

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

LINDA JUCKETTE,

Petitioner,

vs.

IOWA UTILITIES BOARD,

Respondent.

CASE NO. CVCV061580

**RESPONDENT'S ANSWER TO
FIRST AMENDED PETITION**

COMES NOW Respondent Iowa Utilities Board, by and through its undersigned counsel, and for its Answer to First Amended Petition, respectfully states as follows:

PARTIES, VENUE, AND JURISDICTION

1. The allegations contained in Paragraph 1 are admitted.
2. The allegations contained in Paragraph 2 not admitted herein are denied. It is admitted that the "Iowa Utilities Board" is an "agency" as that term is defined in Iowa Code § 17A.2 and located at 1375 E. Court Avenue, Des Moines, Polk County, Iowa.
3. The allegations contained in Paragraph 3 are admitted.
4. The allegations contained in Paragraph 4 are admitted.

NATURE OF AGENCY ACTION

5. The allegations contained in Paragraph 5 not admitted herein are denied. It is admitted that on September 17, 2019, MidAmerican Energy Company filed a "Petition for Electric Transmission Line Franchise" with Respondent Iowa Utilities Board. It is further admitted that in its petition, MidAmerican Energy Company requested a franchise to erect, maintain, and operate 3.53 miles of electric transmission line capable of operating at a maximum voltage of 169,000 volts in Madison County, Iowa, and requested that a portion of the proposed electric

transmission line be routed in the public road right-of-way that borders Petitioner Linda Juckette's real property to the east.

6. The allegations contained in Paragraph 6 are admitted.

7. Respondent admits that on February 1, 2021, Respondent issued an "Order Granting Petition for Electric Transmission Line Franchise and Right of Eminent Domain," which in part granted MidAmerican Energy Company's petition for franchise filed on September 17, 2019, as subsequently revised.

8. The allegations contained in Paragraph 8 are admitted.

9. The allegations contained in Paragraph 9 are denied. Respondent admits that on March 18, 2021, Respondent issued an "Order Denying Application for Rehearing" that denied Petitioner Linda Juckette's Application for Rehearing.

10. The allegations contained in Paragraph 10 call for legal conclusions for which no response is required. Notwithstanding, Respondent does not contend Petitioner Linda Juckette failed to exhaust her administrative remedies or failed to timely file her petition for judicial review.

11. The allegations contained in Paragraph 11, including each and every subpart, are denied.

12. The allegations contained in Paragraph 12, including each and every subpart, are denied.

13. Paragraph 13 does not set forth an averment of fact for which a response is required and the incorporated documents speak for themselves.

GROUND ON WHICH RELIEF IS SOUGHT

14. The allegations contained in Paragraph 14, including each and every subpart, are denied.

COUNT I: RETROACTIVE APPLICATION OF IOWA CODE § 306.46

15. Respondent re-alleges and incorporates by reference Paragraphs 1 through 14 of this

Answer to First Amended Petition as if set forth herein.

16. The allegations contained in Paragraph 16 not admitted herein are denied. It is admitted that MidAmerican Energy Company did not obtain a voluntary easement from Petitioner Linda Juckette (although it claimed the existence of an easement), did not seek the right of eminent domain over Petitioner Linda Juckette's real property, and relied, in part, on Iowa Code § 306.46.

17. The allegations contained in Paragraph 17 not admitted herein are denied. It is admitted that in its February 1, 2021 final order, Respondent Iowa Utilities Board concluded Iowa Code § 306.46 permitted MidAmerican Energy Company to construct, operate, repair, and maintain the transmission line in the public road right-of-way.

18. The allegations contained in Paragraph 18 are denied.

19. The allegations contained in Paragraph 19 are denied.

WHEREFORE, Respondent Iowa Utilities Board respectfully requests this Court deny the relief requested by Petitioner, affirm the final agency decision, and assess costs of this action against Petitioner.

COUNT II: IOWA CODE § 306.46 IS NOT UNCONSTITUTIONAL

20. Respondent re-alleges and incorporates by reference Paragraphs 1 through 19 of this Answer to First Amended Petition as if set forth herein.

21. The allegations contained in Paragraph 21 not admitted herein are denied. It is admitted that the quoted language in Paragraph 21 is taken from the first sentence of Iowa Code § 306.46(1). Respondent Iowa Utilities Board further admits that its interpretation of § 306.46 is contained in its February 1, 2021 final order.

22. The allegations contained in Paragraph 22 are legal assertions and arguments for which

no response is required. In the event a response is required, Respondent Iowa Utilities Board denies the allegations contained in Paragraph 22 as being an incomplete discussion of property law.

23. The allegations contained in Paragraph 23 are legal assertions and arguments for which no response is required. In the event a response is required, Respondent Iowa Utilities Board states the cited Iowa Supreme Court decision speaks for itself.

24. The allegations contained in Paragraph 24 not admitted herein are denied. It is admitted that Amendment V of the United States Constitution provides, in part, that private property shall not “be taken for public use, without just compensation.”

25. The allegations contained in Paragraph 25 are denied.

WHEREFORE, Respondent Iowa Utilities Board respectfully requests this Court deny the relief requested by Petitioner, affirm the final agency decision, and assess costs of this action against Petitioner.

COUNT III: IOWA CODE § 306.46 IS NOT UNCONSTITUTIONAL

26. Respondent re-alleges and incorporates by reference Paragraphs 1 through 25 of this Answer to First Amended Petition as if set forth herein.

27. The allegations contained in Paragraph 27 not admitted herein are denied. It is admitted that Article I, § 18 of the Iowa Constitution provides, in part, that “[p]rivate property shall not be taken for public use without just compensation first being made, or secured to be made to the owner thereof, as soon as the damages shall be assessed by a jury, who shall not take into consideration any advantages that may result to said owner on account of the improvement for which it is taken.”

28. The allegations contained in Paragraph 28 are denied.

29. The allegations contained in Paragraph 29 are denied.

WHEREFORE, Respondent Iowa Utilities Board respectfully requests this Court deny the relief requested by Petitioner, affirm the final agency decision, and assess costs of this action against Petitioner.

COUNT IV: THE STANDARDS FOR GRANTING A FRANCHISE WERE MET

30. Respondent re-alleges and incorporates by reference Paragraphs 1 through 29 of this Answer to First Amended Petition as if set forth herein.

31. The allegations contained in Paragraph 31 not admitted herein are denied. It is admitted that Respondent Iowa Utilities Board may not issue an electric transmission line franchise without first making the necessary findings set forth in Iowa Code chapter 478 and ensuring the requirements in chapter 478 are met.

32. The allegations contained in Paragraph 32 are denied.

33. The allegations contained in Paragraph 33 are denied.

34. The allegations contained in Paragraph 34 are denied.

35. The allegations contained in Paragraph 35 are denied.

36. The allegations contained in Paragraph 36 are denied.

37. The allegations contained in Paragraph 37 are denied.

38. The allegations contained in Paragraph 38 are denied.

39. The allegations contained in Paragraph 39 are denied.

WHEREFORE, Respondent Iowa Utilities Board respectfully requests this Court deny the relief requested by Petitioner, affirm the final agency decision, and assess costs of this action against Petitioner.

Respectfully submitted,

/s/ Jon Tack

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**ATTORNEYS FOR RESPONDENT IOWA
UTILITIES BOARD**

**ALL PARTIES SERVED ELECTRONICALLY
THROUGH EFS**