BEFORE THE CHIEF JUDGE OF THE FIFTH JUDICIAL DISTRICT

OF THE STATE OF IOWA

IN THE MATTER OF THE APPLICATION OF IOWA POWER AND LIGHT COMPANY FOR CONDEMNATION OF RIGHT OF WAY FOR TRANSMISSION LINE IN MADISON COUNTY, IOWA	* * * * * * * *	NO. APPLICATION FOR CONDEMNATION AND APPOINTMENT OF COMMISSION TO APPRAISE DAMAGES

TO: The Chief Judge of the Fifth Judicial District of the State of Iowa

The Applicant, Iowa Power and Light Company, pursuant to Section 472.3 of the Code of Iowa, hereby applies to Gibson C. Holliday Chief Judge of the Fifth Judicial District of Iowa, for the appointment of a Commission to appraise the damages to real estate hereinafter described, and in connection therewith Applicant states as follows:

1. That Applicant, Iowa Power and Light Company, is a corporation organized under the laws of the State of Iowa, with its principal place of business and its general offices in the City of Des Moines, Polk County, Iowa, and is engaged in the business of generating, transmitting and distributing electricity at various points and places within the State of Iowa.

2. That by Order dated December 30, 1977, the Iowa State Commerce Commission granted Applicant a franchise (Iowa State Commerce Commission Frachise No. 14897) authorizing the construction and operation of a nominal 345,000 volt (maximum 400,000 volt) electric transmission line extending through and across the property hereinafter described and other property in Madison County, Iowa together with the right of eminent domain to condemn for transmission line purposes the land hereinafter described which the Iowa State Commerce Commission has found to be necessary for the use of the Applicant for construction, operation and maintenance of said transmission line in Madison County. That a copy of said Order and Franchise is attached as Exhibit "A" and made a part of this application.

FILED NO. 371
BOOK 113 PAGE 1
1979 AUG 27 PM 3:03
MARY E. WELTY
RECORDER
MADISON COUNTY, IOWA

Fee $ 3.00 Paid

RECEIVED
MADISON COUNTY SHERIFF
WINTERSET, IOWA
RRR
FEB. 20 1979

file returned To Clerk of Court 9-10-79

SHERIFF'S and CLERK'S NOTATION: FOR COMPLETE TEXT OF EXHIBIT "A" ATTACHED TO AND MADE A PART OF THIS APPLICATION FOR CONDEMNATION, SEE DOCKET # 21763, MADISON COUNTY, IOWA DISTRICT COURT.

DEED RECORD 113

22

3. Applicant seeks to condemn and acquire by the process of eminent domain a right of way and easement one hundred fifty feet (150') in width over, along and across the land hereinafter described to construct, operate and maintain a nominal 345,000 volt (maximum 400,000 volt) electric transmission line and all necessary wires and equipment incident thereto for the purpose of constructing, operating and maintaining said transmission line.

4. The description of the property to be effected or sought to be condemned by its congressional numbers in tracts not exceeding one-sixteenth (1/16) of a section; a description of the specific property sought to be condemned from each of said parcels to be condemned with reference to such description; the names of all record owners and parties in possession of the parcels of property sought to be condemned, or otherwise affected by such proceedings; the holders of liens or encumbrances upon such lands, and the places of residence of all such persons, so far as is known to Applicant, or as shown of record, are as follows, to wit:

SHERIFF'S NOTATION: ONLY THAT DESCRIPTION AND PLAT PERTAINING TO THESE DEFENDANTS IS SET FORTH:

PARCEL NO. 61-33

DESCRIPTION OF PROPERTY TO BE AFFECTED

The East 20 Acres of the Southeast Quarter (SE¼) of the Northeast Quarter (NE¼), the Northeast Quarter (NE¼) of the Southeast Quarter (SE¼), the West 26 acres of the East Half (E½) of the Southeast Quarter (SE¼) of the Southeast Quarter (SE¼), and all of the East Half (E½) of the Southeast Quarter (SE¼) of the Southeast Quarter (SE¼) lying north of the road in Section 27, the Southwest Quarter (SW¼) of the Northwest Quarter (NW¼) and the North 8 Acres of the Northwest Quarter (NW¼) of the Southwest Quarter (SW¼) of Section 26, all in Township 74 North, Range 28 West of the 5th P.M., Madison County, Iowa.

DESCRIPTION OF SPECIFIC PROPERTY SOUGHT TO BE CONDEMNED

That part of a strip of land 150 feet in width which will fall across the East 20 Acres of the Southeast Quarter (SE¼) of the Northeast Quarter (NE¼) and Northeast Quarter (NE¼) of the Southeast Quarter (SE¼) of Section 27, the Southwest Quarter (SW¼) of the Northwest Quarter (NW¼) and North 8 Acres of the Northwest Quarter (NW¼) of the Southwest Quarter (SW¼) of Section 26, all in Township 74 North, Range 28 West of the 5th P.M., Madison County, Iowa, the centerline of said 150 foot wide strip being described as follows:

Beginning at a point approximately 2,615 feet South of the Northwest corner of the East Half (E½) of the Northeast Quarter (NE¼) of said Section 27, thence East to a point on the East property line approximately 2,603 feet South of the Northeast corner of the West Half (W½) of the Northwest Quarter (NW¼) of said Section 26.

This easement is limited to construction of one 345,000 volt electric transmission line across the above described property consisting of one 2-pole structure and associated conductors. (Maximum 400,000 volt).

NAMES OF ALL RECORD OWNERS AND PARTIES IN POSSESSION

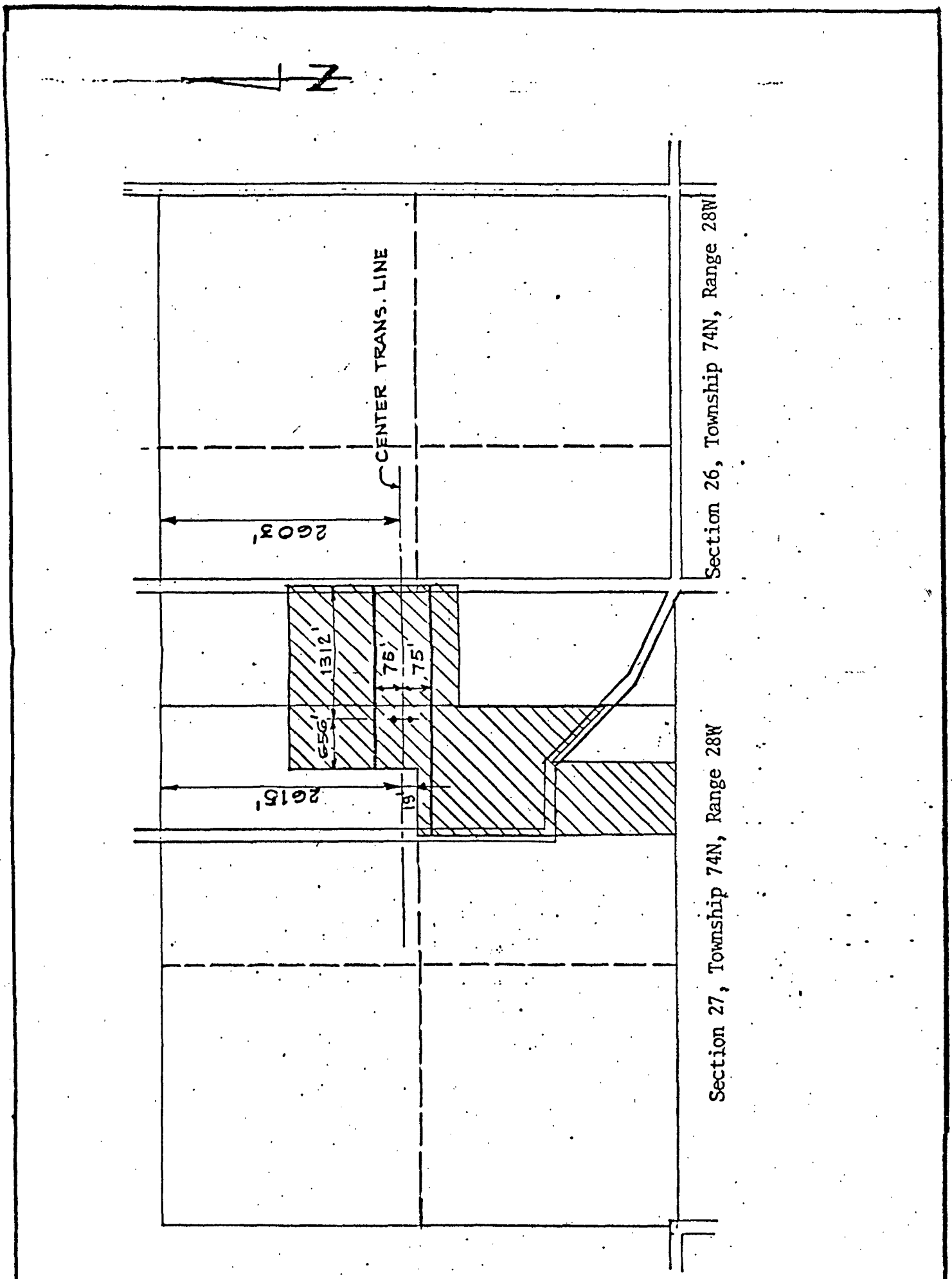
OWNER: Floyd Dudney and Janet Siddens Dudney
Lorimor,
Iowa 50149

Shirlee Ann Siddens
David Vernon Siddens
Don Carl Siddens
Lorimor, Iowa 50149

HOLDERS OF LIENS OR ENCUMBRANCES

LIEN HOLDER: Madison County

(A Plat showing the location of the property to be affected and the location of the specific property sought to be condemned is attached hereto, marked Parcel 61-33 and by this reference made a part hereof.)



IOWA POWER AND LIGHT COMPANY
345KV TRANSMISSION LINE

FLUOR PIONEER INC	REVISION	PROPERTY PLAT MADISON COUNTY	
DWN. BY J.M.G. 4-22-76			
CHECKED			PARCEL NO 61-33
APP'D			

Applicant requests that the Chief Judge of this Judicial District appoint a Commission to appraise the damages to said lands in accordance with the terms and provisions of Chapter 472 of the Code of Iowa.

Dated this 16 day of February, 1979.

Keith D Hartje

Keith D. Hartje
666 Grand Avenue, P.O. Box 657
Des Moines, Iowa 50309

GAMBLE, RIEPE, BURT, WEBSTER & FLETCHER
2600 Ruan Center
Des Moines, Iowa 50309

By B. A. Webster
B. A. Webster

Attorneys for Applicant
IOWA POWER AND LIGHT COMPANY

State of Iowa)
)
County of Polk)

I, E. L. Birdsall, being first duly sworn, on oath depose and state that I am Vice-President of Iowa Power and Light Company, Applicant named in the foregoing Application; that I have read the above and foregoing Application; that I know the facts therein set forth, and that the same are true and correct as I verily believe.

E. L. Birdsall

Subscribed and sworn to before me by said E. L. Birdsall this 16 day of February, 1979.

LLOYD C. McLAUGHLIN
MY COMMISSION EXPIRES
September 30, 1979

Lloyd C. McLaughlin
Notary Public in and for the State of Iowa

Filed in duplicate in my office at Des Moines Iowa, this 16 day of February, 1979.

Lloyd D. Kelleher
Chief Judge of the Fifth Judicial District of Iowa including Madison County.

RECEIVED
MADISON COUNTY SHERIFF
WINTERSET, IOWA

FEB 20 1979

5

IN THE MATTER OF THE APPLICATION OF IOWA POWER AND LIGHT COMPANY FOR CONDEMNATION OF RIGHT OF WAY FOR TRANSMISSION LINE IN MADISON COUNTY, IOWA

SELECTION AND APPOINTMENT OF COMPENSATION COMMISSIONERS BY THE CHIEF JUDGE OF THE FIFTH JUDICIAL DISTRICT

An Application for Condemnation having been filed with me by the Iowa Power and Light Company for the selection and appointment, by lot, of six suitable persons as the law provides to act as a compensation commission to assess and appraise the damages sustained by reason of the condemnation of certain specified rights in certain land described by Applicant, in its application filed in the above entitled matter, I hereby designate, select, and appoint as the members of said compensation commission required in this matter the following persons:

NAME	ADDRESS	QUALIFICATION
Ole Olson	Winterset	Licensed Real Estate Salesman or Broker
William Hunter	Earlham	
Jack Foster	Winterset	Knowledgeable of Property Values by Virtue of Occupation
Gail Leeper	Winterset	
Irvin Martens	Winterset - Alternate	
Darrell Daggett	Earlham	Agricultural
Raymond Clark	Booneville	

I further designate, select and appoint the above named _____ to act as Chairman of said commission.

TO THE SHERIFF OF MADISON COUNTY, IOWA: Attached hereto please find a duplicate of the Application for Condemnation in the above matter.

Dated at Des Moines, Iowa, this 26 day of February, 1979.

Gibson O. Holliday

Chief Judge of the 5th Judicial District, including Madison County

Filed in my office at Winterset, Iowa this 26 day of Feb, 1979.

Rep Reise

Sheriff of Madison County, Iowa

3

IN THE MATTER OF THE CONDEMNATION OF CERTAIN RIGHTS IN LAND BY THE IOWA POWER AND LIGHT COMPANY FOR RIGHT OF WAY FOR TRANSMISSION LINE LOCATED IN MADISON COUNTY, IOWA

OATH OF COMMISSIONERS

STATE OF IOWA)
) SS
MADISON County)

Each of the undersigned being duly sworn says:

That I do possess the qualifications listed under my name below, and
That I do not possess any interest in the proceeding which would cause me to render a biased decision and
That I will, to the best of my ability, faithfully and impartially assess the damages which owners, lienholders, encumbrancers and other persons interested in the land from which certain rights are sought to be appropriated by these proceedings will sustain by reason of the appropriation of the rights as set forth and described in the Application in the Office of the Sheriff for Condemnation of Transmission Line Right of Way and make a written report to the Sheriff as authorized and prescribed in Chapters 471, 472 and 489, Code of Iowa, and any amendments thereto, and will well and truly perform any and all other duties imposed upon me by law as a member of the compensation commission selected and appointed to assess said damages.

Farrell O'Brien
NAME:
Licensed Real Estate Salesman or Broker

William Smith
NAME:
Licensed Real Estate Salesman or Broker

John Foster
NAME:
Knowledgeable of Property Values by Virtue of Occupation

Gail L Jergon
NAME:
Knowledgeable of Property Values by Virtue of Occupation

Darrell Doggett
NAME:
Agricultural

Raymond Clark
NAME
Agricultural

Subscribed and sworn to before me this 7th day of March, 1979.

SEAL OF THE DISTRICT COURT IOWA

Ila L. Silverthorn, Deputy
~~(Notary Public)~~
(Clerk of Court) in and for said County and State

Filed in my office at Winterset, Iowa, this 7th day of March, 1979.

Rex Rouse
Rex Rouse
Sheriff of Madison County, Iowa

7

8

PARCEL 61-33

BEFORE THE SHERIFF OF MADISON COUNTY, IOWA

IN THE MATTER OF THE APPLICATION OF IOWA POWER AND LIGHT COMPANY FOR CONDEMNATION OF RIGHT OF WAY FOR TRANSMISSION LINE IN MADISON COUNTY, IOWA	))))	NO. _____ NOTICE OF HEARING BEFORE COMMISSIONERS

TO:

OWNER: Floyd Dudney and Janet Siddens Dudney 20
Lorimor,
Iowa 50149

Shirlee Ann Siddens — Route 1 Creston 616 N Vine
David Vernon Siddens — RR 2 Creston
LCW Don Carl Siddens
Lorimor, Iowa 50149

FEB 20 1979

HOLDERS OF LIENS OR ENCUMBRANCES

LIEN HOLDER: Madison County 21

and all other persons, companies, or corporations having any interest in or owning any of the following described real estate: See "Exhibit A" attached.

You are hereby notified that Iowa Power and Light Company, a corporation organized under the laws of the State of Iowa, with its principal place of business in the City of Des Moines, Polk County, Iowa, desires the condemnation of the following described easement in land: See "Exhibit B" attached.

That such condemnation is sought for the construction, operation and maintenance of a 345,000 volt electric transmission line and all necessary wires and equipment incident thereto, together with the permanent and perpetual right of ingress and egress on said easement to and from said property for the purpose of constructing, operating and maintaining said transmission line and associated wires and equipment incident to the operation and maintenance of said transmission line.

That a Commission has been appointed as provided by law for the purpose of appraising the damages which will be caused by said condemnation. That said Commissioners will, on March 7 1978 at 11:00 o'clock A.M., view said premises and proceed to appraise said damages, at which time you may appear before the Commissioners if you care to do so.

Keith D Hartje

Keith D. Hartje
P.O. Box 657, 666 Grand Avenue
Des Moines, Iowa 50303

B. A. Webster

B. A. Webster
GRAMBLE, RIEPE, BURT, WEBSTER & FLETCHER
2600 Ruan Center
Des Moines, Iowa 50309

ATTORNEYS FOR APPLICANT,
IOWA POWER AND LIGHT COMPANY

PARCEL NO. 61-33

EXHIBIT "A"

DESCRIPTION OF PROPERTY TO BE AFFECTED

The East 20 Acres of the Southeast Quarter (SE¼) of the Northeast Quarter (NE¼), the Northeast Quarter (NE¼) of the Southeast Quarter (SE¼), the West 26 acres of the East Half (E½) of the Southeast Quarter (SE¼) of the Southeast Quarter (SE¼), and all of the East Half (E½) of the Southeast Quarter (SE¼) of the Southeast Quarter (SE¼) lying north of the road in Section 27, the Southwest Quarter (SW¼) of the Northwest Quarter (NW¼) and the North 8 Acres of the Northwest Quarter (NW¼) of the Southwest Quarter (SW¼) of Section 26, all in Township 74 North, Range 28 West of the 5th P.M., Madison County, Iowa.

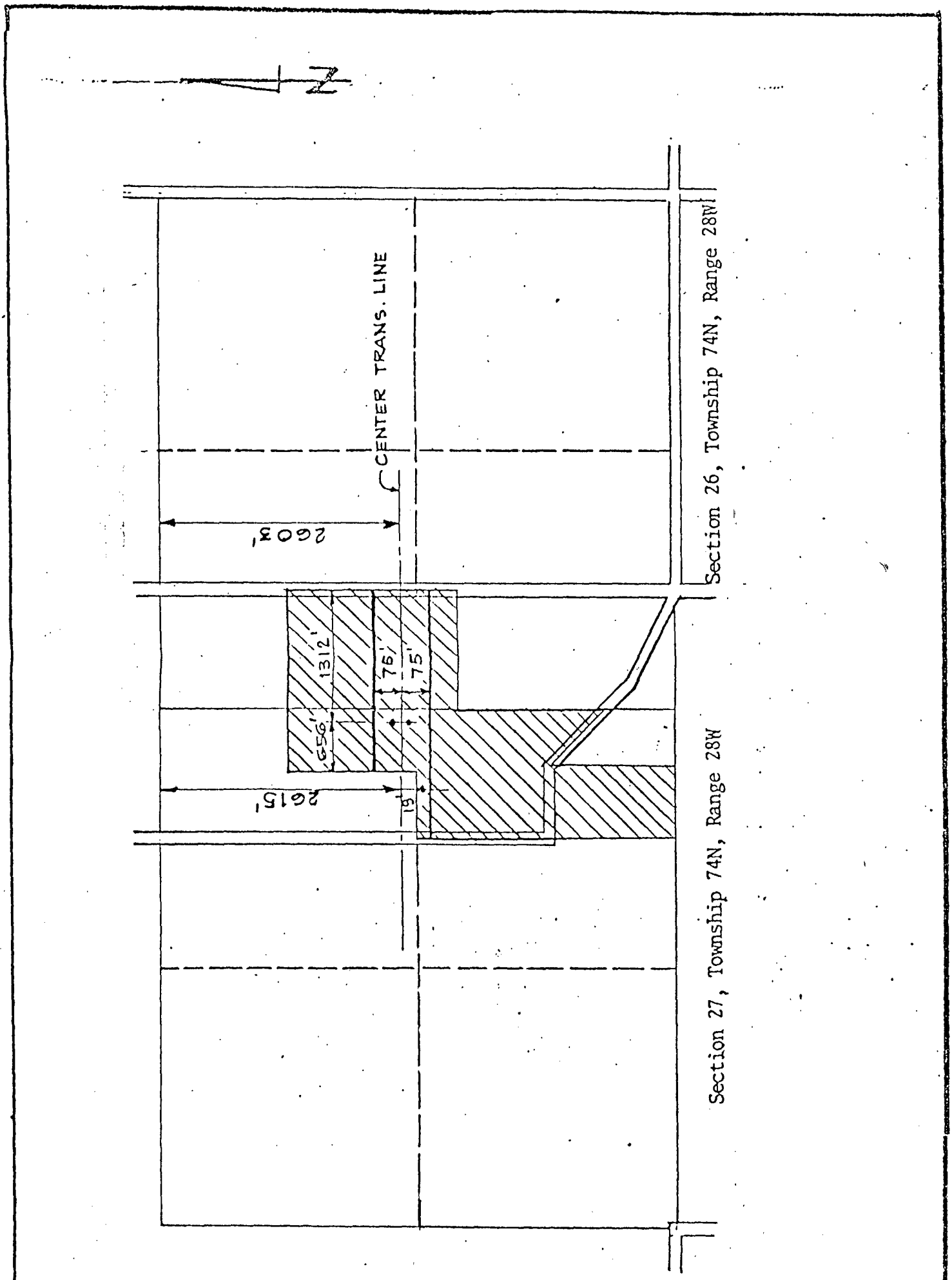
EXHIBIT B

DESCRIPTION OF SPECIFIC PROPERTY SOUGHT TO BE CONDEMNED

That part of a strip of land 150 feet in width which will fall across the East 20 Acres of the Southeast Quarter (SE¼) of the Northeast Quarter (NE¼) and Northeast Quarter (NE¼) of the Southeast Quarter (SE¼) of Section 27, the Southwest Quarter (SW¼) of the Northwest Quarter (NW¼) and North 8 Acres of the Northwest Quarter (NW¼) of the Southwest Quarter (SW¼) of Section 26, all in Township 74 North, Range 28 West of the 5th P.M., Madison County, Iowa, the centerline of said 150 foot wide strip being described as follows:

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This easement is limited to construction of one 345,000 volt electric transmission line across the above described property consisting of one 2-pole structure and associated conductors. (Maximum 400,000 volt).



IOWA POWER AND LIGHT COMPANY
345KV TRANSMISSION LINE

FLUOR PIONEER INC	REVISION	PROPERTY PLAT MADISON COUNTY	
DWN. BY J. Wil. G. 4-22-76			
CHECKED			PARCEL NO 61-33
APP'D			

OFFICERS RETURN OF SERVICE

STATE OF IOWA, Madison County, ss.

The attached notice with copy of Petition attached received this 20th day of February, 19 79, and I certify that I served the same on the defendants named below by delivering a copy thereof to each of said defendants personally at the time and place set opposite their respective name.

Name of Defendants	Month	Day	Year	Township	County	State
Floyd Dudney	February	20th	1979	Monroe	Madison	Iowa
Janet Siddens Dudney	February	20th	1979	Monroe	Madison	Iowa

Rex Rouse Sheriff

Madison County, Iowa

By _____, Deputy Sheriff

FEES

Service $_____

Copies $_____

Notary $_____

Mileage $_____

Total $_____

RETURN OF ORIGINAL NOTICE

STATE OF IOWA, MADISON County, ss.

The within notice came into my hands on the 20th day of February 19 79, and on the 20th day of February, 19 79, I served the same on Don Carl Siddens _____, by leaving a true copy thereof at the house of Don Carl Siddens, situated in the Township of Monroe Madison County, Iowa, the same being the usual place of residence of said defendent with Janet Siddens Dudney, a member of said defendant's family, with whom he resides, and over 18 years of age, the said defendant not being found within the County.

FEES

Service, $_____

Copies, $_____

Mileage, $_____

Total, $ _____

Rex Rouse
Rex Rouse
Sherriff of Madison County

By _____, Deputy

BBB

RETURN OF SERVICE — GOVERNMENTAL BODY

STATE OF IOWA, Madison County, ss.

The within Notice came into my hands on the 20th day of February, 19 79 and on the 21st day of February, 19 79, I served the same upon the Madison County by offering to read the same to George Abrahams, he being the Auditor of Madison County, Iowa of said Governmental Body, which he waived, and by giving him a true copy thereof, all done in Center Township, Madison County, Iowa.

FEES

Service - - - $_____

Copies - - - $_____

Mileage - - - $_____

Total - - - $_____

Rep Ronse, Sheriff

of Madison County

By _____ Deputy.

BOONE BLANK BOOK CO., BOONE, IOWA 1081-72

RETURN OF SERVICE OF ORIGINAL NOTICE

The State of Iowa, Union County, ss.

The within notice received this 21 day of February, 19 79, and I certify that I served the same on the defendants named below by delivering a copy thereof to each of said defendants personally at the time and place set opposite their respective names:

NAMES OF DEFENDANTS	MONTH	DAY	YEAR	CITY, TOWN OR TOWNSHIP	COUNTY	STATE
Dorothy Williams	2	24	79	Creston	Union	Iowa
Dick Williams					Union	Iowa
					Union	Iowa
					Union	Iowa
					Union	Iowa

FEES:

Service $ 3.00

Copies $ _____

Mileage $ 1.00

Total $ 4.00

Leonard Jim

Sheriff, Union County, Iowa

By Richard Johnson, Deputy

13

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PARCEL 61-33

BEFORE THE SHERIFF OF MADISON COUNTY, IOWA

IN THE MATTER OF THE APPLICATION OF IOWA POWER AND LIGHT COMPANY FOR CONDEMNATION OF RIGHT OF WAY FOR TRANSMISSION LINE IN MADISON COUNTY, IOWA	))))	NO. _____ NOTICE OF HEARING BEFORE COMMISSIONERS

TO:

OWNER: Floyd Dudney and Janet Siddens Dudney
Lorimor,
Iowa 50149

Shirlee Ann Siddens Tucker, 618 N. Vine, Creston, Iowa 50801
David Vernon Siddens , Route 2, Creston, Iowa 50801
Don Carl Siddens
Lorimor, Iowa 50149

HOLDERS OF LIENS OR ENCUMBRANCES

LIEN HOLDER: Madison County

RECEIVED
UNION COUNTY, IOWA
FEB 21 1979
DONALD LOY, SHERIFF

and all other persons, companies, or corporations having any interest in or owning any of the following described real estate: See "Exhibit A" attached.

You are hereby notified that Iowa Power and Light Company, a corporation organized under the laws of the State of Iowa, with its principal place of business in the City of Des Moines, Polk County, Iowa, desires the condemnation of the following described easement in land: See "Exhibit B" attached.

That such condemnation is sought for the construction, operation and maintenance of a 345,000 volt electric transmission line and all necessary wires and equipment incident thereto, together with the permanent and perpetual right of ingress and egress on said easement to and from said property for the purpose of constructing, operating and maintaining said transmission line and associated wires and equipment incident to the operation and maintenance of said transmission line.

That a Commission has been appointed as provided by law for the purpose of appraising the damages which will be caused by said condemnation. That said Commissioners will, on March 7 1978, at 11:00 o'clock A.M., view said premises and proceed to appraise said damages, at which time you may appear before the Commissioners if you care to do so.

Keith D Hartje

Keith D. Hartje
P.O. Box 657, 666 Grand Avenue
Des Moines, Iowa 50303

B. A. Webster

B. A. Webster
GRAMBLE, RIEPE, BURT, WEBSTER & FLETCHER
2600 Ruan Center
Des Moines, Iowa 50309

ATTORNEYS FOR APPLICANT,
IOWA POWER AND LIGHT COMPANY

PARCEL NO. 61-33

EXHIBIT "A"

DESCRIPTION OF PROPERTY TO BE AFFECTED

The East 20 Acres of the Southeast Quarter (SE¼) of the Northeast Quarter (NE¼), the Northeast Quarter (NE¼) of the Southeast Quarter (SE¼), the West 26 acres of the East Half (E½) of the Southeast Quarter (SE¼) of the Southeast Quarter (SE¼), and all of the East Half (E½) of the Southeast Quarter (SE¼) of the Southeast Quarter (SE¼) lying north of the road in Section 27, the Southwest Quarter (SW¼) of the Northwest Quarter (NW¼) and the North 8 Acres of the Northwest Quarter (NW¼) of the Southwest Quarter (SW¼) of Section 26, all in Township 74 North, Range 28 West of the 5th P.M., Madison County, Iowa.

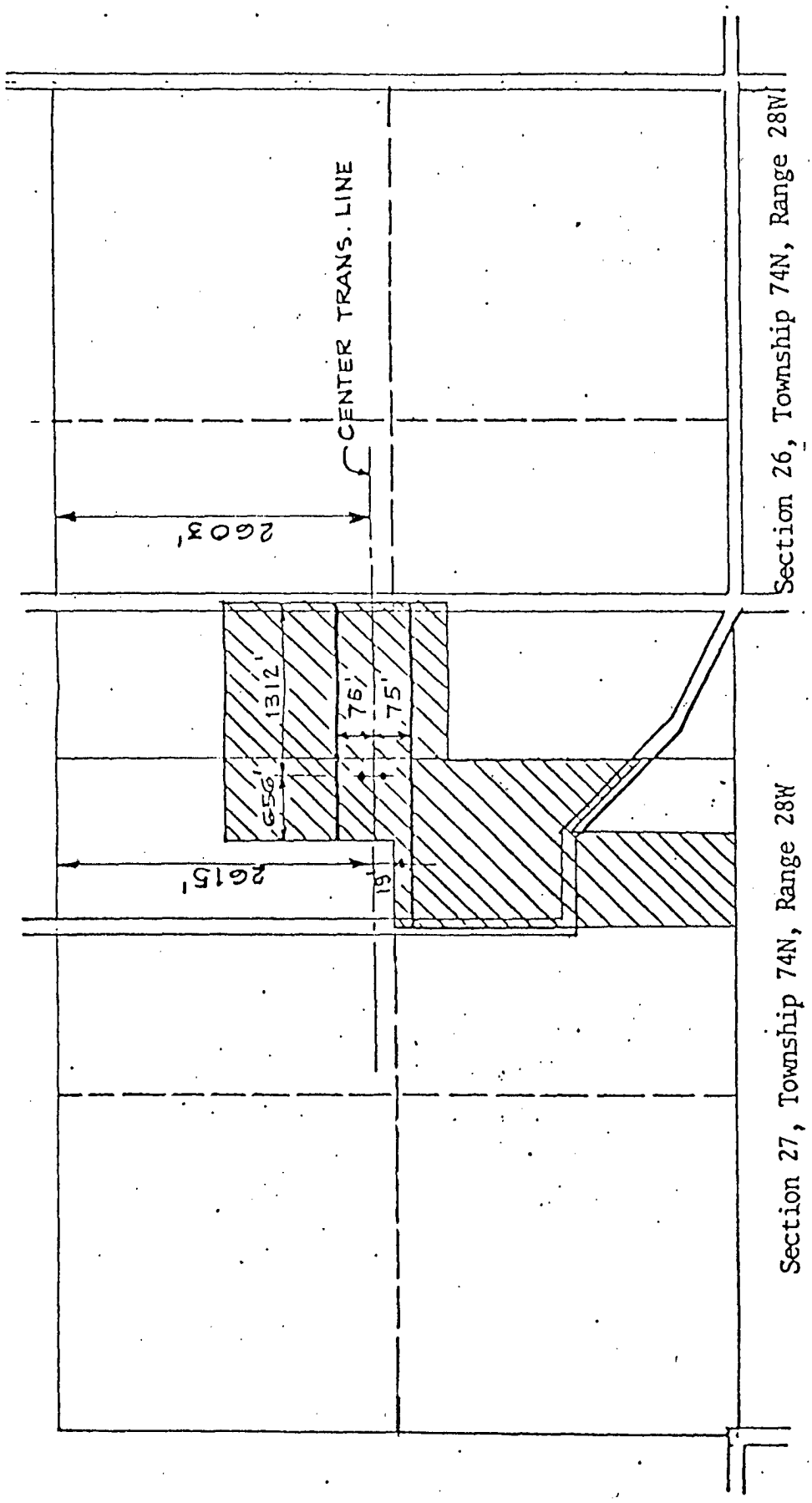
EXHIBIT B

DESCRIPTION OF SPECIFIC PROPERTY SOUGHT TO BE CONDEMNED

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Beginning at a point approximately 2,615 feet South of the Northwest corner of the East Half (E½) of the Northeast Quarter (NE¼) of said Section 27, thence East to a point on the East property line approximately 2,603 feet South of the Northeast corner of the West Half (W½) of the Northwest Quarter (NW¼) of said Section 26.

This easement is limited to construction of one 345,000 volt electric transmission line across the above described property consisting of one 2-pole structure and associated conductors. (Maximum 400,000 volt).



IOWA POWER AND LIGHT COMPANY
345KV TRANSMISSION LINE

FLUOR PIONEER INC	REVISION	PROPERTY PLAT MADISON COUNTY
DWN. BY J. Wil. G. 4-22-76		
CHECKED		PARCEL NO 61-33
APP'D		

18

BEFORE THE SHERIFF OF MADISON COUNTY, IOWA

IN THE MATTER OF THE APPLICATION OF IOWA POWER AND LIGHT COMPANY FOR CONDEMNATION OF RIGHT OF WAY FOR TRANSMISSION LINE IN MADISON COUNTY, IOWA	))))	NO. _____ NOTICE OF HEARING BEFORE COMMISSIONERS

TO:

OWNER: Floyd Dudney and Janet Siddens Dudney
Lorimor,
Iowa 50149

Shirlee Ann Siddens Tucker, 618 N. Vine, Creston, Iowa 50801
David Vernon Siddens , Route 2, Creston, Iowa 50801
Don Carl Siddens
Lorimor, Iowa 50149

HOLDERS OF LIENS OR ENCUMBRANCES

LIEN HOLDER: Madison County

7

RECEIVED
UNION COUNTY, IOWA
FEB 21 1979
DONALD LOW, SHERIFF

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That such condemnation is sought for the construction, operation and maintenance of a 345,000 volt electric transmission line and all necessary wires and equipment incident thereto, together with the permanent and perpetual right of ingress and egress on said easement to and from said property for the purpose of constructing, operating and maintaining said transmission line and associated wires and equipment incident to the operation and maintenance of said transmission line.

The State of Iowa
Union County } ss.

Return of Service of Original Notice

The within notice received this 21 day of February, 1979, and I certify that on the 24 day of February, 1979, I served the same on the defendant David Vernon Siddens at his dwelling house or usual place of abode in the City, Town or Township of Lincoln in Union County, State of Iowa, and which place was not a rooming house, hotel, club or apartment building, by there delivering a copy thereof to Diane Sidden a person residing therein who was then at least eighteen years old.

300 Co Dec
31 Mileage
510 Total Pd-Darling

Donald Low Sheriff
Official Title

By Richard Hawksworth Deputy

BOOKS BLANK BOOK CO., DUBUQUE, IOWA

That a Commission has been appointed as provided by law for the purpose of appraising the damages which will be caused by said condemnation. That said Commissioners will, on March 7 1978 at 11:00 o'clock A.M., view said premises and proceed to appraise said damages, at which time you may appear before the Commissioners if you care to do so.

Keith D Hartje

Keith D. Hartje
P.O. Box 657, 666 Grand Avenue
Des Moines, Iowa 50303

B. A. Webster

B. A. Webster
GRAMBLE, RIEPE, BURT, WEBSTER & FLETCHER
2600 Ruan Center
Des Moines, Iowa 50309

ATTORNEYS FOR APPLICANT,
IOWA POWER AND LIGHT COMPANY

PARCEL NO. 61-33

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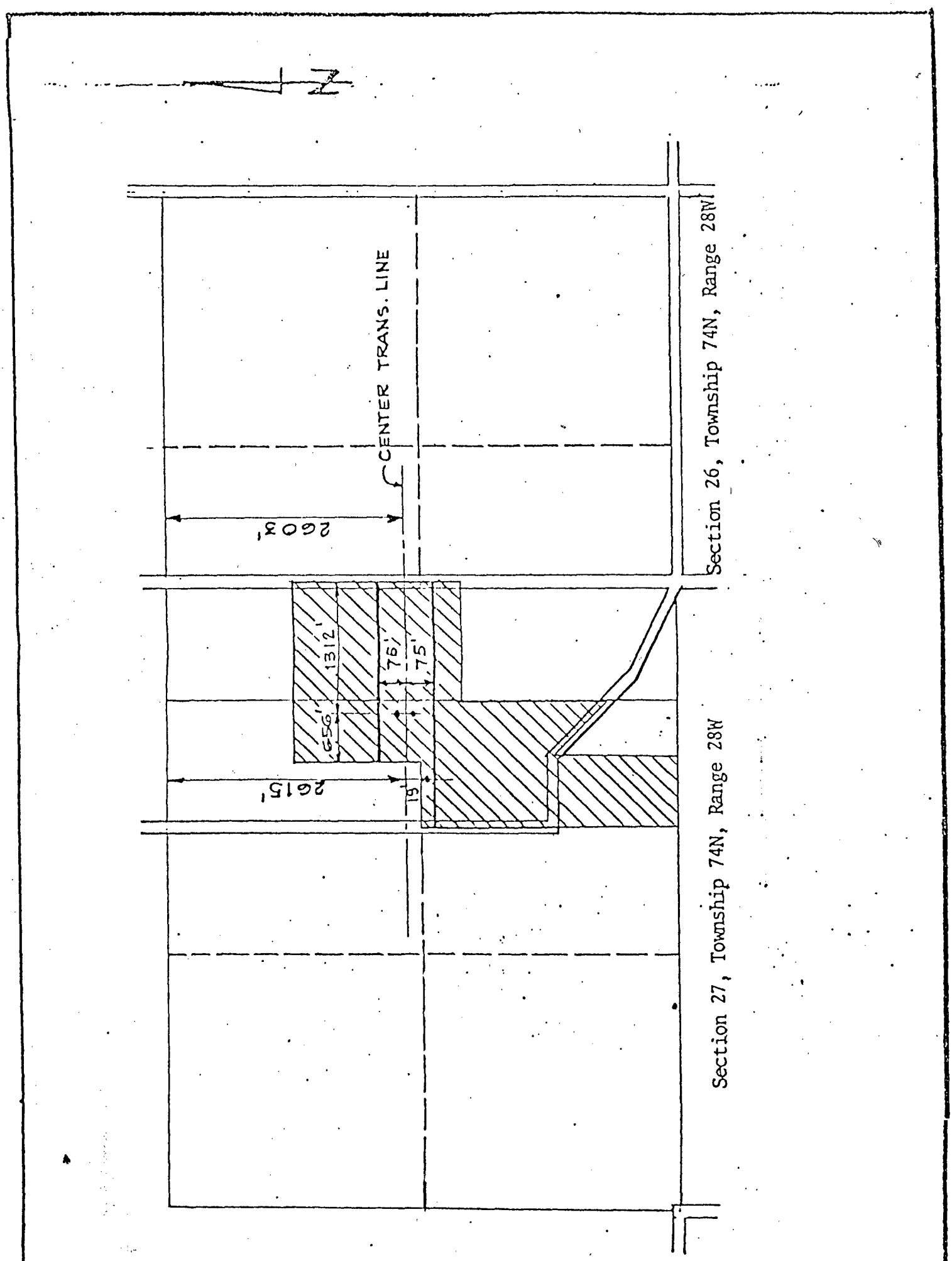
EXHIBIT B

DESCRIPTION OF SPECIFIC PROPERTY SOUGHT TO BE CONDEMNED

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IOWA POWER AND LIGHT COMPANY
345KV TRANSMISSION LINE

FLUOR PIONEER INC	REVISION	PROPERTY PLAT MADISON COUNTY
DWN. BY J. Vil. G. 4-22-76		
CHECKED		PARCEL NO 61-33
APP'D		

BEFORE THE CHIEF JUDGE OF THE FIFTH JUDICIAL DISTRICT

OF THE STATE OF IOWA

AND THE

SHERIFF OF MADISON COUNTY, IOWA

1979 MAR 29 AM 9:33
MARGARET MUELLER
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA
FILED

407

MAR 13 1979

IN THE MATTER OF THE APPLICATION OF IOWA POWER AND LIGHT COMPANY FOR CONDEMNATION OF RIGHT OF WAY FOR TRANSMISSION LINE IN MADISON COUNTY, IOWA) NO. _____

AMENDMENT TO APPLICATION FOR CONDEMNATION AND APPOINTMENT OF COMMISSION TO APPRAISE DAMAGES

TO: The Chief Judge of the Fifth Judicial District of the State of Iowa; and

The Sheriff of Madison County, Iowa

The Applicant, Iowa Power and Light Company, hereby amends its Application for Appointment of a Commission to appraise damages to real estate heretofore filed and in connection therewith Applicant states:

1. That on or about March 9, 1979 the Hon. M. J. V. Hayden, Judge of the Fifth Judicial District of the State of Iowa, filed a Ruling on Plaintiffs' Motion to Enlarge Findings of Fact and Conclusions of law in the matter of William H. Anstey, et al., Plaintiffs, vs. Iowa Commerce Commission, Defendant; Iowa Power and Light Company, et al., Intervenors on Behalf of Defendant; Henry C. Brandt, et al., Intervenors on Behalf of Plaintiffs, Equity No. CE 8-4686 in the Iowa District Court for Polk County; which Ruling modified to some extent the Iowa State Commerce Commission's Order granting the Applicant, Iowa Power and Light Company, the right of eminent domain and limiting such eminent domain in scope of duration as provided for in the applicable portions of §§ 478.19, 478.13 and 478.15 (Code of Iowa 1977).

2. That attached hereto and by this reference made a part hereof is a copy of the Ruling of Judge Hayden modifying the Order of the Commerce Commission attached to the Applicant's original Application filed herein.

B. A. Webster

GAMBLE, RIEPE, BURT, WEBSTER & DAVIS
2600 Ruan Center
Des Moines, Iowa 50309

Keith D. Hartje
666 Grand Avenue
P. O. Box 657
Des Moines, Iowa 50309

Gordon K. Darling
Darling & Chickering
53 Jefferson St.
Winterset, Iowa 50273

Attorneys for Applicant,
Iowa Power and Light Company

IN THE DISTRICT COURT OF IOWA, IN AND FOR POLK COUNTY

WILLIAM H. ANSTEY, et al, Plaintiffs, vs. IOWA STATE COMMERCE COMMISSION, Defendant.	EQUITY NO. CE 8-4686
IOWA POWER & LIGHT COMPANY, et al, Intervenors on Behalf of Defendant HENRY C. BRANDT, et al, Intervenors on Behalf of Plaintiffs.	Filed March 9, 1979

RULING ON PLAINTIFFS AND INTERVENORS ON BEHALF OF PLAINTIFFS' MOTION FOR NEW TRIAL

The proceedings before the Court herein came on by way of judicial review of an agency action in accordance with Section 17A.19(Code), wherein Plaintiffs and Intervenors on Behalf of Plaintiffs have sought judicial review in the Polk County District Court of the Iowa State Commerce Commission's decision after hearing filed before said Commission on the Iowa Power & Light Company, et al, Petition for Franchise, per Chapter 489(1975 Code) now Chapter 478 (1977 Code). The Court notes that the judicial review of an agency action does not constitute a trial as contemplated by IRCP 244 (Code).

Section 17A.19(7)(Code) recites as follows:

> " . . . In proceedings for judicial review of agency action in a contested case, however, a Court shall not itself hear any further evidence with respect to those issues of fact whose determination was entrusted by constitution or statute to the agency in that contested case proceeding. . . ."

The Legislature by this enactment has not granted the reviewing Court authority to hear any further evidence with respect to those issues of fact whose determination was entrusted to the Iowa State Commerce Commission by constitution or statute in the contested case proceedings on review before the Court. Therefore, a trial thereon is precluded in District Court. The proceedings before the Court being not in the nature of a trial, but rather a judicial review of an agency action, the Motion for New Trial does not properly lie before the Court as a viable remedy by Plaintiffs and Intervenors on behalf of Plaintiffs and is hereby dismissed. Plaintiffs and Intervenors on Behalf of Plaintiffs' remedy appears to be specifically governed by Section 17A.20(Code):

> "APPEALS. An aggrieved or adversely affected party to the judicial review proceeding may obtain a review of any final judgment of the District Court under this Chapter by appeal to the Supreme Court. The appeal shall be taken as in other civil cases, although the appeal may be taken regardless of the amount involved."

RULING ON PLAINTIFFS AND INTERVENORS ON BEHALF OF PLAINTIFFS' MOTION FOR STAY PENDING APPLICATION FOR NEW TRIAL UNDER IRCP 246

In view of the Court's Ruling and disposition of the Plaintiffs and Intervenors on Behalf of Plaintiffs' Motion for New Trial, the Motion for Stay is hereby overruled and denied. See IRCP 246 (Code).

RULING ON THE TWO MOTIONS OF PLAINTIFFS AND INTERVENORS ON BEHALF OF PLAINTIFFS' TO ENLARGE FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has found and ruled in its Order dated February 15, 1979, that the Commission's findings are supported by substantial evidence in the record. The Court now clarifies this that the Commission's findings in this contested case are supported by substantial evidence in the record made before that agency when that record is viewed as a whole. The matters and issues presented in these

two Motions for the Court to expand and enlarge upon are matters and issues which have been considered by the Court in its Order of February 15, 1979, or findings and orders of the Commission which were reviewed and affirmed by the Court, save and except the issue of whether the Iowa State Commerce Commission has exceeded its statutory authority in granting unto the power companies a perpetual easement over which to construct and maintain an electrical power transmission line when the duration of the franchise or privilege is limited to a period of twenty-five years. See Section 478.9 (Code).

In the case of Race vs. Iowa Electric Light & Power Co., 257 Iowa 701, 707, 708, 134 NW 2d 335 (Iowa 1965), the Supreme Court stated:

> "The purpose of Chapter 489 is to confer jurisdiction on the Commerce Commission to determine the necessity of taking the particular property for the proposed use. The legality of the determination of the Commission may be tested on this type of action. Vittetoe vs. Iowa Southern Utilities Co., 255 Iowa 805, 123 NW 2d 878. However, this issue is not tried de novo. The Commission is a tribunal set up by the Legislature for the purpose of determining the public use, the necessity of such use, and the land, and the amount thereof to be taken for it.
>
> If the evidence before the Commission is sufficient to support the granting of the franchise as granted, and the Commission had not acted arbitrarily, capriciously, in bad faith or fraudulently, its determination is not subject to review by the Courts. . . ."

At page 708 the Supreme Court went on to say:

> "That Findings of Fact are broadly and liberally construed rather than narrowly or technically. They are construed to uphold rather than defeat the Order made, effect is given to what is implied as well as stated. . . ."

The Court having found and ruled that there was substantial evidence upon which the Commission made its findings and determination as to the granting of the franchise herein, the Commission is also authorized and empowered to grant power of condemnation as it may approve and find necessary for public use to the holder of the franchise.

As to the precise and narrow issue presented to the Court in this judicial review of agency action, to-wit: has the Iowa State Commerce Commission exceeded its statutory authority in granting unto the power companies a perpetual easement over the lands in question to construct and maintain an electrical power transmission line when the duration of the franchise or privilege is limited to a period of twenty-five years by statute, the Court finds it necessary to construe the applicable portions of Sections 478.6, 478.9, 478.13 and 478.15 (Code) as the Court has been unable to find any case authority, and none have been cited by the parties, as authority on this question.

Section 478.6 (Code) TAKING UNDER EMINANT DOMAIN:

> ". . .when the Commission grants a franchise to any person, company, or corporation for the construction, erection, maintenance, and operation of transmission lines, wires, and cables for the transmission of electricity, such person, company, or corporation shall be vested with the power of condemnation to such extent as the Commission may prove and find necessary for public use."

Section 478.9 (Code) EXCLUSIVE RIGHTS-DURATION OF FRANCHISE:

> ". . .and no franchise or privilege shall ever be granted for any such purpose for a longer period than twenty-five years."

Section 478.13 (Code) EXTENSION OF FRANCHISE-PUBLIC NOTICE:

> "Any person, firm, or corporation owning a franchise granted under this chapter or previously existing law, desiring to aquire extensions of such franchise, may petition the Commission in the manner provided for the granting of a franchise and the same proceeding shall be had as on an original application, including the assessing of costs provided by Section 478.4 . . ." "Such petition shall be accompanied by the written consent of the applicant that the provisions of all laws relating to public utilities, franchises, and transmission lines, or to the regulation, supervision, or control thereof which are then in force or which may be thereafter enacted shall apply to its existing line or lines, franchises, and rights with the same force and effect as if such franchises had been granted or such lines had been construed or rights had been obtained under the provisions of this chapter."

Section 478.15 (Code) EMINANT DOMAIN-PROCEDURE-ENTERING ON LAND-REVERSION ON NON-USE, at the fourth paragraph which reads in part as follows:

> "If an electric transmission line right-of-way, or any part thereof, is wholly abandoned for public utility purposes by the relocation of the transmission lines, is not used or operated for a period of five years, or if its construction has been commenced and work ceased and has not in good faith been resumed for five years, the right-of-way shall revert to the person or persons who, at the time of the abandonment or reversion, are the owners of the tract from which such right-of-way was taken."

The Court finds and rules that the power companies' power of condemnation by way of right of eminant domain granted by the Iowa State Commerce Commission per authority granted by Section 478.6 (Code) by necessity must coincide and be commensorate with the franchise or privilege granted for such purpose not to exceed twenty-five years in duration per Section 478.9 (Code). The Iowa Legislature has not given the Iowa State Commerce Commission,by way of expressed statute or clear implication, authority to grant a perpetual easement to the power companies when the franchise or privilege for such purpose shall not be longer than a period of twenty-five years.

In the event a franchise is extended by the Iowa State Commerce Commission pursuant to Section 478.13 (Code), the easement therefore would correspondingly be extended. If the franchise was not renewed, the easement therefore would terminate.

In addition, in the event any of the conditions as set forth in Section 478.15 (Code), supra, should occur, the easement would terminate and the right-of-way would revert to the person or persons who at the time are the owners of the tract from which such right-of-way was taken.

The Legislature, in its wisdom, has protected the property owners against an easement in perpetuity over and across their lands. The Iowa State Commerce Commission has exceeded its statutory authority upon granting unto the power companies by way of right of eminant domain to condemn the tracts of land for the perpetual easement for the franchise, but rather that same is limited by the provisions of Section 478.9, 478.13 and 478.15.

AUTHORITY: Browneller v. Natural Gas Pipeline Company of America, 233 Iowa 686, 8 NW 2d 474, Iowa (1943):

> "It is true that in considering the power of eminant domain the courts have uniformly held that such power derogatory to private rights is to be strictly construed and is not to be extended or broadened by judicial construction. . ."

Section 17A.19, JUDICIAL REVIEW (Code):

> "Except as expressly provided otherwise by another statute referring to this chapter by name, the judicial review provisions of this chapter shall be the exclusive means by which a person or party who is aggrieved or adversely affected by agency action may seek judicial review of such agency action. However, nothing in this chapter shall abridge or deny to any person or party who is aggrieved or adversely affected by an agency action the right to seek relief from such action in the courts."

> "(8). The Court may affirm the agency action or remand to the agency for further proceedings. The Court shall reverse, modify, or grant any other appropriate relief from the agency action, equitable or legal and including declaratory relief, if substantial rights of petitioner have been prejudiced because the agency action is . . .
>
> (b) In excess of statutory authority of the agency. . ."

The Iowa State Commerce Commission's Order wherein it granted unto the power companies right of eminant domain to condemn for a perpetual easement is hereby modified in that said easement shall not be perpetual, but shall be limited in scope of duration as provided for in the applicable portions of Sections 478.9, 478.13 and 478.15 (Code).

To the extent that the Court's Order on Judicial Review affirming agency action filed herein on the 15th day of February, 1979, is inconsistant or in conflict with the Ruling on the Two Motions of Plaintiffs and Intervenors on Behalf of Plaintiffs' to Enlarge Findings of Fact and Conclusions of Law, the same is hereby vacated and shall be of no force or effect.

Dated this 9th day of March, 1979, at Des Moines, Polk County, Iowa.

M J V Hayden
JUDGE, FIFTH JUDICIAL DISTRICT IOWA

IN THE DISTRICT COURT OF THE STATE OF IOWA IN AND FOR MADISON COUNTY

IN THE MATTER OF THE APPLICATION OF IOWA POWER AND LIGHT COMPANY FOR CONDEMNATION OF RIGHT OF WAY FOR TRANSMISSION LINE IN MADISON COUNTY, IOWA

AFFIDAVIT OF FINAL OFFER

STATE OF IOWA)
) SS.
COUNTY OF POLK)

I, E. L. Birdsall, being first duly sworn, on oath depose and state that on the 23rd day of February, 19 79, as agent and representative of Iowa Power and Light Company, I delivered to the following named persons, ~~to wit:~~ by regular mail, to wit:

Floyd Dudney and Janet Siddens Dudney
Lorimor, Iowa 50149

Shirlee Ann Siddens
David Vernon Siddens
Don Carl Siddens
Lorimor, Iowa 50149

a duplicate original of the "Final Offer to Acquire Easement", a true copy of which is attached hereto, marked Exhibit A, and by this reference made a part hereof.

Dated this 23rd day of February, 19 79.

E. L. Birdsall

Subscribed and sworn to before me by E. L. Birdsall this 23rd day of February, 19 79.

NOTARIAL SEAL IOWA
LLOYD C. McLAUGHLIN
MY COMMISSION EXPIRES
September 30, 1979

Lloyd C. McLaughlin

Notary Public in and for IOWA

IOWA POWER
666 Grand Avenue / P.O. Box 657
Des Moines, Iowa 50303

FINAL OFFER TO ACQUIRE EASEMENT

February 23, 1979

Floyd Dudney and Janet Siddens Dudney
Lorimor, Iowa 50149

Shirlee Ann Siddens
David Vernon Siddens
Don Carl Siddens

Lorimor, Iowa 50149

Pursuant to Chapter 472, entitled Procedures Under Power of Eminent Domain, Code of Iowa, Iowa Power and Light Company hereby makes its final offer to pay you the total lump sum of $ 6,984.00 in consideration of your execution, acknowledgement and delivery of a 345,000 volt electric transmission line easement in substance and form as, and across real estate described in, the "Transmission Line Easement" attached hereto, marked Exhibit "A", and made a part hereof. Such offer does not include construction damage to crops, tile or similar property which will be paid after construction when such damage can be ascertained.

If you wish to accept this offer, please call Iowa Power and Light Company collect at the following telephone number: 1-515-281-2713. If a voluntary easement is not acquired by the Company for this parcel, condemnation proceedings will be initiated.

A plat showing the proposed transmission line easement on your property is enclosed for your information.

Yours very truly,

E. L. Birdsall
Vice President

Enclosure

Parcel 61-33

Parcel No. 61-33

Job No.

Draft No.

EXHIBIT "A"

County Madison

Township 74 North

Range 28 West of the 5th P.M.

Section 27

TRANSMISSION LINE EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

The undersigned Owners, Floyd Dudney and Janet Siddens Dudney Shirlee Ann Siddens, David Vernon Siddens, Don Carl Siddens

and the undersigned Tenant, _____

(hereinafter called the Grantor(s), in consideration of the sum of One Dollar and other valuable considerations in hand paid, do hereby grant to Iowa Power and Light Company, an Iowa Corporation, (hereinafter called the Grantee,) the perpetual right and easement to construct, reconstruct, repair, maintain, operate, inspect, patrol and remove a line of towers or poles for the transmission and supply of electric current, with wires and cables upon and from the same and all necessary foundations, anchors, guys, braces, fittings, equipment and apurtenances including a buried ground wire, and such culverts, bridges, and ways of access as may be reasonably necessary for the convienent construction, reconstruction, repair, maintenance, operation, inspection, patrolling and removal of said line over, along, across and under the following described property situated in Madison County, Iowa, to-wit:

That part of a strip of land 150 feet in width which will fall across the East 20 Acres of the Southeast Quarter (SE¼) of the Northeast Quarter (NE¼) and Northeast Quarter (NE¼) of the Southeast Quarter (SE¼) of Section 27, the Southwest Quarter (SW¼) of the Northwest Quarter (NW¼) and North 8 Acres of the Northwest Quarter (NW¼) of the Southwest Quarter (SW¼) of Section 26, all in Township 74 North, Range 28 West of the 5th P.M., Madison County, Iowa, the centerline of said 150 foot wide strip being described as follows:

Beginning at a point approximately 2,615 feet South of the Northwest corner of the East Half (E½) of the Northeast Quarter (NE¼) of said Section 27, thence East to a point on the East property line approximately 2,603 feet South of the Northeast corner of the West Half (W½) of the Northwest Quarter (NW¼) of said Section 26.

This easement is limited to construction of one 345,000 volt electric transmission line across the above described property consisting of one 2-pole structure and associated conductors. (Maximum 400,000 volt).

The Grantor(s) warrants and covenants unto Grantee that, subject to liens and encumbrances of record at the date of this easement, it is the owner of the above described land and has full right and authority to validly grant this easement, and that Grantee may quietly enjoy the premises.

Grantee is given the right to trim, cut and clear away any trees, limbs and brush, whether located on the above described easement property or adjacent to and overhanging the same, and the right to remove from the above described easement property any obstruction, including buildings, inflammable materials, brush, structures of any kind or other obstructions wherever in its judgment such will interfere with or endanger the construction, operation or maintenance of said line, and to renew, replace, and to otherwise change the lines and any part thereof and all appurtenances thereto and the location thereof within the easement property; and to pass along the easement property to and from adjoining lands and to have reasonable access to said property from Grantor's adjoining lands. The Grantee may erect and use gates in all fences which cross or which shall hereafter cross the route of said line.

In consideration of such grant, Grantee agrees that it will repair or pay for any damage which may be caused to crops, fences or other property of the undersigned by the construction, operation, maintenance, inspection, patrolling or removal of said line. Grantor(s) covenants that no act will be permitted within the easement property which is inconsistent with the rights hereby granted; that no building or structures will be erected upon said property and that the present grade or ground level thereof will not be changed by excavation or filling.

Grantee, its contractor or agents, may enter said premises for the purpose of making surveys and preliminary estimates immediately upon the execution of this easement but the easement shall not otherwise be operative nor shall construction begin until a franchise for the line is issued by the Iowa State Commerce Commission and until the full consideration is paid as hereinafter provided.

The Grantor(s) acknowledges payment of $ _____ hereunder and it is agreed that if the additional sum of $ _____ is paid the undersigned Grantor(s) within one year from the date hereof, or the release of this easement from any liens or encumbrances of record, whichever date is later, this agreement shall become binding upon all parties hereto but shall terminate upon the permanent removal or abandonment of all lines and appurtenances of Grantee upon the easement property. If the additional amount of consideration is not paid within the time stated above, then the initial payment shall be forfeited to the Grantor(s) and both parties shall be released from all further obligation hereunder. The parties hereto agree that all payment made by virtue of this agreement shall be paid to _____ of _____ as agent for the Grantor(s).

This agreement shall run with the land and bind and inure to the benefit of the heirs, successors and assigns of the parties.

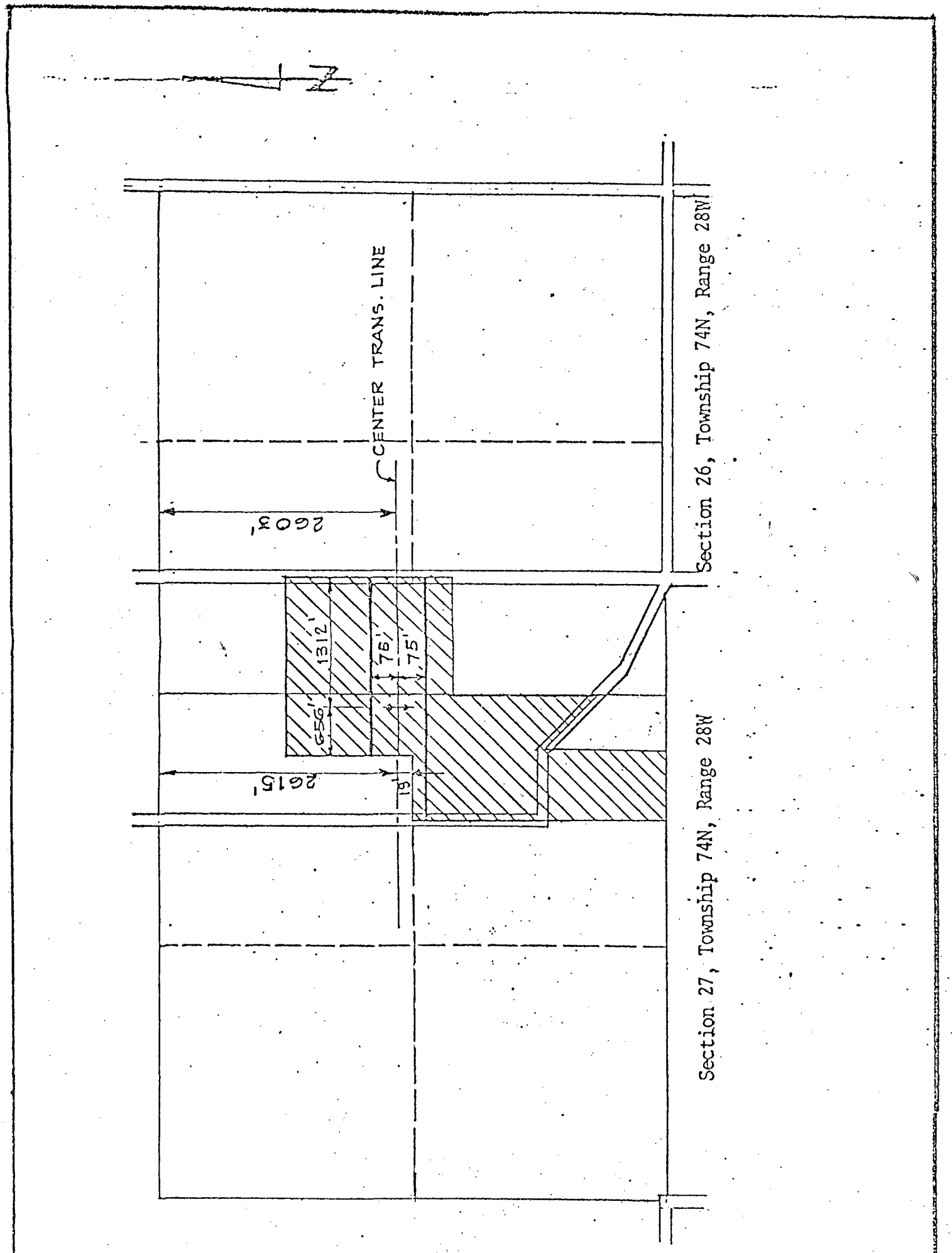
Dated this _____ day of _____, 19 _____.

_____ _____

_____ _____

_____ _____

_____ _____



IOWA POWER AND LIGHT COMPANY
345KV TRANSMISSION LINE

FLUOR PIONEER INC	REVISION	PROPERTY PLAT MADISON COUNTY	
DWN. BY J. W. G. 4-22-76			
CHECKED			PARCEL NO 61-33
APP'D			

BEFORE THE SHERIFF OF MADISON COUNTY, IOWA

FILED
1979 MAR 21 AM 11:15
MARGARET WHEELER
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

IN THE MATTER OF THE APPLICATION OF IOWA POWER AND LIGHT COMPANY FOR CONDEMNATION OF RIGHT OF WAY FOR TRANSMISSION LINE IN MADISON COUNTY, IOWA	* * * * * * * *	NO. REPORT OF COMPENSATION COMMISSION

TO: Floyd Dudney, Janet Siddens Dudney, Shirlee Ann Siddens, David Vernon Siddens, Don Carl Siddens

We, the undersigned, being the duly appointed and qualified Commissioners appointed to inspect the agricultural land described in Iowa Power and Light Company's Application herein, and to assess the damages sustained by the respective owners, lien holders, encumbrancers, and other persons interested in the premises affected by the appropriation or condemnation of the real estate described in said Application for the construction, operation and maintenance of a 345,000 volt electric transmission line to be located on a strip of land as specifically described in said Application, do hereby make report as follows:

That we proceeeded to view the respective premises at the time fixed in the Notices to the persons interested in the parcel numbers hereinafter mentioned, which parcel numbers in this report correspond with the parcel numbers in the said Application, and do hereby assess the damages sustained by the respective persons interested in said lands as follows, all of which is respectfully submitted:

PARCEL NO. 61-33

OWNERS: Floyd Dudney and Janet Siddens Dudney
Lorimor, Iowa 50149

Shirlee Ann Siddens
David Vernon Siddens
Don Carl Siddens
Lorimor, Iowa 50149

AWARD: $12,575.00 for damages, including consequential damages, to owners.

ATTORNEY FEES AND COSTS: $510.00

I hereby certify this to be a true and correct copy of the original instrument on file in my office
Peg Rouse
PEG ROUSE, DEPUTY
MADISON COUNTY, IOWA

MAR 20 1979

35

Dated March 9, 1979.

John Foster

Gail Hodges

Raymond Clark

William Hunter

J. O. Danger Jr.

Lowell L. Bloom Chrwin

I, the undersigned, Sheriff of Madison County, Iowa hereby endorse and certify to the attached Report of Compensation Commission; that I have mailed by ordinary mail on 3-10, 1979, a copy of said Report of Compensation Commission together with a Notice of Appraisement of Damages and Time for Appeal to each of the persons designated thereon.

Rep Reise

Sheriff of Madison County, Iowa

PARCEL 61-33

BEOFRE THE SHERIFF OF MADISON COUNTY, IOWA

IN THE MATTER OF THE APPLICATION OF IOWA POWER AND LIGHT COMPANY FOR CONDEMNATION OF RIGHT OF WAY FOR TRANSMISSION LINE IN MADISON COUNTY, IOWA	*	NO. 61-33 NOTICE OF APPRAISEMENT OF DAMAGES AND TIME FOR APPEAL

TO: **Floyd Dudney and Janet Siddens Dudney**
Shirlee Ann Siddens; David Vernon Siddens; Don Carl Siddens

OWNERS: Floyd Dudney and Janet Siddens Dudney
Lorimor, Iowa 50149

Shirlee Ann Siddens
David Vernon Siddens
Don Carl Siddens
Lorimor, Iowa 50149

You and each of you are hereby notified that the duly appointed and qualified commissioners assessed and appraised the damages sustained by you by reason of the condemnation as set out upon the attached report of Compensation Commission, and that pursuant to Section 472.18 of the Code of Iowa, as amended by House File 215, Acts of the 64th General Assembly, you may within thirty (30) days from the date of mailing of this Notice, appeal to the District Court as by law provided.

Roy Rouse

Sheriff of MADISON
County, Iowa

Date Mailed: 3-10-79

MADISON COUNTY SHERIFF'S CERTIFICATION OF COSTS

FILED
1979 APR 29 AM 9:33
MARGARET WILSON
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

I further certify that costs incident to this proceeding, Iowa Power and Light condemnations held March 7, 8, 9 and 12, 1979 have been taxed as follows:

SHERIFF FEES:	Fee	Postage	Mileage	Total
Sheriff serving notices	185.00		47.70	$232.70
Summoning Commissioners		1.20	3.60	4.80
Sheriff attending Commissioners	120.00		26.70	146.70
Mail Award Notices		6.75		6.75
Copy fees	10.00			10.00
	$315.00	7.95	$78.00	$400.95

COMMISSIONERS EXPENSES:		
Lowell Olson, Chairman		
4 days service, mileage and meals		214.62
Gail Leeper		
4 days service, mileage and meals		216.58
William Hunter		
4 days service, mileage and meals		243.10
Raymond Clark		
4 days service, mileage and meals		251.50
Darrell Daggett		
4 days service, mileage and meals		235.90
John Foster		
4 days service, mileage and meals		216.50
	TOTAL	$1,378.20

DAMAGES AWARDED:	
Arthur Knutson and Karen V. Knutson (61-19)	$14,555.00
Attorney John Casper	590.00
61-22	
Robert M. Berry and Catherine E. Berry	15,425.00
Attorney Gary Kimes	500.00
61-26	
Robert M. Berry and Catherine E. Berry	7,388.00
61-29	
Roy H. Maass and Judith L. Maass	2,690.00
Tenants - Gail McKinney and Gail McKinney II	100.00
Attorney Gerald Olivier	350.00
61-30	
Roy H. Maass and Judith L. Maass	11,135.00
Tenants - Gail McKinney and Gail McKinney II	100.00
61-33	
Floyd Dudney and Janet Siddens Dudney; shirlee Ann Siddens David Vernon Siddens and Don Carl Siddens	12,575.00
Attorney - John Casper	510.00
61-41	
Benjamin F. Kirk and Virginia C. Kirk	15,497.00
Attorney - Larry VanWerden	500.00
61-43	
Benjamin F. Kirk and Virginia C. Kirk	5,639.00
61-54	
Russel D. Richards and Joan C. Richards	65,386.00
Attorney - Gary Kimes	900.00
61-78	
Richard G. Tracy	8,120.00
Attorney - Dean Nelson	500.00
61-87	
Florence E. Frey	12,972.00
Tenants - Albert H. Frey and Ruth M. Frey	200.00
61-88	
Albert H. Frey and Ruth M. Frey	8,120.00
Tenant - Rod Jones	200.00
61-89	
Carl J. Bek	16,306.00
Tenant - Nick Bek	200.00
Attorney - Gary Kimes	500.00
61-92	
Frances Mary Bradley and Albert E. Bradley	3,975.00
Tenant - Lew Wildin	50.00
Attorney - Gary Kimes	225.00

61-95	
George Kinnaird and Marjorie Kinnaird	18,480.00
Attorney - Chester Bentz	250.00
61-96	
Vernon Goodwin and Hazel Goodwin	20,853.00
Attorney - John Casper	200.00
61-97	
Harold Seward and Kathryn S. Seward	12,415.00
Attorney - John Casper	200.00
61-100	
Peter J. Cunningham and Ruth M. Cunningham	42,100.00
Tenants - Kenneth Tuttle and Patricia Tuttle	50.00
61-103	
Joan M. Hardy and Raymond J. Hardy	17,820.00
Attorney - Lewis Jordan	500.00
61-109	
John J. Kiernan and Alice E. Kiernan	30,654.00
Tenants - Gary Kiernan and Joan A. Kiernan	200.00
Attorney - John Casper	200.00
61-119	
Forrest L. Ridgway, Sandra Kay Ridgway, Yvonne Friestad, Lewis Friestad, Jr.	8,135.00
Tennants - Don Waller and Connie Waller	200.00
Attorney - Lewis Jordan	350.00
TOTAL OF AWARDS	$357,815.00

RECAPITULATION

TOTAL SHERIFF COSTS	$400.95
TOTAL COMMISSIONER EXPENSES	$1,378.20
TOTAL DAMAGES AWARDED	$357,815.00
GRAND TOTAL	$359,594.15

Note: Costs for out-of-county services of notices previously paid by IPALCO.

Certified a true statement of condemnation awards and expenses in connection with: "In the Matter of the Application of Iowa Power and Light Company for Condemnation of Right of Way for Transmission Line in Madison County, Iowa" and the Original Copies thereof on this 12th day of March, 1979.

Rex Rouse

Rex Rouse, Sheriff
Madison County, Ia.

EXHIBIT "A"

MARGARET L. MILLER
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA
1979 MAR 29 AM 9:34

C E R T I F I C A T I O N

IOWA STATE

COMMERCE COMMISSION

I, Dean A. Briley, Secretary of the Iowa State Commerce Commission, certify that attached hereto is a true and correct copy of Franchise No. 14897 Docket No. E- 18586 granted by the Commission on the 30th day of December 1977 to the Iowa Power and Light Company, Des Moines, Iowa, for the construction, operation and maintenance of an electric transmission line in Madison County.

IN TESTIMONY WHEREOF, witness my signature and the seal of the Commission at Des Moines, Iowa, this 30th day of December 1977.

Dean A. Briley
Secretary
IOWA STATE COMMERCE COMMISSION

9

Docket No. E-18586
Franchise No.14897

FRANCHISE

WHEREAS, on the 24th day of March , 1977, the Iowa Power and Light Company, Des Moines, Iowa, which is authorized to transact business in The State of Iowa, filed a petition with the Iowa State Commerce Commission, for franchise to erect, maintain and operate 39.5 miles of 400,000 volt transmission line as provided in and under the provisions of Chapter 478, Code of Iowa 1977. Upon notice in accordance with the provisions of the said statute, the Commission found that the application should be granted and that a franchise should be issued to applicant.

Pursuant to the order of this Commission and pursuant to the provisions of the said Chapter 478, this franchise is issued and permission and authority thereunder are hereby granted unto the above named applicant to erect, maintain and operate a transmission line on routing as specifically described herein for the transmission, distribution, use and sale of electric current outside of cities and towns, and for such purpose to erect, use and maintain poles, wires, guy wires, towers, cables, conduits and other fixtures and appliances necessary for conducting electric current for light, heat and power, over, along and across any public lands, highways, streams, or the lands of any person, company or corporation, and to acquire necessary interest in real estate for such purposes, on and along the route particularly described to-wit:

SEE ATTACHED

FILED NO. 371
BOOK 113 PAGE 41
1979 AUG 27 PM 3:03
MARY E. WELTY
RECORDER
MADISON COUNTY, IOWA

This franchise is granted and issued for a period of twenty-five years from and after the date hereof unless sooner revoked, modified or terminated as provided by law, and it is expressly stated herein that this franchise shall be subject to and governed by all the provisions, conditions and requirements of Chapter 478, Code of Iowa 1977 and by all of the provisions, rules and regulations of the Iowa State Commerce Commission, insofar as the same may be applicable. Provided, however, should the facilities herein authorized not be built in whole or in part within two years from the date hereof, this franchise shall be void, and of no further force or effect, unless extended by Order of this Commission.

During the period of time this franchise is in force the use of the right of eminent domain is not necessary and therefore not included by the Iowa State Commerce Commission as set forth in its Order granting this franchise.

It is provided and understood that this franchise is granted subject to the provisions of Section 319.5, Code of Iowa 1977.

It is further provided and is a condition of this franchise that the Iowa State Commerce Commission retains jurisdiction and may at any time hereafter and during the period of this franchise make such further orders and regulations as may be necessary.

Signed and sealed as provided by law on December 30, 1977

IOWA STATE COMMERCE COMMISSION

Marcus Van Nostrand
Chairman

ATTEST:

Grant Bibby
Secretary

EXHIBIT "A"

MADISON COUNTY

400,000 Volts (Maximum Operating Voltage)
345,000 Volts (Nominal Operating Voltage), Three Phase Wye

Beginning at a point approximately 2,606 feet South of the Northwest corner of Section 30, Township 74 North, Range 29 West of the 5th P.M., Madison County, Iowa, thence Easterly on private right-of-way across said Section 30, 29, 28, 27,26, and 25, last named Township and Range, to a point approximately 2,611 feet South of the Northeast corner of said Section 25, thence continuing East on private right of way along the East-West centerline of Sections 30, 29, 28, 27, 26, and 25, Township 74 North, Range 28 West of the 5th P.M., to a point approximately 2,620 feet South and 50 feet West of the Northeast corner of the Northwest Quarter (NW¼) of said Section 25, thence Northeasterly on private right-of-way across said Section 25 last named Township and Range, and Section 30, Township 74 North, Range 27 West of the 5th P.M., to a point approximately 8 feet East and 1,570 feet South of the Northwest corner of said Section 30, thence continuing Easterly and Northeasterly on private right-of-way across said Section 30 to a point approximately 1,337 feet South and 5 feet West of the Northeast corner of the Northwest Quarter (NW¼) of said Section 30, thence Easterly on private right-of-way across said Section 30, and Sections 29, 28, and 27, last named Township and Range to a point approximately 1,334 feet South of the Northeast corner of the West Half (W½) of the Northwest Quarter (NW¼) of said Section 27, thence Easterly and Southeasterly on private right-of-way across said Section 27 to a point approximately 118 feet South and 93 feet East of the Northwest corner of the Southwest Quarter (SW¼) of the Northeast Quarter (NE¼) of said Section 27, thence Easterly and Northeasterly on private right-of-way across said Section 27, and Sections 26 and 25, last named Township and Range, to a point approximately 1,324 feet South and 36 feet East of the

Northwest corner of said Section 25, thence North on private right of way along the North-South section line between Sections 25 and 26, 23 and 24, 13 and 14, 11 and 12, last named Township and Range, to a point approximately 1,470 feet South and 75 feet East of the Northwest corner of said Section 12, thence Northeasterly on private right of way across said Section 12 to a point approximately 452 feet East of the Northwest corner of said Section 12, thence continuing Northeasterly on private right of way across Section 1, last named Township and Range, to a point approximately 970 feet East and approximately 550 feet South of the Northwest corner of the Southwest Quarter (SW¼) of said Section 1, thence Northeasterly to a point approximately 75 feet West and 1,490 feet South of the Northeast corner of the Northwest Quarter (NW¼) of said Section 1, thence Northerly on private right of way across said Section 1, last named Township and Range to a point approximately 2,553 feet East of the Northwest corner of said Section 1; thence continuing Northerly on private right of way across Section 36, Township 75 North, Range 27 West of the 5th P.M., to a point approximately 2,532 feet East of the Northwest corner of said Section 36, thence Northerly and Northwesterly on private right of way across Section 25, last named Township and Range, to a point approximately 2,466 feet East and 45 feet South of the Northwest corner of the South Half (S½) of the Southwest Quarter (SW¼) of said Section 25, thence Northerly and Northeasterly on private right of way across said Section 25 to a point approximately 2,596 feet East of the Northwest corner of the Southwest Quarter (SW¼) of said Section 25, thence Northerly on private right of way across said Section 25, and Section 24, last named Township and Range to a point approximately 2,490 feet East of the Northwest corner of said Section 24, thence Northwesterly on private right of way across said Section 24, and Section 13, last named Township and Range, to a point approximately 1,050 feet North and 1,982 feet East of the Southwest corner of the North Half (N½) of the Southwest Quarter (SW¼) of said Section 13, thence Northerly on private right of way across said Section 13, and Section 12, last named Township and Range, to a point approximately 2,055 feet East of the Northwest corner of the Southwest Quarter (SW¼) of said Section 12, thence Northwesterly on private right of way across said Section 12 to a point approximately 1,347 feet East of the Northwest corner of said Section 12, thence Northerly on private right of way across Section 1, last named Township and Range, to a point approximately 1,324 feet East of the Northwest corner of said Section 1; thence continuing Northerly on private right of way across Section 36, Township 76 North, Range 27 West of the 5th P.M., to a point approximately 651 feet North and 1,324 feet East of the Southwest corner of the North Half (N½) of the South Half (S½) of the Southwest Quarter (SW¼) of said Section 36, thence Northeasterly on private right of way across said Section 36 to a point approximately 450 feet North and 2,630 feet East of the Southwest corner

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of the North Half (N½) of the Northwest Quarter (NW¼) of said Section 36, thence Northerly on private right of way across said Section 36, and Sections 25, 24, 13, 12, and 1, last named Township and Range to a point approximately 2,712 feet East of the Northwest corner of said Section 1; thence continuing Northerly on private right of way across Sections 36, and 25, Township 77 North, Range 27 West of the 5th P. M., to a point approximately 1,980 feet South and 19 feet East of the Northwest corner of the Northeast Quarter (NE¼) of said Section 25, thence Northeasterly on private right of way across said Section 25, and Section 24, last named Township and Range, to a point approximately 560 feet North and 275 feet West of the Southeast corner of the Northeast Quarter (NE¼) of said Section 24, thence Northerly on private right of way across said Section 24 and Section 13, last named Township and Range to a point approximately 19 feet West of the Northeast corner of said Section 13, thence continuing Northerly along the North-South section line between Sections 12 and 1, last named Township and Range and Sections 7 and 6, Township 77 North, Range 26 West of the 5th P.M., to a point approximately 19 feet West of the Northeast corner of said Section 1; a total distance of approximately 39.5 miles.

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STATE OF IOWA

IOWA STATE COMMERCE COMMISSION

IN THE MATTER OF:	
ELECTRIC TRANSMISSION LINE, 124 MILES OF 345,000-VOLT (400,000-VOLT MAXIMUM) LINE IN ADAIR, CASS, DALLAS, MADISON AND POTTAWATTAMIE COUNTIES, IOWA	DOCKET NOS. E-18583 E-18584 E-18585 E-18586 E-18587
IOWA POWER AND LIGHT COMPANY, PETITIONER.	

FINAL OPINION AND ORDER DENYING MOTIONS TO DISMISS AND GRANTING FRANCHISES

(Issued December 30, 1977)

I. PROCEDURAL BACKGROUND

This case involves petitions filed by Iowa Power and Light Company for 124 miles of 400,000-volt transmission line in Adair, Cass, Dallas, Madison and Pottawattamie Counties, Iowa. The proposed transmission line would transmit power from Council Bluffs Power Station No. 3 to central Iowa. CBPS #3 is a fossil-fueled electric generating unit with an expected generating output of approximately 650 MW. The unit is presently being constructed under the direction of Iowa Power in Council Bluffs, Iowa, and is scheduled for commercial operation on June 1, 1978.

The proposed transmission line would be owned by the seven joint owners of CBPS No. 3--Iowa Power and Light Company, Iowa-Illinois Gas and Electric Company, Central Iowa Power Cooperative, Inc., Cedar Falls Municipal Electric Utility, Corn Belt Power Cooperative, Inc., Eastern Iowa Light and Power Cooperative, Inc., and the Atlantic Board of Water Works and Electric Light and Power Plant Trustees. It would extend from the Council Bluffs power station to Iowa Power's Booneville substation which ties into Iowa Power's Sycamore substation located north of Des Moines, as well as other parts of the Iowa transmission system.

Informational meetings on the proposed line were held on February 17, 1976, in Oakland and Atlantic, Iowa; on February 18, 1976, in Greenfield and Winterset, Iowa; and on February 19, 1976, in Van Meter, Iowa. A Petition for Franchise was filed by Iowa Power on June 11, 1976. After hearing on February 16, 1977, the Commission issued an order on February 18, 1977, granting a motion by certain of the Objectors to dismiss the petition for failure to give statutory notice of the hearing on the petition to persons affected by the proposed line. The order further stated, "If Company chooses to refile its Petition for Franchise without material change, informational meetings shall not be required."

Mr. Harold P. Beckman, Mr. W. Edward Anstey, and Mr. Gary Kimes, Attorneys for Objectors, filed applications for rehearing attacking the provision of our order concerning informational meetings. The rehearing applications were denied in an order issued April 7, 1977. We stated at that time, however, that further evidence and argument on the issues of notice and sufficiency of informational meetings would be heard if those issues were subsequently raised in the context of a hearing on a pending petition. Meanwhile, on March 24, 1977, Iowa Power refiled its Petition for Franchise. Attorneys Beckman, Anstey, and Kimes filed separate motions to dismiss, upon which a hearing was held on May 23-24, 1977.

The Commission denied these motions to dismiss in an order issued June 10, 1977, which order was appealed to the Madison County District Court. The District Court dismissed the petition before the Commission; however, the Iowa Supreme Court has stayed the effectiveness of this order, allowing the Commission to conduct a hearing on the merits (which lasted some 11 full days) and to go forward to decision as to whether franchises for construction of the line should be issued. Furthermore, the Objectors have again moved to dismiss the petition, requiring the Commission to make another determination of its jurisdiction.

Before examining these jurisdictional issues and the merits, it is necessary to address Objectors' various motions to dismiss premised on alleged bias and ex parte communications.

II. ALLEGED BIAS

From the outset of these proceedings, certain Objectors have filed motions and objections, urging us to disqualify ourselves from considering Company's petition on the grounds of bias, both against them and in favor of the Company. Were we to do so, the result would not only be dismissal of the pending petition, but also the inability to consider any similar petition later filed by Iowa Power. Hence, we must carefully examine the content of such allegations.

The first such motion to be considered is one filed by Attorney Anstey on June 13, 1977, asking that we all disqualify ourselves. We overruled this motion during the course of the hearing (Tr. 288), but since we did not articulate our reasons then, and in light of Mr. Anstey's renewal of this motion on September 30, and references to this motion in other motions to dismiss, we need to examine it in more depth.

First, he alleged that we overruled his motions to set a specific date and time for individual Objectors to address the Commission and to stay proceedings pending the adoption of appropriate rules. How this is intended to demonstrate "personal bias" as required by §17A.17(4) is not explained and is certainly not self-evident. Our order of May 26, 1977, denied the first motion by pointing out that any Objectors who had relevant and material testimony could appear and testify before us in an adversary hearing on the petition for franchise (as many Objectors in fact did) and that, if the request was intended to result in an invitation to provide extra-record communication on the merits, it was tantamount to a request for ex parte communications. Overruling a motion which was either superfluous or solicited violation of §17A.17 in no way demonstrates personal bias, and indeed still appears quite proper.

As for the motion to stay proceedings pending adoption of rules concerning ex parte communications, we noted in our May 26 order that such rule making is discretionary. Failure to engage in discretionary rule making is hardly "bias" either--unless one defines bias as not giving a party everything it wants. By definition, such an approach would render every tribunal impermissibly "biased." Further, as examined below, Objectors have not shown

themselves to be prejudiced in any fashion by the lack of rules concerning ex parte communications or by any such communications that allegedly occurred.

Next, Mr. Anstey alleged that four of the individual Objectors that he represents were sent copies of our May 26 order on May 26, while his copy was sent May 27--these facts being supported by personal affidavits as to the postmarks on the relevant envelopes. How this indicates or even implies personal bias is beyond our comprehension. It is our practice to have such mailings made simultaneously, but we have more pressing duties than supervising mechanical tasks by office personnel. We are sorry if Mr. Anstey was inconvenienced. His clients were sent copies of the order because they had filed individual objections.

Then, Mr. Anstey refers to our January 7, 1977, order in Docket Nos. E-18341, et al., in which we granted in part a motion for additional time in which to file prepared direct testimony, denied motions for continuance of hearing, for change of hearing location, and for additional time for discovery, and provided for a time certain for the commencement of landowner-objector testimony. There is no explanation as to the purpose of this reference. If the intent were to show inconsistency with our May 26 order, we need only point out that Mr. Anstey's motion for a specific date and time for Objectors to "address" the Commission was ambiguous and in our order of June 24, 1977, we provided for a specific time and place for objector testimony.

Finally, Mr. Anstey refers to two contacts made by Iowa Power officers with Chairman Van Nostrand (these conversations will be examined in more detail in the next section). In this context, it is enough to point out that these conversations were unsolicited, related to the dismissed petition for franchise, and were of no effect. How such conversations, or any of the other facts alleged, demonstrate personal bias on the part of all three Commissioners, goes unexplained and is beyond us, once again.

We note that in the previous dockets Mr. Anstey filed a similar motion on similar grounds, like the motion under consideration which was filed in conjunction with an application for modification of a procedural order. The pattern demonstrated in this and the jurisdictional area is one of numerous motions, often repetitious, too often with no attempt to explain their reasoning

and having no effect except delay. Denial of such motions hardly demonstrates personal bias.

At this point, we need to examine what constitutes personal bias and what does not. As we understand the law, a presumption of regularity and impartiality attends all official actions by the Commission, with the burden on those asserting the contrary to prove otherwise. Cedar Rapids Steel Transport Co. v. Iowa State Commerce Commission, 160 N.W. 2d 825 (Iowa 1968). A decision-maker is not disqualified simply because he or she has taken a position, even in public, on a policy issue. Hortonville Joint School District No. 1 v. Hortonville Education Association, 426 U.S. 482 (1976). Rather:

> * * * the term "bias" means adverse, preconceived mental attitude or disposition, toward a party to a controversy, of such weight and nature as to materially impair or destroy that impartiality essential to a fair hearing . . . [Cedar Rapids Steel, supra, at 837].

With this in mind, we turn to what Objectors have alleged concerning Chairman Van Nostrand's comments before the Iowa Energy Policy Council September 15, 1977, this being after the record was closed but before briefs were filed.

The motion to dismiss filed by Attorneys Anstey, Beckman, and Kimes on September 22 included as a ground therefore the fact that Chairman Van Nostrand, previously requested to disqualify himself or be disqualified for personal bias, was permitted to continue as presiding officer during the submission of testimony. Since the previous request was illogical and the only support mentioned for the alleged bias occurred after testimony was concluded, there is no justification for dismissal. Objectors do not even attempt to show that the hearing was conducted in an unfair or prejudicial fashion.

Even assuming, arguendo, that the comments were biased and the Chairman should disqualify himself, there are two of us who can decide this case. On brief, Objectors claim that Chairman's comments "tainted" all of us. This allegation is devoid of factual or legal support and would not suffice to meet any concept of burden of proof. They also refer to the quorum requirement of Rules 250--1.7(4). Even if this rule were read to relate to the receipt of testimony (which is doubtful--it relates to the transaction of business), all

Commissioners were present during most of the testimony, a complete transcript was made, and there has been no showing of prejudice, as pointed out above. Further, if one can be retroactively disqualified as Objectors suggest, pursuant to their quorum theory, the appropriate, albeit purposeless, remedy would be to have two commissioners propose a decision to themselves under §17A.15 of the Iowa Administrative Procedure Act. It does not follow that the petition would be dismissed, which would require everyone involved to go through the entire statutory procedure again.

Also on September 22, Attorney Kimes filed a motion for disqualification of Chairman Van Nostrand and dismissal of the petition, claiming that the comments publicly made by the Chairman demonstrated personal bias and a violation of his duty of impartiality, objectivity and fairness, denying Objectors a fair and impartial hearing and due process of law. He asked for an evidentiary hearing in case the comments reported in Mr. Jim Healey's article in the Des Moines Register on September 16, 1977, were denied.

On September 25, 1977, Attorney Beckman filed a similar motion, joining in Mr. Kimes' motion and alleging in addition that the comments further support Mr. Anstey's motion discussed above, that they disclose how Objectors have been deprived of a fair hearing and that they impugn the character of all Objectors. He also asked for an evidentiary hearing in case the comments were denied.

On September 30, 1977, Attorney Anstey joined in the motions of Beckman and Kimes.

Staff accepted as true the accuracy of the statements made by the Chairman as set forth in the article in a resistance filed October 10. Nevertheless, Attorneys Beckman, Kimes, and Anstey filed a joint application for an evidentiary hearing on their motions, alleging that their motions "are now at issue based upon Commission Staff's Resistance filed October 10, 1977" and that the "record is open." However, we denied this application on October 21, 1977, since, as Staff pointed out in its Resistance, there were no material issues of fact warranting a hearing due to the fact that the statements attributed to Chairman Van Nostrand had been admitted. Hence, an evidentiary hearing would have been pointless.

Bearing in mind that Objectors' motions are premised solely on the Chairman's comments and that he is made a member of the Energy Policy Council by statute, we will examine the comments in question:

1. He agreed with the comment that most Objectors to a line only want it on someone else's land. This is not bias, but a recognition of the arguments advanced in transmission line hearings generally. Both in the original and remanded proceedings with regard to the Lehigh-Sycamore line, such arguments were basically the only ones advanced. In this case, alternate routing was central to Objectors' attack on the merits of the proposed line.

2. He said that Objectors speak of preserving farm land but often are more interested in how much the utility will pay them for use of that land. Objectors claim on brief that this:

> * * * stamps a label on <u>all</u> objectors as being <u>only interested in financial reimbursement</u> for the use and loss of their real estate by the Petitioner, all of which is completely erroneous, misleading, and beyond the scope of inquiry of this Commission and in violation of 17A.17 and 17A.11 of the 1977 Code of Iowa. Apparently this Commission has been caught up in the emotions of the case and lost sight of its judicial function and authority, thereby requiring their disqualification. (Brief of Objectors on Jurisdictional Issues and 17A.17 Issues, at 15). [emphasis supplied].

The emphasized words of this quotation demonstrate the inaccurate factual underpinnings of this argument--Chairman Van Nostrand did not categorize all Objectors, nor say they are only interested in how much the utility will pay them. His comment was not directed at the Objectors in this case specifically and cannot fairly be construed to mean that he never accepts the validity of Objector testimony or argument; rather, it was a statement showing an understanding of human nature, which, implicitly or explicitly, all triers of fact recognize. We would be so bold to say that in nearly every case, whatever the area of law involved, the primary motivation of the parties is financial self-interest. Further, as the article by Mr. Healey reports:

> * * * a leader in the current fight to stop the Council Bluffs to Booneville line has said he is most interested in how much money Iowa Power and Light Company would pay him to cross his land.
>
> Van Nostrand said the man came up to him after a hearing on the line and said: "That [legal] stuff is all well and good, but why don't you make them [Iowa Power] deal directly with me on the money?"

The "true" motivation of parties is beyond our scope of inquiry except as it bears on the credibility of witnesses. However, it is not beyond the scope of inquiry of the Energy Policy Council; indeed, to give such insights into Commission proceedings involving energy was probably in the legislature's "mind" when it provided that our Chairman be a member.

3. He said objectors often offer purely emotional arguments instead of stating sound reasons for relocating or abandoning a line. The same analysis applies here--the comment is clearly limited in scope, and applies to transmission line cases generally. Even Objectors must admit that their testimony was emotional at times--ranging from allegations of perjury and Communistic tendencies to the spectre of electrocuted grandchildren. It is understandable that Objectors with no technical background and whose land, farming operations, and so on, are affected by a proposed line will offer such testimony. However, our decision must be based on factors made relevant by Chapter 478.

4. In response to a comment to the effect that the general public will not become interested in transmission lines until it faces severe electrical problems, he suggested the Council "lend its support to drumming up 'public sentiment on the other side'." Objectors examine this comment out of context. It certainly has no relevance to this case since the record was closed at the time, and "public sentiment" could not affect its future. Such sentiment could only make landowners more willing to accept admittedly necessary transmission lines in the future or lead to legislative streamlining or simplification of the franchise process. Public education and legislative suggestion are two of the functions of the EPC, §93.7, The Code 1977, and our Chairman is a member in order to give it the benefit of his expertise--and opinion.

These comments do not show a bias arising from extra-judicial origins, but rather an opinion gained from "judicial" experience. They certainly are not enough for us to conclude that the Objectors have met their burden of proof. As pointed out already, taking a public stand on policy issues is not "personal bias" such as to disqualify a decisionmaker.

III. EX PARTE COMMUNICATIONS

As with bias, Objectors from the beginning of this proceeding have been concerned with ex parte communications. Section 17A.17(2), The Code 1977, is the relevant statutory prohibition:

> Unless required for the disposition of ex parte matters specifically authorized by statute, parties or their representatives in a contested case shall not communicate directly or indirectly, in connection with any issue of fact or law in that contested case, with individuals assigned to render a proposed or final decision or to make findings of fact and conclusions of law in that contested case, except upon notice and opportunity for all parties to participate as shall be provided for by agency rules. . . . [emphasis supplied].

Objectors have alleged that three such communications have taken place which necessitate the dismissal of the petition.

Two of these communications are mentioned in Attorney Anstey's motion of June 13, 1977, which asks all of us to disqualify ourselves. The motion recites that responses to discovery indicate that Iowa Power representatives, namely, Mr. Mark Putney, Senior Vice-President, and Mr. James Lyon, Executive Vice-President, had contacts with Chairman Van Nostrand on February 18, 1977, and March 15, 1977, "during which aspects of the proposed project were discussed . . ."

We need to refer to Iowa Power's answers to supplemental interrogatories to get details. They indicate that on February 18, 1977, at approximately 4 p.m., Mr. Putney called Chairman Van Nostrand to comment on our decision dismissing Iowa Power's Petition for Franchise and stating that he disagreed with the conclusion. Mr. Putney further commented on the procedural delays which had been encountered and which had delayed construction of the needed facility, stating that although he disagreed with the reasoning of the dismissal order, he would promptly proceed with the preparation of a new petition which would be carefully reviewed to see that it was correct and would be filing a new petition at the earliest date possible. The answer further indicates that Chairman Van Nostrand defended the dismissal order of the Commission based on the inadequacies of the record and the testimony and the evidence adduced at the hearing. He asked Mr. Putney if he had reviewed the

entire record and then criticized Mr. Putney for complaining when he had not reviewed the record.

The answers to supplemental interrogatories indicate that on March 15, 1977, Mr. Lyon spoke to Chairman Van Nostrand when the Commission issued an order rejecting Iowa Power's new petition because of errors in the descriptions and other technical defects discovered by Staff. Mr. Lyon asked why an order had been issued, rather than a letter as in the past, and reviewed some of the errors with Chairman Van Nostrand.

Looking at these facts, not only do we reject Mr. Anstey's conclusion that these conversations somehow biased the entire Commission and are of such a nature to call for dismissal, we reject the notion that they were ex parte communications prohibited by the statute. Section 17A.17(2), The Code 1977, refers to communications by parties to and in connection with a contested case. A "[c]ontested case" is defined as a proceeding "in which the legal rights, duties or privileges of a party are required by Constitution or statute to be determined by an agency after an opportunity for an evidentiary hearing", §17A.2(2), and commences with the notice of hearing, §17A.12(1). The conversations, therefore, did not relate to the contested case we are now deciding, but rather related to contested cases which had been dismissed. Dismissal is final agency action--hence at the time of the conversations, there was no contested case involved. Objectors later applied for rehearing in the first case, claiming deficiencies in the informational meetings; their objections were preserved in our April 7, 1977 order, which recited they could be raised again upon the filing of a new petition. In short, Objectors were in no way prejudiced.

Even were we to consider these conversations impermissible, the most extreme remedy, i.e. dismissal, had already been imposed. There is no justification, in law or equity, to penalize a party in a future contested case for conduct relating to a past case. Nor can these unsolicited contacts with one of our members be viewed, by any feat of logic, as creating bias in all of us.

The third contact Objectors allege to be impermissible ex parte communication consists of certain statements made by Mr. Bill Davis, manager of government relations for Iowa Power, at the Energy Policy meeting attended by Chairman Van Nostrand, referred to above. Attorneys Kimes and Beckman, in their motions for disqualification and dismissal, respectively refer to these statements as a "flagrant contravention of 17A.17" and "a culpable act on the part of petitioner of such magnitude and proportion" that dismissal is mandated.

Mr. Davis, according to the article by Mr. Healey, told the Council that Iowa is "flirting" with a power blackout because landowners have blocked construction of transmission lines across their property through legal maneuvering and that utility customers may have to pay $1 million for every month after CBPS #3 comes on line next spring that it remains isolated from the Booneville substation. Both points are contained in the record, either before us or the District Court, and Objectors have had every opportunity to dispute them. It is not disputed here that if the Lehigh-Sycamore and Council Bluffs-Booneville lines are not constructed, the reliability of the electrical supply is threatened. Objectors in the Lehigh-Sycamore proceeding admitted that the line was necessary, yet at the time of Mr. Davis' comments it had been delayed for years and the effectiveness of our franchise order had been stayed, pending appeal. Objectors in this case have not seriously disputed the necessity for a line between Council Bluffs and Booneville. The exact cost of delay was not an issue before us and is not a basis for our decision. Hence, Objectors have not been prejudiced by Mr. Davis' comments.

Therefore, dismissal is completely unwarranted under the circumstances. Section 17A.17(2), The Code 1977, states in reference to remedy:

> * * * The agency's rules may require the recipient of a prohibited communication to submit the communication if written or a summary of the communication if oral for inclusion in the record of the proceeding. As sanctions for violations, the rules may provide for a decision against a party who violates the rules; for censuring, suspending or revoking a privilege to practice before the agency; and for censuring, suspending or dismissing agency personnel.

Since we have no rules limiting our discretion with regard to appropriate sanctions, it is within our power to render an adverse decision because of an ex parte violation. In determining remedy we certainly must remain cognizant of the absence of prejudice, as well as the fact that at least one arguably ex parte communication (mentioned in connection with bias) has come from the Objectors' side. In Sangamon Valley Television Corp. v. U.S., 269 F.2d 221 (D.C. Circ. 1959), private approaches to the Commissioners were held to vitiate their ultimate action and it was ordered the proceeding be reopened. Here, we are presented with public statements whose content Objectors have already had the opportunity to dispute. We also find guidance in the legislative history of the ex parte provision in the Federal Administrative Procedure Act (unfortunately, Iowa has little written history):

> . . .The judgment will have to be made whether a particular communication could affect the agency's decision on the merits. . .
>
> It is expected that an agency will rule against a party on the merits under this subsection only in rare instances. . . House Report (Government Operations Committee) No. 94-880 (Part I), March 8, 1976, at 20-21, 22.

So we conclude that, assuming violation of §17A.17(2), dismissal would be a highly inappropriate remedy.

More significant, of course, is our conclusion that Mr. Davis' comments did not violate the statute.

First, on its face the statute refers to communication "in connection with any issue of fact or law" in the case, and, as pointed out above, the statements did not relate to contested issues.

Second, it is questionable whether the statute should be seen as relating to public comments. The danger created by ex parte contact is that a decision maker may be influenced by privately-related information that an adverse party does not know about and has not had an opportunity to dispute. This is the express legislative purpose of the federal provision, although it also does not explicitly confine itself to private contacts. Ibid, at 2. If a comment is made publicly, it might just as well be made a part of the agency record.

Third, we should be reluctant to read §17A.17(2) as pertaining to Mr. Davis' comments to the EPC. It is the duty of the Council to obtain such information, §93.7, The Code 1977, and the comments served to relate Iowa Power's views to the Council. The "hope of personal advantage" is irrelevant, as the U.S. Supreme Court stated in a case involving construction of the Sherman Act:

> . . .In a representative democracy such as this, these branches of government [Legislative and executive] act on behalf of the people and, to a very large extent, the whole concept of representation depends upon the ability of the people to make their wishes known to their representatives. . .
>
> . . .A construction of the Sherman Act that would disqualify people from taking a public position on matters in which they are financially interested would thus deprive the government of a valuable source of information and, at the same time, deprive the people of their right to petition in the very instances in which that right may be of the most importance to them . . . Eastern Railroad Presidents Conference v. Noerr Motor Freight, 365 U.S. 127, at 137, 139 (1961).

For the above reasons, we reject Objectors' position that we must dismiss the petition because of Mr. Davis' comments.

IV. JURISDICTION

The following contentions are made in Objectors' motion to dismiss: (a) that the Commission lacks jurisdiction over the petition because of an inadequacy of the Commission's rules of practice, and that the Commission has not adopted rules pertaining to ex parte communication; (b) that notice of informational meetings was inadequate under the statute, and that the Chicago, Rock Island and Pacific Railroad Company and other parties on alternate routes were entitled to notice; (c) that the informational meetings were conducted inadequately; (d) that the Commission Staff was permitted to participate as a party; (e) that a 230-kV line would be sufficient to accommodate CBPS No. 3 generation and construction of a transmission line of higher voltage would violate Section 478.18, The Code 1977; (f) that the proposed route violates Section 478.18 because Iowa Power did not start its planning commencing with land division lines and this route digresses from railroad and land division lines; (g) that shorter routes exist that would comply with Section 478.18 but the Commission cannot order these routes because informational meetings were not conducted with respect to these routes; (h) that construction design using two-pole structures rather than single-pole structures interferes more than necessary with the use of the land contrary to Section 478.18; and (i) that permitting Iowa Power to construct a line along the only route for which it gave notice or held informational meetings, which has "some 28 digressions from approved routing," where an alternate route exists with less than one-half of the number of digressions, violates Section 478.18 and subverts the legislative intent of Section 478.20. 1/

However, only the first four points arguably relate to the Commission's jurisdiction; the rest relate to the merits of the proposed line and will be handled in that context below.

1/ The remaining contention, relating to alleged bias, has been handled above.

Procedural Rules

Once again the Objectors argue that the Commission lacks jurisdiction because of its alleged failure to adopt procedural rules pursuant to Section 17A.3(1)(b), The Code 1977.

A glance at the Iowa Administrative Code discloses the false, factual premise of this claim--the Commission has three relevant chapters of rules. 2/ As Staff points out on brief, to the extent that these rules, the Iowa Administrative Procedure Act, or the statute under which the Commission is proceeding (Ch. 478, The Code 1977) do not address a particular point of procedure, "the rules and practices which obtain in the district courts of the state of Iowa" apply. 3/ Further,

> * * * the commerce counsel will, upon request, advise any party as to the form of petition, answer or other paper necessary to be filed in any case. 4/

Even assuming that the Commission's procedural rules are in some way deficient, Objectors have never explained how this affects our jurisdiction. The Iowa Administrative Procedure Act itself is quite explicit in stating that it is meant to affect only procedural, and not substantive, rights. 5/ The appropriate remedy for insufficient rules is a petition for rulemaking.

The weakness of this allegation by Objectors is apparent when one realizes that they have never alleged prejudice from a lack of rules. A number of Objectors have appeared pro se with little apparent difficulty. Numerous pleadings and motions have been filed, and hearings held--in fact Objectors have been successful in getting one petition dismissed. All parties, including Objectors, have been able to present their positions; it must not be concluded that the proper procedure to follow is unclear or substantial rights have been prejudiced merely because the Objectors have not always prevailed.

2/ Chapters 1, 2, and 6, Commerce Commission [250], IAC.

3/ 250--6.11(2), IAC.

4/ 250--6.15 (474), IAC.

5/ §17A.1(2), 6th sentence, The Code 1977.

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Objectors have presented three additional points on brief, but none are entitled to any weight. It is said that the Commission does not have a proper form to raise jurisdictional issues. Not only are the Rules of Civil Procedure adequate in this regard, Objectors have managed to get two sets of hearings and now three orders on jurisdictional issues and were successful in getting one petition dismissed. This history discloses the very antithesis of prejudice. Further, Objectors say that the Commission has no rules to sanction parties who refuse to make full discovery. However, there is no claim that there has been any failure of discovery in this case, and the statute cited by Objectors, §17A.13, The Code 1977, not only does not require such agency rules but also makes it clear that enforcement is a matter for the courts. Finally, Objectors claim that the petition must be dismissed because of the alleged failure to comply with §17A.3(1)(b) and for support, cite two cases that are completely irrelevant. 6/ Objectors say nothing on brief concerning their allegation that the Commission is without jurisdiction due to its failure to adopt rules concerning ex parte communications. This was wise because, not only are the nexus to jurisdiction and the showing of prejudice lacking, §17A.17(2), The Code 1977, requires no such rules. We feel the existing law relevant to ex parte communications, discussed previously, adequately guides our discretion.

We therefore affirm our previous position that the Commission is not deprived of subject matter jurisdiction due to its alleged failure to adopt procedural rules.

Notice of Information Meetings

The Objectors allege that §478.2, The Code 1977, on its face mandates dismissal of a petition for franchise if any landowner (who has owned and

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6/ Franzee v. Iowa Board of Parole, 248 N.W.2d 80 (Iowa 1977) reversed the District Court dismissal of a petition for review of a parole revocation and held that the Board of Parole was an "agency", the revocation proceeding was a "contested case" and the parole revocation was "agency action" within the ambit of the IAPA. Airhart v. Iowa Department of Social Services, 248 N.W.2d 83 (Iowa 1977), involving revocation of probation from a training school, is to the same effect and in addition holds the IAPA governs the method of adopting rules.

possessed the land "for a long number of years"), possessor or resident of affected property is not sent certified mail notice of the applicable informational meeting. Since we rejected this argument in our June 10, 1977 order, it is perhaps unnecessary to delve into the intricacies of this section once again. However, upon further consideration, we feel our earlier interpretation of the statute was not entirely correct and therefore will address the issue again, although the result in this case is the same.

Section 478.2 provides that as "conditions precedent" to the filing of a petition for franchise for an electric transmission line, the proponent company shall hold "informational meetings" in each affected county, not less than 30 days before such filing, at which a summary of the legal rights of affected landowners shall be presented. Two paragraphs later, it provides that the company "shall give notice of the informational meeting to each person, company, or corporation determined to be the landowner affected by the proposed project and any person, company, or corporation in possession of or residing on the property." "Landowner" is defined as a "person, company, or corporation listed on the tax assessment rolls as responsible for the payment of real estate taxes imposed on the property"; no definition of possessors or residents of affected property is presented. The next paragraph recites that the notice shall, inter alia, "advise that the landowner has the right to be present at such meetings and to file objections with the commerce commission," "be served not less than thirty days prior to the time set for the meeting by certified mail with return receipt requested; and be published once in a newspaper of general circulation in the county at least one week and not more than three weeks before the time of the meeting and such publication shall be considered notice to landowners whose residence is not known." [emphasis supplied]. The section concludes by stating that:

> No person, company, or corporation seeking rights under this chapter shall negotiate or purchase any easements or other interests in land in any county known to be affected by the proposed project prior to the informational meeting.

The threshold determination which must be made is whether lack of notice to some qualified persons of the informational meeting(s) requires the same result as the failure to provide any notice or to hold informational meetings

at all--i.e., dismissal. As we pointed out in our June 10, 1977 order, the statute does not answer this question directly. 7/

A clue to the legislative intent in this regard is provided by the concluding paragraph of §478.2 which prohibits negotiation for easements prior to the informational meeting. It is undisputed that the purpose of §478.2 was to prevent companies from negotiating for voluntary easements with people who are unaware of their right to object to the proposed line. 8/ Further, we must not blindly conclude that isolated violations of the notice provisions of §478.2 call for dismissal merely because the term "notice" is used:

> The word "notice" is not a technical one and, while it can have various meanings, the meaning to be given by the courts is to be controlled largely by the context and by the purpose and intent of the statute which provides for or requires it. The term should receive reasonable interpretation with reference to the subject to which it is applied. 66 C.J.S. Notice §1, pp. 634-5.

In the context under consideration, "notice" is to be given so that an effective meeting can be held, i.e., people must know about a meeting in order to attend it. Notice of hearing is considered jurisdictional because a hearing results in an adjudication of rights. However, informational meetings have the sole function of informing people of their rights, and hence there is no reason to imply that notice of such meetings, as well as notice of the hearing before the Commission, is jurisdictional.

Further, as Staff points out on brief, such an implication would entail absurdity and the frustration of legislative intent:

> If certified mail notice of informational meetings to each and every affected person were necessary for the Commission to have jurisdiction of a petition for franchise, it follows that such notice should be given to everyone affected as of the date of petition. Informational meetings must be held at least thirty (30) days prior to the filing of a petition for franchise and certified mail notice of such meetings must be sent at least thirty (30) days before such are held. If any land transaction takes place between the sending

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7/ The "conditions precedent" in the second paragraph is not a reference to the notices prescribed in the fourth and fifth paragraphs as argued by Objectors, but rather to the holding of informational meetings.

8/ The legislative history of this section was examined in detail in our June 10, 1977 order, and our conclusions in this regard have not been attacked.

> of notice and the filing of a petition, assuming certified mail notice is a jurisdictional necessity, new informational meetings would be required. Because of this, it would be possible to prevent any jurisdictional petition from ever being filed (footnote omitted). Such a construction of the statute would make it clearly unconstitutional, since transmission lines are a part of interstate commerce. Chemiheuvi Tribe of Indians v. Federal Power Commission, 420 U.S. 395 (1975).
>
> Likewise, under Objectors' interpretation, the failure to notify someone affected at the time notice is given but no longer affected at the date of petition, e.g., because of sale of his or her statutory interest in land or death, should deprive the Commission of jurisdiction and necessitate a new informational meeting, imposing additional expense and delay upon a proponent company and ultimately its consumers because of a "statutory violation" that caused no injury or prejudice whatsoever. . . . Staff Brief, at 14-15.

Objectors, on the other hand, although they have alleged repeatedly that the notice provisions of §478.2 are jurisdictional, have never explained how they reached this conclusion nor why the legislature would have intended it. 9/

Therefore, we reaffirm our earlier conclusion that the remedy for a violation of the notice provisions of §478.2 is not the dismissal of a subsequently filed petition. To conclude otherwise would expand the rights created by §478.2 far beyond the intent of the legislature to prevent unfair easement acquisition and entail absurdity as well as possible unconstitutionality. The four-prong remedy we set forth in our June 10, 1977 order would adequately redress any injury resulting from a violation of the notice provisions of §478.2 and is likewise reaffirmed:

1. The petitioning company is prohibited from initiating negotiations for an interest in land with any person who should have received notice of an informational meeting actually held, but in fact received no such notice.

2. Any consummated purchase of any interest in land, from a person who should have been notified of an informational meeting but was not, is voidable

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9/ The cases cited on brief by Objectors dealing with the invalidity of attempted waiver of notice of hearing or other jurisdictional requirements are only relevant if notice of informational meetings is jurisdictional, which clearly begs the question. Nishnabotna Valley REC v. Iowa State Commerce Commission, 161 N.W.2d 348 (Iowa 1968), cited by Objectors, is not on point--it held that, since we did not have the authority to regulate a certain area (REC rates), we could not do so indirectly.

at the options of such an individual.

3. Such an individual will be indemnified by the petitioning company for costs incurred because of the need to respond before a condemnation tribunal.

4. Such an individual will be indemnified by the petitioning company for costs incurred because of the lack of required notice, e.g., reasonable attorneys' fees and travel expenses associated with the need to testify as to such lack of notice.

The question we must now address is how the notice provisions of §478.2 are to be interpreted--who is entitled to notice and what type of notice is required. Objectors claim no interpretation is required, but such a position is demonstrably untenable.

The problem arises in that the statute states that landowners, possessors and residents of affected property are to be given notice; then defines landowners as those listed on the tax assessment rolls; and goes on to provide that notice shall be given by certified mail with return receipt requested except that published notice is sufficient as to landowners whose residence is not known. Objectors allege this means that all possessors and residents must receive certified mail notice.

However, certified mail with return receipt requested at a minimum requires a name and address. Section 478.2 does not require a search for the names and addresses of possessors and residents. Even implying that such a search is required, it is significant that not all landowners must get certified mail notice and yet a search of the tax rolls is mandated for this group. To require certified mail notice to possessors and residents whose names and addresses are not known would require the impossible and give possessors and residents greater rights than landowners. The situation is further confused by the fact that the statute requires a presentation of the legal rights of affected landowners at the informational meeting and requires that the notice of meeting advise that the landowner has a right to be present at such meetings and to file objections with the Commerce Commission. The "literal" reading of §478.2 desired by Objectors thus would give possessors and residents the right to be notified of a meeting they could not attend, which meeting would discuss the rights of others, and of the right of others to object to a proposed transmission line.

In our June 10, 1977 order, we attempted to solve this puzzle by concluding that possessors and residents, at best, are entitled only to published notice. However, this does not alleviate the inconsistency with those provisions of the statute relating to the meeting agenda and content of notice; such a reading makes the provision for notice to possessors and residents one of absolutely no effect. Further, it ignores the fact that certain possessors and residents have significant interests at stake in a decision to franchise a transmission line. The only reading of the statute that eliminates these difficulties is one which considers the term "landowners" when it appears alone to be generic, including the legal owners and those possessors and residents whose interests are recorded or are of such a nature that a buyer of the property would be deemed to have notice of their existence as a matter of property law. 10/ This reading gives possessors and residents the right to be present at informational meetings, to be presented with a summary of their legal rights and to file objections to the proposed line; as to the issue before us, it gives possessors and residents whose names and addresses are known the right to certified mail notice while published notice is sufficient as to those whose names and addresses are not known.

We agree with Objectors that, as a general proposition, in determining legislative intent, we must examine what the legislature said, rather than what it should or might have said. However, they also point out that, "[i]t will not be presumed that useless and meaningless words are used in a legislative enactment, and an interpretation reaching that result should be avoided if possible." 11/ The Objectors' interpretation of the statute, albeit literal, renders the provision concerning notice to possessors and residents useless, as well as absurd and unreasonable--further reasons to

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10/ The statute does not define possessors and residents, but some reasonable delineation of those included must be made such that they can be identified without undue effort and yet those with important interests can be protected. Otherwise, the terms are broad enough to include every family member, including children, resident farm hands, anyone renting a room in a dwelling on the property, etc., as Staff pointed out on brief. Staff Brief at 13.

11/ Brief of Objectors on Jurisdictional Issues and 17A.17 Issues, at 5.

reject a "literal" reading as established by the cases cited by Staff on brief. Although as a general rule a tribunal may not by construction insert words or phrases in a statute:

> Words and phrases may, however, be supplied by the court and inserted in a statute, where that is necessary to prevent an act from being absurd, to obviate repugnancy and inconsistency in the statute, complete the sense thereof, and give effect to the intention of the legislature manifested therein. 73 Am.Jur. 2d, Statutes, §203.

We believe this construction of the statute best furthers legislative intent. The original version of the bill which when enacted became §478.2 mentioned only landowners. 12/ It seems likely that the amendment adding the provision that notice be given to possessors and residents was intended to give them similar rights as those possessed by landowners, not to deprive them of all substantive rights while granting them greater procedural rights than those of landowners--indeed, so much greater as to require the impossible.

Objectors' argument that by our former interpretation we amended Rule 250--11.5(1)(b) without following the procedures mandated by the Iowa Administrative Procedure Act is therefore moot. The interpretation of the statute we now embrace is consistent with this rule in that it prescribes certified mail notice to affected parties, defined as landowners, possessors and residents of affected property, except that published notice is sufficient for affected parties whose addresses are not known. 13/

This change in our interpretation of §478.2 does not change our finding that no one entitled to certified mail notice failed to receive such. As we pointed out in our June 10, 1977 order, the burden of proof to support motions to dismiss resides with the moving parties; this has not been denied by Objectors. At the hearings on the motions to dismiss there was no showing that anyone with a statutory interest in land 14/ at the relevant time, who had a known address, failed to receive certified mail notice. Objectors do not

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12/ See Eminent Domain Study Committee (Final Report for 1969 Interim).

13/ The arguments advanced with respect to the applicability of this rule in the circumstances presented by this case are, therefore, no longer important.

14/ The relevant statutory interests are defined, supra.

controvert our earlier finding that no more effective method of compiling a mailing list than that employed by Iowa Power was shown on the record, nor did they show that the method used would have disclosed the name and address of anyone who failed to receive certified mail notice. 15/

Objectors' remaining allegation with regard to notice of informational meetings is that Iowa Power failed to comply with Commission Rule 250--11.4(3), IAC by failing to notify parties along feasible alternate routes including the Rock Island Railroad of the informational meetings for said line, even though Iowa Power contacted Rock Island's representatives on December 8 and 21, 1976, concerning possible joint routing for the proposed transmission line. Rule 250--11.4(3) provides that property along feasible alternate routes over which the applicant may seek easement is to be considered "affected" with regard to informational meetings; it was not in effect at the time of the informational meetings, but rather became effective September 27, 1976. We reject this allegation for several reasons.

First, Objectors cannot demonstrate prejudice absent a showing that an alternative route considered by Iowa Power is preferable to the route it petitioned for, i.e., we would have franchised it if we had the choice. Otherwise, the situation of the Objectors would be the same as it is now, even if the additional notice had been given. Such a showing has not been made.

Further, Rule 250--11.4(3) relates to informational meetings, and in this case such meetings were held before the effective date of the rule. Iowa Power was under no duty to comply with this rule. A case cited by Objectors, Motor Club of Iowa v. Dept. of Transportation, 251 N.W.2d 510 (Iowa 1977), states an important principle--rules are to be construed in the same way as statutes. And statutes are presumed to be prospective in operation unless a contrary intent is expressed. Section 4.5, The Code 1977.

15/ The time to present such evidence, if it exists, would have been at the May 23-24, 1977 hearing, absent a showing of good cause for failure to present the evidence at that time. Good cause to reopen the record is not established, for example, by the mere oversight of counsel.

However, the Objectors' point is not well taken even if they had shown prejudice and the rule was in effect at the time in question. Notice is required under Rule 11.4(3) to those along feasible alternate routes over which the applicant may seek easement. Iowa Power did not petition in the alternative for another route, and this is the only situation where the rule makes any sense. To require notice to those along "alternate routes" presented to the Commission for the sole purpose of determining whether the proposed route represents a reasonable relationship to an overall plan of transmitting electricity in the public interest, not to mention those along all conceivable alternate routes, would impose an onerous burden on interstate commerce for no reason at all and with no statutory authorization whatsoever.

Objectors claim that the failure to notify Rock Island somehow fails to safeguard the rights of those who have an interest in the hearing before the Commission as prescribed by the Iowa Supreme Court in Zwingle Independent School District v. State Board of Public Instruction, 160 N.W.2d 299 at 302 (Iowa 1968), but do not explain how. Zwingle prescribed no such rights but rather stated that administrative bodies may act within the limits of their legislative authority without giving notice or providing a hearing unless required by statute or constitution, and that a court should not interfere with Board action unless there is a failure to comply with statutory requirements, and held that a court cannot disapprove a school district merger plan simply because it may feel the plan to be mistaken or ill-advised. 16/ Similarly, we do not feel free to require notice of informational meetings to persons unmentioned in §478.2 who by no stretch of the imagination have any statutory or constitutional rights affected, even if we thought they "should" be given notice so that we might have more options upon which to adjudicate.

We therefore conclude that the failure of Iowa Power to give certified mail notice of informational meetings to all landowners, possessors, and residents of property affected by the proposed line or by suggested or conceivable alternate routes does not deprive us of jurisdiction over the Petition for Franchise and, on the state of the record, did not violate §478.2, The Code 1977.

16/ Zwingle at 302.

Sufficiency of Informational Meetings

The legal sufficiency of the informational meetings has also been attacked by Objectors. Before examining the specific alleged deficiencies, it would be helpful to set forth the relevant provisions of §478.2:

> As conditions precedent to the filing of a petition with the commission requesting a franchise for a new transmission line, and not less than thirty days prior to the filing of such petition, the person, company, or corporation shall hold informational meetings in each county in which real property or rights therein will be affected. A member of the commission, the counsel of the commission, or a hearing examiner designated by the commission shall serve as the presiding officer at each meeting and present an agenda for such meeting which shall include a summary of the legal rights of the affected landowners. No formal record of the meeting shall be required.
>
> The meeting shall be held at a location reasonably accessible to all persons, companies, or corporations which may be affected by the granting of the franchise. [Emphasis supplied].

These, then, are the statutory requirements which must be met before an informational meeting is considered legally sufficient. Any alleged deficiencies must be based on what the statute requires. We find it necessary to articulate this obvious truism because many of the alleged deficiencies are premised on how Objectors believe an informational meeting should be run, not on what the statute requires. In fact, the legislature clearly intended that what transpires at such meetings, beyond the statutory requirements, to be legally irrelevant; this is the only conclusion that may be drawn from the provision that no formal record shall be required. Even Objectors recognize that:

> There is no question presented as to the process due under the United States or Iowa Constitutions by Objectors. The question facing this Court [sic] is whether the process due Objectors under §478.2 has been had by them so as to empower the Commission to act upon the Iowa Power & Light Company's request. (Brief of Objectors on Jurisdictional Issues and 17A.17 Issues, at 8-9; emphasis supplied).

With this preface in mind, we will now turn to specifics.

It is claimed that the meetings did not have sufficient seating capacity, but the significance of this, if true, is not explained. Predicting how many people will attend a particular informational meeting is obviously difficult. 17/

17/ For example, the Dallas County meeting was only attended by one or two persons, while other meetings were attended much more heavily.

More importantly, there is no evidence that better locations were available or that anyone was prejudiced as a result. The statute was meant to prevent unfair easement acquisition and there is no evidence that anyone signed an easement because he or she was unable to attend a meeting or that Iowa Power deliberately planned any lack of seating capacity. Moreover, since the statute is silent on this point, we are reluctant to find anything other than the grossest deficiency of seats to be so important that a meeting is not considered an "informational meeting" for the purpose of fulfilling the statutory condition precedent to filing a jurisdictional petition; otherwise, the filing of such a petition could be delayed inordinately by the simple tactic of rounding up so many people for a meeting that no location in the county could seat them all.

Next, it is claimed that many people testified they were unable to hear. However, there is additional evidence in this regard which we cannot ignore. Mr. Tefft, the presiding Commission representative at the meetings, testified that Iowa Power supplied an amplifier for use at all the meetings except in Dallas County. He said that persons attending a meeting usually let him know immediately if they can't hear; this simple, common-sense cure for the alleged problem certainly makes the testimony of interested parties somewhat less credible. In the case of the Oakland meeting which was held in a long, narrow meeting room, Mr. Tefft testified that he asked Iowa Power representatives to sit at the back of the room and indicate if they were unable to hear, that they so indicated on a couple occasions, and that he then tried to make it louder. Further, he testified that he repeated all questions so that those who had not heard the question would understand what was being answered. As with seating capacity, there has been no showing of prejudice. We find Mr. Tefft's testimony to be the more credible. Further, we recognize that allowing such allegations, in the face of conflicting evidence, to lead to dismissal would make the filing of a jurisidictional petition virtually impossible--surely not the intent of the legislature.

Further, it is claimed that persons were restricted in the number of questions that could be asked, were unable or not permitted to ask questions, or if they were, left with their questions unanswered. Again, we are faced with contrary testimony (by Mr. Tefft, 18/ and Mr. McLaughlin of Iowa Power), with no showing of prejudice, and with a strong policy reason not to accept such testimony and dismiss the petition. Moreover, the legislature would have provided for a record of the meetings if it had intended for such testimony to be legally relevant at all. The statute itself is silent as to what is to transpire at the meeting except for the presentation of a summary of legal rights. We are aware that the Eminent Domain Study Committee said that landowners will be allowed to ask any questions they might have. However, the statute says no such thing and, as we have been reminded repeatedly by Objectors, we must look at what the legislature said and not what it should or might have said. What it said was that no record was required. It would do well to remember that we are dealing with a meeting, not a hearing, and we should be reluctant in this context to require that which the statute does not. 19/ This analysis also applies to the specific allegation that the safety ramifications of the proposed line were not adequately presented. Further, the testimony of Mr. Trausch and the statement by Mr. Webster, referred to by Objectors are irrelevant in this regard since neither attended the informational meetings.

Similar considerations are brought into play by the alleged deficiency resulting from the fact that only 14 of 21 (or 27) "rights" were read by Mr. Tefft at the meetings. The statute explicitly calls for a "summary" of legal rights, and such was given. The rights read aloud were the most important, and at no point do Objectors argue on brief that those omitted were fundamental. To give a complete explanation of the legal rights of persons

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18/ We agree with Mr. Tefft that it is not the function of the Commerce Commission representative at an informational meeting to advise how to stop the line.

19/ Once again, we feel constrained to point out that constitutional questions might be raised by §478.2. See, e.g., Natural Gas Pipeline Company of America v. Iowa State Commerce Commission, 369 F.Supp. 156 (S.D. Iowa 1974).

affected by the proposed line not only would be gratuitous but impossible; the line must be drawn somewhere. The Eminent Domain Study Committee did not speak in terms of a "summary" in 1969, but the law does--perhaps as a result of a 1970 Iowa Attorney General's opinion that requiring "a statement of the legal rights of the landowner" would be unconstitutional. 20/ Also, there has been no showing of prejudice caused by the failure to read certain rights.

Next, it is alleged that, despite Mr. Tefft's testimony that few informational meeting agendas were picked up and that he announced that persons could write for a copy, it is "clear" those attending were confused or not so informed. But there is a third alternative--only a few persons wanted a copy. In light of the fact that some agendas were picked up, we think that this is the logical conclusion. A claim of "confusion" should not be considered sufficient to cause the dismissal of a petition, particularly when based on pure speculation and not presented with a showing of prejudice. Further, we have no reason whatsoever to doubt Mr. Tefft's veracity. Moreover, the distribution of written copies of the agenda is not even required by the statute, so any shortcoming on this score is legally irrelevant.

For the same reason, the allegations that Iowa Power dominated the meetings with information favorable to the proposed line and distributed favorable pamphlets are legally irrelevant.

In short, there is no justification whatsoever for the sweeping allegations of bad faith made by Objectors, nor for the conclusion that the informational meetings were legally insufficient. 21/

Staff Participation

As a new grounds for dismissal, Objectors challenge the participation of Commission Staff as a party in this proceeding. However, despite this, our order of August 26, 1977 (which provided that initial briefs shall contain all

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20/ Op. Atty. Gen. (Fischer, April 14, 1970).

21/ Our statement in our June 10, 1977 order that "the procedure may need to be improved" is in no way a recognition that Iowa Power failed to comply with §478.2, as claimed by Objectors. Further, we cannot understand the purpose of Objectors' citation to Flanders v. Waterloo Community School District, 217 N.W.2d 579 (Iowa 1974).

issues and legal authorities relied upon), and Staff's examination of this issue in its initial brief, Objectors fail to even mention this allegation in their initial or reply briefs. We therefore conclude that this issue is not before us for decision. However, we take this opportunity to state our conclusion that Staff participation is fully justified under Chapters 17A, 475, and 478, and was implicitly validated by the Iowa Supreme Court in Hanson v. Iowa State Commerce Comm'n., 227 N.W.2d 157 (1975). We also feel Objectors waived any right to complain of such participation by their failure to raise any objection until the hearings were almost completed.

V. NECESSITY AND REASONABLE RELATIONSHIP TO AN OVERALL PLAN

The major issue in any electric transmission line franchise proceeding is whether the proposed project is necessary to serve a public use and represents a reasonable relationship to an overall plan of transmitting electricity in the public interest. Section 478.4, The Code 1977.

The primary purpose for the proposed line according to Iowa Power's Witness Walkup, is to transport the power generated by Council Bluffs Power Station #3(CBPS #3) into the central Iowa area. Each of the participating utilities presented evidence to the effect that its existing generation is not capable of handling the loads anticipated in the next few years and that the availability of CBPS #3 power will be essential to the continued operation of their respective systems. This testimony is basically undisputed and hence will be summarized here.

Mr. Richard B. Miller testified that Iowa-Illinois Gas and Electric Company will have a projected generation deficiency in 1979 of 151 MW without the availability of power from CBPS #3. Mr. Edward P. Crist testified that Corn Belt Power Cooperative will be deficient approximately 28 MW by the winter of 1979-1980 without the input to their system of their share of CBPS #3. Mr. Gary Behrens testified that the City of Atlantic is dependent on delivery of at least 8.1 MW from CBPS #3 in order to match its load requirement by 1979. Mr. Ray D. Sowers testified that Eastern Iowa Light and Power Cooperative's system would be deficient by some 21 MW in the winter of 1979-1980 and is dependent upon CBPS #3 power to meet that deficiency.

Mr. Harold Dean Crowe testified that Cedar Falls Utility, a municipal utility, could probably meet its capacity requirements in 1979, but that this would require the operation of older, less reliable, higher-operating cost units. Mr. Terry J. Nelson testified that Central Iowa Power Cooperative's system is dependent upon an input of some 46 MW from CBPS #3 in the winter of 1979-1980 in order to meet its load. Mr. Glenn F. Walkup testified that without the availability of CBPS #3 power, Iowa Power's system will experience a 1979 generation deficiency of 143 MW.

Objectors, however, claim that the participating utilities have "forgotten to include, deferred and/or have allowed to deteriorate generating capacity in excess of 200 megawatts." Even assuming that generating capacity has been "wrongfully" retired, we fail to see the significance of this to the issue before us. We surely cannot be expected to "punish" utilities for this by refusing their request for a necessary transmission line, for it would be the consumers who would suffer--yet this seems to be the unarticulated assumption of Objectors. Furthermore, we believe the record supports Iowa Power's conclusion that:

> * * * In each case where witnesses testified that their utility had retired generating capacity, the reasons for such retirement were stated to be major mechanical, environmental or fuel problems which could not be corrected without expenditures which would be grossly disproportionate to the benefit received from bringing the units back into service. 22/

This purportedly available generation consists of such items as 58 MW that was retired due to regulatory agency restrictions (Tr. 2256); 60 MW that has been retired from service due to extreme age, obsolescence, and regulatory agency restriction (Tr. 45-46); and approximately 16 MW of expensive oil-fueled generation that is being curtailed in favor of more efficient base load generation to be made available by the coal-fired CBPS #3 unit.

A similar point made by Objectors is that Iowa Power is selling power as early as 1979. This has no significance in itself since loads increase gradually, allowing a utility to sell to its neighbors for a few years after a

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22/ Petitioner's Reply Brief at 3-4.

major generating facility comes on line.

Further, Objectors claim that Iowa Power failed to examine what would happen if CBPS #3 was built but the proposed line was not, and that the Raun-Lehigh line recently franchised "considerably" reduces the need for the proposed line. However, they then refer us to the testimony of Mr. Walkup which directly contradicts such allegations:

> * * * if the Council Bluffs-Booneville 345 kV line is not available for service when CBPS #3 begins operation, power would be available from CBPS #3 only on a temporary, day-to-day basis provided other major transmission lines in the area are in service as planned.
>
> * * * *
>
> Q. In your opinion, what effect would failure to complete both the Raun-Lehigh-Sycamore line and the Council Bluffs-Booneville line have upon CBPS #3 operation?
>
> A. Our studies show that it may not be feasible to operate CBPS #3 unit under these conditions, except at greatly reduced output, because a single incident such as short circuit of the Cooper to Des Moines 345 kV line could, under moderate to heavy load conditions, result in collapse of the Des Moines and surrounding area electric systems. [Tr. 298, 299].

Objectors' primary argument is that necessity has only been shown for a 230 kV line, as opposed to the proposed 345 kV project. We believe such a conclusion is erroneous on the basis of the record before us. Mr. Walkup, planning engineer for Iowa Power, testified that a 230 kV line would only be capable of carrying 375 MW, as opposed to the 650 MW of electricity to be generated at CBPS #3. Further, Mr. Behrens, a registered professional engineer testifying on behalf of the City of Atlantic, testified that a 345 kV line would be the lowest voltage that could be utilized to economically transmit the output of CBPS #3 over this great distance. The only support for the proposition that a lower voltage line would be adequate was testimony related to thermal limitations, which does not mean that such a line is capable of providing the bulk power transfer capabilities required during emergency conditions.

The basic flaw, then, of Objectors' analysis is their implicit assumption that the only purpose of the proposed line is to transmit CBPS #3 generation. Their expert witness did not testify that a 230 kV line could transmit more than a bare minimum of the capacity of CBPS #3, and did not examine Iowa Power's load flow and stability studies. In fact, at times they have insisted that the line need only carry 375 MW, without explaining the assumptions required to reach this conclusion. However, according to the testimony of Mr. Tefft, Mr. Walkup, and others, there is a need to construct an interconnected transmission system capable of carrying peak system loads in spite of the loss of one or two major system components. 23/ Hence, the line, under emergency conditions, may be required to transmit power considerably in excess of the 650 MW capacity of CBPS #3 (Tr. 2259).

As Mr. Tefft summarized his expert opinion:

> * * * The Company has demonstrated by its joint efforts with neighboring utilities to develop an overall continuing plan for transmitting electric energy in the state and through the region that this proposed line is an important part of that overall plan. I have reviewed the load-flow studies that have been prepared by the participants in the Iowa G&T Study Task Force, and it is my conclusion that this line is required in order to provide reliable economic load scheduling paths between the Omaha-Council Bluffs area and the Central Iowa area. Each of the participant companies in this project has presented information showing its projected load growth in the next few years and these growth figures are, in my opinion, reasonably accurate load projections. Additionally, they have presented their present and proposed generating capabilities to demonstrate a need for the energy that is proposed to be transmitted over this line. Thus, in my opinion, the line is necessary to meet a public use and represents a reasonable relationship to an overall plan of transmitting electric energy in the public interest. (Tr. 2270-2271).

We agree.

As their final argument in this area, Objectors claim that, under the record before us, necessity can only be shown for a 100-foot right-of-way, as opposed to the 150-foot width for which easement is sought. Hence, they conclude that we would violate §478.18, and the United States and Iowa con-

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23/ The importance of such a system was demonstrated by the New York City outage of July 14, 1977. See, Federal Power Commission's Staff Report on the July 13 and 14, 1977 Electric System Disturbance on the Consolidated Edison Company of New York, Inc. System, August 4, 1977.

stitutions if we franchise more than a 100-foot right-of-way.

However, as Objectors recognize, their 100-foot figure is dependent upon reducing the voltage of the line to 230 kV, shortening the span length to 900 feet, and utilizing single-pole structures with stacked conductor configuration. We have already concluded that a 230 kV line would not be sufficient to meet the demonstrated needs of bulk power transfer from CBPS #3 and transmission system reliability. Further, even though the double pole structures require at least 30 feet additional right-of-way width, the record discloses that single-pole construction is less desirable in terms of land use, safety, and reliability. 24/ The precedent cited by Objectors does not support the conclusion that a taking of property must be limited to that which is absolutely necessary. The test developed by the Iowa Supreme Court in an early case is that, ". . . the land sought to be taken will to some extent conduce to the public use for which it is to be devoted." 25/ The Court has more recently pointed out that:

> An absolute necessity for taking the particular land need not exist. A reasonable necessity is sufficient. 26/

There is no reason to believe that §§478.15 and 478.18 or the U.S. Constitution requires anything more. 27/

VI. COMPLIANCE WITH SECTION 478.18

The major allegations of Objectors concerning the proposed line relate to compliance with §478.18, The Code 1977. This section provides:

> * * * Said transmission line shall be constructed near and parallel to the right of way of railways of the state or along the division lines of the land, according to the government survey thereof, 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 thereof.

24/ The relevant evidence is examined later in this order.

25/ Bennett v. City of Marion, 106 Iowa 628, 76 N.W. 844 (1898).

26/ Vittetoe v. Iowa Southern Utilities Company, 123 N.W.2d 878 (Iowa 1963).

27/ City of Cincinnati v. Vester, 281 U.S. 439 (1930), cited by Objectors, dealt with the applicable state law and did not reach any constitutional conclusions.

The "division lines of the lands, according to the government survey thereof" has been defined by the Iowa Supreme Court "to mean section lines, quarter section lines, and quarter-quarter section lines . . ." 28/

Objectors in their initial brief contend that the proposed line is not "along" division lines. This argument is dependent on their definition of "along" as "on or over." However, we reject this construction of the term. It is true that the term "along the alley" has been construed to mean on or over said alley, 29/ but the reasoning used by the court was only applicable to the particular facts before it:

> * * * The ordinance authorizes the defendant to construct its road along the alley in question. In other portions of the ordinance the defendant is authorized to construct its road on, over, and along certain alleys. It is claimed that this change of language is significant, and must have been employed with a purpose. We think, however, that the words "on, over, and along" were all employed synonymously in this ordinance. The words "on" and "over," as here employed, are clearly synonymous. The word "along" does not necessarily mean by the side of. . . . We cannot think that the city council, by the change of phraseology, intended to authorize the defendant to construct its road by the side of the alley, on private property over which the city has no control. 15 N.W. at 574 (emphasis in original).

In fact, the type of analysis engaged in by the court leads us to reject Objectors' definition of "along." First, a change in language is not always significant; that is, "near and parallel to" does not necessarily give more latitude in routing than "along." Secondly, the court implies that "along" usually does not mean "on or over." In a later case, the Iowa court found that the primary definition of "along" is running beside and parallel to, 30/ and this is the construction that was previously accepted by us in Docket No. E-16883. Of the most significance, however, is the court's recognition of the importance of the circumstances involved and the results of a particular construction in defining a term. As Staff points out on brief, such analysis in relation to §478.18 leads one to accept the "running parallel to" definition

28/ Hanson v. Iowa State Commerce Commission, 227 N.W.2d 157, 159 (Iowa 1975).

29/ Heath v. Des Moines & St. L. Railway Co., 61 Iowa 11, 15 N.W. 573 (1883).

30/ Stahr v. Carter, 116 Iowa 380, 90 N.W. 64 (1902).

of "along":

> This definition seems to make sense since the majority of the public highways in the State of Iowa are located on the division lines of the land as defined in Hanson. Consequently, electric transmission lines must be built parallel to but some distance away from these division lines which coincide with highway rights-of-way. . . .
>
> Objectors' construction of §478.18 to the effect that "along" means "on or over" is inconsistent with the latter part of the section requiring that transmission lines be constructed "and so as not to interfere with the use of the lands by the occupant thereof." [sic] Observing Objectors' construction of the word "along" would mean that in most instances fences would have to be removed, and transmission line structures centered exactly on the division line where fences are normally constructed. This would interfere greatly with the use of the land by the occupant. 31/

Before moving on to an examination of the proposed route with regard to Section 478.18, it is necessary to discuss the misperceptions we believe Objectors have of our function and the significance of Section 478.18. Illustrative is the following passage in their jurisdictional brief:

> By allowing Applicant, (Iowa Power and Light Company), to notice and hold informational meetings only for those affected parties along the proposed line; contrary to Commission Rules, the Commission herein has deprived itself of jurisdiction to approve any route other than that sought by applicant. (Hanson v. Iowa State Commerce Commission, 227 N.W.2d 157). The question thus presented to the Commission is whether the proposed line should be approved or disapproved rather than which route location will most adequately comply with §478.18 by following near and parallel to railroad right-of-way or along land division lines and not unnecessarily interfere with the use of the land by the occupants thereof. 32/

Similar is Objectors' implication that if a route other than that proposed can be shown to have fewer digressions from division-line or railroad right-of-way routing, approval of the proposed route would fail to "secure full compliance" with Section 478.18 and hence would be grounds for reversal under Hanson.

31/ Staff Reply Brief, at 7.

32/ Brief of Objectors on Jurisdictional Issues and 17A.17 Issues, at 11 (emphasis supplied).

However, our function is to approve (with such modifications, restrictions, or conditions as we deem proper within the constraints imposed by Section 478.2) or disapprove a proposed project that is petitioned for; Chapter 478 gives us no power beyond this. Possible alternative routes are only significant as one of the eight factors listed in Section 478.3, relevant in determining whether the proposed project "represents a reasonable relationship to an overall plan of transmitting electricity in the public interest." As we have pointed out before, our function is not to select the "best" possible route and refuse to franchise any other; in fact, the Court in Hanson criticized us for our approval of the Company's proposal as "the most feasible, practical and reasonable route." If an alternative route exists that is so significantly preferable in terms of land use, safety, and cost that we deem the proposed route not to represent a reasonable relationship to an overall plan, then and only then can we refuse to franchise a line for the sole reason that there is a "better" alternative. To do otherwise would indirectly exercise a substantive authority we do not have. 33/

We also reject the Objectors' position because the division line-railroad routing provision in §478.18 is not a basis upon which to compare alternative routes. It provides that a transmission line shall follow division line or railroad routing "wherever the same is practicable and reasonable"; a given route either complies or it does not. Between two complying routes, one cannot more "adequately comply" than the other. Hanson involved a "wholesale departure" from division line or railroad routing; the legal error was that the route did not begin with such routing and then just deviate therefrom at points of impracticability or unreasonableness. The Court made it clear that it was not addressing a dispute "as to whether a transmission line following railroad or division lines is practicable at certain points"; obviously, this situation would have presented a factual question committed to us as the finder of fact.

However, Objectors do not argue that the proposed route is a "wholesale departure" or contains deviations that are unnecessary from the standpoint of

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33/ Cf., Nishnabotna, supra at fn. 9.

practicability or reasonability (except for the 125' clearance requirement, the back tracking at the eastern terminus, the "Blair deviation", and the CBPS #3 exit route). Effectively ignoring the "wherever" language of §478.18, they imply that the crucial consideration is the number of deviations, whether justified or not. Unless the route proposed contains deviations which are so extreme we are led to the conclusion that planning did not begin with division lines or railroads, the number of deviations is completely irrelevant in determining compliance with §478.18 and in comparing the proposed route to suggested alternatives.

Objectors claim the "wherever" requirement of §478.18 was "modified" by establishing a route with 125' clearance to the nearest structures rather than following division lines. However, Mr. Eder testified this was required in practice in order to ensure the 100' clearance required by §478.20. As Staff points out on brief, the only deviations are either required by this clearance requirement, or made to parallel a railroad or change from one division line to another. Many of the latter deviations are in response to landowner requests. 34/ Staff does request two line-route changes, however--removal of the so-called Blair deviation and utilization of Company Alternate C as the exit route from CBPS #3.

Therefore, we find it necessary to examine only the three disputed segments of the proposed routing.

First, we turn to the backtracking at the eastern terminus which Objectors claim unnecessarily increases the length of the line by three miles. However, the record reference on this point directs us to the testimony of Glenn Frizell, who indicates that the north-south portion of the line in Madison County utilizes a corridor east of the eastern terminus because of certain limestone

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34/ In this regard, we should point out the §478.18 by its very language (". . . nor unnecessarily interfere with the use of the lands by the occupant thereof") recognizes that landowners should be allowed to bargain with regard to routing, free from complaints that the result violates the statute. Hanson itself recognizes that the statute was intended to protect the landowners involved. We concluded in the Lehigh-Sycamore case (Docket Nos. E-18206, et al.) that §478.18 does not apply to voluntary easements and have recently been upheld by the Boone County District Court.

quarries and public recreation lands under the exclusive control of the State Conservation Commission. 35/

We do, however, find merit in the two route modifications suggested by Staff.

The "Blair deviation", set forth in Exhibit CF-30, is that portion of the proposed route which takes a northwesterly angle from the quarter section line of Section 27, T 74 N, R 29 W, to a point along the quarter-quarter section line of Section 27, then proceeds west across Sections 27, 28 and 29, all in T 74 N, R 29 W, and then angles back southwesterly across Section 30, T 74 N, R 29 W, until it reaches the quarter section line. Both Mr. Blair (who owns the affected property) and Staff urge that the line route remain on the above-described quarter section line. However, Iowa Power contends that good engineering practice requires this deviation to avoid constructing the line in close proximity to nine sets of buildings and a cemetery which are located along the quarter section line.

The relevant testimony is that of Commission Staff Engineer Tefft. In conducting a line route inspection, he found that the majority of the buildings located along the quarter section line are not used as dwellings, and that by following the quarter section line, land use interference could be reduced by routing next to a county road. Elimination of the "Blair deviation" would avoid the two long diagonals and enable a greater percentage of structures to be located adjacent to cross fences or parallel fences. The record also indicates that all clearance requirements can be observed following this line route.

Therefore, we find that we should exercise our discretion under Section 478.4, The Code 1977, by approving a route remaining along the quarter section line. We do not, however, grant the right of eminent domain as to the property on this segment, since this was neither requested nor noticed by Iowa Power pursuant to Section 478.6, The Code 1977.

Finally, we have examined the alternatives presented to us for exiting

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35/ This is really not a deviation from division-line routing, since the three miles involved is on division lines.

the Council Bluffs Power Station site. The proposed route departs from the plant site and proceeds east through Sections 29, 28 and 27 all in T 74 N, R 43 W, approximately 640 feet north of the section line. Both Objectors and Staff regard this deviation as a violation of the "division line" requirement of Section 478.18, The Code 1977.

Iowa Power argues that this routing is "along" a division line, and alternatively, that this deviation from strict division line routing is necessary to avoid construction directly over a farm home and set of farm buildings. In addition, it claims that by locating the line north of the section line, a corridor is established for future 345-kV lines which may be required.

We reject the argument that a line 640 feet from a division line is "along" the same--this stretches the meaning of "along" to the point that its use in the statute would be rendered superfluous. Also, continuing the deviation from the division line east of the buildings in question is not justified. Furthermore, although Section 478.3 requires us to consider the relationship of the proposed project to any other power system planned for the future, the record does not support a finding that possible future lines necessitate the approval of this deviation from division-line routing.

The Company, both at the hearing and on brief, recognized this routing problem with regard to the western terminus of the line. In addition to the above-described petitioned-for line route at this location (Route A), the Company has proposed for our consideration alternate routes B, C, and D as shown on Exhibits JEL-2, JEL-3, and JEL-4.

Alternate Route B (JEL-2) proceeds easterly from the CBPS plant site at the same point of departure as Route A. At a point in Parcel 78-3 northeast of the buildings, mentioned above, the route angles sharply southeastward until it reaches the section line, proceeds east to a point in Parcel 78-9 directly south of the location of the 90-degree angle structure that would be placed on this parcel using proposed Route A, and then turns north and rejoins the proposed route. Although Alternate Route B is along a division line, it runs through the middle of a long cultivated farm field on Parcel 78-7. The record indicates no need to construct the line through this field and hence this routing would unnecessarily interfere with land use.

Alternate Route C (JEL-3) proceeds easterly from the CBPS plant site at the same point of departure as Route A. At a point on Parcel 78-3, the line angles sharply northeastward until it reaches the quarter section line, then proceeds directly east to a point in Section 27, T 74 N, R 43 W, where a slight deviation is made to intersect with the proposed route.

Alternate Route C is along a division line and is adjacent to a drainage ditch at the edge of cultivated fields, minimizing land-use interference. Thus, Alternate Route C satisfies Section 478.18, in all respects.

Alternate Route D (JEL-4), proposed by Objectors on brief, proceeds north on power station property to the quarter section line and then turns east. Iowa Power Witness Luhring testified as to several reasons this is not an acceptable alternative. One point presented--the cost of removing and relocating certain towers installed in anticipation of franchise--is not persuasive for obvious reasons. However, we find other reasons advanced sufficient to justify discarding this alternative. Such a route would interfere with the present and future use of the land as an ash pond for the power station. Further, Iowa Power has voluntary easement across parcel 78-2 and has indicated such can be obtained across parcel 78-3, both following Alternate Route C; no such assurance of landowner cooperation is present in the record for Alternate Route D. These factors lead us to find that Alternate Route D would unnecessarily interfere with the use of the land by the occupant thereof under Section 478.18, The Code 1977.

Therefore, pursuant to Section 478.4, The Code 1977, we find that the proposed Route A should be disapproved, and this segment of routing should be modified and approved so as to allow construction following Alternate Route C. It should be noted, however, that Iowa Power did not request or notice eminent domain pursuant to Section 478.6, The Code 1977, with respect to property located on Alternate Route C, so we may not at this time grant the right of eminent domain as to such property.

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VII. COMPARISON OF ALTERNATIVE ROUTES

As has already been pointed out, the purpose of comparing a proposed transmission line to possible alternatives is not to ascertain whether it is the best possible route, but rather whether it represents a reasonable relationship to an overall plan of transmitting electricity in the public interest in light of such available alternatives. The pertinent criteria for such a comparison are land use, cost and safety, 36/ as well as reliability.

Mr. Frizell testified in detail about the process of selection of a line route. Iowa Power selected nine alternate routes for examination, and a detailed study was made for each. We find that the alternatives presented, for purpose of a meaningful analysis of the final line route proposed, were good faith efforts under relevant legal and economic constraints to examine viable alternative routes. Objectors dispute this by pointing out that all but two of such routes contain diagonals. However, this point is not well taken since all but one of the diagonals either follow existing lines or a highway, and the remaining diagonal was offered for purposes of comparison only.

Numerous alternatives were advanced by Objectors, some of which were difficult to locate, but they center their attention on Route R-1, the "squared-off" Avoca route which follows division lines to Avoca and then proceeds along the existing 161-kV line from Avoca to Booneville, 37/ and Route VIII, which proceeds to the north to a point southwest of McClelland and then follows the Rock Island Railroad to Booneville. 38/ (See, Appendix A for route locations).

36/ Order, June 20, 1977, Conclusion of Law No. 3, Docket Nos. E-18206, et al.

37/ Route R-1 is a modification of Route IX. For comparison purposes, land-use and cost figures for Route IX will be utilized since we have no such figures for Route R-1 and the only difference between the two is the location of the north-south portion of the line.

38/ Objectors urge us to give serious consideration to routing along the Rock Island Railroad, proposing or discussing a number of alternatives. Surprisingly, however, Objectors' expert witness presented no testimony concerning railroad routing but rather concentrated on Route R-1. We do have expert testimony from Staff and Iowa Power relevant to Route VIII, though, that allows us to make a meaningful comparison to the proposed route.

The first factor to be examined is land use. The evidence does not support Objectors' allegation that the proposed route involves more cultivated land than alternative routes. The petitioned-for route (Route VI) would affect the least amount of cultivated land of any of the alternatives studied because of a design allowing for maximum span length (allowing more structures to be placed in or adjacent to cross fences) and minimizing the number of structures required. Mr. Frizell presented calculations on land-use interference for various locations of two-pole structures and with respect to single-pole and three-pole large angle structures. Utilizing such figures, Exhibit GF-38 indicates that Route VI affects 3.518 acres of cultivated and 2.904 acres of uncultivated land (total of 6.423 acres); while the squared-off Avoca route with double circuit construction affects 8.316 acres of cultivated and 0.983 acres of uncultivated land (total of 9.299 acres; however some land would be returned to production) and with parallel construction, 9.1039 acres of cultivated and 1.0587 acres of uncultivated land (total of 10.162 acres) and the railroad route affects 10.306 acres of cultivated and 2.235 acres of uncultivated land (total of 12.541 acres).

With respect to the railroad route, the land-use figure assumes single-pole construction on the railroad right of way and two-pole construction bypassing certain towns. It was proper to bypass the following towns for the purposes of this calculation given required clearances and building locations shown in Exhibit FE-4: McClelland, Hancock, Atlantic, Wiota, Anita, and Adair.

Use of single-pole structures, as proposed by Objectors, would increase rather than decrease land-use interference. As indicated by Mr. Frizell, the use of single-pole structures would require 25 percent more structures to be utilized over a given distance. Such structures would require larger foundations of reinforced concrete rather than crushed rock and guying into adjacent fields on small angles that would not be required with two-pole structures. In addition, where fences run perpendicular to the line near the structure, two-pole construction allowing the placement of structures at quarter-mile intervals coinciding with cross-fences causes less land-use interference than single-pole construction with a 600-900 foot span.

Witnesses Frizell and Eder testified with regard to the cost of the proposed line; the estimate is $14,700,000. However, the estimated cost for the railroad route is $20,273,000. This figure underestimates the right-of-way costs by not including the required purchase of a large number of easements for installation of guy wires. No study was made to determine the cost of mitigating interference with existing railroad communication lines; but such a study was performed with regard to the Lehigh-Sycamore line and these costs were used. The estimated cost of two-pole double-circuit construction along Route R-1 is $18,605,000, which does not include the added labor cost required, 39/ and the costs of design, engineering, and right-of-way acquisition for the line. Mr. Trausch indicated that single-pole double-circuit structures would cost from 10 to 20 percent more (Tr. 2061).

Even if these land-use and cost figures were not so persuasive, safety and reliability considerations clearly favor the proposed routing and design.

With regard to the use of single-pole structures suggested by Objectors, Mr. Frizell testified that, contrary to theory, in practice the two-pole H-frame construction better prevents against structure overturning or failure with severe cross-wind conditions. Further, as Mr. Tefft testified with regard to single-pole construction along the railroad route:

> * * * It has been my experience from many discussions with farming landowners that guy wires present a very extreme hazard to farm operations, an even greater hazard than do poles. Additionally, from an engineering standpoint, the introduction of guyed structures also means the introduction of additional points of possible failure in the support structures and this in turn means a greatly reduced reliability of the line and an increased safety hazard. (Tr. 1237).

The squared-off Avoca route must primarily be dismissed for its lack of reliability due to double circuiting. As pointed out already, a major reason for the proposed line is to increase service reliability. Mr. Tefft, although testifying that this alternative is a practicable and reasonable route, continued as follows:

39/ It would be necessary to minimize construction time so that the existing 161-kV line could remain in service for as long as possible.

> However, a decision must include a recognition that the two lines that would occupy the same set of structures do extend between the same two termini and are complementary. When two lines occupy the same structures, any reliability study must recognize that the loss of one line will also result in the loss of the other line in almost every case. Since these are the only two transmission lines that directly connect the two termini, common construction would reduce the reliability of the power supply to the major delivery stations in Avoca, Atlantic and Earlham. (Tr. 1243).

Hence, we conclude that the proposed route is reasonable with respect to land use, cost, safety, and reliability, in comparison to the alternatives proposed by Objectors. They suggest length is an appropriate, indeed primary, criterion to use in comparing routes and point out that the railroad route is indeed shorter. 40/ However, length is only relevant as a rough indication of land use, cost, and reliability and should be given no weight at all in this case since the shorter railroad route is much worse than the proposed route in these three respects.

Further, at times it has appeared that Objectors contend that railroad routing must be given some preference over division-line routing. For example, after noting that many of the deviations from division lines contained in the proposed route are said to be justified by Section 478.20, The Code 1977, it is pointed out on brief that this statutory provision relating to clearances does not apply to railroad routing. However, pursuant to Chapter 476 and Commission Rule 250--20.5(2) IAC, the Iowa and National Electrical Safety Codes, which include clearance requirements, apply to all transmission line construction. There is no justification, either in Section 478.18 or Hanson, for the proposition that railroad routing is to be preferred.

40/ Using the figures in Exhibit FE-1, the difference is approximately 8.5 miles.

CONCLUSIONS OF LAW

Based upon the record of this proceeding, and the agreement formalized by Commission order that all legal argument was to be contained in the briefs filed by the respective parties, the Commission enters the following Conclusions of Law. Given the nature and scope of this proceeding and its complex procedural background, this enumeration of our Conclusions of Law is not meant to be an exhaustive compilation of the legal conclusions implicit in this decision.

1. The Iowa State Commerce Commission, pursuant to Chapter 478, The Code 1977, has jurisdiction of petitions for franchises to erect, maintain and operate electric transmission lines outside cities and to grant the right of eminent domain for right of way not exceeding 200 feet in width for electric transmisssion lines of 200 kV and higher, as may be approved, prescribed and found necessary for a public use.

2. A presumption of regularity and impartiality attends all official actions by the Commission, with the burden on those asserting the contrary to prove otherwise. Cedar Rapids Steel Transportation Co. v. Iowa State Commerce Commission, 160 N.W.2d 825 (Iowa 1968).

3. A decisionmaker is not disqualified simply because he or she has taken a position, even in public, on a policy issue. Hortonville Joint School District No. 1 v. Hortonville Education Association, 426 U.S. 482 (1976).

> . . . [T]he term "bias" means adverse, preconceived mental attitude or disposition, toward a party to a controversy, of such weight and nature as to materially impair or destroy that impartiality essential to a fair hearing . . . Cedar Rapids Steel Transport Co. v. Iowa State Commerce Commission, 160 N.W.2d 825, 827 (Iowa 1968).

4. A showing of personal bias is a prerequisite to disqualification pursuant to Section 17A.17(4), The Code 1977.

5. Pursuant to Section 93.2, The Code 1977, the Chairman of the Iowa State Commerce Commission is a member of the Energy Policy Council and is required to attend the meetings of the Council.

6. Pursuant to Section 93.7, The Code 1977, two functions of the Energy Policy Council are public education and the recommendation of legislation.

7. Section 17A.17(2), The Code 1977, prohibits those ex parte communications by parties to and in connection with any issue of fact or law in that contested case.

8. Dismissal is justified as a sanction for violation of Section 17A.17(2), The Code 1977, only in a case where the communication could affect the agency's decision on the merits.

9. Neither a deficiency in a Commission procedural rule nor the lack of a Commission procedural rule affects the Commission's jurisdiction in a proceeding pursuant to Chapter 478, The Code 1977.

10. The appropriate remedy for an alleged deficiency in or absence of a rule would be a petition for rulemaking pursuant to Section 17A.7, The Code 1977, and Commission Rules 250--Chapter 3 IAC.

11. Section 17A.17(2), The Code 1977, prohibition of ex parte communications, does not require the adoption of rules as a prerequisite to this Commission's jurisdiction in any proceeding.

12. The failure of one who petitions for an electric transmission line franchise to give certified mail notice of an informational meeting pursuant to Section 478.2, The Code 1977, to some qualified person does not, ipso facto, require dismissal of the petition for franchise for lack of jurisdiction.

13. Section 478.2, The Code 1977 and Commission Rule 250--11.5(1)(b) IAC provide that notice of informational meetings shall be given by certified mail with return receipt requested to affected persons, defined as landowners, possessors and residents of affected property, and that published notice shall constitute sufficient notice to such affected persons whose addresses are not known.

14. Neither Chapter 478, nor this Commission's rules, including Rule 250--11.4(3) IAC, require notice of informational meetings be given to persons owning or possessing affected property along alternate transmission line routes for which a petition is not filed.

15. The conduct of informational meetings is governed exclusively and expressly by Section 478.2, The Code 1977; and Section 478.2, provides (a) that a member of the Commission, counsel of the Commission, or a hearing examiner

designated by the Commission shall serve as the presiding officer at informational meetings, and shall present an agenda for such meetings which shall include a summary of the legal rights of affected landowners; (b) that no formal record of the meeting shall be required; and (c) that such meeting shall be held at a location reasonably accessible to all persons, companies or corporations which may be affected by the granting of the franchise.

16. Eminent domain requires a reasonable necessity to take particular land for a public use; an absolute necessity need not exist. Vittetoe v. Iowa Southern Utilities Company, 123 N.W.2d 878 (Iowa 1963).

17. Pursuant to Section 478.18, The Code 1977, the Commission has authority to supervise the construction of electric transmission lines. Section 478.18, The Code 1977, further provides that transmission lines are to be "constructed near and parallel to the right of way of railways or along the division lines of the lands, according to the government survey thereof, 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 thereof."

18. As used in Section 478.18, The Code 1977, "the division lines of the land, according to the government survey thereof" means section lines, quarter section lines, and quarter-quarter section lines which divide land into 640-acre, 160-acre, and 40-acre tracts, respectively. Hanson v. Iowa State Commerce Comm'n., 227 N.W.2d 157 (Iowa 1975).

19. As used in Section 478.18, The Code 1977, the word "along" does not mean directly "on" the division lines of the lands according to the government survey thereof, but rather "running beside and parallel to." See, e.g., Stahr v. Carter, 116 Iowa 380, 90 N.W. 64 (1902).

20. Section 478.18, The Code 1977, requires utilities to begin their planning so as to route transmission lines along railroads or division lines and to deviate therefrom just at points of impracticability or unreasonableness. Hanson v. Iowa State Commerce Commission, 227 N.W.2d 157 (Iowa 1975).

21. Pursuant to Chapter 478, The Code 1977, the standard for approving a proposed construction, assuming the route follows land division lines or railroads wherever practicable and reasonable, is whether the proposal represents a reasonable relationship to an overall plan of transmitting electricity in the public interest; and in our inquiry to determine whether it does, and to test the reasonableness of what is proposed, we must look to available viable alternatives in terms of land use, safety, reliability, and cost. If a prima facie showing is made that a proposed construction satisfies these requirements, the burden of coming forth with competent evidence to the contrary shifts to those who oppose the Company's petition.

22. Pursuant to Section 478.4, The Code 1977, the Commission may grant a franchise for an electric transmission line in whole or in part upon such terms, conditions and restrictions, and with such modifications as to location and route as may seem to it just and proper.

23. Neither Section 478.18, The Code, 1977, nor the Supreme Court's decision in Hanson, supra, preclude landowners from granting voluntary easements for diagonal construction of an electric transmission line; however, construction of a transmission line over such easements is subject to our approval of a line route.

24. Pursuant to Section 478.2, The Code 1977, the Commission's authority to modify the route of a proposed transmission line is limited to those routes for which the notice and informational meeting requirements have been satisfied, and such requirements are satisfied if a line route modification does not affect landowners who were not given notice of informational meetings. If, however, a line route modification determined by the Commission affects landowners who were not given notice of informational meetings, it is necessary for the petitioner to begin again with informational meetings for such newly affected landowners. Hanson v. Iowa State Commerce Comm'n., 227 N.W.2d 157 (Iowa 1975).

25. Pursuant to Sections 478.1 and 478.2, The Code 1977, the Commission's jurisdiction to franchise electric transmission lines extends only to those lines outside cities; however, pursuant to Chapter 476, The Code 1977, the Commission has jurisdiction with respect to safety and service of electric utilities serving within cities.

26. Pursuant to Chapter 476, The Code 1977, and Commission Rule 250--20.5(2) IAC, the Iowa Electrical Safety Code and the National Electrical Safety Code, including the clearance requirements thereof, are applicable within cities.

FINDINGS OF FACT

Based upon Iowa Power's petitions and supporting exhibits, the objections filed in the docket, the evidence submitted at the oral hearings, and in reliance upon the issues addressed by the parties in their respective briefs, we enter the following findings of fact. Those findings implicit in the body of the order and not separately stated hereafter shall have the same force and effect as those itemized below.

1. Proper notice has been given as required by statute, and informational meetings have been conducted in each county which the proposed project will affect. Informational meetings as required by Section 478.2, The Code 1977, were held on February 17, 1976 in Oakland, Iowa and Atlantic, Iowa; on February 18, 1976 in Greenfield, Iowa and Winterset, Iowa; and on February 19, 1976 in Van Meter, Iowa.

2. Unsolicited, allegedly ex parte communications with Chairman Van Nostrand do not show personal bias on his part or on the part of the other Commissioners.

3. The statements by Chairman Van Nostrand at a meeting of the Iowa Energy Policy Council held September 15, 1977, as reported in Mr. Jim Healey's article in the Des Moines Register on September 16, 1977 are admitted as fact for purposes of this proceeding and do not demonstrate disqualifying personal bias.

4. Contacts between Iowa Power officers Putney and Lyon and Chairman Van Nostrand on February 18 and March 15, 1977, respectively, were not made during the pendency of a contested case.

5. It has not been shown that the Putney or Lyon conversations with Chairman Van Nostrand or Mr. Davis' comments at the Energy Policy Council meeting of September 15, 1977, related to issues of fact or law in this case, could affect our decision on the merits, or prejudiced Objectors in any way.

6. The Commission has adopted rules of practice and procedure as required by Section 17A.3(1)(b), The Code 1977, and it has not been shown that Objectors were prejudiced by any alleged deficiency in such rules.

7. There has not been an adequate, timely showing that anyone with a statutory interest in land at the relevant time, who had a known address, failed to receive certified mail notice of informational meetings.

8. It has not been shown that Objectors were prejudiced by any failure to give notice of informational meetings to affected persons on feasible alternate routes.

9. Objectors have not made a showing of prejudice arising from any alleged deficiencies in the conduct of the informational meetings.

10. Based on our observation of the credibility of witnesses, we find Mr. Tefft's testimony with regard to the conduct of informational meetings to be the more credible and therefore find that the meeting requirements of Section 478.2, The Code 1977, were fulfilled.

11. We find that the proposed line is necessary to serve a public use. We find a present need and necessity, as well as growing future need and necessity, for the construction of a 345 kV (400,000-volt maximum) electric transmission line between the Council Bluffs Power Station #3 and Iowa Power's Booneville Substation which ties into Iowa Power's Sycamore Substation located north of Des Moines and, in turn, other parts of the Iowa transmission system. The evidence clearly shows the necessity for the line to provide transmission for CBPS No. 3 power to be delivered to the load areas of the respective participating utilities to remedy increasing deficiencies in available generation. We further find that the line will contribute substantially to overall system reliability and represents a reasonable relationship to an overall plan of transmitting electricity in this State.

12. It has not been shown that a 230 kV design would provide the bulk power transfer capabilities required, nor that 100 feet would be reasonable right of way width.

13. It has not been shown that the 125-foot clearance criterion used by Iowa Power in designing the proposed route was unreasonable, in light of its purpose to ensure full compliance with Section 478.20, The Code 1977.

14. The "backtracking" at the eastern end of the proposed route follows division-line routing and, because of certain quarries and public recreation lands, has not been shown to be unreasonable or unjustified.

15. We find that a portion of the line route in Madison County, the so-called Blair deviation, unnecessarily deviates from division-line routing, and also would constitute an unnecessary interference with the use of the lands by the occupants thereof. The division line route along the East-West quarter-section line of Sections 27, 28, 29, and 30 in Township 74 North, Range 29 West of the 5th P.M., follows division-line routing and would not constitute such an unnecessary interference.

16. We find that the exit route from the Council Bluffs Power Station as proposed by Iowa Power in its petition is a wholesale departure from division-line routing and would also constitute an unnecessary interference with the use of the lands by the occupants thereof. Available Alternate Route C, as shown on Exhibit JEL-3 follows division-line routing; further, this alternate would not unnecessarily interfere with the use of the land by the occupant unlike Alternate Route D, as shown on Exhibit JEL-4.

17. We find that, except with regard to the Blair deviation and the CBPS #3 exit route, Iowa Power began its planning of the proposed line on the division lines of the lines and deviated therefrom only at points of impracticality or unreasonableness or to prevent unnecessary interference with land use.

18. We find that there are innumerable routes between the Council Bluffs Power Station and the Booneville Substation site that could comply with the requirement to follow land division lines or railroads. We further find that alternative routes I, II, IV, V, VI, VIII and IX as described by Iowa Power, as well as alternative routes R-1, R-2, R-3, R-4, R-6, R-7, R-8, and 27 as described by Objectors were good faith efforts within relevant legal constraints to examine alternate routes.

19. It has not been shown that Alternate Routes R-1 and VIII or the possibility of single-pole construction indicate the unreasonableness of the route or construction design proposed by Iowa Power in terms of land use.

20. We find from an examination of the testimony and the information in Exhibit FE-4 that under the Iowa Electrical Safety Code, a line route along the Rock Island Railroad would require that the communities of McClelland, Hancock, Atlantic, Wiota, Anita, and Adair be bypassed.

21. It has not been shown that Objectors' Alternate R-1 and Iowa Power's Alternate VIII as supported by Objectors demonstrate unreasonableness of the actual proposed route on the basis of original cost to construct, a cost that must be borne by the general public.

22. It has not been shown that the proposed route is unreasonable in terms of safety given the alternative construction design and routing proposed by Objectors.

23. The construction proposed by Iowa Power utilizing two-pole structures and minimizing double-circuit construction with other bulk power lines has not been shown to be unreasonable in terms of reliability by certain alternatives presented by the Objectors, including a single-pole structure design and Alternate Route R-1.

24. We find that the proposed transmission line will meet or exceed the minimum engineering requirements of the rules of this Commission and of Chapter 478, The Code 1977.

25. Iowa Power has made reasonable efforts to acquire voluntary easements. In order for construction to commence, it is reasonable and necessary to serve a public use that Iowa Power be granted the use of the right of eminent domain for described permanent rights of way as set forth in Exhibits "F" attached to the petitions for franchise, except parcels 61-4, 61-7, and 61-11 in Madison County and parcels 78-4, 78-6, 78-7, 78-8, and 78-9 in Pottawattamie County.

IT IS THEREFORE ORDERED:

1. Objectors' motions to dismiss are denied.

2. The petitions of Iowa Power and Light Company in Dockets No. E-18583, E-18584, and E-18585 are hereby granted. The petitions in Dockets No. E-18586 and E-18587 are hereby granted as amended in our Findings of Fact. Copies of the franchises are attached hereto and by this reference made a part hereof.

3. The use of the right of eminent domain by Iowa Power and Light Company is hereby prescribed and approved to construct, erect, operate, and maintain an electric transmission line for a strip of land over which eminent domain was requested on the properties as described in Exhibits "F" as amended and attached to the petitions except for parcels 61-4, 61-7, 61-11, 78-4, 78-6, 78-7, 78-8, and 78-9. Copies of Exhibits "F" are attached hereto and by this reference made a part hereof.

4. The Commission hereby retains jurisdiction of the subject matter of Dockets No. E-18583, E-18584, E-18585, E-18586, and E-18587 pursuant to Chapter 478, The Code 1977, and may hereafter, during the period of the franchises, make such further orders as may be deemed necessary.

IOWA STATE COMMERCE COMMISSION

ATTEST:

Commissioner

Secretary

Commissioner

Dated at Des Moines, Iowa, this 30th day of December, 1977.

STATE OF IOWA

IOWA STATE COMMERCE COMMISSION

IN THE MATTER OF:	)	
ELECTRIC TRANSMISSION LINE, 124 MILES OF 345,000-VOLT (400,000-VOLT MAXIMUM) LINE IN ADAIR, CASS, DALLAS, MADISON AND POTTAWATTAMIE COUNTIES, IOWA	)	DOCKET NOS. E-18583 E-18584 E-18585 E-18586
IOWA POWER AND LIGHT COMPANY,	)	E-18587
PETITIONER.	)	

CONCURRING OPINION OF CHAIRMAN VAN NOSTRAND

(Issued December 30, 1977)

As the absence of my signature on the majority decision in this docket would indicate, I have elected not to participate in the final deliberation of my fellow commissioners. One reason for my exercise of this prerogative is to eliminate the awkwardness they might otherwise experience in passing upon allegations as to personal bias on my part. I concur in their decision on this and the other questions raised in this docket.

Another reason for separately commenting on this case is to underscore the difficulty of adjudicating complex cases like this one under the existing statute. In its 1975 decision in Hanson v. Iowa State Commerce Commission, 227 N.W.2d 157, the Iowa Supreme Court took pains to examine the statute and to recognize in its conclusions that the 1913 law reflected in Section 478.18 afforded us little opportunity to treat the impact of modern technology on the routing of electric transmission lines in Iowa. The clear message to our legislature that new legislation is in order has yet to be answered.

It should be incentive enough for new legislation to merely point out that although no question of the necessity for the line involved has ever been raised, the controversy in the Hanson case has yet to be resolved and is now before our Supreme Court for the second time. The instant case involves

no less controversy and its development has been interrupted a number of times by interlocutory challenge to our capacity to even address its merits. The cost of such tortuous litigation is, of course, borne by the general ratepaying public of this state.

At a time when utility rates are becoming a larger and larger part of their budgets, these citizens are surely entitled to greater economy of litigation and lower utility construction costs. This is not likely to result absent a revision of the present law governing the franchising of electric transmission lines in Iowa.

IOWA STATE COMMERCE COMMISSION

ATTEST:

Secretary

Chairman

Dated at Des Moines, Iowa, this 30th day of December, 1977.

STATE OF IOWA

IOWA STATE COMMERCE COMMISSION

IN THE MATTER OF: ELECTRIC TRANSMISSION LINE, 124 MILES OF 345,000-VOLT (400,000-VOLT MAXIMUM) LINE IN ADAIR, CASS, DALLAS, MADISON AND POTTAWATTAMIE COUNTIES, IOWA IOWA POWER AND LIGHT COMPANY, PETITIONER.	DOCKET NOS. E-18583 E-18584 E-18585 E-18586 E-18587

ERRATA ORDER

(Issued January 17, 1978)

On December 30, 1977, we issued our "Final Opinion and Order Denying Motions to Dismiss and Granting Franchises" in these dockets. Attached to that order and made a part thereof were the Exhibits "F" that described the extent of eminent domain granted to Iowa Power and Light Company in the various dockets.

By telephone call to Staff, it has been brought to our attention by Objector Ernest Victora that the eminent domain description in our December 30, 1977, Order does not reflect amendments filed with us on May 26, 1977, and granted in our "Ruling on Motions to Dismiss" issued June 10, 1977.

We have reviewed the record and find that Staff failed to enter the amendments as requested and approved. We further find that the Exhibits "F" attached to our Order of December 30, 1977, should be modified by removing the words "together with the right of ingress and egress across adjoining land" in the first paragraph of each parcel description.

IT IS THEREFORE ORDERED that the first paragraph of the description contained in the Eminent Domain parcels of Exhibits "F" attached to and a part of our "Final Opinion and Order Denying Motions to Dismiss and Granting Franchises" issued December 30, 1977, is amended to read as follows:

> A perpetual easement to construct, operate and maintain a nominal 345,000 volt (maximum 400,000 volt) electric transmission line and all necessary wires and equipment over, along, and across the following described property, for the purpose of constructing, operating, and maintaining

said transmission line and associated wires and equipment, and the right to trim, cut or remove, with reasonable care, such trees as may interfere with the proper maintenance and operation of said transmission line.

IOWA STATE COMMERCE COMMISSION

Chairman

ATTEST:

Commissioner

Secretary

Commissioner

Dated at Des Moines, Iowa, this 17th day of January, 1978.

STATE OF IOWA

IOWA STATE COMMERCE COMMISSION

IN THE MATTER OF:	
ELECTRIC TRANSMISSION LINE, 124 MILES OF 345,000-VOLT (400,000-VOLT MAXIMUM) LINE IN ADAIR, CASS, DALLAS, MADISON AND POTTAWATTAMIE COUNTIES, IOWA	DOCKET NOS. E-18583 E-18584 E-18585 E-18586 E-18587
IOWA POWER AND LIGHT COMPANY, PETITIONER.	

ORDER DENYING REHEARING

(Issued February 8, 1978)

On December 30, 1977, we issued an Order Denying Motions to Dismiss and Granting Franchises to Iowa Power and Light Company for construction of a 345-kV transmission line from Council Bluffs to Booneville, Iowa.

On January 19, 1978, Objectors Anstey, et al., filed an Application for Rehearing containing 44 allegations of error, which was joined in by Objectors Richards and Stortenbecker, et al. On February 6, the aforementioned Objectors filed jointly a document captioned "Amendment to Application for Rehearing." Petitioner, Iowa Power and Light Company, has filed resistances to both pleadings, and a motion to strike the latter.

We must strike and give no consideration to the "Amendment to Application for Rehearing," in that it is an improper and untimely filing under Section 17A.16(2), Code of Iowa 1977. The only amendments we could recognize under this section of the Code would be those filed within the 20-day period prescribed. If it were otherwise, the period during which we may act under the same section could be reduced to but a fraction of that allotted. As it is, Objectors' "amendment" is dated but two days prior to the last day upon which the statute permits us to speak to the merits of rehearing petitions. That we may grant rehearing, and thereby gain further time to consider the validity of such additional allegations, does not change the statute or mitigate our right to a full use of an already limited period.

Turning to Objectors' Application for Rehearing, we feel constrained to address 14 of the 44 allegations directly. The remaining allegations do not cite facts or offer a rationale in support thereof, but are merely assertions that our conclusions are erroneous, or a restatement of previous argument with no attempt to refute the evidence or reasoning used in our order. Hence, certain of Objectors' allegations (1, 2, 4, 7, 8, 11-14, 16, 18-23, 26, 27, 29-36, 40, 41, 43, 44) are merely routine and are thus denied outright in reliance upon our previous findings and conclusions.

Conversely, some of Objectors' "allegations of error" constitute completely new argument and cannot be reasonably attributed to the disposition of issues addressed on brief and in our December 30 order. Because of the sheer number of arguments made during the course of these proceedings, as well as the conclusory nature of some of Objectors' allegations, and our desire to provide procedural fairness to all parties and permit this proceeding to reach administrative finality--we ordered (on the basis of agreement in the record), that the briefs before us were to contain a concise statement of all issues, all legal authorities relied on, and the specific transcript references to support factual allegations. Despite this, we are now confronted on Application for Rehearing with what appears to be entirely new argument (allegations 3, 5, 6, 10, 15, 24, 25, 28, 39, 42).

Although we shall address such allegations on their merits, they are also denied outright as new argument not reasonably presented to us for determination on brief. We view the function of any application for rehearing to bring to an agency's attention alleged omissions in its order (i.e., evidence and arguments on brief that were not addressed), and to give parties a chance to respond to any evidence or reasoning used in an order that could not be reasonably foreseen and hence briefed; it is not a "second shot" at persuading an agency by use of argument held in "reserve" or thought up after the briefing process.

Rather than attempting to paraphrase Objectors' allegations, we will set them out verbatim.

At paragraph 3 of their Application for Rehearing, Objectors allege that the Commission order of December 30, 1977 is erroneous:

> 3. In claiming to have adopted adequate procedural rules according to Sec. 17A.3-1-6 [sic 17A.3(1)(b)] in regard to the proceedings herein even though most of the said rules with the deficiencies complained of did not become effective until at least 3-29-76 and Chapter II, [sic Chapter 11] specifically dealing with the construction and operation of transmission lines did not become effective until September 27, 1976; in Division IV of said order.

This is quite different from arguing that we lack rules of practice. All "deficiencies complained of" were addressed in our order. As we have pointed out before, Objectors have not made a showing of prejudice or offered reasoning in support of their conclusion that a certain caliber of rules of practice is a jurisdictional requirement. Further, we had rules of practice effective under the IAPA during the hearing process. Arguing that we lack jurisdiction for noncompliance with §17A.3(1)(b), because our rules were not effective under the IAPA until a number of months after the latter's effective date in this circumstance, is little different from arguing that we can never have jurisdiction of anything!

We have had procedural rules since prior to 1951 and the March date is merely when our existing rules became effective under the IAPA. The five days between Iowa Power's filing of its petition, commencing this contested case, and the date we completed the process of re-enacting our rules has no significance whatsoever. Finally, our present Chapter 11, which Objectors allege was not effective until September 27, 1976, was merely a revision of Chapter 11, which was adopted prior to July 4, 1951, and amended September 24, 1965, and December 14, 1965, and does not even contain rules of practice.

At paragraph 5 of the Application for Rehearing, Objectors allege that we erred:

> 5. In claiming a failure of evidence as to the methods for obtaining mailing lists at footnote 15 of Division IV of said order, although the entire record of proceedings was included in said proceeding and further in view of the commissions [sic commission's] previous discussion at page 6 of its order conditionally granting motion to dismiss entered February 18, 1977.

Objectors' allegation at paragraph 25 is similar and will not be separately stated.

Our finding in this regard has consistently been that pursuant to the requirements of §478.2, C77, there has been no showing that anyone entitled to certified mail notice of informational meetings has failed to receive such notice. As we recited in our order, at the hearings on the motions to dismiss there was no showing that anyone with a statutory interest in land at the relevant time, who had a known address, failed to receive certified mail notice of informational meetings. Objectors do not effectively dispute our earlier finding that no more effective method of compiling a mailing list than that employed by Iowa Power has been shown on the record, nor do they show that the method used would have disclosed the name and address of anyone who failed to receive certified mail notice.

In our order of February 18, 1977, dismissing the Company's petitions for franchises in Dockets No. E-18341, et seq., we clearly distinguished between the statutory and rule notice requirements with respect to informational meetings as opposed to notice of hearing on petitions involving eminent domain. Objectors wrongfully equate the two notices, the purpose of such notices, and the statutes and rules under which they are required. There is no provision in the law that published notice of hearing on eminent domain is sufficient to landowners whose addresses are not known, and a very real distinction in the law exists between the two types of notices required. In fact, they refer us to our discussion of the breakdown of procedures with regard to notice of hearing, which is irrelevant at this point, and ignore the fact that in the order cited we indicated that notice of informational meetings had been properly given.

At paragraph 6 of their Application for Rehearing, Objectors allege error as follows:

> 6. In holding the testimony of witness Tefft as determinative in establishing the propriety of informational meetings held herein after said witness had under oath failed to recall conversations related in the answer to Interrogatory #99, and had further testified to his long association with petitioner.

Paragraph 28 is substantially the same.

Our examination of the record with respect to Mr. Tefft's memory vis-a-vis Petitioner's response to Interrogatory #99 indicates that at the January 18, 1977 hearing, Mr. Tefft at transcript p. 51 indicated that he did not recall a meeting attended by Mr. Hartje, Mr. Trausch, and other individuals. It was later clarified in the record (Tr. 1-18-77, p. 69, lines 14-16) that Mr. Tefft did not attend any meeting with Mr. Trausch, and Mr. Trausch is not among those attending the meeting listed by Petitioner in its interrogatory response (Tr. 1-18-77, p. 54, lines 17-23). Further, Mr. Tefft has no current interest in the outcome of this proceeding, unlike those who testified for Objectors in this regard. We see no error in finding his testimony credible.

At paragraph 10, Objectors allege error:

> 10. In holding in Division V a 150' right of way does not violate Sec. 478.18 for this project, especially over condemned land, in view of the fact that line configuration can be altered during construction and further that if over 50% more poles were used to reduce span length to 900' or less, according to company figures, the increased land actually taken from production would be less than 3 acres while 720 acres would be freed from easement.

We do not understand the meaning of the allegation that "line configuration can be altered during construction" nor do we know the accuracy of the figures mentioned without specific reference to the record. Accepting them as true (which may be doubtful because Objectors' previous argument with respect to a reduced right-of-way width depended on reducing the voltage of the line also), we fail to see how more poles would reduce interference with land use, since the poles cause the interference while land subject to easement can be farmed.

At paragraph 15, Objectors allege we erred:

> 15. In misinterpreting the clear provisions of Sec. 478.2 as to notice of informational meetings and attempting to adopt by rule a lesser standard in conclusion of law #13.

We stand by our earlier interpretation of the statute. We include this allegation to show our difficulty throughout in understanding what Objectors believe to be §478.2's "clear provisions"--until now, Objectors have always urged that we follow the interpretation embodied in our rule.

Objectors allege at paragraph 24 that we erred:

> 24. In finding the commission to have complied with Sec. 17A. 3-1-6 (C75) [sic Sec. 17A.3(1)(b) (C77)] when in fact most rules adopted pursuant to said section were not effective until after informational meetings were held, at finding #6, of said order.

Although it is not clear, it appears that Objectors are alleging herein that our Rules of Practice and Procedure referenced at Finding 6, page 50 of our order granting franchises, refer to informational meetings required by Code §478.2. As we pointed out in that finding, it has not been shown that Objectors have been prejudiced by any alleged deficiency in our Rules of Practice and Procedure, nor has any such allegation been made in conjunction with specification of error number 24 set forth above. Also, as indicated previously, the Commission has always had rules of practice and procedure and Objectors have never explained how or why §17A.3(1)(b) affects our jurisdiction.

To the extent specification of error number 24 intimates that rules of practice and procedure with respect to informational meetings are required, we find this completely new argument devoid of merit. Section 478.2 with respect to informational meetings is self-contained, and no rules of practice are required by the Administrative Procedure Act. Under §17A.1(2), the APA is intended to affect agencies "when they take action affecting the rights and duties of the public" and is meant to apply to rulemaking, contested case proceedings, and suits for judicial review. Informational meetings do not meet this description and categorization. Further, their function is to disseminate information and this does not lend itself to "rules of practice."

At paragraph 39 of their application, Objectors allege that we erred:

> 39. In finding at finding of fact #25, that it is reasonable and necessary to serve a public use that Iowa Power be granted the use of the right of eminent domain for described permanent rights of way as set forth in Exhibit F attached to the petitions for Franchise, contrary to Section 478.9 of the Code which limits the franchise or privilege granted to not more than 25 years.

This same allegation has been made by Objectors in their paragraph 42 which will not be set forth. In both allegations Objectors allege that we erred when Iowa Power was granted franchises for 25 years, but the right of eminent domain was granted to obtain "permanent rights of way." As we observed in our Dockets No. E-18206, et seq. when we rejected this same argument, once an electric transmission line is constructed, the line will continue to exist although the ownership may change. Under the law, ownership over such a line can only be granted for a 25-year period; at the end of this period, an extension of franchise must be sought. The only means by which a right of way granted for a line reverts to the original owner is if the line is not used or operated for five years. §478.15, C77. Clearly, under the authority of §478.6 and §478.15, C77, the Company is vested with the right of eminent domain to such extent as the Commission may approve, prescribe and find to be necessary for a public use. That is what we did.

The remaining allegations made by Objectors are not new argument, but must be rejected nonetheless.

They contend we erred:

> 9. In holding a necessity to serve a public interest exists for a proposed line whose capabilities far exceed the generating capacity of the new plant and whose adverse effects as testified by Dr. Transch [sic Trausch] go unmentioned by the Commission.

The generating capacity argument was rejected in our December 30 order. The testimony of Mr. Trausch referred to was adequately refuted in the rebuttal testimony of Mr. Tefft and mentioned in the Objectors' initial brief with respect to the adequacy of the informational meetings. Since Mr. Trausch did not attend the meetings, we did not understand the significance of his testimony and hence did not comment upon its substance.

Objectors allege at paragraph 17 that we erred:

> 17. In construing the word along in Sec. 478.18 to mean running beside and parallel to at conclusion of law #19, rather than on, where, as here, the 2 pole structure could sit astraddle of most obstructions on the land division line.

This infers that the word "along" as used in Code §478.18 has a different meaning, depending on the type of structure utilized by a petitioning utility. We affirm our reasoning as set forth beginning at page 34 of our December 30, 1977 order. The language employed by the legislature at Code §478.18 requires that transmission lines be constructed "along the division lines of the land according to the government survey thereof 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 land by the occupant thereof." This does not require construction so as to place the structures dead center on the division line. In fact, such a construction of the statute would defeat for the most part Objectors' alternate construction proposals.

We note also that straddling the land division line would interfere greatly with the use of the land by the occupants. In many cases, it would involve interference with two landowners instead of one, and require the removal of existing fences, to be replaced upon the completion of construction. Also, as Staff points out on brief, such a construction of the statute (even in 1913, when it was enacted) would be unreasonable in that it would remove from consideration the placing of electric transmission lines along existing roadways which are "on" the division line.

Objectors allege at paragraph 37 of their Application for Rehearing that we erred:

> 37. In finding at finding of fact #21 that the increased initial cost of construction over specified alternate routes is anything but deminimus [sic de minimis] in light of the projected revenue from said line.

Our referenced Finding of Fact provides as follows:

> 21. It has not been shown that Objectors' Alternate R-1 and Iowa Power's Alternate VIII as supported by Objectors demonstrate unreasonableness of the actual proposed route on the basis of original cost to construct, a cost that must be borne by the general public.

To our knowledge, the record contains no competent evidence of "the projected revenues from said line." The cost comparisons as set forth on page 43 of our order are not de minimis and are ultimately borne by the utility's ratepayers. As Staff pointed out in its reply brief at page 11, the figures that have been used by Objectors in this respect have confused revenues with profits and were developed on the erroneous assumption that the cost of the line would be expensed rather than included in rate base. More importantly, Objectors are ignoring the purpose of making a cost comparison in the first place--to ascertain whether the proposed route is reasonable in light of the cost of alternate routes. Even were we to agree with Objectors, our original finding would stand.

At paragraph 38, Objectors allege that we erred:

> 38. In finding at finding of fact #23 that objectors had a burden of showing unreasonableness in terms of reliability with regard to double pole structures and double circuiting contrary to Sec. 478.18 of the Code.

Our Finding of Fact No. 23 provides as follows:

> 23. The construction proposed by Iowa Power utilizing two-pole structures and minimizing double-circuit construction with other bulk power lines has not been shown to be unreasonable in terms of reliability by certain alternatives presented by the Objectors, including a single-pole structure design and Alternate Route R-1.

Objectors in their allegation of error number 38 are selective in their reading of our order as to who has the burden of proof in an electric transmission line proceeding. Conclusion of Law No. 21 at page 48 of our order provides as follows:

> 21. Pursuant to Chapter 478, The Code 1977, the standard for approving a proposed construction, assuming the route follows land division lines or railroads wherever practicable and reasonable, is whether the proposal represents a reasonable relationship to an overall plan of transmitting electricity in the public interest; and in our

///

> inquiry to determine whether it does, and to test the reasonableness of what is proposed, we must look to available viable alternatives in terms of land use, safety, reliability, and cost. If a prima facie showing is made that a proposed construction satisfies these requirements, the burden of coming forth with competent evidence to the contrary shifts to those who oppose the Company's petition.

As discussed in the body of our order, commencing at the middle of page 43, the Company did make a prima facie showing that the proposed construction would be safe, and reliable in terms of service continuity, whereas the Objectors' proposal to double-circuit the existing 161-kV line would not be.

In short, the assignments of error in the Objectors' Application for Rehearing proffer no facts or reasons which would warrant any change or modification of our December 30, 1977 decision and order in this proceeding, and said application should be denied.

IT IS THEREFORE ORDERED:

Objector Anstey's Application for Rehearing filed on January 19, 1978, and joined in by Objectors Richards, et al. and Stortenbecker, et al., is denied. Iowa Power's Motion to Strike the Joint Amendment to Application for Rehearing filed February 6, 1978, is granted. Our decision and order issued in this proceeding on December 30, 1977 is therefore final.

IOWA STATE COMMERCE COMMISSION

Chairman

ATTEST:

Commissioner

Secretary

Commissioner

Dated at Des Moines, Iowa, this 8th day of February, 1978.

IN THE IOWA DISTRICT COURT FOR MADISON COUNTY

FILED NO. 371
BOOK 113 PAGE 1

1979 AUG 27 PM 3:03

MARY E. WELTY
RECORDER
MADISON COUNTY, IOWA

IOWA POWER AND LIGHT COMPANY,

Plaintiff,

vs.

FLOYD DUDNEY, JANET SIDDENS DUDNEY, SHIRLEE ANN TUCKER, DAVID VERNON SIDDENS, DON CARL SIDDENS, MADISON COUNTY, IOWA, and REX ROUSE, Sheriff of Madison County, Iowa,

Defendants.

LAW NO. 2,768

ORIGINAL NOTICE

4:45 PM

MAR 20 1979

TO THE ABOVE-NAMED DEFENDANTS:

You are hereby notified that there is now on file in the Office of the Clerk of the above-named Court, a Petition in the above-entitled action, a copy of which Petition is attached hereto. The plaintiff's attorney is Gordon K. Darling, whose address is 53 Jefferson Street, Winterset, Iowa 50273.

You are further notified that unless you appear thereto and defend in the Iowa District Court for Madison County at the County Courthouse in Winterset, Iowa within twenty (20) days after the service of this Original Notice upon you, judgment by default will be rendered against you for the relief demanded in the Petition.

SEAL OF MADISON COUNTY IOWA DISTRICT COURT

Margaret Wheeler

Margaret Wheeler,
Clerk of the Above Court
Madison County Courthouse
Winterset, Iowa 50273

NOTE:

Persons named as defendants are told to "appear thereto and defend." These words are not always understood. The required appearance may be made either by the defendant or by defendant's attorney. IT IS NECESSARY TO SERVE AND FILE A SPECIAL APPEARANCE, MOTION OR PLEADING TO PREVENT A DEFAULT (RULE 87). The attorney who is expected to appear for the defendant should be promptly advised by the defendant of the service of this Original Notice.

ACCEPTANCE OF SERVICE

Service of the foregoing Notice of Appeal, Original Notice and Petition is hereby acknowledged, and receipt of a copy acknowledged this 20th day of March, 1979 at Winterset, Iowa.

Rex Rouse

Rex Rouse, Sheriff
Sheriff of Madison County, Iowa

By _____

ACCEPTANCE OF SERVICE

Service of the foregoing Notice of Appeal, Original Notice and Petition is hereby acknowledged, and receipt of a copy acknowledged this 20 day of March, 1979 at Winterset, Iowa.

MADISON COUNTY, IOWA

By Phillip Cashman

IN THE IOWA DISTRICT COURT FOR MADISON COUNTY

IOWA POWER AND LIGHT COMPANY, Plaintiff, vs. FLOYD DUDNEY, JANET SIDDENS DUDNEY, SHIRLEE ANN TUCKER, DAVID VERNON SIDDENS, DON CARL SIDDENS, MADISON COUNTY, IOWA, and REX ROUSE, Sheriff of Madison County, Iowa, Defendants.	)	LAW NO. 21768 NOTICE OF APPEAL

FILED
1979 MAR 20 PM 4:22
MARGARET WHEELER
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

COMES NOW Iowa Power and Light Company, plaintiff condemnor, and pursuant to Chapter 472, Code of Iowa (1977), hereby appeals to the District Court from the award of the Compensation Commission entered herein on March 9, 1979.

B A Webster
B. A. Webster
GAMBLE, RIEPE, BURT, WEBSTER & DAVIS
2600 Ruan Center
Des Moines, Iowa 50309
Telephone: (515) 243-6251

Gordon K. Darling
Gordon K. Darling
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Keith D. Hartje
IOWA POWER AND LIGHT COMPANY
666 Grand Avenue
P. O. Box 657
Des Moines, Iowa 50303
Telephone: (515) 281-2331

ATTORNEYS FOR IOWA POWER AND LIGHT COMPANY, Plaintiff-Condemnor

116

IN THE IOWA DISTRICT COURT FOR MADISON COUNTY

FILED
1979 MAR 20 PM 4:22
MARGARET WHEELER
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

IOWA POWER AND LIGHT COMPANY, Plaintiff, vs. FLOYD DUDNEY, JANET SIDDENS DUDNEY, SHIRLEE ANN TUCKER, DAVID VERNON SIDDENS, DON CARL SIDDENS, MADISON COUNTY, IOWA, and REX ROUSE, Sheriff of Madison County, Iowa, Defendants.	)	LAW NO. 21768 PETITION ON APPEAL FROM COMPENSATION COMMISSION AWARD

COMES NOW Iowa Power and Light Company and, for its Petition on Appeal, pursuant to Chapter 472, Code of Iowa (1977), states:

1. Plaintiff, Iowa Power and Light Company, has been granted a Franchise by the Iowa State Commerce Commission, pursuant to Chapter 478, Code of Iowa (1977) for construction and maintenance of a 345-K.V. electric transmission line through Madison County, Iowa together with the right of eminent domain.

2. Said line passes across lands owned by defendants or in which they have an interest described in Exhibit A hereto attached and incorporated herein by reference.

3. The easement acquired by plaintiff is set forth in Exhibit B and shown in the plat attached, incorporated herein by reference.

4. Said easement on defendants' property is 56 feet in width for a length of 660 feet and 150 feet in width for a length of 1968 feet, contains 7.6 acres and one structures. It is solely for the purposes of said line and defendants retain full ownership and use of said land for all purposes not inconsistent with plaintiff's easement.

5. That on March 9, 1979 said easement was condemned by plaintiff by eminent domain proceedings. That the award returned by the Compensation Commission was excessive and unreasonable. That the difference between the fair and reasonable market value of

the property before and after the condemnation of the easement did not exceed $ 6,900.00 .

6. That pursuant to law all construction damage, crop damage or damage to personal property now or hereafter incurred will be paid in addition to the payment for said easement.

WHEREFORE, plaintiff prays that damages to said property be determined in accordance with law.

B. A. Webster
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Des Moines, Iowa 50303
Telephone (515) 281-2331

ATTORNEYS FOR IOWA POWER AND LIGHT COMPANY, Plaintiff-Condemnor

OFFICERS RETURN OF SERVICE

BBB

STATE OF IOWA, MADISON County, ss.

The attached notice with copy of Petition attached received this 20th day of March, 19 79, and I certify that I served the same on the defendants named below by delivering a copy thereof to each of said defendants personally at the time and place set opposite their respective name.

Name of Defendants	Month	Day	Year	Township	County	State
Floyd Dudney	March	21st	1979	Monroe	Madison	Iowa
Janet Siddens Dudney	March	21st	1979	Monroe	Madison	Iowa
~~Rex Rouse,~~	~~March~~	~~21st~~	~~1979~~	Center	Madison	Iowa
Sheriff of Madison County, Iowa						

Rex Rouse ~~Rex Rouse~~ Sheriff

Madison County, Iowa

By _____, Deputy Sheriff

RETURN OF ORIGINAL NOTICE

STATE OF IOWA, MADISON County, ss.

The within notice came into my hands on the 20th day of March 19 79, and on the 21st day of March, 19 79, I served the same on Don Carl Siddens, by leaving a true copy thereof at the house of Don Carl Siddens, situated in the Township of Monroe Madison County, Iowa, the same being the usual place of residence of said defendent with Janet Siddens Dudney, a member of said defendant's family, with whom he resides, and over 18 years of age, the said defendant not being found within the County.

FEES

Service, $ 6.00

Copies, $ _____

Mileage, $ _____

Total, $ _____

Rex Rouse Rex Rouse

Sherriff of Madison County

By _____, Deputy

IN THE IOWA DISTRICT COURT FOR MADISON COUNTY

FILED
1979 MAR 20 PM 4:23
MARGARET WHEELER
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

IOWA POWER AND LIGHT COMPANY, Plaintiff, vs. FLOYD DUDNEY, JANET SIDDENS DUDNEY, SHIRLEE ANN TUCKER, DAVID VERNON SIDDENS, DON CARL SIDDENS, MADISON COUNTY, IOWA, and REX ROUSE, Sheriff of Madison County, Iowa, Defendants.	LAW NO. 21768 NOTICE OF APPEAL

COMES NOW Iowa Power and Light Company, plaintiff condemnor, and pursuant to Chapter 472, Code of Iowa (1977), hereby appeals to the District Court from the award of the Compensation Commission entered herein on March 9, 1979.

B A Webster

B. A. Webster
GAMBLE, RIEPE, BURT, WEBSTER & DAVIS
2600 Ruan Center
Des Moines, Iowa 50309
Telephone: (515) 243-6251

Gordon K. Darling

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Des Moines, Iowa 50303
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ATTORNEYS FOR IOWA POWER AND LIGHT COMPANY, Plaintiff-Condemnor

120

IN THE IOWA DISTRICT COURT FOR MADISON COUNTY

FILED
1979 MAR 20 PM 4:23
MARGARET WHEELER
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

IOWA POWER AND LIGHT COMPANY, Plaintiff, vs. FLOYD DUDNEY, JANET SIDDENS DUDNEY, SHIRLEE ANN TUCKER, DAVID VERNON SIDDENS, DON CARL SIDDENS, MADISON COUNTY, IOWA, and REX ROUSE, Sheriff of Madison County, Iowa, Defendants.	LAW NO. 21768 PETITION ON APPEAL FROM COMPENSATION COMMISSION AWARD

COMES NOW Iowa Power and Light Company and, for its Petition on Appeal, pursuant to Chapter 472, Code of Iowa (1977), states:

1. Plaintiff, Iowa Power and Light Company, has been granted a Franchise by the Iowa State Commerce Commission, pursuant to Chapter 478, Code of Iowa (1977) for construction and maintenance of a 345-K.V. electric transmission line through Madison County, Iowa together with the right of eminent domain.

2. Said line passes across lands owned by defendants or in which they have an interest described in Exhibit A hereto attached and incorporated herein by reference.

3. The easement acquired by plaintiff is set forth in Exhibit B and shown in the plat attached, incorporated herein by reference.

4. Said easement on defendants' property is 56 feet in width for a length of 660 feet and 150 feet in width for a length of 1968 feet, contains 7.6 acres and one structures. It is solely for the purposes of said line and defendants retain full ownership and use of said land for all purposes not inconsistent with plaintiff's easement.

5. That on March 9, 1979 said easement was condemned by plaintiff by eminent domain proceedings. That the award returned by the Compensation Commission was excessive and unreasonable. That the difference between the fair and reasonable market value of

the property before and after the condemnation of the easement did not exceed $ 6,900.00 .

6. That pursuant to law all construction damage, crop damage or damage to personal property now or hereafter incurred will be paid in addition to the payment for said easement.

WHEREFORE, plaintiff prays that damages to said property be determined in accordance with law.

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666 Grand Avenue
P. O. Box 657
Des Moines, Iowa 50303
Telephone (515) 281-2331

ATTORNEYS FOR IOWA POWER AND LIGHT COMPANY, Plaintiff-Condemnor

122

BEFORE THE SHERIFF OF MADISON COUNTY, IOWA

FILED
1979 APR -6 AM 10:
MARGARET [illegible]
CLERK OF DIS[illegible] COURT
MADISON COUNTY, IOWA

IN THE MATTER OF THE APPLICATION OF IOWA POWER AND LIGHT COMPANY FOR CONDEMNATION OF RIGHT OF WAY FOR TRANSMISSION LINE IN MADISON COUNTY, IOWA	)))	WAIVER OF NOTICE OF HEARING AND CONSENT TO JURISDICTION

COMES NOW Janet Dudney, Conservator of the Property of Don Carl Siddens, a Minor, and hereby waives Notice of Hearing Before the Compensation Commission and consents to the jurisdiction of the Commission in the above-entitled matter on behalf of the Minor, Don Charles Siddens, in consideration of Iowa Power and Light Company, the Condemnor, dismissing its appeal to the District Court of Madison County from the award of the Compensation Commission. The said Janet Dudney, individually and as life tenant of the property under condemnation, as well as the other remaindermen, did receive Notice and were represented by counsel at said hearing.

Dated this 5th day of April, 1979.

Janet Dudney

JANET DUDNEY, as Conservator of the Property of Don Carl Siddens, a Minor

IN THE IOWA DISTRICT COURT FOR MADISON COUNTY

FILED
1979 APR 16 AM 10: 30
MARGARET WHEELER
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

IOWA POWER AND LIGHT COMPANY, Plaintiff,	)	
vs.	)	LAW NO. 21768
FLOYD DUDNEY, et al., Defendants.	)	DISMISSAL OF APPEAL

COMES NOW Iowa Power and Light Company and hereby dismisses its appeal in the above-entitled case, at plaintiff's costs, the same having been fully settled out of Court.

B. A. Webster

B. A. Webster
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Attorneys for Iowa Power and Light Company, Plaintiff

IOWA DISTRICT COURT
MADISON COUNTY

☑ CLERK OF THE DISTRICT COURT ☐ MAGISTRATE

DATE 4/16/79

RECEIVED OF Margaret Wheeler Clerk

CASE NO. CITATION NO. BOOK DOCKET PAGE

DUE TO

DOLLARS

FINE

COSTS

BOND

ANSWER Condemnation

☑ CHECK ☐ CASH

12545 00

TOTAL AMOUNT

RECEIVED BY Janet Dudney

SIDLAR OFFICE PRODUCTS, CENTRE LTD - DAVENPORT, IA 52808 1765-8

784

ORIGINAL

123

124

IN THE IOWA DISTRICT COURT FOR MADISON COUNTY

FILED
1979 DEC -2 AM 9:57
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

IOWA POWER AND LIGHT COMPANY, Plaintiff,	)	LAW NO. 21768
vs.	)	
FLOYD DUDNEY, et al., Defendants.	)	STIPULATION FOR DISMISSAL

IT IS HEREBY STIPULATED that the above-entitled matter shall be dismissed, at plaintiff's cost, the same having been fully settled out of Court.

B A Webster (gd)

B. A. Webster

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Attorneys for Plaintiff,
Iowa Power and Light Company

John E. Casper

FLANDER AND CASPER
223 East Court Avenue
Winterset, Iowa 50273
Telephone: (515) 462-4912

Attorneys for Defendants