STATE OF IOWA
DEPARTMENT OF COMMERCE
IOWA UTILITIES BOARD

IN RE: **SUMMIT CARBON SOLUTIONS, LLC**	**DOCKET NO. HLP-2021-0001**

INITIAL POST-HEARING BRIEF OF SUMMIT CARBON SOLUTIONS, LLC

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INTRODUCTION

Corn is the leading agricultural crop in Iowa, dominating the state's farming landscape. Corn is Iowa's largest agricultural crop. Over 50% of that corn is sold to ethanol production in the state. Ethanol, in turn, is of such importance to Iowa's economy that political officials of both parties routinely fight to protect and expand Iowa's ethanol business. The Iowa ethanol industry provides a market for corn, provides jobs, and provides a renewable liquid fuel . Many of Iowa's ethanol plants are locally and cooperatively owned, providing additional revenue to farms and communities, while the corn market supports underlying land value in rural Iowa. All of this economic activity based on corn and ethanol provides a vital tax base for rural cities and counties. Corn, and the market for it, is a crucial thread in the tapestry of Iowa's past, is inseparable from Iowa's present, and is a key to Iowa's success in the future.

This critical sector of Iowa's economy is under threat from the push to rapidly decarbonize the United States economy. This threat, however, is also an opportunity. Summit Carbon Solutions, LLC ("Summit"), based in Ames, Iowa and founded by a long-time Iowa agricultural company, is developing a carbon management system aimed at helping Iowa's ethanol (and by extension, corn) sector maximize this opportunity through a process that converts Iowa's ethanol into a low-carbon fuel. Summit, by capturing, transporting, and permanently sequestering the carbon dioxide ("CO2") from the ethanol fermentation process of its partnering plants can help ensure Iowa-made ethanol not only survives, but thrives, well into the future and can play a part – rather than be threatened by – decarbonization. In doing so, Summit will also prevent nearly 10 million metric tons per annum ("MMTPA") initially, and up to 18 MMTPA at full capacity, of CO2 from reaching the atmosphere each year. At full capacity this would be the equivalent of taking the carbon emissions of 3.9 million gas-fueled cars off the roads.

In short, the Summit carbon capture and storage (CCS) project – including the pipeline at the center of this docket – will serve Iowa's bipartisan pro-ethanol policies, serve the federal renewable fuel and emission control policies embodied in the 45Q and 45Z tax credit programs, and provide over $1.6 billion of economic injection through the project's investment in infrastructure in Iowa, including $43 million per year in new long-term tax base. The record in this case shows significant benefits that support a finding that the pipeline "promotes the public convenience and necessity." Iowa Code § 479B.9. As is discussed further below, such a finding is consistent with chapter 479B and prior cases of the Iowa Utilities Board ("Board") and the Iowa Supreme Court, most notably *Puntenney v. Iowa Utilities Board*, 928 N.W.2d 829 (Iowa 2019) which guides many of the issues in this case. Arguments to the contrary are, for reasons discussed below, not compelling and ignore or misapprehend the law and the facts applicable to Summit's application. The Board should grant the requested pipeline permit promptly, allowing Iowa to obtain maximum benefits from the Summit Project.

PROJECT BACKGROUND

The Summit Project is a pipeline system with a main line from Iowa to North Dakota and laterals in five states (Iowa, Nebraska, Minnesota, South Dakota, and North Dakota).[1] Thirty-two ethanol plants, including thirteen in Iowa, have already entered into long-term agreements to utilize the Project to provide carbon capture, transportation, storage, or combinations of those services.[2] The entire system will have an initial length of approximately 2,000 miles, including approximately 688 miles in Iowa, and will carry the captured CO2 to a tested and verified

[1] Summit Pirolli Direct at 3; Revised Petition Ex. F at 1. Two additional plants have signed in South Dakota since the time of the testimony; the number of total participants is now thirty-four.

[2] Summit Pirolli Direct at 3; Summit Pirolli Rebuttal at 6.

geologic sequestration site in North Dakota.[3] The Iowa portion traverses twenty-nine counties, and nearly 75% of the route miles in Iowa are covered by voluntary easement agreements – a number that continues to climb.[4]

Construction of the pipeline will create 1,200 jobs annually in Iowa and an approximate $1.8 billion in economic output in Iowa.[5] In fact, Summit has already paid Iowa landowners over $100 million,[6] money that helps farmers keep land in their families, and money that gets spent at local businesses. As part of building out the system, Summit fronts the capital costs for capture and compression equipment at the ethanol plants.[7] The biogenic CO2 from the ethanol fermentation process is very pure; once captured it is dehydrated, compressed to a dense phase, and injected into the pipeline as a fluid.

Preventing the CO2 from becoming an atmospheric emission reduces the carbon intensity score for participating ethanol plants by roughly 50%, allowing the ethanol produced to be classified as a low-carbon fuel (LCF).[8] Qualifying as an LCF is important to open and expand markets for Iowa ethanol in jurisdictions like the west coast of the United States and all of Canada, which have LCF markets.[9] It is also important in the event outright restrictions on carbon in fuel are enacted, in which case qualifying as an LCF will maintain the viability of

[3] Summit Powell Direct at 4; Summit Pirolli Direct at 3; Revised Petition Ex. F at 2; Summit Schovanec Staff Report Testimony at 3.

[4] Petition at 1; Revised Petition Ex. F at 2; Tr. Vol. 10 at 2598:25 – 2599:23.

[5] Summit Phillips Rebuttal at 4; Summit Phillips Rebuttal Ex.

[6] *See* Tr. Vol. 9 at 2416:6-7 (Economist Phillips testifying that one update to his model was that "the new financial model reflects several hundred million dollars of right-of-way payments that were not in the original model.")

[7] This is the model for the thirteen ethanol plants in Iowa to date, and it makes the Project more attractive and viable for smaller, locally-owned facilities. As the Board is aware, see Tr. Vol. 8 at 1964:22 – 1965:19, Summit has also been negotiating a different form of Transportation Services Agreement that does not involve capture; Summit has been and is holding itself out as offering either model and anticipates future growth will be a mix of both models.

[8] Summit Pirolli Direct at 3; Summit Pirolli Rebuttal at 3.

[9] Summit Pirolli Direct at 3 – 4; Summit Pirolli Rebuttal at 2.

Iowa's ethanol as a fuel. On the other hand, by qualifying as an LCF, Iowa's ethanol stands to obtain a premium in the market of 10-to-35 cents per gallon on a net basis.[10]

The Project will also play an important role in reducing greenhouse gas emissions. As governments, industries, and consumers seek to reduce carbon emissions, a dramatic increase in carbon capture and sequestration ("CCS") is crucial to achieving that goal. The Project is capable of moving up to 18 million metric tons of CO2 every year for safe and permanent storage, which is the equivalent of removing approximately 3.9 million cars from our roads on an annual basis.[11]

Importantly, these benefits can be obtained in a way that is safe for Iowans. While the federal Pipeline and Hazardous Materials Safety Administration ("PHMSA") has exclusive jurisdiction over the safe design, construction and operation of the pipeline, the Board can be assured the Summit pipeline will be state-of-the art, with safety features and standards that go above and beyond PHMSA requirements in multiple ways. For example (and this list is not exhaustive):

- PHMSA requires approximately 10% of girth welds to be x-rayed; Summit will x-ray 100% of the girth welds;
- PHMSA requires a minimum three feet depth of cover; Summit will install at a minimum of four feet to top of pipe to reduce the likelihood of impacts or strikes;
- Summit will exceed the required pipe wall thickness at several categories of locations;
- PHMSA requires dispersant analysis for high consequence areas ("HCAs") only; Summit performed dispersant analysis along the entirety of the pipeline; and

[10] Summit Pirolli Rebuttal at 4.

[11] Opponents have argued that this is not an amount that will "solve" the emissions issue. That argument is disingenuous: no one action will alone make a decisive difference in the amount of carbon emissions reaching the atmosphere. By that logic, no one should attempt any mitigations. Impacts on emission levels will require a lot of separate actions, of which Summit's Project is one. But it is nonetheless a large one, relatively speaking, and each new success encourages others to follow suit – which is precisely why the federal 45Q and 45Z incentives were put in place.

- Summit will apply the integrity management plan requirements that PHMSA sets for high HCAs to the entire pipeline.

In addition, this will be one of the first pipelines built under PHMSA's 2021 amendment to the valve spacing rules, requiring closer valve spacing. The valves will all be emergency flow restriction devices, that are remote actuating and do not require human operation, and each valve will have redundant communication and power supply. Further, Summit will implement a fracture control program that starts with American milled steel with metallurgical properties chosen for this specific purpose, and it will be hydrostatically tested to 125% of the pipeline's Maximum Operating Pressure ("MOP") for a continuous eight-hour period. It is important to note that the PHMSA-set MOP is well below the actual maximum yield strength of the pipe, to allow a margin of safety. Moreover, the actual operating pressure of the pipeline will be below the MOP, adding yet an additional increment of safety. Finally, unlike many products covered by Iowa Code chapter 479B, CO2 is not flammable or explosive, and is not inherently toxic.

ARGUMENT

I. THE PROJECT PROMOTES THE PUBLIC CONVENIENCE AND NECESSITY.

Iowa Code chapter 479B provides a list of requirements that an application for a pipeline permit must fulfill, but once the basic application requirements are met, the standard for the Board's decision is succinct:

> The board may grant a permit in whole or in part upon terms, conditions, and restrictions as to location and route as it determines to be just and proper. A permit shall not be granted to a pipeline company unless the board determines that the proposed services will *promote the public convenience and necessity*.

Iowa Code § 479B.9 (emphasis added).

While the "public convenience and necessity" standard is not further defined by statute, the Board is not writing on a blank slate. The Board, as well as the Iowa Supreme Court, have addressed the meaning of "public convenience and necessity" on many occasions in the past,

including in pipeline cases. *See, e.g., In re: NuStar Pipeline Operating P'ship L.P.*, Docket No. HLP-2021-0002, "Final Decision and Order" ("*NuStar Order*") at 30 (IUB Apr. 26, 2023); *In re Dakota Access, LLC,* Docket No. HLP-2014-0001, "Final Decision and Order" at 16 (IUB Mar. 10, 2016) ("*Dakota Access Order*"); *Puntenney v. Iowa Utilities Bd.*, 928 N.W.2d 829, 841 (Iowa 2019); *S.E. Iowa Coop. Ele. Ass'n v. Iowa Utilities Bd*, 633 N.W.2d 814, 821 (Iowa 2001); *In re Ag Processing, Inc.*, Docket No, P-835, "Proposed Decision and Order Granting Permit" (IUB Sept. 16, 1996) at 5.

In general, the "public convenience and necessity" standard is not a high bar. "Public necessity" goes to the need for the project, but it clearly is not an *absolute* need – rather, the question is whether there is a demonstrable role for the project that satisfies *any* kind of need. "Public convenience" is a slightly different (and even less demanding) question, and looks at whether there is a public benefit to the project. As the Iowa Supreme Court recently reiterated:

> Regarding the meaning of "public convenience and necessity," our court has held,
>
> > The words are not synonymous, and effect must be given both. The word "convenience" is much broader and more inclusive than the word "necessity." Most things that are necessities are also conveniences, but not all conveniences are necessities.... The word "necessity" has been used in a variety of statutes .... It has been generally held to mean something more nearly akin to convenience than the definition found in standard dictionaries would indicate. So it is said the word will be construed to mean not absolute, but reasonable, necessity.

Puntenney, 928 N.W.2d at 840 – 41 (quoting *Thomson v. Iowa State Commerce Commn*, 15 N.W.2d 603, 606 (Iowa 1944).

Also in *Puntenney*, the Iowa Supreme Court approved of the Board's reliance on the following guidance from the Illinois Supreme Court regarding the meaning of necessity:

> The word connotes different degrees of necessity. It sometimes means indispensable; at others, needful, requisite, or conducive. It is relative rather than

> absolute. No definition can be given that would fit all statutes. The meaning must be ascertained by reference to the context, and to the objects and purposes of the statute in which it is found.

Id. at 841 (quoting *Wabash, Chester & W. Ry. v. Commerce Commn ex rel. Jefferson Sw. R.R.*, 141 N.E. 212, 215 (Ill. 1923).

Ultimately, the Board applies a flexible, balancing approach to the inquiry. As explained in *Dakota Access*, the Board applies, "a balancing test, weighing the public benefits of the proposed project against the public and private costs or other detriments as established by the evidence in the record." *Dakota Access Order* at 16. This balancing approach has been consistently used by the Board and has been upheld by the Iowa Supreme Court. *NuStar Order* at 30 ("In order to determine whether the proposed hazardous liquid pipeline promotes the public convenience and necessity, the Board will conduct a balancing test for the factors at issue in this case"); *Dakota Access Order* at 113 – 114; *S.E. Iowa Coop. Elec. Ass'n,* 633 N.W.2d at 821 (approving the Board's use of balancing test in electric transmission franchise proceeding); *Puntenney*, 928 N.W.2d at 840 – 41 (upholding the Board's use of balancing test in *Dakota Access*, noting the "balancing approach is consistent with our prior caselaw and is supported by legal authority elsewhere.").

A. <u>There is a Demonstrated Demand for the Project.</u>

While many factors may be relevant to the Board's balancing inquiry, a review of the Board's precedent makes clear that demand for the Project is itself a critical factor in demonstrating public convenience and necessity. For example, in *Dakota Access* the Board noted that multiple shippers had entered into long-term agreements to utilize the pipeline, ultimately finding that, "[t]he fact that the proposed pipeline will serve a market where there is a clear demand for pipeline transportation service is another benefit." *Dakota Access Order* at

110. More recently, the Board granted NuStar's Petition for a hazardous liquids pipeline permit, relying on testimony from an Iowa Fertilizer Company ("IFCo") representative that IFCo had requested pipeline service and that IFCo had "spent millions of dollars in anticipation of the interconnection to [the proposed pipeline]." *NuStar Order* at 42 – 43.

These recent cases are representative of many past cases before the Board. *See, e.g.*, *In re Quantum Pipeline Co.*, Docket No. HLP-1997-0002, "Proposed Decision and Order Granting Permit" (IUB, May 1, 1996) (considering that Equistar desired ethylene service by pipeline to permit it to expand production); *In re Williams Pipe Line Co.*, Docket No. P-667. "Proposed Decision and Order Granting Permit" (IUB Aug. 1, 2000) at 7 (considering Williams' desire to have natural gas pipeline service to its pumping station to transport refined petroleum products to Iowa and neighboring states).

That there is a demonstrated demand for the Summit Project cannot be questioned. Thirty-two ethanol plants throughout the five-state Project footprint, including thirteen in Iowa, have signed long-term agreements to utilize the Project to transport their CO2 on Summit's system.[12] As James Powell testified, "Demand for the Project is high and comes from a need for existing ethanol plants in the upper Midwest to secure competitive access to low carbon fuel standard markets…" (Summit Powell Direct at 5). Those ethanol plants currently have approximately 9.5 MMTPA of CO2 to ship on the system, or more than half of the Project's total

[12] Summit Pirolli Direct at 3; Summit Pirolli Rebuttal at 6.

capacity.[13] And, Summit continues to compete in the market for additional shippers. See Tr. Vol. 8 at 1964 – 65.[14]

That many Iowa ethanol plants have entered into long term agreements for pipeline transportation of CO2 should not be surprising. As James Pirolli testified:

> Without the Project, Summit's 12 [now 13] partner ethanol plants in Iowa would lack a viable option to capture and permanently store their CO2 emissions because Iowa does not have proven subsurface geologic formations capable of storing the volume of CO2 the plants produce. The Project is necessary for these ethanol plants because it provides a CO2 transportation solution, which otherwise would not exist, putting Iowa's ethanol plants at a significant long-term disadvantage to ethanol plants in states like North Dakota and Illinois, which contain proven subsurface geologic storage formations.

Summit Pirolli Direct at 4.

No party has produced any evidence refuting the demand for the project by ethanol plants, including the thirteen in Iowa. In light of the Board's precedent and the unquestioned demand from ethanol plants for pipeline CO2 service, the Board should hold that this factor weighs heavily in favor of a finding that the Project promotes the public convenience and necessity.

B. <u>The Project Provides Benefits to Iowa's Agricultural Economy.</u>

For decades in Iowa, pipeline infrastructure has been developed to support Iowa's agricultural and manufacturing economies. The Board's most recent hazardous liquids pipeline permit was issued in *In re: NuStar Pipeline Operating Partnership L.P.*, Docket No. HLP-2021-0002, a case involving an application for a pipeline permit to transport anhydrous ammonia to an

[13] Were the project regulated under a FERC tariff, 10% of the system's capacity would be required to be reserved for "walk-up" shippers. While Summit is not subject to FERC's commercial regulation, it has committed to nonetheless reserve 10% for such non-contract shippers.

[14] As the Board is aware, since the close of the Summit hearing a competing project, NavigatorCO2's "Heartland Greenway" has suspended its efforts. It is likely that many of the facilities that were signed up to use the Navigator project will remain interested in carbon capture and sequestration and may join Summit's project instead which will increase demand for the Summit Project even further.

Iowa Fertilizer Company ("IFCo") plant to support IFCo's production of fertilizer and other agricultural products. Describing the need for the Project, the Board observed:

> Based upon review of the testimony, the Board finds there is a need for this proposed hazardous liquid pipeline. Iowa's economy is inextricably tied to agriculture and manufacturing. As described by NuStar, this proposed hazardous liquid pipeline will provide IFCo direct, continuous access to anhydrous ammonia in order to allow IFCo to distribute anhydrous ammonia to the surrounding area, as well as produce enhanced anhydrous ammonia products.

NuStar Order at 42 – 43.

Such cases are not new. In *In re: Ag Processing, Inc.*, Docket No, P-835, the Board issued a permit to Ag Processing Inc. ("AGP") to construct and operate its own natural gas pipeline to power its Mason City facility – then the "largest soybean processor in Iowa." The Board found,

> AGP intends to use the proposed pipeline to transport natural gas directly between Northern's interstate pipeline and its Mason City soybean processing facility. The record establishes that AGP can recognize substantial savings if it avoids lnterstate's transportation charges by bypassing the Iocal distribution system. The proposed pipeline will allow AGP to operate the Mason City facility at lower cost, and should enhance the facility's competitiveness….This evidence is sufficient to warrant a finding that the services proposed to be rendered by AGP's pipeline are in the public convenience and necessity.

In re Ag Processing, Inc., Docket No, P-835, "Proposed Decision and Order Granting Permit" (IUB Sept. 16, 1996) at 5; *see also In re: Manning Mun. Utilities*, Docket No. P-0901, "Order Granting Pipeline Permit" (IUB July 1, 2019) at 5 (holding that "there is no dispute concerning the need for the pipeline in this case" where the pipeline was designed to provide continuing natural gas service to Farmers Area Cooperative in Arcadia, Iowa and an expanding grain drying business in Templeton, Iowa in lieu of their current use of liquid propane); *Sioux City Brick and Tile Co*, Docket P-834, "Proposed Decision and Order Granting Permit" (IUB Dec. 1, 1995) at 8-11 (finding that the lower cost for gas would help Sioux City Brick "assure continued production

and employment").

Here, the purpose of the Project is directly aimed at supporting Iowa's agricultural model. Corn is Iowa's largest agricultural crop, being produced on approximately 12.7 million acres of Iowa farm ground.[15] The ethanol industry is the largest purchaser of Iowa corn, consuming approximately 53% of Iowa's corn crop each year.[16] The ethanol industry has proven to provide benefits on several fronts: energy independence, lower tailpipe emissions, and economic benefits to rural economies through job creation and better markets for corn.[17] Iowa ethanol plants consume approximately 1.6 billion bushels of corn to produce approximately 4.5 billion gallons of ethanol each year.[18] The ethanol industry supports approximately 340,000 jobs in the United States each year, including approximately 44,000 jobs in Iowa.[19]

Participating in the Summit Project unlocks new revenue streams for participating ethanol plants.[20] At present, when corn is processed into ethanol approximately one-third becomes fuel ethanol, one-third becomes animal feed, and one-third is CO2 which at present is, at most plants, lost and adds no value. The Summit Project creates value from that one-third that is turned into CO2 by capturing and permanently sequestering it.[21]

Capture and sequestration also adds value to the existing ethanol revenue stream. Low carbon fuel standard ("LCFS") markets represent a significant growth opportunity for ethanol. Markets in the western United States and Canada have already launched programs and more

[15] Summit Pirolli Rebittal Ex. 1 at 61.

[16] Summit Pirolli Direct at 5; Summit Pirolli Rebuttal at 5.

[17] Summit Pirolli Direct at 4.

[18] Summit Pirolli Rebuttal Ex. 1 at 8; Summit Broghammer Direct at 2.

[19] Summit Pirolli Direct at 4.

[20] Summit Pirolli Rebuttal at 3.

[21] Summit Pirolli Rebuttal at 3.

jurisdictions are exploring the implementation of low carbon fuel standards.[22] Energy supplies in a LCFS market generate credits or deficits based on a comparison of the carbon intensity of the energy that they sell to a standard. Those standards continue to trend lower over time. The lower a product like ethanol's carbon intensity score, the more value it adds and the higher premium buyers will pay for it. At present, the average carbon intensity score for ethanol produced in Iowa is around 70. The Summit project will reduce that score by about 35 points –roughly 50%.[23]

In addition to premiums earned in LCFS markets, there are also tax incentives and other carbon credits that can be monetized, and the participating ethanol plants will also share in those revenues. The 45Q and 45Z tax credit programs are part of an intentional, bipartisan federal policy meant to encourage projects that will capture and sequester CO2.[24] Under the programs, ethanol plants are able to earn credits through Summit's Project based upon results (tons of sequestered carbon for the 45Q program or gallons of reduced-carbon ethanol produced for the 45Z program).[25] By participating in the Summit Project, ethanol plants are eligible to earn an approximate $0.60/gallon of ethanol produced through the 45Z program alone.[26] On a net basis, an ethanol plant participating in the Summit Project is expected to earn an additional 10 – 35 cents per gallon for their ethanol.[27]

The Summit Project not only improves the financial health of participating ethanol plants; it ensures that the Iowa ethanol market is preserved. Without the Project, Iowa's ethanol plants are unable to transport and sequester the carbon, putting them at "a significant long-term

[22] Summit Pirolli Direct at 3.
[23] Summit Pirolli Rebuttal at 3.
[24] Summit Pirolli Rebuttal at 4.
[25] Summit Pirolli Rebuttal at 4.
[26] Summit Broghammer Direct at 2 – 3.
[27] Summit Pirolli Rebuttal at 4.

disadvantage to ethanol plants in states like North Dakota and Illinois, which contain proven subsurface geologic storage formations." Summit Pirolli Direct at 4. Summit witness James Broghammer, CEO of Pine Lake Corn Processors ethanol plant, explained that without the ability to transport and sequester CO2, "Iowa ethanol plants will be unable to compete and will be gone as fast as it takes to expand ethanol production in other states." (Summit Broghammer Direct at 3).[28] As a recent study by the Iowa Renewable Fuels Association notes:

> Iowa ethanol plants are competitive within the current market structure of energy and ethanol markets and are well positioned to provide feed byproducts of ethanol to local livestock and poultry feeders. But long periods of potentially negative operating margins due to competitors having access to the 45Z tax credits and Iowa's ethanol producers not having access would eventually "right-size" the ethanol market by forcing producers with negative margins to shutter their plants and reduce the supply of ethanol produced in Iowa.

Summit Pirolli Rebuttal Ex. 1 at 10.

The positive impacts to Iowa's agricultural economy do not stop with ethanol. Because roughly 53% of Iowa's corn is sold to ethanol producers, preserving a market for ethanol by preserves a market for corn.[29] A robust market for corn keeps corn prices higher. As Summit Witness James Broghammer testified:

> The ethanol industry has created considerably more demand for corn and therefore pushed the price of corn to higher levels. The returns for Iowa ethanol plants will vary from location to location, but it cannot be denied that the benefit to the Iowa corn producers is several times that of the return per bushel that Iowa ethanol plant have made. If ethanol use or production were to shrink because it cannot compete in increasingly low-carbon fuel markets, all of those gains in corn demand would be lost.

Summit Broghammer Direct at 3.

[28] *See also* Tr. Vol. 8 at 2029 ("we would be unsustainable against those that do have [pipeline service].").

[29] Summit Pirolli Rebuttal at 5.

And of course, a higher, more consistent revenue per acre helps support higher land prices for Iowa farmland. *See* Summit Pirolli Direct at 5; *see also* Summit Powell Direct at 5 ("[T]he project secures ethanol's place in the agricultural markets in the upper Midwest and sustains the demand for corn, which secures corn prices and land values."); Tr. Vol. 8 at 1952 ("[W]hen we look at values of commodity prices over time, they're consistently linked to farmland values…"); Tr. Vol. 9 at 1621 – 22 ("…so as long as the ethanol market stays robust and the corn demand stays high, I would think would contribute to sustaining high land prices in Iowa.").

The Summit Project preserves the future of the Iowa ethanol industry, an industry which drives Iowa's agricultural economy, purchases approximately 1.6 million bushels from Iowa corn growers annually, generates billions of gallons of alternative fuel, supports approximately 44,000 jobs in Iowa alone, and sustains the rural communities in which those ethanol plants operate. The Board should weigh this factor heavily in favor of finding that the Project promotes the public convenience and necessity. *See, e.g., NuStar Order* at 42 – 43.

C. The Project Provides Extraordinary Economic Benefits to Iowa and the Midwest.

Construction of this important infrastructure project will also result in extraordinary economic benefits to Iowa in the form of direct, indirect and induced economic activity in Iowa – much of it through thousands of new jobs. The Board has clearly found economic benefits, including jobs, to be adequate to support pipeline permits in the past. In *Dakota Access*, for example, "the IUB observed that the pipeline would result in at least 3100 construction jobs in Iowa, at least twelve long-term jobs for Iowans, and more than $ 27 million annually in property tax revenue." *Puntenney*, 928 N.W.2d at 842. The Board found those economic benefits important, concluding:

> The overall economic benefits to Iowa from the construction, operation, and maintenance of the proposed pipeline represent a factor that merits significant weight in the Board's balancing test.

Dakota Access Order at 47; *see also Puntenney*, 928 N.W.2d at 842 (approving IUB's consideration of secondary economic benefits in the public convenience and necessity analysis).

Even in cases involving economic benefits of a much lesser magnitude than were involved in *Dakota Access*, the Board has routinely found economic benefits a sufficient basis for issuing a pipeline permit. *See, e.g., NuStar Order* at 36 (finding that "the economic benefits weigh in favor of granting NuStar's permit request" where approximately $10 million would be spent on the project, creating approximately eighty-five construction-period jobs); *Ag Processing*, P-835 at 6 (finding even private economic benefit sufficient to meet public convenience and necessity test); *Sioux City Brick*, P-834 at 9-12 (finding lower input costs to a single company would help Sioux City Brick maintain its existing employment).

That the Summit Project would provide immense economic benefits is beyond dispute. Ernst & Young performed an economic impact study, admitted as Summit Phillips Direct Exhibit 1 ("EY Study") which, as updated, reflects that Summit will make approximately $5.9 billion in capital expenditures to construct the Project, including $1.9 billion in Iowa alone.[30] As Summit Witness Andrew Phillips' Rebuttal Testimony summarizes the Iowa-specific economic benefits:

> The construction of the Project will support nearly 1,200 jobs annually in Iowa, for a total of 6,590 worker years. This excludes 2,679 worker years contributed by 473 out-of-state construction workers who will be employed, on average, in Iowa for the duration of the project. Total labor income exceeds $459 million, excluding wages, salaries and benefits paid to out-of-state construction workers.

[30] Summit Phillips Rebuttal at 3.

> ***The total value added and gross output exceeds $838 million and $1.8 billion, respectively***.

Summit Phillips Rebuttal at 4 (emphasis added).

In addition to $1.8 billion in economic output, the Summit Project will contribute $73 million in taxes in Iowa during the construction phase, and $42 million in taxes in Iowa annually once in operation.[31] Further, these figures do not include direct payments to landowners for easements, nor do they reflect the economic impacts in the other four states within the Project's footprint.

The opponents of the Project present no evidence to seriously challenge the reality that building and putting into service this important infrastructure will result in immense economic impacts. Sierra Club Witness Dr. Secchi, for example, attempts to critique the EY Study, but her critiques fall flat. Dr. Secchi suggests, for example, that the EY Study did not estimate environmental costs. While that is true, the EY Study also did not *credit* the environmental benefits of the Project.[32] Dr. Secchi also makes the false assertions that the EY analysis only included worker years instead of average employment impacts and includes benefits from "out-of-state inputs". *See* Summit Phillips Rebuttal at 5, 7. Perhaps more to the point, she admits she did not perform her own economic study of the impacts of the Project, so she has no basis to provide an alternative estimate.[33]

By any measure, the economic benefits of the Project are extraordinary and compelling. They exceed those found compelling in *Dakota Access* and dwarf those found sufficient in prior pipeline cases. In fact, they appear to be the largest of any

[31] Summit Phillips Direct at 8.

[32] Summit Phillips Rebuttal at 5.

[33] Tr. Vol. 14 at 3675 – 76.

project to come before the Board. Given the Board's precedent and the unquestioned importance of these economic benefits, the Board should consider this an important factor in its balancing test. *See, e.g., Dakota Access Order* at 47; *NuStar Order* at 36.

D. The Project Furthers National Policy Objectives by Reducing Greenhouse Gas Emissions.

The 45Q and 45Z tax credit programs are part of an intentional, bipartisan federal policy meant to encourage investment in projects that will capture and sequester CO2.[34] The 45Q tax credit program, for example, has been increased and enhanced under several presidential administrations, dating back to 2008.[35] As Summit Witness Brigham McCown, who has served in several high-level federal energy and infrastructure policy roles, testified:

> Bipartisan majorities in Congress and Presidents of both parties have adopted and then increased over time the tax incentives that seek to encourage a sweet spot that both reduces carbon emissions and encourages, rather than hinders, industries seeking to reduce their carbon intensity. Those tax incentives have included programs targeted at carbon capture, carbon sequestration, renewable biofuels, and reduced-carbon biofuels. Whatever one's individual view on climate change may be, and whatever one's view of the role carbon capture and sequestration can serve as a mitigation, it is clear that official federal policy sees CCS as having a role to play in reducing carbon emissions and that Congress (and both the current and former Presidents) sees tax policy as a way to encourage CCS. Summit's project is carrying out an intentional federal economic and environmental policy that we should be wary of undermining.

Summit McCown Direct at 3.

The Summit Project furthers that national policy objective in a substantial way. The Project captures, transports, and permanently sequesters the CO2 from its participating ethanol plants that would otherwise be emitted into the atmosphere.[36] The Project is capable of

[34] Summit Pirolli Rebuttal at 4; see also Tr. Vol. 8 at 1891.

[35] See Summit McCown Rebuttal at 4 – 5; Summit Godfrey Rebuttal at 4; Tr. Vol. 8 at 1893; *see also* Energy Improvement and Extension Act of 2008, Pub. Law 110-343 (Oct. 3, 2008); Bipartisan Budget Act, Pub. Law 115-123 (Feb. 9, 2018); Inflation Reduction Act, Pub. Law 117-169 (Aug. 16, 2022).

[36] Summit Pirolli Direct at 6; see also Revised Petition Ex. F; Tr. Vol. 8 at 1921, 1955 – 57.

capturing, transporting, and permanently storing up to 18 million metric tons of CO2 every year, which is the equivalent of removing the emissions from approximately 3.9 million cars.[37] And, contrary to unfounded suggestions by Project opponents, the Project provides a net reduction in greenhouse gas emissions when considering the emissions necessary to operate it. *See* Tr. Vol. 8 at 1956 ("On a net basis, we remove the impact of emissions that are created from the energy that's needed to capture, compress, transport, and store. Which is roughly 10 percent. And there's models out there that show that. So, right now, if we're at, you know, 9 1/2 million tons, the net removal per year would be about 8.6.").[38] Once operational, the Project will be the largest carbon removal project in the world.[39]

The Board has long considered policy objectives in analyzing whether a project promotes the public convenience and necessity. Recently in *the NuStar Order*, for example, the Board held,

> Mr. Koegeboehn's rebuttal testimony shows there are benefits on the national level for increasing the domestic production of fertilizer. (Koegeboehn Rebuttal, p. 5.). As pointed out by the United States Department of Agriculture (USDA), numerous external factors impact fertilizer production. (*Id*.) To combat this, the federal government announced $500 million in grant funds to increase the domestic supply of fertilizer. (*Id*.) The United States federal government has determined there is a national need to increase the domestic production of fertilizer. NuStar's proposed hazardous liquid pipeline will allow IFCo to assist that national need for reliable, domestic fertilizer production.

NuStar Order at 44 – 45; *see also Dakota Access Order* at 27 (considering enhanced energy security resulting from the Project); *In re MidAmerican Energy Co. (Wind VII)*, Docket No. RMU-2009-0003, "Final Decision and Order" (IUB Dec. 14, 2009) at 17-18 (in context the term "necessity" in evaluating ratemaking principles, considering "public

[37] Summit Pirolli Direct at 6; see also Revised Petition Ex. F.

[38] *See also* Tr. Vol. 8 at 1958.

[39] Summit Pirolli Direct at 6; see also Revised Petition Ex. F.

policy factors and non-cost factors" including but not limited to fuel diversity, lower-cost energy and economic development), *aff'd sub nom NextEra Energy Resources, LLC v. Iowa Utilities Bd.*, 815 N.W.2d 30 (Iowa 2012).

Like the above-cited projects, Summit's Project furthers bipartisan national policy in favor of reducing greenhouse gas emissions, and it does so on a large scale. The Board should give substantial weight to this benefit in determining that the Project promotes the public convenience and necessity.

E. The Project Will Transport Carbon Dioxide Safely.

Importantly, the benefits of the Project can be obtained in a way that is safe for Iowans. PHMSA regulates supercritical (dense) phase CO2 pipelines like the Project and has done so for decades.[40] While PHMSA has exclusive jurisdiction over the safe design, construction and operation of the pipeline, the Board has previously observed that, "[b]y any measure – number of incidents, fatalities and spilled fluids recovered, pipelines are the safest and most effective form of energy transportation." *Dakota Access Order* at 32 (quoting Vern Grimshaw & Dr. John Rafuse, *Assessing America's Pipeline Infrastructure: Delivering on Energy Opportunities*). *See also NuStar Order* at 32 – 33 (finding that safety of pipeline transportation as compared to other forms weighed in favor of granting permit). According to PHMSA, pipeline systems are the safest means of moving large volumes of product.[41] In fact, statistical analysis demonstrates that pipeline transportation is more than 99.99% safe.[42]

PHMSA's regulatory oversight includes the design, construction, operation, maintenance, integrity management, public awareness, and emergency planning and

[40] Summit McCown Direct at 5.

[41] Summit McCown Direct at 6.

[42] Summit McCown Direct at 6.

preparedness of Summit's pipeline.[43] While a complete listing of PHMSA's regulations applicable to Summit's Project is beyond the scope of this Brief and entails matters over which PHMSA has exclusive jurisdiction, McCown provided just a few examples in his testimony:

> In the design phase, there are requirements to apply factors of safety to engineering calculations; set minimum distances between shutoff valves; and, specifically for CO2 pipelines, take into consideration the potential for fracture propagation. During construction, the federal regulations define the minimum depth of cover, minimum percent of welds non-destructively tested, and hydrostatic testing above the pipeline's maximum operating pressure…
>
> Operational safety controls include an operations and maintenance ("O&M") manual; integrity management program including risk assessments; operator training and qualifications; leak detection system; public awareness; right-of-way patrols, and emergency response plan among other requirements.

Summit McCown Direct at 8 – 9.

Summit's Project has and will comply with all of PHMSA's regulations, including those specific to CO2 pipelines, including design features to resist ductile fracture, and conducting air dispersion analysis to inform other safety features.[44] In addition, Summit's Project will be one of the first pipelines built under PHMSA's 2021 amendment to the valve spacing rules, requiring closer valve spacing.[45] The valves will all be emergency flow restriction devices that are remote actuating and do not require human operation, and each valve will have redundant communication and power supply.[46] The system will be monitored 24 hours per day, 7 days per week, 365 days per year from a state-of-the-art Operations Control Center ("OCC"), with a secondary OCC at an additional location.[47] A Supervisory Control and Data Acquisition ("SCADA") system will communicate with all field sites, provide continuous status from every

[43] Summit McCown Direct at 6.

[44] Summit Godfrey Direct at 3 – 4.

[45] Summit Godfrey Direct at 6; Summit Powell Direct at 7 – 8.

[46] Summit Powell Direct at 8; *see* Tr. Vol. 7 at 1854:23 – 24, 1862:11 – 18.

[47] Summit Powell Direct at 9 – 10.

facility and data collection point along the pipeline, and will be fully accessible from both of the OCCs.[48] In addition, a Real Time Transient Model ("RTTM") leak detection system will be deployed, providing a real-time hydraulic model of the pipeline that runs alongside the actual pipeline continuously checking for any deviations between the two.[49]

Although PHMSA's jurisdiction is exclusive, the Board has in the past considered the benefits of pipeline companies going "above and beyond" PHMSA requirements. *See NuStar Order* at 31 – 32 ("The Board finds that NuStar has committed to going above the safety requirements for PHMSA in construction of the proposed pipeline" and noting that NuStar would exceed PHMSA regulations for depth of cover, percent of welds tested, and hydrostatic testing timelines); *Dakota Access Order* at 57 – 58 ("Dakota Access will be required to meet the applicable PHMSA safety standards and will be subject to PHMSA inspections. Further, as described in the preceding section of this order, the company proposes to exceed PHMSA standards for design, construction, and testing in many respects, including x-ray inspection of all main girth welds, use of thicker pipeline walls in many areas, and more severe hydrostatic testing, among other things. Each of these steps will tend to reduce the safety risks of the proposed pipeline when compared to a pipeline designed, constructed, and tested in accordance with PHMSA's requirements.").

Summit's Project has committed to going above and beyond PHMSA regulations in numerous ways. To name a few:

- PHMSA requires approximately 10% of girth welds to be non-destructively tested; Summit will non-destructively test 100% of the girth welds;

[48] Summit Powell Direct at 9.

[49] Summit Powell Direct at 10.

- PHMSA requires a minimum three feet depth of cover; Summit will install at a minimum of four feet to top of pipe to reduce the likelihood of impacts or strikes;
- Summit will exceed the required pipe wall thickness at several categories of locations;
- Summit will apply the integrity management plan requirements that PHMSA sets for HCAs to the entire pipeline; and
- All of Summit's line-pipe in the system will be internally inspectable (i.e., piggable) and Summit will conduct in-line inspections across the entire system as opposed to only in HCAs.[50]

In sum, not only will Summit comply with PHMSA's pipeline safety regulations, including those that are newly adopted, Summit will go above and beyond those regulations as other operators that have been approved by the Board have done.

Opponents of the Project attempt to make two arguments regarding the safety of the Project, neither of which is properly before this Board and neither of which should give the Board reason for concern. First, certain opponents suggest that because PHMSA has announced an intention to review its regulations related to CO2 pipelines, this Board should wait until PHMSA does so before issuing a permit. However, as McCown, former administrator of PHMSA explained,

> There is no safety reason for the Board to delay…the current rules very effectively regulate the safety of CO2 pipelines. PHMSA always evaluates its rules and continually seeks new science and data…It is my opinion that such calls for delay are unreasonable, unnecessary, and unprecedented. As an example of how this process works, Summit's pipeline will likely be among the first to apply the recent amendment to the valve spacing rules. When that rule was under discussion, projects didn't change their schedules and regulators didn't withhold approval. As stated above, if PHMSA thought that kind of full stop was necessary, it would have made that known.

Summit McCown Rebuttal at 3 – 4.

[50] *See* Summit McCown Direct at 8 (referring to Summit's commitment to forty-eight inches of cover and 100% inspection of pipeline welds); Summit McCown Direct at 11 – 12 (discussing application of IMP to the entire pipeline and in-line inspections of entire system);

More to the point, to the extent PHMSA were to adopt new regulations that apply to the operations and maintenance of the Project, those will apply to Summit, and to the extent PHMSA adopts new regulations that it makes retroactive, Summit has committed to complying with them. *See* Tr. Vol. 7 at 1654 (James Powell testifying, "But in any event, if PHMSA were to change their standards or requirements and make those retroactive, we would comply."). Accordingly, even if there were authority to do so, there is no basis for the Board to delay decision based upon speculation regarding what new regulations PHMSA, as the exclusive regulator of pipeline safety, might adopt in the future.

Second, opponents to the Project have argued that compliance with PHMSA regulations is not sufficient to ensure safety because of a release that occurred near Satartia, Mississippi in February of 2020 (the "Satartia Incident"). As a threshold matter, the Board cannot lawfully rule on the adequacy of PHMSA's safety rules or decide to modify those requirements. *See* 49 U.S.C. § 60104(c)("A state authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation."); *see also Kinley Corp. v. Iowa Utils. Bd.*, 999 F.2d 354 (8th Cir. 1993)(preempting separate safety regulations adopted by Iowa); *Save Our Illinois Land (SOIL) v. Illinois Commerce Comm'n*, 2022 IL App (4th) 210008 (Jan. 12, 2022) at *15-16. But to be clear, PHMSA's Failure Investigation Report ("PHMSA Investigation Report") related to the Satartia Incident expressly found that the operator, Denbury, was *not* complying with PHMSA regulations.[51] Further, Summit has proactively taken steps to incorporate the information gleaned from the Satartia Incident and PHMSA's Investigation Report into its design, construction, operations, and emergency response planning.

[51] *See, e.g.,* Summit Powell Rebuttal at 3 – 4; Summit Godfrey Rebuttal at 6 – 7.

Of the five contributing factors to the Satartia Incident outlined in PHMSA's Investigation Report, three related to geohazards, which Denbury failed to identify and in turn, failed to incorporate into their O&M procedures and IMP. To avoid a similar situation, Summit has conducted a geohazard analysis across the entire route of the pipeline and implemented all mitigative measures identified by that analysis, and has also complied with PHMSA'sAdvisory Bulletin issued on June 2, 2022 "Pipeline Safety: Potential for Damage to Pipeline Facilities Caused by Earth Movement and Other Geological Hazards" that was published following the Satartia Incident. These activities are intended to identify and mitigate geohazard risks and take account of them in Summit's O&M procedures and IMP. In addition, while federal regulations require that the IMP apply to HCA areas, Summit has committed to applying the IMP to every segment of its pipeline.[52]

The fourth contributing factor found by PHMSA in the Satartia incident was that Denbury's CO2 dispersion model underestimated the potential affected area that could be impacted by a release. Unlike Denbury, Summit has undertaken a more robust dispersion analysis, including additional steps such as overland flow analysis to identify areas CO2 could potentially reach in the unlikely event of an incident.[53]

Fifth, because Denbury's dispersion analysis did not identify the village of Satartia as a could affect HCA, it was not included in Denbury's public awareness program or its emergency response plan (ERP). Due to the robust nature of the dispersion analysis performed for Summit's Project, all communities which could be affected in the unlikely event of a release will be

[52] Summit Powell Rebuttal at 4.

[53] Summit Powell Rebuttal at 4; Summit Louque Direct at 7 – 8;

included in Summit's PAP and local emergency response plans, so that first responders are alerted at the earliest possible moment.[54]

In sum, not only will Summit comply with PHMSA's safety standards, including those newly adopted and those adopted in the future, it is going above and beyond those requirements in many areas and incorporating the information learned from the Satartia Incident and published by PHMSA into its design, construction, operations, maintenance and emergency response planning. The Board should conclude that the CO2 in the Summit Project can be moved safely, further supporting a finding that the Project promotes the public convenience and necessity.

II. THE USE OF EMINENT DOMAIN IS APPROPRIATE FOR THIS PROJECT, AND THE BOARD SHOULD APPROVE ITS LIMITED USE AS REQUESTED.

Summit understands that the use of eminent domain is controversial. But Iowa law is clear that on finding that a pipeline project under Iowa Code chapter 479B qualifies for a permit under the "public convenience and necessity" test, the right of eminent domain ***shall*** be vested in the applicant. The U.S. Supreme Court has recently reiterated the policy reasons behind providing eminent domain authority automatically when a regulator finds a pipeline qualifies for a permit. *See PennEast Pipeline Co. v. New Jersey*, 594 U.S. ___, ___, 141 S. Ct. 2244, 2252–53 (2021). In that case, the Supreme Court upheld a natural gas pipeline's use of eminent domain against constitutional challenges. *Id.* at 2263. Unlike liquids pipelines, natural gas pipelines obtain federal certificates that are akin to permits under Iowa Code § 479B and apply a similar "public convenience and necessity" standard. Initially, the corresponding federal law, 15 U.S.C. § 717f, did not include a provision for eminent domain, but it was later amended to add § 717f(h), which provided that if a "holder of a certificate of public convenience and necessity

[54] Summit Powell Rebuttal at 5.

cannot acquire by contract . . . the necessary right-of-way . . . , it may acquire the same by the exercise of the right of eminent domain." As Chief Justice Roberts explained for the majority, prior to the amendment "[t]he result was that certificate holders often had only an illusory right to build." *PennEast*, 141 S. Ct. at 2252. The decision went on to explain that after the amendment to include language similar to Iowa Code § 479B.16, "enabling FERC to vest natural gas companies with the federal eminent domain power, the 1947 amendment ensured that certificates of public convenience and necessity could be given effect." *Id*. at 2253.

The important statutory provision that authority to use eminent domain ***shall*** be given to an applicant who is found eligible for a permit is subject to the Iowa and federal constitutional requirement that the condemnation is for a "public use," and whether there will be "just compensation." While the compensation question under Iowa procedures is for county compensation commissions and not the Board, the public use question has been conclusively decided by the Iowa legislature and by the Iowa Supreme Court in the *Puntenney* case. Summit has shown its good faith efforts to negotiate, it has obtained voluntary easements for a strong supermajority – nearly 75% -- of the parcels on the route, and it has met all compliance requirements of chapter 479B and the Board's rules. The Board should grant Summit's requests for eminent domain authority as requested in the current Exhibit Hs on file.

A. <u>Eminent Domain – Legal Analysis of Board's Authority.</u>

The Iowa Code makes the statutory test for eminent domain authority for a liquids pipeline coextensive with the "public convenience and necessity" test for a permit.

> A pipeline company granted a pipeline permit ***shall*** be vested with the right of eminent domain, to the extent necessary and as prescribed and approved by the board, not exceeding seventy-five feet in width for right-of-way and not exceeding one acre in any one location in addition to right- of-way for the location of pumps, pressure apparatus, or other stations or equipment necessary to the proper operation of its pipeline. The board may grant additional eminent domain rights where the pipeline company has presented sufficient evidence to

> adequately demonstrate that a greater area is required for the proper construction, operation, and maintenance of the pipeline or for the location of pumps, pressure apparatus, or other stations or equipment necessary to the proper operation of its pipeline.

Iowa Code § 479B.16 (emphasis added). There is no separate test for the authority to use eminent domain, although the Board can limit the scope of the taking to the extent that it is "necessary." Conversely, the Board can *expand* the authority, for example to widths beyond the statutory seventy-five foot limits, where the applicant makes a showing that additional authority is necessary for "proper construction, operation, and maintenance."

In addition to the statutory provisions, there is a constitutional limitation on eminent domain that requires it be for a "public use." The public use requirement is similar under the United States and Iowa Constitutions. *See* U.S. Constitution, Amend. 5, Iowa Constitution, Art. 1 § 18. Accordingly, the analysis of whether a condemnation is for a public use or public purpose is the same under either state or federal law. *See Milligan v. City of Red Oak*, 230 F.3d 355, 359 (8th Cir. 2000). Defining the scope of what is a "public use," however, is in the first instance for the legislative body. As the Iowa Supreme Court has explained,

> It is initially for the legislature to determine whether private property is being taken for a public use. *Simpson v. Low–Rent Hous. Agency of Mount Ayr*, 224 N.W.2d 624, 627 (Iowa 1974); *see also Hawaii Hous. Auth.*, 467 U.S. at 239, 104 S.Ct. at 2329, 81 L.Ed.2d at 196. Courts should not substitute their judgment for the legislature's judgment as to what constitutes a public use unless the use is palpably without reasonable foundation. *Id*. at 241, 104 S.Ct. at 2329, 81 L.Ed.2d at 197.

CMC Real Est. Corp. v. Iowa Dep't of Transp., 475 N.W.2d 166, 169 (Iowa 1991). As a result, "the public use requirement of the Takings Clause is coterminous with the regulatory power" and the regulatory determination that a use is a public use "should not be disturbed by the court 'unless it is clear, plain and palpable it is private in character.'" *Milligan*, 230 F.3d at 359 (citing *Nat'l R.R. Passenger Corp. v. Boston & Me. Corp.*, 503 U.S. 407, 422 (1992); *Vittetoe v. Iowa S.*

Utils. Co., 123 N.W.2d 878, 880 (Iowa 1963)). "Legislation calling for condemnation enjoys the same presumption in its favor as when the constitutionality of [any other] statute is challenged." *Milligan*, 230 F.3d at 859 (citing *Abolt v. City of Ft. Madison*, 108 N.W.2d 263, 268 (Iowa 1961)). In addition, as the Iowa Supreme Court has repeatedly explained, "Statutes are presumed constitutional, imposing on the challenger the heavy burden of rebutting that presumption." *Santi v. Santi*, 633 N.W.2d 312, 316 (Iowa 2001) (citing *Stanley v. Fitzgerald,* 580 N.W.2d 742, 744 (Iowa 1998)).

In the present case, the legislature has unambiguously made the determination that CO2 pipelines are a public use. Iowa Code Chapter 479B expressly applies to CO2 pipelines, *see* § 479B.2(2), and where a permit is requested and the Board has granted such a permit, the legislature has mandated to the IUB that the applicant "***shall*** be vested with the right of eminent domain".[55] Iowa Code § 479B.16 (emphasis added). In doing so, the legislature determined that a pipeline – including a CO2 pipeline -- that promotes the public convenience and necessity is a public use. It is the only reading of the law that give effect to the mandatory language of § 479B.16.

The Iowa legislature has also separately declared that the acquisition of any interest in property necessary to the function of a common carrier constitutes a public use. Iowa Code § 6A.22(2) ("'Public use' [or] 'public purpose'. . . means one or more of the following: . . . The acquisition of any interest in property necessary to the function of a public or private utility***, common carrier***, or airport . . . ."). The Iowa Supreme Court has explained that the distinctive characteristic of a common carrier is that it holds itself out as ready to engage in the transportation of goods or persons for hire, and that it need not serve all the public all the time:

[55] In this regard, the legislature has determined that CO2 pipelines are categorically to be treated the same as oil, ammonia, or any other hazardous liquid pipeline.

> Iowa law has defined a common carrier as "one who undertakes to transport, indiscriminately, persons and property for hire." *Employers Mut. Cas. Co. v. Chicago & North Western Transp. Co.,* 521 N.W.2d 692, 693 (Iowa 1994). ***We have ruled that the distinctive characteristic of a common carrier is that it holds itself out as ready to engage in the transportation of goods or persons for hire, as public employment, and not as a casual occupation***. *Kvalheim v. Horace Mann Life Ins. Co.,* 219 N.W.2d 533, 535 (Iowa 1974). A common carrier holds itself out to the public as a carrier of all goods and persons for hire. ***We, however, have also recognized that a common carrier need not serve all the public all the time***.

Wright v. Midwest Old Settlers and Threshers Ass'n, 556 N.W.2d 808, 810–11 (Iowa 1996) (emphasis added); *see also Circle Exp. Co. v. Iowa State Com. Comm'n*, 86 N.W.2d 888, 893 (Iowa 1957) ("the distinctive characteristic of a common carrier is that he holds himself out as ready to engage in the transportation of goods for hire, as a public employment, and not as a casual occupation, and that he undertakes to carry for all persons indifferently, ***within limits of his capacity and the sphere of the business required of him***.") (citations omitted, emphasis added); *cf. In re Arbitration of Sprint Commc'ns Co., L.P. v. Ace Commc'ns Group*, Docket No. ARB-05-2, "Order on Rehearing" (IUB, Nov. 28, 2005) at 4 (setting forth test noting "a carrier that offers its service only to a defined class of customers can still be considered a common carrier if it holds itself out to serve all within that class indiscriminately," citing *United States Telecom Ass'n v. FCC*, 295 F.3d 1326, 1329 (D.C. Cir. 2002)).

In addition, as set forth above, courts around the country have long held that what makes a pipeline a public use is that it provides open access to the *relevant* users of the pipeline – that is, shippers; not that it must serve every member of the public directly. *See, e.g.*, *Iowa RCO Ass'n v. Illinois Com. Comm'n,* 409 N.E.2d 77, 80 (Ill. App. 4th Dist. 1980) (holding that public use test was satisfied with respect to interstate crude oil pipeline traveling from Illinois through Iowa to Minnesota, where evidence showed that "several nonaffiliated companies wished to use the pipeline and that Northern would furnish service to them" and that Northern would be

operating in interstate commerce); *Linder v. Arkansas Midstream Gas Services Corp.*, 362 S.W.3d 889, 897 (Ark. 2010) (rejecting landowners' argument that a natural gas pipeline was not a public use because "the taking is for the exclusive use of a collection of individuals less than the public," and concluding, "it makes no difference that only 'a collection of a few individuals' may have occasion to use the pipeline after its completion. Again, the character of a taking, whether public or private, is determined by the extent of the right to use it, and not by the extent to which that right is exercised. If all the people have the right to use it, it is a public way, although the number who have occasion to exercise the right is very small.") (citations omitted).[56]

That Summit holds itself out to provide capture, transportation and sequestration of CO2 from businesses within the relevant class and in a manner that treats similarly situated parties in a non-discriminatory fashion is not disputed on the record. The ethanol plant agreements were all filed with the Board (confidentially) on September 6, 2023 and the Board can see that (1) there are agreements for 13 separate ethanol plants and (2) that the terms are substantively the same across the agreements. Summit witness Pirolli testified that none of the partnering plants are under common ownership with Summit.[57] Pirolli also testified that the company actively holds itself out to the relevant industries whose processes generate CO2 as being willing to contract with them on non-discriminatory terms.[58] Finally, while there is no regulatory requirement to do so, Pirolli also testified that Summit will both be holding an open season to allow anyone to bid on capacity on the system, and also that Summit will be reserving 10% of the capacity of

[56] *See also, e.g.*, *Peck Iron & Metal Co. v. Colonial Pipeline Co.*, 146 S.E.2d 169, 172 (Va. 1966) (noting that "If it is a public way in fact, it is not material that but few persons will enjoy it").

[57] Summit Pirolli Rebuttal at 6:3-7.

[58] Summit Pirolli Rebuttal at 6:8-14.

unknown, future, or uncontracted "walk-up" shippers.[59] None of this testimony was contested by any witness.

The most stringent limit on the definition of "public use" in Iowa comes from post-*Kelo* legislation limiting the use of eminent domain specifically on agricultural lands: "'Public use' or 'public purpose' or 'public improvement' does not include the authority to condemn agricultural land for private development purposes." Iowa Code § 6A.21(1)(c). Even there, however, the legislature provided an explicit exception to this limitation that is applicable here:

> This limitation also does not apply to utilities, persons, companies, or corporations under the jurisdiction of the Iowa utilities board in the department of commerce or to any other utility conferred the right by statute to condemn private property or to otherwise exercise the power of eminent domain.

Iowa Code § 6A.21(2). For purposes of this provision, Summit Carbon is unambiguously "under the jurisdiction of the Iowa Utilities Board."[60] *See Puntenney*, 928 N.W.2d at 842-43 ("We agree with the IUB and the district court that Dakota Access is a 'compan[y] . . . under the jurisdiction of the [IUB],' *id*., via the permit process laid out in chapter 479B"). Because this limitation and the decision in *Puntenney* both make clear that infrastructure that is granted a permit and therefore authority under the jurisdiction of the Board is to be allowed to use eminent domain as a public use, this context also supports a finding that the Summit pipeline is a common carrier.

Not only has the eminent domain issue regarding Summit been addressed already in *Puntenney*, this case is actually a considerably easier question than what the Board and the Court faced regarding Dakota Access. In that case, the major issue with regard to public use was

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[59] Summit Pirolli Rebuttal at 6:14-17

[60] It is entirely possible that – particularly once it has a permit – Summit is also a "utility" for purpose of § 6A.21, which would be a second, separate way Summit would qualify as a public use even for the purpose of eminent domain over agricultural land. Similarly, it is not clear that this Project is "*private* development purpose" once IUB determines it promotes the public convenience and necessity. While it is not necessary to reach that issue, that would also remove the project from the agricultural land limitations of §6A.21.

whether a pipeline was a public use for purposes of state eminent domain in Iowa where the pipeline had no "on-ramps" or "off-ramps" in Iowa – that is, the pipeline was merely passing under Iowa, with none of the shipped project being loaded or unloaded in Iowa or from or on behalf of Iowans. Summit presents no such question: there are at least thirteen ethanol plants in Iowa – none of whom are affiliated with Summit -- who have entered into agreements with Summit to capture, transport, and sequester the CO2 they generate for the benefit of those ethanol plants.

Because Dakota Access had no such direct usage in Iowa, much of that case was spent arguing over whether *indirect* benefits – secondary and tertiary jobs, or construction costs – were sufficient to show a public use. The debate over indirect benefits was only necessary because, in the absence of on-ramps or off-ramps, it was harder to show a direct benefit. Again, however, Summit presents an easier issue. There are ethanol plants in Iowa who will benefit *directly* from the ability to capture, transport, and sequester CO2 from their facilities. It directly provides these Iowa facilities a service that is an integral part of the process of producing a fuel product – low-carbon ethanol. It opens up new markets for their Iowa value-added agriculture business. It provides them access to federal tax programs. All of these are direct benefits to entities operating in Iowa, and making use of the pipeline in Iowa. And as the access to federal tax programs reflects, the Project is also a public use because it helps effectuate express public policy enacted by bipartisan majorities of Congress and both Republican and Democratic Presidents.

Finally, on a more practical rather than constitutional issue, Summit has shown that it engaged in good faith negotiations to the extent such negotiations were within Summit's control. Summit's approach, which was outlined in the county informational meetings, is similar to that

of most other linear infrastructure developers who come before the Board. Summit used available third-party information on agricultural land valuation to establish a fair market value in a given county.[61] Summit's approach, which incorporates CSR2 ratings, is more granular than most past applicants. Summit's offers have consistently been above fair value for an easement because Summit has offered amounts based on purchasing the amount of land in question in fee – the offers are not discounted for the fact that Summit is only obtaining an easement, something less than all of the rights in the land. Landowners are effectively being paid as if they will no longer own the land, but then also being able to farm it and make ongoing revenue from the land as they did before. Summit contacted and attempted to stay in contact with landowners, see Petition Exhibits L.4 and L.5[62], and in fact even witnesses with strong objections to the project, who had every reason to *not* praise the land agents, often did so.[63] At the other extreme, as the Board heard many times, numerous landowners simply refused to talk with Summit or its agents at all; there is a limit to what Summit can do when it does not have a good faith negotiating partner.[64] When landowners and Summit have negotiated, however, Summit has made changes to terms in the draft voluntary easement, for example, and has increased payment offers based on specific situations.[65] In short, Summit has engaged in negotiations, and those negotiations – very similar to those in myriad other cases where the Board has given eminent domain authority – have been undertaken in good faith, as is evidenced by the nearly 75% success rate.

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[61] *See generally*, Summit Rorie Direct at 4:1-6:10.

[62] Several landowners raised issues with Exhibit L.4 and L.5 but did not appear to understand that those exhibits (a) reflect all *attempts* at contacts, not just successful communications; are grouped by parcel and accordingly show attempts to contact any person associated with the property (some of which were based on land records that have a lag time regarding, for example, deaths); and which are reflect a given contact as associated with each parcel owned by that person.

[63] Tr. Vol. 4 at 996:6 – 7; Tr. Vol 5 at 1304:12 – 14, 1347:5 – 6.

[64] Tr. Vol. 10 at 2588:11 – 2589:4

[65] Tr. Vol. 16 at 4499:23-25; Tr. Vol. 20 at 5920:15, 5943:1-22.

Despite the clear legal support for Summit to have eminent domain authority, opponents have repeatedly argued that private entities should not be allowed to use eminent domain. No matter how many times it is used as a rallying cry, however, it remains legally incorrect. As the U.S. Supreme Court explained in *PennEast*, eminent domain

> can be exercised either by public officials or by private parties to whom the power has been delegated. And it can be exercised either through the initiation of legal proceedings or simply by taking possession up front, with compensation to follow. Since the founding, the United States has used its eminent domain authority to build a variety of infrastructure projects. It has done so on its own and through private delegatees, and it has relied on legal proceedings and upfront takings.
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> * * *
>
> For as long as the eminent domain power has been exercised by the United States, it has also been delegated to private parties.

PennEast, 141 S. Ct. 2251, 2255.

Here, where Summit has met all of the requirements to be granted a pipeline permit, eminent domain authority should follow. Eminent domain is necessary to prevent a relatively small percentage of holdouts from having veto power over beneficial infrastructure; as the U.S. Supreme Court noted, without it, the rights in a permit are often illusory. In the present case, nearly 75 percent of the required easements have been obtained voluntarily, a number that continues to rise and is likely to rise at a greater rate once a permit is granted by the Board and the Project is approved for construction. Here, the authority to use eminent domain to obtain the remaining portions of the route is necessary, there are no additional limits on the use of that authority supported by the evidence in the record, and the Board should grant eminent domain as provided in the filed Exhibit Hs for the permanent and additional temporary workspace that has been requested by Summit.

B. The Board Should Adopt a Framework for Considering Individual Parcels Similar to its Dakota Access Analysis, Which Will be Easier Here Where Very Few Landowner Witnesses Presented Alternative Routes or Evidence in Support of Such Routes.

Despite the largely successful good faith negotiations, approximately 25 percent of the needed easements remain outstanding. As a result, eminent domain authority is necessary to implement the permit and to obtain the benefits discussed above as to why the Board should find the project promotes the public convenience and necessity. Specifically in the current case the Board should grant eminent domain authority for the widths requested in each of the remaining Exhibit H filings for temporary and permanent workspace, and for surface rights (for valves, launcher/receiver stations, and one pump station) and access easements where indicated. While the standard widths are 50-feet for the permanent easement and an additional 50 foot temporary workspace easement, several of the parcels have different widths both narrower (in forested areas, for example, to preserve additional trees) and wider (where special equipment or additional soil stockpiling is required). In particular, the additional temporary construction widths requested facilitates better handling of soils in agricultural areas, in accordance with the letter and spirit of the Board's Chapter 9 rules.

Iowa Code § 479B.16 establishes that if an applicant satisfies the requirement for a permit, that it shall be granted the power of eminent domain – that is the default assumption. The statute goes on, however, to give the Board the ability to limit the use of the power to "the extent necessary and as prescribed and approved by the board." Because the default is that a permit holder, having shown the project promotes the public convenience and necessity, shall have the ability to complete the project using eminent domain, a party who believes a limit should be applied to that right should have the burden to come forward and call on the Board to apply these limits and support such a request with evidence and good cause. This is the

framework the Board used in *Dakota Access*. In that case, the Board, having determined the applicant met the test for a permit, turned to the eminent domain request and divided the remaining Exhibit H parcels into groups. Where an Exhibit H landowner had not filed testimony or a written objection, the Board did not look any farther, but rather applied the default and approved the filed Exhibit H. *See Dakota Access* at 122-123. The Board did the same where a landowner filed an objection but presented no evidence through intervention, prefiled testimony, or testimony at the hearing. *Id*. at 124. The third category[66] was Exhibit H parcels where the landowner intervened and provided sworn testimony. The Board reviewed those parcels, but even then, the review was limited and in many instances very brief:

> This section of the order will address only those issues directly related to the easement over the parcel and will not address those issues raised by landowners regarding the issue of whether the project will promote the public convenience and necessity, that is, whether the permit should be issued. The Board has addressed that issue in earlier sections of this order.

Id.

In analyzing those remaining parcels, however, the Board set forth principles that can make the review here even more efficient and allows for significant grouping of parcels and arguments. Most notably, the Board reiterated in writing a position it has long expressed in hearings: that while evidence supporting a different route on a given landowner's parcel are welcomed, objectors should ***not*** merely propose shifting a burden from their property to another non-participating parcel, and further recognized that even shifting burdens to voluntarily acquired parcels after the fact is improper. *See*, *e.g.*, *Dakota Access* at 129-130 ("The Board does not consider shifting the burden from one landowner to another to be a reasonable alternative in this particular situation"); *and* 138 ("It appears that returning the pipeline to its original proposed

[66] The Board in *Dakota Access* discussed a fourth category, government parcels, that is not relevant here.

location would require substantial relocation on other nearby parcels where voluntary easements have been negotiated based on the revised location[;] shifting that burden to the adjoining parcels would not be reasonable.")

In this case, exceedingly few witnesses productively discussed revised routes across their own property; nearly every witness, when asked by the Board if they had proposed a revised route, answered that their proposed re-route was either off of their land, or to deny the project altogether. Even in some of the few instances where a landowner witness testified to specific concerns about specific aspects of the route across their parcel, the hearing was the first time they had raised the proposed re-route (too late to effectively do anything with it) and when Summit offered to work with them on changes to reflect those concerns, as the Board heard, they would not agree to do so. Further, in the vast majority of such cases the Exhibit H County Overview Maps will confirm that the adjacent parcels have been voluntarily obtained, reducing flexibility to revise the route on a holdout parcel.

And while the opponents of the Project often spoke in broad terms about a generalized opposition to eminent domain, or its use in this case or across their individual property, no one has specifically opposed the particular width or the justification for that width of permanent or temporary easement on any specific parcel. Similarly, while several landowners objected to certain terms in the proposed *voluntary* easement, little was said about the terms of the Exhibit H easement. To the extent that concerns about the voluntary easement were frequently claims that the location of the easement were not strictly defined, for example (because the process was still ongoing), that issue is fully resolved by the Exhibit H easement, which is defined in explicit detail in the Exhibit H. Importantly, the terms of Summit's Exhibit H easement are substantively similar to eminent domain easement rights – including as to issues like scope of what Summit

can do in the easement and how it can access the easement -- that this Board has long and repeatedly approved. *Compare* Summit Exh. H *with* the Exh. Hs in *In re NuStar Pipeline Operating Partnership, L.P.*, Docket No. HLP-2021-0002; *In re Dakota Access LLC*, Docket No. HLP-2014-0001; *In re City of Waukee*, Docket No. P-0874 (amended Exh. H filed Jan. 28, 2009); and *In re ITC Midwest LLC and Dairyland Power Cooperative*, Docket No. E-22386. As a result, there is no basis for finding different routes on individual parcels, different widths, or different terms and conditions to be more appropriate and eminent domain as requested in the filed Exhibit H's should be granted.

III. THE ISSUES RAISED BY THE OBJECTORS DO NOT CHANGE THE PERMIT OR EMINENT DOMAIN ANALYSIS.

While the opposition to the Summit pipeline is vocal, it is much less substantial – both in size and in content – than it might appear. Approximately 150 landowner-witnesses opposing the Project testified, but the Project involves approximately 3,000 parcels. And a large majority of those landowners were among the Jorde Landowners, where it is hard to know the real issues for those landowners because the prefiled testimony was almost entirely cut-and-paste – even the typographical errors were repeated from witness to witness.[67] This is a violation of the cumulative evidence rule intended to make the opposition look much more voluminous than they attorney-driven effort it really was. There were even witnesses who appeared to be unfamiliar with their own testimony when asked about sources they had "cited" (and in any event, it seems very coincidental that each of 100-plus witnesses would have read and cited exactly the same

[67] Tr. Vol. 18 at 5047; 5106; 5131.

sources.)[68] As a result, the Board should be wary of this effort to engage in "law by the pound," stuffing the scales of justice was mass-manufactured pages of argument against the Project.

As the Board recently observed in an electric transmission line case, a broad or general opposition to an infrastructure project – even when sincere and impassioned – doesn't necessarily translate into evidence that bears on the legal framework the Board must apply. *See In re ITC Midwest LLC*, Docket No. E-22401, "Order Granting Johnson County Electric Transmission Line Franchise, Approving Iowa County Electric Transmission Line Franchise With Conditions, and Granting Right of Eminent Domain" (IUB, September 23, 2021) at 26 ("While appreciating the concerns and objections that were filed in the docket and expressed at hearing, the scope of the Board's route review under § 478.18(2) is somewhat circumscriptive.") That is true in the present case as well.

Overwhelmingly, the arguments of the opponents fall into a few broad categories that are easily addressed. Many of the objections would apply equally to the more than 45,000 miles of pipelines (including hazardous liquids and natural gas)[69] already existing – some for generations – in Iowa. If, as just one example, modern farm equipment routinely harmed underground pipelines, that would be well-established by now as many of the existing natural gas, oil, petroleum, ammonia, refined product, and chemical lines under Iowa's farms were built decades ago under much less demanding regulations.

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[68] *See*, *e.g.*, Tr. Vol. 15 at 3936:21-25 (Jorde Landowner King, asked by Ms. Gruenhagen if he knew who Marvin Lugert and Loren Staroba are; Mr. King responded "I do not" – despite citing to them in "his" testimony); Tr. Vol. 24 at 6768 (Jorde Landowner Beyer similarly unable to state what he meant by "social impacts," despite allegedly testifying about such impacts.)

[69] PHMSA maintains a searchable database of pipeline mileage at: https://portal.phmsa.dot.gov/analytics/saw.dll?Portalpages&PortalPath=%2Fshared%2FPDM%20Public%20Website%2F_portal%2FPublic%20Reports&Page=Infrastructure

Many of the other objections appear to be based on a lack of familiarity with Iowa Code 479B, Board Rules chapter 9 and 13, and the required Agricultural Impact Mitigation Plan (AIMP). Easements, for example, are not "forever" regardless of whether the pipeline is being used. Iowa Code § 479B.32 provides that if a pipeline has been abandoned for five years, a landowner can revert the land rights from the pipeline company back to the landowner. Similarly, the statute provides requirements regarding damages after the 3-years in damages statement, see § 479B.27-30, and the statute includes requirements for Summit to pay incremental costs for new tile construction to the extent those costs are caused by the pipeline, see § 479B.31. The AIMP, which is driven by the Board Rules, Chapter 9 and which requires Board approval, addresses most of the farming-related issues raised in the case – the large, obvious issues like soil segregation, decompaction, and tile repairs but also other issues raised by landowners such as temporary fencing and gates or removal of rocks.

Additionally, several of the issues raised by objectors were already addressed in the *Dakota Access* case and in the Iowa Supreme Court's *Puntenney* case upholding the Board's decision, including the use of eminent domain by pipeline companies. Collectively, many of the issues that objections claimed have not been adequately addressed are in fact addressed by operation of existing law.

Finally, a vast amount of the prefiled testimony from the Jorde Landowners, and discussed on the witness stand in the hearings, pertained to objections landowners had to various terms of the proposed *voluntary* easement. None of that discussion, however, is relevant: the terms of the voluntary easement – a private, bilateral agreement – are not before the Board. What is before the Board is the condemnation easement language that is identical (except for certain infrequent valve or launcher-receiver rights) across all Exhibit Hs. The Exhibit H rights,

which (as discussed above) are substantially similar to those approved in numerous prior dockets, are (consistent with Summit's understanding of the law and prior Board preference) and much shorter and limited in scope. That is, the voluntary easement template is much more detailed and provides advantages to both landowners and Summit and is much more customizable. It is also drafted and often transmitted to landowners very early in the project, so terms may include additional flexibility (as to line location, for example) whereas by law the Exhibit H must show the exact contours of the requested easement. Comparing the two is an apples to oranges comparison that renders large amounts of the objector testimony irrelevant. Nonetheless, the overwhelming majority of the tens of thousands of pages filed by objecting landowners in this case, aside from being cut-and-paste repetition, is about just two topics: terms of the voluntary easement offered by Summit, or safety. Neither of those are properly before the Board (safety being in the exclusive jurisdiction of PHMSA), leaving nearly all of the landowner testimony looking massive in volume but ultimately irrelevant in content. A minority of objectors, particularly when their fears and claims are unsupported or simply based on inaccurate information, can't be given individual vetoes over a beneficial project where nearly 75% of the route has been acquired voluntarily.

While Summit will, in its reply brief, respond more directly to arguments raised in objectors' initial briefs, there are a handful of issues that are obvious and frequently-raised but easily addressed that it makes sense to at least touch on in advance. For the reasons below, none of these issues are valid objections to Summit's Project.

A. There is No Evidence That the Project Will Have Undue Impacts on Farming Other Than Temporary Crop Loss Which Will be Covered by Crop Damage Payments.

Undoubtedly the biggest area of concern expressed in the hearing is a set of issues that collectively fall under the umbrella of impacts on farming. Summit understands those concerns:

the idea or the Project came from Summit Agricultural Group, a rural agricultural company based in Alden, Iowa, and with a deep history in Iowa farming, seeing value-added uses for Iowa's farm products, and in agricultural policy.[70] Summit is headquartered in Ames, Iowa, in the heart of farm country, next to a land grant university. The entire goal of the Summit Project is to help ensure the viability of corn markets (and thereby corn farming and the success of corn farmers) through Iowa's value-adding ethanol sector well into the future despite the push toward decarbonization. That history and focus, and Summit's understanding of the importance of farming in Iowa, has been key to the ability to obtain nearly 75% of the proposed route through voluntary agreements.

Nonetheless, few if any of these farming-based concerns like soil compaction, drain tile damage, or safety working over or near infrastructure, are unique to Summit – they are present, and often raised, in every linear infrastructure docket before the Board from liquids pipelines to natural gas to electric transmission, and even "GCU" dockets for solar generation that will share space with agricultural uses. The Board routinely approves projects despite these concerns; there is no basis for treating Summit's CO2 pipeline any differently (particularly when the legislature treated CO2 pipelines the same as many others in chapter 479B). Despite over 45,000 miles of pipelines, thousands of additional miles of electric transmission lines, and a growing number of solar projects, farming continues successfully throughout Iowa. Indeed, the bigger threat to farming in Iowa has been extreme weather events like drought, derecho, and floods, all of which at least some experts blame on climate change caused by greenhouse gases, which the Summit Project would sequester and therefore help mitigate.

[70] Tr. Vol. 8 at 1985:16 – 17

As an initial matter, the Board should not negate its own rules. The entire assumption behind Chapter 9 of the Board Rules and its land restoration requirements (which are the strictest certainly in the Midwest) is that land can be restored adequately to allow farming at a level and in a manner similar to before the pipeline was installed. Not only are these rules more extensive and stringent than other states, they have been updated to incorporate lessons from Dakota Access, and have become even *more* demanding on the applicant and more protective of the farmland. Those rules require an extensive topsoil survey, requirements for topsoil separation and continuing segregation, requirements for decompaction, and highly prescriptive requirements for both temporary and permanent tile repair.

Moreover, to the extent these temporary disruptions to the land cause crop loss before the restoration is fully effective, both Iowa law and Summit's filed statement regarding damages provide for payment of damages to compensate the owner of the farm. *See* Iowa Code §§ 479B.27, .29-.30; Statement Regarding Damages *filed* August 11, 2021. A study of the impact of Dakota Access that was conducted by researchers at Iowa State University was entered into the record to show the existence of crop damage based on the construction of a pipeline. *See* M. Tekeste, E. Ebrahimi et al., *Effect of Subsoil Tillage During Pipeline Construction Activities on Near-Term Soil Physical Properties and Crop Yields in the Right-of-Way* (June 2020).[71] This study, however, actually supports Summit and its approach to crop damages. No one denies that there will be some crop loss in the narrow easement area – depending on timing, it may be impossible to put a crop in at all in the season the trench is cut and the pipe installed. But the Tekeste study showed average reductions in crop yields in the second and third seasons after the

[71] The study and an Iowa State University media release summarizing the study were filed as Attachment 9 to most of the Jorde Landowner testimony and exhibit sets (*see*, *e.g.*, Sylvia Spalding, Vicki Koeppe, Margaret Thomas, Michael and Deborah Main).

Dakota Access Pipeline was installed of 25% for soybeans and 15% for corn. *See* Iowa State summary of Tekeste Study ("The team found crop yields in the right-of-way were reduced by an average of 25% for soybeans and 15% for corn during the first and second crop seasons, compared to undisturbed fields. 'However, we have already started to see gradual recovery in yields from the soybean-corn rotation re-established in the right-of-way,' Ebrahimi said.") Summit is paying crop damages of 100% the first year (regardless of whether any crops are grown), 80% the second year, and 60% the third year – that is, Summit is paying for ***three to four times*** as much crop damage as the Tekeste study actually found in the first few years, and the landowner does not need to show any causation – Summit assumes its activities were the cause for the first three years. Further, while there appeared to be mistaken assumptions about this by many witnesses, Summit remains liable to compensate for proven crop damages caused by the pipeline beyond the three years for which Summit is paying a pre-set percentage. *See* Iowa Code § 479B.17. In short, comparing Summit's damages policy to studied results of Iowa farms following pipeline construction, Summit is vastly *overpaying* for crop damages, making landowners more than whole for the losses caused by Summit's project.

Another concern expressed about impacts to farming is whether it would be safe to farm over the Summit pipeline. There are numerous reasons for the Board to find that it would be safe and to reject this objection: history, regulation, and engineering studies.

As with issues above, farming operations have been occurring over the more than 45,000 miles of existing pipe – much of which was installed under less restrictive safety rules. The PHMSA rules require only 3-feet of cover; Summit's pipe will be built with a minimum of 4-feet of cover. Requirements for integrity management and control of and standards for the pipe steel itself have both gotten more protective over time as well. But if there were a wide-spread history

of pipe failure caused by farming, that would surely be well-known in Iowa either through frequent headlines, through issues brought to the Board, or because the opponents in this case would have been able to bring forth evidence of such problems. Indeed, if farming over steel pipes were a problem, farming over modern pattern drain tile – often plastic, and often at less depth than 3-feet -- would be a much bigger problem, one that would have required changes in farming practices. No such history was shown. Instead, the opponents merely speculated about possible events in the future – because history has shown that farming can and does take place over pipelines like Summit's all the time.[72]

Similarly, PHMSA's regulations take into account that much of the pipeline infrastructure in this country is under agricultural land. The potential stress on the pipe from such farming activities is taken into account in both the depth of cover regulation – which Summit will exceed – and in the pipe wall thickness regulations.

Finally, despite the fact that there is no history of problems caused by farming activities over pipelines, and despite the fact that PHMSA's safety rules already account for such activities and Summit will then exceed those PHMSA safety rules, Summit also studied the issue of weight over the pipeline and had a outside engineering consultant prepare a report on that issue for the docket. *See* Summit Hearing Ex. 4. Even making all manner of conservative assumptions, and testing to a substantial safety margin, the study showed that even the heaviest equipment could be safely operated over the proposed Summit pipeline and concluded that no changes were necessary in the design of the pipe or the depth of cover.

[72] Steel pipelines are simply not as fragile as opponents' unsupported innuendo would suggest. Objecting landowner David Reinig admitted he has directly, repeatedly hit an aged (and apparently uncovered) pipeline on his property with tractor-mounted equipment without incident. Tr. Vol. 5 at 1291 – 1293.

B. County Ordinances Purporting to Regulate the Project of Require Separate Permitting are Unlawful, and the Board Should Disregard Such Efforts.

Throughout the hearing, the Counties raised the issue of recently passed county ordinances. While it is not clear what the point of those discussion was, or what (if any) the relief the Counties may seek from this Board, it is abundantly clear that the County ordinances are of no effect with respect to Summit's pipeline Project. The Board need not, and should not, give any weight to these ordinances which have been found to impermissibly violate the state regulatory scheme, and the terms of which are preempted by federal law as well. *Couser and Summit Carbon Solutions, LLC v. Story County, Iowa et al.*, No. 4:22-cv-383, Dkt. 55 (S.D. Iowa Dec. 4, 2023) (permanently enjoining application of Story County ordinance as preempted by both Iowa Utilities Board process and federal Pipeline Safety Act.)

Further, to the extent the Counties assert that even if the ordinances themselves cannot lawfully apply, that the Board should apply the same terms, the Board should reject that argument. Counties waited a year or more after the Board process began with the informational meetings to seek to pass ordinances – trying to change the rules well into the game, and well after Summit had made significant lawful expenditures on land rights, engineering and environmental studies, and on preparing a permit application compliant with Board rules. In addition to demonstrating why Judge Rose was right to find an intent for a single state process rather than numerous Balkanized county processes and regulations, these belated efforts to regulate aimed directly at the Summit Project raise numerous other legal concerns from equal protection (they have never applied to any of the other pipelines covered by chapter 479B), to

regulatory takings, Contract Clause issues with existing easements,[73] and violations of Summit's vested rights.[74]

The Counties have had the opportunity to express their concerns by participating in the Board process, and they have done so. That is the proper approach. Passing their own Ordinances with their own disparate regulations and their own permitting regimes is not, and should not be considered in this case other than for the Board to reiterate that it has the sole authority over permitting and routing of liquids pipelines in Iowa.

C. To the Extent Opponents Discussed Alternatives Means of Processing Fermentation CO2, Such Alternatives are Irrelevant, and Even if They Weren't the Available Evidence Suggests the Alternatives are Infeasible or Inferior to Summit's Project.

Several witnesses suggested that there may be alternatives to Summit's Project that would not require a pipeline to be built. As a threshold matter, there is nothing in Chapter 479B that required – or even allows -- for an application for a pipeline permit to be compared to alternative uses or approaches to handling the same covered product. The only showing required that pertains to alternatives is that the application must include a statement on consideration of alternative routes. *See* Iowa Code § 479B.5; Board Rule 13.1(f). Summit has complied with that requirement. *See* Petition, Exh. F at 8. The language regarding routes, however, does show that the legislature knows how to require consideration of alternatives when it wants to do so; the fact

[73] *Northern Nat. Gas Co. et al. v. Munns, et al.*. 254 F. Supp.2d 1103, 1112-1115 (S.D. Iowa 2003)(finding amendments to land restoration rules impaired existing easements with landowners).

[74] *See*, *e.g.*, *Geisler v. City Council of Cedar Falls*, 769 N.W.2d 162, 167 (Iowa 2009)(an entity may have rights in a prior zoning law if its rights were vested by substantial lawful investment in furtherance of a project in reliance on the prior law, or if the local government acts in bad faith by directing the change at the project in an attempt to "zone out" the land use); see also *U.S. Cellular Corp. v. Bd. of Adjustment*, 589 N.W.2d 712 (Iowa 1999)(further discussion on bad faith); *Nemmers v. City of Dubuque, Iowa*, 716 F.2d 1194 (8th Cir. 1983)(extensive discussion of vested rights and history in Iowa).

that it did not require comparison of a particular pipeline to other alternatives suggests that the Board should not engage in such a comparison.

Even if the Board does so, however, there are no viable alternatives supported by the record. In this case, the most-frequently discussed alternative was the alleged ability to create "green methanol" at the site of an ethanol plant through companies like CapCO2 or CarbonSink. As with other alternatives, this speculative suggestion was put forth with little-to-no detail: would this (or any other alternative) be able to handle the same volume of emitted CO2 as Summit's project? Would the economics to the ethanol plant be attractive? (An "alternative" can't be forced by the government on an unwilling plant, obviously, and not a single ethanol plant came before the Board in support of CapCO2 or CarbonSink or other alternatives.)

As a practical matter, however, the biggest problem with these alternatives is just that – practicality. The only record evidence of any substance regarding these alternatives is the testimony of Jeffrey Bonar, CEO of CapCO2. Unlike CO2 capture and pipeline transportation, which have been in use for decades, CapCO2 is essentially still in a testing phase. Mr. Bonar testified that CapCO2's processing equipment would come in a shipping container, with each container able to process 10,000 metric tons of CO2. Tr. 4289:3-7. But the Summit project has contracts with ethanol plants for capture of 9,500,000 of CO2, which would require 950 of CapCO2's shipping containers; over 13 participating ethanol plants that would be *an average of 73 shipping containers for each ethanol plant*. Bonar admits that the manufacturing for the crates is "still to be put in place." Tr. 4289:8-10.

Ironically, such alternatives – even if they come to fruition -- don't address concerns that opponents of the Summit project raised regarding Summit. CapCO2, for example, will almost surely use more water than Summit for the same amount of CO2 emissions presented. Every 90

million gallon ethanol facility will use approximately 67 million gallons of water per year.[75] Further, for methanol to be "green," which (like low-carbon ethanol) is how it provides access to tax programs and green energy markets to benefit the ethanol plant, the CapCO2 facilities must be powered with wind energy. But as CapCO2's Bonar testified, the energy needs of CapCO2's equipment is such that *each* ethanol plant working with CapCO2 would require approximately *1,000MW* of wind energy.[76] That is *double* the size of the largest existing wind farm in Iowa, and 13,000MW of new wind capacity would be more than *six times* what was proposed in MidAmerican's recent WindPRIME docket. *See generally In re MidAmerican Energy Company*, Docket No. RPU-2022-0001. Given that some of the very same counties where Summit has participating ethanol plants have recently enacted moratoria on wind energy developments or have enacted largely prohibitory wind ordinances, see Tr. Vol 16 at 4314:10-14, CapCO2 and similar green methanol alternatives look implausible even if the Board were to consider alternatives (which, under chapter 479B, it shouldn't). And if it is successful, CapCO2 will either still require pipelines to move the green methanol, or it will have the even worse result (from both a safety and an energy efficiency standpoint) of using rail or trucks.[77] That is assuming such alternatives can be built and operated at all.

[75] It is not clear if that figure includes the water used to create the green hydrogen input, which is made by electrolysis of water molecules. Also, many of the plants working with Summit produce much more than 90 million gallons of ethanol per year; CapCO2's water use would scale accordingly. That said, the issue of water usage is one that is properly before the Iowa Department of Natural Resources (IDNR), who has the expertise and the state authority to review applications for and grant permits to draw water above a certain volume. The water is used by the capture facility, not the pipeline, and it is only the pipeline that is in the Board's jurisdiction. It is IDNR's role and expertise to evaluate aquifers and other water sources for impacts, and IDNR has approved the permit for one capture facility associated with the Summit project and is reviewing (and will review) any others that are needed.

[76] Tr. Vol 16 at 4308:7-11.

[77] Summit McCown Rebuttal at 6:9-7:9.

D. The Distinction Raised in Some Prefiled Testimony as to Whether Dense Phase CO2 is "Supercritical" or "Liquid" is a Red Herring and of no Consequence.

To the extent the opponents attempt to re-litigate their claim that the Board is without jurisdiction in this case because CO2 shipped in supercritical phase is not "liquefied carbon dioxide" for purposes of Code Chapter 479B, the Board need look no farther than its own Order denying George Cummins' Motion to Dismiss in this docket. *In Re: Summit Carbon Solutions, LLC*, Docket No. HLP-2021-0001, "Order Denying Motion to Dismiss" (IUB July 28, 2023) ("*Order on Motion to Dismiss*"). In that Order, the Board quoted from the Iowa District Court in and for Hardin County, which held:

> Given the purpose of Chapter 479B, it would be nonsensical to hold that companies transporting carbon dioxide through pipelines at higher temperatures and higher pressures than carbon dioxide in its liquid phase are exempt from its requirements. It is therefore clear that Summit [Carbon]'s proposed pipeline is the exact type of hazardous liquid pipeline that the Iowa Legislature intended to be governed by Chapter 479B, regardless of the fact that the carbon dioxide being transported may not always meet a scientifically precise definition of "liquefied" at every moment in the transportation process.

Summit Carbon Sol., LLC v. Kasischke, No. CVCV101911, Dkt. No. 0133 at *7–9 (Iowa Dist. Ct. Hardin Cnty. July 11, 2023).

Agreeing with the District Court, the Board went on to observe:

> The Iowa Legislature enacted Iowa Code chapter 479B "to protect landowners and tenants from environmental or economic damages which may result from the construction, operation, or maintenance of a hazardous liquid pipeline . . . ." Iowa Code § 479B.1. For the legislators to enact a law not covering the most common method of transporting carbon dioxide by pipe creates an absurd result. See Ames 2304, LLC, 924 N.W.2d at 871. This cannot be what the Iowa Legislature intended.
>
> Furthermore, ASME has determined that for its standards, which are included in PHMSA's rules, supercritical carbon dioxide shall be a liquid. ASME B31.4, B400.2 (2019). ASME's website states, "ASME is the leading international developer of codes and standards, hereafter referred to as standards, associated with the art, science, and practice of mechanical engineering. ASME is the

> globally recognized, trusted source of consensus standards since 1884." About ASME Standards, Am. Soc. of Mechanical Engineers, https://www.asme.org/codes-standards/about-standards (last visited July 20, 2023). PHMSA itself, through a duly enacted administrative rule, has supported the ASME definition even though its definition is for supercritical carbon dioxide. PHMSA's support for the term "liquid" is in disagreement with the narrow treatment of terminology proposed in the motion to dismiss. In the supercritical phase, there is no way to distinguish between a liquid and a gas. Considering this fact and how the industry and regulators regulate carbon dioxide, the Board concludes Summit Carbon's proposed project falls within the scope of Iowa Code chapter 479B.

Order on Motion to Dismiss at 9.[78]

Nothing has changed since the Board denied Cummins' Motion to Dismiss as outlined above, and nothing should cause the Board to strain common sense to make a reading of Code Chapter 479B that would have the legislature failing to regulate pipeline shipment of CO2 in the most common manner and contrary to federal regulation. The Board should summarily reject opponents' attempt to relitigate this issue.

E. <u>There is No Evidence that Landowners Will be Left With Uninsurable Liabilities for Damages Caused by the Summit Pipeline, Particularly Since Summit has Committed to Extend it's Indemnity Clause to all Landowners, and is Suggesting a $35 Million Insurance Policy as a Condition of the Permit.</u>

Certain landowners have suggested that placement of the pipeline on their property somehow prohibits them from obtaining property or general liability insurance, or that it subjects them to liability to third parties in the event of a release on the pipeline. Neither of those assertions comports with legal reality or common sense.

First, no party has come forward with evidence demonstrating an inability to obtain property insurance or general liability insurance because of the existence of an underground

[78] And, as noted in the Order on Motion to Dismiss, even if CO2 in the supercritical state were not considered "liquefied" carbon dioxide, Summit would be governed by the substantially identical procedures in Iowa Code Chapter 479. *See Order on Motion to Dismiss* at 11.

pipeline on their property. At most, certain Jorde landowners have presented either testimony of their own, or letters from their current insurer, suggesting that they may not be able to obtain insurance for the risk of a release *on the pipeline*. That makes good sense, of course, because those landowners do not own, operate, or control the pipeline in any manner. An individual landowner seeking a policy to protect against the risk involved in operating a multi-billion dollar pipeline, when that landowner does not operate a multi-billion dollar pipeline, is absurd.

Moreover, it strains common sense to suggest that a landowner cannot obtain property or general liability insurance because of the presence of a pipeline on their property. There are more than 45,000 miles of underground pipeline in Iowa alone.[79] If the millions of acres occupied by those pipelines and the farming and other operations that occur on them were uninsurable because of the presence of a pipeline, it would be well known by now. In fact, for many of the landowners who testified, their property already has other pipelines on it; none of them provided any evidence that they could not insure their property or farm operation because of the presence of those pipelines.

Second, some opponents' argument that they are subject to liability to third parties if a release were to occur on the pipeline does not comport with legal reality. It is the pipeline owner and operator, not the owner of the property where that pipeline may be installed, that is liable for a release on the pipeline. These opponents point to no recognized legal theory under which the owner of the underlying property on which a pipeline is located would be held liable for the pipeline owner's conduct. By the opponents' logic, landowners all over Iowa would have liability for incidents occurring on the streets and highways located on roadway easements across their properties. The Board has in the past impliedly recognized that it is the pipeline owner, not

[79] Summit Schovanec Rebuttal at 7.

landowners, who are liable for damages resulting from a release. *See, e.g., Dakota Access Order* at 102 (requiring Dakota Access to maintain $25 million in insurance coverage to guard against a release on the pipeline); *NuStar Order* at 27 (requiring NuStar to maintain $2.5 million in insurance coverage for damages). In this case, Summit has committed to maintaining a minimum of $35 million in insurance coverage to cover any such losses for the life of its pipeline.[80]

In addition, another way Summit is addressing this issue is to volunteer and suggest as a condition that the enhanced indemnification language it included when requested in voluntary easements be made applicable to all parcels on the route. That language, found in Summit Hearing Exhibit 1, provides:

> **Indemnification**. Company shall pay commercially reasonable costs and indemnify and hold Landowner harmless for any loss, damage, claim, or action resulting from Company's use of the Easements, except to the extent such loss, damage, claim, or action arises out of, relates to, and/or results from the gross negligence or willful misconduct of Landowner, its tenants, guests, invitees, agents, and the like, and/or those acting by or through them or subject to their control.

The inclusion of this condition further insulates and expressly indemnifies landowners from any liability arising from Summit's use of its pipeline on a landowner's property.

Accordingly, the Board should disregard opponents' unfounded speculation that the existence of the pipeline subjects them to liability to third parties or renders them unable to obtain property insurance or general liability insurance for their business.

[80] Summit Powell Rebuttal at 2.

F. The Board Has Provided More Than Adequate Process in This Proceeding, and Shouldn't be Concerned With Due Process Arguments Raised by Opponents of the Project.

The opponents have also claimed at various times that they have been denied procedural due process, either related to the scheduling of the hearing, the ordering of witnesses, or the ability to perform friendly "cross" examination. None of the opponents' arguments have merit. With respect to opponents' arguments that scheduling the hearing to begin on August 22, 2023 and that having non-intervening Exhibit H landowners testify at the outset of the public hearing violates due process, the Board need look no further than its July 28, 2023 "Order Addressing Reconsideration and Clarification of the June 16, 2023 Order with Concurrence" (the "July 28 Order").

As the Board explained in the July 28 Order, the parties were not only provided adequate notice of the hearing, but "[b]y issuing the procedural schedule and official notice on June 16, 2023, the Board provided eminent domain landowners *more* notice than what is required by the Board's rules." *July 28 Order* at 9 (emphasis added); *see also Bowers v. Polk County Bd. of Supervisors*, 638 N.W.2d 682, 691 (Iowa 2002) (holding that statutory period of ten days' notice of board's proposed issuance of bonds was sufficient notice period for purposes of due process). Further, non-intervening Exhibit H landowners were given a meaningful opportunity to be heard. Non-intervening Exhibit H landowners were provided mailed and published notice of the hearing as required by law and were permitted to testify in-person or virtually at the hearing. And, dozens did so. Similarly, opponents' suggestion that having non-intervening Exhibit H landowners appear first at hearing violated their procedural due process rights is based on an incorrect premise. They were not required to testify first; rather, all other parties were required to file their direct testimony prior to the direct testimony of non-intervening Exhibit H

landowners. *See July 28 Order* at 10 – 11. Indeed, Summit filed its direct testimony, in writing, on May 25, 2023 – three months before the hearing began.

In sum, the Board's procedural process for this contested case comports with due process and the Board's statutory authority to "in all cases conduct its proceedings, when not otherwise prescribed by law, in such manner as will best conduce to the proper dispatch of business and the attainment of justice." Iowa Code § 474.3; *see also Jones v. Univ. of Iowa*, 836 N.W.2d 127, 145 (Iowa 2013) (noting "all that is necessary is that the procedures be tailored to the capacities and circumstances of those who are to be heard, to insure that they are given a meaningful opportunity to present their case" and "[n]o particular procedure violates [due process] merely because another method may seem fairer or wiser.").

To the extent that the opponents attempt to argue that they were deprived of due process by being unable to conduct "friendly cross-examination," that argument is also meritless. As a threshold matter, counsel for opponents to the Project *were* permitted to conduct examinations of each other's witnesses for dozens of hours at hearing. Moreover, prohibiting friendly cross examination does not implicate due process; there is no due process right to friendly cross examination. *See, e.g., Puntenney v. Iowa Utils. Bd.*, Polk County Case No. CVCV051987, Ruling on Judicial Review (Iowa Dist. Ct. Feb. 15, 2017) (finding that's Board's disallowance of friendly cross-examination was consistent with due process).

Further, prohibiting friendly cross examination on the few occasions the Board did so during hearing also does not run afoul of Iowa Code § 17A.14. Prior to and throughout hearing, the opponents relied on that Code Section to suggest that they are entitled to friendly cross-examination. That provision provides, "Witnesses at the hearing, or persons whose testimony

has been submitted in written form if available, shall be subject to cross-examination by any party as necessary for a full and true disclosure of the facts." Iowa Code § 17A.14(3).

While the term "friendly cross" is used colloquially from time to time in agency proceedings, the term is a misnomer. Importantly, Code Section 17A.14 allows any party to conduct "***cross***-examination." (emphasis added). By definition, if a given witness is "friendly" to the questioner's case, the questioning is not ***cross***-examination. Black's Law Dictionary defines "Cross-Examination" as follows: "The questioning of a witness at a trial or hearing by the party ***opposed to the party in whose favor the witness has testified***." *Cross-Examination*, Black's Law Dictionary (11th ed. 2019) (emphasis added). Black's Law Dictionary goes on to explain:

> The purpose of cross-examination is to discredit a witness before the fact-finder in any of several ways, as by bringing out contradictions and improbabilities in earlier testimony, by suggesting doubts to the witness, and by trapping the witness into admissions that weaken the testimony.

Id.

It is beyond question that the opponents to the Project are not opposing parties to one another. Thus, for example, Sierra Club's counsel's hours-long questioning of Mr. Jorde's witnesses was not questioning by the party "opposed to the party in whose favor the witness testified." *Id*. Because it does not constitute cross-examination, it is not covered by Iowa Code Section 17A.14's provision permitting "cross-examination" by other parties. The Board should reject any argument to the contrary.

CONCLUSION

The Summit Project presents an extraordinary opportunity for Iowa: a massive infrastructure investment that creates jobs, increased tax revenues, and increased revenues for ethanol plants and landowners, all of which also helps ensure a bright future for Iowa's corn

growers and ethanol producers. Support for value-added agriculture is vital to the state, not just in dollars but in ensuring the vigor of Iowa's rural communities. The Summit pipeline will provide a direct service to over a dozen companies in Iowa. In addition, it advances a bipartisan public policy, embodied by Congress in the 45Q and 45Z tax incentive program, of both promoting biofuels and encouraging investments in reduction of carbon emissions. Because there is a proven demand, and because of the extensive benefits the Project will provide, the Project promotes the public convenience and necessity.

Summit understands the importance of property rights and has made good faith efforts to work with landowners and is providing generous offers for easements and for crop damages. As a result, nearly 75% of the route has been acquired voluntarily. While the benefits of the project must be balanced against the use of eminent domain, the Board has often applied that balance and approved infrastructure projects, including approval of eminent domain for holdout parcels. This Project provides more benefits and more *direct* benefits than most of those previously-approved applications, and the voluntary easement percentage is consistent with previous large projects as well. In this regard, the *Dakota Access Order,* upheld by the Iowa Supreme Court, provides strongly guiding precedent. The Iowa legislature, understanding the importance of pipeline infrastructure – including CO2 pipelines – expressly approved the use of eminent domain for such projects in Iowa Code § 479B.16.

The Board has conducted what is likely the longest and most thorough proceeding in Board history. The record is extensive – and demonstrates Summit's compliance with all prerequisites for a permit, as well as the robust benefits the Project will provide. For all of the reasons herein, the law and the facts favor approval of the Project.

Summit respectfully requests the Board grant the requested pipeline permit, and with it the use of eminent domain as requested in the remaining Exhibit Hs.

Respectfully submitted this 22nd day of December 2023.

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ATTORNEYS FOR
SUMMIT CARBON SOLUTIONS, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 22nd day of December 2023, he had the foregoing documents electronically filed with the Iowa Utilities Board using the EFS system which will send notifications of such filing (electronically) to the appropriate persons.

/s/ Bret A. Dublinske