

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE:

COGGON SOLAR LLC

DOCKET NO. GCU-2021-0001

ORDER DENYING COGGON SOLAR LLC'S REQUEST

On October 22, 2021, the Utilities Board (Board) issued an "Order Granting Petition for Intervention, Request for Waivers, and Application for a Certificate of Public Convenience, Use and Necessity under Iowa Code chapter 476A" in Docket No. GCU-2021-0001. In part, the order approved Coggon Solar LLC's (Coggon Solar) application for a certificate of public convenience, use and necessity, but did not issue the certificate, pending the filing by Coggon Solar and approval by the Board of the final unappealable decision from the Linn County Board of Supervisors (Linn County Supervisors) approving Coggon Solar's request under the county's utility-scale solar ordinance.

On February 7, 2022, Coggon Solar filed a letter in which it asserted the Linn County Supervisors approved Coggon Solar's rezoning request for the project site. With the letter, Coggon Solar filed a "proof of publication," which purportedly constituted a true and accurate copy of the published notice of the Linn County Supervisors' rezoning decision. Coggon Solar concluded the letter by stating that it "looks forward to receiving its certificate."

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On March 1, 2022, the Board issued an order requesting additional information. The Board stated the text of the copy of the publication included in Coggon Solar's February 7, 2022 filing was too small to read. The Board also stated that on February 22, 2022, Martin Robinson, Paula Robinson, Tom Robinson, and Laura Robinson, (collectively, the Robinsons) filed a "Notice of Appeal of Linn County's Rezoning Decision and Objection to Issuance of Certificate of Necessity," which indicated the Robinsons had initiated a certiorari proceeding in the Linn County District Court to challenge the Linn County Supervisors' rezoning decision. The Board directed Coggon Solar to file a readable copy of the Linn County Supervisors' rezoning decision and to file additional information on the issue of whether the county rezoning decision constituted a final unappealable decision.

On June 1, 2022, Coggon Solar filed a response with a more readable copy of the county's rezoning decision. Coggon Solar argued that the Robinsons' certiorari action is an ordinary action, not an appeal, and consequently, according to Coggon Solar, the Linn County Supervisors' rezoning decision constitutes a final decision. Coggon Solar requested the Board issue it a certificate of public convenience, use and necessity.

On June 9, 2022, the Robinsons filed a reply, contending the Linn County Supervisors' rezoning decision is not final and unappealable. The Robinsons state that the proper method for challenging (or appealing) a county zoning decision is through a certiorari action, which they filed on February 17, 2022. The Robinsons requested the Board deny Coggon Solar's request for the issuance of a certificate of public convenience, use and necessity at this time.

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Although it did not caption its June 1, 2022 filing as a motion, Coggon Solar did request Board action in the filing's conclusion. Therefore, the Board will treat the filing as a motion. See e.g., *Iowa Elec. Light & Power Co. v. Lagle*, 430 N.W.2d 393, 395 (Iowa 1988) (holding that the "label attached to a motion is not determinative of its legal significance" and that the content of the filing should be reviewed "to determine its real nature").

The Iowa Supreme Court has recognized "that certiorari may be a proper remedy for reviewing the legality of decisions made by city councils and county board of supervisors in zoning matters." *Sutton v. Dubuque City Council*, 729 N.W.2d 796, 797 (Iowa 2006) (citations omitted). Even though a certiorari proceeding is identified as an "ordinary proceeding" in Iowa Rule of Civil Procedure 1.1402(2) rather than an appeal, a certiorari action authorizes a court to review the records of an inferior tribunal "for the purpose of ascertaining whether the inferior tribunal or body had jurisdiction and whether its proceedings were authorized." 11 Iowa Practice, *Civil & Appellate Procedure* § 11:39 (2022 ed.) (citations omitted). Just as in an appeal, in a certiorari action, the court sits in review of the inferior tribunal's action.

In its October 22, 2021 order, the Board stated that a certificate would not be issued until Coggon Solar filed, and the Board accepted, a "final unappealable decision" from the Linn County Supervisors approving the rezoning request. The Board now clarifies that a rezoning decision is not final and unappealable if it is subject to a timely filed certiorari action that has not been resolved.

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IT IS THEREFORE ORDERED:

Coggon Solar LLC's June 1, 2022 request for the Utilities Board to issue it a certificate of public convenience, use and necessity is denied without prejudice.

UTILITIES BOARD

Geri Huser Date: 2022.07.12
16:04:19 -05'00'

Richard Lozier Date: 2022.07.12
16:17:05 -05'00'

ATTEST:

Kerrilyn Russ Digitally signed by Kerrilyn Russ
Date: 2022.07.13 11:44:54
-05'00'

Josh Byrnes Date: 2022.07.12
14:40:33 -05'00'

Dated at Des Moines, Iowa, this 13th day of July, 2022.