

**IOWA UTILITIES BOARD**

IN RE:  SUMMIT CARBON SOLUTIONS, LLC	DOCKET NO. HLP-2021-0001
IN RE:  SCS CARBON TRANSPORT, LLC	DOCKET NOS. HLP-2024-0001, HLP-2024-0002, HLP-2024-0003, HLP-2024-0004, HLP-2024-0005, HLP-2024-0006, HLP-2024-0007, HLP-2024-0008, HLP-2024-0009, HLP-2024-0010, HLP-2024-0011, HLP-2024-0012, HLP-2024-0013, HLP-2024-0014

**ORDER DENYING MOTIONS TO REOPEN RECORD, CONSOLIDATE,  
AND STAY PROCEEDINGS, WITH DISSENTING OPINION**

**BACKGROUND**

On November 8, 2023, the Utilities Board (Board) closed the evidentiary record in Docket No. HLP-2021-0001 regarding Summit Carbon Solutions, LLC’s (Summit Carbon), petition for hazardous liquid pipeline permit for approximately 688 miles of 6- to 24-inch diameter pipe in Iowa. On January 19, 2024, parties filed their simultaneous reply briefs on this matter.

On March 4, 2024, SCS Carbon Transport, LLC (SCS), filed a request for 22 public informational meetings for new trunk and lateral pipelines to connect to the proposed hazardous liquid pipeline in Docket No. HLP-2021-0001. On March 11, 2024, SCS filed a revised request to include an additional county where an informational meeting would be held. The requests for informational meetings were filed, by lateral, in Docket Nos. HLP-2024-0001 through HLP-2024-0014.

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On March 14, 2024, the Board informed SCS it needed to find alternative dates for the informational meetings.

On March 14, 2024, Sierra Club Iowa Chapter (Sierra Club) filed a motion to reopen the Summit Carbon record and to consolidate or stay the related dockets. The Iowa Farm Bureau Federation (Farm Bureau) filed a separate motion to reopen the record. Shelby County, Kossuth County, Floyd County, Emmet County, Dickinson County, Wright County, and Woodbury County boards of supervisors (collectively, the Counties) filed a joinder to Sierra Club's motion.

On March 15, 2024, Jorde Landowners<sup>1</sup> filed a joinder to Sierra Club and Farm Bureau's motions as well as a motion to stay the decision in Docket No. HLP-2021-0001.

On March 18, 2024, Summit Carbon filed a resistance to the motions.

On March 22, 2024, Sierra Club filed a reply to the resistance filed by Summit Carbon.

On March 27, 2024, Jorde Landowners filed a joinder to Sierra Club's reply.

## **ARGUMENTS**

### **A. Sierra Club Motion**

Sierra Club states the Board's rules at 199 Iowa Administrative Code (IAC) 7.24 allow the Board, on its own motion, or a party to file a motion to reopen the record to receive further evidence. Under 199 IAC 7.23(6), "[a]t any stage during or after the hearing, the board or presiding officer may order a party to present additional evidence and may conduct additional proceedings as appropriate." Sierra Club asserts the 14

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<sup>1</sup> Jorde Landowners is a group of approximately 150 landowners.

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new laterals proposed by SCS are “a significant major addition to the original project.”

Sierra Club states the Board should consider the hazardous liquid pipeline proposed in

Docket No. HLP-2021-0001 along with the 14 new laterals proposed by SCS. Sierra

Club argues:

Most, if not almost all, of Summit’s evidence regarding the additional lines would be the same as the evidence already submitted for the original project. Although there would be additional landowners who would be allowed to present evidence, reopening the record in this case would be more efficient than holding 14 separate hearings on the new additional lateral lines. It would make no sense, either in terms of efficient use of the Board’s time and resources or of the impacted landowners, to have 14 separate proceedings when the evidence can be produced and considered in this case.

Sierra Club states Summit Carbon would not be prejudiced by reopening the record as Summit Carbon has not received a permit for construction in North Dakota or South Dakota and has testified it would not begin construction until it has obtained those permits.

In addition to motioning to reopen the record, Sierra Club motions to have Docket Nos. HLP-2024-0001 through HLP-2024-0014 consolidated with Docket No. HLP-2021-0001, or Docket Nos. HLP-2024-0001 through HLP-2024-0014 stayed pending the consideration of additional evidence in Docket No. HLP-2021-0001 obtained through the reopened record.

Sierra Club states 199 IAC 7.14(1) allows the Board to “consolidate in one docket any or all matters at issue in two or more dockets.” Sierra Club states there are four factors the Board considers when determining whether to consolidate a proceeding as follows:

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- a. Whether the matters at issue involve common parties or common questions of fact or law;
- b. Whether consolidation is likely to expedite or simplify consideration of the issues involved;
- c. Whether consolidation would adversely affect the substantial rights of any of the parties to the proceedings; and
- d. Any other relevant factors.

199 IAC 7.14(1).

As it relates to the first factor, Sierra Club states many of the parties in a consolidated Docket No. HLP-2021-0001 would be the same as the original proceeding. Sierra Club states there is an “or” included in the first factor, which allows for the consideration of whether the docket would involve common parties or a common question of fact or law. Sierra Club states that while there may be additional parties who would seek intervention, the issues would be the same.

Sierra Club states the second factor is present as consolidation in one docket would expedite or simplify consideration of the issues involved, instead of having 14 separate new dockets.

As it relates to the third factor, Sierra Club asserts Summit Carbon is the only party whose substantial rights would be impacted. Sierra Club argues Summit Carbon would actually receive a benefit by having a more efficient proceeding.

Sierra Club argues, based on these factors, the Board should consolidate Docket Nos. HLP-2024-0001 through HLP-2024-0014 with Docket No. HLP-2021-0001.

## **B. Farm Bureau Motions**

In its motions, Farm Bureau requests the Board reopen the record to “receive further evidence related to the announced material and significant expansion of the proposed [hazardous liquid] pipeline to determine the expansion’s potential impact, if

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any, on the [hazardous liquid] pipeline proposed” in Docket No. HLP-2021-0001. Farm Bureau’s motion states it is unknown whether the proposal by SCS would necessitate Summit Carbon needing to increase the diameter of the pipe. Farm Bureau asserts it is unknown whether Summit Carbon’s maximum operating pressure would need to increase to accommodate the additional laterals. Farm Bureau states it is unknown whether SCS’s proposal would necessitate additional pump stations to be built on Summit Carbon’s proposed route. Farm Bureau asserts the proposed connections by SCS to Summit Carbon’s proposed route would present material and significant changes to Summit Carbon’s petition.

Included with its motion to reopen the record, Farm Bureau provides an affidavit from Timothy Johnson as well as a description of the additional evidence to be included with the testimony, as required by 199 IAC 7.24.

Farm Bureau requests the record be reopened for the following purposes:

- a. Admit proffered IFBF Johnson Supplemental Testimony and attachments into the record for this docket as described above and in the attached affidavit.
- b. Require Summit [Carbon] to describe the likely impact of the future planned addition of the carbon dioxide produced by nineteen ethanol plants on the hazardous liquid pipeline proposed in IUB docket No. HLP-2021-0001 other than the physical addition of laterals and trunk lines to expand the route, which will be addressed in separate dockets.
- c. Require Summit [Carbon] to provide the following additional information related to the proposed pipeline in this docket:
  - i. Whether the announced project expansions to include the POET and Valero ethanol plants will cause a change in the expected volume of liquified carbon dioxide to be transported through Iowa on an annual basis and to identify the amount of the newly expected volume.
  - ii. Whether the announced project expansions to include the POET and Valero ethanol plants will cause a change in the normal or maximum operating pressure of the proposed pipeline.
  - iii. Whether the announced project expansions to include the carbon dioxide from the POET and Valero ethanol plants will cause a change in the number of valve sites, launcher-receiver sites or

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pump stations required to be located in Iowa and whether any of these sites or stations are expected to be located on property listed in Summit [Carbon's] Exhibit H request.

iv. Whether the announced project expansions to include the POET and Valero ethanol plants will cause a change in the diameter of the pipeline at any location along the proposed route as represented in Petition Exhibits A, C, M and N.

d. Require Summit [Carbon] to amend those portions of the petition for its permit, as applicable, which make representations about the pipeline diameter, normal and maximum operating pressure, the number of valve sites, the number of launcher-receiver sites, the number of pump stations, and the annual volume of liquified carbon dioxide expected to be transported, and including but not limited to the Petition and Petition Exhibits A, C, M, and N.

Should the Board not reopen the record, Farm Bureau requests the Board rely upon the information currently within the petition and further amend the Exhibit H language to limit above-ground appurtenant facility construction by Summit Carbon, absent Board approval.

### **C. The Counties**

In its joinder, the Counties assert the laterals proposed by SCS are part of the same project proposed by Summit Carbon. The Counties argue that instead of “introducing the same or substantially similar evidence in 14 additional dockets and potentially holding 14 additional hearings, the Board should require Summit [Carbon] to submit additional evidence in [Docket No. HLP-2021-0001].” The Counties state it would be more efficient and convenient to reopen the record in Docket No. HLP-2021-0001 rather than litigating the issues in 14 separate dockets.

If the Board does not consolidate, the Counties state the Board should stay the proceedings in the 14 new dockets. The Counties state there has been no decision reached in North Dakota or South Dakota related to Summit Carbon's permit, and whatever decision the Board makes will likely be subject to judicial review, so there

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would be little benefit with moving ahead with Docket Nos. HLP-2024-0001 *et seq.* The Counties also state some of the parties have requested the Board deny certain aspects of the route proposed by Summit Carbon and there is active litigation regarding what authority a county has to regulate Summit Carbon's proposed hazardous liquid pipeline, which could impact routing in the 14 SCS dockets.

#### **D. Jorde Landowners**

In its joinder, Jorde Landowners join the motions filed by Sierra Club and Farm Bureau for the reasons described in their motions.

#### **E. Summit Carbon**

In its resistance, Summit Carbon states the motion filed by Sierra Club should be denied because the motion does not comply with the requirements of 199 IAC 7.24 due to it not including an affidavit of any witness who will present new evidence. As it relates to the merits of Sierra Club's motion, Summit Carbon states Sierra Club, while acknowledging the evidence would be substantially similar, does not explain why the evidence from additional landowners could not be filed into the docket related to the proposed lateral impacting their property. Summit Carbon asserts Sierra Club did not explain how it would be more efficient to reopen the record in Docket No. HLP-2021-0001, which has been ongoing for 31 months, when SCS has yet to formally request a permit or have approved informational meeting dates. Summit Carbon argues Sierra Club's proposal is seeking to delay the Board's decision as it relates to its proposed hazardous liquid pipeline.

Furthermore, Summit Carbon asserts the Board should deny Sierra Club's motion for the same reasons it denied the motion to consolidate Docket No. HLP-2023-0004 with Docket No. HLP-2021-0001 on July 27, 2023. Summit Carbon argues the

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Board's conclusions in that order hold true for the present motion, with the only change being the process is further along.

As it relates to Farm Bureau's motion, Summit Carbon states the Board should deny this motion as well. Summit Carbon asserts Farm Bureau's motion will cause unnecessary delays in its proceeding in order to obtain information that is more appropriately supplied in the dockets opened for the SCS proposals. Summit Carbon also states Farm Bureau's motion is contrary to the Board's process. Summit Carbon asserts:

each time a new user(s) requests service on a natural gas, ammonia or refined products system, new pipelines are proposed that connect to existing permitted pipelines. The Board's process does not have that pipeline company submit evidence regarding the new pipeline in the original docket for the first line permitted by the Board. It addresses the new line and the evidence concerning it in its own, new docket. There is no legal reason to depart from that process here.

Lastly, Summit Carbon states the answers to many of Farm Bureau's questions are already governed by Iowa law and there is a process in place to address them. Summit Carbon states 199 IAC 13.9(1) describes when a company is required to seek an amendment. Summit Carbon states this provision of the Board's rules covers relocating outside of the easement, obtaining new interests in land, or needing to modify a condition or limitation imposed by the Board. Summit Carbon states that if additional valves, launcher-receivers, or pump stations are needed, those issues would be better addressed in SCS's docket related to the lateral where any such additional valves, launcher-receivers, or pump stations may need to be located, as Summit Carbon does not anticipate needing any additional valve, launcher-receivers, or pump stations on its proposed route. If it did need them, Summit Carbon states this would be an additional

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interest in property and an amendment would be required. Summit Carbon states this is true as well should the diameter of the pipe need to change. Additionally, Summit Carbon states if there were to be an increase to the maximum operating pressure, the Board's rule at 199 IAC 13.13 addresses this item, if necessary.

Summit Carbon requests the Board deny both motions.

#### **F. Sierra Club Reply**

In its reply, Sierra Club states 199 IAC 7.24 only requires an affidavit if a witness will present additional evidence and it is not required to reopen the record. Sierra Club states reopening the record would require Summit Carbon to provide additional evidence, and it is this evidence that justifies reopening the record. Sierra Club states there is no limitation on the type or amount of additional evidence that would be appropriate for reopening the record, as reopening the record is entirely at the Board's discretion. Additionally, Sierra Club states that even if its filing is defective, the Board on its own motion could reopen the record based upon the arguments made in the motions.

Sierra Club states Summit Carbon's reply indicates it would present different or additional evidence not presented in Docket No. HLP-2021-0001. Sierra Club asserts Summit Carbon should explain the new or additional evidence. Sierra Club states the real question before the Board is how the additional laterals, proposed by SCS, would impact the Board's decision related to Summit Carbon's petition as the proposals by Summit Carbon and SCS are one project. Sierra Club states this is not a situation where SCS is seeking to add laterals to an existing hazardous liquid pipeline.

Lastly, Sierra Club states there would be no undue delay caused by reopening the record. Sierra Club asserts "[s]imply adding additional evidence in one proceeding

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would be much more efficient and prevent undue delay, compared to forcing the Board to undertake proceedings in 14 separate new dockets.” Sierra Club reiterates the fact Summit Carbon has yet to receive construction permits in North Dakota and South Dakota, so it would not suffer undue delay.

### **G. Jorde Landowners Reply**

In its reply, Jorde Landowners join the arguments made by Sierra Club in Sierra Club’s response.

## **BOARD DISCUSSION**

The Board has reviewed the filings and will not consolidate the proceedings, reopen the record, or stay the proceedings as requested by Sierra Club and Farm Bureau. The Board will address each item in turn.

### **A. Consolidation**

The Board will not require consolidation of Docket Nos. HLP-2024-0001 through HLP-2024-0014 into Docket No. HLP-2021-0001. Under 199 IAC 7.14(1), there are four factors the Board is to consider. The factors are:

- a. Whether the matters at issue involve common parties or common questions of fact or law;
- b. Whether consolidation is likely to expedite or simplify consideration of the issues involved;
- c. Whether consolidation would adversely affect the substantial rights of any of the parties to the proceedings; and
- d. Any other relevant factors.

As it relates to factor one, while there may be overlapping parties between the proceedings, the landowners likely will not be the same. As demonstrated at the hearing in Docket No. HLP-2021-0001, the Board values landowner participation. These landowners would be different parties than those participating in Docket No.

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HLP-2021-0001. Furthermore, as the Board has previously stated in a similar motion to consolidate Docket No. HLP-2023-0004 into Docket No. HLP-2021-0001, the Board's legislatively prescribed jurisdiction means most of the Board's proceedings rely on common questions of fact or law. That being said, there are sufficient differences between Docket Nos. HLP-2024-0001 through HLP-2024-0014 and Docket No. HLP-2021-0001 to not warrant consolidation. Docket No. HLP-2021-0001 is a petition seeking a permit for 688.01 miles of 6- to 24-inch diameter pipe throughout Iowa, whereas the SCS is seeking to build 14 laterals of 6- to 8-inch diameter through a few counties.

For the second factor, the Board finds it to be unlikely that consolidation would expedite or simplify consideration of the issues involved. The opposite is true. SCS is proposing 14 new laterals, consisting of approximately 340 miles of pipe, in 23 counties. As of the date of this order, the Board has yet to approve the 23 informational meetings. Assuming consolidation, at best, Summit Carbon could not file a revised petition in Docket No. HLP-2021-0001 until 30 days after the last informational meeting. Filing a revised petition would require Board review. Once completed, another hearing would need to be scheduled to receive new or revised testimony from the parties as well as the landowners who are a part of the new laterals. This does not expedite the proceeding in Docket No. HLP-2021-0001, but rather delays it. Furthermore, the record in Docket No. HLP-2021-0001 is already one of, if not, the largest records that has been submitted to the Board for its consideration. Adding an additional 340 miles to the existing record would further add to the complexity of the proceeding. The Board finds this request is to delay, not expedite, the proceeding regarding Summit Carbon's petitions.

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As it relates to whether consolidation would adversely impact the substantial rights of any party, the Board finds Summit Carbon and SCS's substantial rights would be impacted. Furthermore, any person who is currently not a party to Summit Carbon's docket but who would want to now participate in the docket would have no opportunity as the intervention deadline has passed. These persons' substantial rights would be impacted by consolidation of the dockets.

As it relates to other relevant factors, ease of use for everyone — including the impacted landowners, the parties, and the Board — supports not consolidating. As stated earlier, this is one of the largest records submitted to the Board for consideration. Throughout the process, the Board has heard from landowners and parties alike about the difficulties of finding information in the docket, including finding their own filings or finding information filed by Summit Carbon about their parcel. Having each SCS lateral in its own docket does not add to the volume of records within Summit Carbon's docket; it allows landowners to more easily find the information they are looking for and to file their comments, objections, or letters of support in the docket directly impacting them. While comments and objections may be filed in any docket, having the ability to submit a comment in a narrowly tailored docket should be more beneficial for some landowners who wish to follow the docket specific to the lateral that impacts them.

Additionally, as noted by Summit Carbon, the Board creates new dockets for new laterals when they are filed. The Board does this for new electric transmission lines, new pipelines, and new hazardous liquid pipelines that are proposed to connect into other electric transmission lines, pipelines, or hazardous liquid pipelines. The Board finds no reason to deviate from this process.

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The Board finds none of the factors for consolidation to be present and will deny the motion to consolidate.

### **B. Reopening the Record**

The Board's rules at 199 IAC 7.24 state either the Board or the parties may motion the Board to reopen the record to receive additional information. If a party seeks to present new information, the party must include an affidavit from the witness who will present new evidence that contains information as to the competence of the witness to sponsor the evidence as well as a description of the evidence to be included. 199 IAC 7.24.

In Sierra Club's motion, it requests to reopen the record for purposes of consolidation of Docket Nos. HLP-2024-0001 through HLP-2024-0014 into Docket No. HLP-2021-0001. Sierra Club did not include an affidavit with its filing indicating it does not plan to submit new evidence. Sierra Club admits this in its reply to Summit Carbon's resistance. The Board finds Sierra Club's motion to reopen the record is premised on the Board consolidating Docket Nos. HLP-2024-0001 through HLP-2024-0014 into Docket No. HLP-2021-0001. As the Board is denying the request to consolidate, the Board finds many of the reasons stated by Sierra Club for reopening the record to be moot.

As it relates to Farm Bureau's motion to reopen the record, the Board will deny this motion as well. Farm Bureau did include an affidavit and description of the competency and evidence that would be new should the Board reopen the record; however, as stated by Summit Carbon, the evidence presented or questions raised by Farm Bureau are either better addressed in SCS' dockets or are governed by Iowa law and the Board's rules. While the information could be beneficial to the Board's decision

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in Docket No. HLP-2021-0001, the Board finds its decision in Docket No. HLP-2021-0001 will be based upon the evidence already presented. If, for example, Summit Carbon needs to increase its pipe diameter due to the addition of an SCS lateral, Summit Carbon must go through the separate amendment process rather than simply revising a filing in the current docket. The Board may consider the current diameter pipe in the pending decision in Docket No. HLP-2021-0001, and any decision regarding an amendment would be a separate decision by the Board under 199 IAC 13.9. This analysis would apply to many of Farm Bureau's questions.

### **C. Stay**

Lastly, the Board will deny the request to stay Docket Nos. HLP-2024-0001 through HLP-2024-0014 pending the outcome of Docket No. HLP-2021-0001. As the Board is neither consolidating SCS's dockets into Summit Carbon's docket nor reopening the record, the Board finds no reason to stay the dockets. As the parties are aware, there is no time frame by which the Board must issue its decision in Docket No. HLP-2021-0001, nor do any of the parties know what the Board's final decision will be with regard to Docket No. HLP-2021-0001. It is SCS who is taking a risk, and incurring the costs of the Board, by requesting public informational meetings before knowing how the Board is going to rule on Summit Carbon's docket.

## **ORDERING CLAUSES**

### **IT IS THEREFORE ORDERED:**

1. The motion to reopen record and to consolidate or stay related dockets filed by Sierra Club Iowa Chapter on March 14, 2024, is denied.

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2. The motion to reopen the record filed by the Iowa Farm Bureau Federation on March 14, 2024, is denied.

**UTILITIES BOARD**

Erik M. Helland Date: 2024.04.25  
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ATTEST:

Keetah A Horras Date: 2024.04.25  
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Sarah Martz Date: 2024.04.25  
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Dated at Des Moines, Iowa, this 25th day of April, 2024.

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### DISSENTING OPINION

Undisputedly, the scope of this case is massive. Summit Carbon petitioned for a hazardous liquid pipeline permit for approximately 687 miles of pipeline. Whether in terms of length of pipeline, or length of hearing, or number of parcels over which eminent domain is sought, this proceeding is the largest to have come before the Board. Further, as noted by several Intervenors in their motions to reopen the record, Summit Carbon<sup>2</sup> has proposed to significantly expand its project's footprint. Several intervenors request the Board reopen the record to consider the impact that the expansion may have on the currently pending project, and I would grant their requests.

The Board should demand that the route for a project of this size and magnitude be the product of comprehensive planning to ensure the final route is the most efficient to accomplish the project's objectives and to minimize the impact on Iowa landowners. Had a comprehensive evaluation been performed, perhaps the route proposed in this case makes the most sense without alteration. However, I believe that discussion should at least occur as the exercise is worth the time and effort.

I appreciate Summit Carbon's objection to reopening the record. This case has been ongoing for more than 31 months. I further appreciate that circumstances and events can change following a contested case hearing, and that Summit Carbon is making business decisions in response to these events. However, Summit Carbon did make the decision to publicly request 23 additional public information meetings for trunk

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<sup>2</sup> While SCS Carbon Transport, LLC, filed the request for 23 public meetings for new trunk and lateral pipelines to connect to the proposed pipeline in this case, in its resistance, Summit Carbon states it filed the request for information meeting dates. See Summit Carbon's Resistance to Motions to Reopen Record, p. 2 (stating the motions to reopen the record were based on "Summit's announcement of new ethanol plant partners and request for informational meeting dates. . ."). Therefore, in this opinion, I refer to both Summit Carbon Solutions, LLC, and SCS Carbon Transport, LLC, as "Summit Carbon."

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and lateral pipelines to connect to the proposed pipeline in this case. Because the company voluntarily chose to open the door to the expanded ethanol plant partners, I believe it is fair to at least ask about the potential impact the additional trunk and lateral pipelines may have on the proposed pipeline.

With respect to Summit Carbon's contention that reopening the record would delay the Board's consideration of its petition by many months, if not years, the Board has the authority to limit the reopening of the record to specific and definite matters. *See e.g., In re: MidAmerican Energy Company*, Docket No. E-22207, "Order Reopening the Record and Required Filings," at p. 2 (May 10, 2019) (reopening the record for the submission of testimony and exhibits on a limited issue identified by the Board). Therefore, the Board could limit the scope of reopening the record to mitigate, if not entirely avoid, the delay Summit prophesies.

Finally, at a minimum and before denying the motions to reopen, I believe the Board should have set the motions for hearing to accept argument from the parties on the issues of whether the record should be opened and, if so, the scope of such reopening.

For these reasons, I respectfully dissent from the Board's decision to deny the motions to reopen the record, and I join the Board's decision to deny the pending motions to consolidate and stay related dockets.

**UTILITIES BOARD**

Joshua Byrnes Date: 2024.04.24  
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Josh Byrnes, Board Member