

**IN THE IOWA DISTRICT COURT FOR POLK COUNTY**

<b>SHELBY COUNTY, et al.,</b>  <b>Petitioner,</b>  <b>vs.</b>  <b>IOWA UTILITIES COMMISSION,</b>  <b>Respondent.</b>	<b>Case No.: CVCV067849</b>  <b>RULING ON MOTION TO INTERVENE</b>
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This matter comes before the Court on the application of Driftless Water Defenders ("DWD") to intervene in this judicial review proceeding, or in the alternative, for leave to file an amicus curiae brief. The Court has considered the application, the resistance filed by the Iowa Utilities Commission ("IUC") and Summit Carbon Solutions, LLC ("Summit"), and the applicable law. For the reasons set forth below, DWD's application is denied.

**I. BACKGROUND**

This case involves the judicial review of the Iowa Utilities Commission's decision in Docket No. HLP-2021-0001, issued on June 25, 2024, which granted Summit Carbon Solutions' petition to construct, operate, and maintain approximately 688 miles of pipeline for the transportation of supercritical carbon dioxide through twenty-nine Iowa counties. Multiple parties filed petitions for

judicial review of the IUC's decision, which have been consolidated in this proceeding.

The proceedings before the IUC were extensive. Summit Carbon filed its pipeline petition with the IUC in January 2022. The IUC conducted comprehensive fact-finding, received tens of thousands of pages of testimony, and held hearings for nearly three months from August to November 2023. The IUC ultimately issued a five-hundred-page decision and order in June 2024.

On February 5, 2025, DWD filed an application to intervene in this judicial review proceeding pursuant to Iowa Rules of Civil Procedure 1.407(1) and (2), or in the alternative, a motion for leave to file an amicus curiae brief. DWD, an Iowa nonprofit corporation, was organized on May 10, 2024, after the evidentiary record was closed in the underlying administrative proceeding before the IUC. DWD was not a party to the proceedings before the IUC, nor did it participate in any manner in those proceedings.

DWD's application to intervene argues that they should be allowed to join the judicial review proceedings because their members have a significant interest in protecting the clean water resources of the Driftless Area in northeastern Iowa. They contend that the Summit pipeline would cross the Upper Wapsipinicon River, which flows into the Driftless Area, potentially impacting water quality through both normal operations and possible leaks. DWD asserts that no party in the IUC

proceedings adequately addressed these water-related concerns, particularly regarding water quantity depletion and water quality degradation. They claim intervention is warranted as a matter of right under Iowa Rule of Civil Procedure 1.407(1) because the disposition of the case would impair their ability to protect their water interests, and no existing party adequately represents these interests. Alternatively, they seek permissive intervention under Rule 1.407(2) because their claims share common questions of law and fact with the main action.

## **II. LEGAL ANALYSIS**

### **A. Intervention in Judicial Review Proceedings**

As all parties are aware, this is a judicial review of agency action governed by Iowa Code section 17A.19. In such proceedings, this Court functions in an appellate capacity. *Iowa Public Service Co. v. Iowa State Commerce Comm'n*, 236 N.W.2d 766, 768-69 (Iowa 1979). The Iowa Administrative Procedure Act ("IAPA") provides that judicial review under chapter 17A is 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.

It is well settled that a person or entity who is not a party to the agency proceeding cannot petition for judicial review. *Public Employment Relations Bd. v. Stohr*, 279 N.W.2d 286, 290 (Iowa 1979). As the Iowa Supreme Court held in *Stohr*, "[w]hen resolution of a controversy has been delegated to an administrative

agency, the district court has no original authority to declare the rights of parties or the applicability of any statute or rules." *Id.*

While the Iowa Rules of Civil Procedure apply to special actions, and judicial review is a special action, the Rules of Civil Procedure do not apply where they conflict with relevant provisions of the IAPA. Iowa R. Civ. P. 1.1601; *Second Injury Fund v. Klebs*, 539 N.W.2d 178, 180 (Iowa 1995); *Kohorst v. Iowa State Commerce Comm'n.*, 348 N.W.2d 619, 621 (Iowa 1984). Since the IAPA does not provide any right of intervention at this stage, i.e., on a petition for judicial review, and, in fact, provides to the contrary by requiring that only a party has standing, DWD's application for intervention must be denied on this basis alone.

The Court is unaware of any legal authority allowing a newly-formed organization or entity to intervene at this stage of the proceedings, nor has DWD provided any such legal basis for its application. The final agency decision in this case occurred on August 15, 2024, when the motions for reconsideration were denied by operation of law. DWD was not a party to the underlying action, and no attempt to intervene was made by this newly-formed group until the present request on February 5, 2025, nearly six months after the final agency decision.

### **B. Timeliness of Intervention**

Even if the Court were to evaluate DWD's application under Iowa Rules of Civil Procedure 1.407(1) and (2), as proposed by DWD, the application would still

fail. Both Iowa R. Civ. P. 1.407(1) and (2) require that an application to intervene be timely. Although the Court has broad discretion to determine what is timely, it is well settled that intervention will not be allowed after final judgment or a decree has been entered. *Morse v. Morse*, 77 N.W.2d 622 (Iowa 1956); *Rick v. Boegel*, 205 N.W.2d 713 (Iowa 1973).

Because the District Court here is functioning in an appellate capacity, the "trial" as contemplated by the applicable rules has already occurred, and the proper time for intervention has lapsed. See *Cedar Rapids Comm. School Dist. v. Parr*, 227 N.W.2d 486 (Iowa 1975). Thus, DWD's request should be denied on this basis as well.

### **C. Speculative Nature of DWD's Interest**

Furthermore, even where a petition for intervention is timely brought in an appropriate forum, a potential intervenor must also have more than a mere speculative or contingent interest in the litigation in order to intervene. *Matter of Estate of DeVoss*, 474 N.W.2d 539, 541 (Iowa 1991). An interest that is indirect, remote, or conjectural is insufficient to support intervention. *Id.* The proposed intervenor must assert a legal right or liability that will be directly affected by the litigation. *In re H.N.B.*, 619 N.W.2d 340, 343 (Iowa 2000).

DWD's application fails on this basis as well. DWD has not asserted any actual legal right or liability that may be affected by the underlying action. Its

claims are speculative on multiple levels. Initially, it speculates that a pipeline leak could occur, and then it speculates that if this first speculative event were to happen, it "could form significant quantities of carbonic acid that, when released into the river, would contaminate water that would flow easterly into the Driftless Area." DWD's broader concern involving "harms caused to the quantity and quality of Iowa's water even when there are not pipeline leaks" further distances DWD from the required nexus between this appeal and an actual legal right or liability.

DWD's claims are too broad, general, and speculative to warrant intervention. It has failed to show that it has any actual legal right or liability beyond speculation or contingency which would be impacted by the pipeline which is the basis for this appeal. *State ex rel. Miles v. Minar*, 540 N.W.2d 462, 465 (Iowa Ct. App. 1995).

#### **D. Exhaustion of Administrative Remedies and Issue Preservation**

Because DWD was not a party to the underlying agency action, none of the issues they now assert here have been properly preserved for appeal. See *Ahrendsen ex rel. Ahrendsen v. Iowa Dep't of Human Services*, 613 N.W.2d 674, 676 (Iowa 2000); *Soo Line R. Co. v. Iowa Dep't of Transp.*, 521 N.W.2d 685, 688 (Iowa 1994). This provides yet another reason for denial of its application for intervention.

DWD is asking this Court to consider and evaluate for the first time the particular factual claims set forth in its application regarding the pipeline's impact to water in the Driftless Area region. However, additional evidence may not be used to retry the factual issues in district court. *Office of Consumer Advocate v. Iowa Utilities Bd.*, 770 N.W.2d 334, 343 (Iowa 2009). In fact, except in very limited circumstances and, even then, only by application, "a court shall not hear any further evidence with respect to those issues of fact entrusted by...statute to the agency in that contested case proceeding." Iowa Code § 17A.19(7).

The reviewing court's discretion "is for the limited purpose of 'highlighting what actually occurred in the agency in order to facilitate the court's search for errors of law or unreasonable, arbitrary, or capricious action.'" *Office of Consumer Advocate*, 770 N.W.2d at 343, quoting *Krause v. State ex rel. Iowa Dep't of Human Servs.*, 426 N.W.2d 161, 165 (Iowa 1988). DWD cannot meet this standard.

#### **E. Amicus Curiae Brief**

DWD's alternative request to file an amicus curiae brief should similarly be denied. DWD correctly asserts that there is no provision in the IAPA or the Iowa Rules of Civil Procedure for amicus briefs. Iowa Rule of Appellate Procedure 6.906(1)(b), to the extent it is instructive here, provides that "a motion for leave must identify the interest of the applicant and state the reasons an amicus curiae

brief would assist the court in resolving issues preserved for appellate review in the case."

DWD's application provides no such basis. It does not assert that the issues are preserved for review, nor can it reasonably do so since the entire thrust of its argument for intervention is that the specific impacts to water in the Driftless Areas were not presented or considered below. DWD has not met the criteria of Rule 6.906(1) for the filing of an amicus brief, nor is there any other applicable legal provision which allows them to do so.

### **III. CONCLUSION**

For all of the foregoing reasons, the Court DENIES DWD's application to intervene as a matter of right or by permission. The Court also DENIES DWD's alternative request for leave to file an amicus curiae brief.

**IT IS SO ORDERED.**





State of Iowa Courts

**Case Number**  
CVCV067849

**Case Title**  
SHELBY COUNTY ET AL VS IOWA UTILITIES  
COMMISSION  
**Type:** OTHER ORDER

So Ordered

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Scott J. Beattie, District Court Judge,  
Fifth Judicial District of Iowa

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