does not meet applicable requirements.

Ames also proposes to present the testimony of Mr. Kom regarding why Ames did not consider a joint triple-circuit line with MEC along NE 29th Street and why it could not have jointly planned, franchised, and constructed the lines together. Ames also proposes to present the testimony of Mr. Myers and Mr. Haselhoff that 199 IAC 11.6(1) requires common use construction only if the lines are located within public road right-of-way, and that neither the proposed Ames line nor the existing MEC line are within public road right-of-way, so the rule would not require common construction. Ames also proposes to present Mr. Myers' testimony that the Board has not previously required independently owned transmission lines in private easements to be jointly constructed. Even if the proposed evidence were allowed, it

would not change any of the proposed decision's findings with respect to this part of the line or the result in the case. The proposed decision discussed this section of the proposed line, the objectors' concerns, and Ames' response to the objection at pages 48-52 and 94. The proposed decision did not require Ames to triple circuit the proposed line with the MEC line at this location. Mr. Myers is correct that 199 IAC 11.6(1) requires common use construction only if the lines are located within public road right-of-way, and the proposed decision so found. The proposed decision stated the following conclusions regarding this part of the proposed line at pages 51-52:

The Board has adopted most of the National Electrical Safety Code (NESC) as part of the Iowa Electrical Safety Code in 199 IAC 25.2(1). NESC Rules 221 and 222, which are adopted, allow joint use of structures, and NESC Rule 222 specifically states that 'joint use of structures should be considered for circuits along highways, roads, streets, and alleys.' Board rule 11.6 expresses a preference for constructing multiple lines along the same public ROW on common structures. 199 IAC 11.6. Although these rules do not require Ames to triple-circuit its proposed line along NE 29th Street, and further evaluation may show that it cannot be done, if Ames chooses to re-evaluate route options, it must consider these rules, discuss the possibility of triple-circuiting with MEC, and present evidence regarding this consideration in its revised petition. Northeast 29th Street in Polk County is a road within the meaning of Iowa Code § 478.18, and a route evaluation that included it as an option could be in accordance with § 478.18, so long as Ames evaluates triple-circuiting the line with the existing MEC line.

Finding of fact number nine stated, in part, that the evidence did not clearly demonstrate that Ames should triple circuit its proposed line with the existing MEC line.

Finally, Ames requests that eminent domain Parcel S-8 be removed from the eminent domain list in Docket No. E-21744. Parcel S-8 is owned by the City of Huxley. Ames proposes to present the additional testimony of Mr. Kom that Ames no longer requests eminent domain authority over the parcel, "while keeping such parcel on the route." Mr. Kom's affidavit states that he would testify that Ames will not contest the eminent domain authority over this parcel "further in this or other proceedings, if the route is approved as proposed to cross the Huxley parcel." Mr. Kom's affidavit states that "[I]t is anticipated that the two cities will be able to reach mutual agreement for location of the proposed electric line across Parcel S-8." However, the affidavit of Huxley's witness, Mr. Haldeman, states that Huxley wishes to make it clear that Huxley has not approved an agreement with Ames and since the hearing, Huxley has not made any representations to Ames concerning the reaching of an agreement. Mr. Haldeman's affidavit further states that the Huxley City Council has not indicated an intent to reach an agreement with Ames and it is unknown what the City Council would do with any proposal that may be presented to it later. Therefore, even if the record were reopened and this evidence were allowed to be presented, it changes nothing with respect to Parcel S-8. This evidence is cumulative to that already presented. Ames has not presented any different evidence or any reason to approve the proposed route over Parcel S-8. As found in the proposed decision, Ames does not have eminent domain authority under Iowa law to condemn Huxley's property. Ames has not presented any changes to the proposed route with

respect to Parcel S-8. As the proposed decision found, the proposed route across Parcel S-8 does not comply with applicable Iowa law. Nothing Ames proposes to present changes this conclusion.

With its motion to reopen, Ames filed an amendment to its petition in Docket No. E-21744, in which it requests that Parcel S-8 be deleted from the eminent domain list reflected in petition Exhibit E. Since the proposed decision has already been issued in this case and the motion to reopen is denied, this motion to amend the petition on which the proposed decision is based is untimely and should therefore be denied.

For all the above reasons, Ames has not presented good cause for reopening the record and its motion should be denied.

IT IS THEREFORE ORDERED:

1. The "Motion to Reopen Hearing" filed by Ames Municipal Electric System on September 27, 2007, is hereby denied.
2. The "Amendment to Petition" filed by Ames Municipal Electric System in Docket No. E-21744 on September 27, 2007, is hereby denied as untimely.

UTILITIES BOARD

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

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 25th day of October, 2007.