

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

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| SWAN LAKE ROAD FARMS LLC, Petitioner. VS. IOWA UTILITIES COMMISSION, Respondent. | Case No. CVCV068000 ORDER FOR STAY |
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I. Introduction

As part of its Petition for Judicial Review in this matter, Petitioner Swan Lake Road Farms, LLC (“Swan Lake”) requested the court to stay, pending the outcome of the judicial review, any effort by ITC Midwest, LLC (“ITC Midwest”) to commence construction of an electric transmission line pursuant to Franchise No. F-23012, which the Iowa Utilities Commission (“Commission”) granted in an Order entered September 17, 2024 (“Order”). In its answer to the Petition for Judicial Review, ITC Midwest contended the request for a stay was premature because Swan Lake had requested a stay from the Commission, which had not been ruled on.

On February 28, 2025, the court heard oral argument on both the merits of the Petition for Judicial Review and the question of whether to issue a stay pending the court’s decision on judicial review. On May 6, 2025, Swan Lake filed a pleading entitled “Notice of Trespass and Request for Supplemental Hearing.” In its pleading, Swan Lake alleged a contractor had trespassed onto its property beyond the boundaries of the easement. Swan Lake inferred the contractor’s

activity is evidence ITC Midwest intends to commence construction of the electric transmission line in question before the court issues a ruling on the judicial review, and requested another hearing to address its proposed stay.¹

On May 15, 2025, the Commission filed a resistance to Swan Lake's request for a supplemental hearing on the requested stay. The Commission contends an alleged trespass on Swan Lake's property is not a subject of the judicial review proceeding, and the court has no jurisdiction to issue a stay based upon such a claim. The Commission suggests Swan Lake's remedy for an alleged trespass is a civil action against the contractor or the county which has authority to issue a building permit.

II. Analysis

Whether to issue a stay of agency action pending judicial review is a proper subject for the court on judicial review.² Iowa Code § 17A.19 provides two means by which a court may issue such a stay. First is pursuant to section 17A.19(5)(a), which grants the court discretion to stay agency action "on appropriate terms or other temporary remedies during the pendency of the judicial review." Second, under section 17A.19(5)(c), the court may grant relief if the agency refuses to

¹ In its September 17, 2024 Order, the Commission denied Swan Lake was entitled to a stay pending review of the proposed decision by the Commission. The Commission noted it would review Swan's Lake's request for a stay pending judicial review in the event such request was made. The agency record transmitted to the court does not contain the Commission's ruling on Swan Lake's request for stay pending judicial review. Based upon the Commission's analysis of the requested stay in its Order, in addition to the fact Swan Lake filed the recent motion for supplemental hearing, the court assumes the Commission denied the stay pending judicial review.

² The court finds the parties have sufficiently briefed and argued the issues involving the stay and another hearing is not necessary to issue a ruling.

grant an application for stay, but only after consideration and balancing of the following four factors:

- 1) The extent to which the application is likely to prevail when the court finally disposes of the matter;
- 2) The extent to which the applicant will suffer irreparable injury if relief is not granted;
- 3) The extent to which the grant of relief to the applicant will substantially harm other parties to the proceedings;
- 4) The extent to which the public interest relied on by the agency is sufficient to justify the agency's action in the circumstances.

It is not clear to the court whether Swan Lake is requesting a stay under subsection 5(a), 5(c), or both. Subsection 5(a) gives the court broad discretion to grant a stay “on appropriate terms” without considering or balancing the four factors in subsection 5(c). Regardless of which subsection applies, however, the court finds Swan Lake is entitled to a stay pending the court's final decision on its Petition for Judicial Review.³

The first factor in subsection 5(c) requires the court to consider and balance the extent or range of likelihood of success. Unlike an application for injunction, this factor does not require the applicant to show there is a

³ In *Grinnell College v. Osborn*, 751 N.W.2d 396, 401 (Iowa 2008), the court stated that “under section 17A.19(5), four factors are required to be considered before entering a stay.” The Iowa Supreme Court did not distinguish in *Grinnell College* between the authority granted in subsection 5(a) compared to subsection 5(c).

probability of success on the merits. *Compare Grinnell College v. Osborn*, 751 N.W.2d 396, 401 (Iowa 2008)(applying 17A.19(5)(c) factors) with *Max 100 L.C. v. Iowa Realty Co.*, 621 N.W.2d 178, 181 (Iowa 2001)(discussing requirements to obtain a temporary injunction under Iowa R. Civ. P. 1.1502.). The degree of likelihood of success required to be shown may vary depending upon the assessment of the other three factors. *Grinnell College*, 751 N.W.2d at 401.

In this case, the court must consider the likelihood of success based upon two different theories Swan Lake is asserting. First is whether the Commission's factual findings on which it based the grant of a franchise to ITC Midwest are supported by substantial evidence. Second is whether constructing an electrical transmission line in the right-of-way easement constitutes an unconstitutional taking of Swan Lake's property. There is considerable Iowa Appellate Court precedent by which to assess the likelihood of success on the first question, but no such precedent with respect to the second. Considering the Iowa Supreme Court's 3-3 split on the takings question in *Juckette v. Iowa Utilities Board*, 992 N.W.2d 218, 222 (Iowa 2023), the court cannot discount the probability the supreme court will ultimately find the Commission's Order to be unconstitutional.

The second factor considers the extent to which Swan Lake will suffer irreparable injury if the stay is not granted. The violation of a person's constitutional rights can constitute irreparable harm justifying the issuance of an injunction. *E.g., Law v. Gast*, 641 F. Supp. 3d 580, 603 (S.D. Iowa 2022)(citations omitted); *But see, Ruckelshaus v. Monsanto Co.*, 467 U.S. 986,

1016-17, 104 S.Ct 2862, 2880, 81 L.Ed.2d 815 (1984)(equitable relief not available to enjoin alleged taking of private property for public use, duly authorized by law, when a suit for compensation can be brought against the sovereign subsequent to the taking).

ITC Midwest suggests that, even if construction of the transmission line is a taking, the harm is not irreparable because Swan Lake can file a lawsuit seeking compensation.⁴ The Commission in its resistance characterizes the alleged trespass on Swan Lake's property as somehow separate from its grant of a franchise to ITC Midwest to build a transmission line in the right-of-way. The court is not persuaded by either argument. Compensation is not the only or even principal relief Swan Lake seeks in this case. Swan Lake's contention is that ITC Midwest is not at this time duly authorized by law to take its property. If the court ultimately rules the Commission's action here will result in an unconstitutional taking, the amount of compensation owed to Swan Lake, if any, will become a question only if ITC Midwest first seeks and obtains eminent domain authority, which Swan Lake has the right to contest. See Iowa Code 478.15. Even if ITC Midwest believes the Commission is unlikely to deny it eminent domain authority if requested, commencing construction of the transmission line before the Commission even considers the eminent domain

⁴ The Commission also questioned whether the franchise proceeding is the appropriate vehicle for Swan Lake to raise the question of a constitutional taking. (Opinion, p. 13, R, p. 02388). The court finds the constitutional issue should be considered now, in part to avoid the potential for the commencement of construction before the constitutional issue is addressed. The Iowa Supreme Court did not question in *Juckette* whether the franchise proceeding was the appropriate forum (although the Court did not decide the issue because of the 3-3 split among the Justices). As in *Juckette*, this court sees no reason the takings issue should not be considered in these proceedings.

question would irreparably harm Swan Lake's constitutional property interest. *See Grinnell College*, 751 N.W.2d at 402 (irreparable injury can be shown if the applicant is unable to obtain relief even if successful at the conclusion of judicial review).

The third factor requires the court to balance the extent to which a stay would substantially harm ITC Midwest. Delaying the commencement of construction could harm ITC Midwest by increasing the costs of construction, and perhaps result in other delay related expenses. Until now, however, there has apparently been no construction activity related to this line in the eight months since the Commission granted the franchise. The court finds that the additional weeks of delay before the court issues an opinion on judicial review does not outweigh the potential constitutional injury to Swan Lake.

The fourth factor is the public interest. The transmission of reliable electricity is an important public interest that must be considered. But the court is not convinced the existing electrical service in the area in question is so fragile without the addition of this new line that judicial review associated delays will harm the public interest. The public also has an interest in ensuring that the process of building new electrical transmission capacity protects the constitutional rights of affected property owners.

Lastly, at the February 28, 2025 hearing, ITC Midwest contended that a bond is mandatory with a stay. Unlike Iowa R. Civ. P. 1.1508 and Iowa R. App. P. 6.601(3), which impose a bond requirement to issue an injunction or stay a judgment, the court finds no authority in section 17A.19 mandating a bond in

connection with a stay of agency action during judicial review. Therefore, no bond will be ordered.

III. Conclusion and Disposition

For the reasons and authorities set forth herein, the court finds Swan Lake Road Farms, LLC's request for a stay pending judicial review is GRANTED. The court hereby stays any activity connected with the construction of the electric transmission line permitted by Franchise No. F-23012, pending further order of the court.



State of Iowa Courts

Case Number
CVCV068000

Case Title
SWAN LAKE ROAD FARMS VS IOWA UTILITIES
COMMISSION
ORDER TO STAY

Type:

So Ordered

A handwritten signature in black ink that reads 'Patrick D. Smith'.

Patrick D. Smith, District Court Judge,
Fifth Judicial District of Iowa

Electronically signed on 2025-05-19 09:39:43