

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

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LINDA K. JUCKETTE,

Petitioner,

v.

IOWA UTILITIES BOARD,

Respondent.

Case No. CVCV061580

**IOWA UTILITY ASSOCIATION'S  
REPLY TO RESISTANCE TO  
MOTION TO INTERVENE**

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**BACKGROUND**

On May 10, 2021 the Iowa Utility Association (IUA”) filed a motion to intervene pursuant to Iowa Rules of Civil Procedure 1.407, 1.1603 along with an alternative request to file a brief as amicus curiae in this judicial review case.

On May 14, 2021 Juckette resisted that motion.

**ARGUMENT**

A. Rule 1.407 Intervention

District courts have recognized the ability of interested utilities to intervene in a decision by the Iowa Utilities Board. *Aventure Communications Technology, L.L.C. v. Iowa Utilities Board*, 734 F.Supp.636, 650 (N.D. Iowa 2010) (plainly, whatever interests the carriers have in continuation of the IUB’s new regulations, those interests may be impaired, if this litigation results in a preliminary or permanent injunction on implementation of those new regulations).

Interested groups or associations have also been allowed to intervene in cases where a constitutional challenge is made to a statute that it is interested in. See , e.g. *Jackson v. Abercrombie*, 282 F.R.D. 507, 515 (D. Hi 2012) (public interest group entitled to intervene as matter of right in action challenging legality of measure it supported); *N. American Meat Institute v. Becerra*, 420 F. Supp. 3d 1014 (N.D. Cal 2019) (constitutional challenge to statute by

trade association warranted permissive intervention by animal welfare organizations)

IUA has supported and relied upon Iowa Code §306.46 as authority for its members to locate facilities in road rights-of-way. Juckette's appeal raises a facial constitutional challenge in addition to issues relating to the interpretation of the statute. The facial constitutional challenge involves a direct, substantive interest of IUA in the outcome of this matter and the continued use of Iowa Code §306.46 as determined by the IUB. Any determination that the statute is unconstitutional, or does not apply retroactively, would work a severe hardship on IUA. Thus, IUA clearly has a sufficient interest to intervene as of right pursuant to IRCP 1.407(1)(b) because it has an interest in the location of utility facilities in rights-of-way and a ruling in this matter may impair or impede its ability to protect such interest.

The adequacy of representation is met "by comparing the interests of the proposed intervenor with the interests of the current parties to the action." and a party generally need only make a minimal showing "that representation 'may be' inadequate" to be entitled to intervene on that basis. *Aventure* at 651. While MidAmerican is a party to the case and a member of IUA, its interest is particularly focused on this case; whereas, the association has a different interest in the public policy surrounding Iowa Code §306.46 because the uses of road right-of-way impact its entire membership in a manner distinct from MidAmerican in this case. As such MidAmerican's representation may not adequately represent the interest of IUA.

IUA should also be allowed to intervene permissively pursuant to IRCP 1.407(2)(b) because this matter raises a common question of law regarding application of Iowa Code §306.46. IUA's participation as a permissive intervenor will not unduly delay nor prejudice the rights of the parties. The court has broad discretion to allow permissive intervention.

Even the authority cited by Juckette recognizes that no definite or precise test exists to

determine sufficiency of interest for intervention and that courts approach the inquiry with flexibility and focus on circumstances of each case. See *State ex rel. Miles v. Minar*, 540 N.W.2d 462, 465 (Iowa 1995). IUA has direct interest in statute being deemed constitutional and applied retroactively.

Juckette's reliance on intervention in family law cases involves interests that are markedly different than those in this case which involve public utility rights-of-way. See *Interest of A.G.*, 558 N.W.2d 400 (Iowa 1997)(intervention attempt by grandmother in CHINA proceeding); *Interest of H.N.B.*, 619 N.W.2d 340 (Iowa 2000) (former foster parents to one of two siblings moved to intervene in parent-child termination action involving those siblings).

Juckette also conflates standing with intervention. Those are separate and distinct concepts. Rule 1.407 does not require standing.

Moreover, IUB and others have standing and, accordingly the ability of IUA to intervene is not dependent on its own standing. *cf. Dickey v. Iowa Ethics and Campaign Disclosure Board*, 943 N.W.2d 34 (Iowa 2020) (Attorney with campaign finance experience petitioned for judicial review of Ethics and Campaign Disclosure Board's dismissal of his complaint which had alleged that Governor underreported the fair market value of a flight on a corporate private jet paid by a campaign donor).

For these reasons, the court should exercise its broad discretion to allow permissive intervention by IUA.

#### B. Amicus Curiae Status

The Iowa Supreme Court has recently affirmed the inherent ability of a court to grant *amicus curiae* status. *Interest of C.Z.* 956 N.W. 2d 113, 121 (Iowa 2021) (courts freely allow amici on appeal where all advocates are stuck with the record already made but there is no

regularized amicus practice at the trial court level); see also *Martinez v. Capital Cities/ABC-WPVI*, 909 F. Supp. 283, 286 (E.D. Pa. 1995) (recognizing that a district court has inherent authority to appoint *amicus curiae* to assist in a proceeding and even though there was no specific statute or rule, the court was guided by Rule 29 of the Federal Rules of Appellate Procedure); *Verizon New England v. Maine Public Utilities Commission*, 229 F.R. D. 335 (D. Me. 2005) (in district court action involving challenge to utility commission order, certain carriers were allowed to participate as traditional *amicus curiae*).

Several factors support granting IUA *amicus curiae* status. First, this is a judicial review action which means the record has already been made. Further, Iowa Rule of Appellate Procedure 6.906 authorizes the filing of amicus briefs.

It is recognized that when such an amicus application is granted by the court, the applicant is allowed to participate in legal arguments and file briefs with the court, but not entitled to examine witnesses or offer evidence. *9 Ia. Prac., Civil Practice Forms* § 13:9. A person moving to participate in litigation as an *amicus curiae* differs from a person seeking to intervene in that the intervenor becomes a party to the litigation and an *amicus curiae* does not. *Id.*; see also 3B C.J.S. *Amicus Curiae* § 2.

IUA has an interest in the constitutionality and interpretation of Iowa Code §306.46 and its views on the importance of such statute may differ in perspective from the other litigants. Participation by IUA as *amicus curiae* could also be beneficial to the court.

### CONCLUSION

The Iowa Utility Association requests that the Court grant its Motion to Intervene and Appear in this proceeding. Alternatively, the Association requests authority to submit an amicus brief to assist the Court in addressing the issues raised in this petition for judicial review.

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**PROOF OF SERVICE**

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on May 18, 2021 by:

- FAX  
 Hand Delivered                       Email  
 Federal Express                      X Other: ECF Filing

Signature: /s/ Stanley J. Thompson