

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

Tom Robinson, Laura Robinson, Martin Robinson and Paula Robinson Plaintiffs, v. Iowa Utilities Board, Respondent	CASE NO. PETITION FOR JUDICIAL REVIEW OF AGENCY ACTION
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COMES NOW, Plaintiffs Tom Robinson, Laura Robinson, Martin Robinson and Paula Robinson and for their Petition for Judicial Review pursuant to Iowa Code §17A.19 concerning a decision of the Iowa Utility Board dated October 22, 2021 state:

1.0 PARTIES, VENUE, AND JURISDICTION

1.1 Plaintiffs Tom Robinson, Laura Robinson, and Paula Robinson reside in Linn County, Iowa. Plaintiff Martin Robinson resides in the State of Colorado. These Plaintiffs are hereafter jointly referred to as “The Robinsons.”

1.2 Respondent Iowa Utilities Board is a state administrative agency located at 1375 E. Court Avenue, Des Moines, Polk County, Iowa.

1.3 Applicant Coggon Solar, LLC is a limited liability company organized under the law of the State of Utah and headquartered in Utah.

1.4 Venue in Polk County District Court is proper under Iowa Code §17A.19(2), which specifically allows for venue to be in Polk County.

1.5 This Court has jurisdiction over this petition for judicial review of an agency action pursuant to Iowa Code §17A.19.

2.0 NATURE OF AGENCY ACTION

2.1 On March 3, 2021 Coggon Solar, LLC (“Coggon Solar”) filed an application for a Certificate of Public Convenience, Use and Necessity and a Request for Waiver (“The Certificate”) with the IUB. This application was designated by the IUB as case number GCU-2021-0001 and requested authority to build, operate and maintain a 100 MW solar generation facility near the city of Coggon in Linn County, Iowa and for the waiver of a public hearing and other requirements regarding this application. This solar generation facility (“The Coggon Project”) is proposed to be built on approximately 700 acres of prime farmland.

2.2 The Robinsons own agricultural real estate which is located across public roads (approximately 65 feet) from The Coggon Project. Further Tom Robinson, Laura Robinson and Paula Robinson own homes and reside at locations which are also across a public road from The Coggon Project. Further, the Robinsons hold easements for agricultural tile drainage under The Coggon Project. The Robinsons fully and timely informed the IUB of their interest in and objections to The Coggon Project.

2.3 Approximately 70 objections and other comments against the Application were filed by the Robinson and numerous other parties against The Coggon Project.

2.4 The Robinsons requested that the IUB allow them to intervene in the proceedings before the IUB and on July 29, 2021 the IUB granted this request.

2.5 As part of its Application Coggon Solar requested that a public hearing and certain other statutory requirements be waived.

2.6 In their Resistance to the Application the Robinsons specifically requested a public hearing and resisted any waiver of the same.

2.7 On October 22, 2021 the IUB without first holding a public hearing granted Coggon Solar's Application, waived the statutory requirement of holding a public hearing and ordered the issuance of The Certificate.

2.8 The Board's October 22, 2021 order contains numerous factual errors, including the following:

- a. The IUB's conclusion that the existing Coggon subdivision does not require upgrades is not factually correct.
- b. The IUB's conclusion that the nature of the project is consistent with Iowa's economic development policies is not factually correct.
- c. The IUB's factual conclusion that The Robinsons' agricultural drainage easement will not be used, invaded and damaged by The Coggon Project is not factually correct.

2.9 The Board's October 22, 2021 order also contains numerous legal errors and violates the Iowa Code and The Robinsons' constitutional rights as follows:

- a. The IUB failed to consider the negative effect of The Coggon Project on the value of the The Robinsons' properties.
- b. The IUB failed to consider the negative effect of The Coggon Project on agricultural production.
- c. The IUB failed to consider the negative effect of The Coggon Project on the drainage easement interests of The Robinsons.
- d. The IUB failed to recognize and protect the drainage easement and other property rights held by The Robinsons and which are protected by the state and federal constitutions.
- e. The IUB improperly determined that since eminent domain is not being used to acquire land for The Coggon Project that this eliminated the need to address The Robinsons' concerns and the concerns of other objectors.
- f. The failure to hold a hearing in this matter violated Iowa law and the rights of The Robinsons under the Iowa and United States Constitutions.

- g. The IUB's delegation of land use decisions regarding The Coggon Project to Linn County is contrary to the IUB's responsibility under Iowa law.
- h. The IUB's decision is contrary to the economic development policies of the State of Iowa.

2.10 On the 8th day of November, 2021 The Robinsons filed an Application for Reconsideration with the IUB.

2.11 On the 8th day of December, 2021 the IUB denied this Application for Reconsideration.

2.12 The Robinsons have exhausted their administrative remedies and therefore have appropriately filed this Petition for Judicial Review.

2.13 The relief sought by The Robinsons in this matter includes a judicial determination that The Certificate in this matter be set aside, that an injunction be issued preventing construction and operation of The Coggon Project, that a decision be issued requiring that a public hearing be held before any certificate can be issued and that the IUB properly apply the statutory requirements and protect the constitutional rights and property of The Robinsons.

3.0 GROUNDS ON WHICH RELIEF IS SOUGHT

3.1 The Robinsons seeks judicial review of the Board's final decision on the grounds that it violates the Robinson's constitutional rights, misapplied facts, misapplied the law improperly refused to hold a public hearing, failed to consider the adverse effects of The Coggon Project and failed to apply the required statutory criteria.

4.0 COUNT 1: UNLAWFUL FAILURE TO HOLD A PUBLIC HEARING

4.1 The Robinsons restate all prior paragraphs.

4.2 Under Iowa Code §17A.9A(1) and the IUB's own rules the IUB was required to hold a public hearing in this matter prior to issuing The Certificate.

4.3 Further, the IUB improperly determined that the public interest would not be adversely effected if a public hearing was not held in this matter.

5.0 COUNT II: VIOLATION OF THE ROBINSONS' RIGHTS UNDER OF THE UNITED STATES CONSTITUTION AND THE STATE OF IOWA CONSTITUTION

5.1 The Robinsons restate all prior paragraphs.

5.2 The Robinsons are the owners of easements for agricultural drainage across The Coggon Project site.

5.3 The Robinsons have not consented to the use or invasion of their easements as part of The Coggon Project.

5.4 The Robinsons easement has been and will be further damaged by The Coggon Project.

5.5 The Robinsons will also suffer a loss in property values and other adverse effects because of The Coggon Project.

5.6 The above-described invasion and damage to The Robinsons' property constitutes a taking of their property under the Fifth Amendment to the United States Constitution and Article 1, Sections 9 and 19 of the State of Iowa Constitution.

5.7 The failure to hold a public hearing in this matter resulted in a violation of The Robinsons constitutional rights under the due process clauses of Amendment 5 of

the United State Constitution and Article 1, Section 9 and 18 of the Iowa Constitution.

6.0 THE IUB FAILED TO PROPERLY CONSIDER AND APPLY THE PROPER STATUTORY AND ADMINISTRATIVE CRITERIA WHEN IT GRANTED APPROVAL FOR THE COGGON PROJECT

- 6.1 The Robinsons restate all prior paragraphs.
- 6.2 In making its decision to grant The Certificate the IUB failed to consider the proper statutory and administrative requirements.
- 6.3 Without limitations the statutory and administrative criteria the IUB failed to consider included the following:
 - a. Code §476A.6 and the economic policies contained in Code chapters 15-16A, inclusive.
 - b. Failure to consider the adverse effects on The Robinsons' properties. Under Code §476A.6 and other facts which determine whether a reasonable land use.
 - c. Failure to consider alternative available sites under 476A.6 (3) and the economics of the same.
 - d. Failure to consider the adverse impact on The Robinsons' property under I.A.C. §199-24.10(2)(b)
 - e. Failure to consider alternative sites under I.A.C. §199-24.10(2).
 - f. Failure to consider the loss of agricultural production.

WHEREFORE, Plaintiffs request the following:

1. That The Certificate issued in this matter be set aside.
2. That prior to the issuance of any further Certificate a public hearing be ordered to be held.
3. That prior to the issuance of any further Certificate the appropriate statutory and administrative criteria be reviewed and applied by a neutral decision maker.
4. That an injunction issue precluding any construction or operation of The Coggon Project until such time as a lawful and proper Certificate is issued by the IUB.
5. That Petitioners have other and further relief as appropriate.

Respectfully Submitted,

By: /S/ *GREGG GEERDES*
GREGG GEERDES
Dey Building
105 Iowa Avenue, Suite 234
Iowa City, Iowa 52240
(319) 341-3304 Telephone
(319) 341-3306 Fax
geerdeslaw@peoplepc.com

ATTORNEY FOR PLAINTIFFS