

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

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SUMMIT CARBON SOLUTIONS, LLC,

Petitioner,

v.

IOWA UTILITIES BOARD, A DIVISION OF  
THE DEPARTMENT OF COMMERCE,  
STATE OF IOWA,

Respondent,

And

SIERRA CLUB IOWA CHAPTER and  
OFFICE OF CONSUMER ADVOCATE,

Intervenors.

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Case No. CVCV062900

**MOTION TO CONTINUE  
RESISTANCE TO MOTION FOR  
SUMMARY JUDGMENT PURSUANT  
TO ICRP 1.981(6)**

On March 16, 2022, the Iowa Utilities Board (“Board”) timely responded to a set of interrogatories served on it by Sierra Club. These discovery requests pertained to an issue highlighted in the Court’s temporary injunction order relevant to the open records exception in Iowa Code §22.7(18). While it is inarguable that there is no requirement in statute or properly promulgated rule for Summit Carbon Solutions (“SCS”) to provide the Board its informational meeting mailing lists, and further that there had been no actual order to produce the lists at the time they were voluntarily provided, an issue in this case is whether the Board had a “procedure” requiring such lists.

Just five days after receiving the responses, on March 21, Sierra Club filed a motion for summary judgment, asserting that it is undisputed the Board had such a procedure. That assertion, however, is exceedingly premature, and cannot be supported by the interrogatories

Sierra Club propounded. The key request, Interrogatory No. 2, asks for a list of “all cases in which the landowner list was required to be submitted to the Board for the last ten years.” This is clearly a slanted question: it fails to also ask for a list of cases where such a list was *not* required to be submitted.

SCS has on April 5, 2022, timely and before the close of discovery, sent its own discovery to the Board following-up on the responses provided to Sierra Club. *See Attachment A*. These are clearly calculated to determine whether there is a genuine dispute over material facts with regard to the Board’s practices regarding mailing lists. Because the Board is the only party who has the information, Summit cannot properly contest the Motion for Summary Judgment without this information.

Iowa Rule of Civil Procedure contemplates precisely this situation – where a motion for summary judgment is premature in a manner that precludes a fair opportunity to resist:

**1.981(6)** *When affidavits are unavailable.* Should it appear from the affidavits of a party opposing the motion that the party for reasons stated cannot present by affidavit facts essential to justify the opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

SCS attaches to this motion the Declaration of its General Counsel, Jess Vilsack, see **Attachment B**, attesting to the reasons SCS cannot at present state facts which are essential to opposing Sierra Club’s Motion for Summary Judgment; SCS has therefore met the requirements of the rule.<sup>1</sup> As the Declaration notes, SCS has a good faith basis to believe that the responses will show facts that call into dispute whether there was an actual procedure of the Board requiring the production of informational meeting mailing lists.

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<sup>1</sup> While ICRP 1.981(6) requires an affidavit, Iowa Code § 622.1 and IRCP 1.413(4) allow that a sworn statement, including an affidavit, may be satisfied by a self-certified declaration using the appropriate certification language.

The responses to SCS's interrogatories to the Board will be due on May 5, 2022. SCS believes a continuance to file its resistance until one week after the responses are due, May 12, 2022, would be appropriate and would still leave time to rule on the motion before the date set for the permanent injunction hearing on July 7, 2022.

Accordingly, **SCS respectfully requests a continuance until May 12, 2022**, pursuant to Iowa Rule of Civil Procedure 1.981(6) to allow it time to obtain follow-up discovery directly responsive to the discovery on which Sierra Club is basing its motion for summary judgment. Such continuance is necessary for SCS to obtain facts to use in affidavits resisting the motion. Respectfully submitted this 6<sup>th</sup> day of April, 2022.

By: /s/ Bret A. Dublinske

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**ATTORNEYS FOR SUMMIT CARBON  
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**CERTIFICATE OF SERVICE**

The undersigned certifies that on the 6<sup>th</sup> of April, 2022, the foregoing document was electronically filed with the Clerk of Court using the EDMS system which will send a notice of electronic filing to all counsel of record registered with the EDMS system.

/s/ Natalie Rider