

STATE OF IOWA
DEPARTMENT OF COMMERCE
BEFORE THE IOWA UTILITIES BOARD

IN RE:

SUMMIT CARBON SOLUTIONS, LLC

DOCKET NO: HLP-2021-0001

SUPPLEMENTAL PETITIONS TO INTERVENE

COME NOW, the King Intervenors¹ by and through undersigned counsel, and submit this supplement to their petitions to intervene.

BACKGROUND

On June 16, 2023, the Iowa Utilities Board (“Board”). Issued an order establishing July 10, 2023 as the deadline for interested parties to intervene in this proceeding. The King Intervenors all filed petitions to intervene on or before that date. On July 19, 2023, the Board issued an “Order Addressing Petitions to Intervene” (“Intervention Order”). All of the King Intervenors’ petitions to intervene were denied.

Mr. King’s petition to intervene was specifically denied in Ordering Clause 19 of the Intervention Order. The remaining King Intervenors were among nearly 100 parties who submitted pro se petitions to intervene. In the Intervention Order, the Board stated, “Many of the filings by the pro se applicants used a form petition to intervene. Therefore, the Board will discuss the assertions of these petitions as a group.” (Intervention Order at 4). When discussing denial of petitions to intervene, the Board explained: “Additionally, the Board will deny the

¹ The King Intervenors include the Hon. Steve King, Michael Daly, Mark Joenks, Ted Junker, James and Janet Norris, Jeffrey Reints, and Jessica Wiskus.

petitions to intervene for persons or legal entities that are not directly impacted by Summit Carbon's proposed hazardous liquid pipeline. The filings made by these persons or legal entities do not contain sufficient information for the Board to rule upon as to whether intervention is proper." (Intervention Order at 10). The Board did not specifically state that this reasoning applies to any or all pro se interventions, but excluded the names of pro se intervenors, including the King Intervenors, from any of the specific grants of intervention.

Because the King Intervenors were not explicitly identified in the Intervention Order, their petitions were denied under Ordering Clause 21. Pursuant to Ordering Clause 22, the King Intervenors hereby submit supplemental support for their petitions to intervene.

ARGUMENT

I. The Intervention Order Lacks a Legal Foundation and Violates Intervenors' Due Process Rights.

The Board committed legal error in the Intervention Order by denying numerous petitions to intervene without a legal foundation and in an abrupt departure from the Board's well-established intervention practices.

The Board denied a large number of petitions to intervene with a blanket statement that the petitioners "are not directly impacted" by Summit's proposed pipeline. (Intervention Order at 10). With this finding, the Board created a new legal standard for intervention that has no basis in any law or regulation. Board Rule 7.13(3) states, "Any person having an interest in the subject matter of a proceeding may be permitted to intervene." The requirement for intervention is an "interest," not an "impact," and certainly not a "direct impact." The creation of a new legal standard without prior notice created an impossible hurdle for intervenors to overcome because it was nothing more than an after-the-fact criteria created in order to provide a rationale for Board action that had no other basis in law.

The lack of explanation of the phrase “direct impact” also makes providing supplemental intervention information an impossible task. To the extent that the Board intends “direct impact” to mean that only landowners are impacted, the Intervention Order is in contravention of Iowa Supreme Court precedent, which states that, “Nothing in the Iowa Code limits standing in pipeline proceedings to individuals whose property is in the direct path of the pipeline.” *Puntenny v. Iowa Util. Bd.*, 928 N.W.2d 829, 837 (Iowa 2019).

Given the Iowa Supreme Court’s holding about standing, it is unclear what else the phrase “direct impact” could mean. Without a definition, the standard is a moving target that the Board can interpret however it wants in order to achieve a desired outcome without regard to any consistency or fairness in the decision-making process. This creation of a new, undefined legal standard is a textbook example of an arbitrary and capricious abuse of discretion by an administrative agency because it is clearly unreasonable. *See, Martin Marietta Materials, Inc. v. Dallas County*, 675 N.W.2d 544, 553 (Iowa 2004) “Discretion is abused when it is exercised on grounds clearly untenable or to an extent clearly unreasonable.”) (internal quotations removed).

Furthermore, the after-the-fact creation of a new, undefined legal standard violates the due process rights of intervenors by denying adequate notice and a meaningful opportunity to be heard. Procedural due process requires that interested parties have notice and an opportunity to be heard. *Bowers v. Polk Cty. Bd. of Supervisors*, 638 N.W.2d 682, 690-91 (Iowa 2002). Specifically, the the opportunity to be heard must be “at a meaningful time and in a meaningful manner.” *Jones v. Univ. of Iowa*, 836 N.W.2d 127, 145 (Iowa 2013) (citation omitted).

The Board’s imposition of a new legal standard in the Intervention Order provided no notice to intervenors of the criteria they needed to meet. Furthermore, by only allowing intervenors five days to provide supplemental information, the Board has failed to provide

adequate notice or an opportunity to be heard in a meaningful time and manner. Five days is woefully inadequate notice for any intervenor, even one with an attorney, to attempt to understand a newly announced legal standard and develop a responsive supplemental petition to intervene. The inadequacy of the notice is compounded in the case of the numerous pro se intervenors who lack legally-trained guidance to assist them with a response.

With specific respect to the Board's denial of Mr. King's petition to intervene, the Intervention Order lacked even an attempt to provide a legal basis for the decision. The Board explained that it is "bound by court rulings, both federal and state, Iowa laws, and duly enacted administrative rules." (Intervention Order at 11). Yet the Board's discussion of Mr. King's petition to intervene contained not a single cite to any of the court rulings, laws, or administrative rule by which it claims to be bound.

The Board's denial of Mr. King's petition to intervene also lacks factual basis. To the extent that the Board actually provided a rationale for denying Mr. King's intervention, it failed to support that rationale. Specifically, the Board stated that other parties "will adequately represent the interests of Mr. King." (Intervention Order at 11). However, it is unclear what other parties will adequately represent Mr. King's interests or how those interests align. Furthermore, the Board's decision assumed facts that are not in the record. The Board asserted that Mr. King "has other mechanisms by which he can argue for the changes he desires." (Intervention Order at 11). However, there is no information anywhere in the record about other mechanisms available to Mr. King, and it is not even clear what mechanisms the Board is referencing. This finding by the Board is also clearly inaccurate. If Mr. King desires to challenge the constitutionality of Summit's proposed pipeline, the only way to do that is by participating in the permit proceeding.

The Board's legal and factual findings in the Intervention Order are flawed and inadequate. Mr. King and the pro se King Intervenors have all been denied participation in this proceeding without basis. The lack of specificity and five-day response time also denies petitioners' due process rights to adequate notice and a meaningful opportunity to be heard.

II. The King Intervenors Have a Cognizable Interest in this Proceeding.

Iowa Code 479B.9 requires that the Board determine that a hazardous liquid pipeline "promote the public convenience and necessity" in order to grant a permit. The requirement of *public* convenience and necessity means that the Board's determination must rely not only on the impact of the pipeline on the land through which it will be built, but on the public as a whole. The Board has held, and the Iowa Supreme Court has affirmed, that determining whether a pipeline promotes the public convenience and necessity is a balancing test that weighs the benefits and costs of a proposed pipeline. *Puntenny*, 928 N.W.2d at 841.

Summit contends that the proposed pipeline promotes the public convenience and necessity because it will impact the ethanol industry throughout the state. (*See, e.g.*, Summit Petition, Ex. F). If unquantifiable, statewide benefits are included in the balancing test, then unquantifiable statewide costs should also be included in the balancing test. Owning property on, or even near, Summit's proposed route is not a prerequisite for having an interest in the broader public costs or benefits of the pipeline. The Iowa Supreme Court has affirmed that a broad range of interests provide standing for intervention in hazardous liquid pipeline proceedings. In *Putnenny*, the Court upheld Sierra Club's standing in the Dakota Access hazardous liquid pipeline proceeding based on the affidavits of two of Sierra Club's members. *Puntenny*, 928 N.W.2d at 837. Those members were:

- Mark Edwards, who "worked for the Iowa Department of Natural Resources as a trail coordinator for thirty years. He submitted an affidavit expressing concern that the

pipeline will damage Iowa's waterways, contribute to climate change, and destroy Native American burial grounds and cultural sites." *Id.*

- Carolyn Raffensperger, whose "home sits about one mile from the pipeline. She submitted an affidavit voicing concern for her own safety and the immediate environment around her property as well as her belief that the pipeline will contribute to climate change, damage Native American cultural sites, and pollute Iowa waterways." *Id.*

The interests of the King Intervenors in this proceeding are similar to the interests of Mr.

Edwards and Ms. Raffensperger the Dakota Access proceeding, as described below:

- **The Hon. Steve King** – Mr. King's petition to intervene described his involvement with the original coordination of board members and potential investors for a number of Iowa ethanol plants as well as his ongoing advocacy for the residents of western and north central Iowa. His interest in the ethanol industry and the property rights of Iowans are similar to the general interests of Mr. Edwards in *Puntenny*. Mr. King's specific interest in this proceeding is further demonstrated in the Direct Testimony of Dr. Jeffrey Bonar, filed on July 24, 2023, which provides a perspective not being presented by other parties and will help develop a sound evidentiary record.
- **Michael Daly** – Mr. Daley lives on land in rural Johnson County, Iowa. He filed Direct Testimony on July 24, 2023 detailing his concerns with the impact of carbon dioxide pipelines on the rural landscape, similar to Mr. Edwards' interests in *Puntenny*. Additionally, Mr. Daly's property is located close to the carbon dioxide pipeline proposed by Wolf Carbon Solutions US LLC ("Wolf"). Wolf has already filed its petition for a permit pursuant to Iowa Chapter 479B (IUB Docket No. HLP-2022-0002). The legal and factual findings of the Board in this docket will have precedential value in the Wolf proceeding and Mr. Daly is interested in having input into Board decisions that may ultimately determine the outcome of the Wolf proceeding.
- **Mark S. Joenks** – Mr. Joenks lives in Greenville, Iowa, in a house only 375 feet from Summit's proposed pipeline. He filed Direct Testimony on July 24, 2023 detailing his concerns with the dangers of living so close to a high-pressure carbon dioxide pipeline. As a corn grower, he also expressed concerns about the dangers related to farming on land above a carbon dioxide pipeline. Mr. Joenks' interests are similar to those that supported the intervention of Ms. Raffensperger in *Puntenny*.
- **Ted Junker** – Mr. Junker lives on a farm outside of New Hartford, Iowa. He filed Direct Testimony on July 24, 2023. Mr. Junker's land is not located on the Summit pipeline route, but is on the route of the carbon dioxide pipeline proposed by Navigator Heartland Greenway LLC ("Navigator"). Navigator has already filed its petition for a permit pursuant to Iowa Chapter 479B (IUB Docket No. HLP-2021-0003). The legal and factual findings of the Board in this docket will have precedential value in the Navigator proceeding and Mr. Junker is interested in having input into Board decisions that may ultimately determine the outcome of the Wolf proceeding.

- **James C. and Janet L. Norris** – Mr. and Ms. Norris live in Montgomery County, Iowa and Summit’s pipeline will pass between two parcels of their farmland. They filed Direct Testimony on July 24, 2023 detailing their safety and community concerns with the construction of a carbon dioxide pipeline so close to their land and in areas where people live.
- **Jeffrey E. Reints** – Mr. Reints is a corn and soybean farmer in Butler and Bremer Counties, Iowa. He filed Direct Testimony on July 24, 2023 describing his farm and his interests in the ethanol industry. Mr. Reints is working with CapCO2 to pursue alternate carbon capture and utilization options that do not require construction of pipelines and has an interest in the impact of the pipelines on the ethanol industry. Additionally, although Mr. Reints’ land is not on the proposed Summit pipeline route, his farm is on the route of the proposed Navigator pipeline and he is interested in this proceeding because the legal and factual findings of the Board in this docket will set precedent for the Navigator pipeline proceeding.
- **Jessica Wiskus** – Ms. Wiskus lives in Linn County, Iowa. She filed Direct Testimony on July 24, 2023. Her land is not on the Summit pipeline route, but both her home and her family’s farm are on the carbon dioxide pipeline route proposed by Wolf. Like Mr. Junker and Mr. Daly, Ms. Wiskus is interested in this proceeding because the legal and factual findings of the Board in this docket will set precedent for the Wolf pipeline proceeding. Additionally, Ms. Wiskus’s Direct Testimony describes a broad range of public concern with carbon dioxide pipelines that weigh on the side of the public cost of the Summit pipeline.

CONCLUSION

For the reasons stated above, the King Intervenors respectfully request that the Board reconsider its decision in the July 19, 2023 “Order Addressing Petitions to Intervene” and grant the interventions filed by the Hon. Steve King, Michael Daly, Mark Joenks, Ted Junker, Pamela Leinbaugh, James and Janet Norris, Jeff Reints, and Jessica Wiskus.

Respectfully submitted,

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