

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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IN RE:  SUMMIT CARBON SOLUTIONS, LLC	DOCKET NO. HLP-2021-0001
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**ORDER ADDRESSING REQUEST FOR ENVIRONMENTAL IMPACT STUDY**

**PROCEDURAL BACKGROUND**

On June 2, 2022, the Winnebago Tribe of Nebraska (Winnebago Tribe) filed with the Utilities Board (Board) a request for an environmental impact study (EIS) in dockets for both Summit Carbon Solutions, LLC (Summit Carbon), and Navigator Heartland Greenway, LLC (Navigator), Docket Nos. HLP-2021-0001 and HLP-2021-0003, respectively.<sup>1</sup>

On June 17, 2022, Summit Carbon filed its response to the Winnebago Tribe's filing.

On June 21, 2022, Sierra Club filed comments addressing the Winnebago Tribe's request. Since Sierra Club's filing, numerous members of Sierra Club have submitted comments requesting an EIS be conducted.

**REQUEST FOR ENVIRONMENTAL IMPACT STUDY**

**A. Winnebago Tribe**

In its filing, the Winnebago Tribe requests that the Board, along with the U.S. Army Corps of Engineers; the Dakota County, Nebraska, Commissioners; the

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<sup>1</sup> The Board will address the request for an environmental impact study for Navigator in a separate order filed in Docket No. HLP-2021-0003.

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Woodbury County, Iowa, Commissioners; and any and all other entities impacted by Summit Carbon's and Navigator's proposed hazardous liquid pipelines, require an EIS prior to issuing any permit to either company. The Winnebago Tribe states the proposed hazardous liquid pipelines would cross land on or near the Winnebago Tribe's property and the Missouri River, and, absent an EIS, the Board cannot make an informed decision about either of the proposed projects.

**B. Summit Carbon**

In its response, Summit Carbon states it is committed to the protection of the environment and its proposed hazardous liquid pipeline will meet or exceed all federal and state environmental laws and regulations. Summit Carbon states it understands the Board is tasked with considering environmental impacts under Iowa Code § 479B.1; however, the EIS requested by the Winnebago Tribe stems from the National Environmental Policy Act (NEPA). Summit Carbon states the Board in Docket No. HLP-2014-0001 acknowledged that Iowa does not have a statute requiring or authorizing a state-level EIS. Summit Carbon believes the appropriate venue to request an EIS is through the U.S. Army Corps of Engineers. Summit Carbon asserts no additional action is needed by the Board, as the environmental issues within the scope of the Iowa statute can be considered during the Board's permitting process pursuant to Iowa Code chapter 479B and the Board's rules at 199 Iowa Administrative Code chapter 13.

**C. Sierra Club**

In its filing, Sierra Club states Summit Carbon's reliance upon NEPA is misplaced, and the Winnebago Tribe is requesting an environmental study, not a study conducted pursuant to NEPA. Sierra Club states only the Board has the authority to

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address the environmental impact of the entire project and that Sierra Club has previously provided this type of information to the Board; however, the Board has relied upon the Iowa Department of Natural Resources, the Environmental Protection Agency, or the U.S. Army Corps of Engineers, or asserted it has limited jurisdiction on the issue. Sierra Club indicates it therefore joins the Winnebago Tribe's request for an EIS.

### BOARD DISCUSSION

Iowa Code § 478B.1 states:

It is the purpose of the general assembly in enacting this law to grant the utilities board the authority to implement certain controls over hazardous liquid pipelines to protect landowners and tenants from environmental or economic damages which may result from the construction, operation, or maintenance of a hazardous liquid pipeline or underground storage facility within the state, to approve the location and route of hazardous liquid pipelines, and to grant rights of eminent domain where necessary.

The Board has reviewed the information and will not require Summit Carbon to conduct an EIS, nor will it conduct its own study. The Board addressed a similar request with regard to Dakota Access, LLC's (Dakota Access), hazardous liquid pipeline in Docket No. HLP-2014-0001. In an order issued October 5, 2015, the Board stated that all parties agreed there is no explicit statutory or rules requirement for an independent EIS. *In re: Dakota Access LLC, Order Denying Motion to Require Environmental Impact Report*, Docket No. HLP-2014-0001, at 7 (October 5, 2015). The Board cited the October 5, 2015 order in addressing environmental issues in its Final Decision and Order issued March 10, 2016. *In re: Dakota Access LLC, Final Decision and Order*, Docket No. HLP-2014-0001, at 53 (March 10, 2016) (finding "there is no

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explicit legal requirement, in statute or in rule, for an independent environmental impact report as a part of this proceeding”).

The Board will consider the specific environmental issues raised in this docket and whether Summit Carbon has addressed the environmental concerns sufficiently as part of the Board’s consideration of whether to grant a permit to Summit Carbon. The Board does not consider a separate EIS to be necessary to fulfill its statutory requirements in considering whether to grant the permit requested.

On March 23, 2022, Board Safety and Engineering staff (Staff) issued a staff review letter identifying 15 supplemental questions that required more information. The questions requested a range of information that included necessary environmental permits, construction in sensitive areas, weed management, and the crossing of water bodies. On April 13, 2022, Summit Carbon filed its response to Staff’s March 23, 2022 letter. Summit Carbon provided responses either explaining its plan or indicating what it anticipates doing in the future to address Staff’s questions.

The information provided by Summit Carbon in response to the questions asked by Staff in the March 23, 2022 letter is part of Staff’s review of the petition. In order to address environmental issues, it will be necessary for Summit Carbon to file testimony and exhibits that address the environmental permits and authorizations it needs to construct the proposed pipeline and what actions Summit Carbon is taking to ensure that the pipeline meets those requirements. Other parties may file testimony and exhibits in response to the evidence presented by Summit Carbon, and cross-examination of witnesses concerning the environmental issues can be conducted at the hearing. The evidence presented through prefiled testimony and cross-examination will

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then be considered by the Board in determining whether Summit Carbon should be granted a permit to construct, operate, and maintain its proposed hazardous liquid pipeline in Iowa.

As found by the Board in the Dakota Access docket, the Board does not consider a separate EIS beyond the statutory requirements in Iowa Code chapter 479B to be necessary. Compliance with the statutory requirements in that chapter and meeting the requirements for permits and authorizations from other state and federal agencies are sufficient to address any environmental issues raised during this proceeding.

### ORDERING CLAUSE

#### IT IS THEREFORE ORDERED:

The request for an environmental impact study to be conducted by Summit Carbon Solutions, LLC, filed on June 2, 2022, by the Winnebago Tribe of Nebraska, is denied.

#### UTILITIES BOARD

**Geri Huser** Date: 2022.10.03  
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**Richard Lozier** Digitally signed by Richard Lozier  
Date: 2022.10.06 09:25:47 -05'00'

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#### ATTEST:

**Louis Vander Streek** Louis Vander Streek  
2022.10.06 13:23:17  
-05'00'

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**Josh Byrnes** Date: 2022.09.30  
16:55:16 -05'00'

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Dated at Des Moines, Iowa, this 6th day of October, 2022.