

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 PROCEDURAL SCHEDULE AND TECHNICAL CONFERENCE
AND DISSENTING OPINION**

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 687 miles of 6- to 24-inch diameter pipeline for the transportation of liquefied carbon dioxide within the state of Iowa.

On November 8, 2022, the Board issued an order setting a scheduling conference in this matter for December 13, 2022, and requested interested persons to file their proposed procedural schedules on or before November 30, 2022. Summit Carbon; the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice; and Mr. George G. Cummins filed proposed procedural schedules in this matter. The Shelby County Board of Supervisors (Shelby County BOS), the Hardin County Board of Supervisors (Hardin County BOS), Sierra Club Iowa Chapter (Sierra Club), and the Iowa Farm Bureau Federation (Farm Bureau) filed statements in relation to the proposed procedural schedule.

During the scheduling conference held on December 13, 2022, additional input was provided by Summit Carbon, OCA, Mr. Cummins, Shelby County BOS, Sierra Club,

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and Farm Bureau to assist the Board in determining the procedural schedule for this matter.

Iowa Code § 479B.5 sets out the information that is required to be included in a petition. Iowa Code § 479B.8 provides that the Board may examine the route of the pipeline and shall consider the petition and any objections, and may hear testimony to assist the Board in making a determination as to whether to grant the permit requested. Board rules at 199 Iowa Administrative Code (IAC) 13.4(1) provide that the petition shall be reviewed for compliance with applicable laws, and after completion of the review and the filing of a report, the petition shall be set for hearing.

Paragraph 199 IAC 13.3(1)(h) requires the Exhibit H's to be in final form before a hearing is scheduled. It is up to the Board to determine when Exhibit H's are in final form, and the Board finds the Exhibit H's filed by Summit Carbon to be in final form for purposes of compliance with this rule in order to allow the hearing to be scheduled. Minor alterations may be made or a new Exhibit H filed to reflect withdrawals of Exhibit H's or a route change in a specific area; however, the Board does not consider those minor adjustments or route changes to be the determining factor for when Exhibit H's are in final form.

The procedural schedule, Attachment A with this order and incorporated by reference, establishes filing dates for prefiled testimony and intervention, and details regarding the hearing. In addition, to ensure landowners of property over which eminent domain is requested receive notice of what is occurring with the docket and to allow adequate time to seek intervention, the Board will require Summit Carbon to send each landowner and known tenant(s) subject to Exhibit H a copy of the procedural schedule,

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the docket number, and the Board's contact information. The Board will require Summit Carbon to file an affidavit averring that all landowners and known tenants subject to Exhibit H were provided notice of the Board's procedural schedule, the docket number, and the Board's contact information. The affidavit shall include, by county, by parcel, the landowner and tenant names and their mailing addresses. The procedural schedule also sets a date for filing of the Staff report, which is after Summit Carbon's direct testimony is filed. Subrule 199 IAC 13.4(1) requires the Board to review a petition for compliance with applicable laws and file a report, then set the petition for hearing. The review of a petition for compliance with applicable laws before setting a hearing is a review by Board Staff of the petition and proposed route and is not the same as the Board's review of the petition and the evidence presented in deciding whether to grant the requested permit. The determination to be made pursuant to subrule 199 IAC 13.4(1) is whether Summit Carbon has filed the information required by Iowa Code § 479B.5 and Board subrule 199 IAC 13.3(1). This review is primarily a review of the legal description, the maps showing the proposed route, the engineering specifications of the pipeline, and other required exhibits. Subrule 199 IAC 13.4(1) requires the filing of a Staff report prior to the scheduling of a hearing; however, the Board finds that a date certain can be set for the Staff report at the same time that the general dates for the hearing are set to meet the requirements of the subrule.

In order to allow parties and those who have filed for intervention an opportunity to better understand the procedural schedule and how the remainder of the docket will progress, the Board will set a technical conference for 10 a.m. March 15, 2023, in the Board's hearing room. At this technical conference, the Board intends to hear from the

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parties about the procedural schedule and to provide information about how the Board envisions the hearing will be conducted. At the technical conference, the Board is proposing to provide parties and those who have filed for intervention a calendar of the hearing days, as well as describe how the Board intends to facilitate participation by commenters and objectors. Parties and persons who have filed for intervention will be required to file a notice of participation on or before March 3, 2023, indicating their participation at the technical conference.

The final hearing schedule that includes the specific hearing details will include a public comment session with three days designated for commenters and objectors from affected counties to attend and make comments about the proposed hazardous liquid pipeline. Should commenters or objectors seek to speak during their assigned day, they will be required to pre-register with the Board at least seven days in advance of the day that county is scheduled to be discussed. After the technical conference, the Board will issue additional orders that will provide further information regarding the schedule for the public comment section and how commenters and objectors are to pre-register with the Board.

IT IS THEREFORE ORDERED:

1. A procedural schedule for Summit Carbon Solutions, LLC's, petition for hazardous liquid pipeline permit is attached to this order and identified as Attachment A.
2. Summit Carbon Solutions, LLC, shall send notice to each landowner or known tenant of a parcel over which eminent domain is requested on the same date that direct testimony is filed. The notice shall include a copy of the latest procedural schedule set by the Board, the docket number, and the Utilities Board's contact

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information.

3. Within five days of Summit Carbons Solutions, LLC's, filing direct testimony, Summit Carbon Solutions, LLC, shall file an affidavit averring that all landowners and known tenants subject to Exhibit H were provided notice of the Board's procedural schedule, the docket number, and the Board's contact information. The affidavit shall include the landowner and tenant names and mailing addresses, listed by county and by parcel.

4. A technical conference will be held at 10 a.m. March 15, 2023, in the Board's hearing room, located at 1375 E. Court Ave., Des Moines, Iowa, for parties and persons who have filed for intervention to discuss the procedural schedule.

5. Parties and persons who have filed for intervention shall file a notice of participation in the technical conference on or before March 8, 2023.

UTILITIES BOARD

Geri Huser Date: 2023.02.17
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Richard Lozier Date: 2023.02.17
14:49:49 -06'00'

ATTEST:

Louis Vander Streek Louis Vander Streek
2023.02.17 15:30:32
-06'00'

Dated at Des Moines, Iowa, this 17th day of February, 2023.

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DISSENTING OPINION

I have reviewed the Order Setting Procedural Schedule and Technical Conference. I understand the desire to set a hearing schedule. I respect the efforts made by Staff to establish systems and tools to try to better understand the workflow and capacity needs in order to set a potential hearing date. I want everyone to have their day to be heard and to be able to present evidence on either side of this contested case. However, that day must come in a manner that is fair and just for all participants. This includes creating a schedule that allows affected landowners a reasonable opportunity to attend. For these reasons, which I will address in greater detail below, I dissent to the proposed procedural schedule.

The main issue I have with this proposed schedule is the time of year in which the hearing would be held. According to the U.S. Department of Agriculture, Iowa was the national leader in corn production by growing more than 2.3 billion bushels in 2020.¹ The optimal time to harvest corn is during the month of October.² Farming is highly weather dependent, and fall months can have extreme weather events. Farmers do not schedule a harvest time, and they must keep a keen eye on the right conditions to bring the crop from field to farm. Having grown up around agriculture and being a current rural resident, I am acutely aware of the stress and demand harvest season brings. Harvest requires long days and waits for no one. A hearing in October is going to be

¹ Schulz, L. and C. Hart. 2021. "Iowa's Role in US Agriculture." Agricultural Policy Review, Spring 2021. Center for Agricultural and Rural Development, Iowa State University. Available at www.card.iastate.edu/ag_policy_review/article/?a=123.

² Iowa Corn Growers Association, *Corn FAQs*, Iowa Corn <https://www.iowacorn.org/education/faqs/> (last visited Feb. 15, 2023).

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burdensome to those affected landowners whose livelihood is dependent upon farming. If we end up having a cool year, harvest could go into November, which would overlap harvest and the proposed hearing even more, further straining farmers located on the proposed route who want to, at a minimum, follow along with the hearing. A hearing in October could require landowners to choose between attending this hearing or their income for the year. For instance, a farmer from either Shenandoah or Larchwood would have to drive more than six hours round trip to and from Fort Dodge, the hearing location. It is possible that a farmer could lose a full day of harvest to attend just a single day of the hearing. I do not have to guess whether this will be an issue; people are telling us. Already, as I write this, the Board has received input in the docket from landowners urging us not to use the accelerated schedule and to not hold the hearing during harvest. With the hearing scheduled for October, we are forcing farmers affected by the proposed route to choose between their land and their livelihood.

Farmers are only one affected group of working Iowans who have an interest in this proceeding. There are teachers, doctors, lawyers, police officers — individuals of all walks of life — who will also have to find the time in their busy lives to come to what we are proposing to be a months-long hearing. I certainly understand that no matter what time of year this hearing is held, some people will not be able to make it work with their schedules. This is going to be a lengthy hearing, full of testimony and arguments. We will get deep into the weeds on many peoples' views on what are advantages and disadvantages of the project as we go through the statutory requirements of a hazardous liquid pipeline permit and the requests for the right of eminent domain over numerous parcels. Nonetheless, the schedule put forth by the majority seems

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unnecessarily taxing, given it falls during harvest, followed directly by the holiday season.

My second concern is that this schedule provides little room for flexibility and is going to require Staff to perform an extensive review involving numerous components and details to meet the aggressive deadlines set by the majority. It is unclear whether engineering staff are comfortable with being able to accomplish the review process by the date proposed, considering there is little leeway to accommodate for weather delays or unanticipated issues. I am concerned that the process is being expedited without valid reason, which increases the chance of mistakes. The parties deserve a meticulous and careful analysis of this petition. It takes time to complete a thorough and comprehensive review of infrastructure projects, and the procedural schedule should reflect this.

On this point, as stated at the February 2023 Board Meeting, the Board was presented with two orders proposing a hearing schedule. The first order proposed having the Staff report due in October 2023, with a hearing date in May 2024. The second order proposed a hearing date in November 2023. The current order approved by the majority sets a hearing in October 2023. It is unclear how a Staff-led proposal scheduled a Staff report to be due for the same dates a Board member-led proposal now has a hearing set. I trust agency Staff and know they are capable of doing great work in short timeframes. The Utilities Board employs outstanding subject matter experts who know what needs to be done, how best and most efficiently to do it, and how long it will take to not only complete a task, but complete it well. It is concerning that there is a seven-month difference between the October 2023 and May 2024

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proposals. It is unclear what has been changed, streamlined, or eliminated to make up that change in time.

Summit Carbon Solutions' proposed pipeline is the most resource-intensive project that has come before the Board in 50 years, possibly since the Board's inception. I have heard and seen many comparisons between this project and the Dakota Access project that took place more than seven years ago. However, the Summit project is more than double the size in mileage at roughly 687 miles, compared to Dakota Access' 346 miles. In addition, Dakota Access only requested eminent domain over 476 parcels initially, compared to the 1,090 parcels for which eminent domain is currently being requested by Summit. Projects of this size and magnitude take time to review, as they should. It is unfair to ask Staff and the public to keep pace with a project that is not comparable in size or purpose.

Additionally, the Board and the agency as a whole cannot set aside all of its other responsibilities in order to solely work on Summit's permit application, which is what this timeline requires. The Utilities Board owes it to the ratepayers and residents of Iowa to fulfill *all* of our regulatory responsibilities. Trying to rush through this process while maintaining the standard required of the Board and Board Staff is unattainable and could give rise to mistakes and missteps. I understand the desire to keep this case moving and to not cause undue delay; however, that does not mean that we should rush the process. The level of scrutiny this decision will be put under will be high, whatever decision the Board reaches once it has heard from all sides of the argument. It also is likely to be challenged in a court of law. I want to be able to say that we took the time we needed and did everything to the full extent of our abilities when defending

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whatever decision we reach. Iowans deserve a thorough and transparent review of this project, with robust analysis from all of the parties and the Board. I am concerned this proposed schedule does not allow for that.

Iowa is an agricultural state. Having a hearing in the months of October and November, as assigned by the majority Board members, neglects that fact. After attending numerous informational meetings and listening to the public, especially the numerous farmers affected by the proposed route, I am aware there is a perception that state government does not care or understand the struggles of Iowa's farmers. The majority decision provides further support to those views. For the reasons stated above, I cannot support the procedural schedule proposed by the majority opinion and respectfully dissent.

Josh Byrnes Date: 2023.02.17
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Joshua Byrnes, Board Member

ATTACHMENT A

HLP-2021-0001 Procedural Schedule	
Procedural Activity	Dates
Scheduling Conference	12/13/22
Technical Conference (logistics and scheduling)	3/15/23
Summit Carbon Direct Testimony Due	5/25/23
Staff Report Due	6/26/23
Intervention Deadline	7/10/23
Summit Carbon Supplemental Testimony Due	7/10/23
OCA & Intervenor Direct Testimony Due	7/17/23
OCA & Intervenor Cross-Rebuttal Due	7/31/23
Summit Carbon Rebuttal Testimony Due	8/17/23 (noon)
Supplemental Staff Report Due	9/14/23
Public Comments (Objectors, Commenters)	October 2023 (three days)
Evidentiary Hearing	October 2023 to January 2024