ELECTRONICALLY FILED MAY 13, 2022 CLERK OF SUPREME COURT

IN THE SUPREME COURT OF IOWA

NO. 21-1788

LINDA K. JUCKETTE,
PETITIONER-APPELLANT

v.

IOWA UTILITIES BOARD,
RESPONDENT-APPELLEE

and

MIDAMERICAN ENERGY COMPANY and OFFICE OF CONSUMER ADVOCATE,
INTERVENORS-APPELLEES.

APPEAL FROM THE IOWA DISTRICT COURT FOR POLK COUNTY

THE HONORABLE JEANIE VAUDT

APPELLEE MIDAMERICAN ENERGY COMPANY'S FINAL BRIEF

By /s/ *Andrew L. Magner*
Andrew L. Magner AT0012739
666 Grand Avenue, Suite 500
Des Moines, Iowa 50309
Phone: (515) 281-2376
Andrew.Magner@Midamerican.com

ATTORNEY FOR INTERVENOR-APPELLEE MIDAMERICAN ENERGY COMPANY

TABLE OF CONTENTS

TABLE OF CONTENTS 2
TABLE OF AUTHORITIES 4
STATEMENT OF ISSUES PRESENTED FOR REVIEW 8
ROUTING STATEMENT 13
STATEMENT OF THE CASE 14
STATEMENT OF FACTS 16
ARGUMENT 20
I. THE SUPREME COURT SHOULD AFFIRM THE IUB'S GRANT OF FRANCHISE AND THE DISTRICT COURT'S ORDER 21
A. Preservation of Issue 21
B. Standard of Appellate Review 21
C. Argument 23
1. The IUB has been delegated the authority to interpret the term "public use" at Iowa Code section 478.4 23
2. Even if "public use" must align with eminent domain statutes, MidAmerican has shown the line serves a public use and has obtained the right of eminent domain in this proceeding 27
3. The record contains substantial evidence in support of MidAmerican's franchise and the Court should not supplant the IUB's well-supported findings of fact with conjecture 31
II. IOWA CODE § 306.46 IS CONSTITUTIONAL AND THE IUB'S GRANT OF FRANCHISE DOES NOT CREATE AN IMPROPER TAKING 38
A. Preservation of Issue 38
B. Standard of Appellate Review 38
C. Argument 39
1. The IUB's application of Iowa Code § 306.46 is reasonable and is not impermissibly retroactive in application 39
2. The IUB's application of Iowa Code § 306.46 is not an improper retroactive reading 43

3. The IUB's application of Iowa Code § 306.46 does not Result in an Impermissible Taking ... 44

4. Iowa Code § 306.46 abrogates the Court's decision in Keokuk Junction ... 50

III. EVEN IF IOWA CODE § 306.46 IS UNCONSTITUTIONAL, THE COURT SHOULD AFFIRM THE FRANCHISE AND REMAND FOR EMINENT DOMAIN PROCEEDINGS ... 59

A. Argument ... 59

CONCLUSION ... 63

REQUEST FOR NONORAL SUBMISSION ... 65

CERTIFICATE OF COST ... 65

CERTIFICATE OF COMPLIANCE ... 66

TABLE OF AUTHORITIES

Cases

Ark. State Highway Comm'n v. Ark. Power & Light Co., 330 S.W.2d 77, 80-81 (Ark. 1959) 58

Bormann v. Bd. of Supervisors, 584 N.W.2d 309, 315 (Iowa 1998) 46

Bradley v. Iowa Dep't of Commerce, No. 01-0646, 2002 WL 31882863 at * 5 (Iowa Ct. App. Dec. 30, 2002) 37

Brakke v. Iowa Dep't of Naural Res., 897 N.W.2d 522, 534 (Iowa 2017) . 40, 46

Broadlawns Med. Ctr. v. Sanders, 792 N.W.2d 302, 306 (Iowa 2010) 32

Carroll v. City of Cedar Falls, 261 N.W. 652, 656-57 (Iowa 1935) 28

Cater v. Northwestern Tel. Exch. Co., 60 Minn. 539, 63 N.W. 111, 112–113 (1895) 51

Cathey v. Ark. Power & Light Co., 97 S.W.2d 624 (Ark. 1936) 58

Des Moines Flying Serv., Inc., v. Aerial Servs., Inc., 880 N.W.2d 212, 220 (Iowa 2016) 41, 57

Fischer v. Iowa State Commerce Comm'n, 368 N.W.2d 88, 97-98 (Iowa 1985) 37

Fisher v. Golden Valley Elec. Ass'n, 658 P.2d 127, 129 (Alaska 1983) 51

Gamble v. State, 723 N.W.2d 443 (Iowa 2006) 54

Hawkeye Land Co. v. Iowa Utils. Bd., 847 N.W.2d 199, 207 (Iowa 2014) . 21

Hrbek v. State. 958 N.W.2d 779 (Iowa 2021) 43, 44, 54

IBP, Inc. v. Al-Gharib, 604 N.W.2d 621, 632 (Iowa 2000) 31

Iowa State Commerce Comm'n v. Northern Natural Gas Co., 161 N.W.2d 111, 114-15 (Iowa 1968) 31

Johnston v. Iowa Dep't of Transp., 958 N.W.2d 180, 190 (Iowa 2021) 57

Jones v. State, 731 N.W.2d 388 (Iowa 2007) 54

Kelo v. City of New London, 545 U.S. 469, 498 (2005) 29

Keokuk Junction Ry. Co. v. IES Indus., Inc., 618 N.W.2d 352 (Iowa 2000) .... passim

Kingsway Cathedral v. Iowa Dep't of Transp., 711 N.W.2d 6, 9 (Iowa 2006) 46

Leonard v. State, 461 N.W.2d 465 (Iowa 1990)... 54

Mathis v. Iowa Utils. Bd., 934 N.W.2d 423, 426-27 (Iowa 2019) .. 21, 24, 28, 38

McCullough v. Interstate Power & Light Co., 163 Wash. 147, 300 P. 165, 166 (1931) 51

Myria Holdings Inc. v. Iowa Dep't Revenue, 892 N.W.2d 343, 348 (Iowa 2017) 40

Natural Gas Serv. Co. v. Serv-Yu Cooperative, Inc., 219 P.2d 324, 325-26 (Ariz. 1950).. 31

NDA Farms v. Iowa Utils. Bd., No. CV009448, 2013 WL 11239755, at *10-11 (Polk Co. Dist. Ct. June 24, 2013) 60

Nerbonne, N.V. v. Florida Power Corp., 692 So.2d 928, 929 (Fla. Dist. Ct. App. 1997) 51

NextEra Energy Res. v. Iowa Utils. Bd., 815 N.W.2d 30, 44 (Iowa 2012) . 22, 32

Northwestern Bell Tel. Co. v. Iowa Utils. Bd., 477 N.W.2d 678, 682 (Iowa 1991) 22

Puntenney v. Iowa Utils. Bd., 928 N.W.2d 829, 836 (Iowa 2019)........ passim

Race v. Iowa Elec. Light & Power Co., 134 N.W.2d 335, 338 (Iowa 1965) 23, 28

Rhoades v. State, 880 N.W.2d 431, 446 (Iowa 2016) 40

S.E. Iowa Co-op Elec. Ass'n v. Iowa Utils. Bd., 633 N.W.2d 814, 819 (Iowa 2001) .... passim

State v. Hutchinson, 721 N.W.2d 776, 780 (Iowa 2006).............................. 48

State v. Iowa Pub. Serv. Co., 454 N.W.2d 585, 588-89 (Iowa 1990) 56

State v. Richardson, 890 N.W.2d 609, 616 (Iowa 2017)............................. 40

SZ Enterprises, LLC v. Iowa Utils. Bd., 850 N.W.2d 441, 447 (Iowa 2014) 30, 31

Vittetoe v. Iowa S. Utils. Co., 123 N.W.2d 878, 881 (Iowa 1963)............... 27

Statutes

Alaska Stat. § 19.25.010 52
Iowa Code § 17A.19(10) 21
Iowa Code § 17A.19(10)(c) 22, 39
Iowa Code § 17A.19(10)(f) 22, 31
Iowa Code § 17A.19(10)(*l*) 22, 27
Iowa Code § 17A.20 21
Iowa Code § 306.2(1) 42
Iowa Code § 306.3(3)-(9) 42
Iowa Code § 306.3(7) 42
Iowa Code § 306.4 42
Iowa Code § 306.46 .... passim
Iowa Code § 306.46(2) 42
Iowa Code § 318.12 48
Iowa Code § 318.3 48
Iowa Code § 318.5 48
Iowa Code § 318.6 48
Iowa Code § 318.7 48
Iowa Code § 318.9 .... 42, 47, 49, 58
Iowa Code § 4.5 43
Iowa Code § 4.6 41
Iowa Code § 476.1 36
Iowa Code § 476.22 30
Iowa Code § 476.25 35
Iowa Code § 476.5 35
Iowa Code § 476.8 35
Iowa Code § 478.15 .... 39, 45
Iowa Code § 478.15(1) 60

Iowa Code § 478.18 38
Iowa Code § 478.3(2) 38
Iowa Code § 478.4 .... 23, 25, 26, 36
Iowa Code § 478.6(3) 39, 45
Iowa Code § 478.9 47
Iowa Code § 479B.9 .... 24, 26
Iowa Code § 716.7(4) 48
Iowa Code § 822.3A 54
Iowa Code §§ 476.3 35
Iowa Code §4.4 41
Iowa Code chapter 306 .... 41, 48
Iowa Code chapter 476A 24
Iowa Code chapter 478 .... 22, 30

Other Authorities

Iowa Department of Transportation, *Iowa Miles of Rural Secondary Roads as of January 1, 2005* (Mar. 10, 2022), https://iowadot.gov/analytics/pdf/secbook2004.pdf 57

Iowa Department of Transportation, *Iowa Miles of Rural Secondary Roads as of January 1,* 2021(Mar. 10, 2022), https://iowadot.gov/analytics/pdf/Secondary-Road-Report-2021.pdf...... 57

MidAmerican Energy Company Electric Tariff No. 2, *Section 4 – Expansion of Electric Distribution System*, Sheet Nos. 67-77, 82 (March 9, 2022), https://www.midamericanenergy.com/media/pdf/iowa-electric-tariffs.pdf. 36

Rules

Iowa Admin. Code 199—11.8 47
Iowa Admin. Code 199—20.3(13)(c) 35

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether the IUB erred in granting MidAmerican an electric transmission line franchise by finding that the line is necessary to serve a public use and represents a reasonable relationship to an overall plan of transmitting electricity in the public interest.

Cases

Bradley v. Iowa Dep't of Commerce, No. 01-0646, 2002 WL 31882863 at * 5 (Iowa Ct. App. Dec. 30, 2002)

Broadlawns Med. Ctr. v. Sanders, 792 N.W.2d 302, 306 (Iowa 2010)

Carroll v. City of Cedar Falls, 261 N.W. 652, 656-57 (Iowa 1935) 2010)

Fischer v. Iowa State Commerce Comm'n, 368 N.W.2d 88, 97-98 (Iowa 1985)

Hawkeye Land Co. v. Iowa Utils. Bd., 847 N.W.2d 199, 207 (Iowa 2014)

IBP, Inc. v. Al-Gharib, 604 N.W.2d 621, 632 (Iowa 2000)

Iowa State Commerce Comm'n v. Northern Natural Gas Co., 161 N.W.2d 111, 114-15 (Iowa 1968)

Kelo v. City of New London, 545 U.S. 469, 498 (2005)

Mathis v. Iowa Utils. Bd., 934 N.W.2d 423, 426-27 (Iowa 2019)

Natural Gas Serv. Co. v. Serv-Yu Cooperative, Inc., 219 P.2d 324, 325-26 (Ariz. 1950)

NextEra Energy Res. v. Iowa Utils. Bd., 815 N.W.2d 30, 44 (Iowa 2012)

Northwestern Bell Tel. Co. v. Iowa Utils. Bd., 477 N.W.2d 678, 682 (Iowa 1991)

Puntenney v. Iowa Utils. Bd., 928 N.W.2d 829, 836 (Iowa 2019)

Race v. Iowa Elec. Light & Power Co., 134 N.W.2d 335, 338 (Iowa 1965)

S.E. Iowa Co-op Elec. Ass'n v. Iowa Utils. Bd., 633 N.W.2d 814, 819 (Iowa 2001)

SZ Enterprises, LLC v. Iowa Utils. Bd., 850 N.W.2d 441, 447 (Iowa 2014)

Vittetoe v. Iowa S. Utils. Co., 123 N.W.2d 878, 881 (Iowa 1963)

Statutes

Iowa Code § 17A.19(10)

Iowa Code § 17A.19(10)(c)

Iowa Code § 17A.19(10)(f)

Iowa Code § 17A.19(10)(*l*)

Iowa Code § 17A.20

Iowa Code § 476.1

Iowa Code § 476.22

Iowa Code § 476.25

Iowa Code § 476.5

Iowa Code § 476.8

Iowa Code § 478.18

Iowa Code § 478.3(2)

Iowa Code § 478.4

Iowa Code § 479B.9

Iowa Code §§ 476.3

Iowa Code chapter 476A

Iowa Code chapter 478

Rules

Iowa Admin. Code 199—20.3(13)(c)

Other Authorities

MidAmerican Energy Company Electric Tariff No. 2, *Section 4 – Expansion of Electric Distribution System*, Sheet Nos. 67-77, 82 (March 9, 2022), https://www.midamericanenergy.com/media/pdf/iowa-electric-tariffs.pdf.

2. Whether Iowa Code section 306.46 permits public utilities, like MidAmerican, to construct, operate, repair, or maintain facilities in public road right-of-way without requiring additional property interests from the servient landowner.

Cases

Ark. State Highway Comm'n v. Ark. Power & Light Co., 330 S.W.2d 77, 80-81 (Ark. 1959)

Bormann v. Bd. of Supervisors, 584 N.W.2d 309, 315 (Iowa 1998

Brakke v. Iowa Dep't of Naural Res., 897 N.W.2d 522, 534 (Iowa 2017)

Cater v. Northwestern Tel. Exch. Co., 60 Minn. 539, 63 N.W. 111, 112–113 (1895)

Cathey v. Ark. Power & Light Co., 97 S.W.2d 624 (Ark. 1936)

Des Moines Flying Serv., Inc., v. Aerial Servs., Inc., 880 N.W.2d 212, 220 (Iowa 2016)

Fisher v. Golden Valley Elec. Ass'n, 658 P.2d 127, 129 (Alaska 1983)

Gamble v. State, 723 N.W.2d 443 (Iowa 2006)

Hrbek v. State. 958 N.W.2d 779 (Iowa 2021)

Jones v. State, 731 N.W.2d 388 (Iowa 2007)

Johnston v. Iowa Department of Transportation, 958 N.W.2d 180, 190 (Iowa 2021)

Keokuk Junction Ry. Co. v. IES Indus., Inc., 618 N.W.2d 352 (Iowa 2000)

Kingsway Cathedral v. Iowa Dep't of Transp., 711 N.W.2d 6, 9 (Iowa 2006)

Leonard v. State, 461 N.W.2d 465 (Iowa 1990)

McCullough v. Interstate Power & Light Co., 163 Wash. 147, 300 P. 165, 166 (1931)

Myria Holdings Inc. v. Iowa Dep't Revenue, 892 N.W.2d 343, 348 (Iowa 2017)

Nerbonne, N.V. v. Florida Power Corp., 692 So.2d 928, 929 (Fla. Dist. Ct. App. 1997))

Rhoades v. State, 880 N.W.2d 431, 446 (Iowa 2016)

State v. Hutchinson, 721 N.W.2d 776, 780 (Iowa 2006)

State v. Iowa Pub. Serv. Co., 454 N.W.2d 585, 588-89 (Iowa 1990)

State v. Richardson, 890 N.W.2d 609, 616 (Iowa 2017)

Statutes

Alaska Stat. § 19.25.010

Alaska Stat.§ 19.59.001

Iowa Code § 306.2(1)

Iowa Code § 306.3(3)-(9)

Iowa Code § 306.3(7)

Iowa Code § 306.4

Iowa Code § 306.46

Iowa Code § 306.46(2)

Iowa Code § 318.12

Iowa Code § 318.3

Iowa Code § 318.6

Iowa Code § 318.7

Iowa Code § 318.9

Iowa Code § 4.5

Iowa Code § 4.6 (2022)

Iowa Code § 478.15(1)

Iowa Code § 478.4 (2022)

Iowa Code § 478.6(3)

Iowa Code § 478.9

Iowa Code § 716.7(4)

Iowa Code § 822.3A

Iowa Code §4.4 (2022)

Iowa Code chapter 306

Rules

Iowa Admin. Code 199—11.8

Other Authorities

Iowa Department of Transportation, *Iowa Miles of Rural Secondary Roads as of January 1, 2005* (Mar. 10, 2022), https://iowadot.gov/analytics/pdf/secbook2004.pdf

Iowa Department of Transportation, *Iowa Miles of Rural Secondary Roads as of January 1,* 2021(Mar. 10, 2022), https://iowadot.gov/analytics/pdf/Secondary-Road-Report-2021.pdf

3. Whether the Court should vacate the franchise if it determines Iowa Code § 306.46 is improperly applied or unconstitutional.

Cases

NDA Farms v. Iowa Utils. Bd., No. CV009448, 2013 WL 11239755, at *10-11 (Polk Co. Dist. Ct. June 24, 2013)

Statutes

Iowa Code § 478.15

ROUTING STATEMENT

This appeal should be transferred to the court of appeals pursuant to Iowa R. App. P. 6.1101(3)(a) because it pertains to the Iowa Utilities Board's authority to grant electric transmission line franchises, which involves the application of existing legal principles.

STATEMENT OF THE CASE

This case is about whether the Polk County District Court erred in affirming the Iowa Utilities Board's ("IUB") order granting an electric transmission line franchise to MidAmerican Energy Company ("MidAmerican") and whether MidAmerican is required to seek the right of eminent domain to place its facilities in public road right-of-way pursuant to Iowa Code § 306.46. In September 2019, MidAmerican, a public utility as defined at Iowa Code § 476.1(3), filed a petition with the IUB requesting an electric transmission line franchise in Madison County, Iowa. Appellant Linda K. Juckette ("Juckette") was permitted to intervene in the proceeding. MidAmerican did not seek the right of eminent domain over Juckette's property. A hearing was conducted in September 2020 and Juckette, MidAmerican, and Intervenor-Appellee Office of Consumer Advocate ("OCA") participated.

In February 2021, the IUB issued an order granting MidAmerican a franchise for a transmission line, including identifying a route which included utility facilities in the public road right-of-way over which Juckette owns the servient estate. One IUB Board member authored a partial concurrence and dissent, agreeing with the grant of franchise for the west segment of the line and dissenting with the grant of franchise for the east segment of the line.

After Juckette exhausted her administrative remedies, Juckette commenced a judicial review proceeding pursuant to Iowa Code § 17A.19 in the Polk County District Court. Following briefing and an oral hearing involving Juckette, the IUB, MidAmerican, OCA, and amici curiae Iowa Association of Electric Cooperatives ("IAEC"), the Iowa Utility Association ("IUA"), and ITC Midwest LLC ("ITC"), the Polk County District Court affirmed the IUB's order granting MidAmerican an electric transmission line franchise and dismissed Juckette's petition for judicial review. This timely appeal followed. On February 15, 2022, the Iowa Farm Bureau Federation ("Farm Bureau") requested amicus curiae status with this Court, which was granted on February 28, 2022.

STATEMENT OF FACTS

MidAmerican ("MidAmerican") Energy Company is a rate-regulated public utility which provides electric and natural gas service in Iowa pursuant to Iowa Code section 476.1. (CR 160, App. 242). On September 17, 2019, MidAmerican filed with the IUB a petition for an electric transmission line franchise to construct, operate, and maintain 3.53 miles of 161 kilovolt ('kV") nominal voltage electric transmission line in Madison County, Iowa. (CR 105-08, App. 187-90). The project consists of two segments, identified as the east and west segments. (CR 63, App. 145). A portion of the east segment adjoins a portion of Ms. Juckette's property; accordingly, the IUB granted Ms. Juckette's request to intervene in docket. (CR 192, App. 274). As part of the docket, MidAmerican requested the right of eminent domain over one along the west segment but not for any portion of the east segment, including Juckette's property. (CR 193, App. 275). MidAmerican requested the right of eminent domain on those parcels because the proposed route would not follow along public road right-of-way in those areas. (CR 193, App. 275).

A contested case hearing was held on September 23, 2020 at the Madison County Fairgrounds in Winterset, Iowa. (CR 535, App. 617). Juckette, MidAmerican, and OCA participated in the hearing. (CR 535, App. 617). On February 1, 2021, the IUB issued an Order Granting MidAmerican's

Petition for Electric Transmission Line Franchise and Right of Eminent Domain ("Order"). (CR 899, App. 981). Regarding the west segment, the IUB unanimously concluded that MidAmerican met all necessary statutory elements to issue a franchise. (CR 939-40, 947, App. 1021-22, 1029). The Board found that MidAmerican had demonstrated that the proposed transmission line was necessary to serve a public use and that the line represented a reasonable relationship to an overall plan of transmitting electricity in the public interest, as required by Iowa Code section 478.4. (CR 939-40, 947, App. 1021-22, 1029). For the east segment, the majority of the Board concluded that MidAmerican's proposed line complied with the statutory requirements. (CR 939-40, App. 1021-22).

In concluding that MidAmerican had satisfied the elements of Iowa Code section 478.4, the IUB found that the line was necessary to serve a public use because the proposed line is necessary to meet current and future transmission needs and will increase system reliability and accommodate current and anticipated load growth, all of which benefits innumerable MidAmerican customers beyond Microsoft. (CR 908, App. 990). In support of this finding, the IUB cited to testimony and exhibits from Michael Charleville, a utility system planner for MidAmerican, that the additional line

was necessary to serve both Microsoft and the anticipated load growth in the area. (CR 198-205, 906, App. 280-87, 988) Mr. Charleville also testified that a radial, single-line feed to the substation was insufficient to meet industry reliability standards. (CR 201-02, App. 283-84). Mr. Charleville also testified that the load at the Maffitt Lake Substation will exceed 150 megawatts and would require the proposed additional feeds in the near future. (CR 656, App. 738). Ms. Juckette introduced evidence that the City of West Des Moines was installing additional infrastructure to accommodate the anticipated growth and testified that she personally believes development will "come her direction quicker than anticipated." (CR 752, App. 834).

The IUB also found that the proposed line represents a reasonable relationship to an overall plan of transmitting electricity in the public interest. (CR 917, App. 999). The IUB concluded that MidAmerican introduced evidence in support of the transmission line sufficient to address all eight factors required by Iowa Code section 478.3(2)(a)(1)-(8). (CR 909-17, App. 991-99). In addition to that analysis, the IUB found that the proposed line does not "unnecessarily interfere" with Ms. Juckette's use of the property, as Ms. Juckette testified that she cannot utilize the existing public road right of way for any additional use. (CR 764-66, 921, App. 846-48, 1003). MidAmerican

introduced evidence and Ms. Juckette testified that there are currently MidAmerican-owned electric line poles located in the public road right-of-way. (CR 444, 449, 762-63, App. 526, 531, 844-45). Further, the IUB determined that MidAmerican's route study process was sufficient to demonstrate that MidAmerican's route study complied with the requirements of Iowa Code § 478.18 and Iowa Code § 478.3 and did not "unnecessarily interfere" with Ms. Juckette's property use. (CR 923, App. 1005)

For all of the foregoing reasons, and supported with substantial evidence in the record, the IUB granted MidAmerican a franchise to construct an electric transmission line in Madison County. Further, the IUB concluded that Iowa Code section 306.46 permits MidAmerican to construct, operate, repair, and maintain utility facilities in the public road right-of-way without the exercise of eminent domain. (CR 932, App. 1014). The Polk County District Court affirmed the IUB's order and dismissed Juckette's petition for judicial review. (Dist. Ct. Order 19, App. 76). This appeal followed.

ARGUMENT

The IUB appropriately granted MidAmerican, a rate-regulated public utility, the right to erect, construct, operate, and maintain a 161 kV electric transmission line in Madison County, Iowa, after thorough review of the evidence in a contested case proceeding. The Iowa Utilities Board has been delegated exclusive jurisdiction to franchise electric transmission lines operating at 69 kilovolts or higher outside of cities at Iowa Code section 478.4. In order to receive a franchise, an electric utility must prove that the line is necessary to serve a public use and represents a reasonable relationship to an overall plan of transmitting electricity in the public interest under Iowa Code section 478.4. MidAmerican provided substantial evidence in the record of both items, and the Board granted the franchise.

The District Court correctly affirmed the IUB's grant of franchise. The District Court correctly agreed that serving a member of the public constituted a public use for the purpose of section 478.1 and as affirmed by Iowa courts for nearly 60 years. Second, the District Court was correct in holding that the IUB did not grant MidAmerican the right to use Juckette's property, and that Iowa Code § 306.46 instead authorized MidAmerican to utilize existing public road right of way that predates Juckette's ownership of the property. For those reasons, the Court should affirm the grant of franchise. Finally, even if the

Court determines that MidAmerican must obtain the right of eminent domain over Juckette's property to place its facilities in the right of way adjacent to her property, the Court should still affirm the franchise and remand to the IUB for the limited question of the grant of eminent domain.

I. THE SUPREME COURT SHOULD AFFIRM THE IUB'S GRANT OF FRANCHISE AND THE DISTRICT COURT'S ORDER

A. Preservation of Issue

MidAmerican agrees that this issue has been preserved.

B. Standard of Appellate Review

Iowa Code § 17A.20 (2022) permits an adversely affected party to an appeal of agency action to appeal the final judgment of the district court. Judicial review of agency action generally is governed by Iowa Code § 17A.19(10) (2022). *Mathis v. Iowa Utils. Bd.*, 934 N.W.2d 423, 426-27 (Iowa 2019) (citations omitted). Upon appeal, the Court's role is to apply the standards set forth in Iowa Code section 17A.19(10) and determine whether the Court's application of the standards produces the same result as reached by the district court. *Puntenney v. Iowa Utils. Bd.*, 928 N.W.2d 829, 836 (Iowa 2019) (citing *Hawkeye Land Co. v. Iowa Utils. Bd.*, 847 N.W.2d 199, 207 (Iowa 2014)).

> If the legislature clearly vested the agency with the authority to interpret specific terms of a statute, then we defer to the agency's interpretation of the statute and may only reverse if the interpretation is "irrational, illogical, or wholly unjustifiable." If, however, the legislature did not clearly vest the agency with the authority to interpret the statute, then our review is for correction of errors at law.

Puntenney, 928 N.W.2d at 836 (quoting *NextEra Energy Res. v. Iowa Utils. Bd.*, 815 N.W.2d 30, 44 (Iowa 2012)). These standards come from Iowa Code § 17A.19(10)(c) and (*l*). *Id.*

The Court has previously recognized that the Legislature has vested the agency with the ability to interpret "public use" under Iowa Code chapter 478 (2022). *S.E. Iowa Co-op Elec. Ass'n v. Iowa Utils. Bd.*, 633 N.W.2d 814, 819 (Iowa 2001) ("the legislature intended [with the enactment of Iowa Code chapter 478] to entrust the [IUB] with the decision whether a public use existed and, if so, the necessity of the proposed line to serve the public use.").

The court reviews the IUB's findings of fact under a substantial evidence standard. *Puntenney*, 928 N.W.2d at 837 (citing Iowa Code § 17A.19(10)(f)). "Evidence is substantial if a reasonable person would consider it sufficient to support the agency's conclusion." *Northwestern Bell Tel. Co. v. Iowa Utils. Bd.*, 477 N.W.2d 678, 682 (Iowa 1991).

C. Argument

1. The IUB has been delegated the authority to interpret the term "public use" at Iowa Code section 478.4

The Court has long recognized that the IUB has been vested with authority to interpret the "public use" of a proposed electric transmission line under Iowa Code § 478.4 (2022). The Court's understanding of the issue was stated succinctly in *S.E. Iowa Co-op*: "In enacting [Iowa Code] 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." *S.E. Iowa Co-op*, 633 N.W.2d at 819 (Iowa 2001) (citing *Race v. Iowa Elec. Light & Power Co.*, 134 N.W.2d 335, 338 (Iowa 1965)).

Beyond simply affirming the IUB's authority to interpret the statute, the Court has also approved the IUB's application of the standard in numerous electric franchise cases over the years. Most relevant to this case, the Court has "already found the transmission of electricity to the public constitutes a public use as contemplated by section 478.4." *S.E. Iowa Co-op*, 633 N.W.2d at 820 (citing *Race*, 134 N.W.2d at 337, stating that "the transmission of electric current for distribution to the public is a public use" for which eminent domain could be granted). Altogether, the issue before the court is "whether

the lines proposed in this case were necessary to serve that public use." *S.E. Iowa Co-op*, 633 N.W.2d at 820.

This analysis has not been modified by the Court's recent opinions in *Mathis* and *Puntenney*. In *Mathis*, the Court was asked to consider the IUB's authority to interpret the term "single site" in determining the size of an electric generating facility at Iowa Code chapter 476A. 934 N.W.2d at 427 ("Our focus here is on the narrow question of whether the legislature gave interpretive authority to the IUB to determine what is a 'single site' within the meaning of Iowa Code section 476A.1(5)."). Ultimately, the Court found that a broad delegation of rulemaking authority was insufficient to conclude that the legislature had vested the agency with the authority to interpret the term "single site." *Id.* at 428. But that decision was in no way relevant to the IUB's authority and discretion to determine whether a public use existed and the necessity of a proposed line to serve the public use.

The more relevant discussion is contained in *Puntenney*. The *Puntenney* court held that the legislature clearly vested the IUB with the authority to interpret "public convenience and necessity" as used in Iowa Code § 479B.9 for several reasons:

> First, we believe "public convenience and necessity" is a term of art within the expertise of the IUB. *See Renda v. Iowa Civil*

> *Rights Comm'n*, 784 N.W.2d 8, 14 (Iowa 2010) (referring to "a substantive term within the special expertise of the agency").
>
> In addition, the Iowa Code itself indicates that the legislature wanted the IUB to have leeway in determining public convenience and necessity. Section 479B.9 states,
>
> > The board may grant a permit in whole or in part upon terms, conditions, and restrictions as to location and route as it determines to be just and proper. A permit shall not be granted to a pipeline company *unless the board determines* that the proposed services will promote the public convenience and necessity.
>
> (Emphasis added.) The phrase "unless the board determines" seemingly affords the IUB deference. Otherwise, if the matter were to be left to judicial determination, the statute would say something like, "unless the proposed services will promote the public convenience and necessity."
>
> Additionally, we have previously held that it is not a judicial function to determine whether a service will promote the public convenience and necessity. *See Application of Nat'l Freight Lines*, 241 Iowa 179, 186, 40 N.W.2d 612, 616 (1950) ("We have held several times that the determination whether the service proposed will promote the public convenience and necessity is a legislative, not a judicial, function.... It is not for the district court or this court to determine whether the commission has acted wisely nor to substitute its judgement for that of the commission.")

Puntenney, 928 N.W.2d at 836.

The rationale quoted above has equal application to the IUB's authority and discretion under section 478.4 and is not limited or diminished by the Court's determination that the phrase "public use," as it appears in Iowa Code

sections 6A.21 and 6A.22, is not uniquely within the IUB's subject matter expertise. *See id*. at 836-37.[1] Much like section 479B.9 (2022), which states that the IUB shall not grant a permit to a pipeline company "unless the board determines" that the proposed services will promote the public convenience and necessity, section 478.4 states that "before granting the franchise, the utilities board *shall make a finding* that the line is necessary to serve a public use and represents an overall plan of transmitting electricity in the public interest." Iowa Code § 478.4 (2022) (emphasis added). In addition, section 478.4 requires the IUB "*consider* the petition" and "*determin[e] the propriety* of granting the franchise," and gives the IUB discretion to "grant the franchise in whole or in part upon the terms, conditions, and restrictions, and with the modifications as to location and route *as may seem to it just and proper*." *Id*. (emphasis added). Under the logic and example of *Puntenney*, there can be no conclusion but that the term "public use," as used in section 478.4, is a term of art within the expertise of the IUB and that the legislature wanted the IUB to have leeway in determining public use, much as this Court has already long

[1] The Court's inquiry there was the IUB's interpretation of that phrase over the states' "general eminent domain law that applies to all state agencies," not the IUB's authority to interpret "public use" in Iowa Code § 478.4 when the right of eminent domain is not in question. *Puntenney*, 928 N.W.2d at 836-37.

held. As the Court reiterated in *Puntenney*, it is not for the district court or this court to determine whether the IUB has acted wisely nor to substitute its judgement for that of the IUB; accordingly, the Court should only reverse the agency's interpretation if it is "irrational, illogical, or wholly unjustifiable." Iowa Code § 17A.19(10)(*l*) (2022). Thus, the Court should affirm the District Court's conclusion that the IUB appropriately interpreted "public use" and affirmed the IUB's order.

2. Even if "public use" must align with eminent domain statutes, MidAmerican has shown the line serves a public use and has obtained the right of eminent domain in this proceeding

Even assuming *arguendo* that "public use" in section 478.4 establishes the same standard as the need for eminent domain, MidAmerican has met that standard. The Iowa Supreme Court has unequivocally answered the question of whether an IUB finding of public use is sufficient to justify the grant of eminent domain authority: "Much of defendant's argument is devoted to the proposition that the transmission of electric current for distribution to the public is a public use for which the power of eminent domain may be exercised. This is not open to doubt." *Vittetoe v. Iowa S. Utils. Co.*, 123 N.W.2d 878, 881 (Iowa 1963) (citing *Carroll v. City of Cedar Falls*, 261 N.W.

652, 656-57 (Iowa 1935)).[2] "It is also settled that the transmission of electric current for distribution to the public is a public use for which the power of eminent domain may also be exercised." *Race*, 134 N.W.2d at 137. This reading has been affirmed again by the Court in *S.E. Iowa Co-op*.

This analysis has not been modified by the Court's holdings in either *Mathis* or *Puntenney*, as Juckette contends. (Juckette Br. 31-32). As noted above, *Mathis* is simply inapplicable to this proceeding. And while *Puntenney* does address the interpretation of the phrase "public use" as it appears in Iowa Code sections 6A.21 and 6A.22 (2022), it does not change the Court's analysis.

In *Puntenney*, the Court reiterated its support for Justice O'Connor's dissent in *Kelo v. City of New London*: "This case falls into the second category of *traditionally valid public use cases cited by Justice O'Connor*: *a* common carrier akin to a railroad or *public utility*. *This kind of taking has long been recognized in Iowa as a valid public use*, even when the operator is a

---

[2] "It has been repeatedly held that electric light and power companies under the right of eminent domain can confiscate private property for use in its utility business. This is permitted solely upon the ground that it is to be used for a public purpose, although the profits and emoluments derived therefrom may and do belong to private corporations, and whose stock is owned by private individuals."

private entity and the primary benefit is a reduction in operational costs." *Puntenney*, 928 N.W.2d at 848 (emphasis added) (citing *Kelo v. City of New London*, 545 U.S. 469, 498 (2005) (O'Connor, J., dissenting) ("[T]he sovereign may transfer private property to private parties, often common carriers, who make the property available for the public's use—such as with a railroad, a public utility, or a stadium"). Ultimately, the *Puntenney* Court held that the IUB's grant of eminent domain authority was appropriate, despite the fact no Iowans would actually use the pipeline to deliver or refine crude oil. 928 N.W.2d at 849. The court recognized that the public use concept was flexible and "does not hang on the presence of spigots and on-ramps." *Id.* at 851.

The fact that the Court found a pipeline that provides no direct service to Iowans is a valid public use for purpose of eminent domain compels the conclusion that MidAmerican's proposed transmission line is likewise a valid public use. In this particular case, MidAmerican has actually proposed a project with the kind of "spigots and on-ramps" the *Puntenney* petitioners demanded—as the record clearly indicates, Microsoft and other Iowans around the Maffitt Lake substation will not only use the electricity delivered by the transmission line but will also receive more reliable electric service as

a result of the proposed lines. (CR 905-08, App. 987-90). If a crude oil pipeline with no on-ramps or off-ramps in the state is a public use, then electric lines delivering public utility services to Iowans certainly is as well.

As a final note, Juckette argues the Court should consider adopting the "public use" language from *SZ Enterprises, LLC v. Iowa Utils. Bd.*, 850 N.W.2d 441, 447 (Iowa 2014). (Juckette Br. 48-49). This would be completely inappropriate. First, *SZ Enterprises* is a case about whether a company providing electric service to the public is a "public utility" subject to regulation by the IUB, whether it is a "public utility" exempt from certain regulations like the exclusive service territory restrictions, and whether the company is an "electric utility" under Iowa Code § 476.22. 850 N.W.2d at 460-61. Although Juckette has decried this statement as a "red herring,"[3] it is literally the language used by the Court in framing the issue: "The first legal issue is whether Eagle Point should be considered a public utility under Iowa Code § 476.1." *Id.* at 460. Second, the term "public use" in that case is unrelated to either the "public use" language of Iowa Code chapter 478 or the "public use" standard of eminent domain under Iowa law; instead, the language is a caselaw construct adopted from the Arizona Supreme Court for

[3] Juckette Br. 49.

a public utility determination which is not in question here.[4] This undermines Juckette's claims that "public use" is the same in all situations; if anything, *SZ Enterprises* shows the risk of attempting a formalized definition of "public use" across all areas of law, no matter how tangentially related. The Court should decline this invitation to modify decades of caselaw by substituting a different standard addressing a different question.

3. <u>The record contains substantial evidence in support of MidAmerican's franchise and the Court should not supplant the IUB's well-supported findings of fact with conjecture</u>

After reviewing the record before the IUB, the Court should affirm the IUB's findings of fact and order granting the franchise. The Court reviews the agency's findings of fact under a substantial evidence standard. *Puntenney*, 928 N.W.2d at 837 (citing Iowa Code § 17A.19(10)(f)). The court reads the agency's findings broadly and liberally with an eye to uphold the decision rather than defeat it. *IBP, Inc. v. Al-Gharib*, 604 N.W.2d 621, 632 (Iowa 2000). The court gives deference to the agency's determinations of credibility.

---

[4] The *SZ Enterprises* court held that in evaluating whether a company providing electricity is "clothed with the public interest," the IUB should employ the eight-factor test developed in *Natural Gas Serv. Co. v. Serv-Yu Cooperative, Inc.*, 219 P.2d 324, 325-26 (Ariz. 1950) and adopted by this Court in *Iowa State Commerce Comm'n v. Northern Natural Gas Co.*, 161 N.W.2d 111, 114-15 (Iowa 1968). 850 N.W.2d at 466. The term "public use" in this context is the second factor in the eight-factor test. *Id.* at 458.

Broadlawns Med. Ctr. v. Sanders, 792 N.W.2d 302, 306 (Iowa 2010). "The agency's decision does not lack substantial evidence merely because the interpretation of the evidence is open to a fair difference of opinion." *NextEra*, 815 N.W.2d at 42.

The District Court affirmed the findings of the IUB Order, finding that "the record contains substantial evidence to support the [IUB'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." (CR 908, 990; Dist. Court Order p. 9, App. 66). In so finding, the District Court cited to testimony offered by MidAmerican witness Michael Charleville, who testified that:

- "Proposed new lines would provide additional electric feeds to the Maffitt Lake substation . . . which would increase electric service reliability to the substation and the customers it serves" (CR 198-202, App. 280-84);
- "The proposed lines would allow for 'immediate reliability support' in the area by allowing more of the local load to be moved to the Maffitt Lake substation from existing substations further away . . . [which] will

reduce [customers'] exposure caused by long distribution lines and the associated risk for outages" (CR 202, App. 284);

- "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." (CR. 201, App. 283).

In addition to the evidence cited by the District Court, the record contains additional evidence in support of the Maffitt Lake substation and the need for additional feeds to the substation to serve anticipated load growth and improve reliability:

- City planning maps from the Cities of Cumming and West Des Moines about their plans for the area around the Maffitt Lake substation, including additional residential, commercial, and industrial development (CR 210-11, App. 292-93);
- Testimony from Juckette that development was coming "[her] direction quicker than anticipated" and a hearing exhibit from the City of West Des Moines describing significant infrastructure improvements

undertaken by the City to accommodate the growth. (CR 671-72, 752, App. 753-54, 834).

Taken together, substantial evidence in the record supports the IUB's findings that the proposed lines are necessary to serve a public use by providing support for anticipated near-term load growth in the area and improving customer reliability by providing additional feeds and minimizing line length from other substations.

Juckette's argument that a public use has not been established by substantial evidence relies conclusory statement based on portions of the record taken out of context. (Juckette Br. 41-50). The Court should take the record as whole and should decline to replace the IUB's well-reasoned findings of fact with conjecture based on select references that are used to make incorrect assumptions and assertions about utility regulation.[5] *See* Iowa Code § 17A.19(10)(f)(3) (2022) (explaining that the record as a whole includes "any determinations of veracity by the presiding officer who

---

[5] Specifically, Juckette asks this Court to conclude that Microsoft is not a member of the public, that the proposed line would offer no service to additional customers, and that the terms of the facilities construction agreement ("FCA") creates an impermissible double-profit for MidAmerican. These contentions are irrelevant to the IUB's statutory inquiry and not supported by any reasonable reading of the record.

personally observed the demeanor of the witnesses and the agency's explanation of why the relevant evidence in the record supports its material findings of fact."). A perfect example of this is Juckette's claim that the facilities construction agreement ("FCA") between MidAmerican represents an improper relationship that results in MidAmerican "double-dipping" at its customers' expense. (Juckette Br. at 43-47). This is demonstrably false. MidAmerican has a legal obligation to serve any customer in its exclusive electric service territory. *See* Iowa Code § 476.25 (2022); *see also* Iowa Code §§ 476.3, 476.8 (2022). The terms of the FCA, which considers a customers' use against the cost of providing the customer service, is legally required by the IUB's rules and is binding upon MidAmerican and its customers through MidAmerican's IUB-approved tariff. *See* Iowa Code § 476.5 (2022) (requiring a utility to offer services pursuant to its IUB-approved tariff and prohibiting a utility from making or granting any unreasonable preferences or advantages as to rates or services to any person); Iowa Admin. Code 199—20.3(13)(c) (effective Dec. 8, 2021) (describing the contractual and financial requirements for electrical line extensions); MidAmerican Energy Company Electric Tariff No. 2, *Section 4 – Expansion of Electric Distribution System*, Sheet Nos. 67-77, 82 (March 9, 2022),

https://www.midamericanenergy.com/media/pdf/iowa-electric-tariffs.pdf. The existence and use of the FCA and the terms contained therein are not only proper, but legally required. As the entity which regulates all of MidAmerican's services, charges, and rates,[6] the IUB was uniquely positioned (and in fact exclusively positioned by the Legislature) to address these claims if they were reasonable or relevant to the proceeding.

The confusion offered by Juckette's conclusions is a perfect example of why the Court has long deferred to the IUB's interpretation of public use and the agency's broad experience with the esoteric world of utility rate regulation. "We afford considerable deference to the agency's expertise, especially when the decision involves the highly technical area of public utility regulation." *S.E. Iowa Co-op*, 633 N.W.2d at 818. It is important to note that the IUB order does not spend time on these issues because the contentions are irrelevant to the Board's analysis under section 478.4 and contrary to the entire body of existing regulated utility law. The Court should not discard sixty-plus years of utility regulation based on conclusory

---

[6] "The utilities board within the utilities division of the department of commerce shall regulate the rates and services of public utilities to the extent and in the manner hereinafter provided". Iowa Code § 476.1.

statements and should recognize the IUB's technical expertise in the area of utility regulation regarding Juckette's unsubstantiated claims of impropriety.

The Court has previously affirmed the IUB's authority to grant franchises when substantial evidence in the record supported the need to serve future load and improve system reliability. *Fischer v. Iowa State Commerce Comm'n*, 368 N.W.2d 88, 97-98 (Iowa 1985) (affirming the IUB's Iowa Code § 478.4 "public use" finding where the evidence showed the proposed line both improved the ability to serve anticipated future load and improve system reliability); see also *Bradley v. Iowa Dep't of Commerce*, No. 01-0646, 2002 WL 31882863 at * 5 (Iowa Ct. App. Dec. 30, 2002) (affirming the IUB's finding of a public use when the record included evidence that the proposed line "is necessary to increase the reliability of service, accommodate occurring and anticipated load growth, and reasonably assure the availability, quality, and reliability of service"). The Court should follow those holdings and again affirm the IUB's findings of fact.

On appeal, Juckette has not challenged the District Court's conclusion that the IUB correctly found the proposed line complied with the second prong of the section 478.4 test: that the line represents a reasonable relationship to an overall plan of transmitting electricity in the public interest. *See* Iowa Code

§ 478.3(2) (2022) (outlining the eight factors a utility must demonstrate to the IUB to show the "reasonable relationship"). These elements include a finding that the route selected by MidAmerican, including the route along the public road right-of-way in question, and approved by the IUB complies with Iowa Code § 478.18 (2020) and is supported by substantial evidence in the record. (Dist. Ct. Order p. 9-12, App. 66-69). Accordingly, the Court should affirm the District Court's conclusion on this issue.

II. <u>IOWA CODE § 306.46 IS CONSTITUTIONAL AND THE IUB'S GRANT OF FRANCHISE DOES NOT CREATE AN IMPROPER TAKING</u>

A. Preservation of Issue

MidAmerican agrees that this issue has been preserved.

B. Standard of Appellate Review

There are two issues for the Court to consider in this appeal: (1) the interpretation of Iowa Code § 306.46 as applied to this case by the IUB and the District Court; and (2) the constitutionality of Iowa Code § 306.46. With respect to the first issue, the court will reverse an agency action "when it is based upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency." *Mathis*, 934 N.W.2d at 427 (quoting Iowa Code §

17A.19(10)(c)) (internal quotations omitted). With respect to the second issue, the court's review is de novo. *Puntenney*, 928 N.W.2d at 836.

C. Argument

1. The IUB's application of Iowa Code § 306.46 is reasonable and is not impermissibly retroactive in application

At the outset, it is important to recognize that the IUB's Order does not grant MidAmerican any property rights over Juckette's property. Indeed, the issue at hand is the IUB's application of Iowa Code § 306.46 (2022(. The IUB's only ability to affect property rights is when a utility requests, and the IUB grants, the right of eminent domain authority. Iowa Code § 478.6(3) (2022) ("When the board grants a franchise . . . such person, company, or corporation shall be vested with the power of condemnation *to such extent as the board may approve and find necessary* for public use") (emphasis added); Iowa Code § 478.15 ("Any person, company, or corporation having secured a franchise as provided in this chapter shall thereupon be vested with the right of eminent domain to such extent as the utilities board may approve, prescribe and find necessary for public use"). In this case, MidAmerican has not received the right of eminent domain from the IUB over any portion of Juckette's property. Accordingly, the IUB has not granted MidAmerican any

property interest in Juckette's property either in fact or in the IUB's application of section 306.46.

An analysis of the IUB's application of Iowa Code § 306.46 follows that of a court, which starts with whether the language of the statute is ambiguous. *State v. Richardson*, 890 N.W.2d 609, 616 (Iowa 2017). "If the language is unambiguous, our inquiry stops there." *Id.* "A statute is ambiguous if reasonable minds can differ or are uncertain as to the meaning of the statute." *Id.* (quoting *Rhoades v. State*, 880 N.W.2d 431, 446 (Iowa 2016)). To consider whether a statute is ambiguous, the court considers the statute as a whole and considers the context of the language of the statute. *Richardson*, 890 N.W.2d at 616. "The objective of statutory interpretation is to determine the legislature's intent in passing the statute." *Myria Holdings Inc. v. Iowa Dep't Revenue*, 892 N.W.2d 343, 348 (Iowa 2017). Ultimately, "[i]t is universally accepted that where statutory terms are ambiguous, courts should interpret the statute in a reasonable fashion to avoid absurd results." *Brakke v. Iowa Dep't of Naural Res.*, 897 N.W.2d 522, 534 (Iowa 2017). Similarly, "A statute should not be interpreted to read out what is in a statute as a matter of clear English and should not render terms superfluous or

meaningless." *Des Moines Flying Serv., Inc., v. Aerial Servs., Inc.*, 880 N.W.2d 212, 220 (Iowa 2016) (internal citations omitted).

In attempting to determine legislative intent, the Court presumes that the Legislature intends for enacted statutes to be constitutional; effective in their entirety; just and reasonable in result; feasible in execution; and favoring the public interest over any private interest. Iowa Code §4.4 (2022). Further, when analyzing a statute, the Court considers the object sought to be obtained by the statute; the circumstances under which the statute was enacted; the common law or former statutory provisions, including laws upon the same or similar subjects; the consequences of a particular construction; and the preamble or statement of policy. Iowa Code § 4.6 (2022).

The IUB's interpretation of the statute is reasonable because the statute itself is unambiguous—there is no room for reasonable minds to differ on what the statute permits or what it means, particularly because all relevant terms are defined. Section 306.46(1) (2022) states:

> 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.

It is important to note that Iowa Code chapter 306 addresses the "establishment, alteration, and vacation of highways" and the jurisdictional

parameters of each highway authority over all roads located throughout the state of Iowa. Iowa Code §§ 306.2(1); 306.3(3) – (9); and 306.4 (2022). It is equally important to note that Iowa Code section 306.46 resides within that chapter and that every essential term contained in that section is specifically defined therein. Iowa Code § 306.46(2) (2022) (defining the terms "public utility" and "utility facilities"); Iowa Code § 306.3(7) (2022) (defining "public road right-of-way")[7] Finally, it is significant that Iowa Code § 306.46(1) requires compliance with another code section specifically addressing the locating of utility facilities in Iowa's public road rights-of-way. See Iowa Code § 318.9 (2022) (addressing the location, relocation, and removal of utility facilities from public road rights-of-way). Thus, Iowa Code § 306.46(1), when read in its proper and complete context, is a clear and unambiguous statement by the Legislature of its intent to allow existing areas of land already under the possession, control, and use of the applicable road authority to also be incidentally used by a pubic utility for the placement of utility facilities. The placement of utility facilities is limited by not only the road authority's right in the property and a prohibition on interfering with use

[7] The definitions do not include the "state versus county" distinction Farm Bureau insists create a meaningful distinction from the Alaska statute Iowa Code § 306.46 follows. (Farm Bureau. Br. 25).

of the road, but also with the understanding that the utility facility is subject to the road authority's power to require relocation or removal at any time upon 90-days' written notice. When taken together, there is no room for disagreement on what the statute actually permits: utility structures may be placed in public road rights of way.

2. The IUB's application of Iowa Code § 306.46 is not an improper retroactive reading

Both Juckette and Farm Bureau contend the statute is impermissibly retroactive, in violation of Iowa Code § 4.5 (2022). (Juckette Br. 61-75, Farm Bureau Br. 28-31). This contention is without merit. This Court recently examined whether a statute was retroactive in nature in *Hrbek v. State*. 958 N.W.2d 779 (Iowa 2021). In determining how the court should consider whether a statute is retroactive in application, this Court stated:

> Application of a statute is in fact retrospective when the 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 by the statute.

Id. at 782-83. The *Hrbek* Court clearly concluded that the event of legal consequence is the conduct regulated by the statute. In this case, the District Court correctly identified that the statute regulates the placement and maintenance of poles, not the establishment of public road right-of-way. (Dist.

Ct. Order 14-15, App. 71-72). Because the specific conduct regulated by the statute is the construction, operation, repair, or maintenance of utility facilities, Iowa Code § 306.46 is not retroactively applied when utilities place poles in public road right-of-way. (Dist. Ct. Order 14-15, App. 71-72).

The IUB's analysis about the "determinative event" regulated by the statute is entirely consistent with the analysis employed by the *Hrbek* court, identifying that the "determinative event" at the heart of the retrospective application question is the utility's construction, operation, repair, and maintenance of the utility structures. (CR 931-32, App. 1013-15). The IUB recognized that the previous time Iowa Code § 306.46 was analyzed by a District Court, the analysis failed to identify what the statute would actually do if not what it unambiguously states. (CR 931-32, App. 1013-15). The language of the statute does not concern itself with the creation of public road rights-of-way, but simply states that where the right of way exists, utilities may utilize it to place facilities.

3. The IUB's application of Iowa Code § 306.46 does not Result in an Impermissible Taking

The second argument advanced by Juckette is that the interpretation applied by the IUB and the District Court results in an impermissible taking. (Juckette Br. 54-61, 75-81) Specifically, Juckette contends that the IUB's

order authorizes MidAmerican to utilize her property without just compensation. (CR 75, App. 157). This is incorrect for multiple reasons. First, as previously discussed, the IUB's authority over property rights is limited to grants of eminent domain authority pursuant to Iowa Code §§ 478.6(3) (2022) and 478.15 (2022) which are not at issue in this proceeding. (Dist. Ct. Order 12, App. 69). Second, Iowa Code § 306.46 does not create a new property interest for MidAmerican nor deprive any servient landowner of rights they possessed before the statute was implemented. The servient landowner was compensated for the initial creation of the right of way, and MidAmerican's use of the right of way is merely incidental to the public road right-of-way's public function.

Juckette contends that the IUB's interpretation of Iowa Code § 306.46 constitutes an impermissible taking because placing poles in the public road right-of-way expands the scope of the easement beyond that held by the highway authority. (Juckette Br. 54). This is incorrect. As the District Court identified, the appropriate framework for a takings analysis comes down to three questions: "Is there a constitutionally protected private property interest at stake? Has this private property interest been taken by the government for public use? And if the protected property interest has been taken, has just

compensation been paid to the owner?" (Dist. Ct. Order 14-15, App. 71-72, quoting *Bormann v. Bd. of Supervisors*, 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).

Because the IUB has not granted MidAmerican the right of eminent domain, it stands to reason that Juckette and Farm Bureau are contending Iowa Code § 306.46 represents a regulatory taking. Farm Bureau's citation to the test explained in *Brakke* bolsters this conclusion. (Farm Bureau Br. 14-15). In *Brakke*, the Court recognized three types of regulatory takings:

> (1) a per se taking arising from a permanent physical invasion of property; (2) a per se taking arising from regulation that denies the owner all economically beneficial ownership; and (3) a regulatory taking based on the balancing of the three Penn Central Factors.

897 N.W.2d 522, 545 (citing *Bormann*, 584 N.W.2d at 316). Of those three, Juckette and Farm Bureau contend that the placement of utility poles in the present case are a "permanent physical invasion of the property." (Juckette Br. p. 75; Farm Bureau Br. 14-15). The argument that the placement of utility structures creates a permanent physical invasion fails because the placement of an electric pole is not permanent. Specifically, the IUB may only grant a franchise for a period of 25 years before a utility is required to seek an

extension by affirming that the line is still necessary to serve a public use and still represents a reasonable relationship to an overall plan of transmitting electricity in the public interest. Iowa Code § 478.9 (2022); *accord* Iowa Admin. Code 199—11.8 (effective Sept. 2, 2020) (setting forth the standards for seeking an extension of an electric transmission line franchise). The IUB's franchise in this proceeding has that 25-year approval period. (CR 948, App. 1030). As previously discussed, the utility is only permitted to utilize the right-of-way as permitted by the road authority and as long as the public road right-of-way exists; without the right of way, the utility cannot stay. *See* Iowa Code § 318.9 (requiring utilities to move structures when requested by the road authority). Clearly there is not a permanent taking when the permission to operate the line has definite approval period and is subject to the terms of the underlying easement.

Many discussions about property rights conceptualize property ownership as a bundle of sticks, with each stick representing an individual right associated with fee simple ownership. (Juckette Br. 64, 67). These include items like the ability to exclude others, to utilize the property as desired, and the ability to invite others. (Farm Bureau Br. 16-17). In granting a public road right of way, the servient landowner forgoes all but one stick in

the bundle: the right of reversion. The servient landowner has virtually no right to possess, use, or control the public right of way area and can face civil or criminal actions should it attempt to do so. *See* Iowa Code § 318.3 (2022) (listing the restrictions on the use of land subject to a public road right-of-way by the servient landowner); *see also* Iowa Code §§ 318.5, 318.6, 318.7, and 318.12 (2022).

This means that the servient landowner effectively has no other sticks to be deprived of—the servient landowner cedes the right to exclude those on the property (an owner would not have a case for trespass against a car on the road, a pedestrian out for a walk, or a stranded traveler stuck in the ditch). *See generally State v. Hutchinson*, 721 N.W.2d 776, 780 (Iowa 2006) (utilizing Iowa Code chapter 306 offers guidance on the kind of public roads against which a criminal trespass charge could not stand under Iowa Code § 716.7(4)). The grant of public road right-of-way also cedes the right to inclusive use of the property (including planting crops or decorative vegetation, constructing fences, or hosting events) to the highway authority. Iowa Code § 318.3 (2022). The right of reversion recognizes that a utility's use of the public road right-of-way is not a permanent taking but may be continued only so long as the highway authority uses the road as a public highway.

In the context of this case, Iowa Code § 306.46 effectively permits a utility to non-exclusively utilize a public road right-of-way subject to the permission of the highway authority, which can be revoked upon 90 days written notice in accordance with Iowa Code § 318.9. Further, the utility never obtains a permanent right to locate poles; the placement is subject to the ongoing maintenance of the right of way by the highway authority and always subject to the right of reversion to the servient landowner. Moreover, the court would be hard-pressed to conclude that placing poles on Juckette's property denies her a right she presently holds, given that there are already MidAmerican poles within the public road right-of-way adjacent to her property. (CR 444, 449, 762-63, App. 526, 531, 808-09).

In this case, the placement of poles does not deprive Juckette of a property right she currently enjoys, and any such placement is subject to relocation at the request of the appropriate highway authority at MidAmerican risk pursuant to Iowa Code § 318.9. In addition, such placement does not deprive Juckette of her reversionary interest, as the franchise from the IUB is not a permanent intrusion on the property and is valid only so long as the road right-of-way exists. Accordingly, the Court should affirm that the placement

of poles is not a "permanent physical invasion" of property which constitutes a regulatory taking.

4. Iowa Code § 306.46 abrogates the Court's decision in Keokuk Junction

The Court should affirm that in passing Iowa Code § 306.46, the Legislature intended to abrogate the Court's holding in *Keokuk Junction Ry. Co. v. IES Indus., Inc.*, 618 N.W.2d 352 (Iowa 2000), in which the Court held that an easement taken by the city of Keokuk through eminent domain did not authorize the placement of utility poles within that right of way with additional compensation to the servient landowner. The analysis the *Keokuk Junction* Court employed compels the conclusion that section 306.46 is a direct legislative rejoinder to that decision.

The *Keokuk Junction* Court approached the issue by examining the array of positions taken on the question across the country; it began its analysis by explaining that the question of whether utility structures are an additional burden on the servient estate is hardly settled across the country, with states adopting no less than five distinct conclusions:

> The possible outcomes are: (1) utility poles are within the highway easement; (2) utility poles are within the highway easement, but only if they are used to furnish power for reasons directly related to travel; (3) utility poles are within the highway easement, but only in relation to urban areas; (4) utility poles are within the highway easement if they (a) are necessary for travel

> purposes, and (b) the highway is in an urban area; or (5) utility poles are not within the highway easement.

Id. at 356 (citations omitted). In the course of its analysis, the Court noted that the first position – that utility poles are within the highway easement and that the erection of power lines within that easement does not create an additional servitude – was represented by Florida, which "recognized that 'construction of a power line which does not interfere with highway travel is a proper use of a highway easement and is not regarded as imposing an additional burden of servitude on the underlying estate.'" *Id*. (quoting *Nerbonne, N.V. v. Florida Power Corp.,* 692 So.2d 928, 929 (Fla. Dist. Ct. App. 1997)). The Court also noted that the Florida court "adopted the rationale of earlier decisions from Alaska, Minnesota, and Washington." *Id*. (citing *Fisher v. Golden Valley Elec. Ass'n,* 658 P.2d 127, 129 (Alaska 1983); *Cater v. Northwestern Tel. Exch. Co.,* 60 Minn. 539, 63 N.W. 111, 112–113 (1895); *McCullough v. Interstate Power & Light Co.,* 163 Wash. 147, 300 P. 165, 166 (1931)).

Although the *Keokuk Junction* Court ultimately declined to follow Florida's lead, it did so in a way that invited legislative response; there the Court specifically stated that it could not join the analysis employed by Florida and Alaska courts to conclude that utility structures are not an additional

burden on the servient estate because Iowa lacked the statutory support to do so:

> The Alaska case relied on in *Nerbonne* can similarly be distinguished from the present case because in Alaska, a statute was enacted to allow utilities to use public right-of-ways without the permission of the servient landowner. *See Fisher,* 658 P.2d at 130 (applying Alaska Stat. § 19.25.010 (Michie 1980)). No such provision exists in Iowa. *The sole reason the Alaska Supreme Court validated the utility's installation of electric poles within the easement was the presence of state legislation authorizing this use. Id.* at 130–31. *Without the aid of such legislation in Iowa, we are clearly not prompted to make a similar decision*.

Id. at 357 (emphasis added). The Alaska statute cited by the court, in pertinent part, stated that "[a] utility facility may be constructed, placed, or maintained across, along, over, under, or within a state right-of-way only in accordance with regulations adopted by this department and if authorized by a written permit issued by the department." Alaska Stat. § 19.25.010 (Michie 1980).

Against this backdrop, it is entirely logical and appropriate to conclude that the Legislature enacted section 306.46 as a direct response to, and in abrogation of, the *Keokuk Junction* decision. To reach this conclusion, one needs look no farther than the statute itself – the *Keokuk Junction* decision noted that its hands were tied by the lack of a statute like Alaska's, and the Legislature responded with a like statute – like the Alaska statute in question,

section 306.46 specifically and unequivocally authorizes a public utility to "construct, operate, repair, or maintain its utility facilities within a public road right-of-way" in accordance with the directions of the highway authority under section 318.9. Iowa Code § 306.46(1) (2022). It is also notable that the legislature adopted language that mirrored the decision's articulation of the Florida position – as noted above, the decision couched the position as encompassing construction of a power line "which does not interfere with highway travel", and section 306.46(1) includes the admonition that "[a] utility facility shall not be constructed or installed in a manner that causes interference with public use of the road."

Despite this compelling history, Juckette and Farm Bureau claim that Iowa Code § 306.46 should not be read to abrogate *Keokuk Junction.* Farm Bureau in particular argues that the Legislature cannot have intended to abrogate *Keokuk Junction* more than one session after the case was decided nor without specific reference to the case in statute (Br. at 23), and both argue section 306.46 only permits utility facilities to use public road right-of-way obtained after 2004. (Juckette Br. at 69; Farm Bureau Br. at 34). These arguments are not persuasive for several reasons.

First, neither has cited to any authority that requires a statute to specifically name the caselaw it intends to abrogate nor a time within which a statute must be passed to do so. The first contention files in the face of this Court's decision in *Hrbek* in which the Court concluded that Iowa Code § 822.3A, enacted in 2020, abrogated Court decisions from as far back as 1990 even though the statute failed to specifically mention or cite any of the three cases the Court held had been abrogated. *See Hrbeck*, 958 N.W.2d at 780 ("Section 822.3A . . . abrogates *Leonard*, *Gamble*, and *Jones*." (citing *Leonard v. State*, 461 N.W.2d 465 (Iowa 1990); *Gamble v. State*, 723 N.W.2d 443 (Iowa 2006); and *Jones v. State*, 731 N.W.2d 388 (Iowa 2007)). And the second contention flies in the face of a reasonable understanding of the legislative process. It often takes time to develop and pass legislation, and policy may change over time, and it is clear that the legislature has the inherent authority to craft legislation which garners enough support to be passed whenever that outcome is achieved. To hold that it can affect prior decisions of the Court only when it acts in the next immediate session not only defies a common understanding of the legislative process, but impermissibly ties the legislature's hands from its proper role within the separation of powers between the legislature and the courts. The Court has never expressed the

bright-line rules for abrogation advocated by Juckette and Farm Bureau and should refrain from doing so here.

Second, the position taken by Juckette and Farm Bureau simply does not make sense. Section 306.46 does make sense when you read it as an expression of policy that further the important state interest of using right of way the public has already acquired and invested in to further the development and extension of critical utility infrastructure in an efficient and cost-effective manner, while limiting the impact of such development on productive property not already dedicated to public right of way.[8] But it does not make sense to – as Farm Bureau or Juckette advocate – constrain the application of section 306.46 to a mere directive to highway authorities to allow utilities to place facilities, or to only apply to utility structures placed in public road right of way obtained after 2004. The former incorrectly assumes highway authorities did not permit utility facilities to be placed in public road right-of-way before 2004, and is contrary to *State v. Iowa Pub. Serv. Co.*, 454 N.W.2d

[8] A policy that is entirely consistent with section 478.18 of the Iowa Code, which provides that "transmission lines 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." Iowa Code § 478.18(2) (2021).

585, 588-89 (Iowa 1990) (holding that the Iowa Department of Transportation can only properly require utilities to follow DOT construction rules within freeways; otherwise, a valid franchise or permit from the IUB and compliance with IUB construction regulations are sufficient to place utility structures in public road right-of-way).[9] The latter makes the application of section 306.46 so limited as to render it almost meaningless. As Farm Bureau ably notes in its brief, Iowa's road system at the time section 306.46 was enacted was a well-established and mature system that is changing only incrementally.

To read section 306.46 as applying only to right of way acquired after 2004 would limit its application to a small, disparate patchwork of new right

---

[9] Farm Bureau takes a similar position in its amicus brief at pages 20 and 27 when it states that the adoption of 306.46 four years after *Keokuk Junction* really had nothing to do with that decision but was simply a way for the legislature to tell or give "notice" to road authorities that utility facilities may now be placed in the public road right-of-way. Of course, such assertions relating to the intent behind 306.46 beg the following question: what basis is there to assume that any of the road authorities needed such "notice" or required such clarification? In fact, unless Farm Bureau is intending to maintain that the "ninety thousand miles of easements along secondary roads (times two)" referenced on page 20 of their brief were entirely devoid of such utility facilities before the passage of Iowa Code section 306.46 (an assumption contrary to common sense and public knowledge) it would appear that road authorities needed no such notice or guidance.

of way, which would completely undermine the policy that logically underlies section 306.46 and that requires broad application to be effective.[10]

When the Legislature acts, it is presumed that it intended its act to have impact and meaning, and an interpretation that deprives the act of impact and meaning should be disregarded. *See Des Moines Flying Serv., Inc.,* 880 N.W.2d at 220; *see also Johnston v. Iowa Dep't of Transp.,* 958 N.W.2d 180, 190 (Iowa 2021) (McDermott, J., dissenting) ("We don't read statutes to imply that the legislature wasted its time and ink . . . no provision should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence.").

Finally, section 306.46 should be reviewed in light of the overall regulatory regime — it does not exist in a vacuum. Juckette's interpretation of Iowa Code § 306.46 (requiring a utility to obtain an independent property right from the servient landowner to place any structures upon the right-of-

---

[10] The report cited by Farm Bureau states there are 89,657 miles of "total open roads" as of January 1, 2021. Iowa Department of Transportation, *Iowa Miles of Rural Secondary Roads as of January 1,* 2021(Mar. 10, 2022), https://iowadot.gov/analytics/pdf/Secondary-Road-Report-2021.pdf. According to the 2005 version of the same report, the Iowa Department of Transportation recognized 89,844 miles of "total open roads" on January 1, 2004, a reduction of 187 miles. Iowa Department of Transportation, *Iowa Miles of Rural Secondary Roads as of January 1, 2005* (Mar. 10, 2022), https://iowadot.gov/analytics/pdf/secbook2004.pdf.

way) would similarly transform a highway authority's authorized removal of a utility facility under Iowa Code § 318.9 into an additional improper taking because it would permit the highway authority to remove a utility structure in a public road right-of-way without compensation. Iowa Code § 318.9 ("A utility structure in a highway right-of-way . . . shall be removed by the owner . . . upon written notice from the highway authority."). This would upend the public policy that underlies section 318.9 by shifting the risk for utility placement in the right of way to the highway authority and discourage highway authorities from permitting utilities in the right of way.[11] The position articulated by Juckette and Farm Bureau upend this carefully articulated statutory scheme, and therefore should be rejected.

Altogether, it is clear that the only reasonable reading of Iowa Code § 306.46 is that the Legislature intended to abrogate the Court's *Keokuk Junction* holding by accepting the Court's invitation to offer statutory

---

[11] As an example, consider *Ark. State Highway Comm'n v. Ark. Power & Light Co.*, 330 S.W.2d 77 (Ark. 1959) which affirmed that taking the position that utility structures are deemed an additional burden on the servient estate which requires compensation to the servient landowner, compels the result that the state may discharge the utility poles "'but the taking of such easement must be by eminent domain proceedings and just compensation allowed, and not by the exercise of police power with no compensation.'" *Id*. (citing *Cathey v. Ark. Power & Light Co.*, 97 S.W.2d 624 (Ark. 1936)).

guidance on which of five distinct approaches the Court should follow when considering whether utility structures are an additional burden on the servient estate. In enacting Iowa Code § 306.46, the Legislature evidenced a desire for utilities to utilize existing public road rights-of-way without additional compensation to the servient landowner. The Court should recognize the Legislature's intent in enacting Iowa Code § 306.46 to abrogate *Keokuk Junction*, recognize that utility structures are not an additional burden on the servient estate, and do not require additional compensation to the servient landowner.

III. EVEN IF IOWA CODE § 306.46 IS UNCONSTITUTIONAL, THE COURT SHOULD AFFIRM THE FRANCHISE AND REMAND FOR EMINENT DOMAIN PROCEEDINGS

A. Argument

Although argued as an appropriate relief by Juckette at the District Court, MidAmerican does not believe this argument is preserved for review, particularly in light of Juckette's failure to identify the appropriate standard of review of the District Court's contention that Juckette's argument is incorrect. (Juckette Dist. Ct. Br. 12-13).

Assuming *arguendo* Juckette has preserved the issue for review, should the Court determine that Iowa Code § 306.46 does not permit MidAmerican to occupy public road right-of-way without eminent domain authority, the

Court should remand the issue back to the IUB for a determination of the right of eminent domain. Juckette argues that should the Court conclude that Iowa Code § 306.46 was improperly applied, the Court should vacate the IUB's grant of franchise. (Juckette Br. at 81-83). This argument should be rejected. Juckette can cite to no authority for this contention and such an argument would render this Court's review of the IUB's grant of franchise and the public use standard moot, consumed wholesale by the Court's Iowa Code § 306.46 evaluation. This would be an unwarranted result, and one that puts the cart before the horse – eminent domain is an option that, when necessary, is conditioned upon and follows a finding of public use and the grant of a franchise, the franchise is not conditioned up first obtaining and exercising the right of eminent domain. *See* Iowa Code § 478.15(1) (2022) (permitting the IUB to grant the right of eminent domain after finding a public use and granting a franchise). In fact, Juckette has specifically requested this remedy multiple times as an appropriate resolution of her Iowa Code § 306.46 argument in this proceeding. (First Amended Pet. 8, 9, App. 21, 22); *see NDA Farms v. Iowa Utils. Bd.*, No. CV009448, 2013 WL 11239755, at *10-11 (Polk Co. Dist. Ct. June 24, 2013) (holding that the issuance of the franchise was valid, finding that Iowa Code § 306.46 did not permit the utility to place

poles in the public road right-of-way without eminent domain, and remanding to the IUB for additional proceedings only to determine the extent to which the utility was vested with the power of condemnation). Although MidAmerican asserts that the *NDA Farms* decision incorrectly interpreted section 306.46, that court did correctly determine that the franchise remained valid and that all that remained was a remand to address the exercise of eminent domain.

Juckette again contends that the IUB's discussion in the final order represents a statement about the need for a utility to have all necessary land rights before seeking a franchise, and that MidAmerican's reliance on Iowa Code § 306.46 renders the entire franchise invalid. (Juckette Br. at 82). Instead of being an analysis of the legal requirements for a franchise, the cited passage from the IUB is a summary of Juckette's position before the IUB during the proceedings. (CR 915-16, App. 997-98) (identifying that the excerpt is an IUB summary of Juckette's position, not a statement of law). Indeed, the IUB actually analyzes the question pages later and finds that MidAmerican has all rights to construct the proposed line, rendering the argument moot (CR 924, 932, App. 1006, 1014). More importantly, Juckette fails to cite to any statutory or case authority in support of her contention., The Court should not follow

this invitation to undermine the IUB's authority through a collateral attack on the entire agency proceeding.

CONCLUSION

This case is about whether the IUB erred in granting MidAmerican an electric transmission line franchise in Madison County, Iowa. The IUB, which the Legislature has vested with the authority to interpret "public use" in a manner long affirmed by Iowa courts, properly found that MidAmerican presented substantial evidence in support of a public use. Even if the Court were to conclude that previous interpretations of "public use" deserve no deference, the IUB's interpretation of "public use" to grant a franchise when presented evidence that a transmission line improves reliability and serves current and future customer electric needs is appropriate. Further, MidAmerican presented substantial evidence that the proposed line represents a reasonable relationship to an overall plan of transmitting electricity in the public interest. Taken together, the Court should affirm the IUB's grant of franchise to MidAmerican on both counts.

This case is also about whether the public utilities may utilize existing public road rights-of-way without additional compensation to the servient landowner. This outcome, which was the result of the Legislature enacting a statute abrogating existing caselaw on the issue, aligns with other actions taken by the Legislature since the time of passage and promotes the use of existing right-of-way when constructing vital utility infrastructure instead of

requiring utilities to seek additional property interests at additional costs to customers and burden to other landowners. The statute recognizes that the placement of utility poles, which are subject to removal at the sole request of the road authority and are not permanent, do not create an additional burden on the servient estate because they do not deprive the servient landowner of any rights they retained after the grant of the public road right-of-way.

Finally, even if the Court concludes that Iowa Code § 306.46 requires public utilities to obtain additional interests in public road rights-of-way from servient landowners, the Court should not abandon the franchise, which is within the IUB's authority to grant and supported by substantial evidence in the record. To do so without any statutory or caselaw support would be to completely upend the Legislature's clear delegation of authority to the IUB. Instead, the Court should remand the matter back to the IUB for a determination of the necessary eminent domain authority pursuant to the IUB's vested authority.

For these reasons, the Court should affirm the District Court's order denying judicial review and affirm the IUB's grant of franchise authority.

REQUEST FOR NONORAL SUBMISSION

MidAmerican respectfully requests that no oral argument is necessary in this proceeding. Should the Court determine an oral argument is necessary, MidAmerican respectfully requests the opportunity to participate in the oral argument.

CERTIFICATE OF COST

Undersigned counsel certifies there was no cost paid by MidAmerican for the printing or duplicating of paper copies pursuant to Iowa R. App. P. 6.903(2)(j).

CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

[X] this brief has been prepared in a proportionally spaced typeface using Times New Roman in 14 point type, and contains 11,222 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1) or

[ ]this brief has been prepared in a monospaced typeface using [state name of typeface] in [state font size] and contains [state the number of] lines of text, excluding the pats of the brief exempted by Iowa R. App. P. 6.903(1)(g)(2).

/s/ Andrew L. Magner
Signature

5/13/2022
Date

CERTIFICATE OF SERVICE

I hereby certify that on May 13, 2022, I electronically filed the foregoing document with the Clerk of the Court by using the Iowa Judicial Branch electronic filing system which will send a notice of electronic filing to the following:

John Lande
William Reasoner
DICKINSON, MACKAMAN, TYLER & HAGEN, P.C.
699 Walnut Street, Suite 1600
Des Moines, Iowa 50309
jlande@dickinsonlaw.com
wreasoner@dickinsonlaw.com
ATTORNEYS FOR PETITIONER-APPELLANT LINDA K. JUCKETTE

Jeffrey J. Cook
Office of Consumer Advocate
1375 E. Court Ave.
Des Moines, Iowa 50319
jeffrey.cook@oca.iowa.gov
ATTORNEY FOR OFFICE OF CONSUMER ADVOCATE

Stanley J. Thompson
DENTONS DAVIS BROWN PC
215 10th Street, Suite 1300
Des Moines, Iowa 50309
stan.thompson@dentons.com
ATTORNEY FOR IOWA UTILITIES ASSOCIATION

Jon Tack
Matthew Oetker
Iowa Utilities Board
1375 E. Court Ave.
Des Moines, Iowa 50319
jon.tack@iub.iowa.gov
matt.oetker@iub.iowa.gov
ATTORNEYS FOR RESPONDENT IOWA UTILITIES BOARD

Dennis L. Puckett
Amanda A. James
Sullivan & Ward, P.C.
6601 Westown Pkwy., Ste. 200
West Des Moines, Iowa 50266
dpuckett@sullivan-ward.com
ajames@sullivan-ward.com
ATTORNEYS FOR IOWA ASSOCIATION OF ELECTRIC COOPERATIVES

Bret A. Dublinske
Brant M. Leonard
FREDRIKSON & BYRON, P.A.
bdublinske@fredlaw.com
bleonard@fredlaw.com
ATTORNEYS FOR ITC MIDWEST LLC

Christina L. Gruenhagen
Daniel Peacock
David Meyers
PARKER & GEADELMANN, P.L.L.C.
5400 University Avenue
West Des Moines, Iowa 50266
CGruenhagen@ifbf.org
ATTORNEYS FOR IOWA FARM BUREAU FEDERATION

/s/ *Andrew L. Magner*
Andrew L. Magner