STATE OF IOWA
DEPARTMENT OF COMMERCE
IOWA UTILITIES BOARD

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

RESISTANCE TO MOTIONS REGARDING EXHIBIT H

On January 28, 2022, Summit Carbon Solutions ("SCS") filed its Petition for a permit pursuant to Iowa Code chapter 479B and Board Rules chapter 13. As the Board knows, the form and format for the Petition are prescribed by the Board. SCS used the provided forms, and filed a Petition that is wholly consistent with those filed in prior dockets.

Nonetheless, on February 18, 2022, Sierra Club – who has participated in prior pipeline dockets – filed a "Motion to Require Exhibit H to be Filed." On February 22, 2022, George G. Cummins, alleging he is an "Affected Iowa Landowner," filed through his counsel the Domina Law Group a "Motion and Response to Summit's Defective Filing." Both of these filings are entirely frivolous – they are procedurally unsound and reflect no effort to understand the Board's rules and procedures -- and the Board should treat them as such.

First, as a threshold matter, it is ironic that the movants accuse SCS of failing to follow proper procedures when neither has intervened and therefore neither is a proper party and both lack standing to file a motion. While the Board often provides latitude for laypersons who are unrepresented by counsel, that is not the case here. Sierra Club's filing was made by an attorney, Wally Taylor, who has appeared before the Board before and who should be expected to know and follow proper procedure. Mr. Cummins is represented by a private law firm, although, as is discussed below, it is clear that Domina Law has made no effort to learn Board practice or to

study the Board's rules and how they are applied. SCS encourages the Board to establish and require the minimal order of requiring persons to properly intervene to acquire the rights of a litigant in this case, including the right to file motions. Because both motions have been improperly made, both must be denied.

Second, both motions are wholly without merit and reflect a fundamental lack of understanding of the rules and processes governing a pipeline permit proceeding. Sierra Club makes the odd assertion, for example, that Board Rule 13.3(h) "requires a list with the specific descriptions of the parcels. . ." The word "list" appears nowhere in the rule; no list is contemplated. There is no excuse for Sierra Club to not know exactly what gets filed: a series of exhibits, one per parcel, with the information listed in the rule, as well as an overview map for each county. There is never, and hasn't been in prior cases under Chapter 13, a list filed. That is simply an egregious misreading of the language of the rule.

Domina Law also appears to have not done the due diligence as to how the Board processes linear infrastructure applications; it is not clear Domina Law realizes that the wording of the Petition with regard to Exhibit H is not something created by SCS, but rather is wording provided by the Board. A Petition is not a static document – it will get revised incrementally through the staff review process, it will get revised incrementally as negotiations with landowners result in minor modifications to the route, and once individual Exhibit Hs are filed it will get revised as they are withdrawn or added. (And this dynamic process during review is true not only of dockets like this one, but in all linear infrastructure dockets including the more common natural gas and electric transmission dockets.) The very rule the movants cite expressly anticipates that the need for or extent of eminent domain may not be known at the time of filing. *See* 199 Iowa Admin. Code § 13.3(1)(h) ("The extent of the eminent domain request may be

uncertain at the time the petition is filed.") The Domina Law filing is also entirely over-the-top in arguing that the Board can't even engage in internal processing of the Petition until Exhibit H is complete. To the contrary, on its face Board Rule 13.3(h) specifies only that the hearing cannot be definitively set until Exhibit H is complete. (Note that this undermines the movant's key argument: by postponing only the locking in of a hearing date, and applying this caveat only to Exhibit H, the rule clearly contemplates Exhibit H being completed later, after the filing of the rest of the Petition.) In HLP-2014-0001, the Board recognized this and noted that it had reserved a location for a hearing, but cautioned Dakota Access that the date would not be finalized unless and until its Exhibit H was complete (and met all other deadlines in the schedule.) *See In re Dakota Access LLC*, Docket No. HLP-2014-0001 "Order Setting Procedural Schedule" (IUB, June 8, 2015) at 1 ("As is contemplated by rule and practice, the petition did not include the final form of Exhibit H. . .")

The absurdity of the movants position is clear in that the Petition can and will be amended in numerous respects as part of the process. As a result, SCS could simply opt for the language that at present it is not seeking eminent domain – and then just amend later if it cannot obtain all necessary voluntary easements. Instead, SCS stated – as the rule, the Petition form, and established practice contemplate – that the extent of eminent domain is presently unknown. As it has done in past cases, the Board presumably will set a deadline for Exhibit Hs; SCS will abide by that deadline. Until that time, it makes no sense, and would waste the time of the Board and SCS (and needlessly alarm landowners) to file and serve numerous Exhibit Hs which would be withdrawn long before the time at which the Board really needs the Exhibit Hs to be final in order to timely process the case. There is no requirement anywhere in the law to have all possible voluntary land acquisition completed before filing a Petition; land negotiations are an

ongoing process, as the Board knows, even after completion of the Board's proceeding. It is in the Board's interest, and the interest of most landowners, for an applicant to obtain as many voluntary easements as time permits before filing Exhibit Hs. Movants simply want to distort a functional, technical requirement of a permitting process into a tool for their own advocacy; that is a misuse of the process and should be rejected.

The Board, having adopted the Chapter 13 rules, is in the best position to know how those rules should be implemented. Notably, the statute governing petitions, Iowa Code §479B.5, does not require *anything* about eminent domain to be included in the petition. That requirement is entirely a function of Board rules. While the Board has latitude to determine how to implement those rules, one of the restrictions it does face is Iowa Code §17A.19(10)(h), which requires that actions other than new rulemakings be consistent with prior Board decisions. The movants here are requesting the Board apply the rules for eminent domain exhibits in infrastructure petitions differently than the Board has applied those provisions in past cases. The Board should decline the wholly unsupported and erroneous invitation. The rule on its face contemplates Exhibit H being completed at a later time, and the Board's past practice has been to allow Exhibit H to be completed over time. The motions are both procedurally and substantively unsound, and must be denied.

Respectfully submitted this 3rd day of March, 2022

By: */s/ Bret A. Dublinske*

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 3rd day of March, 2022, 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