STATE OF IOWA
DEPARTMENT OF COMMERCE
BEFORE THE IOWA UTILITIES BOARD

IN RE: SUMMIT CARBON SOLUTIONS, LLC	DOCKET NO. HLP-2021-0001

RESPONSE TO MOTION FOR RECONSIDERATION

The Office of Consumer Advocate (OCA) hereby responds to the Motion for Reconsideration (Motion) filed by Summit Carbon Solutions, LLC (Summit) on December 13, 2021. Summit argues that the Iowa Utilities Board (Board) should reconsider the "Order Granting in Part and Denying in Part Request for Confidentiality" (Order) issued on November 23, 2021 for two reason. First, Summit argues that the Board failed to conduct an analysis of the applicability of Iowa Code section 22.7(18). Summit also argues that the Board erred in its analysis of the privacy interests of business entities and trusts. As explained below, OCA objects in part to Summit's motion for reconsideration.

I. IOWA CODE SECTION 22.7(18) IS INAPPLICABLE

Summit argues that Iowa Code section 22.7(18) applies to the list of landowner identities and provides a reason to keep the landowner lists confidential. Iowa Code section 22.7(18) provides that the following items may be held confidential:

Exhibit C

> Communications not required by law, rule, procedure, or contract that are made to a government body or to any of its employees by identified persons outside of government, to the extent that the government body receiving those communications from such persons outside of government could reasonably believe that those persons would be discouraged from making them to that government body if they were available for general public examination.

Using circular logic, Summit argues that Summit itself would be discouraged from providing the landowner lists to the Board if the lists were not held confidential, using Summit's own objection to publication as evidence that Summit's objection to publication should be granted. (Motion at 4). Summit also argues that many utilities "consider their dealings with individual landowners to be private and confidential." (Motion at 4). This argument misses the point. Making landowner information public would merely reveal the identity of landowners, not Summit's dealings, or negotiations, with landowners.

Summit argues that Board precedent supports keeping the landowner list confidential. Summit first cites the Board's "Order Granting Request for Confidential Treatment Filed on August 28, 2019 and Issuing Certificate" (*In Re Wapello Solar, LLC*, Docket No. GCU-2019-0001, Oct. 24, 2019). In that case, the Board granted Wapello Solar's request to keep a list of impacted landowners confidential. However, in that case all the landowners had already signed voluntary easements, eliminating the need for public information regarding whose land Wapello Solar might be seeking to use. Additionally, in that case, the Board began its grant of confidentiality by stating, "Given the minimal interest in public disclosure of this information…" (*Wapello Solar* at 3). In the current case, Summit is seeking large amounts of land for easements

that have not yet been negotiated, and will potentially request eminent domain. There is also demonstrated interest in public disclosure of the landowner list. The holding in *Wapello Solar* is simply inapplicable to the facts in this case. Summit also cites the Board's "Order Granting Requests for Confidential Treatment Filed June 22 and July 31, 2020" (*In re Holliday Creek Solar LLC*, Docket No. GCU-2020-0001, (Oct. 28, 2020). The facts of *Holliday Creek Solar* are similar to those of *Wapello Solar* and included a statement that the company would not be seeking eminent domain. *Holliday Creek* Solar is inapplicable to the current case for the same reasons as *Wapello Solar*.

In further support of its Reconsideration Motion, Summit cites several court cases for the contention that courts have ordered similar information to be held confidential. However, none of the cases actually discuss privacy interests related to information similar to that of the landowner lists. In *City of Sioux City v. Greater Sioux City Press Club*, 421 N.W.2d 895 (Iowa 1988), the Court discussed privacy interests related to employment applications. Employment applications contain a wide variety of personal information that extends well beyond the scope of name and address, making this case inapposite. In *Des Moines Indep. Community Sch. Dist. Pub. Records v. Des Moines Register & Trib. Co.*, 487 N.W.2d 666 (Iowa 1992), the Court discussed privacy interests relating to written statements submitted by parents. (Motion at 5). Again, the Court was analyzing privacy interests of documents that contained much more information than simply name and address, making the case inapposite.

Summit also filed a Notice of Additional Authority and provided the Iowa Supreme Court's recent ruling in *Ripperger v. Iowa Pub. Info. Bd.*, Case No. 20-0902, __ N.W.2d ___ (*available at* 2021 WL 5977236) (Iowa Dec. 17, 2021). While, at first glance, *Ripperger* appears relevant, a closer reading reveals significant differences between the privacy interests in

Rippinger and the privacy interests at issue here. Notably, the list of names at issue in *Ripperger* was a list of names of people who had specifically requested to have their names removed from a search function in the electronic version of the Polk County Assessor's records. The Court logically concluded that public release of the names of individuals who have specifically requested increased privacy would discourage individuals from requesting privacy because it would counteract the purpose of the privacy request. (*Rippinger* at 21). Furthermore, the list of names at issue in *Rippinger* was deemed by the Court to be a communication from the individuals on the list to the County Assessor within the meaning of section 22.7(18). (*Rippinger* at 17). Releasing the list would have revealed not only the names of individuals but the substantive content of their communications to the County Assessor – a request to have their name removed from the electronic search function. The issue in *Rippinger* was not whether the individuals' identities should be held confidential as a general matter, as is the case here, but whether public records revealing the *content of communications* from individuals should be released. In the case at hand, the landowner lists contain only the identities of potentially impacted individuals and entities. There is no question of releasing any communications the landowners have had with the Board.

Summit bears the burden of proving that a statutory exemption applies. (*Rippinger* at 14). Summit has not shown any persuasive evidence that the exemption in Iowa Code section 22.7(18) applies. The Board should deny Summit's motion to reconsider as it relates to the applicability of section Iowa Code section 22.7(18).

II. PRIVACY INTERESTS OF BUSINESS ENTITIES AND TRUSTS

A. The Identities of Business Entities Should Be Made Public

Summit argues that the names of business entities should be held confidential because "It is widely known that many landowners throughout Iowa own their farms in the form of a business entity." (Motion at 7). Summit therefore reasons that landowners who choose to own their farm in the form of a business entity should have the same privacy interests as individuals. However, Summit's argument overlooks one crucial distinction between corporate ownership and individual ownership, even of a family farm. Landowners who have chosen to own their land through a corporate entity have already chosen to make ownership details public by filing their corporate status with the Secretary of State. Business entities whose ownership and address has already been made public by a government agency cannot claim to a privacy interest for the same information from another agency. OCA therefore encourages the Board to uphold its decision regarding the release of names and addresses of business entities.

B. The Identities of Trusts Should Be Treated the Same as Individual Identities

While OCA believes that individual identities need not be held confidential, to the extent that the Board determines that individual identities should be held confidential, OCA agrees with Summit that the identities of trusts should be held confidential. Trusts are private documents whose existence appears in property records in the same manner as individual identities. Accordingly, the same analysis that applies to individual identities should also apply to trusts.

III. CONCLUSION

OCA respectfully requests that the Board deny Summit's Motion for Reconsideration with respect to business entities. OCA concurs with Summit that the privacy interests of trusts should be evaluated in the same manner as the privacy interests of individuals.

Respectfully submitted,

Jennifer C. Easler
Consumer Advocate

/s/ John S. Long
John S. Long
Attorney

/s/ Anna K. Ryon
Anna K. Ryon
Attorney

1375 East Court Avenue
Des Moines, Iowa 50319-0063
Telephone: (515) 725-7200
E-mail: IowaOCA@oca.iowa.gov

OFFICE OF CONSUMER ADVOCATE