

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

IN RE: SUMMIT CARBON SOLUTIONS, LLC	DOCKET NO. HLP-2021-0001 MOTION FOR CLARIFICATION RE IUB ORDER RE GEORGE CUMMINS’S MOTION FOR STAY AND MOTION FOR CLARIFCATION
IN RE: NAVIGATORHEARTLAND GREENWAY, LLC	DOCKET NO. HLP-2021-0003 MOTION FOR CLARIFICATION RE IUB ORDER RE RICHARD MCKEAN’S MOTION FOR STAY AND MOTION FOR CLARIFCATION

Mr. Cummins and Mr. McKean state:

INTRODUCTION

Clarification is needed to prevent confusion on the constitutionally significant issue of notice and service. Specifically at issue is the Board’s determination that a pipeline company must make a “good faith” effort to notify landowners before entering their property. What remains unanswered, however, is the process for challenging this “good faith” standard. Who determines whether a hazardous pipeline company has acted in good faith? What mechanisms are used in making the determination? These questions, and others, require answers from the Board because they implicate fundamental issues of due process and private property rights. The Motion for Clarification should be granted.

ARGUMENT

There is an increased presence of hazardous liquid pipeline companies in Iowa. This has resulted in several disputes in front of the Iowa Utilities Board (“Board”) concerning invasive land surveys and private property rights. In particular, the following two legal issues have emerged: (1) the proper mechanism for serving notice upon a landowner before entering private property, and (2) the appropriate process afforded to landowners in challenging the sufficiency of statutorily required notice.

The Board answered the first question in its July 5, 2022, Order Addressing Motions for Clarification. The Board concluded that pipeline companies need only make a “good faith effort” to contact landowners before entering private property and conducting land surveys. In other words, the Board has interpreted “restricted certified mail” as requiring, at a minimum, a good faith effort by the pipeline companies to inform landowners of their intention to enter and survey private property. *See* Iowa Code § 479B.15.

The second legal issue, however, remains unanswered. It is still not clear how landowners can hold pipeline companies to their burden of demonstrating “good faith” before entering private property. The Board should answer these questions as soon as practicable to ensure that the constitutional rights and protections of landowners are preserved. The movants’ Motion for Clarification should therefore be granted.

Navigator and Summit oppose the underlying Motion for Clarification. But their opposition briefs support—not undermine—the need for further clarification. Indeed, whereas Summit argues that improper service can be challenged in a civil suit for damages, Navigator encourages a formal complaint to the Board. *Compare*, Navigator Brief, pg. 2

(encouraging landowners to “file an inquiry or informal complaint with the Board”), *with* Summit Brief, pg. 2 (landowners can “file a complaint and seek actual damages to the property). In other words, not even the pipeline companies agree on the issues presented in the movants’ Motion.

Without further clarification, the parties will be left without answers to constitutionally significant issues regarding due process and the fundamental right to exclude from private property. Accordingly, the Motion for Clarification should be granted.

CONCLUSION

Without clarification on the practical matters raised here, much confusion with previously raised issues and their resulting effects remain as to the vague nature of the survey rights in question. Little has been done to provide direction as to how to avoid factual disputes as to service and “good faith effort” such that the Board is respectfully requested to clarify the questions posed herein so that all parties and law enforcement and the out-of-state survey crews know how this process is to move forward.

REQUEST FOR RELIEF

Movants each request an Order or further clarification of the issues raised herein in hopes to conserve resources of all involved and avoid confrontation related to these issues.

Movant lastly requests any and all other relief deemed necessary.

George C. Cummins
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Iowa Landowners

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