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IN THE IOWA DISTRICT COURT FOR POLK COUNTY

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

Comes now Sierra Club Iowa Chapter and for its Reply to Summit's Resistance to the Motion for Summary Judgment, states to the Court as follows:

As all parties agree, the only issue in this case is whether the Iowa Utilities Board has a procedure, as contemplated in Iowa Code § 22.7(18), requiring submission of a list of affected landowners to the Board. In arguing that there is no such procedure, Summit relies on the allegations in the Board's Resistance to Sierra Club's Motion for Summary Judgment. Summit quotes the Board as saying that landowner information was submitted in "most, but not all" cases. But this is simply an allegation in a pleading.

Summit conveniently ignores the statement by the Board, in response to Interrogatory No. 2 submitted by Sierra Club, that the 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 is clear that landowner information was required to be submitted to the board in all cases, beginning in June of 2019. There is no

indication in that statement that there were any exceptions to that procedure. But now, after Sierra Club filed its Motion for Summary Judgment, the Board is attempting to cloud the issue. In any event, based on all the evidence, there is a Board procedure for submitting a landowner list or map when the Board requests it. Upon careful consideration, it is an irrelevant distraction to assume that the procedure requiring submission of the landowner information must require the information in all cases. There is nothing in the statutory language or any court decision that requires that the designated procedure be applied in all cases. The point is that there is a Board procedure that the landowner information must be submitted when the Board requests it.

But irrespective of the foregoing, this case involves the Board procedure with respect to hazardous liquid pipelines. The interrogatory answers show absolutely that in hazardous liquid pipeline cases the Board has required landowner lists to be submitted. Moreover, and perhaps more decisively, the point is made in the Board's December 16, 2021 Order (App. p. 2). In that Order the Board said:

> As part of the process for scheduling the informational meetings, a company proposing to construct an HLP [hazardous liquid pipeline] is required to give notice to all landowners and persons in possession of land in a corridor where the proposed pipeline will be located. 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.

So let's deconstruct that statement. The Board first notes that notice is required to all landowners in the pipeline corridor. That requirement comes from Iowa Code § 479B.4, which has been the law since 1995. Therefore, the landowner list has to be created by the pipeline company in order to give notice to the landowners, and that list has obviously

been a necessary part of the process for years. This is not something that just came about with the Summit pipeline proposal. The Board's Order then says the landowner list is an important document for the Board. Since the landowner list has for years been part of the process, one must assume that it has for all those years been an important document for the Board. Again, it did not just become important with the Summit pipeline proposal. Having laid that foundation, the Board's Order then says the Board "therefore requires pipeline companies to file" a landowner list. The only logical interpretation of the word "requires," given the preceding predicate discussion explaining the historical use of the landowner list, is that the landowner list has always been required to be submitted to the Board for hazardous liquid pipelines.

Therefore, the Board's December 16, 2021 Order describes a procedure requiring the submission to the Board of landowner lists in hazardous liquid pipeline cases. So the landowner list is not subject to the exclusion from the Open Records Law contained in § 22.7(18).

There is one additional side note. Summit infers that the procedure referenced in § 22.7(18) must be in writing. There is nothing in that section that leads to that conclusion. Indeed, in the Court's February 11, 2022, temporary injunction ruling in this case, the Court acknowledged that any procedure for submitting the landowner lists may have been an unwritten one. The Court did not indicate that an unwritten procedure would not qualify as a procedure as contemplated by the statute. So whether the procedure is written or unwritten in not an issue.

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Summit has not presented any justifiable interest it has in keeping the landowner list confidential. It is important to the landowners, however, so they can communicate with each other. That, of course, is the reason Summit wants to keep the list confidential. The Iowa Utilities Board has made it clear in its December 16, 2021 Order that the landowner list in hazardous liquid pipeline cases must be submitted to the Board. That indisputably takes it out of the § 22.7(18) exemption.

The Court should therefore grant Sierra Club's Motion for Summary Judgment.

/s/ *Wallace L. Taylor*

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