STATE OF IOWA
DEPARTMENT OF COMMERCE
IOWA UTILITIES BOARD

IN RE: **SUMMIT CARBON SOLUTIONS, LLC**	**DOCKET NO. HLP-2021-0001** **GEORGE CUMMINS'S REPLY BRIEF IN SUPPORT OF MOTION FOR STAY AND MOTION FOR CLARIFCATION**

Mr. Cummins states:

INTRODUCTION

Summit admits that it is legally required to notify landowners before entering private property for the purpose of conducting land surveys. But Summit argues that it has sole legal authority to determine when "notice" has, and has not, been effectuated under Iowa Code § 479B.15. Because there is no legal or factual basis for Summit's position, the Board should reject it as a matter of law. Mr. Cummins's Motion for Clarification and Motion for Stay should be granted.

ARGUMENT

When a landowner has not expressly consented to entry upon their land, a pipeline company must comply with the notice requirements of Iowa Code § 479B.15. Relevant here, § 479B.15 requires at least 10 days written notice via restricted certified mail on the "landowner" and "any person residing on or in possession of the land." Note that unlike what Summit proposes as a resolution

directed the Board that service to "reasonably ascertainable tenants…"[1] does not comply with law and service must be made as stated above and not only those who are "reasonably ascertainable" based on Summits efforts or lack thereof.

Because "restricted certified mail" is a legally defined term, notice is not effectuated under § 479B.15 until the sender obtains a "return receipt showing the date of delivery, the place of delivery, and person to whom delivered." Iowa Code Ann. § 618.15 (defining "restricted certified mail"). Summit seeks to redefine "restricted certified mail" to benefit its interests. It argues that a landowner who refuses to accept or claim notice has *necessarily* been notified of the eventual entry upon land, thereby satisfying the requirements of Iowa Code Ann. § 618.15. (Summit Response, pg. 5). Without any legal authority to support its position, Summit then argues that it has unilateral power and authority to determine (1) when a landowner is intentionally refusing service, and thus (2) when notice has been effectuated.

Summit's arguments fail for several reasons. First, as noted above, restricted certified mail is never complete "without proof of delivery of the notice." *Escher v. Morrison*, 278 N.W.2d 9, 10–11 (Iowa 1979). Thus, Summit cannot possibly comply with the plain language requirements of § 618.15 unless and until it obtains a signed receipt from its intended recipient. *Id*. Summit cannot escape this requirement

[1] See Summit Response Brief May 12, 2022, pg. 7

simply by alleging—without any evidence—that Iowa landowners are "recalcitrant." (Summit Response, pg. 5).

Second, and relatedly, Summit repeatedly refers in its Response Brief to Iowa landowners "intentionally" ignoring and abandoning attempted notifications for entry onto land. (Summit Response, pg. 5). Summit further insinuates that Iowa landowners are dangerous, and that its employees may "suffer[] serious physical harm." (Id., pg. 1). But none of these incendiary allegations are supported by any shred of discernable evidence. The complete absence of evidence is significant because, as the Iowa Supreme Court has held, constructive notice is only satisfied "**[u]pon proof**" that the intended recipient is evading service. *Long v. Crum*, 267 N.W.2d 407, 411 (Iowa 1978) (restricted certified mail requirements waived only "upon proof" of recipient's refusal to accept notice).

The fundamental problem with Summit's position is that it makes pipeline companies—not the Board or a Court of competent jurisdiction—the ultimate decider of legally-required notice requirements. On page 7 of its Response Brief, for example, Summit proposes a rule in which the receipt of an "unclaimed" or "refused" electronic tracking ticket necessarily establishes notice under § 479B.15. (Summit Response, pg. 7). **But the plain text of § 618.15 requires something different**. It requires pipeline companies like Summit to obtain a "return receipt showing the date of delivery, the place of delivery, and person to whom delivered." Iowa Code Ann. § 618.15. And if Summit cannot satisfy this statutory requirement,

then it must present evidence—not-speculation—that the intended recipient is intentionally dodging service. *Long*, 267 N.W.2d at 411.

Under Summit's interpretation of the law, it can attempt one time to serve a landowner with restricted certified mail. If the landowner is unable to accept service—for whatever reason—Summit has unilateral power to determine that the landowner is "intentionally" dodging service. After that unilateral decision is made, Summit can determine on its own that the notification requirements of § 479B.15 are satisfied, and that entry on the land for surveying and examination is permissible.

This is not the law. If Summit wishes to enter private property, it must do so in compliance with § 479B.15. This requires, among other things, notification to the landowner via restricted certified mail. If Summit believes that a landowner is intentionally avoiding notification, it can present "proof" to the proper tribunal of these allegedly intentional acts, seeking alternative or constructive service, and request the injunction that is specifically spelled out as a remedy under § 479B.15. *Long*, 267 N.W.2d at 411. Short of that, Summit has no legal entitlement to entry on the land, and any attempt to do so is trespass.

CONCLUSION

Contrary to Summit's desires, they don't make the law, but it is time they start following the law. Perhaps Summit is struggling to obtain voluntary easements in Iowa because they behave toward landowners with the same grace as they referred to them throughout Summit's Response Brief. Summit is not a fit applicant nor deserving of the immense powers and rights it seeks from the Board. If the

landowner interactions Summit is having at this early stage in the game is Summit's interview in Iowa of what can be expected of them in the future should the Board approve their application, if they ever file one that complies with Iowa law – brace yourselves.

As discussed in Mr. Cummins's opening brief, the plain reading of Iowa Code § 479B.15 is that an injunction is **required** absent valid service. Mere "sending" of a letter allegedly containing a 10-day notice is not valid service of the 10-day notice nor is it valid service if intended recipient does not sign for such mailing. Any entry upon land of another with respect to a pipeline survey without either prior valid permission from the landowner and any person in possession of the land or valid service and proof thereof as outlined above, is by definition a trespass. The continuing narrative of survey crews showing up on landowners' property unannounced is bad enough but without any right to do so and in violation of clear Iowa law this behavior and harassment must be stopped.

For these reasons, Mr. Cummins respectfully requests the Board enter an order clarifying its prior statement regarding "sending" of the 10-day survey notice so that there is no confusion on this issue and that the position of the Board on this matter is consistent with Iowa law and that the Board specifically states no survey right triggers until and unless either the pipeline company has proof of valid service via signed return receipts of all necessary persons or an injunction ordering survey is obtained, or written permission has been obtained by all necessary parties.

Movant also requests the Board enter an order staying all survey activity other that those where all necessary persons have provided permission or where Summit can prove they have obtained all necessary signatures via return receipts of service and then file such evidence in this Docket.

Movant lastly requests any and all other relief deemed necessary.

George Cummins,
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