

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

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| LINDA K. JUCKETTE, |) | Case No. CVCV061580 |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | |
| |) | |
| IOWA UTILITIES BOARD, |) | ORDER DENYING |
| |) | REMAND |
| Respondent. |) | |

Telephonic oral argument on Intervenor MidAmerican Energy Company’s (MidAmerican) Application for Limited Remand (the Application) was held on July 16, 2021. Appearing for MidAmerican was attorney Andrew Magner. Appearing for Petitioner Linda K. Juckette (Juckette) was attorney William Reasoner. Appearing for Respondent Iowa Utilities Board (IUB) were attorneys Jon Tack and Matt Oetker. Appearing for Intervenor Office of Consumer Advocate was attorney Jeffrey Cook. Amici Iowa Utilities Association and Iowa Association of Electric Cooperatives appeared through their respective attorneys Stan Thompson and Amanda James, but did not participate in oral argument.

Upon review of the Application and the court file under the relevant law, and after considering the argument of counsel, the court concludes the Application should be denied for the following reasons.

BACKGROUND FACTS AND PROCEEDINGS

After Juckette initiated this judicial review proceeding but before entry of a final

merits order by the district court, MidAmerican submitted a new request to IUB. MidAmerican now wants IUB to grant MidAmerican eminent domain powers relative to Juckette's real property. Juckette resists and otherwise objects to MidAmerican's ability to obtain eminent domain under the present circumstances. Subsequent to submitting the foregoing request to IUB, MidAmerican requested that the district court remand this proceeding to IUB so that IUB can consider MidAmerican's request for use of eminent domain power over Juckette's property.

Juckette contends MidAmerican's request for limited remand asks the court to fashion a new remedy whereby a utility obtains a franchise under Iowa Code chapter 478 by denying the need for eminent domain, and then asks IUB to add eminent domain to that franchise. Juckette further argues that MidAmerican's actions as an Intervenor after the commencement of this judicial review proceeding are an attempt by MidAmerican to circumvent the process of judicial review to obtain a franchise with the power of eminent domain. Juckette contends MidAmerican, in doing so, filed new pleadings with IUB undermining the premise under which IUB granted the franchise.

The court agrees with Juckette that IUB relied upon MidAmerican's representation regarding the lack of necessity for eminent domain in granting MidAmerican a franchise that did not include the power to exercise eminent domain on Ms. Juckette's property. MidAmerican's subsequent application to IUB for eminent domain power undermines the franchise IUB granted MidAmerican. The propriety of the agency's grant of the franchise is now before the court on judicial review. Allowing MidAmerican to obtain a

limited remand of this case to IUB frustrates Juckette's right to judicial review. MidAmerican cannot now change the assumptions and premises upon which it obtained the franchise, and then avoid judicial review of IUB's grant of that franchise.

Allowing MidAmerican to obtain a franchise, avoid a ruling by the court on judicial review about the lawfulness of the franchise, and then to subsequently seek eminent domain—after the grant of a franchise premised upon the lack of eminent domain—is not contemplated by Iowa Code chapter 478.¹ If MidAmerican wanted to utilize eminent domain on Juckette's property, it should have done so during the agency proceeding at IUB.

In addressing a challenge to the constitutionality of the electric line franchise chapter, the Iowa Supreme Court (the Court) said "the right of eminent domain is limited to the extent necessary as found by the commission and prescribed and approved by it. Determination of the extent necessary is not left for future determination. Under section 489.5 the commission is required to make that determination." *Race v. Iowa Elec. Light & Power Co.*, 134 N.W.2d 335, 338 (1965) (emphasis added). Critically, chapter 487—previously codified at chapter 489—cannot leave the scope of eminent domain for future determination. That appears to be what MidAmerican proposes here by attempting to latently tack a request for eminent domain onto final agency action in a contested case that is on judicial review.

The court finds MidAmerican's claim that section 478.15 supports its attempt is

¹ The court acknowledges that Iowa Code chapter 478 in many ways is not a model of clarity.

not persuasive. Juckette raises several issues on judicial review concerning the grant of the franchise beyond the issue sought to be mooted by MidAmerican's subsequent request for a determination by IUB of eminent domain power. It is possible that Juckette's judicial review petition may be granted without a remand for IUB's consideration of eminent domain powers. Juckette contends the franchise should not have been granted because IUB erred in finding that the franchise met the statutory requirements of public use. Juckette alternatively urges MidAmerican's latent request for eminent domain establishes that the route selection at issue in the franchise as granted was faulty and that the franchise should not have been granted. Because a remand may not be the remedy granted if Juckette prevails on the instant judicial review, MidAmerican's contention is not compelling.

Chapter 478 does not permit multiple franchises covering the same segment. IUB granted MidAmerican a franchise based upon specific circumstances that did not include the eminent domain issue. Under this record it is appropriate for the court to deny MidAmerican's request for limited remand and for the court to proceed with reviewing the issues presented by Juckette here.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Application is denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that costs are assessed to Intervenor MidAmerican.



State of Iowa Courts

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Type:

Case Title
LINDA JUCKETTE V IOWA UTILITIES BOARD
OTHER ORDER

So Ordered

Jeanie Vaudt, District Court Judge,
Fifth Judicial District of Iowa

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