

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

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

Comes now Sierra Club Iowa Chapter and for Reply to Responses to Motion for Summary Judgment, states to the Court as follows:

1. The Office of Consumer Advocate has responded that the December 16, 2021 Order issued by the Iowa Utilities Board (IUB) (App. p. 2, submitted with the Motion for Summary Judgment) is sufficient for the Court to grant summary judgment. Sierra Club agrees that that Order should provide sufficient basis for the Court to grant summary judgment. In fact, Sierra Club’s Brief (p. 3) made just that argument. But Sierra Club also relies on the Answers to Interrogatories submitted by the IUB, as discussed below.

2. The IUB responds to the Motion for Summary Judgment first by arguing that there is no statute or administrative rule requiring the submission of landowner lists. But Iowa Code § 22.7(18) does not require, or even intimate, that the “procedure” referred to must be established by statute or administrative procedure. In fact, the statute refers to “law, rule, **procedure**, or contract.” (emphasis added). And the Court acknowledged that distinction in its Order granting a temporary injunction (Order, p. 4).

3. The IUB then contends that the agency has not obtained landowner lists for some projects where permits were applied for after June of 2019. This was obviously an attempt to counter the uncontested fact in its Answer to Interrogatory No. 2 submitted to the IUB by Sierra Club (App. p. 11, submitted with the Motion for Summary Judgment) that “the Iowa Utilities Board began the routine practice of requesting a list or map identifying individuals provided notice of an informational meeting in June of 2019.” That statement certainly describes a procedure of requiring landowner lists to be submitted to the IUB. Furthermore, the IUB’s Answer to Interrogatory No. 1 submitted to the IUB by Sierra Club (App. p. 9, submitted with the Motion for Summary Judgment) said the IUB “does not ‘contend that the Iowa Utilities Board had not had a procedure prior to December 16, 2021, of requiring applicants for permits of any kind to submit lists of landowners affected by the applicant’s project to the Board.’” In other words, the IUB admitted that it had a procedure prior to December 16, 2021, of requiring applicants for permits to submit a landowner list.

4. The IUB has also submitted an affidavit signed by Sanel Lisinovic, a Utilities Regulation Engineer with the IUB. The affidavit, however, is not admissible evidence. A court should only consider admissible evidence in evaluating a motion for summary judgment. *Pitts v. Farm Bureau Life Ins. Co.*, 818 N.W.2d 91 (Iowa 2012). And Iowa Rule of Civil Procedure 1.981(5) requires that affidavits be made on personal knowledge, setting forth facts admissible in evidence, by an affiant who is competent to testify to the facts in the affidavit. The affidavit here is inadmissible evidence because there is no showing that the affiant has personal knowledge of the nature and specifics of the projects in the various IUB dockets listed. Nor is there any explanation as to why some of the

docket entries after June of 2019 apparently show that landowners lists were not submitted, in obvious contradiction of the statements in the Interrogatory answers discussed above. So the affidavit leaves us to speculate on these questions. An inference is not legitimate if it is based on speculation or conjecture, and in considering a summary judgment, speculation is not sufficient to generate a genuine issue of fact. *Banwart v. 50<sup>th</sup> St. Sports*, 910 N.W.2d 540 (Iowa 2018).

5. It is also important to consider that the IUB's December 16, 2021, Order addressed specifically hazardous liquid pipelines. In IUB's Answer to Sierra Club's Interrogatory No. 2, the hazardous liquid pipeline dockets are identified by an "HLP" prefix. In all of those dockets, a landowner list was required to be submitted. So even if the IUB contends that in some electric transmission line dockets landowner lists were not required, it is clear that landowner lists were required for hazardous liquid pipelines. That is the relevant and material fact for this litigation, and that fact cannot be disputed.

6. Summit has responded to the Motion for Summary Judgment by filing a Motion to Continue. The basis of the Motion to Continue is the allegation that Summit needs time to conduct discovery, referring to three interrogatories served on April 5, 2022. But the information requested in those interrogatories would add nothing material to the record regarding the Motion for Summary Judgment that is not contained in the IUB's Answers to Sierra Club's Interrogatories and Sanel Lisinovic's affidavit (even if the affidavit were admissible evidence) discussed above. Iowa Rule of Civil Procedure 1.981(6) states that a continuance in this circumstance should be granted only if the party resisting a summary judgment cannot present facts essential to supporting the opposition to the summary

judgment. Summit cannot show how the answers to its interrogatories would be essential to its opposition to Sierra Club's Motion for Summary Judgment.

7. Sierra Club's Motion for Summary Judgment addresses a simple straightforward issue for which the record is sufficient to include all of the material uncontested facts the Court needs to render a summary judgment.

WHEREFORE, Sierra Club requests that the Court enter Summary Judgment.

/s/ *Wallace L. Taylor*

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