

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>WOLF CARBON SOLUTIONS US, LLC,</p> <p><i>Petitioner,</i></p> <p>v.</p> <p>IOWA UTILITIES BOARD, A DIVISION OF THE DEPARTMENT OF COMMERCE, STATE OF IOWA,</p> <p><i>Respondent.</i></p>	<p>CASE NO. EQCE088409</p> <p>PETITIONER'S UNOPPOSED MOTION TO STAY ONGOING PROCEEDINGS</p>
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COMES NOW, Petitioner Wolf Carbon Solutions US, LLC ("WCS") with this Unopposed Motion to Stay Ongoing Proceedings (this "Motion"), stating the following:

1. This case concerns the potential release of private and confidential landowner/occupier information voluntarily provided to the Iowa Utilities Board (the "IUB") from WCS in relation to a highly public carbon capture pipeline project, also known as a "hazardous liquid pipeline," currently under regulatory review.

2. This is the second action concerning the potential release of a private and confidential landowner/occupier list related to a pipeline project proposed by WCS. It is separate and distinct from an earlier action involving a similar, but not identical, landowner/occupier list, filed in Polk County District Court on September 7, 2022 (Case No. EQCE088016).

3. In Iowa, the IUB has primary jurisdiction over the siting of hazardous liquid pipelines, and a company proposing to build such a pipeline must obtain a permit from the Board under Iowa Code Chapter 479B.

4. Pursuant to Iowa Code Chapter 479B and the IUB's administrative rules implementing that statute, 199 Iowa Administrative Code Chapter 13, in order to secure a permit for a carbon capture infrastructure project of this nature one must hold a public informational meeting in each county where the pipeline is proposed to be constructed and operated, and notice of these meetings must be sent via certified mail to "persons as listed on the tax assessment rolls as responsible for payment of real estate taxes imposed on the property and those persons in possession of or residing on the property in the corridor in which the pipeline company intends to seek easements." 199 IOWA ADMIN. CODE r. 13.2(5) (implementing IOWA CODE § 479B.4).

5. Notably, however, nothing in the statute nor the IUB's rules requires or contemplates public filing of the list of persons on which the mailing was based.

6. While mailing lists are not required to be filed under Chapter 479B of the Iowa Code or the IUB's administrative rules, the IUB requested via order on November 23, 2021, December 16, 2021, and December 28, 2021, in all of its then-open hazardous liquid pipeline dockets, and again on July 14, 2022, as to WCS specifically, to file such mailing lists with the IUB.

7. However, the December 16, 2021 order expressly allowed for the confidential treatment of the lists, and the December 28, 2021 order confirmed that the IUB would "withhold from public inspection all materials subject to such request" until a final ruling from the IUB, which would come after other litigation was resolved regarding the confidentiality of the mailing lists of another pipeline project involving Summit Carbon Solutions, LLC ("Summit").

8. The litigation referenced in the December 28, 2021 IUB order was *Summit Carbon Solutions, LLC v. Iowa Utils. Bd., et al.*, Polk County, Iowa Case No. CVCV062900 (the "Summit").

Action"), which involves the confidentiality of Summit's mailing lists in light of an open records request under the Iowa Open Records Act, Iowa Code Chapter 22.

9. On August 12, 2022, the Iowa District Court for Polk County in the Summit Action entered an Order Denying Motion for Permanent Injunction (the "Order"). On September 2, 2022, Summit filed an appeal and supersedeas bond with the Iowa Supreme Court, thus staying the District Court's Order.

10. Subsequently, the IUB notified WCS on August 24, 2022, that it would withhold the filed mailing list for a temporary period of time in order to give WCS an opportunity, if it so chose, to file an action in district court to preserve confidentiality of the list information. WCS affirmatively exercised that right (for the first time) on September 7, 2022. *See Wolf Carbon Solutions US, LLC v. IA Utils. Bd.*, Polk County Case No. EQCE088016 (Filed Sept. 7, 2022).

11. Due to certain administrative circumstances, WCS filed a revised second list with the IUB on November 21, 2022. ***This is the list subject to the present litigation.*** The previously filed list's confidentiality is being litigated in the separate docket listed immediately above.

12. On January 3, 2023, WCS initiated the instant action to seek injunctive relief to maintain the confidentiality of the second list involved in this litigation.

13. Given the overlap of the issues in this action, and the Summit Action (as well as another action involving a third pipeline project on similar grounds, *see Navigator Heartland Greenway, LLC v. IA Utils. Bd.*, Polk County Case No. EQCE088024), WCS now hereby formally requests that the current action be stayed pending the resolution of the Summit Action now on appeal.

14. This Court has the inherent power "to control the disposition of causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Chicoine v. Wellmark, Inc.*, 894 N.W.2d 454, 460 (Iowa 2017) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)).

15. This Court should stay this matter pending resolution of the Summit Action, as it is in the interests of judicial economy and fairness to do so. *See, e.g., In re B.B.*, 516 N.W.2d 874, 877 (Iowa 1994) (holding issue is moot if it no longer presents a justiciable controversy because it has become academic); *Thomas v. Timonds*, 159 N.W. 881, 884 (1916) (upholding stay of claim to set aside real estate conveyance in probate action where resolution of related will contest claim would be determinative of real estate conveyance claim).

16. If this case were to proceed, the parties and this Court would spend significant time, money, and resources litigating some issues that the Summit Action could ultimately render a nullity or irrelevant. *See Coyne & Delany Co. v. G. W. Onthank Co.*, 90 F. Supp. 505, 506 (S.D. Iowa 1950) (finding a stay appropriate pending the outcome of separate case involving related issues that would "aid materially" in the court's disposition and thereby reduce the costs of litigation).

17. Considerations of judicial economy, cost of the parties, and efficient claim resolution all dictate a stay of this action pending the resolution of the Summit Action. Once that case is concluded, this case can proceed again and resolve whatever issues may still be present after considering the ruling from the appellate court on similar issues. At a minimum, the issues left for trial in this case could be lessened. Justice would require a stay of this case, and no party would be prejudiced if a stay issued.

18. So that this Court and the parties can continue to track the status of the Summit Action, the parties would request that this Court set a status conference in this case at a time on or

near October 1, 2023, so that the status of the Summit Action can be considered and to better determine how this case should proceed.

19. Consistent with IOWA R CIV. P. 1.910(2), undersigned counsel has conferred with Respondent IUB, who approves and consents to the remedy requested to stay the proceeding.

20. IUB's consent does not constitute approval or consent to WCS' underlying factual and legal assertions in support of WCS' action for injunctive relief in this action.

21. WCS requests that this case be stayed until resolution of the Summit Action, at which point a new trial scheduling order may need to be entered for this case.

WHEREFORE, WCS respectfully requests that this Court grant its Unopposed Motion to Stay Ongoing Proceedings pending the resolution of the Summit Action, set a status conference in this case at a time on or near October 1, 2023 so that the status of that case can be considered in relation to the present action, and for such other and further relief as the Court deems just and necessary under the circumstances.

Dated: January 23, 2023

Respectfully submitted,

By: /s/ Colin C. Smith

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