STATE OF IOWA
DEPARTMENT OF COMMERCE
IOWA UTILITIES BOARD

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

REPLY IN SUPPORT OF CONFIDENTIAL TREATMENT FOR INFORMATIONAL MEETING MAILING LIST

Summit Carbon Solutions ("Summit") respects the views of the parties that have requested access to Summit's mailing list for its informational meetings, but Summit has compelling reasons for asking the Board to protect the privacy interests of landowners who have not voluntarily chosen to have their personal information publicized.

In planning the informational meetings and coordinating schedules with the Board staff, the Board staff requested that the mailing list be provided. There is nothing in Iowa Code chapter 479B, nor in Chapter 13 of the Board Rules, that requires or compels an applicant for a pipeline permit to file the mailing list for its informational meeting notices. Summit acknowledges that the Board staff had legitimate reasons for its request: to gauge the potential attendance in each county, to confirm substantial compliance with the mailing rule, or to have a source to determine as comments are filed for and against the project whether the commenter is likely to be directly impacted by the line or not. In an effort to be cooperative with the Board, Summit agreed to provide the list to the Board on request. As Summit explained at the time, however, it had concerns about the propriety of giving out personal information of landowners without their permission.

Summit has, from the start, argued (as have other utilities on many issues over many years) that their dealings with individual landowners are private and confidential for the

protection of the privacy interests of the landowner. To use an analogy, it is widely accepted that it is improper to send a mass e-mail with the e-mail addresses exposed for all other unrelated recipients to see. The interest is no different with physical mailing addresses.

This premise should not be controversial. The Board has already ruled on this exact question, finding that the privacy interest of individuals on such mailing lists means that there is no public purpose in their disclosure for purposes of Iowa Code §22.7(6), the exception to the Open Records Act for reports to government the release of which would serve no public purpose. *See, e.g.*, *In re Wapello Solar LLC*, Docket No. GCU-2019-0001, "Order Granting Request for Confidential Treatment Filed on August 28, 2019 and Issuing Certificate" (October 24, 2019); *In re Holliday Creek Solar LLC*, Docket No, GCU-2020-0001, "Order Granting Requests for Confidential Treatment Filed June 22 and July 31, 2020" (October 28, 2020). As the Board correctly noted in those orders,

> Holliday Creek asserts the landowners' "personal, specific information should be protected." The Board agrees with this assertion. In *Clymer v. City of Cedar Rapids,* the Iowa Supreme Court recognized a constitutional right of privacy could serve as a basis for holding information confidential. *Clymer v. Cedar Rapids*, 601 N.W.2d 42 (Iowa 1999). The court examined, in part, the scope of this privacy interest in the context of a public employee's home address, holding "a public employee has a substantial privacy interest in his or her address that outweighs the public's interest in disclosure, unless the information is necessary to open the government's actions to the light of public with scrutiny." Id.at 47 (citations omitted). The Board finds this same privacy interest could be implicated with respect to the landowner contact information.

Holliday Creek at 3-4. This is also consistent with Restatement (Second) of the Law, Torts, §652, which sets out as one of the privacy rights a right to be free of intrusion on seclusion. Publicizing widely a list of the personal addresses of persons involuntarily made part of a process serves only to make them more exposed to the kind of intrusion the law generally seeks to protect them against.

Opponents to keeping landowner information private argue that publicizing the mailing list is necessary to facilitate organization of opponents to the pipeline. Facilitating the organization of opponents of the pipeline is not the role of the neutral Board and does not outweigh the privacy interests of the landowners on the mailing list. There are many ways for landowners ***who want to be known, who voluntarily want to forego their privacy*** to find each other, and they clearly have for purposes of commenting to the Board. One function of the informational meetings is that neighbors can congregate and discuss – before, during and after.[1] Social media and web sites allow for easy organizing for and against issues like infrastructure projects. Groups can hold and advertise their own community meetings (and some have during the process.) And of course, if landowners want to make themselves known, they can file comments in the Board docket which becomes a *de facto* mailing list because of the electronic service function of the filing system. Key to attending and speaking at a meeting, organizing a meeting, joining a social media page, or filing in the Board's docket, however, is that all of these are choices the individual landowner makes to "go public" – they can "opt in" to the public debate. Additionally, publicizing the mailing list is exceedingly overbroad: 2/3rds of that list will not actually end up on the route. Those persons merely in the notice corridor would have their name and address associated with the project for essentially no reason at all.

Summit believes – as the Board itself has, as the Iowa Supreme Court has – that the privacy of personal information is important and Summit should not be the one to publicize a list of personal identifying information, including home addresses, for persons who had no say in that decision.

[1] It may be suggested that the ability to organize opposition before the informational meetings is important. That position, however, misapprehends the purpose of the informational meetings. Those meetings are not for argument; if they were, they would be on the record. Those meetings are, by Code, for the purpose of transmitting certain listed information to the potentially impacted public.

CONCLUSION

The opponents of confidential treatments have provided no basis for the Board to reject its own recent, repeated, correct precedents on this issue. The Board should grant the properly supported request for confidential treatment.

If, however, the Board does not believe confidential treatment is appropriate, the Board should simply allow Summit to withdraw its filing and it should be deleted. Had Summit understood that pipeline opponents would fight against landowner privacy to advance their agenda, Summit would have resisted providing the list to begin with – again, there is no legal basis to require its filing. Summit relied in good faith on the Board's prior practice in understanding the list it voluntarily provided could be given confidential treatment.

If the Board does not grant confidential treatment, and does not allow the filing to be withdrawn, the Board should at the very least impose three limitations. First, Summit should be allowed to refile the list with only tracts on the proposed centerline – most of the recent comments filed on this issue seek names of the affected landowners; most of the list will never fit that description. Second, as even OCA agrees is necessary, the Board should run the list against the Safe At Home program database before publication. And third, the Board should provide an opt-in mechanism where persons who received the meeting mailing can declare that they want to be made public. The opponents are incorrect in claiming to speak for all landowners and in saying "everyone" wants the list public. As with most infrastructure projects, there is a vocal minority, while such projects routinely get significant (but much less vocal) support as shown through voluntary participation in the project. At the very least, the Board should provide a mechanism, as OCA suggests, for an opt-out – where recipients can privately and confidentially request their information be omitted from the list pre-publication.

All of these alternatives are needlessly complicated ways to protect basic individual privacy, however, and none protect it as well as not publicizing private individuals' information without a compelling reason in the first instance. The Board should grant confidential treatment for the mailing list consistent with the law and good policy.

Respectfully submitted this 1st day of November, 2021.

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ATTORNEYS FOR SUMMIT CARBON SOLUTIONS, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 1st day of November, 2021, 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
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