

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>Tom Robinson, Laura Robinson, Martin Robinson and Paula Robinson Petitioners,</p> <p>v.</p> <p>Iowa Utilities Board, Respondent</p> <p>AND CONCERNING Office of Consumer Advocate and Duane Arnold Solar, LLC., Intervenors</p>	<p>CASE NO. CVCV 062986</p> <p><b>PETITIONERS' RESISTANCE TO RESPONDENT IOWA UTILITIES BOARD'S PRE-ANSWER MOTION TO DISMISS AND MOTION TO ENLARGE TIME TO TRANSMIT CERTIFIED RECORD</b></p>
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COMES NOW Respondents and in resistance to the Motion to Dismiss filed by Respondent states:

1. This action seeks judicial review of an Iowa Utilities Board (IUB) decision to issue Coggon Solar, LLC a Certificate of Necessity authorizing it to construct a large scale “solar farm” in Linn County which would produce electrical power.
2. On October 22, 2021 the IUB issued its “Order Granting Petition for Intervention, Request for Waivers, and Application for a Certificate of Necessity.” Following this order Respondents timely filed their Motion to Reconsider with the IUB. Then, on December 8, 2021, the IUB issued its “Order Denying Application for Reconsideration.”
3. Respondent IUB contends that Petitioners have prematurely filed their challenge to the IUB’s actions. Petitioners disagree for several reasons. First, as stated in the title of the IUB’s October 22 order “Granting ....Application for a Certificate of Public Convenience, Use and Necessity...” the IUB by this order obligated itself to issue the Certificate of Necessity requested by Coggon Solar, LLC. All what remains for IUB to do is the purely ministerial duty to issue the actual certificate. Additionally, the IUB further recognized this purely ministerial obligation when it stated in its order denying reconsideration that “...(t)he Board approved Coggon Solar’s Application for a Certificate of Public Use, Convenience and Necessity and stated the Certificate would not be issued until Coggon Solar filed and the Board accepted, the final un-appealable decision for the Linn County Board of Supervisors approving Coggon Solar’s request...” (December 8 Ruling, page 2). Because IUB has made the decision to grant the certificate requested by Coggon Solar LLC, these purely ministerial future actions do not prevent the IUB’s December 8 order from being a final order.

4. The December 8, 2021 order is an appealable final order for a second reason. As stated in this order and the earlier October 22 order the IUB made detailed findings of fact and conclusions of law after it declined to hold a formal hearing in this matter. Therefore, under Code §476A.11 and §17A.15, .16 and .19 the IUB's decision is by statute considered to be the IUB's final decision. Accordingly, this action was timely brought.

5. Petitioners have no objection to Respondent's request for additional time to transmit the record in this matter.

THEREFORE, the Motion to Dismiss should be denied.

Respectfully Submitted,

*BY:/S/ GREGG GEERDES*  
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PROOF OF SERVICE AND CERTIFICATE OF FILING

I certify that on the 3rd day of February, 2022 I electronically filed the foregoing with the Clerk of Court for Polk County, Iowa and that all parties named above participate in this system.

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