

**STATE OF IOWA
DEPARTMENT OF COMMERCE
IOWA UTILITIES BOARD**

IN RE:

ITC MIDWEST LLC

DOCKET NO. E-21340

COMMENTS OF ITC MIDWEST LLC

COMES NOW ITC Midwest LLC (“ITC Midwest”) and hereby provides written comments summarizing its position on the applicability of 199 IAC 11.6(1)“b” to the underlying facts of the petition for extension of franchise in the above-referenced docket. ITC Midwest states:

BACKGROUND

1. On October 21, 2020, ITC Midwest filed a petition for extension of Franchise No. 17275 for an approximate 16.22 mile-long 161 kV transmission line located in Worth County, Iowa. On December 1, 2020, Iowa Utilities Board (“Board”) engineering staff issued its first staff review letter, within which it stated:

Since this transmission line was last franchised, ITC Midwest has constructed its Barton Switching Station. Rule 199 IAC 11.3(2)(c)(2) [now located at 199 IAC 11.6(1)“b”] requires that an amendment be filed for the construction of an addition[al] (sic) circuit. It is IUB staff’s interpretation that the construction of the Barton Switching Station has bisected the previous single circuit into two separate circuits, thus requiring an amendment to the franchise. IUB staff requests that ITC Midwest file an amendment to the franchise to account for this change.

2. In its response to the first staff review letter, ITC Midwest clarified that the lines going in and out of the Barton Switching Station are located entirely within substation property and therefore no additional filing is required. A second staff review letter was issued and a

response was filed with no mention of the amendment requirement. However, in its third staff review letter dated April 21, 2021, Board staff reiterated its position that ITC Midwest must file an amendment and suggested that a waiver could be filed for some of the exhibits associated with an amendment filing.

3. After asking for additional time to respond, ITC Midwest filed its response to the third staff review letter on July 20, 2021, wherein it spelled out many of the arguments explained in more detail below and requested a meeting with Board staff in the event that Board staff still believed an amendment must be filed.

4. On January 10, 2022, a technical conference was held in this docket. Counsel for ITC Midwest participated as did counsel for Central Iowa Power Cooperative (“CIPCO”) and Corn Belt Power Cooperative (“Corn Belt”). Counsel for MidAmerican Energy Company attended remotely but did not make comments. Both ITC Midwest and counsel for CIPCO and Corn Belt disagreed with Board staff’s interpretation of 199 IAC 11.6(1)“b”. Instead, it is ITC Midwest’s position that 199 IAC 11.6(1)“b” is intended to cover an additional transmission line being added “on” to the poles of an existing franchised transmission line, and the plain language of this rule supports this interpretation. Counsel for CIPCO and Corn Belt agreed with ITC Midwest’s interpretation. At the conclusion of the technical conference, ITC Midwest requested the ability to file written comments and Board staff stated no objection to ITC Midwest’s request.

ARGUMENT

5. The plain language of 199 IAC 11.6(1)“b,” Iowa Code section 478.1(2) and 199 IAC 11.6(4) are dispositive of the issue in this case. First, 199 IAC 11.6(1)“b” requires that a petition for an amendment of franchise must be filed when an electric company is “[c]onstructing

an additional circuit which is capable of operating at a nominal voltage of 69 kV or more *on* a previously franchised line, *where an additional circuit at such voltage is not authorized by the existing franchise.*” (Emphasis added). Here, there is no additional circuit being constructed “on” a previously franchised line. In fact, in keeping with 199 IAC 11.6(1)“b,” there is no “additional circuit” being constructed that “is not authorized by the existing franchise” in this case. Thus, Board staff’s interpretation of the word “circuit” in the context of this rule does not hold up to the rest of the plain language of the rule. In fact, when the rule on franchise amendments was originally promulgated by the Board, the intent was to ensure there were procedures in place to allow public input for “[s]ignificant changes to existing lines” that “may affect the rights and duties of the public.” *In Re Electric Transmission Lines*, Order Commencing Rulemaking, at p. 1 (Issued November 12, 1992), Docket No. RMU-92-13. Here, there is no element of the addition of the Barton Switching Station that affects the rights and duties of the public as it relates to the electric transmission line the only landowner affected by the addition of the substation is ITC Midwest.

Second, Iowa Code section 478.1(2) expressly exempts “transmission lines constructed entirely within the boundaries of property owned by a person primarily engaged in the transmission or distribution of electric power . . .” from the requirement to obtain a franchise. The Barton Switching Station taps are transmission lines themselves that are constructed entirely within the boundaries of property owned by ITC Midwest, which is a “person primarily engaged in” the transmission of electric power. This places the situation at hand squarely within the exception set forth in Iowa Code section 478.1(2).

Third, 199 IAC 11.6(4) expressly states that “[a]n amendment to a franchise shall not be required for a voltage increase, *additional circuit*, or electric line relocation *where such activity*

takes place entirely within the boundaries of property owned by an electric company or an end user.” (Emphasis added). Even if one were to accept Board staff’s interpretation of the phrase “additional circuit” as it is used in 199 IAC 11.6(1)“b,” the “activity” that created the “additional circuit” under Board staff’s interpretation has taken place “entirely within the boundaries of property owned by an electric company” and is therefore exempt from the amendment requirement in accordance with 199 IAC 11.6(4).

6. Even without the expressly applicable statutory and rule sections cited above, Board staff’s theory that a substation bisects a single “circuit” into two “circuits” by the addition of a substation along the route is unsupported by the entire franchising construct laid out in Iowa Code Chapter 478 and the Board’s own rules. Iowa Code section 478.1(1) requires franchising of a “transmission line, wire, or cable that 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 . . .” This requirement applies to any length of line, and any one franchise can cover anywhere between a short five-foot section of line to several hundred miles of lines of various voltages in a county-wide or multi-line franchise. Because something short of a complete “circuit” in the electrical engineering sense of that word can be and is frequently franchised, it follows that an amendment to a franchise should not be required when a single length of line is bisected by a non-jurisdictional component (such as a substation or switching station), when no new length of line located outside of electric company owned property is constructed. In that situation (as in the situation in this docket), there would be no new length of line to franchise. The original purpose and need for the transmission line remains the same. The addition of a substation merely adds non-jurisdictional

functionality.¹ If the substation had other transmission lines going in or out of it that crossed public highways or grounds (outside of cities), the Board would be aware of those lines and their purpose by virtue of the franchising requirements for those lines.

7. If Board staff's interpretation of 199 IAC 11.6(1)"b" is taken to an extreme, then any non-jurisdictional operational change would require an amendment to be filed, and 199 IAC 11.8(1)"d"(3) would serve no purpose. This rule requires an electric company to describe "any substantial rebuilds, reconstructions, alterations, relocations, or changes in operation not included in a prior franchise or amendment proceeding" in the Exhibit D to a petition for extension of franchise. ITC Midwest would be happy to describe the addition of the Barton Switching Station in the Exhibit D to its petition for extension of franchise in this docket.

8. Additionally, Board staff's interpretation of the phrase "circuit" as it is used in 199 IAC 11.6(1)"b" is not supported by the enabling statute. The word "circuit" does not appear anywhere in Iowa Code Chapter 478. As stated above, it is ITC Midwest's position that the phrase "additional circuit" is intended to refer to an additional transmission line that is added on to common structures with an existing franchised transmission line. In fact, the other places the term "circuit" is used throughout Chapter 11 bolster ITC Midwest's interpretation. The only places in which the word "circuit" appears in Chapter 11 outside of 199 IAC 11.6(1)"b" and 199 IAC 11.6(4) are the following:

- 199 IAC 11.5(1)"b"(1), 11.7(2)"b"(1), 11.8(1)"b"(1), which all govern what must be included on the Exhibit B map submitted with a petition for a new, amendment, or extension of franchise, or a petition for franchise under the abbreviated process.

These all generally require that line sections with "multiple-circuit" construction be

¹ In this case, the switching station is connected to a collector substation for a wind farm.

designated, along with the voltage and ownership of those other circuits or underbuild. Thus, the use of the word “circuit” in the context of these rules supports ITC Midwest’s position that the phrase “additional circuit” as it is used in 199 IAC 11.6(1)“b” is intended to cover an additional transmission *line* constructed on the same poles as an existing franchised transmission line.

- 199 IAC 11.11(1), in the context of requiring all parallel overhead electric supply “circuits” on the same road right-of-way be attached to the same poles unless good cause is shown for separate pole lines. The use of the word “circuit” in this rule also supports ITC Midwest’s position that the amendment requirement applies to an additional transmission *line* that is added “on” to a pole with an existing transmission line.

As a result, to the extent staff expressed a change in the Board’s approach from keeping track of lines to keeping track of “circuits,” that change is not consistent with chapter 478 or the Board’s existing rules.

9. Under Iowa Code § 17A.23(3), the Board’s authority is limited to the authority granted by law, which may not be expanded or enlarged. Board staff’s interpretation of the word “circuit” as it is used in 199 IAC 11.6(1)“b” appears to be an attempt to gain some measure of jurisdiction over substation siting, purpose, need, and construction, when no such jurisdiction exists under Iowa law. In fact, the Board has previously acknowledged its lack of jurisdiction over the location of a substation for an ITC Midwest transmission line project when it determined a landowner’s objection did not comply with the definition of an objection under Iowa Code s. 478.5, as the transmission line at issue no longer impacted that landowner’s property and the only remaining objection by the landowner was the location of a substation.

See In Re ITC Midwest, “Order Granting Motion for Determination That No Hearing is Required” at p. 4 (Issued March 22, 2017), Docket No. E-22165.

10. Finally, sound public policy exists for electric companies to be able to add additional non-jurisdictional, operational functionality to electric transmission lines without the need to go through the franchising process, such as the addition of switches and switching stations.

- Switching allows electric companies to isolate faults or outages on a transmission line without taking the entire line out of service. It also allows line operators to change power flow over transmission lines in real time at any given moment to relieve congestion on certain lines and instead direct the electricity to lines with available capacity. Switching capability at interconnections of either generation or load is necessary as it also allows any required maintenance on lines or other equipment to be performed without requiring a complete outage to the generating facility or substation serving end use customer load. This functionality is of utmost importance in major storm events, such as the Derecho of August 2020, as switching can often accomplish temporarily re-energizing substations while downed poles are stood up again in the field.
- The process of requiring an amendment as staff seeks to do in this case adds a minimum of six months even if waivers are requested which delays upgrades to the system, and delays the use of the transmission line for one of its intended purposes – allowing interconnection of generation to the grid.
- Substations and switches that are at issue here in no way change the purpose, functionality, need or any other criteria for franchising the already-franchised line. The line still serves the need the Board found in the original franchise (and in this particular

case, the Board gets to revisit that promptly in the extension analysis even without an amendment), it still connects the original starting and ending points, and it is at the same voltage and using the same non-ITC Midwest land rights as before the switching station was added. The amendment process here is both legally unjustified, but also largely superfluous for the company and the Board alike.

CONCLUSION

WHEREFORE, ITC Midwest respectfully requests the Board find that no amendment of franchise is required to be filed in this docket and that the petition for extension of franchise be allowed to progress through the Board's normal franchising process.

Respectfully submitted this 24th day of January, 2022.

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ATTORNEYS FOR ITC MIDWEST

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 24th day of January, 2021 he had the foregoing document electronically filed with the Iowa Utilities Board using the EFS system which will send notification of such filing (electronically) to the appropriate persons.

/s/ Bret A. Dublinske _____

Bret A. Dublinske