

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

**TOM ROBINSON, LAURA
ROBINSON, MARTIN ROBINSON,
and PAULA ROBINSON,**

Petitioners,

vs.

IOWA UTILITIES BOARD,

Respondent.

CASE NO. CVCV062986

**RESPONDENT IOWA UTILITIES
BOARD'S PRE-ANSWER MOTION
TO DISMISS AND MOTION TO
ENLARGE TIME TO TRANSMIT
CERTIFIED RECORD**

COMES NOW Respondent Iowa Utilities Board, by and through its undersigned counsel, pursuant to Iowa Rules of Civil Procedure 1.421 and 1.1602, and Iowa Code § 17A.19(6), and for its Pre-Answer Motion to Dismiss and Motion to Enlarge Time to Transmit Certified Record, respectfully states as follows:

I. PRELIMINARY STATEMENT.

1. On January 4, 2022, Petitioners Tom Robinson, Laura Robinson, Martin Robinson, and Paula Robinson (collectively, the “Robinsons”) filed a Petition for Judicial Review of Agency Action from an interlocutory and non-final order issued by Respondent Iowa Utilities Board (“Board”).

2. Because the Board order from which judicial review was taken is not final agency action, the Board respectfully requests the above-captioned case be dismissed.

3. The Board further requests the period for transmitting the certified record be enlarged during the pendency of this court’s review of the motion to dismiss.

II. STATEMENT OF THE FACTS.

4. Through Iowa Code § 474.1(1), the Iowa legislature created the Utilities Division within the Iowa Department of Commerce. The Board, which is comprised of three members, is the

policy making body for the Utilities Division. *Id.*

5. Pursuant to Iowa Code § 476A.2, a person wishing to construct, operate, and maintain an electric generating facility with a total capacity of twenty-five megawatts of electricity or more must first obtain a certificate of public convenience, use, and necessity (“Generating Certificate”) from the Board.

6. Generating Certificate proceedings before the Board are contested cases. *Id.* at § 476A.5(1). Chapter 476A, subchapter I sets forth the requirements for a Generating Certificate proceeding, which includes provisions relating to notice and hearing; however, § 476A.15 provides the Board with the power to “waive any of the requirements in” subchapter I “if it determines that the public interest would not be adversely affected.”

7. On March 3, 2021, Coggon Solar LLC filed a Generating Certificate application with the Board for a proposed 100 MW solar generation facility located approximately 2.75 west of Coggon, Linn County, Iowa.¹ With its application, Coggon Solar requested the Board waive a number of requirements in Iowa Code chapter 476A, subchapter I, including the hearing provisions.

8. On October 22, 2021, the Board issued an order that: (1) granted a number of Coggon Solar LLC’s waiver requests, including its request to waive the hearing provisions contained in §§ 476A.4 and 476A.5; and (2) conditionally approved Coggon Solar LLC’s request for a

1. In ruling on a motion to dismiss, the district court may consider those facts of which the court may take judicial notice. *Geisler v. City Council of City of Cedar Falls*, 769 N.W.2d 162, 165 (Iowa 2009). Judicial notice may be taken of information contained on an executive branch agency’s website. *See League of United Latin American Citizens of Iowa v. Pate*, 950 N.W.2d 204, 212-13 (Iowa 2020) (taking judicial notice of data posted on the Iowa Secretary of State’s website). To the extent necessary to adjudicate the above-captioned motion, the Board requests the Court take judicial notice of the underlying contested case filings made with the Board and the Board orders and decisions, which are available in the Board’s Electronic Filing System in Docket No. GCU-2021-0001 (<https://efs.iowa.gov/efs/ShowDocketSummary.do?docketNumber=GCU-2021-0001&actionType=back>).

Generating Certificate.²

9. In Ordering Clause 3 of the October 22, 2021 order, the Board held that it would not issue a Generating Certificate until “Coggon Solar LLC has filed, and the Board has accepted, a final unappealable decision from the Linn County Board of Supervisors approving Coggon Solar LLC’s request under the county’s utility-scale solar installation ordinance.”³ (Attachment A, p. 24).

10. On November 8, 2021, the Robinsons filed an application for reconsideration from the October 22, 2021 order.⁴

11. On December 8, 2021, the Board issued an order denying the Robinsons’ reconsideration request.⁵

12. Final agency action in chapter 476A proceedings occurs through the issuance of a Generating Certificate, *see* Iowa Code §§ 476A.6 and 476A.7, and in this matter, the Board has not issued a Generating Certificate to Coggon Solar LLC.

III. MOTION TO DISMISS.

13. “Judicial review of administrative agency action is a special proceeding [that] is in all respects dependent upon the statutes which authorize its pursuit.” *Anderson v. W. Hodgeman &*

2. A copy of the Board’s October 22, 2021 order is retrievable at:

https://wcc.efs.iowa.gov/cs/idcplg?IdcService=GET_FILE&allowInterrupt=1&RevisionSelectionMethod=latest&DocName=2074470&noSaveAs=1. Additionally, for the Court’s convenience, a copy of the Board’s October 22, 2021 order will be attached hereto as “Attachment A.”

3. Linn County, Iowa has adopted an ordinance that requires utility-scale solar projects submit a request to rezone the area to be used for the solar installation to a “Renewable Energy Overlay Zoning District.” [Linn County Code of Ordinances § 107-117\(h\)](#). It should be noted that pursuant to Iowa Code § 476A.8, upon the Board’s issuance of a Generating Certificate, “a regulatory agency, city or county shall not require any further approval, permit or license for the construction of the facility.” In this case, however, and as shown in Ordering Clause 3, the Board decided against issuing Coggon Solar LLC a Generating Certificate until the entity obtained Linn County’s approval through a final and unappealable decision.

4. The Robinsons’ November 8, 2021 application for reconsideration is retrievable at:

https://wcc.efs.iowa.gov/cs/idcplg?IdcService=GET_FILE&allowInterrupt=1&RevisionSelectionMethod=latest&DocName=2075934&noSaveAs=1.

5. The Board’s December 8, 2021 order denying reconsideration is retrievable at:

https://wcc.efs.iowa.gov/cs/idcplg?IdcService=GET_FILE&allowInterrupt=1&RevisionSelectionMethod=latest&DocName=2078561&noSaveAs=1.

Sons, Inc., 524 N.W.2d 418, 421 n.1 (Iowa 1994). The judicial review provisions of Iowa Code chapter 17A are “the exclusive means by which a person or party who is aggrieved or adversely affected by agency action may seek judicial review of such agency action.” Iowa Code § 17A.19 (2019). For judicial review of agency action, the procedures contained in chapter 17A “must be adhered to in order for the district court to obtain jurisdiction.” *Tindal v. Norman*, 427 N.W.2d 871, 872 (Iowa 1988).

14. Generally, “chapter 17A only allows for judicial review of a final agency action.” *Cooper v. Kirkwood Community College*, 782 N.W.2d 160, 166 (Iowa Ct. App. 2010). *See also Christensen v. Iowa Civil Rights Comm’n*, 292 N.W.2d 429, 431 (Iowa 1980) (stating that “[w]e believe the legislature intended . . . that judicial review ordinarily await final agency action”); Iowa Code § 17A.19 (stating that a person “adversely affected by any *final agency action* is entitled judicial review thereof under” Chapter 17A) (emphasis added).

15. Here, the order from which the Robinsons sought judicial review is not final agency action. As shown in the October 22, 2021 order, the Board did not issue (and has not issued) Coggon Solar LLC a Generating Certificate. (Attachment A, p. 24). The order further provided that the Board would not issue a Generating Certificate until (and unless):

- (1) the Linn County Board of Supervisors approved Coggon Solar LLC’s rezoning request,
- (2) Coggon Solar LLC filed the final, unappealable Linn County Board of Supervisors decision with the Board, and
- (3) the Board accepted the filing.

16. As of the date of this filing, there is no unappealable Linn County Board of Supervisors decision, Coggon Solar LLC has not filed the final, unappealable Board of Supervisors decision with the Board, and the Board has not accepted any such filing. More importantly, the Board has

not issued a final agency decision because it has not issued a Generating Certificate to Coggon Solar LLC.

17. Because the Board has not taken final agency action and because the Robinsons have not sought judicial review from final Board action, the above-captioned judicial review is improper and must be dismissed.

IV. MOTION TO ENLARGE TIME TO TRANSMIT CERTIFIED RECORD.

18. Iowa Code § 17A.19(6)⁶ permits the district court to enlarge the time by which the agency must transmit to the reviewing court a certified copy of the entire contested case record.

19. The Board requests the period in which it must file the certified record be extended until this Court has an opportunity to review and rule on the motion to dismiss. In the event the Court denies the motion to dismiss, the Board requests the deadline for the transmittal of the certified record be set as 30 days from the date of the denial order.

WHEREFORE, the Iowa Utilities Board respectfully requests this Court grant the above-captioned pre-answer motion to dismiss. In the event the Court denies the motion to dismiss, the Iowa Utilities Board requests the Court set the deadline for the transmission of the certified record 30 days from the date of the order.

6. Section 17A.19(6) provides that a certified record should normally be filed within 30 days after the filing of the petition of judicial review. Because the Robinsons filed their petition for judicial review on January 4, 2022, the deadline for transmission of the certified record would be, absent this request, due on or about February 3, 2022.

Respectfully submitted,

/s/ Jon Tack

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**ATTORNEYS FOR RESPONDENT IOWA
UTILITIES BOARD**

**ALL PARTIES SERVED ELECTRONICALLY
THROUGH EFS**