

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>WOLF CARBON SOLUTIONS US, LLC, Plaintiff, v. IOWA UTILITIES BOARD, Defendant.</p>	<p>Case No. EQCE088409</p> <p>RESPONSE TO PLAINTIFF’S MOTION FOR TEMPORARY INJUNCTION</p>
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COMES NOW Defendant Iowa Utilities Board (Board or IUB), by and through its undersigned counsel, and in response to Plaintiff’s [Motion] for Temporary and Preliminary Injunction respectfully states:

1. This proceeding before the Court arises out of a case pending before the Board, *In Re: Wolf Carbon Solutions US LLC*, Board Docket No. HLP-2022-0002, whereby Wolf Carbon Solutions US LLC has proposed construction of a carbon capture pipeline through the State of Iowa.

2. As part of Docket No. HLP-2022-0002, the Board ordered Wolf to file its mailing lists of affected landowners. Wolf has filed two mailing lists and accompanying Applications for Confidential Treatment of those lists: the first one on or about August 15, 2022 (List #1) and a second one on or about November 21, 2022 (List #2).

3. The Board has not ruled on Wolf’s applications and the confidential nature of the mailing lists is now a determination for the district court: List #1 is the subject of Wolf’s petition in *Wolf Carbon Solutions US, LLC v. Iowa Utilities Board*, Case No. EQCE088019 (Polk County) where trial on the merits is scheduled for January 16, 2024; and List #2 is now the subject of this proceeding.

Background List #1—

Wolf Carbon Solutions US LLC v. Iowa Utils. Bd., Case No. EQCE088019.

4. On July 14, 2022, in *Wolf Carbon Solutions US LLC*, Board Docket No. HLP-2022-0002, the Board ordered Wolf to compile and file the mailing list of affected landowners to allow the Board to determine 1) whether there were conflicts of interest with the proposed pipeline; and 2) whether proper notice had been provided to the landowners.

5. On August 15, 2022, Wolf filed an Application for Confidential Treatment in Board Docket No. HLP-2022-0002 with regard to the mailing list. The filing of such request triggers the temporary withholding of the materials by the Board pursuant to its Board administrative rule 1.9(6)(c). See Iowa Admin. Code r. 199—1.9(6)(c).

6. Before ruling on Wolf's application, on August 24, 2022, the Board notified Wolf of a series of public records requests for

IUB records that are not routinely available for public inspection to the extent the subject of the request includes materials for which a request for confidentiality has been filed pursuant to 199 Iowa Administrative Code 1.9(6) and has not yet been ruled upon by the IUB. Pursuant to Rule 1.9(6)(c), the requested information is currently withheld from public inspection. As such, the request is subject to the provisions of 199 Iowa Administrative Code 1.9(5) and 1.9(8).

7. The Board further notified Wolf that, pursuant to the provisions of Board subrules 1.9(5) and 1.9(8), the Board was withholding the mailing lists from public inspection for a period of 14 days to allow Wolf to obtain injunctive relief in a District Court in the State of Iowa.

8. Pursuant to Board subrule 1.9(8)(b)(3), following a request for the examination of records determined to be confidential pursuant to Board rules and Iowa Code chapter 22, the Board will provide notice to the parties and will withhold the

confidential records for 14 days to allow the party who submitted the material to seek injunctive relief. If injunctive relief is not requested within the 14-day period, the Board will produce the records for inspection. See *id.* r. 199—1.9(8)(b)(3).

9. On September 7, 2022, Wolf filed its original petition seeking “expedited consideration” of its request for temporary and permanent injunctive relief to enjoin the Board’s disclosure of Wolf’s mailing list of landowners/occupiers affected by Wolf’s proposed pipeline (List #1).

10. Consistent with Board subrule 1.9(8), the Board is withholding the records that are the subject of the requested injunction until such time as a determination is made by the Court as to the confidentiality of such records.

11. The Board did not resist Wolf’s motion for a temporary injunction and noted in its response, “As Board rules provide for the temporary withholding of confidential records while an injunction is sought by a party, the Board does not resist the granting of a temporary injunction to allow for the litigation of the issues raised herein.”

12. On September 23, 2022, the Court granted Plaintiff Wolf’s Motion for Temporary and Preliminary Injunction enjoining the Board from releasing Wolf’s mailing lists of affected landowners (List #1).

***Current Proceeding Background List #2—
Wolf Carbon Solutions US LLC v. Iowa Utils. Bd., Case No. EQCE088409.***

13. While the district court action was pending, on or about November 21, 2022, Wolf filed a second, list of affected landowners/occupiers (List #2) with the Board along with an Application for Confidential Treatment in Board Docket No. HLP-2022-0002.

14. The next day, Sierra Club of Iowa filed a Resistance to Wolf’s application and also an Open Records Request for List #2.

15. The Board has not ruled upon Wolf's Application for Confidential Treatment of List #2.

16. On January 3, 2023, Wolf initiated this proceeding by filing its Petition for Temporary and Permanent Injunctive Relief concerning List #2.

17. Consistent with Board subrule 1.9(8), the Board will withhold the records that are the subject of the requested injunction (List #2) until such time as a determination is made by the Court as to the confidentiality of such records. For this reason, the Board does not resist Wolf's petition for a temporary and preliminary injunction enjoining the Board from releasing the records.

All Pending Cases.

18. There are three related cases (seeking injunctive relief regarding asserted confidentiality of mailing lists for proposed pipelines) pending:

A. *Summit Carbon Solutions, LLC v. Iowa Utilities Board*, Supreme Court No. 22-4414; (Polk Cnty. Dist. Ct. Case No. CVCV062900, 8/12/2022 order denying motion for permanent injunction; 9/6/2022 Petitioner appealed);

B. *Navigator Heartland Greenway, LLC v. Iowa Utilities Board*, Polk Cnty. Dist. Ct. Case No. EQCE088024 (temporary injunction granted, trial on merits was scheduled for December 6, 2023, and now stayed by order pending outcome of *Summit* case); and

C. *Wolf Carbon Solutions US LLC v. Iowa Utilities Board*, Polk Cnty. Dist. Ct. Case No. EQCE088019 (List #1, awaiting ruling on temporary injunction, trial on merits scheduled for January 16, 2024).

WHEREFORE Defendant Iowa Utilities Board requests this Court grant such relief as may be just and equitable under the circumstances.

Respectfully submitted,

/s/ Jon Tack

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