

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

SUMMIT CARBON SOLUTIONS, LLC,

Petitioner,

v.

IOWA UTILITIES BOARD,

Respondent.

CASE NO. CVCV066790

**RESPONDENT'S ANSWER
TO PETITION FOR
TEMPORARY AND PERMANENT
INJUNCTIVE RELIEF AND
RESPONSE TO MOTION FOR
TEMPORARY/PRELIMINARY
INJUNCTION**

COMES NOW Respondent Iowa Utilities Board (Board), by and through its undersigned counsel, and for its Answer to the Petition for Temporary and Permanent Injunctive Relief and its Response to the Motion for Temporary/Preliminary Injunction states:

I. PETITION FOR TEMPORARY AND PERMANENT INJUNCTIVE RELIEF.

PARTIES AND JURISDICTION

1. Respondent admits the allegations of Paragraph 1 contained in the petition.
2. Respondent admits the allegations contained in Paragraph 2 of the petition.
3. Respondent admits the allegations contained in Paragraph 3 of the petition.
4. Respondent admits the allegations contained in Paragraph 4 of the petition.

BACKGROUND

5. Respondent admits the allegations contained in Paragraph 5 of the petition.

6. Respondent admits the allegations contained in Paragraph 6 of the petition.

7. Respondent denies the allegations contained in Paragraph 7 of the petition for lack of information.

8. Respondent denies the allegations contained in Paragraph 8 of the petition for lack of information.

9. Respondent admits the allegations contained in Paragraph 9 of the petition.

10. Respondent admits the allegations contained in Paragraph 10 of the petition that Iowa Code chapter 479B provides the Board authority over the existence of the pipeline, its route, and whether to authorize use of eminent domain; and that the Board's jurisdiction over safety is preempted by the federal Pipeline and Hazardous Materials Safety Administration ("PHMSA") to the extent stated therein, but affirmatively states that the cases speak for themselves and denies the remainder of the allegations.

11. Respondent admits the allegations contained in Paragraph 11 of the petition that PHMSA requires the creation and maintenance of an Emergency Response Plan ("ERP"), but denies the allegation regarding its disclosure due to lack of knowledge and denies the remaining allegations.

12. Respondent admits the allegations contained in Paragraph 12 of the petition.

13. Respondent admits that various parties in HLP-2021-0001 raised certain issues in the permit proceeding that required several Board rulings on access to information:

a. Respondent admits the allegations contained in Paragraph 12(a) of the Petition.

b. Respondent admits the allegations in Paragraph 12(b) that, in response to Summit's motion for reconsideration, the majority of the Board set a status conference to determine the procedure and extent of evidence for reconsideration while the minority Board member determined that no further process was necessary – that he would reverse the order on the ERP and risk assessment based on federal preemption. *In re Summit Carbon Solutions, LLC*, Docket No. HLP-2021-0001, "Order Addressing August 3, 2022 Motion for Reconsideration and Scheduling Status Conference" (IUB, Sept. 2, 2022).

c. Respondent admits the allegations contained in Paragraph 12(c) of the petition.

d. Respondent admits the allegations contained in Paragraph 12(d) of the petition.

e. Respondent admits the allegations contained in Paragraph 12(e) of the petition, but states that the date of the Board order is September 5, 2023.

14. Respondent admits that Summit voluntarily filed the dispersion models in the docket designated Confidential-Attorney' Eyes Only, but denies the remaining allegations in Paragraph 14 of the petition for lack of information.

15. Respondent admits the allegations contained in Paragraph 15 of the petition.

16. Respondent admits the allegations contained in Paragraph 16 of the petition.

17. Respondent admits the allegations contained in Paragraph 17 of the petition.

COUNT I
TEMPORARY AND PERMANENT INJUNCTION

18. Respondent repleads and realleges the preceding admissions and denials.

19. Respondent admits the allegations contained in Paragraph 19 of the petition.

20. Respondent admits that Summit seeks a temporary and permanent injunction to prohibit the Board from releasing the dispersion modeling and denies the remaining allegations contained in Paragraph 20 of the petition.

21. Respondent denies the allegations contained in Paragraph 21 of the petition for lack of information.

22. Respondent denies the allegations contained in Paragraph 22 of the petition for lack of information.

23. Respondent admits the allegations contained in Paragraph 23 of the petition.

24. Respondent admits that the Act includes a specific exemption in Iowa Code section 22.7(50), but denies the remaining allegations contained in Paragraph 24 of the petition for lack of information.

25. Respondent admits the allegations contained in Paragraph 25 of the petition.

26. Respondent denies the allegations contained in Paragraph 26 of the petition for lack of information.

27. Respondent denies the allegations contained in Paragraph 27 of the petition.

28. Respondent denies the allegations contained in Paragraph 28 of the petition for lack of information.

29. Respondent denies the allegations contained in Paragraph 29 of the petition for lack of information.

30. Respondent admits the allegations contained in Paragraph 30 of the petition.

II. MOTION FOR TEMPORARY/PRELIMINARY INJUNCTION.

Respondent takes no position on whether the air dispersion modeling falls within Iowa Code sections 22.7(18) and 22.7(50) as an exception to the Open Records Act. Respondent does not resist Summit's motion for a temporary/preliminary injunction pending this Court's ruling and resolution of the issue.

WHEREFORE, the Respondent Iowa Utilities Board respectfully requests the Court make such determinations and issue such orders as are consistent with the requirements of Iowa Code section 22.7 and as may be just and equitable.

Respectfully submitted,

/s/ Jon Tack

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**ALL PARTIES SERVED ELECTRONICALLY
THROUGH COURT EDMS.**