

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

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**IN RE:**

**DOCKET NO. E-22386**

**ITC MIDWEST LLC**

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**ITC MIDWEST LLC RESISTANCE IN OPPOSITION TO  
PETITION TO INTERVENE OF CHRIS KLOPP**

**INTRODUCTION**

ITC Midwest LLC (“ITC Midwest”) submits this Resistance in opposition to Chris Klopp’s Petition to Intervene (“Petition”). Ms. Klopp is a Wisconsin resident who was a party in the proceedings before the Public Service Commission of Wisconsin (“PSCW”) and now seeks to re-litigate the same issues before the Iowa Utilities Board (“Board”). As discussed in more detail below, ITC Midwest respectfully requests that the Board deny the Petition. Ms. Klopp waited until the PSCW voted to issue a permit for the Wisconsin portion of the electric transmission line at issue in this docket before she filed her petition to intervene.<sup>1</sup> Her petition to intervene comes more than four months after the procedural schedule was set in this case. Even overlooking the timing of Ms. Klopp’s Petition, it fails to identify sufficient grounds for intervention and is largely duplicative of issues already being addressed by other parties. Rather than (or perhaps in addition to) any right she has to appeal the Wisconsin decision in which she participated, Ms. Klopp appears to simply want to have a second try; to litigate her issues in not only her home forum, but another forum. That is not an appropriate use of

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<sup>1</sup> PSCW, Minutes and Informal Instructions of the Open Meeting of Tuesday, August 20, 2019, PSC REF#:374489, Docket No. 05-CE-146.

intervention here, and makes all state issues effectively into national issues, while also allowing the same litigants to make repeated efforts, win or lose, that are inefficient for agencies and applicants alike. In the alternative, should the Board grant the Petition, Ms. Klopp's intervention should be limited to relevant matters specific to the Iowa franchise criteria of which she has personal knowledge and which are not addressed by other parties.

### **BACKGROUND**

On April 29, 2019, the Board issued its Order Establishing Procedural Schedule; Granting Deutmeyer's, Kurt's, and Iowa Environmental Council's Petitions to Intervene; and Granting Admission Pro Hac Vice ("Order Establishing Procedural Schedule"). Over three months later, on August 29, 2019, Ms. Klopp, a Wisconsin resident, filed her Petition to Intervene. Ms. Klopp previously participated with full party status in the contested case proceedings conducted by the PSCW regarding Wisconsin portion of the Project. Among other things, Ms. Klopp participated in discovery, submitted pre-filed testimony, and submitted multiple rounds of post-hearing briefs.<sup>2</sup> The PSCW voted to issue a permit for the Project on August 20, 2019.<sup>3</sup>

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<sup>2</sup> *E.g.*, Applicants' Responses to Intervenor Chris Klopp's First Set of Discovery Requests to Applicants, PSC REF#:363372, Docket No. 05-CE-146; Direct Testimony of Chris Klopp on Behalf of Chris and Louise Klopp, PSC REF#:367538, Docket No. 05-CE-146; Chris Klopp's Initial Brief in Opposition to the Application for Cardinal-Hickory Creek Transmission Line Project, PSC REF#:372110, Docket No. 05-CE-146.

<sup>3</sup> PSCW, Minutes and Informal Instructions of the Open Meeting of Tuesday, August 20, 2019, PSC REF#:374489, Docket No. 05-CE-146.

### **LEGAL STANDARD**

The Board has discretion to allow intervention of a person “having an interest in the subject matter of a proceeding.” 199 IAC 7.13(3). When considering whether to grant intervention, the Board shall consider:

- a. The prospective intervenor’s interest in the subject matter of the proceeding;
- b. The effect of a decision that may be rendered upon the prospective intervenor’s interest;
- c. The extent to which the prospective intervenor’s interest will be represented by other parties;
- d. The availability of other means by which the prospective intervenor’s interest may be protected;
- e. The extent to which the prospective intervenor’s participation may reasonably be expected to assist in the development of a sound record through presentation of relevant evidence and argument; and
- f. Any other relevant factors.

The Board may limit a person’s intervention to particular issues, otherwise condition an intervenor’s participation, or consolidate participation when two or more intervenors have substantially the same interest. 199 IAC 7.13(5), (6).

### **DISCUSSION**

**I. The Petition should be denied because it is an untimely attempt to get a second chance to re-litigate the Project.**

Ms. Klopp waited more than four months after the procedural schedule was set in this proceeding before filing her petition. The timing is no accident. Ms. Klopp actively participated in the Certificate of Convenience and Necessity proceeding before the Public Service Commission. Ms. Klopp filed her Petition on August 29, 2019, nine days after the PSCW issued its oral decision to approve the project.<sup>4</sup> Having lost in Wisconsin,

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<sup>4</sup> Minutes from the August 20, 2019 PSCW meeting are available at <http://apps.psc.wi.gov/pages/viewdoc.htm?docid=374489>

Ms. Klopp is belatedly turning her attention to Iowa. Accordingly, ITC Midwest respectfully requests that the Board deny the Petition.

**II. The Petition should be denied because it does not identify sufficient grounds for intervention under Rule 7.13(3).**

The Petition also fails to identify grounds which are sufficient for intervention under Rule 7.13(3). Ms. Klopp has not identified how her interest is unique as compared to the other parties already participating in this proceeding, nor does she explain how a decision by the Board regarding the Project will specifically affect her interests. Ms. Klopp does not assert that she owns property in Iowa. Instead, Ms. Klopp references property she owns in Wisconsin and apparently seeks to re-litigate the same arguments she raised before the PSCW, and which the PSCW rejected when it decided to approve the Project. See Attachment 1 (Chris Klopp Request to Intervene and Notice of Appearance, PSCW Docket No. 05-CE-146). For example, Ms. Klopp previously similarly stated that her concerns included the potential cost of the Project and her own interest in energy conservation. The Board should reject Ms. Klopp's request to re-litigate these issues, as it would needlessly complicate these proceedings and suggest that other Wisconsin litigants can seek to wage a collateral attack on the PSCW in Iowa, as well.

In addition, the interests alleged by Ms. Klopp are largely similar to those already identified by other intervenors, and, in particular Iowa resident Linda Grice. See Grice Petition to Intervene (July 30, 2019). For example, both Ms. Klopp and Ms. Grice express interest in Project alternatives, natural resources generally, and energy conservation. The Board has already granted Ms. Grice's intervention petition, and to allow Ms. Klopp to intervene on the same topics would be duplicative and would not

assist in the development of the record before the Board. See, e.g., 199 IAC 7.13(3)(c), (e) and 7.13(6). As such, Ms. Klopp's Petition should be denied.

**III. In the alternative, Ms. Klopp's participation should be limited.**

To the extent the Board does not deny the Petition, Ms. Klopp's participation should nonetheless be limited to those issues which are relevant to the Iowa franchise criteria and not addressed by other parties and for which Ms. Klopp has personal knowledge. See 199 IAC 7.13(6); Order Granting Limited Interventions with Restrictions, Docket No. P-0890 (Apr. 29, 2014); Order Granting Petition to Intervene and Limiting Participation, Docket No. FCU-2012-0004 (May 22, 2012). Similarly, some of the topics raised in Ms. Klopp's Petition are not before the Board. For example, Ms. Klopp discusses statewide energy planning, the Project's route in Wisconsin, and natural resource impacts in Wisconsin. These issues are not within the Board's jurisdiction, and Ms. Klopp should be limited from addressing these topics. This limitation would assist the Board in efficiently developing a relevant record --and avoiding irrelevant material -- in this proceeding.

WHEREFORE, ITC Midwest respectfully requests that the Petition be denied. To the extent the Board grants the Petition, however, ITC Midwest respectfully requests that Ms. Klopp's participation be narrowly limited as discussed in Section III above.

Respectfully submitted this 5th day of September 2019

By: */s/ Lisa Agrimonti*

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