

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

WOLF CARBON SOLUTIONS US LLC,)	
)	
Petitioner,)	No. EQCE088016
)	
vs.)	
)	REPLY TO RESISTANCE TO MOTION
IOWA UTILITIES BOARD,)	TO INTERVENE
)	
Respondent.)	

Comes now Sierra Club Iowa Chapter and in support of this Reply to Plaintiff’s Resistance to Motion to Intervene, states to the Court as follows:

INTRODUCTION

It is important to understand that there are now two landowner lists compiled by Wolf. The list identified by Wolf in its Petition in this case is the first list that was prepared by Wolf. A series of informational meetings were held based on purported notice to the landowners on that list. It was determined, however, that that list was fraught with errors and omissions. So Wolf compiled a second list of landowners, which is the list that Sierra Club has an interest in, since it is apparently the more accurate and complete list.

That second list was submitted to the Iowa Utilities Board (IUB) on November 21, 2022. On November 22, 2022, Sierra Club made a request, pursuant to Chapter 22 of the Iowa Code for release of that second list. So Sierra Club has all rights to which it is entitled under Chapter 22.

INTERVENTION OF RIGHT

Sierra Club has a legal right that will be affected by the outcome of this case, as required by Iowa Rule of Civil Procedure 1.407(1). Sierra Club has a legal right to invoke

the Iowa Open Records Law. Iowa Code § 22.2(1) states that **every person** has the right to access public records. Thus, Sierra Club has a legal right to the landowner list in this case. It would not matter if Sierra Club did not, in fact, make a formal request for the first landowner list that existed when this lawsuit was filed. The persons who made the formal request are not parties to this action, either.

It is important for the Court to know that when this action was filed in this Court on September 7, 2022, the landowner list at issue then has been superseded by a new landowner list. The new landowner list was required by the IUB because, as shown by the IUB October 19, 2002 Order referred to in Wolf's Resistance, Wolf "has determined that some anomalies occurred, likely resulting in certain landowners not receiving notice via certified mail as required." As a result, Wolf is conducting new informational meetings and created a new landowner list. That new list was filed with the IUB on November 21, 2022, accompanied by a motion asking the IUB to keep the list confidential. That motion is hereto attached. Sierra Club, on November 22, 2022, filed with the IUB a resistance to confidential treatment and an open records request pursuant to Chapter 22 of the Iowa Code. Sierra Club's open records request is hereto attached. Based on the foregoing, it is the new landowner list that Sierra Club seeks, and Sierra Club has filed an open records request for that list. The person or entity that makes the open records request certainly has a legal interest and statutory right in the list. Iowa Code § 22.5.

Nor will Sierra Club's intervention at this time **unduly** delay these proceedings, as contemplated by Iowa Rule of Civil Procedure 1.407(2)(c).. According to the trial scheduling and discovery plan filed herein, trial is set for January of 2024, over a year

from now. The deadline for discovery is 90 days before trial. Based upon that schedule, it is impossible to imagine how Sierra Club's intervention would delay, let alone unduly delay, the conduct of this case. The cases cited by Wolf on the issue of delay are mostly non-Iowa cases. The Iowa cases involve factual situations not relevant here. For example, Wolf characterizes Sierra Club's intervention as "eleventh-hour," citing *In re Interest of B.B.M.*, 514 N.W.2d 425,426 Iowa 1994). That was a case involving termination of parental rights in juvenile court. The child was placed for adoption and the grandparents sought to intervene. The Supreme Court did, in fact, determine that the grandparents' intervention was timely, even though termination had been decided. The issue then was whether the grandparents could adopt, and the court said they could not because there was no right for grandparents to adopt.

Wolf also cited the case of *Adam Joseph Resources v. CNA Metals Ltd.*, 919 F.3d 856, 865 (5th Cir. 2019), and quoted from that case that the decision on intervention depends on the "length of time during which the intervenor actually knew or reasonably should have known of his interest in the case" and "the extent of prejudice to the existing parties to the litigation." In this case it was only by happenstance, when Sierra Club's counsel noticed a reference to this case in a brief in another case, that Sierra Club learned that Wolf had filed this lawsuit. More importantly, Wolf can show no prejudice when trial is more than a year away.

Finally, Sierra Club has alleged that the current parties will not adequately protect Sierra Club's interest. In the first instance, since we are now addressing Wolf's second landowner list, and Sierra Club has a statutory right to enforce its rights pursuant to Iowa

Code § 22.5, Iowa Rule of Civil Procedure 1.407 (a) applies and no showing of inadequate representation is required. But even if Sierra Club's intervention was pursuant to Iowa Rule of Civil Procedure 1.407(b), the IUB had demonstrated that it believes the landowner list should be confidential. IUB's Answer in this case states that it will keep the list confidential, pending a decision in this case. Moreover, the Answer does not request that the Court deny Wolf's request for an injunction, but merely that the IUB will await the Court's decision. That attitude does not demonstrate that the IUB will vigorously oppose Wolf's request to withhold the landowner list from public disclosure.

Denial of Sierra Club's Motion to Intervene would defeat the purpose of intervention, as described in *State ex rel. Miles v. Minar*, 540 N.W.2d 462 (Ia. App. 1995):

It is also useful to examine each request to intervene in light of the policies underlying our rule permitting intervention. **The purpose of the rule is to reduce litigation by involving as many interested persons as possible and expeditiously dispose of lawsuits.** *Rick v. Boegel*, 205 N.W.2d 713, 717 (Iowa 1973). (emphasis added).

It is also worth noting that Judge Nelmark, in the case of *Summit Carbon Solutions LLC v. IUB*, No. CVCV062900 (Polk County Dist. Ct. 2022), determined that there was a public purpose in release of the landowner list:

The proposed Summit pipeline and the competing projects [including Wolf] have received a great deal of public attention. Summit acknowledges that a number of landowners oppose the project. In addition to the public purpose identified by Sierra Club – that the lists will help opponents of the project communicate with one another – the Court finds that knowing which land owners are impacted by the project helps the public evaluate the work of the Board. This exemption requires a showing that the release serves “no public purpose,” not just showing that the requester of the documents seeks them to advance private interests.

Id., Order Granting Temporary Injunction at 6.

Based on the foregoing, Sierra Club is entitled to intervention of right.

PERMISSIVE INTERVENTION

Sierra Club is entitled to permissive intervention pursuant to Iowa Rule of Civil Procedure 1,407(2)(a) because it has a statutory right under Iowa Code § 22.5, as explained in the previous section of this Reply. Sierra Club made an open records request for the current landowner list, and thus, comes within the scope of § 22.5.

Sierra Club also satisfies the requirements of Iowa Rule of Civil Procedure 1.407(2)(b). It is clear from the allegations in Sierra Club's Intervention Petition that Sierra Club's claims have questions of law and fact in common with Wolf's Petition. Sierra Club's claims directly rebut Wolf's claims.

Finally, as explained previously, Sierra Club's intervention will not unduly delay or prejudice these proceedings.

FACTUAL DISPUTES

The bulk of Wolf's Resistance is filled with allegations of factual disputes. Those are matters that will be presented at the trial of this case and be determined by the Court at that time, to the extent that they are even relevant. They are certainly not relevant in determining whether Sierra Club has a right to intervene and the Court should not give them any consideration.

WHEREFORE, Sierra Club Iowa Chapter requests that the Court grant its Motion to Intervene.

/s/ *Wallace L. Taylor*

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