

**STATE OF IOWA
DEPARTMENT OF COMMERCE
IOWA UTILITIES BOARD**

IN RE:

SUMMIT CARBON SOLUTIONS LLC

DOCKET NO. HLP-2021-0001

RESISTANCE TO SIERRA CLUB MOTION TO PROTECT LANDOWNERS

On May 13, 2022, Sierra Club Iowa Chapter (“Sierra Club”) filed its Motion to Protect Landowners (“Motion”), asking the Board to create and enforce a requirement limiting the communication and exchange of information between Summit Carbon Solutions, LLC (“Summit Carbon”) and Iowa landowners along the route of the proposed pipeline. The requirement Sierra Club proposes is found nowhere in the Iowa Code or the Board’s rules, and is in fact inconsistent with the Iowa Code and prior Board precedent. The Board should reject Sierra Club’s Motion for the reasons set forth below.

Under Iowa law, an “acquiring agency” such as Summit Carbon is required to engage in good faith negotiations with landowners. *See* Iowa Code § 6B.2B (“The acquiring agency shall make a good faith effort to negotiate with the owner to purchase the private property or property interest...”); 6B.54 (“Every reasonable and good faith effort shall be made to acquire expeditiously real property by negotiation...”). Contrary to Sierra Club’s assertion, engaging in good faith negotiations requires more than three minimal contacts with a landowner. As a threshold matter, multiple contacts with landowners are required by the Iowa Code and the Board’s rules even apart from easement negotiation. *See, e.g.*, 199 Iowa Admin. Code § 13.2 (requiring a pipeline company to hold and mail notice of an informational meeting to landowners); 199 Iowa Admin. Code § 13.4 (requiring a pipeline company to provide notice of

the hearing to landowners); Iowa Code § 479B.15 (requiring notice to landowners of survey activity); Iowa Admin. Code § 9.3 (requiring provision of Agricultural Impact Mitigation Plan to landowners).

Further, good faith easement negotiation requires more than three attempts to contact a landowner. In many cases, a few initial contacts are necessary simply to make an introduction, learn information about possible tenants, and to provide simple introductory information regarding the project. The term “negotiating” is defined in the Board’s Rules as to include discussion of items such as “location, damages, compensation, or other matter that is restricted by Iowa Code section 479B.4(6).” 199 Iowa Admin. Code § 13.1(3). Clearly, discussing and negotiating specifics regarding such items will often require several contacts.¹

In addition, good faith negotiations require more than a single contact in which a landowner initially indicates that they are not interested. There are several reasons, both practical and legal, that additional contacts will and must occur. Important factors may change after an initial contact; for example, the compensation offer may change or a minor route deviation on a neighboring property may create an opportunity for a shorter or more convenient route across a landowner’s property. Following-up to provide a landowner with such information is consistent with Summit Carbon’s obligation to negotiate in good faith, and is encouraged by Board precedent regarding good faith negotiations. *See, e.g., In Re: ITC Midwest LLC*, Docket No. E-22116, “Order Granting Petitions for Electric Franchises” at 35 (discussing importance of diligent follow-up with landowners on potential alternative routes). Also, even where a landowner refuses to engage with Summit Carbon after multiple attempts, Summit

¹ Sierra Club’s attempt to distinguish negotiating the terms of the easement from negotiating whether an easement will be signed is a misnomer. Obviously, the purpose of negotiating the terms of an easement is to determine if the parties can formulate an agreement that the parties are willing to execute.

Carbon is required by law to contact that landowner to make an offer for an easement. *See* Iowa Code § 6B.54 (requiring an acquiring agency to make an offer for the property interest to be acquired); Iowa Code § 6B.33 (requiring an acquiring agency to file an affidavit reflecting its most recent offer with sheriff).

Finally, Sierra Club’s suggestion that “the Board is telling landowners they have to negotiate with the pipeline company and sign an easement” (Motion at 8) is simply false. At the conclusion of the informational meetings, Board representatives indicate that landowners are then allowed to speak with pipeline company representatives; no Board representative told landowners they must negotiate or sign an easement with Summit Carbon. In fact, one of the primary purposes of the informational meetings is to make landowners aware of their rights, and those rights were discussed verbally during the meetings and extensively in the written materials that are provided to landowners at the meetings.

In sum, Sierra Club’s Motion is unsupported by any law, administrative rule, or legal precedent, and ignores the legal requirements and practical implications of Summit Carbon’s obligation to engage in good faith negotiations. Sierra Club’s Motion seeks to decrease, rather than increase, the exchange of information between Summit Carbon and Iowa landowners – a result that is contrary to the law, Board precedent, and good policy. Accordingly, Sierra Club’s Motion should be denied.

WHEREFORE, Summit Carbon Solutions, LLC requests that the Board deny Sierra Club’s Motion.

Respectfully submitted this 26th day of May, 2022.

By: /s/ Brant M. Leonard

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**ATTORNEYS FOR SUMMIT CARBON
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 26th day of May, 2022, the foregoing document was electronically filed with the Iowa Utilities Board using the EFS system which will send notifications of such filing (electronically) to the appropriate persons.

/s/ Olivia Lucas