

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: SUMMIT CARBON SOLUTIONS, LLC	DOCKET NO. HLP-2021-0001
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**ORDER REGARDING JUNE 6, 2023 STATUS CONFERENCE; SETTING
PROCEDURAL SCHEDULE; AND GRANTING INTERVENTION**

On January 28, 2022, Summit Carbon Solutions, LLC (Summit Carbon), filed a petition for a hazardous liquid pipeline permit with the Utilities Board (Board) to construct, operate, and maintain approximately 687 miles of 6- to 24-inch diameter pipeline for the transportation of liquefied carbon dioxide within the state of Iowa.

STATUS CONFERENCE

On June 6, 2023, the Board held a status conference to discuss the potential use of mediators, the use of presiding officers, satellite locations, and the procedural schedule. The status conference was attended by Summit Carbon; the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice; the Iowa Farm Bureau Federation (Farm Bureau); Sierra Club Iowa Chapter (Sierra Club); LSCP, LLC, and PLCP, LLLP (collectively, Corn Processors); Iowans for a Growing Agricultural Economy (IGAE); Mr. George Cummins; and a representative for the Boards of Supervisors for Dickinson, Emmet, Floyd, Hardin, Kossuth, Shelby, Wright, and Woodbury counties (collectively, the Counties).

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At the June 6, 2023 status conference, the Board proposed offering impartial, third-party mediators to balance the negotiation process and reduce regulatory delay. Sierra Club, the Counties, and Mr. Cummins spoke against the Board's proposal, while Summit Carbon, OCA, Farm Bureau, Corn Processors, and IGAE did not object to the proposal. After hearing from the parties, the Board concludes it will send a one-time mailing to all landowners subject to Exhibit H and ask whether they are interested in participating in mediation. It will be up to the landowner to voluntarily respond to the mailing. Based upon the voluntary feedback, the Board will examine whether to proceed with the mediation proposal. Should the Board determine there is sufficient, voluntary landowner participation, the Board will identify mediators for the mediation. The mediators will then contact the landowners and Summit Carbon to set up the one-time mediation.

In addition to the mediation question, the Board will also ask Exhibit H landowners about whether and to what extent they intend to participate in the hearing process. This is a logistical mechanism the Board is using in an attempt to determine what the hearing may entail. The Board is providing information to Exhibit H landowners on the many ways in which they may participate; the options selected by no means are limiting an Exhibit H landowner's participation, but rather will provide several avenues that may better align with a specific landowner's situation.

In order to facilitate the mailing, the Board will require Summit Carbon to file an Excel file containing the names and addresses of all landowners subject to Exhibit H within 14 days of this order.

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The June 6, 2023 status conference also included a discussion of using presiding officers or hearing officers to hear the evidence as it relates to Exhibit H landowner testimony. During the status conference, OCA, Farm Bureau, the Counties, Sierra Club, and Mr. Cummins stated the Board should either hear all the evidence or assign the case to an administrative law judge who would hear all the evidence and render a proposed decision in the docket. Based upon the discussion, the Board will not use presiding or hearing officers to hear evidence. However, one area where the Board will use a presiding officer is to address discovery disputes, as suggested by Farm Bureau at the status conference.

Under 199 Iowa Administrative Code 7.3, the Board may designate a presiding officer to conduct a hearing or other proceedings as ordered by the Board. In this case, the Board will limit the presiding officer's duties to hearing and deciding discovery disputes. The presiding officer will be authorized to hold an oral argument to hear discovery dispute in addition to any motions pending in regard to the dispute. The presiding officer may use discretion for procedural issues, including whether to consolidate multiple discovery disputes into a single oral argument. In the interest of justice, an oral argument allows the disputing parties an opportunity to articulate their rationales directly to the presiding officer. The Board will designate a presiding officer for all discovery disputes that have been filed or may be filed in this docket. The presiding officer will be responsible for scheduling, holding oral argument(s), and issuing proposed decision(s) on any discovery dispute raised in this docket.

The June 6, 2023 status conference also included a discussion regarding the use of satellite locations. The Board is still exploring remote participation options, which

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could include the potential use of physical satellite locations or allowing virtual testimony. Virtual testimony would allow an Exhibit H landowner to provide live testimony during the hearing, while allowing the Exhibit H landowner to testify from a location that is more convenient for them. The mailing discussed above also will be used to gauge interest in the virtual testimony option.

The June 6, 2023 status conference concluded with a procedural schedule discussion. Summit Carbon, Corn Processors, and IGAE all made recommendations to the Board to set the remainder of the procedural schedule and have the proceeding conclude by the end of 2023. The remaining parties raised issues with this proposal, ranging from making sure the hearing is not in the prime of fall harvest to scheduling the hearing for spring or summer 2024. The Board has heard the comments of the parties and will address the procedural schedule below.

PROCEDURAL SCHEDULE

On May 19, 2023, the Board set a partial procedural schedule establishing the due dates for such items as Summit Carbon's direct testimony, the intervention deadline, and OCA and Intervenor direct testimony. Based on the parties' discussions at the status conference, the Board is amending the previously issued procedural schedule and setting the remainder of the procedural schedule as shown in Attachment A, included in this order by reference.

The Board is proposing to amend the current procedural schedule by removing the OCA and Intervenor cross-rebuttal testimony. As stated at the status conference, Summit Carbon bears the burden of proof in this case and having testimony between

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OCA and Intervenors is not pertinent to whether Summit Carbon has met its burden of proof.

With regard to the hearing, the Board is scheduling the hearing to commence on August 22, 2023, at the Cardiff Event Center, 3232 First Avenue South, Fort Dodge, Iowa. The hearing will begin with testimony from landowners subject to Exhibit H. Following testimony of the Exhibit H landowners, the Board will evaluate the next step in the hearing.

The Board is flipping its normal approach to this type of hearing by having the Exhibit H landowners begin as a way to promote procedural efficiency. By starting in August with the Exhibit H landowner testimony, landowners who seek to testify at the hearing may do so without the conflict of peak harvest months. While it is very likely the hearing could last into October or beyond, beginning with Exhibit H landowner testimony and livestreaming the entire hearing will allow landowners who are harvesting and unable to attend in person to observe the hearing remotely.

To further assist Exhibit H landowners, the Board is creating a schedule whereby the landowners would be given a date range as to when the Board anticipates receiving testimony on Exhibit H for their respective geographic areas. This date range will be set to provide clarity to Exhibit H landowners about when they will need to be present to testify while avoiding unnecessary and lengthy hearing attendance.

Additionally, scheduling Exhibit H landowner testimony first will reduce the likelihood of having to recall Summit Carbon witnesses to address issues or comments made by the Exhibit H landowners after the Summit Carbon witnesses have testified. By having the Summit Carbon witnesses appear later in the hearing, those witnesses

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can address their direct testimony, testify to other parties' cross-examination, and provide testimony addressing Exhibit H landowners' testimony.

In addition to the above specific items, the Board is also setting the dates for the eminent domain staff report, Summit Carbon's testimony based on the eminent domain staff report, OCA and Intervenor testimony based on Summit Carbon's eminent domain testimony, Summit Carbon's rebuttal testimony, the discovery deadline, and when parties' witness and exhibit lists will be due. These dates are shown in Attachment A to this order. This schedule is designed to assist the Board in making a timely decision, no matter how difficult.

INTERVENTION

On May 25, 2023, the Woodbury County Board of Supervisors (Woodbury County BOS), by and through its counsel, Timothy Whipple, filed a petition to intervene in this docket. Woodbury County BOS states Iowa Code § 331.301(1) grants it the authority to "exercise any power and perform any function it deems appropriate to protect and preserve the rights, privileges, and property of the county or of its residents, and to preserve and improve the peace, safety, health, welfare, comfort, and convenience of its residents." Woodbury County BOS further states Iowa Code § 479B.7 allows governmental entities whose rights or interests may be affected by a proposed hazardous liquid pipeline to file an objection. Lastly, Woodbury County BOS states it has adopted a comprehensive plan and zoning ordinance regulating the use of land in the county pursuant to Iowa Code chapter 335. Woodbury County BOS states it desires to ensure Summit Carbon complies with the requirements of Iowa Code § 479B.5(7) and its local policies and requirements. Woodbury County BOS asserts it

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has a unique interest in this proceeding and no other party can adequately represent its interests in this proceeding.

The Board's subrule at 199 IAC 7.13(3) provides that "[a]ny person having an interest in the subject matter of a proceeding may be permitted to intervene at the discretion of the board..." In determining whether to grant intervention, the Board shall consider factors including, but not limited to, the prospective intervenor's interest in the subject matter of the proceeding, the effect a final decision in the proceeding may have upon the prospective intervenor's interest, and the extent to which the prospective intervenor may be expected to assist in the development of a sound record. *Id.*

No party filed an objection to Woodbury County BOS's petition to intervene.

Woodbury County BOS has stated that it has a substantial interest in the outcome of this proceeding and will assist in the development of a more complete record. Therefore, applying the 199 IAC 7.13(3) factors, the Board finds Woodbury County BOS has stated sufficient grounds for granting its petition to intervene.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. Within 14 days of this order, Summit Carbon Solutions, LLC, shall file an Excel document with the names and addresses of all landowners subject to Exhibit H.
2. The Utilities Board will designate a presiding officer in Docket No. HLP-2021-0001 for the limited purpose of hearing and issuing proposed decisions on discovery disputes.
3. The procedural schedule regarding Summit Carbon Solutions, LLC's,

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petition for a hazardous liquid pipeline permit is shown in Attachment A to this order.

4. The petition to intervene filed by the Woodbury County Board of Supervisors on May 25, 2023, is granted.

UTILITIES BOARD

Erik M. Helland Date: 2023.06.16
11:33:38 -05'00'

Joshua Byrnes Date: 2023.06.16
11:05:54 -05'00'

ATTEST:

Keetah Horras 2023.06.16
11:56:39 -05'00'

Sarah Martz Date: 2023.06.16
11:25:44 -05'00'

Dated at Des Moines, Iowa, this 16th day of June, 2023.

Attachment A

HLP-2021-0001 Procedural Schedule	
Procedural Activity	Dates
Scheduling Conference	12/13/22
Technical Conference	3/15/23
Prehearing Status Conference	4/11/23
Summit Carbon Direct Testimony Due	5/25/23
Prehearing Status Conference	6/6/23
Petition Staff Report (Excludes Exhibit H) Due	6/26/23
Prehearing Status Conference	7/10/23
Intervention Deadline	7/10/23
Summit Carbon Petition Staff Report Testimony Due	7/10/23
Eminent Domain Staff Report (Exhibit H)	7/10/23
Summit Carbon Eminent Domain Staff Report Response Testimony Due	7/21/23
OCA & Intervenor Direct Testimony Due	7/24/23
Witness and Exhibit List Due	8/14/23
OCA & Intervenor Rebuttal to Summit Carbon's Eminent Domain Staff Report Response Testimony Due	8/14/23
Discovery Deadline	8/17/23
Summit Carbon Rebuttal Testimony Due	8/21/23
Evidentiary Hearing (Beginning with Exhibit H Testimony)	8/22/23 until concluded