

BEFORE THE IOWA RACING & GAMING COMMISSION

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PETITION BY RIVERSIDE CASINO AND )  
GOLF RESORT, LLC; AND WASHINGTON )  
COUNTY RIVERBOAT FOUNDATION, )  
INC. )  
)  
FOR A DECLARATORY ORDER )  
)  
REGARDING IOWA CODE ) **RULING ON PETITIONERS’**  
§ 99F.7(11) ) **REQUESTS FOR STAY**

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On November 8, 2024, Petitioners Riverside Casino and Golf Resort, LLC (Riverside) and Washington County Riverboat Foundation, Inc. (together, Petitioners) filed a petition for declaratory order with the Iowa Racing and Gaming Commission. The petition asked the Commission to issue a declaration that it lacks authority to issue any license for a gambling facility in Linn County because, Petitioners contended, Linn County had not satisfied Iowa Code chapter 99F’s referendum requirements.

Following several weeks of scheduled proceedings that included briefing and oral argument at the January 23, 2025 Commission meeting, the Commission voted 4–1 to decline to answer the petition for declaratory order under Iowa Code section 17A.9(1)(b)(1) and Iowa Administrative Code rule 491—2.28. The Commission issued a written order four days later, confirming the Commission’s vote.

In that January 27 order, the Commission emphasized that declining to issue a declaratory order was not the same as granting a license for a Linn County casino. The Commission also emphasized the distinction between a decision *on the petition*

and the completely separate decision on a *pending application* scheduled for February 6, 2025.

On February 6, the Commission voted on that pending application by Cedar Rapids Development Group, LLC (CRDG) and Linn County Gaming Association, Inc. (LCGA). The Commission voted 4–1 to grant the application by CRDG and LCGA to establish a gambling structure in Linn County.

Since then, Petitioners have filed two petitions for judicial review of Commission action. The first petition for judicial review (Washington County No. CVEQ007371) seeks judicial review of the Commission’s January 27 order declining to answer the petition for declaratory order. The second petition for judicial review (Washington County No. CVEQ007370) challenges a different Commission action: the February 6 vote to grant the license application submitted by CRDG and LCGA. On February 10, the district court consolidated the two judicial review cases.

Under Iowa Code section 17A.19(5)(a), “the agency may grant a stay . . . or other temporary remedies during the pendency of judicial review.” Petitioners filed two materially similar motions on February 6, asking the Commission to grant a stay during the pendency of judicial review. One motion is captioned with the declaratory order caption. The other is captioned with an *In re Gambling Games License* format. In both motions, Petitioners ask the Commission to stay the issuance and effectiveness of the licenses granted to CRDG and LCGA. Although the district court judicial review matters have been consolidated, two separate motions remain before the Commission.

After receiving the motions on February 6, the Commission scheduled a special virtual meeting for February 10, so that the Commission could promptly take up the motions. Given the short turnaround, CRDG and LCGA were not required to submit any written response or resistance—but nevertheless elected to do so.

Petitioners seek a stay because they continue to assert the Commission lacked statutory authority to issue a gambling games license in Linn County under Iowa Code section 99F.7(11). Petitioners assert they are likely to prevail in that challenge in the district court. Petitioners further assert a stay is necessary to prevent CRDG and LCGA from beginning construction on a casino that, Petitioners believe, is not legally authorized and could result in significant wasted effort and expense.

In response, CRDG and LCGA make several arguments. First, they maintain the Commission properly declined to issue a declaratory order and properly concluded the 2021 referendum did not deprive the Commission of authority to grant a license. Second, CRDG and LCGA contend the requests for stay are too late because Petitioners did not file them before February 6. Third, CRDG and LCGA assert a stay would substantially harm them, because they have already paid a \$4 million license fee installment payment under Iowa Code section 99F.10(8) and expended millions more in the last several years to prepare and submit the license application.

During the February 10 virtual meeting, the Commission voted unanimously to deny both motions for stay. The Commission also directed staff to prepare a written order. Although the caption of this order reflects only the declaratory order proceedings, the substance of this order addresses both motions.

## I. APPLICABLE LEGAL PRINCIPLES

An agency “may grant a stay on appropriate terms . . . during the pendency of judicial review.” Iowa Code § 17A.19(5)(a). Of course, “the statutory procedure for stay does not guarantee a grant of stay.” *Richards v. Iowa State Commerce Comm’n*, 270 N.W.2d 616, 620 (Iowa 1978). The Code “plainly makes the issuance of the stay discretionary.” *Teleconnect Co. v. Iowa State Commerce Comm’n*, 366 N.W.2d 511, 513 (Iowa 1985). In balancing multiple considerations, some factors can “come down strongly against issuing” a stay. *Id.* at 514.

## II. PETITIONERS’ REQUESTS WERE NOT TOO LATE

The Commission declines to find that Petitioners filed their motions too late. The statute allows the agency to grant a stay “during the pendency of judicial review.” Iowa Code § 17A.19(5)(a). Thus, under the plain language of the statute, motions could not be filed with the Commission until a judicial review petition was on file. In turn, a judicial review petition was not appropriate until the Commission took final agency action. *See id.* § 17A.19(1) (authorizing judicial review of “any final agency action”). The Commission did not take final agency action in granting a license until February 6. Thus, Petitioners’ motions filed that same day were not too late.

## III. REQUEST FOR STAY—DECLARATORY ORDER CAPTION

Although Petitioners’ requests for stay were not too late, the Commission denies both requests.

The request for stay captioned in the declaratory order proceedings is denied because, in those proceedings, there is nothing to stay. The declaratory order

proceedings, and the January 27 order resolving them, did not grant a license to CRDG and LCGA. Rather, the Commission’s January 27 order explained it was *not* granting a license. Yet Petitioners ask the Commission to “stay,” in those same proceedings, the issuance and effectiveness of *a license* granted to CRDG and LCGA. The Commission did not grant a license in the January 27 decision Petitioners have challenged in the district court.

Alternatively, to the extent Petitioners seek a stay of the January 27 decision itself, there is likewise nothing to stay. The Commission elected not to issue a substantive declaratory order. While a decision not to act may be subject to judicial review, *see* Iowa Code § 17A.2(2), it is not feasible to *stay* a decision not to act.

Because Petitioners target an action that did not occur in the proceedings Petitioners challenge, or alternatively seek to stay the Commission’s decision not to act, the request for stay captioned in the declaratory order proceedings is denied.

#### **IV. REQUEST FOR STAY—LICENSE CHALLENGE CAPTION**

The request for stay captioned as the “license challenge” is also denied. In a 1993 case, the Iowa Supreme Court concluded an agency should be able to consider granting a stay of agency action if proceeding without a stay would deprive the challenger of the practical ability to seek judicial review. *See Glowacki v. Iowa Bd. of Med. Exam’rs*, 501 N.W.2d 539, 542 (Iowa 1993). *Glowacki* involved a physician who was accused of violating administrative rules concerning his billing practices, but whose “competence to practice medicine was . . . unchallenged.” *Id.* at 540. For the billing-practices violations, the “board ordered a ninety-day suspension of

Glowacki’s license to practice medicine.” *Id.* Because of a statutory prohibition against stays in that context, Glowacki’s suspension was not stayed, meaning he would have to serve his entire suspension before his judicial review challenge to it could be resolved. *See id.* at 542.

The Iowa Supreme Court concluded that where denying a stay “effectively eliminates [the] statutory right to judicial review,” a stay should be permitted even if a statute purports to provide otherwise. *See id.* But here, denying a stay will not eliminate Petitioners’ statutory right to judicial review. Petitioners have already filed petitions for judicial review, and those petitions are on track to be resolved expeditiously, well before the Cedar Rapids casino facility opens. In other words, unlike in *Glowacki*, denying a stay does not prevent Petitioners from getting their day in court. Accordingly, a stay is not appropriate.

## V. CONCLUSION

Both of Petitioners’ Commission-level motions for stay are denied.

Dated: **February 17, 2025**



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Daryl Olsen, Chair  
Iowa Racing & Gaming Commission