

STATE OF IOWA
DEPARTMENT OF COMMERCE
BEFORE THE IOWA UTILITIES BOARD

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

**MOTION TO REQUIRE FILING AND PREREQUISITES FOR
ESTABLISHING A PROCEDURAL SCHEDULE**

The Office of Consumer Advocate (OCA) hereby requests that the Iowa Utilities Board (Board) require Summit Carbon Solutions, LLC (Summit) to file additional exhibits, as described below, in support of Summit’s petition for a permit to construct a hazardous liquid pipeline in Iowa. OCA also requests that the Board require that Summit file these exhibits before establishing a procedural schedule.

INTRODUCTION

On January 28, 2022, Summit filed a Petition for Hazardous Liquid Pipeline Permit (Petition), seeking permission to construct 681 miles of pipeline in Iowa for the purpose of transporting carbon dioxide. On March 23, 2022, the Board issued a “Supplemental Letter Regarding a Petition for a Pipeline Permit in Docket No. HLP-2021-0001” in which Board staff requested that Summit provide additional information about Summit’s proposed pipeline. On April 14, 2022, Summit filed a “Response to Staff’s Supplemental Letter Filed March 23, 2022” (Response). As an introductory remark to the responses, Summit stated, “Many of the staff’s questions relate to matters that are in process or still being developed, such as specific construction plans, or permits and authorizations that are typically sought and obtained closer to the beginning of construction, when a final route has been decided and specific construction

practices have been determined.”¹ Proceedings for hazardous liquid pipeline permit petitions are complex and require substantial investment of the Board’s time and resources, as well as that of other parties. Summit’s admission that it is unable to provide information that the Board requested demonstrates that Summit has not done the amount of planning necessary for the Board to expend resources on a contested proceeding.

Board Rule 13.3 lists the exhibits that are required to accompany a petition for a hazardous liquid pipeline permit. Rule 13.3(l) states, “The Board may require filing of additional exhibits if further information on a particular project is deemed necessary.” Given the size of Summit’s proposed pipeline and the novelty of carbon dioxide pipelines in Iowa, OCA urges the Board to require Summit to file additional exhibits before establishing a procedural schedule in this docket.

Waiting until after Summit files the exhibits described below to establish a procedural schedule will create administrative efficiency by ensuring that Summit has fully developed a plan for safely constructing and operating a hazardous liquid pipeline before the Board commits its resources to conducting what will undoubtedly be a time-consuming proceeding. The public availability of this information will ensure that the Board and other parties will be able to use resources efficiently when evaluating Summit’s Petition. Having these exhibits filed before establishing the procedural schedule should also reduce the amount of discovery conflicts and the need for Board intervention in those disputes.

Furthermore, Summit will not be prejudiced by a delay because there is no imminent deadline for Summit to meet. The 45Q federal tax credits that Summit has discussed merely

¹ Response at 1.

require that construction on an eligible project begin before January 1, 2026,² leaving ample time for the Board to engage in a thorough examination of Summit's Petition. Additionally, if Summit dislikes the length of a delay due to additional filing requirements, Summit will be the party in control of that delay and can shorten the time of the delay by providing information quickly.

PROPOSED EXHIBITS

I. Risk Assessment and Consequence Analysis

Summit's proposed pipeline would be the first carbon dioxide pipeline in Iowa. Carbon dioxide has very different properties than other liquids transported through Iowa in hazardous liquid pipelines. Those properties require different pipeline construction and will result in different impacts in the event of a pipeline accident. In order to evaluate Summit's proposed pipeline route, the Board and other parties need to understand the risks associated with the pipeline. Similarly, a consequence analysis that examines the effects of a pipeline accident is important for understanding the potential impacts along the pipeline route. For a carbon dioxide pipeline, this information should include plume modelling demonstrating how carbon dioxide would disperse if released into the atmosphere. Understanding the potential for accidents and resulting injuries is crucial to evaluating the pipeline's route. Summit should be required to provide that information before the Board sets a procedural schedule and begins moving forward with the hazardous liquid pipeline permit process.

II. Emergency Response Plan

Understanding the potential impact of a leak or burst and the measures Summit will take to minimize injury and mitigate damages in case of a leak or burst is essential to determining

² Congressional Research Service, *The Tax Credit for Carbon Sequestration (Section 45Q)*, IF 11455, Version 2, Updated, Prepared by Angela C. Jones and Molly F. Sherlock, June 8, 2021 (available at <https://sgp.fas.org/crs/misc/IF11455.pdf>).

whether the pipeline's route is appropriately situated and whether the pipeline promotes the public convenience and necessity. Requiring Summit to file this as a public exhibit is appropriate given the acute interest in the public safety that was seen at numerous public information proceedings. In the Petition, Summit stated, "The methods for promptly and effectively addressing any [emergency] events will be fully addressed in the Facility Response Plan ("FRP") required under PHMSA rules and will be completed prior to commencement of operations on a timeline consistent with PHMSA requirements."³

OCA asked Summit when it would be able to provide the FRP to the Board. Summit's response was: "Under 49 CFR 195.402, preparation of the Facility Response Plan ("FRP") is not due until the initial operation of the system. Based on that requirement, SCS anticipates having a final FRP prepared approximately 60 days before operation, at which time the Board should be able to access the FRP from PHMSA."⁴ According to Summit's response, the time when the Board will see Summit's emergency response plan – 60 days before *operation* – falls well after the Board will have issued a permit and construction has concluded. Regardless of whether PHMSA has exclusive jurisdiction over emergency response measures,⁵ the details of an emergency response plan are directly relevant to whether Summit's proposed route is appropriate under state law. Before beginning lengthy and complex proceedings about the appropriateness of the proposed pipeline route and whether the pipeline promotes the public convenience and necessity, the Board and the public ought to at least know that Summit has an emergency response plan and what that plan contains.

³ Petition, Exhibit F at Section 5.

⁴ Exhibit A, OCA DR 19. Note that the date on Summit's data response is February 1, 2022, which is the date OCA sent the data requests to Summit. Summit provided its data responses on February 22, 2022 and updated those responses on February 24, 2022.

⁵ Arguably, PHMSA's jurisdiction over Summit's emergency response plan is not exclusive. However, OCA is not proposing at this time that the Board impose different safety requirements than PHMSA, merely that the Board and the public are able to review Summit's emergency response plan. Therefore, the issue of jurisdiction need not be addressed.

III. Route evaluation

Iowa Code section 479B.5(6) and Board Rule 13.1(1)“f”(2)(2) require a petition for a hazardous liquid pipeline permit to contain information about “[t]he possible use of alternate routes.” While Summit’s Petition included a generic description of how it determined the proposed route, Summit did not provide specific information about the steps it had taken to determine the pipeline route.⁶ OCA requested additional information from Summit in a Data Request⁷ as follows:

“14. In Section 3 of Exhibit F, Summit states that it “performed extensive analyses utilizing Geographic Information System (“GIS”) programs” when determining the proposed pipeline route. Please provide the following:

- A. Results of all analyses conducted, and
- B. The underlying data sets used when conducting those analyses.”

OCA received the following response from Summit:

“SCS states that there are no discrete results for all analyses conducted. For the GIS program, it optimizes for a large list of data sets and avoidance levels making calculations that are internal to the program – the potentially millions of calculations are not individually shown. The GIS tool, as well as field verifications and discussions with landowners, are part of an incremental and evolving “result” -- the proposed route, which continues to undergo minor modifications as SCS works with landowners and agencies and continues to conduct field surveys.”

Summit’s data response is either disingenuous or indicative that Summit is giving less consideration to the pipeline route in Iowa than in other states. In its South Dakota application, Summit provided a narrative description of the route selection process, a list of alternate routes considered, maps of alternate routes, and explanations why those routes were rejected.⁸

⁶ Petition, Exhibit F.

⁷ Exhibit B, OCA DR 14.

⁸ Exhibit C, *Application to the South Dakota Public Utilities Commission for a Permit for the SCS Carbon Transport LLC (SCS) Pipeline Under the Energy Conversion and Transmission Facility Act*, Doc. No. SCS-0700-ENV-05-PE-009-A, February 7, 2022, at 20-23.

Summit's proposed pipeline would cross 681 miles of land in Iowa.⁹ Before the Board and other parties invest the effort necessary to evaluate the pipeline route, Summit should be required to demonstrate the effort it invested to determine the pipeline route. Summit is clearly capable of providing this information at this time, having already done so for the portion of the pipeline that is proposed to go through South Dakota.

IV. Survey Documentation

Iowa Code section 479B.15 imposes requirements on pipeline companies seeking to enter private property to survey the land for the proposed pipeline route. The Board does not have specific rules regulating company conduct during the land survey process, making it appropriate for the Board to order Summit to file about Summit's procedures for land surveys. How Summit interacts with landowners during the survey process and Summit's compliance with the requirements of Iowa Code section 479B.15 speaks to whether Summit will construct and operate the proposed pipeline in a manner that promotes the public convenience and necessity. Accordingly, OCA requests that the Board require Summit to file an exhibit containing the following information:

1. Copies of any written communications used to send information about surveys to landowners;
2. Copies of any scripts used to communicate via telephone with landowners about surveys;
3. Copies of any policies about how and when surveyors should communicate with landowners;
4. Copies of any code of conduct for surveyors;
5. A list of all properties where surveys have been conducted, listed by county, to be updated weekly;
6. Copies of proof of service for all survey entry notices.

⁹ Petition, Section II.

V. Easement Negotiation Information

Iowa Code section 6B.2B requires that a company must make a “good faith effort to negotiate” with the property owner “before filing an application for condemnation.” Failure to make a good faith effort to negotiate with property owners before filing an application for condemnation can therefore result in denial of the ability to use eminent domain. The requirement to make a good faith effort to negotiate incorporates the common-law doctrine of the covenant of good faith, requiring not only that Summit try to negotiate voluntary easements but that those negotiations be conducted in good faith and fair dealing.¹⁰ Under current procedure, questions of whether a company’s negotiations with landowners satisfy the requirement in Iowa Code section 6B.2B, are not decided until the very end of the process, potentially not even until a permit has been issued and the company files an application to condemn a specific property. Waiting until after a permit is granted to determine the adequacy of negotiations that occur months, or even more than a year, before a company files an application for condemnation denies that company the opportunity to mitigate deficiencies in easement negotiations. Instead, companies must fully litigate all issues in a pipeline permit proceeding before finding out if the company’s earlier negotiations were legally sufficient.

OCA attempted to obtain information from Summit about Summit’s policies and procedures for negotiating easements and was dismayed to receive Summit’s response that it views easement negotiations as irrelevant to its permit for a hazardous pipeline permit.¹¹ Summit’s lack of concern for easement negotiation tactics employed on its behalf was further evident in Summit’s statements that it “did not create and is not in possession of” manuals or

¹⁰ “In Iowa, [i]t is generally recognized that there is an implied covenant of good faith and fair dealing in a contract.” *Am. Tower, L.P. v. Loc. TV Iowa, L.L.C.*, 809 N.W.2d 546, 550 (Iowa Ct. App. 2011) (*quoting Harvey v. Care Initiatives, Inc.*, 634 N.W.2d 681, 684 (Iowa 2001)).

¹¹ Exhibit D, OCA DR 4.

scripts to be used by easement negotiators.¹² Summit is responsible for the conduct of its contractors and for ensuring that those contractors follow Iowa law and negotiate in good faith. Summit's control, or lack thereof, over the conduct of its contractors also speaks to whether Summit will construct and operate the proposed pipeline in a manner that promotes the public convenience and necessity.

Accordingly, OCA requests that the Board order Summit to file an exhibit containing the following information:

1. A copy of all contracts for easement negotiation services;
2. Copies of any written communications used to send information about easements to landowners;
3. Copies of any scripts used to communicate via telephone with landowners;
4. Copies of any policies about how and when land agents should communicate with landowners; and
5. Copies of any code of conduct for land agents.

If Summit is not in possession of any of this information, Summit should be required to obtain that information from the party with whom Summit has contracted for easement negotiation services.

VI. Information Regarding the Use of Public Funds

Summit has indicated that it will receive 45Q tax credits from the federal government for operation of the pipeline and sequestration of carbon dioxide.¹³ Federal tax credits come at the expense of taxpayers, including Iowans. How those tax credits, and any other public funds, are used is relevant to whether Summit's pipeline would promote the public convenience and necessity. Therefore, OCA urges the Board to require Summit to file the following information:

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

¹² Exhibit D, OCA DR 4.

¹³ Exhibit E, OCA DR 26.

4. A list of investors and their share in any profits.

VII. Efforts to Minimize Pipeline Footprint

In the Petition, Summit indicated that it intends to request eminent domain if it is unable to obtain voluntary easements for the entire pipeline route. Before being allowed the privilege of using other people's property without their consent, Summit should provide evidence that it has made efforts to minimize the pipeline's footprint, thereby minimizing the need for eminent domain. OCA urges the Board to require Summit to file the following information:

1. Evidence that Summit has investigated potential storage sites in Iowa and that there is no viable sequestration site in Iowa;
2. Evidence that the Summit has investigated alternate transportation options and that there are no viable alternate transportation options;
3. 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;
4. 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;
5. 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:
 - a. Potential future pipeline routes to large emitters of carbon dioxide;
 - b. Analysis of the pipeline's capacity to carry carbon dioxide from additional facilities;
 - c. Proposed tariffs to be implemented for potential future customers desiring carbon dioxide transport.
6. Any other evidence of Summit's efforts to minimize the pipeline footprint.

CONCLUSION

Summit boasts that its proposed carbon dioxide pipeline and sequestration project will be the world's largest carbon capture and storage project in the world.¹⁴ Iowa currently has no carbon dioxide pipelines, and over 680 miles of Summit's pipeline would go through Iowa.¹⁵ Given the scope of Summit's proposed project and the novelty of carbon dioxide pipelines in Iowa, it is important to not rush to establish proceedings before Summit has prepared information necessary to evaluate the pipeline and its route. Rather, Summit should be required to file information showing that it has thoroughly researched and planned the proposed project before the Board and other parties invest time and resources to evaluating that project. Therefore, OCA urges the Board to require Summit to file additional exhibits as described above before establishing a procedural schedule in this docket.

Respectfully submitted,

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¹⁴ Summit Carbon Solutions, *Summit Agricultural Group Announces Creation of Summit Carbon Solutions and World's Largest Carbon Capture and Storage Project*, February 18, 2021 (available at <https://summitcarbonsolutions.com/summit-agricultural-group-announces-creation-of-summit-carbon-solutions-and-worlds-largest-carbon-capture-and-storage-project/>).

¹⁵ Petition, Section II.