STATE OF IOWA
DEPARTMENT OF COMMERCE
IOWA UTILITIES BOARD

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

RESISTANCE TO OFFICE OF CONSUMER ADVOCATE'S MOTION TO REQUIRE FILING

On January 28, 2022, Summit Carbon Solutions LLC ("Summit Carbon") filed with the Iowa Utilities Board ("Board") an extensive Petition and Exhibits that followed in all respects the requirements of Iowa Code § 479B.5, Board Rule 13.3, and the forms provided by the Board for pipeline permit applications. The Board staff has begun its customary process of reviewing the submission and sending staff review letters. A procedural schedule is pending.

On April 19, 2022, however, Office of Consumer Advocate ("OCA") filed a motion that by its title seeks to establish additional "prerequisites for establishing a procedural schedule." The OCA motion would radically change the procedures the Board has traditionally used in all manner of infrastructure cases. Put simply, OCA seeks the illogical outcome that Summit Carbon has to make most of its case in order to be allowed to go forward and make its case. It is not surprising that OCA cites to no statute, law, or precedent to support this backwards approach. The Board should reject the motion and continue in the same way it always has, with a procedural schedule that allows evidence to be introduced at the appropriate time and let the case develop in its normal course.

It is not at all clear why OCA believes case processing needs to stop just because OCA believes it needs additional information. Much, perhaps most, of what OCA is asking for is

precisely the kind of information that is routinely provided in prefiled direct testimony and exhibits – and the only way to get to that point is for the case to keep moving forward. Moreover, there is ample time for OCA to continue to avail itself of the traditional discovery process. While OCA's motion seems to suggest it has not gotten the answers it wants in its early discovery, the motion is not a motion to compel.

Instead of such usual methods for obtaining information, the OCA asks the Board to take the drastic step of effectively changing the petition requirements without any basis in law to do so. The statute and rules set forth the information an applicant is to include in its petition. The Board even provides specific forms to be followed for this purpose. An applicant must be able to rely on those rules to guide its case and its petition. OCA in effect is saying that the current rules are insufficient, and rather than undertake a forward-looking rulemaking, that the Board should simply change the requirements to initiate a case in the middle of an applicant's proceeding.

A contested case is largely analogous to a civil case in court. The complaint that initiates a court case is notice of the broad contours of what is being alleged, but it is understood that it is not the entire case – that is what the rest of the proceeding exists for, including discovery, motions, briefs, witness testimony, and the trial itself. Through this progression, the entire case and all of the evidence comes out. OCA seeks to short-circuit this process and require much of the content of what would traditionally be the witness testimony to be filed to even get the case underway. The Board has simply never done this before. As Summit Carbon has argued in prior motions, there needs to be an orderly process where Summit Carbon can rely on the rules as written and the precedents of the Board – and the obvious one is Dakota Access – for guidance.[1]

[1] And notably the Board, after Dakota Access, reviewed its own rules to determine whether any lessons from that case should be reflected in rule changes (which was the appropriate approach); what OCA now seeks to require as "prerequisites" were either never proposed in that process or were rejected in that process. Either way it is not appropriate to try and interject them now by motion.

To use just one example from OCA's motion, the Board did not require Dakota Access to file its Facilities Response Plan ("FRP") as a "prerequisite" for moving the case forward. In fact, the Board addressed the submission of the FRP and expressly required it "prior to commencement of construction." *See In re Dakota Access LLC*, Docket No. HLP-2014-0001, "Final Decision and Order" (IUB, March 10, 2016) at 70.

The same is true of the other information OCA seeks: the Board has not required it as a "prerequisite" before and there is no lawful basis for adding the information as a "prerequisite" now. Indeed, much of what OCA seeks is unrelated to any of the "prerequisites" Summit Carbon could have known from the Board's Rules, and some of it is only tangentially related at best to the criteria before the Board for granting a permit. For example, it is not the Board's role to review Summit Carbon's use of federal tax credits; that is a federal program subject to federal review and that review has not been delegated to the Board. For other issues, like routing specifics or whether good faith negotiations occurred for any parcels for which condemnation is sought, the Board is well aware there are witnesses on those issues in virtually every infrastructure case – that is when those issues are always addressed (and indeed, without knowing which, if any, parcels are ultimately subject to condemnation requests, the inquiry into good faith negotiations is clearly premature). Finally, for some issues, like survey access, there are already other motions pending before the Board pertaining to that, and the Board has issued its own order on that subject – without stopping the processing of the case.

Summit Carbon will not go through item by item of OCA's motion because the real issue here is the bigger picture: OCA seeks to add "prerequisites" – effectively Petition requirements – that are not in the express statutory and rule requirements placed upon applicants, and have never been interpreted as prerequisites before by the Board. OCA seeks to radically change the

process for a pipeline permitting case in the middle of the proceeding, which the Board should not allow. This is particularly true where there is no evidence that OCA has used the tools already at its disposal – additional discovery, discovery motions, or simply waiting to review the testimony and exhibits at the appropriate time. The only way to get to that time, however, is to let the case go forward and to set an appropriate schedule for filing such testimony, exhibits, and briefing, and holding a hearing for further examination of such testimony and exhibits.

Respectfully submitted this 2nd day of May, 2022.

By: */s/ Bret A. Dublinske*
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ATTORNEYS FOR SUMMIT CARBON SOLUTIONS LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 2nd day of May, 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