

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

IOWA ASSOCIATION OF MUNICIPAL
UTILITIES,

Petitioner,

vs.

IOWA UTILITIES BOARD,

Respondent.

Case No. 05771 CVCV062999

**APPEARANCE AND APPLICATION
FOR LEAVE
OF COURT TO INTERVENE**

Iowa Association of Electric Cooperatives ("IAEC") files its Appearance and Application to Intervene in this proceeding pursuant to Iowa Rule of Civil Procedure 1.407(2)(b), and in support of its Application states as follows:

1. The IAEC is an Iowa Cooperative Association with its principal place of business at 8525 Douglas, Suite 48, Urbandale, Polk County, Iowa 50322.

2. The IAEC is a trade association representing 38 distribution cooperatives that provide electric service at retail to member consumers in their assigned service areas in the state of Iowa and nine generation and transmission cooperatives that provide wholesale electric service to the distribution cooperative members in the state of Iowa. These generation, transmission, and distribution cooperatives are public utilities under Iowa Code § 476.1.

3. The above-captioned matter relates to a rulemaking proceeding conducted by the Iowa Utilities Board ("IUB") under Docket RMU-2020-0027, establishing rules for electric cooperatives and municipal electric utilities, which rules are in 199 Iowa Administrative Code Chapter 27.

4. The IAEC participated in the rulemaking proceeding before the IUB by filing written comments and participating in oral comment proceedings.

5. The Iowa Association of Municipal Utilities ("IAMU") also participated in the rulemaking proceeding and has commenced this judicial review proceeding to challenge the adoption of rule 199 IAC 27.1(8) and rule 199 IAC 27.3(2)(c)(1)(1), seeking that said rules be declared void and unenforceable as to municipal electric utilities.

6. In its Answer and Affirmative Defenses filed January 28, 2022, the IUB contends that the IAMU lacks standing to pursue the judicial review and alleges that the IAMU "has not been aggrieved or adversely affected by the agency action made subject of this case so as to obtain judicial review under Iowa Code section 17A.19(1)". (Answer and Affirmative Defenses ¶¶ 56 and 57). The IUB states that even if municipal electric utilities are aggrieved or adversely affected by subrule 27.1(8) and subnumbered paragraph 199 - 27.3(2)(c)(1)(1), such municipal electric utilities are not petitioners in this Petition for Judicial Review. (Answer and Affirmative Defenses Second ¶¶ 14 and 15). The IUB generally challenges that IAMU's ability to seek judicial review of a decision which adversely affects the members of the association.

7. As an association whose members are subject to the decisions and rules of the IUB, the IAEC seeks to intervene in this proceeding as provided under Iowa Rule of Civil Procedure 1.407(2)(b), for the purpose of asserting an association's right to pursue review of decisions adversely affecting its members.

8. The IAEC often participates in proceedings on behalf of its members, as it did in the rulemaking which is the subject of this judicial review proceeding.

9. The Iowa Supreme Court has recognized an association's standing to challenge agency action on behalf of its members and the IAMU should not be denied the right to do so in this

proceeding. (*See, Iowa Power & Light Co. v. Iowa State Commerce Commission*, 410, N.W.2d 236, 239 (Iowa 1987) and *Citizens for Washington Square v. Davenport*, 277 N.W.2d 882, 886 (Iowa 1979)).

10. The Petition for Judicial Review was filed on January 7, 2022.

11. The intervention of IAEC will not unduly delay or prejudice the adjudication of the rights of the other Parties hereto.

12. Given the nature of the above-captioned judicial review action, IAEC does not seek to add additional claims, so a separate pleading is not concurrently filed. Instead, IAEC seeks to file a brief in support of Petitioner's standing to pursue judicial review on behalf of its members and present oral argument in support of said brief, to the extent required and permitted. While the IAEC, as an association, may be similarly situated to the IAMU in this regard, its members are unique and their interests will not be adequately represented by the IAMU's participation.

WHEREFORE, the Iowa Association of Electric Cooperatives requests that the Court grant its motion to intervene pursuant to Iowa Rule of Civil Procedure 1.407(2)(b), with unrestricted rights to participate as a party in this proceeding with the undersigned counsel entering their appearance on behalf of Iowa Association of Electric Cooperatives and all other relief deemed just and equitable in the premises.

Respectfully submitted,

SULLIVAN & WARD, P.C.

By: 

Dennis L. Puckett AT0006476

6601 Westown Parkway, Suite 200

West Des Moines, Iowa 50266

Telephone: (515) 244-3500

Facsimile: (515) 244-3599

Email: dpuckett@sullivan-ward.com

**ATTORNEYS FOR IOWA
ASSOCIATION OF ELECTRIC
COOPERATIVES**

All Parties served electronically through the Court's Electronic Filing System