

## IOWA UTILITIES BOARD

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IN RE:

SUMMIT CARBON SOLUTIONS, LLC

DOCKET NO. HLP-2023-0004

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### ORDER ADDRESSING MOTION TO CONSOLIDATE

On June 19, 2023, Summit Carbon Solutions, LLC (Summit Carbon), filed a request for informational meetings in Mitchell and Floyd counties in Iowa with the Utilities Board (Board). Summit Carbon requests the informational meetings for a proposed 31-mile, six-inch diameter hazardous liquid pipeline, called the Absolute Energy Lateral, for the transportation of liquefied carbon dioxide.

On June 20, 2023, Sierra Club Iowa Chapter (Sierra Club) filed a motion to consolidate this docket with Docket No. HLP-2021-0001. Docket No. HLP-2021-0001 is another petition for a hazardous liquid pipeline permit filed by Summit Carbon. Sierra Club states this lateral is “clearly a part of the larger project that is the subject of Docket No. HLP-2021-0001” and could easily be consolidated with Docket No. HLP-2021-0001. Sierra Club asserts the issues and evidence in this docket will be virtually identical to the issues and evidence in Docket No. HLP-2021-0001, and, therefore, consolidation will be an efficient use of the Board’s time. Sierra Club states under 199 Iowa Administrative Code (IAC) 7.14(1), the Board must consider the following factors when determining whether to consolidate: (1) whether the matters at issue involve common parties or common questions of fact or law; (2) whether consolidation is likely to expedite or simplify consideration of the issues involved; (3) whether consolidation would adversely affect the substantial rights of any of the parties to the proceedings; and (4) any other relevant factors. Sierra Club asserts both dockets will have

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substantially similar parties, but notes there would be new or additional landowners based upon the additional mileage. Sierra Club states the only party that could be harmed by consolidating would be Summit Carbon, due to an extension of the procedural schedule. Sierra Club asserts a delay is not a violation of substantial rights, absent actual prejudice. See *McFee v. Iowa Dep't of Transp.*, 400 N.W.2d 578 (Iowa 1987). Sierra Club argues Summit Carbon cannot show actual prejudice. Therefore, Sierra Club requests the Board consolidate this docket with Docket No. HLP-2021-0001.

On July 12, 2023, Summit Carbon filed its response to Sierra Club's motion. Summit Carbon states the permit requested in Docket No. HLP-2021-0001 spans 688 miles and 29 counties, whereas the permit requested in this docket is for 31 miles in two counties. Summit Carbon asserts Docket No. HLP-2021-0001 has been ongoing for nearly two years. In that time, Summit Carbon states it has filed its petition and exhibits, filed motions and responses, responded to Board orders, participated in hearings before the Board, and began submitting its prefiled testimony. Summit Carbon states this docket is just beginning, noting the informational meetings are yet to be held.

Summit Carbon argues that none of the relevant factors in 199 IAC 7.14(1) support consolidation of this docket. Summit Carbon states the parties are not common in each docket. Summit Carbon notes that at this time, there are only two parties to the docket, Summit Carbon as the petitioner and the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, by operation of law. Summit Carbon states Mitchell County is not a party in Docket No. HLP-2021-0001 and the intervention deadline has already passed in Docket No. HLP-2021-0001. Furthermore, Summit Carbon states the landowners impacted in this docket will be different from the

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landowners impacted in Docket No. HLP-2021-0001. Summit Carbon states that while there may be some common questions of law or fact between the two dockets, many are not. Summit Carbon asserts the proposed hazardous liquid pipeline in this docket involves a much smaller project and will have a smaller set of facts than that of Docket No. HLP-2021-0001.

As it relates to the third factor, Summit Carbon argues consolidation would not expedite or simplify the issues in the two dockets. Summit Carbon states this docket is approximately two years behind Docket No. HLP-2021-0001, which already has progressed through much of the Board's process for hazardous liquid pipelines, while this proceeding has just begun that process. Summit Carbon notes it is not yet able to begin negotiating with landowners for easements. Summit Carbon asserts that consolidating a docket that has its informational meeting scheduled for August 8, 2023, with a docket scheduled for hearing on August 22, 2023, will do nothing but delay and complicate the issues and procedures involved.

Lastly, Summit Carbon asserts consolidation would affect substantial rights of multiple parties. Summit Carbon states Mitchell County may want to be involved in the Board's process, but it is two years behind the counties impacted in Docket No. HLP-2021-0001 and the intervention deadline has passed. Furthermore, Summit Carbon states delaying Docket No. HLP-2021-0001 could result in millions, or even hundreds of millions of dollars in unrecoverable delay costs. Summit Carbon states the United States District Court for the Southern District of Iowa held Summit Carbon has shown not only prejudice, but irreparable harm from delays. *See Summit Carbon Solutions, LLC v. Shelby County, Iowa, et al.*, Case No. 1:22-cv-00020-SMR-SBJ, "Order on Motion for Preliminary Injunction" (S.D. Iowa July 10, 2023).

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The Board has reviewed the filings and will not consolidate this docket with Docket No. HLP-2021-0001. The Board agrees with Summit Carbon that the potential parties at issue in this docket will not be the same as those in Docket No. HLP-2021-0001. Focused particularly on the landowners involved, it is unlikely that the landowners owning parcels on which the pipeline in Docket No. HLP-2021-0001 is proposed to be located, or their tenants, are the same landowners or tenants of parcels on which the pipeline in Docket No. HLP-2023-0004 is proposed to be located. Furthermore, as noted by Summit Carbon, the intervention deadline in Docket No. HLP-2021-0001 was July 10, 2023. While there may be some common questions of law or fact between this docket and Docket No. HLP-2021-0001, there are sufficient differences between the two that warrant not consolidating. As stated by Summit Carbon, this docket is for a proposed 31-mile, six-inch diameter hazardous liquid pipeline in two counties, unlike the proposed hazardous liquid pipeline in Docket No. HLP-2021-0001. The assertions made by Sierra Club regarding the common questions of law or fact could apply to many proceedings before the Board, given the nature of the Board's legislatively delegated authority.

The Board does not find that consolidation will expedite or simplify consideration of the issues involved. The Board finds the opposite to be true in this situation. This docket has yet to have required informational meetings, which means Summit Carbon cannot begin negotiating with any potentially impacted landowners. Additionally, Summit Carbon cannot file its petition for a permit with the Board until 30 days after the informational meeting. Iowa Code § 479B.4(3). Given those parameters, Summit Carbon could not file its revised petition and exhibits until at least September 7, 2023, assuming the Board is able to declare the informational meetings complete. The Board

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would then need to review the filing and have Summit Carbon make any necessary revisions. Once the review is complete, notice would have to be sent in compliance with Iowa law and the Board's rules.<sup>1</sup> These additional processes and procedural requirements, which are yet to be completed, support the Board concluding the process would not be expedited by consolidating this docket with Docket No. HLP-2021-0001.

The Board also finds consolidation would affect Summit Carbon's rights. As noted by Summit Carbon, only it and OCA are parties to this proceeding at the time of this filing. While other parties could intervene later in this docket, the intervention deadline in Docket No. HLP-2021-0001 has passed, which would remove the ability for persons affected by this docket to participate fully in Docket No. HLP-2021-0001.

For the above reasons, the Board will deny Sierra Club's motion to consolidate.

**IT IS THEREFORE ORDERED:**

The motion for consolidation filed by Sierra Club Iowa Chapter on June 20, 2023, is denied.

**UTILITIES BOARD**

Erik M. Helland 2023.07.26 16:58:50 -05'00'

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Joshua Byrnes Date: 2023.07.27  
09:20:12 -05'00'

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ATTEST:

Keetah Horras 2023.07.27  
13:32:07 -05'00'

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Sarah Martz Date: 2023.07.27  
12:52:37 -05'00'

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Dated at Des Moines, Iowa, this 27th day of July, 2023

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<sup>1</sup> The Board notes it is possible that Summit Carbon has already sent and published notice, which could create additional confusion should the Board move the hearing date to accommodate the consolidation.