

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

Linda Juckette,

Plaintiff,

v.

Iowa Utilities Board,

Defendant.

Case No.: CVCV061580
IUB Docket No.: E-22417

**FIRST AMENDED PETITION FOR
JUDICIAL REVIEW OF AGENCY
ACTION**

COMES NOW, Plaintiff Linda K. Juckette, and pursuant to Iowa R. Civ. P. 1.402(4), states the following for her First Amended Petition for Judicial Review pursuant to Iowa Code § 17A.19 concerning the Iowa Utility Board’s decision dated February 1, 2021:

PARTIES, VENUE, AND JURISDICTION

1. Plaintiff Linda K. Juckette (“Juckette”) resides in Madison County, Iowa.
2. Respondent Iowa Utilities Board (“Board”) is an administrative agency located at 1375 E. Court Avenue, Des Moines, Polk County, Iowa.
3. Venue in Polk County District Court is proper under Iowa Code § 17A.19(2), which specifically allows venue to be in Polk County.
4. This Court has jurisdiction over this petition for judicial review of an agency action pursuant to Iowa Code § 17A.19.

NATURE OF AGENCY ACTION

5. On September 17, 2019, MidAmerican Energy Company (“MEC”) filed a Petition for Electric Franchise with the Board. The requested franchise proposed erection of poles in and electric lines over Juckette’s real estate in Madison County, Iowa. Specifically, MEC requests a franchise to construct, operate, and maintain 3.53 miles of

161 kV nominal operating voltage (169 kV maximum voltage) electric transmission line in Madison County.

6. Following MEC's filing of several amended petitions, the Board held a hearing on MEC's requested franchise on September 23, 2020.

7. On February 1, 2021, the Board entered an order granting MEC's requested franchise.

8. On February 16, 2021, Juckette filed an Application for Rehearing Pursuant to Iowa Admin. Code R. 199-7.27.

9. On March 19, 2021, the Board denied Juckette's Application for Rehearing.

10. Juckette has exhausted her administrative remedies and has timely filed this petition for judicial review.

11. The Board's February 1, 2021 order contains numerous factual errors. Specifically:

a. The Board erred in finding that MEC's proposed franchise serves a public interest. There was clear evidence presented that the proposed franchise are for the purpose of serving one customer, Microsoft;

b. The Board erred in concluding that the routes in proposed franchise were not unduly injurious; and

c. The Board erred in concluding that east route of MEC's proposed franchise does not unnecessarily interfere with Juckette's current and future use of real estate.

12. The Board's February 1, 2021 order also contains legal errors, violates Iowa

Code, and violates Juckette's constitutional rights. Specifically:

a. The Board improperly applied Iowa Code § 306.46 by allowing MEC to rely upon road rights-of-way to place utility poles in and lines over Juckette's real estate without any specific grant of right by Juckette;

b. The Board improperly applied Iowa Code § 306.46 by allowing MEC to rely upon road rights-of-way to place utility poles in and lines over Juckette's real estate without MEC's request for use of eminent domain powers concerning Juckette's real estate;

c. The Board improperly applied legal precedent when it concluded, as a matter of law, that the proposed franchise did not further burden Juckette's use of her property;

d. The Board improperly applied an incomplete and incorrect standard for determining whether the proposed franchise served a public interest, while ignoring constitutional limits and precedence on the standards of public interest and necessity of public use; and

e. The Board failed to apply constitutional limits to Iowa Code § 306.46 and improperly ruled that application of Iowa Code § 306.46 in this case did not violate Juckette's constitutional protections against the taking of property without just compensation.

13. The Board's factual and legal errors are more thoroughly identified in Juckette's post-hearing brief, the Board's order granting the franchise, Juckette's

application for re-hearing, and the order denying the application for re-hearing, all of which are incorporated into this Petition with this reference.

GROUND ON WHICH RELIEF IS SOUGHT

14. Juckette seeks judicial review of the Board's final decision on the grounds that it violates Juckette's constitutional rights, misapplied facts, and misapplied the law pertaining to the grant of electric franchises. Specifically:

a. The Board's final decision is unconstitutional as applied and facially based on the Board's interpretation, because the decision results in an unconstitutional taking of Juckette's property. *See* Iowa Code § 17A.19(10)(a);

b. The Board's final decision is based on Iowa Code § 306.46 which is unconstitutional as applied and facially based on the Board's interpretation, because the statute's application results in an unconstitutional taking of Juckette's property. *See* Iowa Code § 17A.19(10)(a);

c. The Board's final decision violated Iowa law by applying Iowa Code § 306.46 retroactively, contrary to principles of statutory construction in Iowa Code Chapter 4. *See* Iowa Code § 17A.19(10)(b);

d. The Board's final decision is based on its erroneous interpretation of Iowa Code § 306.46 and Iowa Code Chapter 4, which statutes the Board has not been clearly vested with discretion to interpret

and apply. *See* Iowa Code § 17A.19(10)(c);

e. The Board's final decision is based on its determination of facts clearly vested by a provision of law in the discretion of the agency that is not supported by substantial evidence in the record before the court when that record is viewed as a whole, as specifically alleged in paragraph 11 of this Petition. *See* Iowa Code § 17A.19(10)(f);

f. In granting the franchise, the Board failed to consider that MEC's analysis did not take into consideration the condemnation along the route that MEC selected, and failed to consider the impacts on property owners of the proposed route. *See* Iowa Code § 17A.19(10)(j);

g. The Board's final decision granting the franchise to MEC was not required by law and the negative impact from the grant of the franchise on the private rights affected is so grossly disproportionate to the benefits accruing to the public interest from the grant of the franchise that the Board's decision must necessarily be deemed to lack any foundation in rational agency policy. *See* Iowa Code § 17A.19(10)(k);

h. To the extent the Board has been clearly vested with authority to interpret and apply, in its discretion, Iowa Code § 306.46 and Iowa Code Chapter 4, the Board's final decision is the product of irrational, illogical, or wholly unjustifiable interpretation of said statutes. *See* Iowa Code § 17A.19(10)(l);

i. The Board's final decision granting the franchise to MEC was

based upon an irrational, illogical, or wholly unjustifiable application of the facts to law that has clearly been vested by a in the discretion of the Board.

See Iowa Code § 17A.19(10)(m); and

j. The Board's final decision was otherwise unreasonable, arbitrary, capricious, or an abuse of discretion for the reasons cited in this Petition. See Iowa Code § 17A.19(10)(n).

COUNT I: UNLAWFUL RETROACTIVE APPLICATION OF IOWA CODE § 306.46

15. Juckette restates all prior paragraphs.

16. MEC did not obtain a voluntary easement from Juckette, nor did MEC request eminent domain authority to erect poles on and place electric lines over Juckette's real property. Instead, MEC relied upon Iowa Code § 306.46 to erect the poles on and place electric lines over Juckette's property within the road right-of-way.

17. The Board relied upon Iowa Code § 306.46 to allow MEC to erect the poles on and place electric lines over Juckette's property within the road right-of-way without an easement or eminent domain authority.

18. The Board's reliance on Iowa Code § 306.46 was unlawful in that the Board applied the statute retroactively to an easement for a road right of way that was granted prior to enactment of Iowa Code § 306.46, which is in violation of the Iowa Code and the Iowa and United States Constitutions. See *NDA Farms, LLC v. Iowa Utilities Bd., Dept. of Commerce*, No. CV 009448, 2013 WL 11239755, at *9-10 (Iowa Dist. June 24, 2013).

19. The Board therefore acted beyond its delegated authority and erroneously

interpreted Iowa law. Iowa Code § 17A.19(10)(b), (c).

WHEREFORE, Plaintiff Linda Juckette respectfully requests the Court enter judgment in her favor and against the Defendants on Count I of the Petition, and further request that the Court and enter an order denying MidAmerican Energy Company's request for an electric franchise, and for all further additional relief the Court finds necessary and proper under the circumstances.

COUNT II: IOWA CODE § 306.46 IS UNCONSTITUTIONAL
(Fifth Amendment of Constitution of the United States of America)

20. Juckette restates all prior paragraphs.

21. Iowa Code § 306.46 provides that "A public utility may construct, operate, repair, or maintain its utility facilities within a public road right-of-way." MEC and the Board understand this statute to mean that a public utility, such as MEC, can erect poles on and place electric lines over the portion of private real estate which is subject to a public road right-of-way easement without compensating the landowner.

22. An easement – such as a public road right-of-way – is a burden on the real estate. However, the servient landowner does not surrender a fee simple by virtue of granting an easement. Instead, all that is relinquished by the landowner by virtue of the easement is whatever rights are contemplated by the specific easement. When a servient landowner conveys a public road right-of-way easement, the landowner retains a fee simple interest in the real estate, subject only to the specific burdens contained in the easement. *See Keokuk Junction Ry. Co. v. IES Indus., Inc.*, 618 N.W.2d 352, 360 (Iowa 2000).

23. As a matter of law, the installation of electric lines creates an actual burden

on real estate. *See Id.* Further, the erection of poles on and electric lines over a portion of real estate that is subject to a road right-of-way easement is an additional burden on the real estate. *Id.* 360-62.

24. The United States Constitution prohibits the taking of private property without just compensation. The Board's application of Iowa Code § 306.46 in this case would result in a taking of Juckette's real property because MEC would physically invade Juckette's real property without paying just compensation to Juckette. *See Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982) (holding that a statute which allows a third-party to physically invade real property without just compensation is unconstitutional).

25. For these reasons, the Board's actions were unconstitutional as applied to Juckette, and if the Board's interpretation of Iowa Code § 306.46 stands then the statute is facially unconstitutional. Iowa Code § 17A.19(10)(a).

WHEREFORE, Plaintiff Linda Juckette respectfully requests the Court enter judgment in her favor and against the Defendants on Count II of the Petition, and further requests that the Court and enter an order denying MidAmerican Energy Company's request for an electric franchise, or, alternatively, order MidAmerican Energy Company to re-petition the Iowa Utilities Board for proper eminent domain authority over Juckette's property, or, alternatively, MidAmerican Energy Company to commence proceedings before the appropriate county compensation commission to determine compensation for the use and taking of Juckette's property, and for all further additional relief the Court finds necessary and proper under the circumstances.

COUNT III: IOWA CODE § 306.46 IS UNCONSTITUTIONAL
(Article 1, Sec. 18 of Constitution of Iowa)

26. Juckette restates all prior paragraphs.

27. The Iowa Constitution prohibits the taking of private property without just compensation. Iowa Const. Art. 1, Sec. 18.

28. Application on Iowa Code § 306.46 in this case would result in a taking of Juckette's real property because MEC would physically invade Juckette's real property without paying just compensation to Juckette.

29. For these reasons, the Board's actions were unconstitutional as applied to Juckette, and if the Board's interpretation of Iowa Code § 306.46 stands then the statute is facially unconstitutional. Iowa Code § 17A.19(10)(a).

WHEREFORE, Plaintiff Linda Juckette respectfully requests the Court enter judgment in her favor and against the Defendants on Count III of the Petition and further requests that the Court and enter an order denying MidAmerican Energy Company's request for an electric franchise, or, alternatively, order MidAmerican Energy Company to re-petition the Iowa Utilities Board for proper eminent domain authority over Juckette's property, or, alternatively, MidAmerican Energy Company to commence proceedings before the appropriate county compensation commission to determine compensation for the use and taking of Juckette's property, and for all further additional relief the Court finds necessary and proper under the circumstances.

COUNT IV: MEC FAILED TO MEET STANDARDS FOR GRANT OF FRANCHISE

30. Juckette restates all prior paragraphs.

31. MEC had the burden of proof to establish that the proposed franchise met the requirements for a franchise under Iowa Code Chapter 478.

32. MEC failed to prove, and the Board erred in finding to the contrary, that the proposed franchise served a public interest.

33. MEC failed to prove, and the Board erred in finding to the contrary, that the proposed franchise was necessary for a public use.

34. MEC failed to prove, and the Board erred in finding to the contrary, that the proposed franchise was not unduly injurious.

35. MEC failed to prove, and the Board erred in finding to the contrary, that the proposed franchise did not unnecessarily interfere with landowner's, including Juckette's, current and future use of real property.

36. MEC failed to prove, and the Board erred in finding to the contrary, that MEC considered alternative routes and methods of supply.

37. Although the evidence demonstrated as much, the Board failed to find that MEC's requested franchise was truly for benefit of one entity: Microsoft.

38. The evidence demonstrates that MEC failed to prove its entitlement to a franchise under the facts and circumstances of this case, and the Board erred in ruling to the contrary.

39. For these reasons, the Board's decision: was not supported by substantial evidence, Iowa Code § 17A.19(10)(f); failed to take into consideration evidence which

would have affected the conclusion of a reasonable factfinder, Iowa Code § 17A.19(10)(j); the Board's decision was not required by law and the negative effects of granting the franchise outweigh any benefit, Iowa Code § 17A.19(10)(k); was irrational, illogical, and wholly unjustifiable on the factual record and statutes before the Board, Iowa Code § 17A.19(10)(l), (m); was arbitrary, capricious, and an abuse of discretion, Iowa Code § 17A.19(10)(n).

WHEREFORE, Plaintiff Linda Juckette respectfully requests the Court enter judgment in her favor and against the Defendants on Count IV of the Petition, and further request that the Court and enter an order denying MidAmerican Energy Company's request for an electric franchise, and for all further additional relief the Court finds necessary and proper under the circumstances.

By: /s/ John E. Lande

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