

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: SUMMIT CARBON SOLUTIONS, LLC	DOCKET NO. HLP-2021-0001
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ORDER SETTING SCHEDULING CONFERENCE

On January 28, 2022, Summit Carbon Solutions, LLC (Summit Carbon), filed a petition for a hazardous liquid pipeline permit with the Utilities Board (Board) to construct, operate, and maintain approximately 681 miles of 6- to 24-inch diameter pipeline for the transportation of liquefied carbon dioxide within the state of Iowa.

On September 16, 2022, the Board held a status conference to discuss the current state of Summit Carbon's petition and setting a date for an oral argument regarding federal preemption. During the discussion about the status of Summit Carbon's petition, the Board requested Summit Carbon file a renewed proposed procedural schedule. On October 7, 2022, the Board issued an order setting the oral argument for December 13, 2022, to address questions regarding federal preemption and the evidence necessary for the Board to make required statutory findings.

On October 5, 2022, Summit Carbon filed a proposed procedural schedule based upon the request. Summit Carbon requests the Board approve its proposed procedural schedule or set a scheduling conference. Summit Carbon states that knowing what the schedule will be for this docket would be beneficial to all parties and interested persons.

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On October 7, 2022, the Shelby County Board of Supervisors (Shelby County BOS) filed its response to Summit Carbon's proposed procedural schedule. Shelby County BOS asserts the Board should deny Summit Carbon's request until it rules on both Shelby County BOS' motion to require revisions to Summit Carbon's petition and the federal preemption issue, which is scheduled for oral argument on December 13, 2022. In addition to waiting for these issues to be ruled upon, Shelby County BOS states the proposed procedural schedule is unreasonable. Shelby County BOS notes little has changed in the proposed procedural schedule submitted on October 5, 2022, compared to the one submitted on May 31, 2022. Shelby County BOS asserts this resubmission unduly compresses the time for the proceeding and negatively impacts the ability of all parties to litigate their issues. For these reasons, Shelby County BOS requests the Board deny Summit Carbon's procedural schedule.

On October 12, 2022, the Sierra Club Iowa Chapter (Sierra Club) filed its response to Summit Carbon's proposed procedural schedule. Sierra Club asserts the proposed procedural schedule does not give enough time for interested persons to determine whether to intervene and to allow for those parties to conduct discovery. Sierra Club also notes the Board has set an oral argument for December that may impact the remainder of the case and, therefore, a procedural schedule should not be established at this time.

On October 14, 2022, Mr. George G. Cummins filed a response to Summit Carbon's proposed procedural schedule, requesting the Board not discuss a procedural schedule until after the Board rules on the federal preemption issue.

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Also on October 14, 2022, the Hardin County Board of Supervisors (Hardin County BOS) filed its response to the proposed procedural schedule. Hardin County BOS asserts, given the outstanding motion by Shelby County BOS and the oral argument, that Summit Carbon's proposed procedural schedule is unworkable and unreasonable.

On October 17, 2022, the Wright County Board of Supervisors (Wright County BOS) filed its response to Summit Carbon's proposed procedural schedule. Wright County BOS asserts the timing and nature of the proceeding makes the proposed procedural schedule unrealistic and premature and, therefore, Wright County BOS requests the Board deny Summit Carbon's proposed procedural schedule.

On October 19, 2022, the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, filed its response to Summit Carbon's proposed procedural schedule, requesting the Board deny the procedural schedule. OCA states the proposed procedural schedule needs to allow ample time between the filing of Exhibit H, the intervention deadline, and testimony due dates, which OCA asserts are not found in Summit Carbon's filing. OCA states the Board has established a December oral argument about federal preemption, which puts in abeyance discovery on items related to the extent of federal preemption until the Board reaches a conclusion on that issue. Besides the issues before the Board, OCA notes the Pipeline and Hazardous Materials Safety Administration is considering a rulemaking for liquefied carbon dioxide pipelines. OCA states there is no reason to rush Summit Carbon's petition as the 45Q tax credit deadline has been extended until January 1, 2033. Based on these reasons, OCA requests the Board deny Summit Carbon's proposed procedural schedule.

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The Board has reviewed the filings and will set a scheduling conference in this matter for December 13, 2022, to follow the scheduled oral argument. The scheduling conference will be livestreamed and available via Webex for remote participation. Interested persons and parties will be required to file a notice with the Board on or before November 30, 2022, indicating if they intend to participate in the scheduling conference and if they will participate in-person or via Webex. If an interested person or party seeks to participate via Webex, they will need to also indicate they have both audio and video capabilities to participate via Webex.

Pursuant to 199 Iowa Administrative Code 13.3(1)(h), a hearing cannot be set until Exhibit H is in its final form. Summit Carbon filed its Exhibit H which, at its maximum, had more than 1,500 parcels subject to a request for eminent domain. The number of parcels subject to Exhibit H requires a significant amount of Board staff time to review, in addition to reviewing of other parts of the petition, petition exhibits, and testimony. As the Board stated in its June 17, 2022 order, the Board determines when Exhibit H is in final form and a hearing can be set. Summit Carbon's Exhibit H filings have not reached that point.

All interested persons and parties should submit their proposed procedural schedule for this matter on or before November 30, 2022, for discussion during the scheduling conference. The proposed procedural schedules should include an intervention deadline, testimony due dates, and potential hearing dates.

IT IS THEREFORE ORDERED:

1. The scheduling conference to discuss a potential procedural schedule and hearing date for Docket No. HLP-2021-0001 will be held following the oral argument

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scheduled for December 13, 2022, in the Utilities Board Hearing Room at 1375 E. Court Ave., Des Moines, Iowa. The scheduling conference will be livestreamed and available via Webex. Instructions for viewing will be available on the Board's Hearing and Meeting Calendar webpage at iub.iowa.gov. Persons with disabilities who will require assistive services or devices to observe or participate in this scheduling conference shall contact the Utilities Board at (515) 725-7300 at least five business days in advance of the scheduling conference to request arrangements.

2. Interested persons shall submit their proposed procedural schedules on or before November 30, 2022.

3. Interested persons or parties who intend to participate in the scheduling conference shall file a notice of participation with the Utilities Board on or before November 30, 2022, indicating participation and whether they will participate in person or online.

UTILITIES BOARD

Geri Huser Date: 2022.11.07
15:54:46 -06'00'

Richard Lozier Date: 2022.11.07
16:00:00 -06'00'

ATTEST:

Kerrilyn Russ Date: 2022.11.08
16:53:48 -06'00'

Josh Byrnes Date: 2022.11.07
15:21:55 -06'00'

Dated at Des Moines, Iowa, this 8th day of November, 2022.