

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

SUMMIT CARBON SOLUTIONS LLC)	
)	
Petitioner,)	No. CVCV062900
)	
vs.)	
)	
IOWA UTILITIES BOARD,)	BRIEF IN SUPPORT OF SIERRA
)	CLUB’S MOTION FOR SUMMARY
Respondent,)	JUDGMENT
)	
and)	
)	
SIERRA CLUB IOWA CHAPTER and)	
OFFICE OF CONSUMER ADVOCATE,)	
)	
Intervenors.)	

Comes now Sierra Club Iowa Chapter, pursuant to Iowa Rule of Civil Procedure 1.981, and submits this Brief in Support of Sierra Club’s Motion for Summary judgment.

INTRODUCTION

Following the Court’s ruling on the request for a temporary injunction Sierra Club submitted Interrogatories to the Iowa Utilities Board to resolve the factual issue identified by the Court. The matter is now appropriate for summary judgment.

Iowa Code § 22.7(18) exempts from disclosure communications not required by law, rule, procedure or contract made to a government body to the extent that the government body could reasonably believe those documents would not be submitted if the person providing them would be discouraged from doing so if the documents were made public.

STANDARD FOR DETERMINING SUMMARY JUDGMENT

Summary judgment “shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Iowa Rule of Civil Procedure 1.981(3). An issue is genuine only if a reasonable fact-finder would render judgment for the non-moving party. *Cannon v. Bodensteiner Implement Co.*, 903 N.W/2d 322 (Iowa 2017). Summary judgment is appropriate if the non-moving party cannot generate a prima facie case. *Susie v. Family Health Care*, 942 N.W.2d 333 (Iowa 2020). The non-moving party must set forth specific facts showing a genuine factual issue. *Peak v. Adams*, 799 N.W.2d 535 (Iowa 2011).

ARGUMENT

The Court’s ruling on Summit’s request for a temporary injunction made it clear that the only issue in this case is whether the Iowa Utilities Board (IUB or Board) has a procedure requiring entities petitioning for a permit to submit to the Board a list of affected landowners. In order to resolve that factual issue, Sierra Club served 3 Interrogatories on the Board. The Interrogatories and the Answers are included in the Appendix filed with this Brief (App. p.).

Interrogatory No. 1 asked if the Board contended that it has not had a procedure prior to December 16, 2021, of requiring applicants for permits to submit lists of landowners affected by the applicant’s project. The Board’s Answer was that the Board was not contending that it did not have such a procedure. The Board would be the logical entity to know if it had a procedure requiring submission of landowner lists. Since the

Board is not contending that it did not have a procedure, that means that it did have a procedure requiring submission of the landowner lists.

Interrogatory No. 2 asked the Board to provide specific information describing its procedure of requiring landowner lists to be submitted and to identify specific cases where that procedure was followed. The Board responded that it “began the routine practice of requesting a list or map identifying individuals provided notice of an informational meeting in June of 2019.”

The Answer to Interrogatory No. 2 further sets forth the numerous specific cases in which landowner lists were provided to the Board pursuant to the routine procedure referred to in the Answer. This information clearly shows more than sporadic or random incidences of applicants voluntarily submitting landowner lists to the Board. Thus, the facts prove that the exemption in Iowa Code § 22.7(18) does not apply in this case.

This fact is also confirmed by the statement in an Order issued by the Board on December 16, 2021 (App. p.), wherein the Board said, “The landowner mailing list is an important document that allows the Board to determine whether there are conflicts of interest with the proposed pipeline and whether proper notice has been provided to landowners in the corridor. The Board therefore requires pipeline companies to file a mailing list for each county where the pipeline is proposed to be located.” The Board, therefore, explained why the landowner list is important and why the Board has required the list to be provided to the Board.

Finally, it is important to note that in the Court’s Order on the temporary injunction, the Court recited that the Board’s attorney said “such lists had always been

requested” but not always part of the electronic docket. But Summit’s attorney claimed that he had worked on projects where such lists were not requested, specifically mentioning the Dakota Access pipeline. But the Dakota Access pipeline was permitted in March of 2016, before the Board’s standardized procedure was adopted in 2019.

CONCLUSION

Based on the foregoing, the exemption from the Open Records Law in Iowa Code § 22.7(18) does not apply in this case. Therefore, the Court should grant summary judgment and deny Summit’s request for a permanent injunction.

/s/ *Wallace L. Taylor*
WALLACE L. TAYLOR AT0007714
Law Offices of Wallace L. Taylor
4403 1st Ave. S.E., Suite 402
Cedar Rapids, Iowa 52402
319-366-2428;(Fax)319-366-3886
e-mail: wtaylorlaw@aol.com

ATTORNEY FOR SIERRA CLUB
IOWA CHAPTER