

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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IN RE:  ITC MIDWEST, LLC	DOCKET NO. E-21261
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**ORDER SCHEDULING SHOW CAUSE HEARING**

(Issued October 21, 2008)

On July 25, 2008, ITC Midwest, LLC (ITC Midwest), filed a petition with the Utilities Board (Board) for an amendment of franchise to allow relocation of 2.76 miles of an existing 72,500 kV electric transmission line in Tama County, Iowa. The original franchise, No. 17193, was granted by the Board to a predecessor of Interstate Power and Light Company, which has sold its transmission system to ITC Midwest. The proceeding for amendment of franchise is identified as Docket No. E-21261.

In its petition for amendment of franchise, ITC Midwest asked for a temporary construction permit so it could begin construction by August 1, 2008. On August 9 and 10, 2008, a member of the Board's staff traveling in the area of the proposed line noticed that construction of almost one mile of the proposed relocated line was completed; no temporary permit had been granted. The Board's staff notified ITC Midwest and ITC Midwest immediately stopped construction. On August 12, 2008, Board staff sent ITC Midwest a letter identifying certain deficiencies in the

amendment filing and noted that temporary construction permits are available only if the line is less than one mile in length, pursuant to Iowa Code § 478.31.

Iowa Code chapter 478 governs the franchise of electric transmission lines.

Iowa Code § 478.1 provides, in part:

A person shall not construct, erect, maintain, or operate a transmission line, wire, or cable which is capable of operating at an electric voltage of sixty-nine kilovolts or more along, over, or across any public highway or grounds outside of cities for the transmission, distribution, or sale of electric current without first procuring from the utilities division of the department of commerce a franchise granting authority as provided in this chapter.

Subrule 199 IAC 11.3(2) specifically requires that a petition for amendment to franchise must be approved prior to relocating a franchised electric line.

In a meeting with the Board's staff, ITC Midwest representatives admitted that ITC Midwest began the line relocation without the required amended franchise.

Iowa Code chapter 478 provides for a wide range of remedies for violation of its provisions, including injunctive relief or possible criminal sanctions. Iowa Code §§ 478.22 and 478.24. The Board does not believe it is necessary to seek such relief in this case. In addition, Iowa Code § 478.29 provides that "[a] person who violates a provision of this chapter is subject to civil penalty, which may be levied by the board, of not more than one hundred dollars per violation or one thousand dollars per day for a continuing violation, whichever is greater."

The provisions of Iowa Code chapter 478 are designed to safeguard the interests of ratepayers, adjoining landowners, and the public generally by providing that before granting a franchise, the Board must determine, among other things, that the proposed line is necessary to serve a public use and represents a reasonable relationship to an overall plan of transmitting electricity in the public interest. Iowa Code § 478.4. The Board notes that in a prior proceeding, it put all electric line owners on notice that commencing construction without a franchise was not acceptable. See, In re: Corn Belt Power Cooperative, "Order Canceling Hearing, Accepting Compromise, and Assessing Civil Penalty," Docket No. E-21570 (2/1/2002). Therefore, the Board will schedule a hearing for ITC Midwest to show cause why civil penalties should not be imposed for the alleged violation of Iowa Code chapter 478 outlined in this order.

The Board will provide ITC Midwest an opportunity to submit an affidavit or prefiled testimony prior to the show cause hearing, explaining the events that led to construction of the transmission line without a franchise. Also, the Board will require ITC Midwest to submit an affidavit or prefiled testimony outlining what steps, if any, it has taken to ensure that such a violation will not occur again. Finally, the Board will set a deadline for any pretrial motions, such as offers of compromise.

**IT IS THEREFORE ORDERED:**

1. A hearing shall be held for ITC Midwest, LLC, to show cause why civil penalties should not be imposed for alleged violations of Iowa Code chapter 478 at

9 a.m. on January 6, 2009. The hearing shall be held in the Board's hearing room at 350 Maple Street, Des Moines, Iowa 50319-0069. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Board at (515) 281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

2. ITC Midwest shall submit an affidavit or prefiled testimony on or before December 5, 2008, outlining what steps, if any, it has taken to ensure that a violation of the franchise provisions of Iowa Code chapter 478 will not occur again. ITC Midwest may also file on that date prefiled testimony or an affidavit explaining the events that led to the apparent construction of a transmission line without a franchise.

3. Any prehearing motions shall be filed on or before December 22, 2008.

**UTILITIES BOARD**

/s/ John R. Norris

/s/ Krista K. Tanner

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Darrell Hanson

Dated at Des Moines, Iowa, this 21<sup>st</sup> day of October, 2008.