IN THE SUPREME COURT OF IOWA

No. 21-1788

LINDA K. JUCKETTE,

Petitioner-Appellant,

v.

IOWA UTILITIES BOARD, MIDAMERICAN ENERGY COMPANY, and OFFICE OF CONSUMER ADVOCATE,

Respondents/Intervenors-Appellees.

On Appeal from the Iowa District Court for Polk County
The Honorable Jeanie Vaudt, District Judge
Case No. CVCV061580

Brief of *Amicus Curiae* for the Iowa Association of Electric Cooperatives, the Iowa Association of Municipal Utilities, and the Iowa Utility Association

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STATEMENT OF *AMICUS CURIAE*

Amici are utility organizations with a unique interest in this case, each possessing specific knowledge and viewpoints about the underlying statutory, regulatory, and practical matters implicated by the arguments put forth by the Parties in this action. *See* IOWA R. APP. P. 6.906(4)(*a*)(3).

The Iowa Association of Electric Cooperatives ("IAEC") represents Iowa's consumer-owned electric cooperatives, serving over 650,000 Iowans in all 99 counties. Formed in 1942, the IAEC has served as the primary electric cooperative trade association whose aims include unifying and empowering Iowa's rural electric cooperatives through legal and legislative representation, regulatory oversight, training and education services, safety programs, and communications support and advocacy. The IAEC regularly participates as *amicus curiae* in litigation involving utility-related issues. *E.g.*, *Kragnes v. City of Des Moines*, 714 N.W.2d 632, 633 (Iowa 2006) (IAEC as *amicus curiae*).

The Iowa Association of Municipal Utilities ("IAMU") represents 754 municipal electric, gas, water, and broadband utilities in Iowa. Formed in 1947, the IAMU is the largest organization of its kind in the United States, and provides legal, legislative, advocacy, and public policy services for its members. IAMU regularly participates as *amicus curiae* in litigation involving utility-related issues. *E.g.*,

Denver Sunset Nursing Home v. City of Denver, Case No. 18-0643, 2019 WL 5424919, at *1 (Iowa Ct. App. Oct. 23, 2019) (IAMU as *amicus curiae*).

The Iowa Utility Association ("IUA") represents Iowa investor-owned utilities serving approximately 72 percent of the electricity customers in Iowa, as well as 95 percent of Iowa natural gas customers. The IUA provides its members with services regarding business development, economic growth, community support, job creation, and other activities. The IUA works regularly alongside the IAEC and the IAMU on issues vital to servicing electric power to Iowans. The IUA regularly participates as *amicus curiae* in litigation involving utility-related matters. *E.g.*, *Hawkeye Land Co. v. Franklin Cnty. Wind LLC*, Case No. 12, 1568, 2013 WL 2371355, at *1 (Iowa Ct. App. May 30, 2013) (IUA as *amicus curiae*).

ARGUMENT

I. INTRODUCTION.

Iowa utilities own, maintain, and operate tens of thousands of miles of electric lines and other utility facilities throughout Iowa. Many of those facilities are located within a public right-of-way. Electric, water, and natural gas are vital and life-sustaining services. Impeding the ability of utilities to locate facilities in the public-right-of-way would catastrophically impact the safe, reliable, and affordable delivery of utility service in this State. This would hurt rural, urban, and municipal

end-users of utility services, particularly electric service. Such disruption is clearly not in the public interest.

The District Court properly dismissed Appellant's judicial review application and provided sound rationale for its decision. If accepted, Appellant's position would harm the reliance interests of utilities across the board, all of whom have built critical infrastructure based upon the Iowa Legislature's assurances contained in IOWA CODE § 306.46. An adverse ruling in this case would make Iowa's utility systems less safe, less reliable, and more expensive. It would impose potentially unsustainable costs on Iowa's utility providers who would have to retrofit or re-do utility facilities built long ago, increasing consumers' energy bills, and causing utilities to hesitate before building future projects, electric or otherwise.

It is in the public interest to facilitate utility service, especially electric and gas service, to all customers at a reasonable rate through the most efficient means possible. It is also in the public interest to prevent "hold out" situations like the one presented here. For the reasons below, the District Court should be affirmed.

II. JUSTIFIABLE RELIANCE ON IOWA CODE § 306.46 BY UTILITY PROVIDERS (AND THE PUBLIC) CAUTIONS AGAINST REVERSING THE JUDGMENT BELOW.

A. THE HISTORY OF ELECTRIFICATION DEVELOPMENT.

It is useful to begin any legal inquiry with a sufficient historical understanding of the issue in question. *See, e.g., Evenwel v. Abbott*, 576 U.S. 54, 64 (2016); *In re*

Detention of Geltz, 840 N.W.2d 273, 275 (Iowa 2013). Mass consumer electricity availability began in 1882 in New York City. *See* Richard A. Pence, THE NEXT GREATEST THING 10 (1984) ("Pence"). That project began the industrialization of America and now-common consumer comforts, such as factory machinery, agricultural mechanization, and even living-room light bulbs. *See id*. Not surprisingly, urban areas were the first to enjoy electrification, while rural areas — such as the State of Iowa — were left far behind on this development curve, mostly for economic and geographical reasons. *See id*.

One of the primary economic and geographical difficulties in electrifying states like Iowa during the early industrial period were "hold out" landowners who, recalcitrantly, wanted electricity on their own properties but did not want to grant reasonable easements for electricity facilities to flow across their own land towards their neighbors. *See id*. at 82 and 87. *See also Consolidated Edison Co. of N.Y. v. FERC*, 823 F.2d 630, 639 n.13 (D.C. Cir. 1987) (describing when an energy project "is in the hands other others, [a] hold out situation" results). To avoid these hold out problems, energy providers started utilizing infrastructure that predated electricity altogether: public right-of-ways. *See* Pence, at 87-89. This was a natural solution to the problem presented. Rural state residents used county roads, farm-to-market routes, and the like in everyday life. They lived by them and early maps of rural

electrification show electric lines traced fairly identically to those public right-of-way passages. *See id*. at 89.

This development strategy served consumers and created the economical and geographical efficiencies needed to make industrialization work. It also circumvented "hold out" problems caused by uncooperative land owners who shunned reasonable efforts by utilities to obtain easements. This framework was so successful in its design that there are documented incidences of landowners literally moving their homes — physically hauling whole structures to alternative locations, with doors, windows, shingles, and all — to areas closer to public roads so as to be able to obtain electricity. *See id*. at 87.[1] Over time, this practice of utilizing road right-of-ways for utility service became so pervasive and efficient that by present day, all fifty states and the District of Columbia have some form of statute or regulation regarding a utility's use of the public right-of-way for service purposes.[2]

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[1] "One farmer was told his home was too far from the electric line. A few days later he returned, waving his $5 [sign-up fee]. 'I moved my house,' he said in triumph." Pence, at 87 (describing the lengths individuals went to in order to obtain reliable and affordable electricity).

[2] *See, e.g.*, ALA. CODE §§ 11-43-62 and 11-50-B-3; ALASKA STAT. § 38.05.810(e); ARIZ. REV. STAT. §§ 9-581 through 9-583; ARK. CODE ANN. § 14-200-101; CAL. PUB. UTIL. COMM'N, Dec. No. 98-10-058, No. R. 95-04-043 (Filed Apr. 26, 1995); COLO. REV. STAT. §§ 38.5.5-101 through 38-5.5-108, and 38-5.5-104; CONN. GEN. STAT. § 16-228; DEL. CODE tit. 22, § 103 and tit. 26, § 901; D.C. CODE §§ 10-1141.03 and 43-1454(a); FLA. STAT. Ch. 202.10 through 10-202.41; GA. CODE §§ 32-4-92 and 46-5-1(a); HAW. REV. STAT. § 264-13; IDAHO CODE §§ 62-701 and 62-701A(2); 35 ILL. COMP. STAT. 635/5 and 625/10(b); IND. CODE § 8-1-2-101(b);

See Gorsche Family Partnership v. Midwest Power, Div. of Midwest Power Sys., Inc., 529 N.W.2d 291, 293 (Iowa 1995) (upholding an administrative order permitting a new electric transmission line in a pre-existing electric line easement area to reduce "the interference with the use of land" held by private owners).

B. IOWA CODE § 306.46 HAS CREATED JUSTIFIABLE RELIANCE INTERESTS FOR UTILITIES.

Despite having utilized public right-of-ways for decades during the initial electrification of Iowa, in 2000, the Iowa Supreme Court ruled an easement obtained by a city through condemnation did not include the right of a utility to install poles

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IOWA CODE §§ 306.46 and 477.1; KAN. STAT. § 17-1902(B); KY. REV. STAT. § 278.540; LA. REV. STAT. §§ 33:4401, 48:381.1(C), and 48:381.3(A)(2); ME. REV. STAT. tit. 35-A §§ 2502 through 2507, and 2307; MD. CODE art. 23A, § 2; MASS GEN. LAWS ch. 166, § 25 and 25A; MICH. COMP. LAWS §§ 484.3101 through 484.3120; MINN. STAT. § 237.04; MISS. CODE § 21-27-1; MO. REV. STAT. § 67.1832; MONT. CODE §§ 7-3-4449, 7-3-2220, and 69-4-101; NEB. REV. STAT. § 86-704(1); NEV. REV. STAT. §§ 707.250 and 707.280; N.H. REV. STAT. § 231:161, I(a)-(c); N.J. STAT. §§ 48:5A-20(a) and 48:17-11; N.M. STAT. §§ 3-42-2A and 19-7-57; N.Y. GEN. CITY LAW § 20, N.Y. GEN. VILLAGE LAW § 4-412, N.Y. TOWN LAW § 64, and N.Y. TRANSP. CORP. LAW § 27; N.C. GEN. STAT. §§ 62-39 and 62.182; N.D. CENT. CODE § 49-09-16; OHIO REV. CODE § 4939.01 through 2939.09; OKLA. CONST. art. IX, § 2, OKLA. STAT. tit. 11 § 36-101, and OKLA. STAT tit. 18, § 601; 71 P.A. CONS. STAT. § 194; R.I. GEN. LAWS §§ 37-7-8 and 39-17-1; S.C. CODE §§ 58-9-2240 and 58-12-10; S.D. CODIFIED LAWS §§ 49-7-22 and 49-32-1; TENN. CODE §§ 65-21-103 and 65-21-201; TEX. LOC. GOV'T CODE §§ 203.001 through 283.002; UTAH CODE §§ 54-4-25 and 72-7-102; V.T. STAT. tit. 19, § 1111(a) and tit. 30, § 2502; V.A. CODE §§ 56-458 and 566-462; WASH. REV. CODE §§ 35.99.020 and 35.99.040; W. VA. CODE §§ 8-31-1, 8-31-2, and 17-4-8; WIS. STAT. §§ 62.14(6)(b), 196.58, and 196.499(14); and WYO. CONST. art. 10, § 17, WYO. CONST. art. 13, § 4, and WYO. STAT. § 15-1-103.

and power lines in a specific right-of-way without just compensation. *See Keokuk Junction Ry. Co. v. IES Indus., Inc*., 618 N.W.2d 352, 362-63 (Iowa 2000). Shortly after, in response to the *Keokuk Junction* decision, the Iowa Legislature exercised its general police powers to enact a new statute to expressly provide a public utility "may construct, operate, repair, and maintain its utility facilities within a public road right-of-way." IOWA CODE § 306.46(1). As was explained by the Iowa Utilities Board ("IUB") below, this new statute was intentionally designed to abrogate the *Keokuk Junction* case. *See In re MidAmerican Energy Co*., Dkt. No. E-22417, 2021 WL 391886, at *17-20 (Iowa U.B. Feb. 1, 2021). *See also* 2004 Iowa Acts Ch. 1104.

Utilities in Iowa have justifiably relied on both the historical context and this statutory provision when planning, constructing, maintaining, and repairing electrical facilities in public right-of-ways for years. *See, e.g*., *Spreitzer v. Hawkeye State Bank*, 779 N.W.2d 726, 737 (Iowa 2009) (holding justifiable reliance is a subjective test, the key being whether in view of the circumstances a party would have the right to rely on information possessed at the time); *Lockard v. Carson*, 287 N.W.2d 871, 878 (Iowa 1980) (same). Indeed, before the *Keokuk Junction* case, it was generally accepted based upon historical and legal practices that utility systems in the public right-of-way were the norm. *See Edge v. Brice*, 113 N.W.2d 755, 759 (Iowa 1962) (noting that "[a]ll parties concede public utilities have the right to use highway rights of way" and the "[u]tility facilities were occupying rights of way"

long before the litigation began). *See also Pac. West Cable Co. v. City of Sacramento, Cal*., 672 F. Supp. 1322, 1333 (E.D. Cal. 1987) (describing legislative history regarding "authorizing construction of [utility] systems over public rights-of-way and utility easements.").

IOWA CODE § 306.46 restored and buttressed Iowa utilities' reliance interest — one recognized similarly by courts and utilities in other jurisdictions. *See In re MidAmerican Energy Co*., 2021 WL 391886, at *17-20; *see also PECO Energy Co. v. Penn. Pub. Util. Comm'n*, 791 A.2d 1155, 1166 (Pa. 2002) (acknowledging "respective historic and prospective benefits that utilities and their ratepayers enjoy from placement of utility facilities in public rights-of-way" and dismissing "abrogat[ing] common law rule [and] def[ying] logic" to the contrary); *Rutherford Elec. Membership Corp. v. Time Warner Entertainment/Advance Newhouse Partnership*, Case No. 13 CVS 231, 2014 WL 2159382, at *1 (N.C. Super. Ct. May 22, 2014) ("Networks for transmitting and distributing electric power and telecommunications have historically been above ground using utility poles placed in the public rights-of-way, usually along roads and highways."); Pence, at 39 (discussing the federal government's encouragement of using pre-existing "multiple-use development…systems for…electric power," so "[t]he greatest good for the greatest number for the longest time" can be achieved.).

The enactment of IOWA CODE § 306.46 to restore confidence in the planning, construction, maintenance, and repair of utility systems in public right-of-ways in Iowa after the *Keokuk Junction* decision reflected sound public policy. *See*, *e.g*., *Norfolk Redevelopment & Housing Auth. v. C & P Tel. Co*., 464 U.S. 30, 35 (1985) (noting the permissibility of utility use of public right-of-ways at common law); *New Orleans Gaslight Co. v. Drainage Comm'n of New Orleans*, 197 U.S. 453 458-59 (1905) (recognizing a gas company had been granted rights to use city streets for its business of providing utility services); *Northern States Power Co. v. Fed. Transit. Admin*., Case No 01-295 JRT/FLN, 2001 WL 1618532, at *10 (D. Minn. May 24, 2001) ("The common law rule, as noted above, has long been that utilities' rights to use streets and public rights-of-way are subject [only] to governmental police powers…").

C. DISRUPTING UTILITIES' JUSTIFIABLE RELIANCE INTERESTS WOULD HAVE NEGATIVE CONSEQUENCES.

"[W]hen a party relies to his detriment" on the assumptions provided by another, equity recognizes the courts should step up "in order to prevent the relying party from being harmed." C.C. Marvel, *Comment Note – Detrimental Reliance*, 48 A.L.R.2D 1069 (2021) (collecting authorities). *Accord Hixon v. Lundy*, Case No. 03-2106, 2004 WL 2804857, at *2 (Iowa Ct. App. Dec. 8, 2004) (discussing detrimental reliance). Iowa's utility providers have relied on IOWA CODE § 306.46 and the common law rules regarding placing facilities in the public right-of-way for

many years. *See Yap v. Zollar*, 691 N.E.2d 18, 24 (Ill. App. Ct. 1997) ("In this matter, the plaintiffs detrimentally relied on the statute as it existed…"). When a company "has relied during their long years of service" upon "promised…benefits," and felt "protected by strong legislative policy," only to have those benefits ripped from them, that is akin to "pulling the rug out from under" them. *Nemaiser v. Baker*, 793 F.2d 58, 69 (2d Cir. 1986). "[P]ulling the rug out from beneath a performer of services is unfair." *Worldwide Subsidy Group, LLC v. Fed. Int'l de Football Ass'n*, Case No. 14-00013 MMM (MANx). 2014 WL 11514475, at *11 (C.D. Cal. Oct. 27, 2014).

It is nearly impossible to estimate the enormous costs that would result if Iowa utilities were required to suddenly abandon the use of public right-of-ways, reconfigure their systems, and halt or re-route future projects already planned. It would certainly cost in the millions of dollars and possibly interrupt utility services to untold numbers of Iowans. Any inefficiencies caused by such a decision would result in incurred costs being tacked onto the bills of utility consumers to make up for increased planning, overhead, locating, design, construction, maintenance, and repair. *Cf. Comes v. Microsoft Corp*., 696 N.W.2d 318, 325 (Iowa 2005) (explaining how "increased costs will ultimately be passed on to the consumer" as a rule of simple "economics.").

In short, a ruling in favor of Appellant would be calamitous to utility companies and to the pocketbooks of Iowans. *See, e.g., In re Interest of B.G.C.*, 496 N.W.2d 239, 242 (Iowa 1992) ("In interpreting a statute, one of the considerations is the practical effects of a particular interpretation."); *In re D.N.*, Case No. 02-1410, 2003 WL 22189361, at *4 (Iowa Ct. App. Sept. 24, 2003) ("we must consider the practical effects of any particular statutory interpretation…[u]nreasonable, unjust, and absurd results should be avoided…[w]e further presume the Legislature did not intend a result that defeats the avowed public policy of this State.") (citations omitted).

III. "HOLD OUT" LANDOWNERS LIKE APPELLANT SHOULD NOT BE APPEASED AT THE EXPENSE OF THE PUBLIC INTEREST.

A. RELIABLE AND REASONABLY PRICED ELECTRICITY IS IN THE PUBLIC INTEREST.

It is in the public's interest that everyone receives reliable electricity at a reasonable price. *See S.E. IA Coop. Elec. Ass'n v. IA Util. Bd.*, 633 N.W.2d 814, 820 (Iowa 2001) ("We have already found the transmission of electricity to the public constitutes a public use…"). *See also Lamb Cnty. Elec. Coop., Inc. v. Pub. Util. Comm'n*, 269 S.W.3d 260, 269 (Tex. App. 2008) (noting the public interest of providing electricity to the public); *Hendricks v. Hanigan*, Case No. Do37609, 2002 WL 397648, at *6 (Cal. Ct. App. Mar. 14 2002) (describing the "broad public interest" of electric power to consumers at "just and reasonable rates."); *Penn. Water*

& Power Co. v. Consolid. Gas, Elec. Light & Power Co. of Baltimore, 89 F. Supp. 452, 470 (D. Md. 1950), *re'vd in part on other grounds*, 184 F.2d 552 (4th Cir. 1950) (noting the "manifold uses of electricity in this electric age" and the "public interest [that] has enabled [everyone] to meet the public requirements" thereof).

This well-established public policy is codified under Iowa law. *See* IOWA CODE § 476.25 ("It is declared in the public interest to encourage the development of…statewide electric service…[and to] establish service areas within which specific electric utilities shall provide electric service to customers…"). It is manifestly in the public interest to have reliable and reasonably priced electricity available to the community being served. *See* IOWA CODE § 478.3 (2)(*a*) (articulating the "overall plan of transmitting electricity in the public interest…"); IOWA ADMIN. CODE RS. 199–32.4(4)(*c*) and 265–9.7(1)(*d*) ("'public interest' means that which is beneficial to the public as a whole…"); *Bradley v. IA Dept. of Commerce*, Case No. 01-0646, 2022 WL 31882863, at *3-4 (Iowa Ct. App. Dec. 30, 2002) (the public use was served by granting an electric transmission line supported by substantial evidence). *See also Carpenter v. Comm'r of Pub. Works of City of Racine*, 339 N.W.2d 608, 611 (Wis. Ct. App. 1983) (acknowledging "the city's legitimate public interest in providing efficient [services] to the community as a whole."); *In re Butte Fire Cases*, Case No. JCCP4853, 2017 WL 9832289 (Cal.

Super. Ct. Jun. 22, 2017) (recognizing a utility's "obligation to provide a vital public interest (electricity).").

B. THE LAW DISFAVORS "HOLD OUT" ACTORS WHEN THE PUBLIC INTEREST IS AT STAKE.

As one court put it:

> "A hold out occurs where, '[d]uring the property assemblages, whether private or public, one or more property owners resist in selling, wanting to be the last owner of a parcel or among the last, in order to be able to demand higher prices for their property because they are holding up a larger project.'"

Makowski v. Mayor and City Council of Baltimore, 94 A.3d 91, 101-02 (Md. Ct. App. 2014) (citing and quoting *Mayor and City Council of Baltimore v. Valsamaski*, 916 A.2d 324, 346 n.18 (Md. Ct. App. 2007)). *See also* Arpan A. Sura, *An End-Run Around The Takings Clause?*, 50 WM. & MARY L. REV. 1739, 1781 n.228 (2009) ("In a hold out situation, because the landowner has a 'monopoly' over the land, [the landowner] has the incentive to raise his asking price *ad infinitum*."). Hold out landowners are nothing new, but they are just as forestalling today as they were when America was initially attempting to build out its electric grid. *See* Pence, at 82 (describing the erection of initial electric lines, stating "[t]he job would have been difficult enough had all farmers been agreeable, but many were not."). Apparently, the same hold out problems persist — with Appellant now leading the charge.

Hold out scenarios almost always have negative implications. *See In re Marriage of Kolpek*, Case No. 11-0745, 2012 WL 299512, at *3 (Iowa Ct. App. Feb. 1, 2012). *See also* John Fee, *Eminent Domain Use & Abuse*: Kelo *In Context* § 6.III (Feb. 2006) (describing "hold out problems" when there are "important public interests" weighed against property rights, with "utilities" as a common example). A ruling in favor of Appellant would ripple throughout Iowa's utility industry and the wallets of everyday Iowans. The Court should not allow a single landowner to hold up a project that could serve other utility consumers. *See* Lloyd Cohen, *Holdouts And Free Riders*, 20 J. LEGAL STUD. 351, 356 (1991) (explaining hold out scenarios to serve other customers throughout the State).

Appellants make much of the fact that Microsoft — a large multinational corporation — is likely to be the primary end-user of the energy supplied via the proposed energy line. *See* Appellant's Br. at pp. 21-24; and 40-50. As the famous Miles Davis jazz tune once noted: "So What?" *See Hall v. Inner City Records*, Case No. 79 Civ. 1854 (HFW), 1980 WL 1163, at *1 (S.D.N.Y. Jun. 19, 1980). This is an unnecessary misdirection. Businesses operating in rural Iowa, regardless of size and nature, are still the "public" and entitled to the benefits secured to other members of the energy-consuming community. *See Schaefer v. Md. Dept. of the Envmt.*, Case No. JFM-13-321, 2013 WL 509168, at *1 (D. Md. Feb. 8, 2013) ("corporations are people too…"). *See also Puntenney v. IA Util. Bd.*, 928 N.W.2d 829, 851 (Iowa

2019) (utility determinations do "not hang on the presence of spigots and on-ramps"); *Wright v. Midwest Old Settlers & Threshers Ass'n*, 556 N.W.2d 808, 810-11 (Iowa 1996) ("a common carrier need not serve all the public all the time."). The Court should not entertain Appellant's arguments in this regard.

To reframe it: what if Microsoft was standing in Appellant's shoes? Let us posit Microsoft owned land in the area in question, but refused to allow the public right-of-way to be used to serve Appellant's barn. One can imagine the uproar such an imbalanced situation would create. What Appellant is doing here is no different. Appellant seeks to prevent Microsoft from receiving vital utility services simply because Appellant does not want utility lines in an adjacent right-of-way — even though lines already exist there and have for a significant period of time. That would not be considered a just result if the situation was reversed and consequently cannot be considered just under these circumstances either. Additionally, it should be noted that any impact on Microsoft's electric service impacts not just Microsoft but all of the end-users of Microsoft's services which are increasingly critical to the 21st century economy. *See generally In re Chipotle Mexican Grill, Inc*., S.E.C. No Act. Ltr., 2016 WL 626463, at *4 (Feb. 12, 2016) (explaining how disruptions in primary operational services to a company hurt not just the company, "but also the company's customers and third party stakeholders.").

Instead, Appellant's position would effectively encourage "hold out" landowners to use a "heckler's veto" to unilaterally stop otherwise economically valuable development projects now and in the future. *See generally Frye v. Kansas City, Mo. Police Dept.*, 375 F.3d 785, 792-93 (8th Cir. 2004) ("the protection against heckler's vetoes even forbids statutory schemes that would allow a disapproving citizen to…complain[] on…apparently neutral grounds.").[3]

IV. APPELLANT HAS THE FUNDAMENTAL ARGUMENT BACKWARDS: IOWA CODE § 306.46 PROTECTS PRIVATE PROPERTY RIGHTS INSTEAD OF HARMING THEM.

Appellant has taken a hard stance on preserving property rights in this case. *See, e.g.*, Appellant's Br. at pp. 32-38. However, Appellant's arguments actually hurt that cause rather than help it.

As stated above, IOWA CODE § 306.46 is designed to alleviate issues related to the taking of private property through eminent domain. Using public right-of-ways are a historically proven mechanism to circumvent property disputes by running electricity lines through alternate, public routes. *See* Pence, at 82 and 87. Using public road right-of-ways helps avoid the use of more intrusive means of

[3] It should also be noted that as a regulated public utility in Iowa, MidAmerican is legally required to provide services to those requesting it within its service area. *See* IOWA CODE § 476.3; 471.5; 476.8; and 476.25. Whether Microsoft alone is the entity requesting service, or if it is one hundred people in "upper value estate homes," MidAmerican must abide by its legal obligations to configure service to those who demand it. For this reason alone, Appellant's "only one customer" argument must fail.

constructing, maintaining, and repairing utility services, such as the use of eminent domain. *See, e.g., City of Long Branch v. Spanos*, Case No. A-2936-04T12936-04T1, 2006 WL 1627977, at *12 (N.J. Super. Ct. App. Div. Jun. 16, 2006) ("The power to take property through eminent domain is one of the most intrusive aspects of sovereignty…"). (quoting *Comm'r of Transp. v. D'Onofrio*, 562 A.2d 267, 269 (N.J. Super Ct. App. Div. 1989)).

At the inception of this case, eminent domain had not yet been sought because it was understood that it was not needed, and out of a sense of courtesy to ensure an amicable resolution for all involved. *See In re MidAmerican Energy Co*., Dkt. No. E-22417, 2021 WL 1087637, at *3 (Iowa U.B. Mar. 18, 2021). If the use of public right-of-ways is not allowed under IOWA CODE § 306.46, it will spur utility companies of all types — electric, gas, water, sewer, and otherwise — to explore more assertive methods of operation that could be more burdensome to property owners than the thoughtful use of rights that have already been obtained. As a matter of public policy, eminent domain is not something to be encouraged, but it is the likely, if unintended, result of the position Appellant is taking under the facts of this case. *See, e.g., Dakota, Minn. & Eastern Ry. Corp. v. South Dakota*, 362 F.3d 512, 516 (8th Cir. 2004) ("In the event the proposed project is approved and DM & E cannot reach agreements with landowners, eminent domain proceedings may be pursued as an avenue of last resort.").

V. THIS CASE HAS IMPLICATIONS BEYOND ELECTRIC LINES.

It is not only electric utilities that use public right-of-ways for providing vital services. For example, municipal utilities take advantage of the efficiencies of public right-of-ways for other integral operations such as water and sewer services. *See, e.g.*, *Rural Water Sys. No. 1 v. Sioux Cnty*., 272 N.W.2d 466, 466-67 (Iowa 1978) (describing the laying of a water pipe in a public right-of-way); *Lenz. v. Hedrick*, Case No. 000-1258, 2002 WL 1766629, at *1-2 (Iowa Ct. App. Jul. 31, 2002) (describing the laying of a sewer/drainage system in a public right-of-way).

More recently, the expansion of broadband internet and telecommunication facilities has also been an important focus of federal and state public policy. Governor Kim Reynolds has established the "Empower Rural Iowa Initiative," whose mission is, in part, to further the "connecting rural Iowa" efforts by providing and expanding high-speed internet across the State. *See* Gov. Kimberly K. Reynolds, EXEC. ORDER NO. 3 (Jul. 18, 2018). This initiative is intended to deploy infrastructure necessary to provide fast, reliable, and affordable broadband internet to rural Iowans who would otherwise not have access to it. *See, e.g.*, *In re Nat'l Broadband Plan & State Broadband Dev. Plan*, Dkt. No. NOI-2010-0002, 2010 WL 3377936, at *1 (Iowa U.B. Aug. 25, 2010) ("encourag[ing] targeted investment in broadband infrastructure, and emphasiz[ing] the importance of broadband in the future of [certain] programs…that would support broadband communications in

areas that would remain unserved without support of which depend on universal support service to maintain existing service."). Some broadband build-outs have already been sited or placed in public right-of-ways to further these goals. *See*, *e.g*., *In re Allamakee-Clayton Elec. Coop., Inc*., Dkt. Nos. ETA-2015-0001, WRU-2015-0006-0901, 2015 996836, at *1-4 (Iowa U.B. Mar. 5, 2015).

If utility companies are not allowed to "piggy-back" on existing infrastructure lanes such as public right-of-ways for electric, gas, water, sewer, telecommunications, and internet services, the development and provision of essential services to Iowans will be hampered. This is true for both above-ground utility systems as well as underground utility systems, regardless of their nature. The Court should not bless such deleterious effects that would hurt both utility service and the State's economic growth and development. *See*, *e.g*., *Dalarna Farms v. Access Energy Coop*, 792 N.W.2d 656, 660 (Iowa 2010) ("We strive for 'a reasonable interpretation that best achieves the statute's purpose and avoids absurd results.'") (quoting *State v. Gonzales*, 718 N.W.2d 304, 308 (Iowa 2006)).

VI. THE DISSENT AT THE IUB LEVEL WAS MISTAKEN.

The original administrative order in this case by the IUB was a split decision, with two board members voting to grant the requested franchise and one board member being opposed. *See In re MidAmerican Energy Co*., Dkt. No. E-22417, 2021 WL 391886 (Iowa U.B. Feb. 1, 2021). The dissent, by board member Lozier,

rested part of its argument on the idea that because Appellant's land is comparatively more valuable than other surrounding real estate — *i.e.*, Appellant's land is currently being used as "an equine breeding and training facility" that may be later subdivided for "upper value estate homes" — and other "lower cost" land abutting an "already devalued" highway corridor was nearby — the latter should be considered (and perhaps given priority) over the former for a planned route. *See id*. at 2021 WL 391886, at *29-30. Board member Lozier's dissent further advocated utility companies "address private property valuation" when examining franchise locations. *Id*. at 2021 WL 391886, at *30.[4]

The problem with this position is that the Iowa Code does not require such a "rich-land-poor-land" evaluation. *See* IOWA CODE §§ 306.46; and 478.3(2)(*a*) While alternative routes should be explored by utilities, *see* IOWA CODE § 478.3(2)(*a*)(6), the multifactor test required when filing for a petition for transmission lines does not require a utility to make a "lowest cost" analysis with respect to the value of the

[4] Appellant's arguments about the potential devaluation of her property in the future should she chose to subdivide it parcel-by-parcel for "high value estate homes" is peculiar. If those "high value estate homes" were to ever materialize, they would need individualized electricity too. The proposed project in question would be able to more efficiently satisfy those future/hypothetical needs. Establishing utility structures to satisfy anticipated future loads has been recognized as a valid public use. *See Fischer v. IA State Commerce Comm'n*, 368 N.W.2d 88, 97-98 (Iowa 1985); *Bradley*, 2002 WL 31882863, at *5. *See also* IOWA CODE §§ 478.3(2)(*a*)(3) (requiring consideration of "the needs of the public presently served and future projections…"); and 478.3(2)(*a*)(4) (requiring consideration of "future land use and zoning…"). In other words, Appellant seems to be arguing against her own case.

underlying land to be impacted. The analysis devised by the Iowa Legislature instead instructs utilities to consider only future economic development, comprehensive planning, present and future utility needs, zoning matters, possible alternative routes, and inconvenience or undue injury to landowners. That's it. *See* IOWA CODE §§ 478.3(2)(*a*)(1)-(8).

The purported value of the dirt adjacent to a new utility installation is not a relevant factor when making a franchise decision. *See id*. This makes sense as a matter of public policy because Iowa law does not favor making demarcations between those with means, those with less means, and those without means altogether. *See State v. Snyder*, 203 N.W.2d 280, 287 (Iowa 1972) ("distinctions in the administration of…justice between rich and poor are generally not likely to bear up under constitutional scrutiny"); *State v. Sickels*, Case No. 13-0911, 2014 WL 1234477, at *3 (Iowa Ct. App. Mar. 26, 2014) (same). To the extent board member Lozier's dissent at the IUB relies on this reasoning, it offends public policy and notions of basic fairness. It should not be adopted by the Court.

CONCLUSION

For the above reasons, *Amici* respectfully urge the Court to affirm the ruling below.

CERTIFICATE OF COMPLIANCE

Neither Party nor their counsel participated in the drafting of this Brief, in whole or in part. Neither Party nor their counsel contributed any money to the undersigned for the preparation or submission of this Brief. *See* IOWA R. APP. P. 6.906(4)(*d*).

This Brief complies with the type-volume limitation of IOWA R. CIV. P. 6.903(1)(*g*)(1) because it contains 5,190 words, excluding parts of the Brief exempted by that Rule. This Brief complies with the typeface requirements of IOWA R. APP. P. 6.903(1)(*e*), and the type-style requirements of IOWA R. APP. P. 6.903(1)(*f*) because it has been prepared in a proportionately spaced typeface using Microsoft Word in Times New Roman, 14-point font.

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