

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

SWAN LAKE ROAD FARMS, LLC,

Petitioner,

vs.

IOWA UTILITIES COMMISSION,

Respondent.

CASE NO. CVCV068000

**RESPONDENT'S RESISTANCE TO
PETITIONER SWAN LAKE ROAD
FARMS, LLC'S NOTICE OF
TRESPASS AND REQUEST FOR
SUPPLEMENTAL HEARING**

COMES NOW Respondent Iowa Utilities Commission ("IUC"), by and through its undersigned counsel, pursuant to Iowa Rule of Civil Procedure 1.431(4), and for its Resistance to Petitioner Swan Lake Road Farms, LLC's Notice of Trespass and Request for Supplemental Hearing, respectfully states as follows:

1. On May 6, 2025, Petitioner Swan Lake Roads Farms, LLC (Swan Lake) filed a document that it captioned as "Notice of Trespass" with a request for hearing. Swan Lake asserts that ITC Midwest LLC ("ITC Midwest") commenced construction of the electric transmission project underlying the above-captioned judicial review. Swan Lake requests this Court stay additional construction activities because, it alleges: (1) ITC Midwest failed to obtain necessary Johnson County, Iowa construction permits, and (2) ITC Midwest committed trespass(es) onto Swan Lake's real property.¹
2. For two interrelated reasons, Swan Lake's stay request is improper and should be denied.
3. First, Swan Lake's grounds for the requested stay (*i.e.*, failing to obtain necessary permits

1. In paragraph 1 of its filing, Swan Lake states that it "has learned that SLRF's contractor – Terracon – has commenced work related to the franchise in question." In that same paragraph, Swan Lake identifies "SLRF" as "Swan Lake Road Farms, LLC." The undersigned assumes that Swan Lake's assertion is scrivener's error and that Swan Lake intended to assert that ITC Midwest's contractor has commenced work related to the franchise in question.

and trespass) are matters separate and distinct from the agency's administrative decision. Each underlying ground for the requested stay constitutes an original action that cannot be joined in this judicial review. *See Campbell v. Iowa Beer & Liquor Control Dep't*, 366 N.W.2d 574, 577 (Iowa 1985) (holding that an original action cannot be "piggybacked" onto a judicial review proceeding); *Black v. University of Iowa*, 362 N.W.2d 459, 462 (Iowa 1985) (stating that the rules of civil procedure "neither expressly nor by implication permit the bringing together in one lawsuit of a judicial review proceeding and an original law or equity action").

4. Perhaps Swan Lake could obtain a stay through a separate civil trespass action against ITC Midwest, and perhaps Johnson County, Iowa (the only entity or person that likely possesses the necessary standing to bring an action based on an alleged violation of its zoning ordinances) could obtain a stay for a construction company that fails to obtain necessary permits; however, what cannot occur is the joinder of such actions in the above-captioned judicial review.

5. Second, it is axiomatic that in a judicial review, the district court only possesses appellate jurisdiction. *Askvig v. Snap-On Logistics Co.*, 967 N.W.2d 558, 561 (Iowa 2021) (quoting *Christiansen v. Iowa Bd. of Educ. Exam'rs*, 831 N.W.2d 179, 186 (Iowa 2013) for the proposition that "[d]istrict courts exercise appellate jurisdiction over agency actions on petitions for judicial review"); *Iowa Med. Soc. v. Iowa Bd. of Nursing*, 831 N.W.2d 826, 838 (Iowa 2013) (stating that in a judicial review action, the "district court acts in an appellate capacity").

6. Consequently, in a judicial review proceeding, the district court "may only review issues considered and decided by the agency." *Klein v. Iowa Pub. Info. Bd.*, 968 N.W.2d 220, 235 (Iowa 2021) (quoting *Grudle v. Iowa Dep't of Rev. and Fin.*, 450 N.W.2d 845, 847 (Iowa 1990)). "The doctrine of exhaustion of administrative remedies provides that before a person may obtain judicial review of administrative action, that action must have been officially sanctioned and thereafter

reviewed within the agency to the fullest extent provided by law.” *North River Ins. Co. v. Iowa Div. of Ins.*, 501 N.W.2d 542, 545 (Iowa 1993).

7. The IUC never considered or decided whether ITC Midwest obtained all necessary construction permits from Johnson County, Iowa, or whether ITC Midwest trespassed on Swan Lake’s property. Because the IUC has not considered or decided the permitting or trespass issues, they are matters that are properly before this Court in this judicial review proceeding.

WHEREFORE, Respondent Iowa Utilities Commission requests this Court deny Swan Lake’s May 6, 2025 hearing and stay request.

Respectfully submitted,

/s/ Michelle Rabe

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**ALL PARTIES SERVED ELECTRONICALLY
THROUGH EFS**