

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

Linda Juckette,

Plaintiff,

v.

Iowa Utilities Board,

Defendant.

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

**LINDA JUCKETTE’S RESISTANCE TO
IOWA ASSOCIATION OF ELECTRIC
COOPERATIVE AND IOWA UTILITY
ASSOCIATION’S MOTIONS TO
INTERVENE**

COMES NOW, Plaintiff Linda K. Juckette, for her resistance to Iowa Association of Electric Cooperative’s and Iowa Utility Association’s Motion to Intervene, states:

1. On May 7, 2021, Iowa Association of Electric Cooperative (“IAEC”) filed a Motion to Intervene in the above captioned matter.

2. On May 20, 2021, Iowa Utility Association (“IUA”) filed a Motion to Intervene in the above captioned matter.

3. This proceeding is a judicial review of a contested agency action and is governed by Iowa Code § 17A.19.

4. Under Iowa Code § 17A.19(2), “*Any party of record in a contested case before an agency* wishing to intervene and participate in the review proceeding must file an appearance within forty-five days from the time the petition is filed.” (emphasis added).

5. Neither IAEC nor IUA were parties to the proceeding before the Iowa Utilities Board at issue in this case. IAEC and IUA, therefore, have no right under Chapter 17A to intervene in this current proceeding.

6. To the extent this proceeding is also governed by the Iowa Rules of Civil Procedure, neither IAEC nor IUA have any right to intervene.

7. Intervention is governed by Iowa Rule of Civil Procedure 1.407. Under this rule, there are two kinds of intervention: intervention by right and permissive intervention. The rule states:

1.407(1) *Intervention of right.* Upon timely application, anyone shall be permitted to intervene in an action under any of the following circumstances:

- a. When a statute confers an unconditional right to intervene.
- b. When the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

1.407(2) *Permissive intervention.* Upon timely application, anyone may be permitted to intervene in an action under any of the following circumstances:

- a. When a statute confers a conditional right to intervene.
- b. When an applicant's claim or defense and the main action have a question of law or fact in common.
- c. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action.

In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

...

1.407(4) *Disposition.* The court shall grant interventions of right unless the applicant's interest is adequately represented by existing parties. The court shall consider applications for permissive intervention and grant or deny

the application as the circumstances require. The intervenor shall have no right to delay, and shall pay the costs of the intervention unless the intervenor prevails.

8. IAEC and IUA have no ability to intervene by permission because none of the situations described in Iowa R. Civ. P. 1.407(2) apply. Neither motion for intervention filed by IAEC or IUA allege any ability to intervene under Rule 1.407(2).

9. IAEC and IUA have no ability to intervene as a matter of right. There is no statute that confers upon IAEC or IUA an unconditional right to intervene. To the contrary, § 17A.19(2)'s allowance for intervention of parties that participated in the agency proceeding strongly suggests that judicial review proceedings are limited to the participants in the agency action.

10. Additionally, neither IAEC nor IUA have an interest in the proceeding, and even if they did, IAEC and IUA's interests are adequately represented by MidAmerican Energy.

11. The sole basis claimed by both IAEC and IUA for intervention is under Rule 1.407(1)(b), which allows intervention "[w]hen the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties."

12. Iowa Courts have long rejected attempts to intervene under Rule 1.407(1)(b) when the applicant has no direct interest in the proceeding, as opposed to a generalized interest in the outcome of the type of case. In other words, intervenors should have a

property interest that will be affected by the facts of the particular dispute, not merely be affected by the collateral consequences of the Court's ruling on a point of law. Neither IAEC nor IUA have identified a property right affected by MidAmerican's decision to build an electric transmission line across Ms. Juckette's property.

13. The purpose of intervention is to eliminate multifarious litigation by including all interested parties in a particular dispute to expeditiously dispose of the issue. *State ex rel. Miles v. Minar*, 540 N.W.2d 462, 465 (Iowa Ct. App. 1995).

14. An applicant has an interest in a proceeding, for the purposes of intervention, if the interest is "derived from some legal right or liability which would be impacted by the judgment sought by the parties." *Minar*, 540 N.W.2d at 465. The interest cannot be speculative or contingent. *Id.*

15. The interest in a proceeding must be a legal right that is directly affected by the proceeding. *In the Interest of A.G.*, 558 N.W.2d 400, 403 (Iowa 1997) explained:

An interest that is indirect, remote or conjectural is generally insufficient to support intervention. On the other hand, a statutory right will support intervention, provided that right will be directly affected by the subject litigation. In addition to the nature of the interest, we consider whether the asserted interest will be impaired – "directly affected" – by the disposition of the action in which intervention is sought. *See State ex rel. Miles v. Minar*, 540 N.W.2d 462, 465 (Iowa App.1995)."

16. However, mere interest in the outcome of a proceeding is not sufficient to establish an "interest" for purposes of intervention. *See In re H.N.B.*, 619 N.W.2d 340, 343 (Iowa 2000) ("An indirect, speculative, or remote interest will not provide one a right to intervene.; see 59 Am.Jur.2d Parties § 134, at 591-92 (1987) (to have an interest in an action, a person must assert more than a mere general interest in the subject matter of the

litigation); 67A C.J.S. Parties § 75, at 815 (1978) (same). Thus, the mere interest or desire to adopt a child will not qualify as a sufficient interest. *B.B.M.*, 514 N.W.2d at 427 (noting that if such an interest were found sufficient, an unlimited number of people would be entitled to intervene).”).

17. IAEC and IUA have no interest in the present proceeding. Neither IAEC nor IUA are seeking any electric franchises that affect Juckette’s real estate.¹ Neither IAEC nor IUA sought to intervene in the proceeding when it was before the Iowa Utilities Board. Certainly, if either IAEC or IUA had a property interest that would have been directly affected by the Iowa Utilities Board’s ruling on MidAmerican’s franchise request, those associations would have intervened before the Board.

18. Both IAEC and IUA allege in their motions to intervene that they do not own any electric lines. Those associations are nothing more than industry groups for a collection of other companies that do similar business as MidAmerican Energy.

19. Neither IAEC nor IUA have any direct interest in MidAmerican Energy obtaining the requested franchise as it applies to Juckette’s property. Moreover, none of the members of IAEC or IUA (with the exception of MidAmerican Energy) have any direct interest in the franchise at issue.

20. Additionally, IAEC and IUA both contend they have an interest because their members have used rights of way to erect utilities under Iowa Code § 306.46. The fact that the associations’ members have used a statute in the past does not confer an

¹ Indeed, neither IAEC nor IUA are seeking *any* franchise as it applies to the proceeding instituted by MidAmerican Energy.

interest in this proceeding upon the associations or their members. This proceeding concerns whether MidAmerican Energy can place an electric line on Juckette's property absent an easement. Ms. Juckette has raised issues that Iowa Code § 306.46 does not apply to the present case. Ms. Juckette has raised constitutional issues as applied to this case. Because the issues in this case are "as applied," the fact that IAEC and IUA's members have used a statute in the past on other properties is wholly irrelevant and does not make those associations interested in the current case.

21. Moreover, even if IAEC and IUA were interested parties, the analysis on an applicant's ability to intervene does not end there. Even if an applicant has an interest, intervention is only permitted if the applicant's interest is not adequately represented by the existing parties to the proceeding.

22. Here, IAEC and IUA's interests, if they have any, are more than adequately represented by MidAmerican Energy.²

23. MidAmerican Energy is the party seeking the franchise that is at issue in this case. IAEC and IUA are associations of companies like MidAmerican Energy. IAEC and IUA both claim an interest by virtue of their member companies' reliance on a specific statute in other circumstances unrelated to the franchise and its effect on

² While MidAmerican Energy is not yet technically a party to this current proceeding, MidAmerican Energy was a party to the Iowa Utilities Board proceeding. MidAmerican Energy filed a Motion to Intervene on May 7, 2021. Ms. Juckette agrees that MidAmerican Energy is entitled to intervene because it was a party to the Iowa Utilities Board proceeding. For all intents and purposes, MidAmerican Energy is a party to this current lawsuit, and once the Court grants MidAmerican Energy's motion to intervene, MidAmerican Energy will be a party of record.

Juckette's real estate. If IAEC and IUA indeed have any interest in this proceeding at all, it is because of their members. Those members are companies just like MidAmerican Energy. IAEC's and IUA's members' interests are adequately represented by MidAmerican Energy. In fact, MidAmerican Energy is itself a member of IUA.³ IUA cannot claim its interest that is derived from its members is not adequately represented by its member MidAmerican Energy.

24. As the record demonstrates, this franchise is of much significance to MidAmerican Energy, because it is obligated by private contract with Microsoft to provide electricity to Microsoft's massive complex. It is wholly because of MidAmerican's private contract with Microsoft that MidAmerican even sought the franchise in the first place.

25. No other party has any other greater incentive to advocate for the Court's approval of the Iowa Utility Board's decision than MidAmerican Energy. There can be no greater example of a party's interest being more adequately represented than is present here.

26. In sum, neither IAEC nor IUA have any right to intervene in this proceeding because they do not have an interest, and even if they did, their interest is adequately represented by MidAmerican Energy.

27. Additionally, both IAEC and IUA lack standing to assert themselves in this judicial review proceeding. In 2020, the Iowa Supreme Court held that an individual

³ <https://www.iowautility.org/members/> (accessed May 11, 2021).

lacked standing to be a party in the district court on a matter involving review of an agency action under Iowa Code § 17A.19. See *Dickey v. Iowa Ethics & Campaign Disclosure Bd.*, 943 N.W.2d 34 (Iowa 2020). In *Dickey*, the Supreme Court stated:

[T]o have standing to challenge an administrative action in court under the IAPA, the complaining party must (1) have a specific, personal, and legal interest in the litigation; and (2) the specific interest must be adversely affected by the agency action in question. Notably, a person may be a proper party to agency proceedings and not have standing to obtain judicial review.

A “general interest” in the proper enforcement of the law cannot support standing to obtain judicial review. A general interest shared by all citizens in making sure government acts legally is normally insufficient to support standing. . .

Id. at 37-38 (internal citations and quotations omitted).

28. As previously articulated, IAEC and IUA have nothing more than a general interest in the application of the law. Allowing IAEC and IUA to intervene in this case will simply add undue delay to this proceeding, and prejudice Ms. Juckette by forcing her to respond to duplicative filings from parties that are adequately represented by MidAmerican.

WHEREFORE, Plaintiff Linda Juckette respectfully requests the Court deny the motions for intervention filed by the Iowa Association of Electric Cooperative and Iowa Utility Association.



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CERTIFICATE OF SERVICE

I hereby certify that on May 14, 2021, I electronically filed the foregoing document with the Clerk of the Court by using the Iowa Judicial Branch electronic filing system which will send a notice of electronic filing to the following:

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