

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

IN RE: SUMMIT CARBON SOLUTIONS, LLC PETITION FOR HAZARDOUS LIQUID PIPELINE PERMIT	DOCKET NO. HLP-2021-0001
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MOTION FOR JUDICIAL NOTICE

COME NOW, the Supervisors of Shelby County, Kossuth County, Floyd County, Emmet County, Dickinson County, Wright County, and Woodbury County (“the Counties”) by and through the undersigned counsel and pursuant to Iowa Code chapter 479B and Iowa Administrative Code rule 13.4(1), and state the following:

1. On August 4, 2021, Summit Carbon Solutions, LLC (“Summit”) made the initial filings in this proceeding. Those early filings included a Request for Informational Meeting Dates in which Summit stated that it would “capture carbon dioxide emissions that otherwise would be emitted into the atmosphere and transport those emissions through a pipeline to North Dakota where they will be permanently and safely stored in deep underground geologic storage locations.”

2. Ever since the initial filing, Summit has consistently represented in this proceeding that the permanent sequestration of the captured carbon dioxide would be in North Dakota, and only North Dakota. See for example the following filings: (1) A copy of the “Presentation” Summit used for the required informational meetings, filed on September 1, at page 11; (2) Responses to Board’s October 25, 2021 Questions filed on November 15, 2021, at page 3; (3) Summit Phillips Direct Exhibit 1 filed May 25, 2023, *passim*; (4) Petition Exhibit C,

Petition Exhibit F, and Petition Exhibit K; and (5) Summit Witness Pirolli Direct Testimony at page 3.

3. The primary environmental and economic benefits claimed for the project are contingent upon sequestration. Summit Witness Broghammer, in Direct Testimony at page 3, states that “The average [carbon intensity] score that is gained by sequestering CO₂ that originates in Iowa and transported to North Dakota through the SCS pipeline is 30 points. Therefore, the total benefit for sequestering CO₂ through SCS is nearly \$0.60/gallon of ethanol and that in turn calculates to \$1.8 per 4 bushel.” Summit Witness Pirolli, in Direct Testimony at page 8, states that the project’s revenue sources include 45Q tax credits of “\$85 per qualifying metric ton of carbon oxides permanently sequestered.”

4. There is no location in Iowa suitable for sequestration. Summit Witness Pirolli, in Direct Testimony at page 7, states that “Given the lack of appropriate geological formations in much of the Midwest, the CO₂ must be transported to a sequestration site outside of the state of Iowa.”

5. On August 4, 2023, the Public Service Commission of the State of North Dakota denied Summit’s Application for a Route Permit in North Dakota.¹ This denial affects the project’s ability to sequester carbon dioxide in North Dakota and tends to cast doubt on the statements and assertions about the project made so far in the record of this proceeding.

6. It is proper to take judicial notice of the official acts, practices, and proceedings of public officers or boards. 31A C.J.S. Evidence § 57; *see also* Iowa R. Evid. 5.201 (providing that a court must take judicial notice if requested by a party and if the fact is not subject to

¹ See Attachment A to this motion available at <https://www.psc.nd.gov/database/documents/22-0391/366-010.pdf>

reasonable dispute because it can be accurately and readily determined from sources whose accuracy cannot be reasonably disputed).

WHEREFORE, the Counties hereby **move** the Iowa Utilities Board (“the Board”) to take judicial notice that on August 4, 2023, the Public Service Commission of the State of North Dakota denied Summit’s Application for a Route Permit in North Dakota.

By: /s/ Timothy J. Whipple

Respectfully submitted,

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