

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>ITC MIDWEST LLC,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">v.</p> <p>IOWA UTILITIES BOARD, A DIVISION OF THE DEPARTMENT OF COMMERCE, STATE OF IOWA,</p> <p style="text-align: center;">Respondent.</p>	<p>Case No.</p> <p style="text-align: center;">PETITION FOR JUDICIAL REVIEW</p>
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In October 2020, ITC Midwest LLC (“ITC Midwest”) filed with the Iowa Utilities Board (“Board”) an application for an extension of a franchise for an electric transmission line in Worth County, Iowa. An extension is a renewal of the 25-year franchise for a line that already exists and is generally a routine matter. In this case, however, Board staff took the position that ITC Midwest needed to file an amendment to its existing franchise before the extension could be granted. After several rounds of back-and-forth between Board staff and ITC Midwest, the Board on March 11, 2022 ordered ITC Midwest to file an amendment of its franchise within 30 days.¹ The Board’s Amendment Order, which is a final order as to the dispute over whether an amendment is appropriate², is contrary to the requirement for an amendment in the Board’s rules, and is a result that adds time and expense to the electrical system in Iowa that is contrary to

¹ *In re ITC Midwest LLC*, Docket No. E-21340 “Order Requiring Amendment to Electric Franchise” (Iowa Utils. Bd., March 11, 2022)(“*Amendment Order*”)(attached as **Attachment A**).

² ITC Midwest believes the Amendment Order is a final order on what has clearly become a distinct and separate issue in the franchise extension docket. The Board’s Amendment Order is a specific, final order requiring ITC Midwest to take a particular substantive action; it functionally is a declaratory ruling on the issue that was debated between Board staff and ITC Midwest. Nonetheless, if the Court disagrees it should allow the case to go forward as an interlocutory appeal as allowed by Iowa Code §17A.19(1). All necessary administrative remedies have been exhausted as to the amendment issue. Requiring ITC Midwest to actually amend, and then complete the extension docket places ITC Midwest’s ability to protect its rights at risk should an appellate court later find that the Amendment Order was a final order and that ITC Midwest’s jurisdictional time to appeal from that order has run.

sound public policy. This Court should find the Board acted outside of its authority and in violation of the Iowa Administrative Procedures Act and should reverse the Board's Amendment Order.

PARTIES AND VENUE

1. ITC Midwest is a Michigan limited liability company with its headquarters in Cedar Rapids, Iowa. ITC Midwest is an independent, stand-alone transmission company engaged exclusively in the development, ownership and operation of facilities for the transmission of electric energy in interstate commerce. ITC Midwest provides transmission service in Iowa, Minnesota, Illinois and Missouri where it owns and operates approximately 6,700 circuit miles of transmission lines with the overwhelming majority of those lines in Iowa.

2. The Board is an administrative agency of the State of Iowa, and part of the Iowa Department of Commerce. It is the agency charged with issuing and administering transmission franchises under Iowa Code chapter 478 and is an Agency for purposes of the Iowa Administrative Procedures Act. *See* Iowa Code § 17.2(1).

3. Venue is proper in Polk County pursuant to Iowa Code § 17A.19(2), which establishes venue in Polk County by statute. Moreover, the decisions and actions at issue occurred at the Board's office in Polk County.

FACTS

4. This case involves the scope and limits on regulation of electric transmission lines. Most people are familiar with the electric *distribution* network – the wires that bring the electricity they use to their homes, offices, schools, etc., owned by their local electric company – but less so the transmission network. The electric transmission network, often called “the grid,” is a system of larger, higher-voltage lines that is interconnected within a state as well as across

state (and even national) lines. It serves an indispensable role in carrying electricity over longer distances, whether between electric generating facilities and distribution networks, from electric generating facilities to energy markets, or from one network to another.

5. Iowa Code chapter 478 requires a utility to obtain a franchise to “construct, erect, maintain, or operate a transmission line. . . 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(1). Iowa Code §478.1(2) also exempts from franchising a line “constructed entirely within the boundaries of property owned by a person primarily engaged in the transmission or distribution of electric power or entirely within the boundaries of property owned by the end user of the electric power.” Further, the Board’s own rules provide an exemption from the amendment requirements 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.” 199 IAC 11.6(4)

6. A franchise has a term of 25 years, which can be extended. *See* Iowa Code §478.9 (term); §478.13 (extension provisions).

7. On October 21, 2020, ITC Midwest filed a petition for extension of Franchise No. 17275 for an approximate 16.22 mile-long 161 kilovolt (“kV”) transmission line located in Worth County, Iowa.

8. 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.

9. A switching station is a kind of substation, specifically one *without* transformers that would step up or down the voltage level of the line(s) connecting through a substation. A switching station rather is used to create a point of interconnection where one line of the same voltage meets another, and they can be used for reliability and resiliency of the grid to segment and allow isolation of line segments and re-routing to maintain service during planned (e.g., maintenance) or unplanned (e.g., storm) outages or other issues. Notably, nothing in Iowa Code chapter 478 (or the more general chapter 476) gives the Board jurisdiction over the location, construction or operation of substations or switching stations, nor has the Board traditionally asserted such jurisdiction.

10. After the 2020 derecho, the speed with which ITC Midwest was able to restore service to its customers was largely due to the use of switching, which allowed restoration well before poles could be physically repaired or new poles stood up. Switching can occur via substations or switching stations, as well as via pole top switches installed within a transmission line itself.

11. The Barton switching station is directly adjacent to the franchised line at issue in this case, and when it was constructed it was connected to the existing line by two very short transmission lines known as “taps.” In this case, the substation taps are entirely on property owned by ITC Midwest, who is both the transmission owner and the end user of the lines.

12. While amendments to franchises are not discussed in Iowa Code chapter 478, the Board has issued rules regarding such amendments. The Board’s rule at 199 Iowa Admin. Code 11.6 provides:

A petition for amendment of a franchise shall be filed with the board for approval when the electric company is:

- a. Increasing the operating voltage of any electric line, the level to which it is capable of operating, or to a voltage greater than that specified in the existing franchise.
- b. Constructing 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.
- c. Relocating a franchised line to a route different from that authorized by an existing franchise which requires that new or additional interests in property be obtained, or that new or additional authorization be obtained from highway or railroad authorities, for a total distance of one route mile or more, or for any relocations where the right of eminent domain is sought. An amendment is not required for relocations made pursuant to Iowa Code section 318.9(2).

(Emphasis added). Neither (a) nor (c) are implicated by the facts of this case. The Board's erroneous application of paragraph (b), and failure to correctly apply 199 IAC 11.6(4), however, are central to the dispute.

13. On January 11, 2021, ITC Midwest responded to the December 2020 staff review letter. With respect to the passage quoted above requiring an amendment, ITC Midwest stated "The line going in and out of the substation is within substation property (end user) therefore no additional filing is required."

14. A second staff review letter was issued 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.

15. ITC Midwest filed its response to the third staff review letter on July 20, 2021, wherein it spelled out many of its arguments. *See Attachment B*. ITC Midwest requested a meeting with Board staff in the event that Board staff still believed an amendment must be filed.

16. On January 10, 2022, a technical conference was held with Board staff, Counsel for Central Iowa Power Cooperative ("CIPCO") and Corn Belt Power Cooperative ("Corn

Belt”), and Counsel for the Office of Consumer Advocate. CIPCO and Corn Belt also own and operate transmission and would be impacted by the outcome. Both ITC Midwest and Counsel for CIPCO and Corn Belt disagreed with Board staff’s interpretation of 199 IAC 11.6(1)“b”. Instead, ITC Midwest stated its 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. Further, it is common in the utility industry to refer to a set of poles with two transmission lines “on” the same poles as a “double-circuit” line, further supporting the interpretation that the rule only applies when another line is going to be added “on” to the poles of an existing transmission line. While there was no court reporter at the conference, Counsel for CIPCO and Corn Belt agreed with ITC Midwest’s interpretation.

17. ITC Midwest filed post-conference comments supporting its arguments on January 24, 2022. *See Attachment C*. Nonetheless, the Board issued the Amendment Order, necessitating this appeal.

CLAIM FOR JUDICIAL REVIEW

18. ITC Midwest adopts and incorporates paragraphs 1-18.

19. The Board’s application of 199 IAC 11.6(b) is contrary to the plain language of the rule and would not only add costs, but more importantly would involve a process taking at least four to six months – and likely often longer. That also means it would take considerably longer to interconnect new generation to the grid, like wind and solar projects, which often are very sensitive to timing. Furthermore, the substation taps fall squarely into the Board’s own rule exempting from the amendment requirements the addition of an “additional circuit . . . where such activity takes place entirely within the boundaries of property owned by an electric

company or an end user.” Even if you accept the Board’s interpretation of the phrase “additional circuit,” ignoring the plain language of 199 IAC 11.6(1), the “activity” that created what the Board is claiming is an “additional circuit” took place entirely within the boundaries of the Barton switching substation, which is owned by ITC Midwest.

20. The Board’s Amendment Order exceeds the authority provided by Iowa Code chapter 478 or any other provision of law in that it (a) seeks to require franchising by electrical circuits rather than service lines, despite the term “circuit” appearing nowhere in Iowa Code chapter 478; (b) is engaging in regulation of substations that is outside of its jurisdiction; and (c) is requiring a franchise based on lines built entirely within ITC Midwest and/or end user-owned property. This exercise of jurisdiction violates Iowa Code §17A.19(10)(b) and (c), or alternatively (l) and (m).

21. The Board’s Amendment Order misinterprets and misapplies Board Rule 11.6(b), and fails to appropriately apply Board Rule 11.6(4), applying those rules differently than it has done in the past without amending the rules or adequately explaining the basis for the new interpretations, in violation of Iowa Code §17A.19(10)(c), (g), (h) and (n).

22. Requiring an amendment of franchise to be filed needlessly adds costs, time and uncertainty to what should be encouraged; positive steps to add reliability, usefulness, and functionality to keep existing lines upgraded. Moreover, in the current case having to file an amendment as part of the extension process unduly complicates and delays what was intended by the legislature to be a “less extensive” extension process. *See* Iowa Code 478.13(1). In this regard, the Amendment Order violates Iowa Code §17A.19(10)(j), (k) and (n).

REQUEST FOR RELIEF

THEREFORE, ITC Midwest respectfully requests that the Court reverse the Board's Amendment Order.

Filed this 7th day of April, 2022.

Respectfully submitted,

/s/ Bret A. Dublinske

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