

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: SUMMIT CARBON SOLUTIONS, LLC	DOCKET NO. HLP-2021-0001
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ORDER ADDRESSING MOTION TO REQUIRE EXHIBITS

PROCEDURAL BACKGROUND

On January 28, 2022, Summit Carbon Solutions, LLC (Summit Carbon), filed a petition for a hazardous liquid pipeline permit with the Utilities Board (Board) to construct, operate, and maintain approximately 681 miles of 4- to 24-inch diameter pipeline for the transportation of liquefied carbon dioxide within the state of Iowa.

On April 19, 2022, the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, filed a motion to require Summit Carbon to file several exhibits.

On May 2, 2022, Summit Carbon filed its response resisting OCA's motion.

On May 24, 2022, OCA filed a reply to Summit Carbon's resistance.

OCA MOTION

In its filing, OCA requests seven exhibits be filed by Summit Carbon. OCA states that 199 Iowa Administrative Code (IAC) 13.3(1)(I) allows the Board to require additional filings it deems necessary. For ease of use, the Board will label OCA's requested items as follows, and will address each in turn below: Exhibit L1, a risk assessment and consequence analysis; Exhibit L2, an emergency response plan; Exhibit L3, alternative

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route evaluations; Exhibit L4, survey documentation; Exhibit L5, easement negotiation information; Exhibit L6, information regarding the use of public funds; and Exhibit L7, efforts to minimize pipeline footprint.

OCA states the Board should require Summit Carbon to file its risk assessment and modeling information as referenced in Exhibit L1, as carbon dioxide has very different properties compared to other liquids currently being transported in Iowa. OCA states both the risk assessment and modeling are needed by the Board and other parties to understand the risks associated with the pipeline and to assist with determining the route of the proposed hazardous liquid pipeline.

OCA asserts knowing Summit Carbon's emergency response plan, as referenced in Exhibit L2, is essential in determining whether the proposed hazardous liquid pipeline route is appropriately situated and whether the pipeline promotes public convenience and necessity. OCA states Summit Carbon has responded to a data request that stated its emergency response plan is not due to be filed with the Pipeline and Hazardous Materials Safety Administration (PHMSA) until 60 days before operation is to begin. See 49 CFR § 195.402. OCA asserts the details of Summit Carbon's emergency response plan are relevant to whether Summit Carbon's proposed hazardous liquid pipeline route is appropriate under state law, regardless of whether PHMSA has exclusive jurisdiction over emergency response measures. OCA states the Board and the public ought to at least know that Summit has an emergency response plan and what that plan contains.

OCA states Iowa Code § 479B.5(6) and 199 IAC 13.3(1)(f)(2)(2) require a petition to contain information about the possible use of alternative routes. OCA states

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it requested additional information from Summit Carbon on this issue, as referenced in Exhibit L3, and Summit Carbon provided either disingenuous or indicative proof that it is giving less consideration to the proposed hazardous liquid pipeline route in Iowa than in other states. OCA states that in Summit Carbon's South Dakota petition, Summit Carbon provided a narrative description of the route selection process, a list of alternative routes considered, maps of alternative routes, and explanations regarding why those routes were rejected. OCA states Summit Carbon should be required to demonstrate the effort it invested to determine the pipeline route.

OCA states Iowa Code § 479B.15 imposes requirements on hazardous liquid pipeline companies seeking to enter private property for surveying purposes. OCA states the Board does not have specific rules regulating a hazardous liquid pipeline company's conduct during the land surveying process. OCA states this lack of guidance from the Board means the Board should require Summit Carbon to file its procedures for how it conducts land surveys, as referenced in Exhibit L4. OCA states how Summit Carbon interacts with landowners during the surveying stage speaks to whether Summit Carbon will construct and operate the proposed hazardous liquid pipeline in a manner which promotes the public convenience and necessity. OCA requests the Board order Summit Carbon to provide copies or lists of:

- a. Any written communications used to send information about surveys to landowners;
- b. Any scripts used to communicate via telephone with landowners about surveys;
- c. Any policies about how and when surveyors should communicate with landowners;
- d. Any code of conduct for surveyors;
- e. All properties where surveys have been conducted, listed by county, to be updated weekly; and
- f. Proof of service for all survey entry notices.

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OCA states Iowa Code § 6B.2B requires a company to make a good faith effort to negotiate with property owners before filing an application for condemnation. OCA states that absent this showing, the request for condemnation can be denied. OCA states that waiting until after a permit is granted to determine the adequacy of negotiations which occur months or years prior to a company filing a request for condemnation denies the company the opportunity to mitigate deficiencies. OCA states it attempted to obtain Summit Carbon's policies and procedures used during negotiations, as referenced in Exhibit L5, but Summit Carbon stated it was not in possession of the requested materials. OCA asserts Summit Carbon's control, or lack thereof, over the conduct of its contractors speaks to whether Summit Carbon will construct and operate the proposed pipeline in a manner which will promote the public convenience and necessity. OCA requests the Board order Summit Carbon to provide copies of:

- a. All contracts for easement negotiation services;
- b. Any written communications used to send information about easements to landowners;
- c. Any scripts used to communicate via telephone with landowners;
- d. Any policies about how and when land agents should communicate with landowners; and
- e. Any code of conduct for land agents.

OCA states Summit Carbon has indicated it intends to receive 45Q tax credits from the federal government for operation of the proposed hazardous liquid pipeline and sequestration of carbon dioxide. OCA states federal tax credits come at the expense of taxpayers, including Iowans. OCA states how those tax credits, and any other public funds, are used is relevant to whether the proposed hazardous liquid pipeline will

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promote the public convenience and necessity. OCA therefore requests the Board require Summit Carbon to file the following information, as referenced in Exhibit L6:

- a. A list of any publicly funded incentives that Summit Carbon intends to use;
- b. The expected value of incentives for each year of the pipeline's 25-year permit; and
- c. A description of all other expected sources of revenue and their value for each year of the pipeline's 25-year permit.

OCA states Summit Carbon has indicated that it intends to request the right of eminent domain if it is unable to obtain voluntary easements for the entire route. OCA states that before Summit Carbon is granted the right of eminent domain, it should provide evidence, as referenced in Exhibit L7, that it has made efforts to minimize the pipeline's footprint. OCA requests the Board order Summit Carbon to provide the following:

- a. A list of investors and their share in any profits;
- b. Evidence that Summit Carbon has investigated potential storage sites in Iowa and that there is no viable sequestration site in Iowa;
- c. Evidence that Summit Carbon has investigated alternate transportation options and that there are no viable alternative transportation options;
- d. Evidence of good faith negotiations with other potential carbon dioxide pipeline operators to share transport of carbon dioxide to the closest sequestration site to each emitting facility;
- f. Evidence of steps taken to coordinate with regional organizations, including but not limited to, the Midwest Regional Carbon Initiative and the PCOR Partnership, to develop a coordinated approach to carbon dioxide infrastructure build-out;
- g. Expansion plans for future transport of carbon dioxide as carbon capture from additional facility types, such as electric power generation facilities, becomes economically and technically viable, including:
 1. Potential future pipeline routes to large emitters of carbon dioxide;
 2. Analysis of the pipeline's capacity to carry carbon dioxide from additional facilities; and
 3. Proposed tariffs to be implemented for potential future customers desiring carbon dioxide transport; and
- h. Any other evidence of Summit Carbon's efforts to minimize the pipeline footprint.

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SUMMIT CARBON RESPONSE

On May 2, 2022, Summit Carbon filed its response to OCA's request. Summit Carbon states OCA's request would radically change the procedures the Board has traditionally used in infrastructure cases. Summit Carbon states OCA's proposal is, in essence, making Summit Carbon prove its case in order to allow its case to go forward. Summit Carbon states much of what OCA is requesting is the kind of information routinely provided in testimony. Summit Carbon does not address each of OCA's requests, but it does state OCA is seeking to add prerequisites to the petition. Lastly, Summit Carbon states OCA has the traditional tools available to it; additional discovery, discovery motions, or reviewing testimony and exhibits, to obtain the information it is seeking. Summit Carbon states OCA has provided no evidence that these tools are not getting OCA the information it desires.

OCA RESPONSE

On May 24, 2022, OCA filed a reply to Summit Carbon's resistance to provide OCA's requested information. OCA states the novelty of Summit Carbon's request means Board staff, OCA, other parties, and the public have very little experience on which to rely when attempting to address Summit Carbon's proposal. OCA states waiting until Summit Carbon files its testimony before beginning to understand the issues in this case will not leave sufficient time to allow the Board, OCA, and other parties to find and hire consultants. OCA states its requested information would be beneficial for landowners to have prior to signing easements. OCA states Iowa Code § 474.3 allows the Board to conduct proceedings in a manner which will best dispatch justice. OCA states Iowa Code § 479B.1 gives the Board authority to protect

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landowners. OCA states the Board has jurisdiction to require Summit Carbon to file the information requested by OCA.

BOARD DISCUSSION

The Board has reviewed the information and will grant in part and deny in part OCA's motion. The Board has examined each of the seven exhibit items requested by OCA and will require Summit Carbon to provide Exhibits L1, L2, and L3. The Board will deny OCA's motion with regard to Exhibits L6 and L7. The Board will require Summit Carbon to file a part of Exhibit L4, detailed below as L4.A, at the same time as Exhibits L1, L2, and L3, and file an additional part of Exhibit L4, referred to as L4.B, and Exhibit L5 once Summit Carbon has filed its Exhibit H, and only for those landowners subject to Exhibit H.

The Board has reviewed the information requested under Exhibits L1, L2, and L3 of OCA's motions and has determined that information is necessary to assist with the review of the petition. The Board agrees that having the risk assessment, modeling, and emergency response plan will aid in siting of the hazardous liquid pipeline. The Board understands these documents may not be in final form; however, the Board has determined the documents, even in draft form, contain information that will be beneficial in the review process. Therefore, Summit Carbon will be required to file its risk assessment and plume modeling for its project in Iowa. Furthermore, Iowa Code § 479B.5(6) and 199 IAC 13.3(1)(f)(2)(2) require Summit Carbon to provide information about the use of alternative routes. The Board will therefore require Summit Carbon to file additional information, be that additional maps or a more descriptive narrative,

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explaining the possible alternative routes that have been considered for the hazardous liquid pipeline in Iowa.

With regard to Exhibits L6 and L7 of OCA's motion, the Board will not require Summit Carbon to file the requested information. The Board has determined this information is better obtained through the discovery tools already at OCA's disposal and finds this information would be better addressed with testimony or at hearing. Therefore, the Board will not require Summit Carbon to file exhibits relating to Exhibits L6 and L7 of OCA's motion.

For Exhibit L4, the Board will break the exhibit into two parts: Exhibit L4.A and L4.B. The Board will require Summit Carbon to file Exhibit L4.A now and Exhibit L4.B, as discussed herein, once the Board has declared Exhibit H to be in final form, if necessary. The Board has reviewed OCA's filing and agrees that Summit Carbon should file written communications sent regarding surveying, scripts used to communicate about surveys, policies Summit Carbon has with land agents about how and when survey communications are to occur, and any code of conduct Summit Carbon has for its surveyors as Exhibit L4.A. The Board is not requiring Summit Carbon to file every communication sent at this time, but is requiring the general written communications sent by Summit. Summit Carbon will be required to continually update Exhibit L4.A, should these general communications regarding survey change once Summit Carbon has filed this exhibit.

With regard to the portion of Exhibit L4.B which is to be filed once the Board declares Exhibit H in final form, if necessary, the Board will require Summit Carbon to provide parcel specific information relating to those parcels subject to Exhibit H. The

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Board will require Summit Carbon to list all survey contacts, who and how the contact was made, and provide a copy of proof of service, if surveying was completed by using Iowa Code § 479B.15 for each parcel subject to Exhibit H. Exhibit L4.B is required once the Board declares Exhibit H to be in final form and will include contacts made by Summit Carbon and any third party working on Summit Carbon's behalf.

For Exhibit L5, the Board will deny OCA's requested information, but will require Summit Carbon to file parcel specific information relating to the negotiation of an easement. The Board will require Summit Carbon to list all negotiation contacts, and who and how the contact was made. Exhibit L5, as described herein, will include contact made by Summit Carbon and any third party working on Summit Carbon's behalf.

The Board finds the information contained within Exhibit L4.B and L5, as described above, to be beneficial after Summit Carbon files its Exhibit H, containing parcel specific requests for eminent domain. This information will be assistive in determining what actions Summit Carbon has undertaken with each person and whether Summit Carbon negotiated in good faith. Therefore, the Board will require Summit Carbon to file Exhibits L4.B and L5, as described above, after Summit Carbon files its Exhibit H, and only for those parcels over which Summit Carbon is requesting eminent domain.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The request for a risk assessment and modeling information filed on April 19, 2022, by the Office of Consumer Advocate, a division of the Iowa Department of

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Justice, and described as Exhibit L1 in the Utilities Board order, is granted.

2. The request for Summit Carbon Solutions, LLC's, emergency response plan, filed on April 19, 2022, by the Office of Consumer Advocate, a division of the Iowa Department of Justice, and described as Exhibit L2 by the Utilities Board in the order, is granted.

3. The request for additional information pertaining to Summit Carbon Solutions, LLC's, alternative routes, filed April 19, 2022, by the Office of Consumer Advocate, a division of the Iowa Department of Justice, and described as Exhibit L3 by the Utilities Board in the order, is granted.

4. The request for survey documentation filed on April 19, 2022, by the Office of Consumer Advocate, a division of the Iowa Department of Justice, and described as Exhibit L4 by the Utilities Board in the order, is granted in part and denied in part.

5. Summit Carbon Solutions, LLC, shall file Exhibit L4.A as described by the Utilities Board in the order.

6. Summit Carbon Solutions, LLC, shall file Exhibit L4.B as described by the Utilities Board in the order.

7. The request for easement information filed April 19, 2022, by the Office of Consumer Advocate, a division of the Iowa Department of Justice, described as Exhibit L5 by the Utilities Board in the order, is denied.

8. Summit Carbon Solutions, LLC, shall file Exhibit L5 as described by the Utilities Board in the order.

9. The request for information regarding the use of public funds, filed April 19, 2022, by the Office of Consumer Advocate, a division of the Iowa Department of

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Justice, and described as Exhibit L6 by the Utilities Board in the order, is denied.

10. The request for efforts to minimize the pipeline footprint filed April 19, 2022, by the Office of Consumer Advocate, a division of the Iowa Department of Justice, described as Exhibit L7 by the Utilities Board in the order, is denied.

11. Within 30 days of this order, Summit Carbon Solutions, LLC, shall file its response to Ordering Clause Nos. 1, 2, 3, and 5.

12. Summit Carbon Solutions, LLC, shall continually update its response to Ordering Clause No. 5.

UTILITIES BOARD

Geri Huser Date: 2022.07.13
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Richard Lozier Date: 2022.07.14
08:43:22 -05'00'

ATTEST:

Kerrilyn Russ Digitally signed by Kerrilyn Russ
Date: 2022.07.14 09:27:32
-05'00'

Joshua J Byrnes Date: 2022.07.13
14:53:25 -05'00'

Dated at Des Moines, Iowa, this 14th day of July, 2022.