

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: CRYSTAL LAKE WIND, LLC	DOCKET NOS. E-21830 E-21831 E-21832 E-21833
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**ORDER ESTABLISHING PROCEDURAL SCHEDULE, PROPOSING TO TAKE
OFFICIAL NOTICE, AND NOTICE OF HEARING**

(Issued March 5, 2008)

On August 28, 2007, Crystal Lake Wind, LLC (Crystal Lake), a subsidiary of FPL Energy, LLC (FPL), filed petitions with the Utilities Board (Board) requesting franchises to construct, operate, and maintain a total of 40.82 miles of 161,000 volt (161 kV) nominal, 169 kV maximum, electric transmission line proposed to be constructed in Cerro Gordo, Hancock, Winnebago, and Worth Counties, Iowa. The petitions were identified as Docket Nos. E-21830 (Cerro Gordo County), E-21831 (Hancock County), E-21832 (Winnebago County), and E-21833 (Worth County). The proposed transmission line would begin at an interconnection point with the existing Interstate Power and Light Company (IPL) Lime Creek Substation north of Mason City in Cerro Gordo County, and terminate at FPL Collector Substation in Hancock County and FPL Collector Substation II in Winnebago County. The purpose of the proposed transmission line is to connect a wind farm in Winnebago and Hancock Counties to the Lime Creek Substation. The proposed route of the line is primarily on

public road right-of-way and runs generally along and parallel to county roads. As proposed, approximately 18.23 miles of the proposed line would be in Cerro Gordo County, approximately 20.42 miles of the proposed line would be in Hancock County, approximately 2.01 miles of the proposed line would be in Winnebago County, and approximately 0.16 mile of the proposed line would be in Worth County. Crystal Lake filed revisions to the petitions and additional information on October 10 and 19, November 7 and 15, December 21, 2007, and on January 8, 9, 16, and 18, 2008.

Crystal Lake does not request the power of eminent domain pursuant to Iowa Code § 478.6. Several written objections, including a petition with multiple signatures, were filed in the dockets, although some objections have been withdrawn. As of the date of this order, five objections in Hancock County and one objection in Winnebago County remain. The following individuals filed written objections with the Board in the Hancock County docket and have not withdrawn them: Ms. Phyllis and Mr. Phillip Clark, Ms. Elaine Heesch, Ms. Jane Luecht-DeBoe, Mr. Ross H. Boysen, and Mr. Joe Knapper. Mr. Aaron H. Charlson filed a written objection with the Board in the Winnebago County docket and it is unclear whether he has withdrawn his objection. Mr. Charlson filed both an individual objection and another objection jointly with other individuals. Mr. Charlson and the other individuals filed a written withdrawal of their joint objection. Since Mr. Charlson did not file a separate withdrawal of his individual objection, and did not mention his individual objection in his joint withdrawal, it is unclear whether he intended to withdraw his

individual objection as well. The property owned by Ms. Phyllis and Mr. Phillip Clark appears to be some distance away from the proposed route, so it is unclear whether they still oppose the proposed transmission line. Two of the objectors, Mr. Ross H. Boysen, and Mr. Joe Knapper, do not own property near the proposed route, and filed their objections as an outdoorsman and a concerned citizen, respectively. There is a legal question whether these two individuals are persons "whose rights may be affected" by the proposed transmission line within the meaning of Iowa Code § 478.5. The undersigned expects the parties to address this legal question in their prehearing briefs.

Iowa Code § 478.6 requires a hearing to be held in an electric transmission line franchise proceeding if objections to a franchise petition are filed or if eminent domain is requested. If a proposed transmission line is more than one mile in length, the hearing must be held in the county seat of the county located at the midpoint of the proposed line. Iowa Code § 478.6. The midpoint of the proposed line is in Hancock County. Therefore, the hearing in this case must be held in Garner, Iowa.

On February 29, 2008, the Board issued an order assigning this case to the undersigned administrative law judge to, among other things, set a procedural schedule, conduct a hearing, issue a proposed decision, and exercise the authority provided in 199 IAC 7.3.

THE BOARD'S AUTHORITY AND JURISDICTION

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

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

THE ISSUES

In Exhibit D of its petitions, Crystal Lake discusses the purpose of the proposed transmission line. Crystal Lake states that it proposes to build the transmission line to allow up to 400 megawatts (MW) of new wind generation in Hancock and Winnebago Counties to be interconnected to IPL's Lime Creek Substation in Cerro Gordo County. Crystal Lake notes that Governor Culver has called for increased renewable energy, including wind energy, and states that wind energy from the proposed site can be economically delivered to the electric grid to

serve Iowa load. Crystal Lake states that it determined that the area immediately to the north and south of Crystal Lake in Hancock and Winnebago Counties was optimal for a wind generation facility. It states that energy generated from wind turbines will be carried by buried electrical cable to two wind farm substations, where the collected energy will be transformed to 161 kV for interconnection to the proposed new 161 kV transmission line. Crystal Lake further states it determined, through extensive study in conjunction with the Midwest Independent Transmission System Operator (MISO), that the most favorable location for delivery of this wind energy is the Lime Creek Substation, and the proposed transmission line is designed to connect the wind farm substations to the Lime Creek Substation. In its petitions, Crystal Lake does not discuss current and future electricity demands in the area or whether the proposed transmission line is needed to meet current and future electricity loads.

Crystal Lake must demonstrate that the proposed transmission line is necessary to serve a public use. Iowa Code § 478.4. It must also show the proposed line represents a reasonable relationship to an overall plan of transmitting electricity in the public interest. Iowa Code § 478.4. Crystal Lake must demonstrate that the transmission line is proposed to be constructed near and parallel to roads, to railroad rights-of-way, or along division lines of land, wherever practical and reasonable, and so as not to interfere with the public use of the highways or streams of the state, nor unnecessarily interfere with the use of any lands by the occupant, as

required by Iowa Code § 478.18 and Board rules. Crystal Lake must also show that the proposed line conforms to the construction and safety requirements of Iowa Code §§ 478.19 and 478.20 and applicable Board rules at 199 IAC 11 and 25. In addition, the undersigned will determine whether any terms, conditions, and restrictions on the franchise, if granted, should be imposed, and whether modifications of line location and route would be just and proper. Iowa Code § 478.4.

Any person whose rights may be affected by the proposed transmission line may file an objection with the Board. Iowa Code § 478.5. Objections must be filed in writing with the Board no later than 20 days after the date of the second publication of the notice required by Iowa Code § 478.5. As of the date of this order, a number of written objections filed by the persons listed above remain. The issues that were raised in these remaining written objections, and any issues that may be raised in objections filed in the future, are also issues in the case.

As discussed below, Board staff Mr. Bao Nguyen and Mr. Don Stursma filed a report (Nguyen/Stursma report) regarding the petitions and proposed transmission line dated February 25, 2008. Mr. Nguyen and Mr. Stursma raised a number of issues in their report, and those issues are also issues in the case.

PREPARED TESTIMONY AND EXHIBITS

All parties will be given the opportunity to present evidence and argument on all issues involved in this proceeding and to respond to evidence presented by opposing parties. Parties may choose to be represented by counsel at their own

expense. Iowa Code § 17A.12(4). The proposed decision and order that the undersigned administrative law judge will issue in this case must be based solely on evidence contained in the record and on matters officially noticed in the record. Iowa Code §§ 17A.12(6) and (8). Unless contrary arrangements are made on the record at the hearing, all evidence will be received at the hearing, and the record will be closed to any further evidence at the conclusion of the hearing.

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

Crystal Lake must file prepared direct testimony and exhibits prior to the hearing in conformance with the procedural schedule set forth below. At a minimum, Crystal Lake's prepared testimony and exhibits must address the issues listed above,

including each of the issues and questions raised in the Nguyen/Stursma report, and each of the issues raised by each of the remaining objectors. The information provided in the petitions does not provide sufficient detail on some issues and must be supplemented with prepared testimony and exhibits as discussed in this order and the Nguyen/Stursma report.

In addition, in the petition filed in Docket No. E-21831, Crystal Lake states it has obtained 66 of 67 needed easements for the proposed line, and in the petition in Docket No. E-21832, Crystal Lake states it has obtained four of the six needed easements. The Nguyen/Stursma report discusses some apparent discrepancies in documents filed with the Board regarding the number of easements obtained and the number still needed for the proposed line. In its prepared testimony, Crystal Lake must clarify the number of easements it needs for the proposed project, the number of easements it has not yet obtained, and discuss the status of the remaining easement negotiations. If any easements have not yet been obtained, Crystal Lake must identify the parcel locations and landowners involved, discuss why easements have not been obtained, explain what Crystal Lake plans to do with respect to each parcel, and explain why it has not requested eminent domain authority over the parcels. If Crystal Lake has obtained additional easements, it must file updated relevant petition pages with the Board.

The Nguyen/Stursma report at pages 5, 8, and 10 recommends that certain documents be filed in the docket, including a copy of the most recent plan and profile

drawings prepared for this project, and any MISO and/or Alliant Energy system studies in support of the proposed line and the interconnection location. Crystal Lake must file these documents with its prepared direct testimony. In the report at page 20, Mr. Nguyen and Mr. Stursma noted that there may be relevant communications not in the Board's Records and Information Center file, and stated that parties should file copies with the Board if they wished them to be considered in reaching a decision in the case. The report is correct that decisions made in this case by the undersigned administrative law judge or the Board are required to be based solely on evidence contained in the record and on matters officially noticed in the record. Iowa Code §§ 17A.12(6) and (8).

On pages 11 and 12 of the Nguyen/Stursma report, staff refers to wood lath route markings that are inconsistent with the proposed route as described in the petition in Docket No. E-21831. If the proposed route has been changed since the filing of Exhibits A and B of the petition in Docket No. E-21831, Crystal Lake must file revised Exhibits A and B in that docket to show the current proposed route. Crystal Lake should not re-file the entire petition. If the proposed route has not been changed since the filing of Exhibits A and B in Docket No. E-21831, Crystal Lake must file a statement with the Board that the most recently filed Docket No. E-21831 petition Exhibits A and B are correct, and explain why the wood lath route markings referred to in the report were not placed at locations consistent with the proposed route as described in the petition. Crystal Lake must make this filing as soon as

possible because the filing is needed so Board staff can prepare the notice for publication, which Crystal Lake must publish as required by Iowa Code § 478.5 and 199 IAC 11.5(2)"a." Failure to file the documents in a timely manner will result in delay of the publication of notice and could require a delay of the hearing date.

As discussed in the Nguyen/Stursma report, Crystal Lake must file a copy of any applicable route study, including an explanation of what factors were used to evaluate alternative routes and how the factors were applied. In addition to filing the route study, Crystal Lake must discuss the various alternative routes it considered, the criteria it used to evaluate the routes, and explain why it chose the proposed route. This discussion must include, but not be limited to, information regarding the cost of the various alternatives considered.

Crystal Lake must evaluate each of the alternate routes suggested in the remaining objections, address each route in its prepared testimony, and explain the advantages and disadvantages of each alternative route in comparison to the route proposed by Crystal Lake. This evaluation and comparison must include, but not be limited to, a comparison of the cost of each alternative route with the proposed route. In its prepared testimony, Crystal Lake must state what could be done to address the objectors' concerns, discuss the feasibility and consequences of any actions that might be taken in response to the concerns, and state what it would be able and willing to do to address the concerns.

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

Crystal Lake has the burden to prove that its proposed transmission line meets all applicable statutory and regulatory requirements. Failure to file adequate prepared testimony and exhibits to support its petition for franchise may result in delays of these proceedings or denial of the requested franchise.

In addition, Crystal Lake must file a prehearing brief that addresses the legal question whether objectors Mr. Boysen and Mr. Knapper are persons "whose rights may be affected" by the proposed transmission line within the meaning of Iowa Code § 478.5. In its prehearing brief, Crystal Lake must also address the issue raised on page 7 of the Nguyen/Stursma report, whether Crystal Lake must obtain a generating certificate pursuant to Iowa Code chapter 476A for the wind generation facilities referred to by Crystal Lake in its petitions.¹

¹ The Board recently issued an order discussing the generating certificate requirements and wind facilities in Docket No. WRU-07-43, "Order Granting Waiver with Conditions," (Issued February 27, 2008).

The Consumer Advocate Division of the Department of Justice (Consumer Advocate) and any objectors may also file prepared testimony and exhibits before the hearing in accordance with the procedural schedule in this order. Although they are not required to participate further, objectors are encouraged to file a statement disclosing whether the proposed route addresses the concerns they expressed in their written objections filed with the Board. This will help clarify which objectors are still objecting to the proposed route.

Parties other than Crystal Lake who choose not to file prepared testimony and exhibits before the hearing will not be precluded from participating in the proceedings. If an objector, for example, does not intend to present evidence going substantially beyond the information contained in the letter of objection, it is unnecessary for the objector to file prepared testimony. However, when a party (including an objector) has a substantial amount of information to present to the Board about the proposed project, if the information has not been previously disclosed to the Board, it should be presented in the form of prepared testimony and exhibits according to the procedural schedule established below. Objectors Mr. Boysen and Mr. Knapper should each file a prehearing brief that addresses the legal question of whether they are persons "whose rights may be affected" by the proposed transmission line within the meaning of Iowa Code § 478.5. It would be helpful to consult legal counsel prior to filing the prehearing brief. Similarly, if the Consumer Advocate takes the position that Crystal Lake should not be granted the

requested franchises, or that restrictions on the grant should be imposed, it must file prepared testimony or a brief in support of its position according to the procedural schedule. In addition, if it disagrees with some or all of the positions set forth in the prehearing brief filed by Crystal Lake, the Consumer Advocate must file a prehearing brief regarding those issues.

PARTIES AND OBJECTORS

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

Each objector, and anyone else who files an objection pursuant to this order and Iowa Code § 478.5, is presumed to be a party to this proceeding unless it is established at hearing that the objector has no right or interest that may be affected by the grant or denial of the requested franchises. Iowa Code §§ 478.5, 17A.2(5), and 17A.2(8). Therefore, at a minimum, objectors should be prepared to give evidence at the hearing that will explain the nature of their specific rights or interests they believe should be protected, and that shows how their rights or interests will be affected by the proposed transmission line. As discussed above, to the extent that this evidence goes substantially beyond information already communicated to the Board in an objection letter, it should be written down and filed as prepared testimony according to the procedural schedule established below.

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

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

The official file of this case will be available for inspection in the Board's Records and Information Center, 350 Maple Street, Des Moines, Iowa. Copies may be obtained, and there will be a charge to cover the cost of copying.

If it has not already done so, Crystal Lake must serve a copy of the most current applicable petition on each of the objectors who filed a written objection prior to the date of this order. Crystal Lake does not need to serve a copy of its petitions on the objectors who filed a withdrawal of their objection with the Board prior to the date of this order. Crystal Lake should review its service list to make sure all remaining objectors are included.

After an objector has filed a letter of objection, all further communications from the objector to the Board having to do with this case (including motions or prepared testimony and exhibits) must be sent to the Executive Secretary. A party (including objectors) must file an original and ten copies of each communication with the Executive Secretary, and the party must send one copy to each of the other parties to this case, except three copies must be served on the Consumer Advocate. 199 IAC 1.8(4) and 7.4(6). Along with the communication being sent, the party must file with the Board a certificate of service that conforms to 199 IAC 2.2(16) and verifies that a copy of the document was served upon the other parties.

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

The parties should examine Iowa Code chapter 478, and Board rules at 199 IAC 11 and 25, 199 IAC 1.8, 7.1(3), 7.22, 7.26, and 7.27 for other substantive

and procedural rules that apply to this case. There are links to the Iowa Code and the administrative rules on the Board's website at www.state.ia.us/iub.

PROPOSAL TO TAKE OFFICIAL NOTICE

Mr. Bao Nguyen, utility regulatory engineer for the Board, and Mr. Don Stursma, manager of the Board's Safety & Engineering Section, have prepared a report in the form of a memo dated February 25, 2008, concerning Crystal Lake's petitions pursuant to Iowa Code § 478.4. A copy of the report is attached to this order. Pursuant to Iowa Code § 17A.14(4), the undersigned administrative law judge proposes to take official notice of the report and of the facts contained therein, thus making them a part of the record of this case. Iowa Code §§ 17A.12(6)(c) and 17A.14(4). Any party objecting to the taking of official notice of the report must file such objection as soon as possible, and no later than five days prior to the hearing. The parties will have the opportunity to contest any information contained in the report in prefiled testimony and at the hearing, and they may also cross-examine Mr. Nguyen and Mr. Stursma concerning the contents of their report at the hearing.

MOTION FOR EXPEDITED PROCEDURAL SCHEDULE

On January 23, 2008, Crystal Lake filed a motion for an expedited procedural schedule. Crystal Lake argues it needs a hearing set at the earliest possible date and requested a hearing date of April 14, 2008. On February 1, 2008, the Consumer Advocate filed a response to the motion. The Consumer Advocate argues that the

Board should be cautious in taking actions that might be perceived as limiting the rights of citizens to be heard or rushing to a decision. On February 15, 2008, Crystal Lake filed a reply to the Consumer Advocate's response. Crystal Lake argues it is not trying to harm anyone's interests by requesting an expedited schedule.

As a matter of practice, the undersigned administrative law judge treats electric franchise and pipeline permit proceedings in which the applicant wishes to construct a new facility as the first priority of work to be done. Setting a procedural schedule in electric transmission line cases involves a balancing of the rights and needs of the parties, including objectors, who are presumed parties. It also involves the practical considerations of the publication of notice requirements in Iowa Code §§ 478.5 and 478.6, and the Board rules, which require Crystal Lake to publish notice for two consecutive weeks, and which require the hearing to be held at least 30 days after the second publication of notice. Iowa Code § 478.6. In this case, Crystal Lake must file a clarification regarding the proposed route before staff can prepare the notice for publication. Additionally, the availability of a site for the hearing, the schedule of the undersigned, and the schedules of multiple staff persons are considered. If the undersigned is aware of scheduling needs of the parties, these are accommodated as well. In this case, the undersigned has set a schedule that accommodates these factors and that provides for a hearing date as early as possible.

IT IS THEREFORE ORDERED:

1. If it has not already done so, Crystal Lake must serve a copy of the most current petition in the relevant docket on each of the objectors who filed written objections prior to the date of this order, excluding those objectors who have filed withdrawals of their objections with the Board.

2. Although they are not required to participate further, objectors who have not previously withdrawn their objections are encouraged to file a statement disclosing whether the proposed route addresses the concerns they expressed in their written objections filed with the Board. This will help clarify which objectors are still objecting to the proposed route.

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

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

Along with the communication being sent, the party must file with the Board a certificate of service as discussed in this order.

5. As discussed in this order, if the proposed route has been changed since the filing of Exhibits A and B of the petition in Docket No. E-21831, Crystal Lake must file revised Exhibits A and B in that docket to show the current proposed route. Crystal Lake should not re-file the entire petition. If the proposed route has not been changed since the filing of Exhibits A and B in Docket No. E-21831, Crystal Lake must file a statement with the Board that the most recently filed Docket No. E-21831 petition Exhibits A and B are correct, and explain why the wood lath route markings referred to in the Nguyen/Stursma report were not placed at locations consistent with the proposed route as described in the petition. Crystal Lake must make this filing as soon as possible because the filing is needed so Board staff can prepare the notice for publication, which Crystal Lake must publish as required by Iowa Code § 478.5 and 199 IAC 11.5(2)"a." Failure to file the documents in a timely manner will result in delay of the publication of notice and could require a delay of the hearing date.

6. The following procedural schedule is established:

a. On or before March 26, 2008, Crystal Lake must file prepared direct testimony and exhibits and the additional documents as discussed in this order. In its prepared testimony, Crystal Lake must address the issues discussed in the body of this order. When it files exhibits, Crystal Lake should

use exhibit numbers one and following. Crystal Lake must file a prehearing brief as discussed in this order on or before March 26, 2008.

b. On or before April 16, 2008, the Consumer Advocate and any objector may file prepared responsive testimony. If the Consumer Advocate takes the position that Crystal Lake should not be granted the requested franchises, or that restrictions on the grant should be imposed, it must file prepared testimony or a brief in support of its position on or before April 16, 2008. As discussed in this order, if the Consumer Advocate disagrees with a position taken by Crystal Lake in its prehearing brief, the Consumer Advocate must file a prehearing reply brief on or before April 16, 2008. If it files exhibits, the Consumer Advocate should use exhibit numbers 100 and following. As discussed in the body of this order, on or before April 16, 2008, objectors Mr. Boysen and Mr. Knapper should each file a prehearing brief that addresses the legal question of whether they are persons "whose rights may be affected" by the proposed transmission line within the meaning of Iowa Code § 478.5. If any objector files exhibits, the objector should use exhibit numbers starting with the person's initials and numbers 200 and following, such as "Exhibit LJ-200" etc.

c. On or before April 23, 2008, Crystal Lake may file prepared rebuttal testimony and exhibits and a reply brief.

d. A public hearing for the presentation of evidence and the cross-examination of witnesses concerning the issues identified in this notice of hearing will be held beginning at 9:00 a.m. on Thursday, May 1, 2008, in the Basement Meeting Room, Hancock County Law Enforcement Center, 875 State Street, Garner, Iowa 50438. If needed, the hearing will continue on Friday, May 2, 2008, beginning at 9 a.m. in the same location. Each party must provide a copy of its prepared testimony and its exhibits to the court reporter at the hearing. Persons with disabilities who will require assistive services or devices to observe this hearing or participate in it should contact the Utilities Board at (515) 281-5256 as soon as possible and at least ten business days in advance of the hearing date to request that appropriate arrangements be made. If needed, a post-hearing briefing schedule will be established at the end of the hearing.

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

8. The undersigned administrative law judge proposes to take official notice of Mr. Nguyen's and Mr. Stursma's report dated February 25, 2008, attached to this order, and of the facts contained therein. Any party objecting to the taking of official notice of the report should file such objection as soon as possible, and must file such objection no later than five days prior to the hearing.

9. Pursuant to Iowa Code § 478.6, a copy of this order will be served by ordinary mail upon Crystal Lake and the remaining objectors who filed written objections prior to the date of this order. This order will be delivered to the Consumer Advocate.

10. Once Crystal Lake has filed the documents referred to in ordering clause number five, Board staff will provide Crystal Lake with a notice to be published and Crystal Lake must publish the notice in Cerro Gordo, Hancock, Winnebago, and Worth Counties as required by Iowa Code § 478.5 and 199 IAC 11.5(2)"a." Since the hearing must be held outside of Des Moines, Crystal Lake must file proof of publication of notice with the Board at least five business days prior to the hearing.

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 5th day of March, 2008.

IOWA UTILITIES BOARD
Safety & Engineering Section

Docket No.: E-21830,E-21831,E-21832,E-21833

Utility: Crystal Lake Wind, LLC

Date: February 25, 2008

TO: The Docket Files

FROM: Bao Nguyen, Don Stursma

SUBJECT: Proposed Crystal Lake Wind, LLC Mason City To Crystal Lake 161 kV Transmission Line in Cerro Gordo, Hancock, Winnebago, and Worth Counties.

I. Background and History

On July 31, and August 1 and 2, 2006, in compliance with Iowa Code § 478.2, Crystal Lake Wind, LLC (CLW), a subsidiary of FPL Energy, LLC, held informational meetings in Cerro Gordo, Hancock, Winnebago, and Worth Counties for a proposed 161,000 volt (161 kV) electric transmission line. The purpose of the line, as stated in the notice letter to landowners, was to connect a wind farm in Winnebago and Hancock Counties to the Alliant² Lime Creek transmission substation north of Mason City.

For Iowa Utilities Board (Board) administrative purposes the following docket numbers were assigned for to project segments in the affected counties³:

Docket No. E-21830 – Cerro Gordo County

Docket No. E-21831 – Hancock County

Docket No. E-21832 – Winnebago County

Docket No. E-21833 – Worth County

At the time of the informational meetings preferred and alternate transmission line routes and wind farm substation sites were proposed. The notices showed several possible transmission line corridors, generally along roads, within which the final route would be located, with a preferred route in each corridor. (See Petition Exhibits G.) In general, the corridors within which landowners were notified were approximately from one to 3.5 miles wide.

Following the publication of informational meeting notices and holding of the informational meetings, eleven (11) individual objections (by 11 objectors), and one (1) objection in the form of a petition bearing thirty-two (32) signatures, were filed with the Board. Four (4) objections, included the one in the form of a petition, were subsequently withdrawn. There remain eight (8) outstanding objections (7 objections in E-21831, and 1 objection in E-21832). Frequently stated reasons for objecting were the

² The informational meeting notice identified the substation owner as Alliant. Alliant is the parent company of Interstate Power and Light Company (IPL), the name under which it does business in Iowa. The Alliant/IPL transmission assets have since been sold to ITC Midwest (ITC).

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



impact on property values; interference with cellular phone, radio, and satellite/internet reception; land use (recreation areas for swimming, hunting, and fishing); wildlife and aesthetic view; concern over the possible health risk of Electric and Magnetic Fields (EMF); and opposition to tree removal.

II. The Petitions

On August 28, 2007, CLW filed petitions for electric franchise for a 161 kV electric transmission line to be located in Cerro Gordo, Hancock, Winnebago, and Worth Counties. The docket numbers assigned to the petitions and the length of electric line⁴ for which franchise is sought in each petition are:

Docket No. E-21830 – Cerro Gordo County – 18.23 miles.

Docket No. E-21831 – Hancock County – 20.42 miles.

Docket No. E-21832 – Winnebago County – 2.01 miles.

Docket No. E-21833 – Worth County – 0.16 mile.

The total project line length is 40.82 miles. The route selected is primarily on public road right-of-way, generally along and parallel to county roads. The routes proposed in the petitions are not necessarily the same as the preferred routes shown on the informational meeting maps, but are within one of the corridors. The locations of CLW's collector substations also changed.

There followed several exchanges between the Board staff and CLW (deficiency letters, e-mails, or direct contact) on September 7, 14, 20, & 21, October 26 & 31, December 7, 10, 11, 12, 13, 14, 18, 28, & 31, 2007, and January 15, 2008, with CLW responses on October 10 & 19, November 7 & 15, December 21, 2007, and January 8, 9, 16, & 18, 2008, which provided answers and petition amendments responding to Staff's review of the filing by correcting errors and clarifying or updating content.

As the filings approached their final form after corrective and update amendments, Board staff examined the route, and the properties of objectors located on and off the currently proposed route. The Board staff inspected the route of the proposed line plus nearby areas on January 3, 8, and 13, 2008. Docket Nos. E-21830, E-21831, E-21832, and E-21833 were considered by Staff to be in sufficient order to be set for hearing following review of amendments filed on January 18, 2008, the date of latest amendments filing.

Each petition includes the following content:

Form Of Petition

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

⁴ These are the final lengths as shown on subsequently corrected and amended petitions, with the final petitions filed on December 21, 2007. The original filings stated lengths of 18.26 miles in Cerro Gordo County, 21.18 miles in Hancock County, 2.02 miles in Winnebago County, and 0.15 mile in Worth County.

Exhibit A

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

Exhibit B

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

Exhibit C

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

Exhibit D

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

Exhibit E

Contains property-specific information on the rights and extent of taking being sought through eminent domain. 199 IAC 11.2(1)"e". As the current petitions do not request the right of eminent domain, they do not include an Exhibit E.

Exhibit F

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

Exhibit G

An affidavit required by Iowa Code § 478.3 stating that required informational meetings were held and providing copies of the forms of notice used.⁵ 199 IAC 11.2(1)"g".

Iowa Code § 478.6 states that a public hearing must be held if an objection is filed or if the right of eminent domain is requested. Since objections are on file in two of the four dockets (E-21831 and E-21832), hearing is required.

Staff recommends all four dockets be consolidated for hearing. The four dockets are interrelated parts of a larger project, and the "public use" and "reasonable relationship" tests of Iowa Code § 478.4, as well as the routing of any one segment, might be influenced by other segments.⁶

Iowa Code § 478.6 further states that when a hearing is required, if a proposed line is more than a mile long, the hearing must be held in the county seat of the county at the

⁵ The maps filed in this exhibit showing the route corridors from the informational meeting notices are of poor copy quality and the corridors are difficult to identify. To examine the corridors, copies of the notices to be used were filed prior to the informational meeting, and they contain better maps.

⁶ Gannon vs. Iowa State Commerce Commission, Polk County District Court, Case No. 92922 (1970).

midpoint of the proposed line. The midpoint of the total project in these dockets falls in Hancock County, therefore the hearing must be held in Garner, Iowa.

III. Description of Project

The project as now proposed consists of 40.82 miles of 161 kV nominal voltage (169 kV maximum voltage) electric transmission line. The proposed line is to deliver electricity generated by wind from CLW collecting wind farm substations to the ITC Lime Creek substation.

The proposed 161 kV line would run west from an interconnection point with the existing ITC Lime Creek transmission substation, located approximately four (4) miles north of Mason City in the Southeast Quarter (SE1/4) of Section 4, Township 97 North, Range 20 West, Cerro Gordo County, to the east right-of-way line of US Highway 65. After crossing the US Highway 65, the proposed line would continue westerly along 340th Street as a double circuit with an existing ITC 69 kV line for approximately a half (0.5) mile of 4.5-mile segment. The line then continues south along Killdeer Avenue for approximately three (3) miles including a half (0.5) mile as a double circuit line with a future ITC 161 kV line. The line would then generally proceed west along 310th Street for an approximate distance of ten (10) miles to the Cerro Gordo – Hancock County line.

In Hancock County, the proposed line would continue west approximately two and half (2.5) miles along 305th Street. Then the line would follow 310th Street westerly for an approximate distance of fifteen (15) miles to connect to a CLW Collector Substation (the first wind farm substation, located in the Northwest Quarter (NW1/4) of Section 20, Township 97 North, Range 25 West, Hancock County). The proposed line would then proceed north approximately five (5) miles to CLW Collector Substation II (the second wind farm substation) in the Northeast Quarter (NE1/4) of Section 30, Township 98 North, Range 25 West, Winnebago County, where it ultimately terminates.

The line route is primarily a new transmission line route and is mostly on public right-of-ways alongside and parallel to roads, although there are segments of the line on private right-of-way not on roads but along division lines of land.

The proposed transmission line design is a single-pole construction. In addition to the 161 kV circuit, for approximately half of its length it would also carry an underbuild (UB) distribution circuit at a voltages of 7.2 kV or 12.47 kV. Most of the circuits to be underbuilt are currently in service, parallel to roads, and owned by IPL, but some segments would be owned by Prairie Energy Cooperative and Heartland Power Cooperative.

A combination of round and laminated wood poles, 61 to 88 feet tall after installation, with braced polymer horizontal post insulators, and at an average span of 280 feet and a maximum span of 490 feet, will constitute the typical construction of the proposed line (See filed Exhibit C-1, structure drawings 161-TAN-9, and 161-TAN-9-UB). At slight angle structures, a combination of a single round wood pole with down guying and

anchoring systems, or a laminated wood pole with or without down guying and anchoring systems, will be used. At 90° angles, a combination of full tension (two-direction guying) and reduced tension (only one-direction guying) guying and anchoring systems will be applied (See filed Exhibit C-1, structure drawing 161-DE-GS). The transmission line conductors will be a 2-bundle of Drake conductors (a group of two same size conductors of 795 kcmil each, and 18 inches apart horizontally). The design includes a shield wire of optical ground wire (OPGW) at the top of structure, at least ten (10) feet above the top bundle conductor, for lightning protection and communications between CLW electrical facilities for its monitoring and operations.

Under worst case conditions, the above ground and roadway crossing clearances of the 161 kV circuit conductors would be both at least twenty-one and one tenth (21.1) feet; while the clearances of the distribution voltage UB conductors (where present) and the neutral would be both at least twenty-one and one tenth (21.1) feet above roadway crossing and eighteen and half (18.5) feet above ground. In addition, the 161 kV circuit, and the distribution voltage UB conductors and its neutral, would be at least twenty-nine and one tenth (29.1) feet and twenty-six and half (26.5) feet respectively above the railroads where crossed. The petitions (Exhibits C) do not show any communication underbuild on the proposed line.

Drawings provided as part of Exhibit C-1 indicate the typical construction where the line parallels a road on public road right-of-way. Structure drawings 161-TAN-9 and 161-TAN-9-UB show the 161 kV line's furthest conductor (furthest sub-conductor of the horizontally 2-bundle 795 kcmil conductor) would typically extend seven (7) feet one (1) inch from the pole. Staff understands that the poles would ordinarily be placed close to the road right-of-way line and there would be conductor overhang of adjacent private property. This would require an overhang easement from the adjacent landowner. As will be more fully discussed under **Section V – The Route** below, CLW needs to obtain three more easements.

Staff review has concluded that the design of the proposed typical facilities as described in the Exhibit C is consistent with the National Electrical Safety Code (NESC) and other safety and engineering provisions adopted by the Board in rule 199 IAC 25.2, but with two possible exceptions. As will be more fully discussed in **Section V – The Route**, there are questions on whether adequate line clearance is being provided over a shed, and how the line could be constructed at certain locations if an overhang easement is not obtained.

“Plan and Profile” drawings of the proposed line route are commonly prepared for a project of this type. In past projects the route details provided by these drawings have been useful to Staff.

CLW should be instructed to file in these dockets a copy of most recent “Plan and Profile” drawings prepared for this project.

IV. Requirements of Iowa Code Section 478.4

Under Iowa Code § 478.4, to grant a franchise the Board “shall make a finding that the proposed line or lines are necessary to serve a public use and represents a reasonable relationship to an overall plan of transmitting electricity in the public interest.”

To obtain the information necessary to address these and other issues, Board rule 199 IAC 11.2(1)d(1) states:

d. Exhibit D. The exhibit shall consist of a written text containing the following:
(1) An allegation, with supporting testimony, that the line is necessary to serve a public use, plus such additional substantiated allegations as may be required by Iowa Code section 478.3(2).⁷

a. Necessary to serve a public use

The Exhibits D filed in these dockets do not make a specific allegation that the line is necessary to serve a public use. The most relevant statements found in Exhibits D are:

The Applicant proposes to build a 40.817-mile 161kV transmission line to allow up to 400 megawatts of new wind generation in Hancock and Winnebago Counties to be interconnected to the Interstate Power and Light Company Lime Creek substation in Cerro Gordo County. Increased renewable energy, including wind energy, has been called for by Iowa’s Governor and several of his policy initiatives. Wind energy from the proposed site can be delivered economically to the grid to serve Iowa load. The wind generation facility will create significant income to area landowners as well as to Hancock and Winnebago Counties and the State of Iowa tax base. As such, the proposed wind generation facility and associated transmission line serve the public convenience and necessity. (Page 1, paragraph 1)

. . . . The proposed line makes possible delivery of up to 400 MW of new wind generation into Iowa’s transmission and distribution system at the Lime Creek Substation to serve the call for increased renewable energy, including wind energy, by Iowa’s Governor and several of his policy initiatives. (Page 3, paragraph c.)

These CLW statements could be interpreted to be the “allegation that the proposed construction is necessary to serve a public use.” These statements appear to assert that the project’s association with a renewable energy project is sufficient to meet that test.

In setting these dockets for hearing, the Board, or Administrative Law Judge (ALJ) if so assigned, should consider if these statements are sufficient to make a finding on this

⁷ Iowa Code 478.3 specifically requires that the petition include allegations regarding the need to serve a public use and the reasonable relationship issue, and contain other specified information.

issue. If not, then CLW should be instructed to expand on its Exhibit D statements in its prefiled hearing testimony or at hearing.

As noted above the stated purpose of this project is to deliver energy from a wind generation facility. A wind facility may or may not, depending on design and the megawatts carried by individual feeder circuits, qualify as a facility requiring a certificate under Iowa Code 476A and 199 IAC Chapter 24. If a certificate is required the facility must meet the tests required in Iowa Code 476A.6, or receive a waiver. The available record does not reflect whether these wind facilities have – or need – a generation certificate or waiver. *CLW should be instructed to explain for the record, in prefiled testimony or at hearing, whether the wind facility has obtained or will require (and if not why not) a certificate or waiver under Iowa Code 476A and 199 IAC Chapter 24.*

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

The Exhibits D filed in these dockets do not make a specific allegation that the line “represents a reasonable relationship to an overall plan of transmitting electricity in the public interest.” The most relevant statements found in Exhibits D are:

Wind energy from the proposed site can be delivered economically to the grid to serve Iowa load. (Page 1, paragraph 1, lines 5 and 6)

After extensive study by the Applicant in conjunction with MISO, the Applicant determined that the most favorable location for the delivery of this energy is the Lime Creek substation in Cerro Gordo County. Phase I of the planned wind farm comprises 100 1.5 MW wind turbines (150 MW) spread across an approximately 25 square mile area in Hancock County. The energy generated by each turbine is carried by a buried 34.5 kV electrical cable to a centrally located wind farm substation. At the wind farm substation, the collected energy is transformed to 161 kV for interconnection to the proposed new 161 kV transmission line. Phase II would add 250 MW and would be spread across an additional approximately 40 square mile area in Winnebago County. A second wind farm substation 5 miles north of the Phase I substation is proposed to be centrally located for the Phase II wind farm. (Page 1, paragraph 3)

In addition, Petition Exhibits D, Items A through H, contain responses to a series of issues that Iowa Code § 478.3(2) requires petitioners to address in a franchise filing. They deal with the relationship of the proposed project to economic development, electrical system, public, and land use considerations, presently and in future. The allegations by CLW in these items contain statements possibly relevant to the “reasonable relationship” issue. CLW includes the following statements:

The electrical connection of this project is being coordinated with the Midwest ISO, the Transmission Provider and Reliability Coordinator for this region. (Page 3, paragraph b)

There has been no further study performed for the generation facility that the proposed transmission line will serve. The proposed line makes possible delivery of up to 400 MW of new wind generation into Iowa's transmission and distribution system at the Lime Creek substation to serve the call for increased renewable energy, ... (Page 3, paragraph c)

The Midwest ISO and Alliant Energy are performing the System Impact and the Facilities Studies in support of this project. The Applicant will comply with the results of these studies. (Page 3, paragraph d)

CLW should be instructed to explain in prefiled testimony or at hearing the status of project coordination with MISO, the purpose and status of the System Impact and Facilities Studies, whether this line can be constructed prior to completion of the coordination or studies, and if necessary why it would be appropriate for the Board to grant franchises before the coordination or studies are completed.

As stated in the exhibits, the proposed line would connect to the transmission grid at the Lime Creek transmission substation. To accomplish this a 40.82-mile long electric transmission line is required. Staff notes there appear to be other potential connection points that would be much closer, such as the Corn Belt Power Cooperative existing 161 kV line located approximately seven (7) miles directly south, or ITC's existing Hancock transmission substation near Garner, Iowa, located approximately twenty (20) miles directly east and south of the CLW Collecting Substation.

CLW should expand in prefiled testimony or at hearing on how the Lime Creek transmission substation came to be the interconnection location to Iowa's transmission grid system versus any other location located closer to the wind farms. The evidence presented should include copies of any Midwest ISO (MISO) and/or Alliant Energy system studies in support of this proposed line and the interconnection location at Lime Creek transmission substation; or, if they are proprietary or very bulky, a summary including any terms and conditions placed on the project as a result of a study.

Several CLW statements in Exhibits D, including those quoted above, could be interpreted to be the required allegations on the "reasonable relationship" issue. Several of these statements appear to assert that the project's association with a renewable energy project contributes to meeting that test.

In setting these dockets for hearing, the Board, or Administrative Law Judge if so assigned, should consider if the contents of Exhibits D are sufficient to make a finding on the "reasonable relationship" test or on other issues that Iowa Code § 478.3(2) requires be addressed in a petition. If not, then CLW should be instructed to expand on its Exhibit D statements in its prefiled hearing testimony or at hearing.

V. The Route

The location of the proposed route is described in Petition Exhibits A, B, and D. The line route is mostly on public right-of-way alongside and parallel to roads. Adjacent to line route, the current land use is predominantly agricultural. A number of the objectors have residences located on the opposite side of roads from the proposed line. Other objectors are located approximately half mile or more away from the current route of the proposed line.

The information provided at the informational meetings showed several different potential route corridors, often miles apart, with preferred routes indicated within corridors. The corridors were often several miles wide. The route proposed in the petitions represents the selection of a corridor, and a final route within each corridor. The route selected is in some areas significantly different than the preferred route indicated at the informational meetings – in some areas by miles. The wind facility substation locations were also changed. In Exhibits D CLW states the route was chosen using the following criteria:

1. Most direct route with the shortest distance to minimize impacts and line losses;
2. Utilize existing road rights-of-way as much as possible;
3. Co-location with existing utility lines as much as possible;
4. Minimize impact to existing homes;
5. Landowner acceptance.

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

A transmission line shall be constructed near and parallel to roads, to the right-of-way of the railways of the state, or along the division lines of the lands, according to the government survey, wherever the same is practicable and reasonable, and so as not to interfere with the use by the public of the highways or streams of the state, nor unnecessarily interfere with the use of any lands by the occupant.

The route now proposed is located in or parallel to road right-of-way (36.667 miles), or where there is no road (4.15 miles) is along a division line of land. The route selected appears to comply with Iowa Code § 478.18(2).

CLW also states “Applicant examined several possible routes for the proposed facility and chose this route on the basis of its being the shortest alternative with complete landowner acceptance everywhere the lines overhang or cross private property as discussed in point 5.” (Page 3, Section f.) This statement is inconsistent with Page 2, Item 5 of Exhibits D, where it says three easements are not yet obtained; and with the final paragraph on Page 4, which says the route has “nearly complete” landowner acceptance.

CLW should be asked to explain the apparent discrepancy in prefiled testimony or at hearing, and file corrected exhibits if needed.

While the route appears to comply with the routing provisions of the law, it was one of a number of routing options, and the route selected continues to have opposition. This will be discussed in the Objections section of this report.

To assist with consideration of the objections, it is suggested CLW be asked to provide, in prefiled testimony or at hearing, additional explanation of why this particular route was selected over routes shown as preferred at the time of the informational meeting, over routes preferred or suggested by objectors, and other potential routes.

Further, if there were any route studies, or any documentation of the process through which the final route was selected, CLW should be instructed to file a copy in these dockets.

The route in Worth County is only 0.156 mile (about 825) feet long. In this area the route is along 340th Street on the Worth – Cerro Gordo County line, generally in the south road right-of-way and in Cerro Gordo County, but switching to the north road right-of-way in Worth County for this short distance. Short changes in route alignment, such as switching back and forth across roads, are generally not considered good engineering practice, but may be necessary or desirable in some instances. There is nothing in the record to indicate why the route shifts across the road for this short distance at this location. *CLW should be asked to explain this route deviation in prefiled testimony or at hearing.*

During the route inspection, Staff found wood laths apparently marking future pole locations that were typically located next to the road right-of-way lines. Based on the standard pole configuration drawings provided in Exhibits C, with poles at that location at least some of the conductors would then overhang private property, and overhang easements would be needed.

The petition form asks for the number of easements obtained versus the number required. According to the petitions, CLW needs a total of 120 easements and has obtained 117.⁸ However, in the petition Exhibits D, CLW states:

To date, 120 easements are executed representing 40.77 miles of the proposed 40.817-mile route. If the Applicant is not successful obtaining easements for the remaining three parcels, the Applicant will make every effort to revise the pole design to allow the transmission line to be placed completely within the County road right-of-way to avoid overhanging these parcels. (Page 2, Item 5.)

In addition, in a “Reply to OCA’s Response to Motion for Expedited Procedural Schedule” filed by CLW on February 15, 2008, CLW states that 124 overhang easements are required, of which 121 have been obtained. Not only are these new numbers, but because 4.15 miles of the route is not along roads, either that statement is in error or there are yet other easements not included in the above count.

⁸ Cerro Gordo County, E-21830, 46 of 46 easements; Hancock County, E-21831, 66 of 67 easements; Winnebago County, E-21832, 4 of 6 easements; and Worth County, E-21833, 1 of 1 easement.

CLW will need to file either corrected petition forms or corrected Exhibits D to resolve the discrepancy in the number of easements needed and obtained.

More significant, however, is that it appears from the above statement that CLW has not yet determined how – or even if – it would be able to construct the line entirely on road right-of-way if overhang easements cannot be obtained. Staff questions if a franchise can be granted if it is uncertain for technical reasons whether the line can actually be built on the proposed route. That would include both a design that complies with the NESC without encroaching on private property, and is acceptable to the highway authority controlling the road right-of-way.

CLW should update in prefiled testimony or at hearing the easement status of the remaining three (3) parcels. If easements have not been obtained, CLW should explain how the line would be constructed at those locations without overhang, and provide the status of approval from road authorities for that design. If an alternative design is developed that does not require overhang easements, information on that design should be filed in petition Exhibits C.

During the route inspection, west of US Highway 65 in Section 4, Township 97 North, Range 20 West, Cerro Gordo County (E-21830), Staff noticed a metal shed that would be right underneath the proposed Line. At this location the 161 kV line would be in double circuit with an ITC 69 kV line, and would also carry an IPL 12.47 kV distribution circuit as underbuild. On January 15, 2008, Staff requested CLW to provide additional information for reviewing of conductor clearances over this building. Ulteig Engineers, a consulting engineering firm who is responsible for the design of this transmission line, faxed the requested information for Staff review on January 16, 2008. On January 18, 2008, CLW formally filed the same information.

Staff has reviewed the information and concludes the evidence provided does not show the NESC minimum required clearance would be met. The code requires a minimum vertical clearance of twelve and half (12.5) feet for roofs not readily accessible to pedestrians, or of thirteen and half (13.5) feet for roofs readily accessible to pedestrians. CLW filed a plan and profile drawing showing the location of the building and indicating the clearance would be 14 feet. However, when the clearance between the roof peak and lowest (12.47 kV distribution) conductor is measured from this drawing, it is only perhaps eleven and half (11.5) feet at most.

CLW should explain in prefiled testimony or at hearing whether the minimum required clearance will be met over this roof.

As previously noted, during field inspection Staff observed wood lath driven into the ground, apparently marking the planned location of poles. However, in three areas in Hancock County the location of these laths was not consistent with the location of the route as described in petition Exhibits A and B. Those areas are as described below:

In the West Half of Section 17 and the East Half of Section 18, Township 97 North, Range 23 West, the petition shows the route along the south section lines, in the north public road right-of-way of 310th Street, between Taylor and Sioux Avenue (See Exhibits A and B). However, laths were found in the south (instead of north) road right-of-way for approximately half (0.5) mile beginning at a point just west of 2040 310th Street located south of 310th Street and approximately 0.1 mile west of Taylor Avenue. That appears to indicate the route would actually cross 310th Street at a point just west of the house, and continue west on 310th Street's south public right-of-way for approximately half a mile (in Sections 20 and 19) before crossing back to the north road right-of-way line and resuming its route in Section 18 as shown on the petition.

In Section 16, Township 97 North, Range 24 West, the petition shows the route is along the south section line, in the north public right-of-way of 310th Street, in the west 0.84 mile of this section. The east 0.16 mile at this location (between Palm Avenue and Oak Avenue) is shown across the road, in the south road right-of-way, along the north section line of Section 21, Township 97 North, Range 24 West. However, according to the location of wood laths, the route would be in Section 21 for approximately half a mile in the east half of that section. The laths would place one half mile of line in the W ½ of Section 16 and one half mile in the E ½ of Section 21, rather than the lengths shown in the petition.

In Section 24, Township 97 North, Range 25 West, along the north section line, the petition shows the line along the south road right-of-way of 310th Street. However, there were wood laths on the north side of road indicating the line would be routed on the opposite (north) side of road for half a mile in the east half of Section 13 instead of being in Section 24 as described in the petition.

CLW should be required to explain in prefiled testimony or at hearing why Staff found laths at locations not consistent with the route as described in the petition. If the route has been changed the petition in Docket No. E-21831 will need to be amended accordingly. This must be done before notice of hearing can be published, as the notice must contain the correct route.

Staff believes the route proposed by CLW for this project complies with Iowa law, and generally appears reasonable, but there remain several issues that must be clarified or resolved, including compliance with safety standards and apparent discrepancies between the route shown in the petition versus laths found in the field.

This conclusion is based on the legal routing requirements and the engineering aspects of the route selected, and is contingent upon the Board concluding the purpose and end points of this line would meet the "public use" and "reasonable relationship" tests of Iowa Code § 478.4. The route in relation to individual objections will be discussed in the next section.

VI. Objections

Altogether, twelve (12) objections, of which one was in the form of a petition bearing thirty-two (32) signatures, were filed with the Board concerning this project. Nine (9) objections (by 9 objectors) were filed in E-21831 (Hancock County), and three (3) objections (included the one in petition form) were filed in E-21832 (Winnebago County). Since the original filings, four (4) objections (included the petition form bearing 32 signatures) have been withdrawn. At this time there remain seven (7) objections in Hancock County and one objection in Winnebago County.

CLW has not requested the right of eminent domain since most needed easements have been obtained voluntarily, and they propose placing the proposed line entirely in public right-of-way if easements are not obtained at the remaining three (3) parcels. The record does not give the locations of these three parcels, but since the route is not on the property of any of the objectors, there does not appear to be a connection between the easement parcels and the objections. *CLW should be asked to clarify this in prefiled testimony or at hearing.*

Board staff re-examined the proposed route on January 3, 8, & 13, 2008, as well as the properties of objectors located on and off the current proposed route.

a. Summary of Objections

Docket No. E-21830 – Cerro Gordo County – No objections.

Docket No. E-21831 – Hancock County – 9 objections.

On March 20, 2007, Phyllis and Phillip Clark, 3075 Urban Avenue; Everett and Laura Brock, 3025 Urban Avenue; and Thad and Connie Josten, 2210 300th Street, Forest City, IA, filed a jointly signed objection opposed to the location of the proposed transmission line (per the informational meeting's indicated preferred route) stating their homes were close to the road, the line's electromagnetic fields had the potential to interfere with peoples' and animals' health, and trees and bushes would be destroyed by the transmission line. They suggest the line to be along other roads that have homes set further back from roads, but did not specify which roads. The Brock and Josten objections were later withdrawn individually, but the Clark objection has not been withdrawn.

On June 12, 2007, Elaine Heesch, 3062 Valley Road, Forest City, IA (corner of Valley Road and 305th Street), filed an objection opposing the proposed transmission line because it is close to her house (opposite side of road from the property), would decrease her property value, and would be a potential health risk. She also opposes routing the line through Torkelson Pits⁹ and a scenic stretch of Valley Road. She

⁹ According to the 1999 Iowa Sportsman's Atlas, Page 17, the Torkelson Pits Wild Life Area is owned by the County Conservation Board and consists of 97 and 15 acres of land. The Winnebago River runs through it. The Atlas indicates it is a fishing and hunting area.

suggests part of the line along 305th Street to be routed further away from her property approximately a half mile (0.5 mile) north along the division lines of land.

Between July 10 and November 7, 2007, the Board received copies of several exchanges of correspondence between Ms. Heesch and CLW. These letters primarily concern Ms. Heesch's proposal to move the route approximately a half mile north, on generally the north line of the E ½ Section 22 and the W ½ Section 23, Township 97 North, Range 23 West. There is no road at this location. In summary, CLW contends there are environmental issues and landowner resistance on this route; Ms. Heesch's reply is that she considers the environmental concerns exaggerated and that CLW could condemn that route if they wanted to.

In a letter received by the Board on November 7, 2007, Ms. Heesch proposes a second alternative route which would follow Urban Avenue, River Road, Wood Avenue, and 310th Street. This route would follow roads and would route the line approximately a mile north of the currently proposed route and her property.¹⁰

Also, in a letter received by the Board on February 13, 2008, Ms. Heesch proposes a third route, this one located about a mile and a half south of her property. The route would be along Balsam Avenue in Cerro Gordo County for two miles, along County Highway B20 (290th Street) in Cerro Gordo and Hancock Counties for eight miles, and along Iowa Highway 69 for two miles. This route includes the unincorporated community of Miller.

On September 4, 2007, Jane Luecht-DeBoe, 2315 305th Street, Ventura, IA, filed an objection opposed to the location of the proposed transmission line along 305th Street approximately thirty (30) feet from her house, alleging it would devalue the property, and expressing concern over potential health issues, wildlife disturbance, view disruption, and cell phone and internet interference. She suggests the proposed line be routed further away from wetland areas and people's homes, but suggested no specific routes.

In a CLW response letter to Ms. DeBoe dated October 16, 2007 (filed on October 19, 2007) there is a mention of federal setbacks from raptor/eagle nests, and of installing "bird diverters" on 25% of the line including along 305th Street. *CLW should provide information in prefiled testimony or at hearing regarding these and any other environmental mitigation measures proposed for this project.*

On September 28, 2007, Don and Bobbi Elbert, 2425 305th Street, Ventura, IA, filed an objection opposed to the location of the proposed line directly in front of their house on 305th Street, and contending it would spoil their view and decrease property values, spoil satellite TV and radio transmissions, endanger an eagle's nest and young, and endanger their health with the line's strong EMF. They say they understand that there is an alternate route that is straighter, crosses fields and pastures, and is away from more populated roads, but did not specify which route.

¹⁰ If there were further communications between CLW and Ms. Heesch regarding this route, they are not in the docket record.

On October 11, 2007, Sam Warren, Jr. who resides at 2285 305th Street, Forest City, IA, filed an objection opposed to the power line along 305th Street contending that this route would affect more homes than other routes, the line would decrease home value, and expressing concern over health affects, wildlife habitats, and the impact on natural areas along the Winnebago River including the Torkelson Pits, a local recreation area for fishing and hunting. He suggests the line to be routed through pasture and farmland that do not have such impacts on people's homes and wetlands, but no specific route was recommended.

On October 15, 2007, Ross H. Boysen, who resides at 348 445th Street, Lake Mills, IA (Section 9, Township 99 North, Range 22 West, Worth County), filed an objection to oppose placing the proposed transmission line near the Torkelson Pits Wildlife Area and the Winnebago River along 305th Street (Section 23, Township 97 North, Range 23 West, Hancock County) where it would negatively affect the local hunting and fishing. He suggests the line be routed further away from the Torkelson Pits Wildlife Area, but did not specify an alternate route. Mr. Boysen apparently does not own property in the vicinity, but says his interest is as an outdoorsman.

On October 15, 2007, Joe Knapper, who resides at 104 Knollwood Drive, Forest City, IA (within the city limits of Forest City, Section 1 or 2, Township 97 North, Range 24 West), filed an objection opposed to the location of the proposed high voltage line along 305th Street and Valley Road (Sections 22 and 23, Township 97 North, Range 23 West) due to the Torkelson Pits Wildlife Area's value decreasing, and health related risks including the potential for carcinogenic diseases. He suggests the power line be located elsewhere, but no specific route was recommended. He apparently does not own property in the immediate vicinity, but says his interest is as a concerned citizen.

Docket No. E-21832 – Winnebago County – 3 objections.

On July 25, 2006, Gordon Nelson, who resides at 35111 210th Avenue, Forest City, IA, filed an objection in the form of a petition (bearing 32 signatures including his own and Aaron H. Charlson, who also filed a separate objection) to oppose the preferred transmission line route (as shown in the informational meeting's map) along Iowa Highway 9 (Sections 25, 26, 27, 28, 29, 32, 33, 34, 35, and 36, Township 98 North, Range 23 West) because it was located close to houses (55 feet), would decrease their property values, disrupt the view of Pilot Knob State Park, and its electromagnetic fields would be a potential cause of health problems. No alternate route for the line was suggested. This objection was later withdrawn by letter bearing the signatures of both Mr. Nelson and Mr. Charlson.

On July 31, 2006, R. W. Hynes, who resides at 108 Fairview Drive, Forest City, IA (within the city limits of Forest City, Country Club Height Subdivision in Hancock County) filed an objection opposed to the location of the high voltage line along Iowa Highway 9 and adjacent to a multi-purpose trail connecting Forest City and Pilot Knob State Park (Sections 31, 32, and 33, Township 98 North, Range 23 West) because of

the safety and health concerns for users of the trail. No alternate route was suggested. The objection was later withdrawn.

On August 9, 2006, Aaron H. Charlson, who resides at 34775 210th Avenue, Forest City, IA, individually filed an objection to oppose locating the transmission line along Iowa Highway 9 (Sections 33 and 34, Township 98 North, Range 23 West) that would negatively affect homes, property values, property improvements, and future development, and would only be an eye-sore to residents in the area and the public along Iowa Highway 9. His suggested alternate route would be approximately two (2) miles north of Iowa Highway 9. This objection has not been withdrawn.

Docket No. E-21833 – Worth County – No objections.

b. Staff review of objections

Brock, Clark and Josten Objections

In eastern Hancock County, at the time of the informational meeting, CLW showed a preferred 161 kV line route from the Hancock – Cerro Gordo County line west along 300th Street and then north along Urban Avenue (in Section 21, Township 97 North, Range 23 West), but did not at that time specify on which side of the road. The Clark, Brock, and Josten joint objection express concern over the line being located on the same side of roads as and/or close to homes.

However, the petition as filed does not propose a route near these residences, but instead it is on the north line of Section 21 and in the south public right-of-way of 310th Street, approximately three quarters of a mile (0.75 mile) north of the Brock and Josten premises. This alternate route appears to have satisfied the Brocks and Jostens, as they have withdrawn their objections. This proposed route is approximately a quarter mile (0.25 mile) north of Clark's residence, but there has been no further contact from this individual to indicate if the currently proposed route has answered or allayed his concerns. The Clarks' objection remains open.

Heesch, Luecht-Deboe, Elbert, Warren, Boysen, Knapper Objections

The line route as now proposed in the petition would be on and along the south public right-of-way of 305th Street (across Sections 22, 23, and 24, Township 97 North, Range 23 West), where there are six (6) outstanding objections. Two (2) of the objectors, Ross H. Boysen, and Joe Knapper, live approximately seventeen (17) miles and seven (7) miles respectively from the proposed line; however, they express their concerns as citizens. The other four (4) objectors, Elaine Heesch, Jane Luecht-DeBoe, Don and Bobbi Elbert, and Sam Warren, jr., all live on the north side of 305th Street. The proposed transmission line would be on the south side of road approximately fifty-eight (58) feet across the road from most of their property lines (66 feet right-of-way width typically), except for Elaine Heesch property, where the road right-of-way is wider. However, it appears that the line location across the road from the residences does not satisfy their concerns.

The currently proposed route along 305th Street in eastern Hancock County was not shown as a preferred route at the time of the informational meeting. It appears the route may have been relocated to this road to avoid the Brock, Josten and Clark residences. However, that in turn has generated protests from persons who live along the new route, plus persons who do not live in the area. The residents' properties are across the road from the Winnebago River valley including the Torkelson Pits Wildlife Area.

Ms. Luecht-DeBoe alleges the line would be within 30 feet of her house. There is insufficient information for Staff to determine the actual distance, but since the line would be across the road from her residence, and assuming a standard 66 ft. wide road right-of-way plus whatever the setback is from the north road right-of-way to her house, it is apparent the distance would be more than the 30 feet stated.

CLW should be instructed to respond to the individual objections in prefiled testimony or at hearing. In addition, CLW should explain why it decided to place the route along 305th Street instead of the originally preferred route along 300th Street, or some other route.

Heesch Objection – additional discussion

As noted above Ms. Heesch shares the concerns of her neighbors over routing along the Torkelson Pit area. However, she has also individually proposed specific alternative routes, which will be discussed separately.

The Elaine Heesch property is located at the Northeast (NE) corner of the intersection of 305th Street and Valley Road. The proposed route would place electric lines across the road from the south and west sides of her property. The currently proposed 161 kV line would be on the south side of 305th Street approximately eighty-two (82) feet across the road from her south property line (approximately 90 feet right-of-way width), and on the west side of Valley Road approximately seventy-two (72) feet across the road from her west property line (80 feet right-of-way width approximately). Although the line is across the roads from her two property lines, and with wider road right-of-way than most places, this has apparently not addressed her concerns. She has suggested two alternative routes north of her property and a third to the south.

Ms. Heesch's first route would move the route approximately a half mile north to 310th Street to the east and generally on the north line of the E ½ Section 22 and the W ½ Section 23, Township 97 North, Range 23 West, where there is no road. According to an aerial photo she attached, land use is agricultural east of where the route would cross the Winnebago River, wooded along the river, and what appears to be natural open area west of the river. In summary, in the exchanges of correspondence between the parties, CLW contends there are environmental issues and landowner resistance on this route; Ms. Heesch's reply is essentially that the environmental concerns are exaggerated and CLW could condemn that route if they wanted to. In her letter filed February 13, 2008, however, she appears to recognize there could be difficulties obtaining approval from the Department of Natural Resources for a route crossing land it owns on this route.

Regarding her second route, it follows a winding path along several different roads and would add more than a mile to the length of the project as currently proposed. Further, it is outside of the corridor noticed for the informational meeting for a distance of around three miles. Because of this it would involve more than a mile of route outside of the informational meeting corridor, a separate informational meeting would be needed for the landowners affected by that route. This route would also pass along the Gabrielson Wildlife Area in Section 16, Township 97 North, Range 23 West, Hancock County, and the Haugen Wildlife area in SW ¼ of Section 18, Township 97 North, Range 22 West, Cerro Gordo County.¹¹

Ms. Heesch's third proposed route, Highway B20 (290th Street) is 12 miles long, and would add about 3.5 miles to the length of the route as proposed in the petitions. It is within the informational meeting corridor. It would pass through the unincorporated community of Miller, located at the intersection of Highway B20 and Taft Avenue mainly in the NE corner of Section 31, Township 97 North, Range 23 West, Hancock County. She appears to recognize that routing through Miller could be an issue, as an alternate routing to the north around a church is also suggested. Because of the date of submission, this route was not included in the Staff field inspection.

She states this route would keep the line out of the environmentally sensitive area along the Winnebago River. However, Staff notes it would place the line along the Wild Goose Marsh in the SW¼ of Section 29, as well as increase the length of line along the Kuhn Wildlife area in the E½ NE¼ Section 19, both in Township 97 North, Range 22 West, Cerro Gordo County.^{12 13}

A map attached to her February 13 filing shows the proposed route, the informational meeting preferred route, and her three alternate routes. (On the original filed map the routes are color coded, but the copies filed are black and white, so reference to the original map will be needed to review this submission.) The map also includes a count of the number of homes (including both homes and apartments) between Balsam Avenue and Highway 69 on each route, including the number of those next to and set back from the road. (Staff has not attempted to verify these numbers.) These numbers indicate that any of these routes pass by a significant number of homes (18 on the shortest route, 41 plus a church on the longest). Ms. Heesch does not define what she considered "right next to" or "set back from" the road, but from the numbers given she appears to consider the great majority "close to the road."

As part of its explanation of the route selected, CLW should respond to each of the alternative routes proposed by Ms. Heesch.

Charlson, Hynes and Nelson Objections

¹¹ According to the 1999 Iowa Sportsman's Atlas, Pages 17 and 18.

¹² According to the 1999 Iowa Sportsman's Atlas, Page 18.

¹³ The E-21830 petition Exhibit B map also shows a NRCS Wetland Protection Area in the same area, but because its boundaries are not shown the effect on that area cannot be determined. This area is not designated in the 1999 Iowa Sportsman's Atlas.

In Winnebago County, many of the persons signing the objection petition are located along Iowa Highway 9 from the Winnebago – Worth County line to 190th Avenue located approximately two (2) miles east of Forest City, which was one segment of the preferred route presented at the informational meeting (See Exhibit G). The objections appear to focus on the line being routed through a five-mile section of Iowa Highway 9 located in proximity to Winnebago Industries and 3M Company that would allegedly negatively affect future home construction and growth of the area. However, all of the route as now proposed follows a completely different route approximately four (4) miles south of the highway in Hancock County, and enters Winnebago County at a point three (3) miles further west. The selected route relocates the route away from these persons' properties and appears to have addressed the concerns raised, however, Mr. Charlson's separately filed objection has not been withdrawn.

Charlson's property is in Sections 33 and 34, Township 98 North, Range 23 West, located approximately four (4) miles north of the proposed line. The 161 kV line route now proposed is not along Mr. Charlson's suggested route, but is away from his concerned area. However, there has been no further contact from this individual to indicate if the currently proposed route has addressed his concerns. The withdrawal letter he co-signed with Mr. Nelson referred specifically to a letter of July 17, 2006, which was the date on the petition letter, so it does not appear applicable to his separately filed individual objection. The objection remains open.

Summary regarding objections

The objections cluster in three separate areas. In two of those areas CLW selected a route removed from the objectors properties, which apparently led to withdrawal of at least four of the six objections filed regarding those areas. However, the relocation to along 305th Street in Hancock County affected a different group of individuals, six of whom have filed objections opposing that route. A consistent objection from the objectors in the 305th Street area is that the line would spoil the view and look of the area, and interfere with wildlife and outdoor recreational use.

Concern for the Torkelson Pits in particular is expressed by those objecting to the 305th Street route. There are also numerous other wildlife/natural areas in this vicinity. Where the proposed route passes near several in Cerro Gordo County, it is on the opposite side of the road. In the 305th Street area, placing it across the road from the Torkelson Pit would place it on the same side of the road as, and closer to, objector residences. It appears there are few routes in this vicinity that would not pass near wildlife/natural areas. The route shown as preferred at the time of the informational meeting would have done the best job of avoiding them. However, as discussed in the report that was not the final route selected by CLW.

Staff notes that a number of objectors have alleged that electromagnetic fields are a health concern. No evidence has been filed or studies referenced to support that charge. Concerns about interference with satellite TV and radio signals are also raised by several objectors. *CLW should be instructed to respond to these specific concerns in prefiled testimony or at hearing.*

CLW should address the issues of the active objections in its prefiled testimony or at hearing. It should include the evaluation of alternative routes suggested by the objectors.

This report previously recommended that CLW explain its routing criteria and decision process in prefiled testimony or at hearing, including discussion of why the route along 305th Street was selected.

Some parties may have had verbal or e-mail communications with Utilities Board staff that are not part of the official case record. There has also apparently been correspondence between CLW and objectors that is not in the Board's record. When the procedural order is issued, all parties should be reminded that only information that has been filed and is in the official record can be considered by the Board or ALJ in making a decision. If any party believes there are other communications that could be relevant to the decision in these dockets, they will need to place copies on file.

VII. Conclusion

Board staff finds the petitions in these dockets to be sufficiently in order to be set for hearing. However, as discussed in the report it appears additional corrections or additions to the petitions will be necessary before franchises could be issued. In the alternative, the Board or Administrative Law Judge, if so assigned, could direct that these changes to the petitions be made before setting a hearing date.

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

The four (4) dockets are interrelated parts of a larger project. Therefore it is recommended these dockets be consolidated for hearing.

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

In these dockets, particular consideration will be needed of whether the interconnection location to Iowa's transmission grid at the ITC Lime Creek transmission substation is reasonable, instead of connecting at other locations closer (and perhaps more economical) to the wind farms such as Corn Belt Power Cooperative existing 161 kV line, or the ITC Hancock transmission substation. This is relevant to the "reasonable relationship to an overall system" test of Iowa Code § 478.4.

The route proposed appears consistent with Iowa Code § 478.18. However, there are a number of additional issues that CLW will need to address, including regarding clearance, the need for additional easements, whether the petitions accurately describe the route, and the concerns of objectors. The bulk of the open objections concern the

CLW decision to route the line along a natural area along 305th Street in Hancock County. The decision in these dockets will need to address if that routing is reasonable given the factors and circumstances of this project.

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