

STATE OF IOWA
DEPARTMENT OF COMMERCE
IOWA UTILITIES BOARD

IN RE:

MIDAMERICAN ENERGY COMPANY

DOCKET NO. E-22417

**MIDAMERICAN ENERGY COMPANY'S
APPLICATION FOR EMINENT DOMAIN**

MidAmerican Energy Company ("MidAmerican"), by and through its representative, requests that the Iowa Utilities Board ("Board") grant MidAmerican the right of eminent domain to locate a 169 kilovolt ("kV") maximum voltage (161 kV nominal voltage) electric transmission line in Madison County, Iowa. MidAmerican seeks the right of eminent domain to the minimum extent necessary to complete the construction of an electric transmission line approved by the Board on February 1, 2021, subject to Franchise No. F-21006. MidAmerican requests the right of eminent domain to locate the approved electric transmission line in the public road right-of-way adjacent to property owned by Intervenor Linda Juckette. In support of its request for eminent domain, MidAmerican states the following:

I. PROCEDURAL BACKGROUND

MidAmerican filed its Petition for an Electric Transmission Line Franchise on September 17, 2019. MidAmerican originally requested the right of eminent domain over two parcels, identified as Exhibits E-1 and E-2. On September 23, 2020, the Board conducted a hearing in Winterset, Iowa, on MidAmerican's petition. Before the hearing, MidAmerican obtained a voluntary easement for the property addressed in Exhibit E-2. At the hearing, Intervenor Juckette objected to the proposed route and fully participated in the hearing, including conducting discovery, filing testimony, and conducting cross-examination of MidAmerican witnesses.

One objector, Jeremy Husk, pre-filed testimony in the record, but elected not to provide additional testimony at the hearing. Exh. Husk Dir. (July 23, 2020); Tr. at 214. The owners of the parcel subject to a request for eminent domain, Marnix Verhofste and Hilde Debruyne, did not file any testimony or participate in the hearing.

On February 1, 2021, the Board issued an “Order Granting Petition for Electric Transmission Line Franchise and Right of Eminent Domain,” (“Order”) and found that MidAmerican’s proposed transmission line is necessary to serve a public use and represents a reasonable relationship to an overall plan of transmitting electricity in the public interest, as required by Iowa Code § 478.4. Order at p. 41. In finding the proposed transmission line met the requirements of Iowa Code § 478.4, the Board approved the route proposed by MidAmerican, which includes placement of the line in the public road right-of-way adjacent to Intervenor Juckette’s property. *Id.* at 35-36; Franchise No. F-21006 (Feb. 1, 2021) (providing the legal description for the approved transmission line route).

One primary question in the proceeding was whether MidAmerican could place a transmission line in the public road right-of-way adjacent to Intervenor Juckette’s property without a request for eminent domain. MidAmerican argued, and the Board agreed, that Iowa Code § 306.46 permits a utility to place facilities in the public road right-of-way without the need for eminent domain. Order at p. 34-36. In his dissent, Board Member Lozier argued against this interpretation of Iowa Code § 306.46. Order at p. 46-49.

The Board also approved MidAmerican’s request for the right of eminent domain over the Verhofste-Debruyne property. Order at p. 40. The Board discussed MidAmerican’s efforts in attempting to negotiate an easement with Mr. Verhofste and Ms. Debruyne. *Id.* at 38-39. Ultimately, the Board found that MidAmerican complied with all of the requirements necessary to

grant the right of eminent domain over the Verhofste-Debruyne property and that the grant of eminent domain was necessary to serve the public use. Order at p. 40-41.

II. APPLICABLE LAW

The Board may issue an electric transmission line franchise if it finds 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.” Iowa Code § 478.4. “When the board grants a franchise to any person, company, or corporation for the construction, erection, maintenance, and operation of transmission lines . . . such person, company, or corporation *shall be vested with the power of condemnation* to the extent as the Board may approve and find necessary for public use.” Iowa Code § 478.5(3).

When seeking the right of eminent domain, the applicant must show a good faith effort to negotiate before filing an application for condemnation. Iowa Code § 6B.2B; see “Order Granting Petitions for Electric Franchises,” Docket No. E-22269, p. 14 (Aug. 18, 2017) (explaining the good faith component of a discussion of eminent domain). When evaluating whether a utility complied with the appropriate notice of Iowa Code § 6B.2A(3), compliance with Iowa Code § 478.2 is deemed sufficient notice of the proposed public improvement.

In preparing a good-faith offer for purchase, an acquiring agency “shall not make an offer to purchase the property or property interest that is less than the fair market value” determined by the appraisal required by Iowa Code § 6B.45. Under Iowa Code § 6B.45 for the interest in real property, a utility may use, in lieu of an appraisal, “the methods and factors used in arriving at an offered price for voluntary easements.”

III. EXPEDITED REQUEST FOR EMINENT DOMAIN

MidAmerican submits with this filing a revised petition to show that MidAmerican has obtained 13 of 14 necessary easements after agreeing to a voluntary easement with Mr. Verhofste and Ms. Debruyne after the Board's February 1, 2021 order. This revision recognizes that MidAmerican is seeking the right of eminent domain to place the approved transmission line in the public road right-of-way adjacent to Intervenor Juckette's property. MidAmerican also submits Exhibit E-3, which contains the terms of the request for eminent domain that MidAmerican is seeking from the public road right-of-way adjacent to Intervenor Juckette's property. Finally, MidAmerican submits an affidavit identifying that MidAmerican has made a good-faith effort to identify all interests in the property, pursuant to 199 Iowa Administrative Code 11.5(1)(e)(6).

MidAmerican's request for eminent domain is as narrowly-tailored as possible to erect, maintain, and operate the approved transmission line along the approved route. The requested easement is entirely contained in the existing public road right-of-way. Exhibit E-3 illustrates that MidAmerican is seeking to "stack" the conduit to the roadway, eliminating any need for an overhang easement past the public road right-of-way boundary.

There is no need for an additional hearing because any relevant information for the Board's consideration is already in the record and Intervenor Juckette has been afforded every opportunity to participate in a hearing. MidAmerican provided the appropriate methods and factors of evaluation through the mail along with notice of the informational meeting on June 20, 2019. "Landowner Packet for Informational Meeting," (May 16, 2019); Tr. at 235. Intervenor Juckette attended the informational meeting with her counsel at the time. MidAmerican representatives later met with Intervenor Juckette and her then-attorneys to discuss the terms of the offer. Tr. at 235-36. As Intervenor Juckette stated at hearing, she had no interest in negotiating for any

easement. *Id.* at 236. MidAmerican and Intervenor Juckette resumed negotiations in March 2021, but those discussions did not result in a voluntary easement.

The only issue for consideration at this time is the extent of the right of eminent domain MidAmerican should receive for the proposed transmission line. The Board has already found the proposed line complies with the terms of Iowa Code § 478.4 and denied Intervenor Juckette's motion for reconsideration. "Order Denying Application for Rehearing," Docket No. E-22417 (Mar. 18, 2021). Intervenor Juckette is seeking judicial review of the Board's conclusion in district court. *Linda K. Juckette v. Iowa Utilities Board*, Polk County District Court No. CVCV061580. The remaining question MidAmerican brings before the Board at this point is the appropriate extent of a request for eminent domain to complete construction of the approved transmission line.

The Board previously addressed a request for eminent domain separate from a proceeding to review the underlying need for the transmission line in Docket No. E-21988. In that docket, intervenors NDA Farms, LLC and Denis Albaugh challenged the use of Iowa Code § 306.46 to place utility facilities in public road right-of-way without either an easement or request for eminent domain. "Order Granting Request for Eminent Domain Authority," Docket No. E-21988 (Aug. 14, 2013). After the Board determined the proposed line complied with Iowa Code, the intervenors appealed the decision to the Iowa District Court. *Id.* at 1. The district court remanded the proceeding to the Board for a determination about the appropriate extent of the right of eminent domain. *Id.* at 2. The Board addressed the request based on the evidence established in the record, along with a revised petition page to reflect the number of easements the utility had obtained and a new Exhibit E to address the additional eminent domain request.

This proceeding should adopt the same procedural approach as that used in Docket No. E-21988. Unlike that docket, in this proceeding, MidAmerican seeks the right of eminent domain

before the district court makes a ruling on Intervenor Juckette's challenge to the Board's order. However, that difference is immaterial, and resolution by the Board of the eminent domain issue should facilitate either a remand or a quick resolution of the proceedings in district court.

IV. CONCLUSION

In conclusion, Intervenor Juckette took advantage of the opportunity to participate in the proceedings in this docket, including filing an objection; filing for and receiving party status as an intervenor; discovery, including interrogatories and a deposition of MidAmerican witness Schierbrock; filing multiple rounds of testimony; cross examining MidAmerican witnesses; and providing additional direct testimony at hearing. Since the hearing, Intervenor Juckette has filed a motion for a stay and a motion for reconsideration. These all demonstrate a full and complete opportunity to discuss the merits of MidAmerican's request for approval of the transmission line. No further proceedings are necessary and a grant of eminent domain is appropriate.

Dated this 7th day of May, 2021.

Respectfully submitted,

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