

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
IOWA UTILITIES BOARD

In Re:  MidAmerican Energy Company	DOCKET NO.: E-22417  <b>INTERVENOR LINDA JUCKETTE'S REPLY IN SUPPORT OF HER OBJECTION TO MIDAMERICAN ENERGY COMPANY'S APPLICATION FOR EMINENT DOMAIN</b>
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Intervenor, Linda K. Juckette ("Juckette"), submits the following for her Reply in Support of her Objection to MidAmerican Energy Company's May 7, 2021 Application for Eminent Domain:

1. MidAmerican Energy Company ("MEC")'s resistance fails to address the heart of Juckette's Objection.
2. As Juckette articulated in her Objection, MEC's actions have created fundamental issues with the franchise application process. MEC took a fundamental position before the Board (that no eminent domain was necessary and, thus, no costs associated with eminent domain should be considered) and obtained approval of a franchise from the Board based on that position. MEC has now changed course by requesting eminent domain powers, while the Board's decision, which was based upon MEC's position that no eminent domain was needed, is on appeal.
3. There can be no doubt that MEC's position was that no eminent domain was necessary over Juckette's real estate because of Iowa Code § 306.46 in the prior proceeding in this docket before the Board.
4. Moreover, it is clear that Juckette's objection to MEC's request to obtain a

franchise was based on several interrelated arguments. It is true that Juckette argued to the Board that MEC could not rely on Iowa Code § 306.46 to place a pole on Juckette's property. It is further correct that Juckette contended that if MEC were to place a pole on Juckette's property, that MEC would need eminent domain power to do so.

5. However, vital to Juckette's objection was the interrelated contention that MEC was not entitled at all to a franchise under the facts and circumstances of this docket. Specifically, Juckette argued that MEC's route selection process demonstrated that MEC's franchise unnecessarily interfered with Juckette's property.

6. Iowa Code § 478.18 prohibits an electric line from unnecessarily interfering with the use of property by the owner of said property. Throughout the proceeding, MEC consistently asserted that its decision to locate the electric lines where they seek was based on the results of a route selection matrix MEC had designed. MEC consistently asserted that the eastern route, which affects Juckette's property, was the best route as a result of the conclusion derived from the matrix. MEC further contended that Iowa law does not require a route selection matrix, but that MEC relied on the matrix anyway.

7. Throughout the proceeding, Juckette articulated concerns with the route selection matrix. The matrix heavily relied on cost inputs in order to determine the best route. The matrix, though, did not include any eminent domain costs. However, MEC consistently asserted that the matrix did not need to account for any eminent domain costs because of Iowa Code § 306.46. In other words, MEC disavowed any need to use eminent domain and contended that its route selection matrix was consistent with the fact that MEC would not need eminent domain.

8. Juckette has contended throughout this proceeding that MEC's route selection matrix is flawed because the matrix does not account for the different eminent domain costs associated with different routes.

9. Juckette further argued that MEC's route selection process violated Iowa Code § 478.18 because the franchise request unnecessarily interfered with Juckette's property, and as a result, that MEC was not entitled to the requested franchise. Specifically, the route selection process unnecessarily interfered with Juckette's property for the following reasons:

a. MEC chose the route purely based on results of a matrix it created;

b. The matrix relied upon by MEC contained incorrect and faulty data;

c. The route decision made by MEC was therefore based on incorrect information; and

d. Since the sole reason for the selected route is based on incorrect information, the decision to use that route is an unnecessary interference with Juckette's property.

10. In other words, how can MEC's route selection comply with Iowa Code § 478.18 by not unnecessarily interfering with Juckette's property if the route selection is not based on correct information? By definition, a decision based on incorrect information cannot be necessary. Since the route selection process was so fundamentally flawed, the decision to use the route - which decision was based solely on the flawed matrix - must

result in unnecessary interference.

11. To avoid that argument, MEC asserted in the original hearing before the Board that no eminent domain was necessary, thus the information in the route selection matrix was not flawed.

12. Based on MEC's contention that it could use Iowa Code § 306.46 and that MEC would not need eminent domain power, the Board found that MEC's route selection complied with Iowa law and the Board granted MEC a franchise.

13. MEC's contention that eminent domain power over Juckette's property was not needed was fundamental to the Board's decision to grant the franchise. The Board stated:

Ms. Juckette's first argument is premised entirely on the presupposition that MidAmerican cannot build, operate, or maintain a transmission line along the eastern border of her property without the use of eminent domain. However, as Ms. Juckette acknowledges within her argument, MidAmerican is not requesting eminent domain authority over any portion of Ms. Juckette's property. **Therefore, in the event Ms. Juckette is correct in her argument that MidAmerican lacks the easements necessary for Route 7 (an argument the Board will examine in greater detail below), then the lack of all necessary easements will serve as a basis to deny MidAmerican's request for a franchise covering the east segment, and this particular contention will be moot.** Conversely, if MidAmerican does not require eminent domain along Ms. Juckette's eastern border, then Ms. Juckette's contention fails.

(2/1/21 Order at 17-18) (emphasis added).

14. Now, though, MEC seeks to defend the Board's grant of the franchise on appeal while, at the same time, changing a fundamental premise upon which the Board's decision to grant the franchise was predicated.

15. MEC cannot have it both ways. If MEC now contends that it should have

eminent domain power to use on Juckette's property, the Board should also re-examine whether MEC's route selection decision – which was based solely on the results of data that did not account for eminent domain – complied with Iowa law to support a grant of franchise. Simply put, MEC's current application fundamentally alters the basis upon which the franchise was granted and so also requires a re-examination of the request for a franchise.

16. MEC has created this issue by taking a new and contradictory position concerning the use of eminent domain. The issue is more than whether or not to allow the use eminent domain; the issue is fundamentally whether MEC is entitled to a franchise based on its unreasonable reliance on a matrix that dictated a route selection when the matrix is based on incorrect information.

17. The pending appeal and the current application create fundamentally incompatible proceedings.

18. The Board should vacate its prior franchise grant and should request the district court to remand the matter back to the Board for further consideration in light of the pending eminent domain request. Alternatively, the Board should stay consideration of the eminent domain request pending final decision on the appeal.

19. Judicial and administrative efficiency demand that the appeal and the eminent domain request should not simultaneously proceed on independent and inconsistent tracks.

20. In any event, contrary to MEC's contention, Iowa law dictates that the Board must at some point hold a hearing on MEC's eminent domain request before such

request can be granted. The statute does not grant the Board any discretion over whether to hold a hearing:

Upon the filing of objections or *when a petition involves the taking of property under the right of eminent domain, the utilities board **shall** set the matter for hearing* and fix a time and place for the hearing. The hearing shall be not less than thirty days from the date of last publication and, where a new proposed transmission line exceeds one mile in length, shall be held in the county seat of the county located at the midpoint of the proposed electric transmission line. . . .

Iowa Code § 478.6(1) (emphasis added). Moreover, in light of the fundamental issues concerning the interrelation of the eminent domain request and the entitlement to a franchise at all, a hearing is necessary to consider both the request for eminent domain power and the continued viability of the grant of the franchise if such request is to be granted.

WHEREFORE, Ms. Juckette respectfully requests the Board either vacate its prior order and request remand from the district court or should stay consideration of MEC's petition for eminent domain pending the outcome of the appeal of the franchise in the district court. Alternatively, Ms. Juckette respectfully requests that the Board set a hearing date as required by Iowa Code § 478.6, and that the Board either deny MEC's request for eminent domain after the mandatory hearing or vacate the previously granted franchise, or both.

By: /s/ John E. Lande

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