

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

SUMMIT CARBON SOLUTIONS, LLC,	CASE NO. CVCV062900
Petitioner,	
v.	RESPONSE TO THE MOTION FOR SUMMARY JUDGMENT
IOWA UTILITIES BOARD,	
Respondent.	

COMES NOW the Office of Consumer Advocate (OCA) a division of the Iowa Department of Justice and herby submits this Response to the Motion for Summary Judgment (Motion) filed by Sierra Club Iowa Chapter (Sierra Club) on March 21, 2022.

INTRODUCTION

On February 11, 2022, the Court issued an Order Granting Motion for Temporary Injunction (Order) in this docket, preventing Sierra Club from obtaining a list of potentially impacted landowners provided by Summit Carbon Solutions, LLC (Summit) to the Iowa Utilities Board (IUB or Board) in IUB Docket HLP-2021-0001, in which Summit is seeking to construct a hazardous liquid pipeline to transport carbon dioxide. Sierra Club requested a copy of the landowner list pursuant to Iowa Code Chapter 22, the Open Records Act. The Order limited the issue remaining for consideration of a permanent injunction to the question of whether the landowner list falls under the exception in Iowa Code § 22.7(18), which excludes the following information from open record requirements:

“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.”

Specifically, the Order identified the question of whether the landowner list was a communication that was “required by law, rule, procedure, or contract.” (Order at 4).

In its Motion, Sierra Club argued that there is no factual dispute about the question of whether the landowner list was a communication that was “required by law, rule, procedure, or contract” and urged the Court to grant summary judgment and deny Summit’s request for a permanent injunction. Sierra Club included a Statement of Uncontested Facts with the Motion and argued that those allegedly uncontested facts support the Motion for Summary Judgment. For the reasons stated below, OCA urges the Court to grant Sierra Club’s Motion, but for reasons different than those presented by Sierra Club.

STANDARD FOR SUMMARY JUDGMENT

Summary judgment can be rendered when “there is no genuine issue as to any material fact.” Iowa R. Civ P. 1.981(3). The material fact in question in this case is whether the landowner list is a communication that was “required by law, rule, procedure, or contract.” In order for summary judgment denying Summit’s request for a permanent injunction to be rendered, there must be no genuine dispute a law, rule, procedure, or contract required Summit to provide the landowner list to the IUB.

SIERRA CLUB’S STATEMENT OF UNDISPUTED FACTS

Sierra Club included a Statement of Uncontested Facts as support for the Motion. The specific facts that Sierra Club alleged to be uncontested are:

- “3. The IUB submitted Answers to Interrogatories confirming that the IUB has had a routine procedure at least since 2019 for applicants for permits from the IUB to submit landowner lists to the IUB (Interrogator Answers, App. p. 7).
4. The IUB issued an Order on December 16, 2021, stating that the IUB requires pipeline companies to file a landowner list for each county where the pipeline is proposed to be located (App. p. 2).”

OCA does not agree with Sierra Club with respect to the undisputed nature of IUB procedures requiring filing of landowner lists since 2019. OCA believes there is still dispute as to the extent and application of the Board's practice of requiring companies to file landowner lists.

Nonetheless, the Board's December 16, 2021 Order, which Sierra Club included in the Appendix to its Motion, provides sufficient undisputed evidence to support a summary judgment decision denying Summit's request for a permanent injunction.

ARGUMENT

On December 16, 2021, the Board issued an "Order Regarding Filing Requirements and Addressing Survey Timing." The Board stated, "The Board therefore requires pipeline companies to file a mailing list for each county where the pipeline is proposed to be located." (Sierra Club App at 3). The Board explained that the 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." (Sierra Club App. at 3). Although the Board made this statement after Summit had already provided a landowner list to the Board, it is clear that Summit was required to do so under the Board's practice. Although the Board specifically addressed two other companies that had not yet filed landowner lists, the application of the filing requirement to Summit is clear in Ordering Clause 2, which states: "Summit Carbon Solutions, LLC; NuStar Pipeline Operating Partnership L.P.; and Navigator Heartland Greenway LLC shall file updates to the mailing lists, as necessary, at the time of providing any such additional notices as are determined to be necessary." (Sierra Club App at 5).

The fact that the landowner lists are required by Board procedure is highlighted by the title of the Board's order: "Order Regarding *Filing Requirements* and Addressing Survey

Timing.” (emphasis added). The Board clearly expressed that it viewed the landowner list as a required filing, not merely as information provided to the Board as a courtesy. The connection of the landowner lists to the substantive proceedings in hazardous pipeline permit applications is highlighted in Ordering Clause 2, where updates to the list are required “at the time of providing any such additional notices as are determined to be necessary.” (Sierra Club App. at 5). Tying the filing of the landowner lists to required notices to landowners demonstrates that the landowner lists serve a substantive purpose in the proceedings and are not merely extraneous information provided as a courtesy.

While there is no specific law or rule requiring filing of landowner lists in hazardous liquid pipeline permit proceedings, the Board has broad authority with respect to the information it requires to be filed. Iowa Code § 474.3 provides, “The utilities board may in all cases conduct its proceedings, when not otherwise prescribed by law, in such manner as will best conduce to the proper dispatch of business and the attainment of justice.” Given that Iowa Code § 479B.1 specifies that the Board’s authority with respect to hazardous liquid pipelines is “to protect landowners and tenants from environmental or economic damages,” the absence of a specific law or rule requiring the filing of landowner lists is not dispositive as to the existence of procedure that requires the filing of landowner lists. To the contrary, the Board’s general statement in the December 16, 2021 that the Board “requires pipeline companies to file a mailing list for each county where the pipeline is proposed to be located,” is clearly a “procedure” that required Summit to file the landowner lists. The requirement is consistent with the Board’s authority over hazardous liquid pipelines and enables the Board to oversee the landowner notice requirements in Iowa Code § 479B.4(4)-(5).

CONCLUSION

The statement in the Iowa Utilities Board order issued on December 16, 2021 that the Board “requires pipeline companies to file a mailing list for each county where the pipeline is proposed to be located,” is undisputed. That statement provides undisputed evidence that Summit was required by the Board’s practice to file a list of landowners with the Board. Because Summit was required to file the landowner list, the exception to the Open Records Act contained in Iowa Code § 22.17(18) is inapplicable to the current proceeding and the Court should issue an order on summary judgment denying Summit’s request for a permanent injunction.

Respectfully submitted,

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OFFICE OF CONSUMER ADVOCATE

CERTIFICATE OF SERVICE

I hereby certify that on April 5, 2022, the foregoing document was filed with the Clerk of Court using the EDMS system which will send electronic notice of the filing to the parties of record.

Anna Ryon