

**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 REPLY TO  
PETITIONERS' RESISTANCE TO  
MOTION TO DISMISS AND  
MOTION TO ENLARGE TIME**

**COMES NOW** Respondent Iowa Utilities Board (IUB), by and through its undersigned counsel, pursuant to Iowa Rules of Civil Procedure 1.431(5), and for its Reply to Petitioners' Resistance to Motion to Dismiss and Motion to Enlarge Time, respectfully states as follows:

1. On January 28, 2022, the IUB filed a pre-answer motion to dismiss and motion to enlarge time to transmit certified record. IUB asserts dismissal is warranted because Iowa Code § 17A.19(1) permits judicial review from *final agency actions* and the agency action being challenged in this case is not final.
2. On or about February 3, 2022, Petitioners filed a resistance to which this reply responds.
3. Petitioners contend that the IUB's orders should be considered "final" because only ministerial functions remain, (Pet. Resistance ¶ 3), and because the prior IUB decisions contain detailed factual findings and legal conclusions, the decisions should be considered "to be the IUB's final decision." (Pet. Resistance ¶ 4).

4. First and foremost, Petitioners failed to cite to any authority in support of their legal assertions: (1) that a non-final agency decision, in which only “ministerial” functions remain, is nevertheless final for purposes of Iowa’s judicial review statute, and (2) that an intermediary agency decision can be considered a final agency action if the decision contains detailed factual findings and legal conclusions. For this reason alone, Petitioners’ contentions should be rejected.

5. Second, contrary to Petitioners’ assertions, Iowa law is already clear as to what is and is not a final agency action. According to the Iowa Supreme Court, “[i]n determining if agency action is the final the question is ‘whether the agency has completed its decisionmaking process, and whether the result of that process is one that will directly affect the parties.’” *Dunn v. City Dev. Bd.*, 623 N.W.2d 820, 825 (Iowa 2001) (quoting *Franklin v. Massachusetts*, 505 U.S. 788, 797 (1992)).

6. As applied to this proceeding, the IUB has not completed its decisionmaking process. The applicant in the underlying agency action initiated the contested case proceeding in the hopes of obtaining a certificate of public convenience, use, and necessity under Iowa Code chapter 476A and as of the date of this filing, the IUB has neither issued the certificate nor directed IUB staff to issue the certificate following the fulfillment of certain conditions and without the exercise of judgement.

7. As detailed in Ordering Clause 3 of Attachment A to the motion to dismiss, the IUB will not issue the certificate until a final, unappealable decision from the Linn County Board of Supervisors is filed with the IUB and *the IUB approves the same*. The fact that the IUB must approve the filing demonstrates, in and of itself, that the

decisionmaking process is not complete.

8. There is no guarantee that a final, unappealable decision from the Linn County Board of Supervisors will exist. Even if such a decision is filed with the IUB, there is no guarantee that Board will approve of the same. Simply put, there is no guarantee that the IUB will ever issue the certificate. This is the antitheses of definiteness and conclusiveness associated with “final agency action.”

9. With respect to the IUB’s request to enlarge time to transmit the certified record, Petitioners state they have no objection to the request and the undersigned appreciates the same.

**WHEREFORE**, the Iowa Utilities Board respectfully requests this Court grant its 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.

Respectfully submitted,

/s/ Jon Tack

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**ATTORNEYS FOR RESPONDENT IOWA  
UTILITIES BOARD**

**ALL PARTIES SERVED ELECTRONICALLY  
THROUGH EFS**