

IOWA UTILITIES BOARD

IN RE:

SUMMIT CARBON SOLUTIONS, LLC

DOCKET NO. HLP-2021-0001

ORDER DENYING PETITION FOR DECLARATORY ORDER

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.

On September 21, 2023, the Hardin County Board of Supervisors (Hardin County BOS) filed a petition for a declaratory order regarding the carbon dioxide capture facilities that are part of SCS Carbon Removal, LLC (Carbon Removal). Hardin County BOS states the carbon dioxide capture facilities prepare the carbon dioxide before it is placed into the hazardous liquid pipeline. Hardin County BOS asserts the carbon dioxide capture facility is outside the scope of Summit Carbon's petition and that Summit Carbon is not seeking a permit from the Board to construct the carbon dioxide capture facilities. Hardin County BOS posits the carbon dioxide capture facilities fall outside the scope of Iowa Code chapter 479B, which defines a "pipeline" to mean a "pipe or pipeline and necessary appurtenances used for the transportation or transmission of hazardous liquids." Hardin County BOS argues the carbon dioxide capture facility is a processing facility where the carbon dioxide is liquefied prior to being placed into the hazardous liquid pipeline.

Hardin County BOS also states the carbon dioxide capture facilities are outside the scope of federal regulations. Hardin County BOS asserts the Pipeline and

DOCKET NO. HLP-2021-0001

PAGE 2

Hazardous Materials Safety Administration (PHMSA) does not have authority over the carbon dioxide capture facility. Hardin County BOS states 49 USC § 60102(i)(3) prohibits PHMSA from regulating “piping or equipment used in the production, extraction, recovery, lifting, stabilization, separation, or treatment of carbon dioxide or the preparation of carbon dioxide for transportation by pipeline at production, refining, or manufacturing facilities.”

Hardin County BOS requests the Board issue a declaratory order stating Summit Carbon’s petition or permit in Docket No. HLP-2021-0001 does not include the carbon dioxide capture facilities; the carbon dioxide capture facilities are not a utility or pipeline under Iowa Code chapter 479B or 199 Iowa Administrative Code (IAC) chapters 1-45; the Board has no jurisdiction over the carbon dioxide capture facility and does not preempt local ordinances or permitting requirements; and the carbon dioxide capture facility is not a hazardous liquid pipeline governed by PHMSA.

On October 11, 2023, Quad County Corn Processors Cooperative; Corn, LP; Green Plains Inc.; Plymouth Energy, LLC; Golden Grain Energy, LLC; Homeland Energy Solutions, LLC; and Siouxland Energy Cooperative (collectively, Corn Processors) filed a motion for extension of time to respond to Hardin County BOS’ petition. Corn Processors assert a Board ruling on Hardin County BOS’ petition will have a direct effect on Corn Processors. Corn Processors request the Board allow it 20 additional days to file a resistance to Hardin County BOS’ petition.

LEGAL REQUIREMENTS

Iowa Code § 17A.9 allows “[a]ny person [to] petition an agency for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within

DOCKET NO. HLP-2021-0001

PAGE 3

the primary jurisdiction of the agency.” The statute continues by stating the agency shall issue a declaratory order in response to the petition unless the “agency determines that issuance of the order under the circumstances would be contrary to a rule” adopted by the agency or the declaratory order “would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.” Iowa Code §§ 17A.1(b)(1) and (2). The Board’s rules at 199 IAC 4.9(1) begin by stating “the board will not issue a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to determination of the matter in a declaratory order proceeding” and list nine grounds on which the Board may refuse to issue a declaratory order. Under Iowa Code § 17A.5, the agency has 30 days to issue an order regarding the petition for declaratory order.

DISCUSSION

The Board has reviewed the petition filed by Hardin County BOS and will decline to issue a declaratory order as requested. As an initial matter, the Board notes that Iowa Code § 17A.9 contemplates declaratory order proceedings as independent proceedings, generally separate from a contested case or other proceeding. In this case, Hardin County BOS filed its petition in the underlying contested case docket. With that in mind and based on Iowa Code § 17A.9 and Board rules, the Board declines to issue a declaratory order as requested by Hardin County BOS in its petition.

First, under Iowa Code § 17A.9(1)(b)(2), the Board “shall not issue a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.” Based upon Hardin County BOS’ petition, Carbon

DOCKET NO. HLP-2021-0001

PAGE 4

Removal and Summit Carbon could be substantially prejudiced by a decision of the Board on the question presented by Hardin County BOS. To date, neither of these companies has submitted in writing a consent to this petition for declaratory order. As the Board's decision could substantially prejudice non-consenting parties' rights, the Board is prohibited from issuing a declaratory ruling.

Assuming all necessary parties consented to the declaratory petition, under 199 IAC 4.9(1), the Board may refuse to issue a declaratory order for other specific reasons. In this particular case, 199 IAC 4.9(1)(4) and (9) apply. Under 199 IAC 4.9(1)(4), the Board may decline to issue a declaratory order where the questions presented are also presented in a contested case or judicial review proceeding that may definitely resolve them. The questions presented have also been presented in this docket, which is a contested case. See, e.g., HT¹ Vol. 13, p. 3442-43. The questions presented have also been presented in a current judicial review proceeding, *Cummins v. Iowa Utils. Bd.*, Polk Cnty. Dist. Ct., CVCV066045. The Board finds the questions presented have been presented in two forums that may definitely resolve them. The Board will deny the petition on this ground as well.

If the questions presented were not a part of the contested case and judicial review proceedings, the Board's rules at 199 IAC 4.9(1)(9) state the Board may decline to issue a declaratory ruling if the order "would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of the petitioner." In this case, there are a number of other persons with adverse interests who have not joined Hardin

¹ HT refers to the transcript for the hearing that commenced on August 22, 2023.

DOCKET NO. HLP-2021-0001

PAGE 5

County BOS' petition. This includes, but is not limited to Summit Carbon and also Carbon Removal, the latter of which is not even a party to the underlying contested case proceeding. Based on this rule as well, the Board will deny Hardin County BOS' petition for a declaratory order. Based upon the above reasons, the Board will not issue a declaratory order. As the Board is declining to issue a declaratory order, Corn Processors' motion for extension of time is moot.

IT IS THEREFORE ORDERED:

1. The petition for declaratory order filed by the Hardin County Board of Supervisors on September 21, 2023, is denied.
2. The motion for extension of time filed by Quad County Corn Processors Cooperative; Corn, LP; Green Plains Inc.; Plymouth Energy, LLC; Golden Grain Energy, LLC; Homeland Energy Solutions, LLC; and Siouxland Energy Cooperative on October 11, 2023, is moot.

UTILITIES BOARD

Erik M. Helland Date: 2023.10.17
11:38:36 -05'00'

Joshua Byrnes Date: 2023.10.17
14:44:42 -05'00'

ATTEST:

Keetah A Horras Date: 2023.10.17
16:18:14 -05'00'

Sarah Martz Date: 2023.10.17
15:40:10 -05'00'

Dated at Des Moines, Iowa, this 17th day of October, 2023.