

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: CEDAR FALLS UTILITIES	DOCKET NO. E-21647
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**ORDER ESTABLISHING ISSUES TO BE DECIDED ON APPEAL, ESTABLISHING
BRIEFING SCHEDULE, AND DENYING REQUEST FOR ORAL ARGUMENT**

(Issued August 2, 2005)

On May 27, 2004, Cedar Falls Utilities (CFU) filed a petition requesting that the Utilities Board (Board) issue a franchise to erect, maintain, and operate a portion of a 161 kV (kilovolt) electric transmission line located outside the city limits of Cedar Falls, Iowa, and, therefore, within the jurisdiction of the Board. The petition was identified as Docket E-21647. The proposed route for the electric transmission line begins at the Union Substation located within the city limits of Cedar Falls, Iowa, and runs for approximately three miles south along the side of Union Road to a point just south of University Avenue, all within the city limits. The line would then cross Union Road and exit the city limits.

Outside the city limits, the line would continue south along the west side of Union Road 1.5 miles to the north margin of West Ridgeway Avenue. The line would then continue east along the north margin of West Ridgeway Avenue for one mile, re-enter the city limits, and continue along the north margin of West Ridgeway Avenue for about 1.3 miles to the new Industrial Park Substation at 605 West Ridgeway

Avenue. The franchise is requested for approximately 2.5 miles of transmission line that would be located outside the city limits of Cedar Falls in Black Hawk County.

On December 23, 2004, the Board assigned the docket to an administrative law judge (ALJ) to establish a procedural schedule, set a hearing date, and conduct the proceedings. In compliance with Iowa Code § 478.6, the Board indicated that the hearing should be held in Waterloo, Iowa.

On January 11, 2005, the ALJ issued an order establishing a procedural schedule and scheduling a hearing. After two continuances, the hearing was held on April 15, 2005. On July 6, 2005, the ALJ issued a proposed decision and order granting the petition and franchise to CFU.

Subrule 199 IAC 7.8(2) requires that appeals from the proposed decision of the ALJ be filed within 15 days of the date the decision is issued. A timely appeal was filed by Bert and Diane Schou. The Schous requested oral argument and a briefing schedule on the issues they raised. The Board, pursuant to 199 IAC 7.8(2)"d," must issue a ruling on the issues to be decided on appeal within 20 days of the date of the proposed decision of the ALJ and establish a procedural schedule for briefs and oral argument if allowed.

Due to schedule conflicts and the short time allowed by 199 IAC 7.8(2)"c" and "d" between the response date and the date an order is required to be issued, August 4 and August 10 respectively, the Board is issuing this order without the benefit of the responses to the appeal. The Board has contacted counsel for CFU and the Consumer Advocate Division of the Department of Justice (Consumer

Advocate) and informed them of this decision. The Board finds that the Schous have raised issues that should be considered on appeal.

The issues to be addressed on appeal are set out below. The parties may also address any other issues they consider relevant. The Board reserves the right to address any issue that it considers necessary to a just and fair resolution of the appeal.

ISSUES FOR CONSIDERATION ON APPEAL

1. Failure to provide notice of the petition as required by Iowa Code § 478.5 and 199 IAC 11.5(2).

Iowa Code § 478.5 and 199 IAC 11.5(2) require that the Board cause notice of the petition to be published in a newspaper for two consecutive weeks. The notice shall contain a general statement of the contents and purpose of the petition, a general description of the lands and highways to be traversed, and shall state that any objections shall be filed in writing not later than 20 days after the date of the last publication. In this case, notice was not published as required before the hearing on April 15, 2005. After the hearing, CFU published the required notice in the Waterloo Cedar Falls Courier on May 16 and May 27, 2005. No new objections were filed.

The Schous raise the issue of failure of CFU to provide the required notice because it was not published before the hearing and, when published, the notice was only published one day each week rather than everyday for a two-week period. This is an issue that the Board will consider on appeal.

2. The findings of the ALJ in the proposed order are not supported by competent and substantial evidence and the ALJ erred in not admitting certain evidence offered by the Schous.

The Schous raised several issues concerning the failure of the ALJ to admit certain evidence and that certain of the ALJ's findings were not supported by the record. The Board will consider these issues under the general heading of whether there is a preponderance of evidence to support the decision of the ALJ.

a. The Schous contend that evidence to support their position was not admitted into the record or is readily available to all parties. The specific items of evidence as described by the Schous are listed below.

1. The engineer's 1978 report referred to by the ALJ was one provided by CFU, which should take responsibility for entering that on the record.

2. The EMF-RAPID report is well-known in the industry and available on the Web and court proceedings in other states.

3. The National Institute of Environmental Health Studies (NIEHS) conclusions regarding the effect of power-line frequency electric and magnetic fields on human health.

4. The printed publication of Black on White. The Schous indicate that they will be receiving copies and will send a copy to each party. Excerpts of the book appear to have been admitted as Exhibit 213 and 216.

5. Evidence from Susan Malloy and Arthur Furstenburg, as well as from Salford and Magda Havas.

b. The Schous contend that CFU did not serve them with all of the prefiled testimony.

c. The Schous contend that the findings of the ALJ concerning the capacity of the proposed line are not credible.

d. The Schous contend that the evidence does not support the findings of the ALJ concerning the distance of the Schou house from the proposed line.

e. The Schous contend that the evidence concerning the field readings of electric magnetic fields (EMF) emissions is not scientifically verifiable and therefore not supported by the evidence.

f. The Schous contend that the findings of the ALJ concerning the health effects of the proposed power line are not supported by the record.

3. Application of the appropriate standard for admission of expert testimony and the qualifications of CFU's witnesses.

The Schous contend that CFU witness Dr. Siles was not qualified to testify as an expert on the effect of EMF on humans. The Schous did not raise the same issue with CFU's other witnesses, however, the Board will consider the qualifications of the three CFU witnesses and the opinions they gave concerning power line emissions and EMF effects on humans.

4. Exclusion of evidence concerning landing strip.

The Schous contend that CFU failed to address the location of a helicopter landing strip within ½ mile of the proposed power line. The Board will consider this issue on appeal.

5. Alternate routes not properly considered

The Schous contend the ALJ did not give proper consideration to the alternative routes, especially the one offered by Consumer Advocate. The Board will consider this issue on appeal.

6. Failure to meet the standard of "necessary for public use."

The Schous contend that CFU did not meet the requirement that the proposed line is necessary to serve the public use. The Board will consider this issue on appeal.

7. Failure to properly weigh evidence of injury to Mrs. Schou.

The Schous contend the ALJ did not properly weigh the effect of the proposed line on the health of Mrs. Schou. The Board will consider this issue on appeal.

RELIEF REQUESTED

The Schous request the ALJ's proposed order be stayed pending a Board decision on the appeal. The franchise will not be issued to CFU until a final decision is issued by the Board. A stay of the proposed order, therefore, is unnecessary. CFU cannot begin construction outside the city limits until it receives the franchise.

The Schous request that the Board rule in their favor on the evidentiary and other issues and grant a rehearing to allow them sufficient time to provide additional evidence. The Board will not address the request for rehearing until it has reviewed the record and the briefs to be filed by the parties.

The Schous requested the Board allow oral argument on the issues they have raised. The Board will deny that request. The Board finds that the record and briefs will be sufficient to allow it to make a decision on the issues raised by the Schous.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The issues set out in this order are the issues to be decided on appeal of the "Proposed Decision and Order Granting Franchise" issued by the Administrative Law Judge on July 6, 2005, in this docket, as well as any other issues the Board deems necessary to render a decision.
2. Initial briefs shall be filed on or before August 19, 2005.
3. Reply briefs shall be filed on or before September 2, 2005.
4. The request for oral argument is denied.

UTILITIES BOARD

/s/ John R. Norris

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 2nd day of August, 2005.