

STATE OF IOWA
DEPARTMENT OF COMMERCE
BEFORE THE IOWA UTILITIES BOARD

IN RE:

SUMMIT CARBON SOLUTIONS, LLC

DOCKET NO: HLP-2021-0001

MOTION TO STAY PROCEEDINGS

COMES NOW Ms. Kerry Hirth, by and through the undersigned attorney, submits this Motion to Stay Proceedings (“Motion”) in the above-captioned docket. In support of her Motion, Ms. Hirth states the following:

1. Ms. Hirth filed a petition to intervene in this docket on July 11, 2023, in which she identified herself as the “child and heir of an Exhibit H affected landowner.”
2. In her petition to intervene, Ms. Hirth explained that the proposed hazardous liquid pipeline could “negatively impact her father’s land.” Throughout her petition to intervene, Ms. Hirth consistently referred to her “father’s land” as the land that would be impacted. At no point did Ms. Hirth indicate that she herself was an Exhibit H landowner.
3. On July 19, 2023, the Iowa Utilities Board (“Board”) granted Ms. Hirth’s petition to intervene.
4. On August 15, 2023, Ms. Hirth called the Board’s Customer Service staff to learn the details of when her father would be able to testify as an Exhibit H landowner. Customer Service staff informed Ms. Hirth that Exhibit H landowners would be testifying at the beginning of the hearing.¹

¹ Ms. Hirth describes the events in the attached sworn statement. Due to scheduling conflicts, Ms. Hirth will file a notarized copy of the sworn statement as soon she is able to obtain it.

5. Ms. Hirth called her father and told him to call Customer Service staff to schedule a time to testify. Ms. Hirth's father called her shortly after that call and informed her that Customer Service staff would not schedule a time for him to testify because Ms. Hirth had been granted intervenor status and only one landowner could testify per parcel.

6. Ms. Hirth immediately called Customer Service and explained that she was an intervenor, not a landowner and that her father was the landowner. Customer Service repeated that only one landowner could testify per parcel and told Ms. Hirth that she had to choose between being an intervenor and having the Board schedule a time for her father to testify.

7. Ms. Hirth felt that her father, as the Exhibit H landowner, should have the main voice in what happens to his property. So she withdrew her intervention and called Customer Service staff to get her father on the Exhibit H landowner testimony schedule.

8. Ms. Hirth felt coerced into relinquishing her intervenor status, which she had been granted by the Board not as an Exhibit H landowner, but due to her status as an heir. As she states in the attached affidavit, when Customer Service refused to schedule a time for her to testify unless she withdrew her intervention, "I had no other choice, it was an ultimatum."

9. Having been granted intervenor status, Ms. Hirth has an independent right to participate in this proceeding that is distinct from her father's right to participate as an Exhibit H landowner.

10. Ms. Hirth only filed a withdrawal of her intervenor standing because Board staff told her that her father would not be allowed to testify unless she withdrew.

11. By refusing to schedule Ms. Hirth's father to testify unless Ms. Hirth withdrew her intervention, Board staff improperly coerced Ms. Hirth into relinquishing her right to participate in this proceeding that was granted by the Board on July 19, 2023.

12. A withdrawal of intervention is a relinquishment of substantial legal rights.

13. Since August 3, 2023, at least five parties have filed withdrawals of their intervention, despite having already been granted intervention by the Board.

14. Based on Ms. Hirth's sworn affidavit, the role of Board staff in improperly requiring individuals who had been granted intervenor status to relinquish that status should be investigated. Some of the parties who filed withdrawals of intervention are also Exhibit H landowners, suggesting Board staff may have also influenced parties' decisions about whether or not to testify during the Exhibit H portion of the hearing.

15. No further proceedings should be held in this docket until the Board determines the extent to which Board staff has improperly impacted the rights of intervening individuals and Exhibit H landowners and the Board has taken steps to remedy any impacts on the rights of parties to this proceeding.

CONCLUSION

WHEREFORE, Ms. Hirth respectfully requests that the Board immediately stay all proceedings in this docket to ensure that Board staff has not improperly limited the rights of parties to this proceeding and remedy any improper influence Board staff has had.

Respectfully submitted,
/s/ Anna K. Ryon
Anna K. Ryon

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Attorney for Ms. Kerry Hirth

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SWORN STATEMENT OF KERRY MULVANIA HIRTH

COMES NOW Kerry Mulvania Hirth, and states the following:

1. My father is an Exhibit H landowner. I am an heir to his property. I petitioned the IUB to allow me to intervene on the basis of my own interest as an heir to my father's property and was granted intervention.

2. On or about August 14, 2023, after having received no information about the hearing, I called up the IUB Customer Service to ask about the calendar so I would know roughly when Exhibit H landowners and also intervenors were able to put on testimony. I was assuming that there would be an order of appearance due to the large numbers of parties. I spoke with a Customer Service representative who followed-up via email on August 15, 2023. The follow-up email I received repeated my specific questions and provided links to the calendar, which was still empty. That email is attached to the affidavit.

3. On August 15, I called again and said that I still couldn't find information. Customer Service told me that now that I was an intervenor, I was a party to the case and I had a right to attend all the hearings and there was a pre-hearing meeting on Monday, August 21, 2023, where I would find out more. Customer Service said that was the only thing I could do except check the website daily and

weekly. I also asked about Exhibit H landowners providing testimony. They said Exhibit H landowners were going first.

4. I called my father so that he could call and get on the docket. He called immediately. He was told that they could not put him on the docket because I had intervened and only one landowner could represent each parcel.

5. I immediately called Customer Service and told them I was an intervenor, not a landowner. They told me again that only one person could represent each parcel, and that I had to choose between being an intervenor or having my father on the docket. They said that the docket was being drafted at that moment, which was around 3:00pm, I know this because these calls are time-stamped on my phone.

6. Customer Service asked me what I wanted to do. I said that I would withdraw my Motion to Withdraw if they would put my father on the docket. I made this choice because it is my father's land and fundamentally his right to object to eminent domain and I wanted to protect him and him to have a place on the docket. I had no other choice; it was an ultimatum.

7. After I filed my Motion to Withdraw, I immediately called back and told Customer Service I had done that. Customer Service confirmed my that father was on the docket and sent me an email notice. I have attached that notice to this affidavit.

8. I'm still confused and afraid that the Board will ultimately not hear either of us. So is my father.

AFFIDAVIT

State of _____)

) ss.

County of __)

I, Kerry Mulvania Hirth, being first duly sworn on oath, depose and state that I am the person identified in the above Sworn Statement of Kerry Mulvania Hirth, that I prepared based on my personal experience. The Sworn Statement of Kerry Mulvania Hirth, found in the foregoing pages, is true and correct to the best of my knowledge and belief as of the date of this Affidavit.

KERRY MULVANIA HIRTH

Subscribed and sworn to before me, a Notary Public in and for said County and State this _____ day of _____, 2023

Notary Public Commission expires: _____