IN THE IOWA DISTRICT COURT FOR POLK COUNTY

LINDA K. JUCKETTE, Petitioner, vs. IOWA UTILITIES BOARD, Respondent, and MIDAMERICAN ENERGY COMPANY, OFFICE OF CONSUMER ADVOCATE, Intervenors.	Case No. CVCV061580 **ORDER DENYING AND DISMISSING PETITION FOR JUDICIAL REVIEW**

Telephonic oral argument on the merits of this judicial review proceeding was held on September 8, 2021. Petitioner Linda K. Juckette (Ms. Juckette) was represented by attorney William M. Reasoner. Respondent Iowa Utilities Board (the Board) was represented by attorney Matt Oetker. Intervenors MidAmerican Energy Company (MidAmerican) and the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, were represented by their respective attorneys, Andrew Magner and Jeffrey Cook. Amici Iowa Utilities Association, Iowa Association of Electric Cooperatives, and ITC Midwest LLC appeared through their respective attorneys Stan Thompson, Amanda James, and Bret Dublinske. The court accepted arguments from Mr. Reasoner, Mr. Oetker, and Mr. Magner. Oral argument was reported.

Upon review of the court file including the certified agency record in light of the relevant law, and after considering the respective arguments by counsel for the parties and amici, the court finds the following facts, reaches the following conclusions, and enters the following Order denying and dismissing Ms. Juckette's Petition for Judicial Review.

BACKGROUND FACTS AND PROCEEDINGS

On March 24, 2021, Ms. Juckette filed a Petition for Judicial Review from the Board's February 1, 2021, Order Granting Petition for Electric Transmission Line Franchise and Right of Eminent Domain. Ms. Juckette filed a First Amended Petition on April 5, 2021, to which the Board answered on April 12, 2021.

On April 19, 2021, OCA filed a motion to intervene, expressing its intent to join the Board in this judicial review proceeding pursuant to Iowa Rule of Civil Procedure 1.1603(1). On May 7, 2021, MidAmerican filed a motion to intervene, also expressing an intent to join the Board's position pursuant to Rule 1.1603(1). On June 3, 2021, the court issued an order granting OCA and MidAmerican intervenor status.

Separate from OCA and MidAmerican, the Iowa Utility Association (IUA), the Iowa Association of Electric Cooperatives (IAEC), and ITC Midwest LLC (ITC Midwest) requested intervenor or amicus status. Through separate orders issued on June 3 and August 25, 2021, the court granted amicus status to IUA, IAEC, and ITC Midwest.

On April 12, 2021, the court issued a Scheduling Order for the instant proceeding. As set forth in the Scheduling Order, Ms. Juckette filed her opening brief on July 16, 2021. The Board and the intervenor parties filed their briefs on August 13, 2021. The Scheduling Order required Ms. Juckette to submit her reply brief by August 20, 2021. However, Ms. Juckette sought and received court approval to extend the deadline for filing her reply brief to September 2, 2021, which she met.

BACKGROUND FACTS

On September 17, 2019, MidAmerican filed with the Board a petition for an electric transmission line franchise to construct, operate, and maintain 3.53 miles of 161 kV transmission

line in Madison County, Iowa. The proposed project consists of a west and east segment. A portion of the east segment adjoins a portion of Ms. Juckette's property. The Board granted Ms. Juckette intervenor status in the agency proceeding.

The contested case hearing occurred on September 23, 2020, at the Madison County Fairgrounds in Winterset, Iowa. On February 1, 2021, the Board issued an Order Granting MidAmerican's Petition for Electric Transmission Line Franchise and Right of Eminent Domain. Regarding the west segment, the Board[1] unanimously concluded that MidAmerican met all necessary statutory elements to issue a franchise. No party sought judicial review from the Board's findings concerning the west segment. Consequently, the Board's decision regarding the west segment is not before the district court.

Regarding the east segment, two Board members found MidAmerican met all the necessary statutory prerequisites to issuing a franchise. The third Board member dissented.

On February 11, 2021, Ms. Juckette filed a motion to stay pending rehearing and judicial review. The Board granted a temporary stay on February 19, 2021, which the Board extended on March 18, 2021, through completion of this judicial review proceeding. On February 16, 2021, Ms. Juckette filed an application for rehearing (the Application). The Board denied the Application on March 18, 2021.

STANDARD OF REVIEW

The most fundamental tenet of administrative law is that "administrative decisions are to be made by agencies, not the courts." *Midwest Auto. III, LLC v. Iowa Dep't of Transp.*, 646 N.W.2d 417, 422 (Iowa 2002) (quoting *Leonard v. Iowa State Bd. of Educ.*, 471 N.W.2d 815, 815 (Iowa 1991)). This principle is well established in Board franchising cases, as the Iowa

1. The Board "is comprised of three members appointed by the governor and subject to confirmation by the senate . . . ." Iowa Code § 474.1(1).

Supreme Court (the Court) has affirmatively stated that "[o]ur legislature gave the Board discretion to make decisions involving electric transmission lines, and we are not to question the wisdom of the legislature in doing so." *South East Iowa Co-op. Elec. Ass'n v. Iowa Utils. Bd.*, 633 N.W.2d 814, 819 (Iowa 2001) (citations omitted). Under this tenet, a reviewing court is not empowered to substitute its own judgment for that of the agency, as the court's authority is only to correct properly preserved errors occurring under Iowa Code section 17A.19. *McClure v. Iowa Real Estate Comm'n*, 356 N.W.2d 594, 597 (Iowa Ct. App. 1984).

Reviewing courts are bound to the agency's finding of fact if they are supported by substantial evidence in the record when the record is viewed as a whole. *Lowe's Home Ctrs., LLC v. Iowa Dep't of Revenue*, 921 N.W.2d 38, 45-46 (Iowa 2018) (citation omitted). "Evidence is not insubstantial merely because different conclusions may be drawn from the evidence," and an agency's decision may be supported by substantial evidence even though the reviewing court may have drawn a different conclusion as fact finder. *Cedar Rapids Cmty. Sch. Dist. v. Pease*, 807 N.W.2d 839, 845 (Iowa 2011) (citing *Arndt v. City of Le Claire,* 728 N.W.2d 389, 393 (Iowa 2007)); *Missman v. Iowa Dep't of Transp.,* 653 N.W.2d 363, 367 (Iowa 2002); *John Deere Dubuque Works of Deere & Co. v. Weyant,* 442 N.W.2d 101, 105 (Iowa 1989)). Courts "'should broadly and liberally apply' the agency's findings of fact 'to uphold rather than defeat the agency's decision.'" *Sydnes v. Iowa Dep't of Human Servs.*, No. 15-1862, 2016 WL 6636810, at *2 (Iowa Ct. App. Nov. 9, 2016) (quoting *Taylor v. Iowa Dep't of Human Servs.*, 870 N.W.2d 262, 266 (Iowa Ct. App. 2015)).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Iowa Code chapter 478 governs the issuance of electric transmission line franchises. Section 478.1 provides that no person shall construct, operate, or maintain a transmission line

without obtaining a Board-issued franchise. "Before the Board may grant a petition for an electric transmission line franchise, it must find the proposed line is 'necessary to serve a public use and represents a reasonable relationship to an overall plan of transmitting electricity in the public interest.'" *South East Iowa Co-op. Elec. Ass'n*, 633 N.W.2d at 819 (citations omitted); s*ee also* Iowa Code § 478.4 (stating that "[b]efore granting the franchise, the utilities board shall make a finding that the proposed line or lines are necessary to serve a public use and represents a reasonable relationship to an overall plan of transmitting electricity in the public interest"). If these two elements are established, then the franchise applicant has demonstrated a need for the transmission line and the focus turns to route location. Iowa Code section 478.18(2) governs this portion of the analysis and provides:

> A transmission line shall be constructed near and parallel to roads, to the right-of-way of the railways of the state, or along the division lines of the lands, according to the government survey, wherever the same is practicable and reasonable, and so as not to interfere with the use by the public of the highways or streams of the state, nor unnecessarily interfere with the use of any lands by the occupant.

If the requirements of Iowa Code chapter 478 are met, the Board must issue the franchise.

A. <u>Public Use and Reasonable Relationship</u>. In several instances, Iowa appellate courts have examined the Board's application of the section 478.4 factors, and in those cases elucidated principles aiding the district court's review here. In *Fischer v. Iowa State Commerce Commission,* 368 N.W.2d 88, 89 (Iowa 1985), the Court considered the judicial review of a Board[2] order granting an electric transmission franchise to Dairyland Power Cooperative (DPC). In supporting its franchise request, DPC submitted evidence showing there were service reliability issues in the general area of the proposed line that DPC anticipated would increase if its load growth projections were correct. *Id.* at 97. DPC claimed the general area was

2. Prior to 1986, the Board was referred to as the Iowa state commerce commission. 1986 Iowa Acts ch. 1245, § 740 (changing name).

approaching the company's maximum load capacity and the new proposed line would improve the company's ability to serve its customers. *Id.* As a summary of the evidence presented, the *Fischer* Court stated: "DPC presented evidence from which the [Board] could and did conclude the proposed system changes were necessary to meet existing needs and, because of the additional future capacity which such changes provided, constituted a reasonable effort to provide for future needs." *Id.* In connecting this evidence to the section 478.4 factors, the *Fischer* Court held:

> We believe that the ultimate conclusion required to be made in the present proceeding was one peculiarly entrusted by law to the [Board's] expertise. The [Board's] finding pursuant to section 478.4 that the proposed project was necessary to serve a public use and represented a reasonable relationship to an overall plan of transmitting electricity in the public interest quite clearly is supported by substantial evidence in the record made before that agency when the record is viewed as a whole. Accordingly, we do not disturb the commission's findings and conclusions.

Id. at 98. Therefore, *Fischer* makes clear that the section 478.4 factors are met where the franchise petitioner demonstrates the proposed transmission line is necessary to meet existing electric needs and constitutes a reasonable effort to meet future needs.

The principles set forth in *Fischer* were similarly applied in *Bradley v. Iowa Department of Commerce*, No. 01-0646, 2002 WL 31882863 (Iowa Ct. App. Dec. 30, 2002). *Bradley* involves a judicial review from a Board decision granting an electric transmission franchise to IES Utilities. Before the Board, IES Utilities presented evidence suggesting the proposed lines would meet existing and future electric need and would increase service reliability. *Id.* at *4. Based upon this evidence, the Board found the record "clearly supports a finding that the lines are necessary to serve a public use and represents a reasonable relationship to an overall plan of transmitting electricity in the public interest." *Id.* While finding that substantial evidence in the record supported the Board's findings, the more important aspect for instant purposes is the

Bradley Court's recognition that the section 478.4 elements are established where the proposed line is shown to be necessary to increase system reliability and to accommodate current and anticipated load growth. *Id.*

Finally, in *South East Iowa Co-op. Electric. Association v. Iowa Utilities Board*, 633 N.W.2d 814, 819 (Iowa 2001), the Court stated that in creating the franchising process in chapter 478, "the legislature intended to entrust the Board with the decision whether a public use existed, and if so, the necessity of the proposed line to serve the public use." The Court further observed that the "underlying purpose of chapter 478 is to serve a public interest" and the Court has long recognized that "the transmission of electricity to the public constitutes a public use as contemplated by section 478.4." *Id.* at 819-20. The Court held that the section 478.4 factors can be established through economic considerations alone. *Id.* at 820. In other words, even where the evidence shows that reliable service is being provided by the existing transmission lines and that a new transmission line is not needed to accommodate current or future load growth, the section 478.4 factors can be met based entirely upon economic considerations. *Id.*

Returning to the instant record, MidAmerican presented evidence in the agency proceeding from which the Board found the proposed transmission lines are necessary to increase reliability and to accommodate anticipated load growth. Michael Charleville, a Senior Engineer II employed in MidAmerican's Electric System Planning department, testified that the proposed new lines would provide additional electric feeds to the Maffitt Lake substation (for a total of three incoming lines), which would increase electric service reliability to the substation and the customers it serves. Currently, only one incoming line feeds the Maffitt Lake substation. This means that if a disruption of service occurs with that one line, the entire area and customers served by that substation will be without service.

Mr. Charleville further testified that the proposed lines would allow for "immediate reliability support" in the area by allowing for more of the local load to be moved to the Maffitt Lake substation from existing substations further away. As explained by Mr. Charleville, moving that customer load to the Maffitt Lake substation "will reduce their exposure caused by long distribution lines and the associated risk for outages."

The record also contains substantial evidence showing that additional transmission infrastructure is required to adequately and reliably serve anticipated load growth in the area. As phrased by Mr. Charleville, "significant industrial growth is occurring in the area, with the construction of a third data center in southern West Des Moines and Cumming area [and d]ue to the projected load growth and MidAmerican's inability to serve significant loads from the existing area feeders, new facilities are required."

In support of her contention that section 478.4 factors are not met, Ms. Juckette asserts that "public use" in section 478.4 is not defined by statute and should be given the same meaning that "public use" has been given in Iowa's eminent domain proceedings. However, Ms. Juckette provided no authority to support her contention. More significantly, her argument runs contrary to the *Fischer*, *Bradley*, and *South East Iowa Coop. Elec. Ass'n* cases cited and discussed above. *South East Iowa Co-op. Elec. Ass'n v. Iowa Utils. Bd.*, 633 N.W.2d at 820 (stating "[w]e have already found the transmission of electricity to the public constitutes a public use as contemplated by section 478.4"); *Fischer v. Iowa State Commerce Comm'n*, 368 N.W.2d at 97-98 (affirming a section 478.4 public use finding where project would increase reliability and improve ability to meet future electric load); *Bradley*, 2002 WL 31882863, at * 5 (finding section 478.4 public use where proposed line increases reliability of service and accommodates load growth).

In sum, the record contains substantial evidence to support the Board's finding that MidAmerican demonstrated the proposed project is necessary to meet current and future transmission needs, will increase system reliability and flexibility, and will support current and anticipated load growth. Based upon the holdings from the appellate decisions discussed above, these findings meet the public use and reasonable relationship factors in section 478.4.

B. Route Location. Iowa Code section 478.18(2) provides that an electric transmission line:

> shall be constructed near and parallel to roads, to the right-of-way of the railways of the state, or along the division lines of the lands, according to the government survey, wherever the same is practicable and reasonable, and so as not to interfere with the use by the public of the highways or streams of the state, nor unnecessarily interfere with the use of any lands by the occupant.

In examining potential routes, the franchise petitioner must start its planning by using roads, railroads, and land division lines, and the petitioner may only deviate from these route locations at points of impracticability or unreasonableness. *Gorshe Family P'ship v. Midwest Power*, 529 N.W.2d 291, 293 (Iowa 1995). In other words, a franchise petitioner must adhere to the route locations identified in section 478.18(2) "except, when in the judgment of engineers, it was not practicable or reasonable to do so." *Anstey v. Iowa State Commerce Comm'n*, 292 N.W.2d 380, 388 (Iowa 1980). The proposed transmission line that is the subject of this judicial review runs entirely near and parallel to a road – a Board finding that no party disputes. Therefore, the proposed line location complies with section 478.18(2) so long as it does not unnecessarily interfere with the use of the land by any occupant.

Part of the proposed line adjoins Ms. Juckette's property. Ms. Juckette contends the line location is an interference. However, "interference" alone does not make a route location improper under the statute. Rather, under section 478.18(2), to establish an otherwise

permissible route location is impermissible, such interference must be "unnecessary." Within her briefs, Ms. Juckette does not cite to any part of the certified record supporting her position as to how the proposed lines would unnecessarily interfere with her current or future use of her property. Instead, Ms. Juckette simply contends that MidAmerican's route selection process was improper. Ms. Juckette says that in selecting a route, MidAmerican should have conducted a merit-based analysis. However, even assuming route selection errors could constitute "unnecessary interference" for the purposes of section 478.18(2), Ms. Juckette's contention must fail for the following reasons.

No provision of Iowa law, whether a statute or a rule, requires a franchise petitioner to propose the best possible route. Beyond the requirements of section 478.18(2), Iowa law does not identify any criteria a franchise petitioner must consider in selecting a route. In fact, Iowa law does not even require a franchise petitioner conduct a route study at all. At most, Iowa Code section 476.3(2)(*a*)(6) simply provides that the petitioner must show it considered the "possible use of alternative routes" in its initially filed franchise petition. In its final order, the Board concluded MidAmerican had met this requirement by considering 26 potential line routes and using a scoring system to weigh the top 10 potential routes.

In *Fischer*, an objecting property owner argued that a different location should have been selected for the transmission project. *Fischer v. Iowa State Commerce Comm'n*, 368 N.W.2d at 98. In the final agency decision, the Board noted that while other locations might have been selected, the route location selected was reasonable because the route complied with section 478.18(2) and was a shorter route. *Id.* In commenting on the Board's findings, the Court held the Board's conclusion was "supported by evidence which shows that, while alternative routes were available, it is likely that they would require longer distances, which produce an

overall increase in cost and would disadvantage more property owners." *Id.* Nothing in the *Fischer* decision suggests the route selected must be the best route possible or that the route must be compared to other potential routes using any particular criteria. In fact, *Fischer* suggests that a shorter route—which necessarily means lower construction costs and fewer landowner disruptions—is a sufficient ground for selecting a location in and of itself.

This principle was also discussed in *Hanson v. Iowa State Commerce Commission*, 227 N.W.2d 157 (Iowa 1975). The *Hanson* Court recognized the most direct transmission line route would "require less cable and fewer structures, involve interference with fewer landowners, come near fewer buildings, and avoid more changes in directions of lines." *Id.* at 162. The *Hanson* Court concluded that the Legislature intended transmission lines be located in those areas identified in Iowa Code section 478.18(2) (*e.g.*, near roads, division lines of land, etc.) unless impracticable or unreasonable. *Id.* at 162-63.

In the instant matter, the route selected by MidAmerican complies with section 478.18(2) by running near and parallel with a roadway. MidAmerican's proposed route is the most direct, running straight south from the Maffitt Lake substation to a point of interconnection with an existing MidAmerican transmission line. Further, the Board's finding that the proposed line location would not interfere with Ms. Juckette's current and future use of her property is supported by substantial evidence. While Ms. Juckette is unhappy with the route selection process, the route selected complies with section 478.18 and the certified agency record does not support a finding that the route is impracticable and unreasonable.

In sum, the Board's finding that the proposed line complies with Iowa Code section 478.18 is supported by substantial evidence and the appellate decisions cited herein. As

explicitly held by the Court, "as part of its function the [Board], and not the courts, determines the route in the light of the facts found by the [Board.]" *Hanson*, 227 N.W.2d at 163.

C. Land Rights. Under the facts of this case and chapter 478, the condition precedents to issuing a franchise are: (1) establishing the section 478.4 factors (*i.e.*, public use and reasonable relationship to an overall plan of transmitting electricity in the public interest), and (2) route compliance with section 478.18(2). The Board concluded each condition precedent has been met and, as discussed above, each Board conclusion is supported by substantial evidence. As argued by the Board, because the statutory prerequisites to issuing a franchise have been met, the final agency action should be affirmed.

Ms. Juckette contends that MidAmerican does not possess the necessary land rights to construct the proposed line over her property and, consequently, the Board's decision to issue a franchise to MidAmerican should be reversed. Ms. Juckette did not cite to any statute or administrative rule supporting her proposition that a franchise petitioner must prove it possesses all necessary land rights before the Board can issue a franchise. Neither Iowa Code chapter 478 nor the governing administrative rules require a franchise petitioner prove it possesses all necessary land rights as a condition precedent to issuing a franchise.

In its final order, the Board examined whether MidAmerican possessed the necessary land rights to construct, operate, and maintain an electric transmission line along the east border of Ms. Juckette's property, stating that "if MidAmerican lacks the necessary easements to construct, operate, and maintain the east segment, that portion of the petition must fail." Ms. Juckette has also sought review of this portion of the Board's action.

MidAmerican did not seek the right of eminent domain prior to the Board issuing its final decision. This does not mean, however, that MidAmerican could not seek the right of eminent

domain after the Board issued the franchise. As section 478.15(1) makes clear, the issuance of a franchise must occur before the Board can grant the right of eminent domain. This statute relevantly provides that once "having secured a franchise," the franchise holder can request the right of eminent domain "to such extent as the utilities board may approve . . . ."

Rather than seeking the right of eminent domain,[3] MidAmerican stated it intended to rely upon Iowa Code section 306.46(1), which provides:

> A public utility may construct, operate, repair, or maintain its utility facilities within a public road right-of-way. The location of new utility facilities shall comply with section 318.9. A utility facility shall not be constructed or installed in a manner that causes interference with public use of the road.

The parties do not dispute that for section 306.46 purposes, MidAmerican falls within the definition of a "public utility" and that electric transmission line falls within the definition of "utility facilities." The parties further do not dispute that MidAmerican proposes to construct, operate, and maintain the transmission line in the public road right-of-way adjoining Ms. Juckette's property. Therefore, the statutory language appears to provide that MidAmerican may construct, operate, and maintain the transmission line in the public road right-of-way.

Ms. Juckette contends such a reading is improper for two reasons. First, applying the statute to MidAmerican's proposed transmission line would constitute an impermissible retroactive application in violation of Iowa Code section 4.5. Second, even if the statute can be applied prospectively, Ms. Juckette contends the statute is unconstitutional. Each contention will be discussed in turn.

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3. Following the Board's issuance of the final agency action, and after Ms. Juckette sought judicial review, MidAmerican filed material with the Board indicating an intent to seek the right of eminent domain. Because the agency has not taken final agency action on MidAmerican's request, whether MidAmerican can meet its burden to acquire the right of eminent domain is not before the district court. Iowa Code § 17A.19(1) (providing judicial review is available to persons who have been aggrieved by any "final agency action").

1. Prospective versus Retrospective. Iowa Code section 4.5 provides that a statute is presumed to be applied prospectively unless it is expressly made retrospective. In its final order, the Board determined that the event by which retroactivity or prospectivity is calculated should be MidAmerican's construction, operation, and maintenance of the proposed transmission line. Because these events have yet to occur, the Board says the statute is being applied prospectively.

Ms. Juckette disagrees, relying upon an unpublished district court decision regarding this precise issue in *NDA Farms, LLC v. Iowa Utilities Board, Department of Commerce*, Polk County Case No. CV009448, 2013 WL 11239755 (Polk County Dist. Ct. June 24, 2013). At that time, no clarifying appellate decisions governing this issue existed. The district court in *NDA Farms* held that:

> [u]pon review of section 306.46 and considering the relevant case law, the court concludes that the IUB committed an error of law in concluding that section 306.46 applied retroactively to the easement granted to Polk County in 1956. The statute applies prospectively only, so as to not interfere with the contractual relations created in the 1956 easement.

Id. at *9. Ms. Juckette urges the district court in this judicial review proceeding to follow the above-quoted holding and find that the determinative event is creation of the road right-of-way. Because the road easement was created at some point prior to the Board's final adjudication, applying section 306.46 to MidAmerican's proposed line would be an impermissible retroactive application.

Since the *NDA Farms* ruling Ms. Juckette relies upon was entered, the Court has clarified how the determinative event is to be identified. In *Hrbek v. State*, 958 N.W.2d 779 (Iowa 2021), the Court identified and examined the determinative event by which retroactivity or prospectivity is to be calculated and stated:

> application of a statute is in fact retrospective when a statute applies a new rule, standard, or consequence to a *prior* act or omission. The prior act or omission is the event of legal consequence "that the rule regulates." The event of legal consequence is the specific conduct regulated in the statute.

Id. at 782-83 (emphasis in original) (internal citations omitted). Under the Court's reasoning, the determinative event is the "specific conduct regulated in the statute." *Id.*

In examining the statute at issue here, the specific conduct regulated in section 306.46 is the construction, operation, repair, or maintenance of a utility facility in the public road right-of-way. Section 306.46 does not relate to the creation of road rights-of-way or road easements and does not concern or even mention road easements. Consequently, under the *Hrbek* standard, the determinative event for purposes of examining whether section 306.46 is being applied retrospectively is the "specific conduct regulated in the statute"—*i.e.*, a public utility's construction, operation, repair, or maintenance of its utility facilities within a public road right-of-way. Because MidAmerican had not constructed, operated, or maintained a transmission line in the road right-of-way at the time of the Board's final decision, the Board properly concluded that section 306.46 was being applied prospectively.

2. Constitutionality. Ms. Juckette alternatively contends that even if section 306.46 is being applied prospectively, the statute is unconstitutional. In its final order, the Board found section 306.46 does not violate the Takings Clause of the Iowa Constitution. However, "[u]nder the doctrine of separation of powers, the judiciary is required to determine the constitutionality of legislation." Consequently, the Board's finding regarding the constitutionality of section 306.46 is not entitled to any deference on review by the district court. *ABC Disposal Sys., Inc. v. Dep't of Nat'l Res.*, 681 N.W.2d 596, 604-05 (Iowa 2004).

Article 1, section 18 of the Iowa Constitution provides that "[p]rivate property shall not be taken for public use without just compensation." The framework for a "takings" analysis is:

> (1) Is there a constitutionally protected private property interest at stake? (2) Has this private property interest been "taken" by the government for public use? and (3) If the protected property interest has been taken, has just compensation been paid to the owner?

Bormann v. Bd. of Supervisors in & for Kossuth Cty., 584 N.W.2d 309, 315 (Iowa 1998). The critical question in a takings case is whether a property interest has been taken. *Kingsway Cathedral v. Iowa Dep't of Transp.*, 711 N.W.2d 6, 9 (Iowa 2006).

Section 306.46 does not violate the Takings Clause of the Iowa Constitution because placing utility structures on a road right-of-way does not call for acquiring an additional servitude from the landowner. Because the "utility use is 'an incidental and subordinate use'" of the road right-of-way, the use of the road right-of-way for constructing, operating, and maintaining an electric transmission line "does not call for acquisition of an additional servitude" from the property owner. *Fisher v. Golden Valley Elec. Ass'n, Inc.*, 658 P.2d 127 (Alaska 1983). If no additional servitude results from constructing, operating, and maintaining the transmission line, there is no taking. Consequently, Iowa Code section 306.46 is not unconstitutional.

These principles were discussed by the Wyoming Supreme Court in *State v. Homar*, 798 P.2d 824 (Wyo. 1990). The *Homar* Court held:

> The rights of the easement holder in another's land are determined by the purpose and character of the easement. The manner in which the easement is used does not become frozen at the time of grant. An easement for a road or a highway does not limit its use to the movement of vehicles. Uses related to traffic movement are within the scope of the easement. The grant of a public road easement embraces every reasonable method of travel over, under and along the right-of-way. Thus, the running of power and telephone lines above the ground and pipelines underneath do not increase the burden on the servient estate and are permissible uses.

Id. at 826. Because the transmission line is consistent with the scope of a road right-of-way and does not impose an additional servitude upon Ms. Juckette's property, section 306.46 is not unconstitutional under the takings analysis.

Ms. Juckette also contends the statute is unconstitutional for reasons expressed by the Court in *Keokuk Junction Railway Company v. IES Industries, Inc.*, 618 N.W.2d 352 (Iowa 2000). In *Keokuk Junction*, the City of Keokuk granted permission to a public utility to install electric power lines within the city's road right-of-way on a landowner's property. *Id.* at 354. The landowner claimed the electric power lines constituted an additional servitude on the land separate from the road right-of-way, for which the landowner was entitled to compensation. *Id.* In examining the issue, the Court noted that states are not uniform in their decisions on the issue. The Court noted for example that Alaska took the position that property owners cannot seek contribution for the installation of electric utility structures under a road easement. *Id.* at 356. The Court described the legal underpinnings of this approach as follows:

> The reasoning underlying this position is that electric . . . lines supply communications and power which were in an earlier age provided through messenger and freight wagons traveling on public highways. So long as the lines are compatible with road traffic they are viewed simply as adaptations of traditional highway uses made because of changing technology: The easement acquired by the public in a highway includes every reasonable means for the transmission of intelligence, the conveyance of persons, and the transportation of commodities which the advance of civilization may render suitable for a highway. . . . .
>
> Hence it has become settled law that the easement is not limited to the particular methods of use in vogue when the easement was acquired, but includes new and improved methods, the utility and general convenience of which may afterwards be discovered and developed in aid of the general purpose for which highways are designed.

Id. at 356-57 (quoting *Nerbonne, N.V. v. Florida Power Corp.*, 692 So.2d 928, 929 (Fla Dist. Ct. App. 1997)). The Court ultimately rejected the Alaska approach because the Iowa Legislature, unlike the Alaska Legislature, had not enacted a statute allowing for placement of utility structures in the road right-of-way. *Id.* at 367. The Court explicitly stated that "[w]ithout the aid of such legislation in Iowa, we are clearly not prompted to make a similar decision." *Id.* at 357.

The Iowa Legislature noted the Court's *Keokuk Junction* decision and accepted the Court's invitation therein. Shortly after the *Keokuk Junction* decision was entered, the Iowa Legislature passed section 306.46. In doing so it adopted language very similar to the Alaska statute referenced by the Court in *Keokuk Junction*.

It is clear that in enacting section 306.46, the Legislature intended to accomplish something. At the time section 306.46 was enacted, the Legislature understood that the *Keokuk Junction* Court refused to follow the Alaska line of reasoning—which permitted construction of utility facilities in public road rights-of-way—simply because no Iowa statute allowed for it. The fact that the Legislature used language in section 306.46 that is remarkably similar to the language contained in the Alaska statute leads the district court to reasonably conclude that the Legislature intended for Iowa's law to be construed similarly to Alaska's law.

Put another way, following the Legislature's enactment of section 306.46, the continuing viability of the *Keokuk Junction* decision is suspect. The foundation for the holding in *Keokuk Junction* was the lack of a guiding Iowa statute at the time that decision was entered. Once the Legislature enacted such a statute, the basis for the Court's *Keokuk Junction* decision went away. This statutory change, coupled with this court's finding above that placement of the proposed line on the road right-of-way adjoining Ms. Juckette's property does not impose an additional servitude on her property leads to the district court's ultimate conclusion that section 306.46 does not violate the Takings Clause of the Iowa Constitution.

CONCLUSION

In reviewing the certified agency record as a whole, including but not limited to the Board's final decision, the issue before the district court on judicial review is not whether the court agrees or disagrees with the Board's ultimate determination. The central issue as discussed

above is whether substantial evidence supports the Board's findings on the section 478.4 elements and the section 478.18 route location. It does.

As to Ms. Juckette's section 306.46 claims, the district court finds the Board did not err in applying the statute retroactively and section 306.46 does not violate the Takings Clause of the Iowa Constitution.

The Board's final decision granting MidAmerican's petition for an electric transmission line should be affirmed, Ms. Juckette's Petition for Judicial Review should be denied and dismissed in its entirety, and costs should be assessed to Ms. Juckette.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Iowa Utilities Board's final order granting MidAmerican Energy Company's Petition for an electric transmission line franchise is affirmed.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Petitioner Linda K. Juckette's Petition for Judicial Review is denied and dismissed in its entirety.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that costs are assessed to Petitioner Linda K. Juckette.

State of Iowa Courts

Case Number	**Case Title**
CVCV061580	LINDA JUCKETTE V IOWA UTILITIES BOARD
Type:	ORDER REGARDING DISMISSAL

So Ordered

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

Electronically signed on 2021-11-07 18:24:58