IN THE IOWA DISTRICT COURT FOR POLK COUNTY

Allen Hayek, Al Laubenthal, Allan Boeck, Andrew Corcoran, Arlan Schomaker Residuary Trust, Arndorfer Brothers Partnership, Barbara Schomaker, Benita A. Schiltz Revocable Trust, Bonnie Peters, Bradley Franken, Brenda Barr, Busch Family Revocable Living Trust dated September 17, 2001 Candace White, Carmen Moser, Chen Beverly Chow, Craig Beyer, Christine Hayek, Curtis Boeck, D. Richard Hocraffer, Daniel L. Wahl Family Trust Dated April 4, 2018, David Peters, Debra Lavalle, Delmar E. Baines Revocable Living Trust, Delores A. Sidener Family Trust, Dennis King, Dennis Valen, DeWayne Schultz, Diane King, Donald O. Johannsen Trust, Daniel "Doug" Swartz, Doug Williamson, Eric Arndorfer, Gadsby Family Farm Co, LLC, Gary Boeck, George Cummins, Gerald Franken, Geraldine R. Pedersen Revocable Trust, Graham Ag, LLC, Grandma Frieda Boettger Hansen's 40, Inc., Greg L. Pickrell Separate Property Trust, Gutschenritter Family Farms, Huntoon Farms, Ltd., Jackson Farms of Terril, Inc., James D. Fetrow Revocable Living Trust, Jamie Moser, Jane Anna Howard Trust, Janet Miller, Jean Granger, Kohles Family Farms, LLC, Dr. Jeffrey Colvin, Julie Colvin, Julie Glade, Jill Williamson, Joanne M. Franken, John L. Hargens, Joyce Johnson, Caila Corcoran, Katherine A. Stockdale Revocable Trust, Kathleen Hunt, Kent Kasischke, Kent R. Pickrell Revocable Trust, Kerry King, Kruthoff Farms, LLC, Leo (Lee) Kaufmann, Linda Hoffmeier, Lori L. Goth Revocable Trust, Della M. Curtis Living Trust, dated April 15, 2007, Maher Farm, Inc., Margaret Fetrow Living Trust, Margaret Thomson, Marjorie Swan, Marie Larson, Mary J. Woodward Trust, Matt Valen, Mau Farm, Inc., Maureen Allan, Meghan Kennedy, Mersch Farms, Inc., Michael White, Nancy Erickson, Nancy A. Todd Revocable Trust, Neil R.	CASE NO. _____ **PETITION FOR JUDICIAL REVIEW**

Dahlquist Living Trust, Carl S. Palmquist Testamentary Trust, Patricia Beyer, Productive Farms, LLC, Rachel Franken, Raymond T and Katherine A Stockdale Revocable Trust, Raymond T. Stockdale Revocable Trust, RMT Family Real Estate, LLC, Robert Watts, Romona Ritter, Sandra Laubenthal, Teresa A. Thoms Revocable Trust dated September 10, 2020, Tronchetti Family Trust, TSL Farms, LLC, Vicki Koeppe, Vicky Sonne, Virgil W. Ewoldt and Bonnie L. Ewoldt Family Trust, Vonda Cummins, Weber Acres, Ltd., Wendell King, Wilmer J. Hulstein Revocable Trust, dated December 9, 1999, Chen Beverly Chow, Drews Land Company, Inc., Gary Marth, Gunion Family Trust, Jacqueline Petersen, JCD Beyer Family Farm, LLC, Jedidiah Petersen, Jeremy Petersen, Joan E. Gaul 2012 Trust, Jordan Petersen, Josh Marth, Joshue Petersen, Julie Kaufmann, Kathryn Josephine Byars, Kathy A. Johnson Revocable Trust, Lance Kleckner, Loutomco, Inc., Marilyn V. Arndorfer Revocable Trust, Marte Joseph Elbert, Dr. Michael Elbert, Mary Moser, Maureen F. Elbert Bechard, Sandra Kleckner, Sandra Marth, Susan Hermann, Timothy Baughmann, and William Becker, Vickie Beck, Golden Oaks, Inc., Michael J. Main, Deborah D. Main, and RKR Farms, LLC Petitioners, v. IOWA UTILITIES COMMISSION f/k/a IOWA UTILITIES BOARD, Respondent.	

Petitioners, as identified in the caption above and all incorporated here, herein collectively ("Landowners"), include those persons or entities who were granted intervention and

became formal parties to the Iowa Utilities Board, now Iowa Utilities Commission, hearing process, also known in that process as, "Jorde Landowners", including intervenors that joined the Jorde Landowner group after the hearing concluded, as well as the following persons and entities who also separately raise an issue for judicial review specific to them as discussed herein: William and Vickie Beck, Slyvia M. Spalding, Golden Oaks, Inc. (Meghan Sloma and Dorothy Sloma), Michael J. Main and Deborah D. Main, RKR Farms, LLC (Elizabeth H. Richards and Jane P. Richards). Pursuant to Iowa Code § 17A.19, Petitioners submit this Petition for Judicial Review.

INTRODUCTION

Petitioners seek judicial review of the June 25, 2024, Final Decision and Order ("Final Order") and of the August 28, 2024, Order granting permit, both of the Iowa Utilities Commission, f/k/a Iowa Utilities Board, ("IUC") in its Docket No. HLP-2021-0001. In its Final Order, the IUC (a) granted a hazardous liquid pipeline permit, subject to conditions, to Summit Carbon Solutions, LLC ("Summit") for purposes of constructing a carbon dioxide pipeline across 29 counties in Iowa ("Proposed Hazardous Pipeline"); (b) approved the location and route of the pipeline; and (c) granted Summit the right of eminent domain to take property against the will of Landowners that Summit believes necessary for its Proposed Hazardous Pipeline. Then the IUC, on August 28, 2024, entered an Order issuing the permit, which had previously only been a conditional permit, finding Summit satisfied said conditions precedent described in the June 25, 2024, Final Order. The August 28, 2024, Order and all rights granted and conferred to Summit by the IUC in that Order, is also specifically appealed here.

Because the IUC committed numerous substantive and procedural errors in reaching its final decision and grant of permit, and because those errors prejudiced the substantial rights of

Petitioners, the Court must "reverse, modify, or grant other appropriate relief" from the IUC's decision. Iowa Code § 17A.19(10).

PARTIES

1. Landowners are owners of real property in Iowa or persons or entities that have beneficial interests in real properties in Iowa, which properties Summit seeks the right to take via eminent domain, allegedly pursuant to Iowa Code § 479B.1 and § 479B.16, for construction of its Proposed Hazardous Pipeline.

2. William and Vickie Beck, Slyvia M. Spalding, Golden Oaks, Inc. (Meghan Sloma and Dorothy Sloma), Michael J. Main and Deborah D. Main, RKR Farms, LLC (Elizabeth H. Richards and Jane P. Richards), collectively "Non-Exhibit H landowners" are persons who were not formally granted intervention but who are directly aggrieved by IUC action first denying their intervention and then proceeding to conduct the hearing, take evidence, and proceed to final decision without their participation.

3. The IUC is the state agency with authority to permit hazardous liquid pipelines in the State of Iowa pursuant to Iowa Code chapter 479B, and with the separate authority to grant eminent domain for eligible projects who have satisfied separate standards.

JURISDICTION

4. The Court has jurisdiction over this Petition for Judicial Review pursuant to Iowa Code § 17A.19(1), which provides that any person aggrieved or adversely affected by final agency action may seek judicial review thereof.

5. On January 28, 2022, Summit Carbon Solutions, LLC ("Summit"), pursuant to Iowa Code Chapter 479B filed a petition with the IUC to construct, operate, and maintain the

"Proposed Hazardous Pipeline", which is comprised of approximately 688.01 miles of hazardous liquid pipeline through 29 Iowa counties.

6. The Landowners are all intervenors in and parties to IUC Docket No. HLP-2021-0001.

7. Non-Exhibit H landowners were denied intervention but should not have been and appeal here for a determination their denial of intervention was error. Landowners join and also request this Court remand this matter with directions to dismiss Summit's petition based on the violation of due process as to Non-Exhibit H landowners.

8. Following an IUC hearing on Summit's petition in Fort Dodge, Iowa, beginning on August 22 and concluding on November 8, 2023, the IUC issued its "Final Order" on June 25, 2024. The Final Order found that (a) the service to be provided by Summit Carbon would promote the public convenience and necessity; and (b) Summit would operate the Proposed Hazardous Pipeline as a common carrier, and therefore, vested Summit with the right of eminent domain as to virtually every aggrieved Exhibit H landowner, including Landowners here.

9. On July 12, 2024, seventeen days after the Final Order, the Supervisors of Shelby County, Kossuth County, Floyd County, Emmet County, Dickinson County, Wright County, and Woodbury County ("the Counties"), timely filed their Motion to Reconsider Final Decision and Order pursuant to 199 Iowa Administrative Code rule 7.27(1) and Iowa Code § 17A.16 and 476.12.

10. On July 15, 2024, twenty days after the Final Order, additional motions for reconsideration and/or rehearing were timely filed separately by Landowners, Sierra Club Iowa Chapter, Republican Legislative Intervenors for Justice ("RLIJ") (an unincorporated association of 36 Members of the Iowa General Assembly), Bold Iowa, and Gordon Garrison.

11. On August 5, 2024, Summit made certain filings with the IUC claiming compliance with the conditions precedent to permit issuance.

12. On August 15, 2024, the IUC provided notice to the parties in its proceeding stating that, consistent with Iowa Code § 476.12 and Iowa Admin. Code r. 199-7.27(1), the motions for reconsideration were deemed denied on August 14, 2024, 30 days after the last timely filed motion.. See *Christiansen v. Iowa Bd. of Educational Examiners*, 831 N.W.2d 179, 190 (Iowa 2013) (where multiple applications for rehearing are filed, the agency's decision on the last pending application constitutes the final decision of the agency).

13. On August 19, 2024, Jorde Landowners filed their response and objection to Summit's alleged compliance with the permit conditions precedent.

14. On August 28, 2024, the IUC issued a second order, the Order Issuing Permit and its Hazardous Liquid Pipeline Permit No. N0071 for the Proposed Hazardous Pipeline, as the IUC concluded all conditions precedent to permit issuance had been satisfied.

15. Pursuant to Iowa Code section 17A.19(1), any person who has exhausted all adequate administrative remedies and who is aggrieved by or adversely affected by final agency action is entitled to seek judicial review thereof.

16. Because this matter involves agency action in a contested case and the Landowners applied for rehearing or reconsideration, this petition must be filed within 30 days after rehearing was deemed denied. Iowa Code §§ 17A.16(2); 17A.19(3); 476.12.

17. Landowners filed their Application for Reconsideration or Rehearing on July 15, 2024, and the IUC failed to act on it within 30 days such that it was deemed denied by Iowa Code § 476.12 on August 14, 2024. Accordingly, Iowa Code § 17A.19(3) requires that Landowners file this Petition for Judicial Review within 30 days of August 14, 2024.

18. Landowners exhausted all adequate administrative remedies by participating as parties in the contested case before the IUC and obtaining a final decision and order from the IUC. Non-Exhibit H landowners also exhausted their remedies, seeking intervention and then reconsideration upon intervention denial, and timely appeal here.

19. For the reasons stated herein, Landowners and Non-Exhibit H landowners are aggrieved because the IUC committed numerous errors of procedure and law in its hearing and Final Order of June 25, 2024, and in its August 28, 2024, Order issuing the permit, as well in failing to grant intervention to Non-Exhibit H landowners. Petitioners timely filed this Petition for Judicial Review in accordance with Iowa Code §§ 17A.16, 17A.19, and 476.12. Therefore, this court has jurisdiction.

VENUE

20. Venue is proper in Polk County District Court pursuant to Iowa Code section 17A.19(2). Although each individual Petitioner could have separately filed petitions for judicial review in their respective counties, Petitioners collectively determined filing jointly in Polk County was the must judicial economic approach.

STANDARD OF REVIEW

21. For IUC actions under Iowa Code chapter 479B related to issuance of a hazardous liquid pipeline permit, the standard of review is contained in Iowa Code § 17A.19(10) of the Iowa Administrative Procedure Act. For IUC actions granting eminent domain based on findings of public purpose, public benefit, or public improvement, the IUC bears the burden to prove "by a preponderance of the evidence that its finding of public use, public purpose, or public improvement meets the definition of those terms." Iowa Code § 6A.24(3). Although the burden of proof imposed by Iowa Code § 6A.24(3) applies to "action[s] challenging the exercise of

eminent domain authority or the condemnation proceedings" under Iowa Code chapter 6B, § 6A.24(3) establishes a clear legislative directive to apply the preponderance of the evidence standard to government decisions of fact related to grants of eminent domain.

FACTUAL BACKGROUND

22. All factual allegations above are restated and incorporated here.

23. Summit proposes to construct, operate, and maintain approximately 688.01 miles of 6- to 24-inch diameter hazardous liquid pipeline in 29 counties in Iowa, to transport supercritical carbon dioxide. Within Iowa, the Proposed Hazardous Pipeline would be comprised of 34.94 miles of 6-inch, 192.64 miles of 8-inch, 150.06 miles of 10-inch, 145.07 miles of 12-inch, 20.53 miles of 16-inch, 95.24 miles of 20-inch, and 49.53 miles of 24-inch nominal diameter pipe.

24. The term "supercritical" refers to a phase of matter distinct from the commonly known gaseous, liquid, and solid phases. Carbon dioxide is a gas at ambient pressures and temperatures. Through compression, carbon dioxide may be converted into liquid. Supercritical carbon dioxide forms only at a combination of pressures above 1,070.0 pounds per square inch ("psi") and temperatures above 87.7604 °F. Solid carbon dioxide (commonly called "dry ice") is created by a combination of pressure and cooling below −109.2 °F. Carbon dioxide in a supercritical state is different from carbon dioxide in a liquid state.

25. The Proposed Hazardous Pipeline would have a maximum operating pressure (MOP) of 2,183 pounds per square inch gauge ("psig") with normal operating pressures ranging from 1,200 to 2,150 psig. The requested permitted pressure is 2,183 psig.

26. Summit Carbon's Proposed Hazardous Pipeline would be capable of transporting up to 12 million metric tons a year in Iowa with a nominal daily transportation volume of 16,290 metric tons per day.

27. The Proposed Hazardous Pipeline is to be located in Boone, Cerro Gordo, Cherokee, Chickasaw, Clay, Crawford, Dickinson, Emmet, Floyd, Franklin, Fremont, Greene, Hancock, Hardin, Ida, Kossuth, Lyon, Montgomery, O'Brien, Page, Palo Alto, Plymouth, Pottawattamie, Shelby, Sioux, Story, Webster, Woodbury, and Wright counties in Iowa.

28. Completion of the Proposed Project would harm landowners by involuntary condemnation of Landowners' properties; cause physical harm to Landowners' properties such as reduced productivity of crop lands due to soil damage by construction and future maintenance activities; create health and safety risks to Landowners; create unnecessary and costly legal restrictions and requirements upon Landowners and all future owners, occupiers, and tenants of such affected lands, and interfere with the Landowners' quiet enjoyment of their properties.

29. Should the Proposed Hazardous Pipeline rupture, the supercritical carbon dioxide would vaporize, expand dramatically in volume, and create a plume of gaseous carbon dioxide that would spread far beyond the Proposed Project's right-of-way. A rupture of the Proposed Hazardous Pipeline could result in carbon dioxide concentrations high enough to asphyxiate and cause the destruction, property loss, injury and death of Landowners nearby Non-Ex H landowners and their livestock and other animals. In areas of moderate carbon dioxide concentrations, a rupture of the Proposed Hazardous Pipeline could cause Landowners to become intoxicated to a degree that that could be hazardous to those working with dangerous equipment, driving, or located outside during hazardous weather conditions.

30. Evaluation and consideration of plume modeling, risk assessment, dispersion modeling, and similar data is critical in determining whether or not a particular hazardous pipeline is acceptable for routing within Iowa, and if so, where precisely such routing will cause the least negative impact.

COUNT I

THE IUC'S FINDING THAT THE PIPELINE CONSTITUTES A PUBLIC USE IS UNCONSTITUTIONAL UNDER ARTICLE I, SECTION 18 OF THE IOWA CONSTITUTION AND UNDER THE *PUNTENNEY* CASE

31. Petitioners incorporate by reference all preceding paragraphs.

32. The IUC's grant of eminent domain was unconstitutional under Article I, Section 18 of the Iowa Constitution because Summit's pipeline is a private, not public, use.

33. The IUC's Final Decision should be reversed because it's finding that the Proposed Hazardous Pipeline would be operated as a common carrier for public benefit is unconstitutional under the two-part common carrier and public use and benefit test established by the Iowa Supreme Court in *Puntenney v. Iowa Utilities Board*, 928 N.W.2d 829, 848-50 (Iowa 2019). In order to be granted the right to eminent domain, a pipeline must be a "common carrier," as this term is defined by Iowa common law. *Id*. at 848. In addition, a Proposed Hazardous Pipeline must provide a public use or benefit, such as cheaper transportation that, in a competitive marketplace, results in lower commodity prices for members of the public, or increased public safety. *Id*. at 849. The court held that "trickle-down benefits of economic development" are not public benefits. *Id*.

34. The IUC found that "Summit Carbon is providing a service to the public, indiscriminately, and will operate as a common carrier under Iowa common law." Final Order at 295. In its discussion of public use, the IUC failed to identify any public use or benefit other than

Summit's claimed status as a common carrier. There was insufficient evidence for the IUC to conclude Summit will operate as a common carrier.

35. The record shows that 100 percent of the carbon dioxide to be transported by the Proposed Hazardous Pipeline under existing executed contracts, called "Offtake Agreements," would be owned by Summit. The Offtake Agreements provide that Summit's ethanol plant partners would provide Summit with title to produced carbon dioxide before it enters the pipeline, in exchange for participation in project cost and revenue sharing from operation of the Proposed Hazardous Pipeline and its related carbon capture and carbon sequestration facilities. Therefore, under the carbon dioxide Offtake Agreements, Summit would exclusively transport carbon dioxide owned by itself, such that the Offtake Agreements do not create a common carrier-shipper relationship between Summit and its ethanol plant partners. Instead, the Offtake Agreements create a private joint venture relationship between Summit and its ethanol plant partners in which they share in revenues, costs, and risks. Where a Proposed Hazardous Pipeline would transport product owned exclusively by the pipeline's owner pursuant to a profit and loss sharing agreement with the product suppliers, it would not operate as a "common carrier" pipeline as this term is defined by Iowa common law. See *Mid-America Pipeline Co. v. Iowa State Commerce Commission*, 253 Iowa 1143, 1146-47 (1962).

36. The IUC also based its finding that the Proposed Hazardous Pipeline would be operated as a common carrier on the basis that Summit stated an intention to transport carbon dioxide via long-term transportation service agreements and short-term "walk-up" shipper agreements, in addition to the executed Offtake Agreements, but without Summit having actually entered into any long or short-term transportation service agreements despite two years of

marketing. For the IUC, the mere intention to allegedly offer other commercial arrangements was sufficient evidence of future operation as a common carrier.

37. A mere intention to transport carbon dioxide via long-term or short-term transportation service agreements is not substantial evidence under Iowa Code § 17A.19(10)(f). It also does not prove by a preponderance of the evidence that Summit will operate the Proposed Hazardous Pipeline as a common carrier, particularly where Summit apparently tried but failed to enter into such transportation service agreements.

38. Rather than rely on mere statements of intent, substantial evidence of operation as a common carrier pipeline includes introduction into the record of executed transportation service agreements that confirm the actual existence of a public commercial demand for the proffered transportation services on the terms offered by Summit. A failure by Summit to enter into transportation service agreements would mean that the Proposed Hazardous Pipeline would operate exclusively under the Offtake Agreements, which do not create a common carrier relationship, with the result that private property would be condemned for a private carrier pipeline, in violation of the *Puntenney* decision.

39. The IUC's "public use" analysis (Final Order pages 251 to 297) is defective also because it focuses exclusively on the Proposed Hazardous Pipeline's common carrier status and does not examine the second part of the *Puntenney* test: whether the Proposed Hazardous Pipeline would provide some benefit to the public generally, such as lower commodity prices, beyond trickle down economic benefits. The IUC's discussion of public benefits (Final Order pages 287 to 297) entirely fails to identify any public use beyond operation as a common carrier. While the IUC discusses the purported benefits of the project in the context of whether the Proposed Hazardous Pipeline would promote the public convenience and necessity (Final Order pages 103

to 238), it fails to analyze whether any of these factors create a public use or benefit in accordance with the second *Puntenney* test under either the substantial evidence or preponderance of the evidence standards.

40. Accordingly, the IUC's finding that the Proposed Hazardous Pipeline would be operated as a common carrier pipeline that provides a public use or benefit is in violation of Article I, Section 18 of the Iowa Constitution and must be reversed under Iowa Code § 17A.19(10)(a). In addition, the IUC's determination that the Proposed Hazardous Pipeline would operate as a common carrier is not based on substantial evidence and must be reversed under Iowa Code § 17A.19(10)(f), nor did the IUC prove that the pipeline would operate as a common carrier by a preponderance of the evidence, such that IUC's common carrier finding must be reversed.

COUNT II

THE IUC'S FINDING THAT THE PIPELINE CONSTITUTES A PUBLIC USE, PUBLIC PURPOSE, OR PUBLIC IMPROVEMENT VIOLATES THE COMMON CARRIER REQUIREMENT IN IOWA CODE § 6A.22

41. Petitioners incorporate by reference all preceding paragraphs.

42. Iowa Code § 6A.21(1)(d) prohibits condemnation of agricultural lands for private development purposes. However, Iowa Code § 6A.21(2) states that this limitation does not apply to:

> utilities, persons, companies, or corporations under the jurisdiction of the Iowa utilities board in the department of commerce or to any other utility conferred the right by statute to condemn private property or to otherwise exercise the power of eminent domain, except to the extent such purpose includes construction of aboveground merchant lines.

This provision broadly exempts companies and corporations regulated by the IUC from the prohibition on condemnation of agricultural land for private purposes.

43. Iowa Code § 6A.22(1) and (2) state in relevant part:

> 1. In addition to the limitations in section 6A.21, the authority of an acquiring agency to condemn any private property through eminent domain may only be exercised for a public purpose, public use, or public improvement.
>
> * * *
>
> 2.a. "Public use", "public purpose", or "public improvement" means one or more of the following:
> (1) The possession, occupation, and enjoyment of property by the general public or governmental entities.
> (2) The acquisition of any interest in property necessary to the function of a public or private utility, common carrier, or airport or airport system.
> (3) Private use that is incidental to the public use of the property, provided that no property shall be condemned solely for the purpose of facilitating such incidental private use.
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> * * *
>
> b. Except as specifically included in the definition in paragraph "a", "public use" or "public purpose" or "public improvement" does not mean economic development activities resulting in increased tax revenues, increased employment opportunities, privately owned or privately funded housing and residential development, privately owned or privately funded commercial or industrial development, or the lease of publicly owned property to a private party.

The foregoing language of Iowa Code § 6A.22 clarifies that while the broad prohibition on condemnation of agricultural land for private development purposes in § 6A.21 does not apply in absolute terms to entities under the jurisdiction of the IUC, such entities may nonetheless use eminent domain only when doing so is "necessary to the function of a public or private utility, [or] common carrier . . . ." (Emphasis added.) The additional limitation provided by Iowa Code § 6A.22 limits use of eminent domain by IUC-regulated pipeline developers to only those pipelines that function as "common carriers" as this term is otherwise defined by Iowa law. Whereas Iowa Code chapter 479B grants the IUC jurisdiction over both common and private carrier hazardous liquid pipelines, Iowa Code § 6A.22 clarifies that merely being under the

jurisdiction of the IUB does not make all hazardous liquid pipeline development activities a "public use" or "public purpose" or "public improvement." Only hazardous liquid pipelines that will operate as common carriers may be granted the right to use eminent domain.

44. For the reasons stated above, the Proposed Hazardous Pipeline would not function as a common carrier within the meaning of Iowa Code § 6A.22(2)(a). Therefore, the Proposed Hazardous Pipeline is not a "public use", "public purpose", or "public improvement" within the meaning of Iowa Code § 6A.22(2)(a). The IUC Final Decision that the Proposed Hazardous Pipeline is a "public use", "public purpose", or "public improvement," therefore, is "[b]ased upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency," Iowa Code § 17A.19(1)(c), and must be reversed.

COUNT III

THE IUC'S FAILURE TO PROVIDE A RULING UPON EACH PROPOSED FINDING OF FACT SUBMITTED BY LANDOWNERS IN THEIR POST-HEARING REPLY BRIEF VIOLATES THE PLAIN LANGUAGE OF IOWA CODE § 17A.16(1)

45. Landowners incorporate by reference all preceding paragraphs.

46. On January 19, 2024, Jorde Landowners filed 43 proposed findings of fact on pages 66 through 72 of their Post-Hearing Reply Brief.

47. Iowa Code § 17A.16(1) contains the following mandatory requirement: "If, in accordance with agency rules, a party submitted proposed findings of fact, the decision *shall* include a ruling upon each proposed finding." (Emphasis added.)

48. The IUC's June 25, 2024, Final Decision and Order fails to respond to each of Landowners' proposed findings, such that it violates the plain language of Iowa Code § 17A.16(1).

49. Landowners request a remand directing the IUC to comply with the mandatory requirement in Iowa Code § 17A.16(1) to respond to each of Landowners' proposed findings of fact.

COUNT IV

THE IUC LACKS JURISDICTION OVER SUMMIT'S JANUARY 27, 2022, PETITION FOR HAZARDOUS LIQUID PIPELINE PERMIT, BECAUSE THE PROPOSED HAZARDOUS PIPELINE WOULD NOT TRANSPORT A HAZARDOUS LIQUID WITHIN THE MEANING OF IOWA CODE § 479B.2(2)

50. Landowners incorporate by reference all preceding paragraphs.

51. On June 21, 2023, George Cummins, a Jorde Landowner, filed a Motion to Dismiss, pursuant to Iowa Code chapter 479B and Iowa Administrative Code rule 13.4(1), requested the IUB reject Summit's Petition for a hazardous **liquid** pipeline (emphasis added) for lack of jurisdiction.

52. For purposes of chapter 479B, "hazardous liquid" means "crude oil, refined petroleum products, liquefied petroleum gases, anhydrous ammonia, liquid fertilizers, **liquefied carbon dioxide**, alcohols, and coal slurries interstate pipelines for the transportation or transmission of natural gas or hazardous liquids." Iowa Code § 479B.2(2) (emphasis added).

53. For Summit to be granted a permit under 479B, it must intend to transport **liquified** carbon dioxide – and no other phase of carbon dioxide. Summit's petition did not establish that the project meets this requirement because Summit specifically stated it will transport supercritical carbon dioxide instead of liquified carbon dioxide. The IUC finding to the contrary was error.

54. Carbon dioxide in the "supercritical" phase is not a "liquid." Additionally, "supercritical" carbon dioxide is not the same as or synonymous with "liquified carbon dioxide."

If the Iowa Legislature intended "supercritical" carbon dioxide be included for purposes of Iowa Code 479B, then it would have added the word "supercritical" to the definition of "hazardous liquid." The legislature did not do so.

55. "Subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings belong." *Heartland Express v. Gardner*, 675 N.W.2d 259, 262 (Iowa 2003) (citations omitted). "Challenges to the subject matter jurisdiction of an adjudicatory body—be it a court or an agency—may be raised at any time, and we have consistently held that parties cannot confer subject matter jurisdiction by waiver or consent." *Heartland Express, Inc. v. Terry*, 631 N.W.2d 260, 265 (Iowa 2001); see also *Bair v. Blue Ribbon*, Inc., 256 Iowa 660, 665–66, 129 N.W.2d 85, 88 (1964) (noting that "[a]n objection based upon the want of jurisdiction of the court over the subject matter of the action may be raised at any time, and is not even waived by consent.")

56. The IUB denied Mr. Cummins' motion to dismiss on July 28, 2023. This denial was inconsistent with established law and the plain language of the relevant statutory authority. The IUC did not have jurisdiction to grant Summit's petition.

COUNT V

THE IUC'S FAILURE TO REQUIRE SUMMIT TO COMPLY WITH COUNTY PIPELINE ORDINANCES AND PERMIT REQUIREMENTS INFRINGES ON COUNTY AUTHORITY AND VIOLATES STATE LAW

57. Landowners incorporate by reference all preceding paragraphs.

58. A number of counties through which the Proposed Hazardous Pipeline would pass have enacted permitting ordinances applicable to pipelines.

59. One or more county ordinances benefit Landowners through setbacks, improved local emergency response planning, and abandoned pipeline mitigation.

60. The IUC failed to require that Summit comply with these county ordinances and failed to require that Summit prepare a detailed assessment of the Proposed Project's effect on land development in each affected county. The IUC disregarded the county ordinances based on its determination that:

a. Iowa Code § 479B.5(7) requires that the IUC do no more than consider "[t]he relationship of the proposed project to the present and future land use and zoning ordinances" as generally described in Summit's initial Petition for Hazardous Liquid Pipeline Permit; Final Order at 40;

b. Iowa Code Chapter 479B grants the IUC exclusive siting authority over hazardous liquid pipelines to ensure uniform distance and siting standards throughout the state, such that an analysis of compliance with county zoning ordinances is not required by Iowa Code § 479B.5(7); Final Order at 41-42; and

c. county ordinances "may run afoul of the preemption arguments" contained in *William Couser et al. v. Story County, Iowa et al.*, Civil No. 4:22-cv-00383-SMR-SBJ, 2023 WL 8366208 (S.D. Iowa Dec. 4, 2023).

Although the Final Order states that it takes no position on whether the county zoning ordinances are preempted, it also states that Summit's obligation to comply with the county ordinances depends on their validity, and then determined that it need not require compliance with the ordinances, thereby implying that the county ordinances are not valid. Final Order at 41, 43. Also, the IUC noted that the *Couser* decision found that federal law preempted county setbacks. Final Order at 41. Based on these findings, the IUC entirely disregarded county setback, emergency response, and abandoned pipeline requirements in its permit approval.

61. The Final Order noted that the U.S. District Court's Couser decision is on appeal to the U.S. Eighth Circuit Court of Appeals. Final Order at 41 n. 14.

62. The IUC's failure to take county permitting and zoning into account in its route selection process violates Iowa Code § 479B.5(7) and authorizes a route in violation of county ordinances in contravention of county authority under state law, and is therefore "[b]ased upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency." Iowa Code § 17A.19(10(c).

COUNT VI

THE IUC GRANTED EMINENT DOMAIN RIGHTS BEYOND THOSE NECESSARY FOR DEVELOPMENT OF THE PROPOSED HAZARDOUS PIPELINE IN VIOLATION OF IOWA CODE § 479B.16

63. Petitioners incorporate by reference all preceding paragraphs.

64. The IUC has statutory authority to grant eminent domain rights to pipeline companies only "to the extent necessary." Iowa Code § 479B.16; see also § 479B.1 ("It is the purpose of the general assembly in enacting this law … to grant rights of eminent domain where necessary.").

65. This necessity requirement is distinct from the "public convenience and necessity" requirement to obtain a permit, see Iowa Code § 479B.9, and instead refers to the scope of the taking.

66. By requiring that the taking be only "to the extent necessary," the legislature seeks to protect Landowners by ensuring that the grant of eminent domain is constitutional by going no farther than necessary for the public use.

67. The IUC failed to justify each taking and the length and size and duration of land taken for each Exhibit H landowner such that the IUC failed to adequately consider "to the extent necessary" for each affected parcel.

68. A taking that exceeds that which is necessary for the public use is unconstitutional and beyond the statutory authority of the IUC. See, e.g., *Race v. Iowa Elec. Light & Power Co.*, 257 Iowa 701, 704, 134 N.W.2d 335, 337 (1965) ("Only property necessary for the public use may be taken."); *Vittetoe v. Iowa S. Utilities Co.*, 255 Iowa 805, 812, 123 N.W.2d 878, 882 (1963) ("If the amount sought to be condemned is in excess of that necessary for the improvement, the appropriation of such excess is not for the public use.")

69. The takings granted by the IUC against each and every Landowner exceed that which is convenient or necessary for public use.

70. The IUC has statutory authority to impose conditions to ensure that the grant of eminent domain is no greater than necessary for the purported public use and to ensure compliance with applicable statutes and regulations. See Iowa Code §§ 479B.9 ("The board may grant a permit in whole or in part upon terms, conditions, and restrictions as to location and route as it determines to be just and proper."); 479B.16(1) ("A pipeline company granted a pipeline permit shall be vested with the right of eminent domain, to the extent necessary and as prescribed and approved by the board….") (emphasis added).

71. The IUC did not impose conditions on its grant of eminent domain that would:

a. ensure that the taking is no longer in extent than necessary by automatically terminating the easements upon termination of the federal tax credits underpinning the Proposed Hazardous Pipeline, which tax credits currently expire after twelve years of capture facility operation, and could expire early

upon termination of the program by the federal government for budgetary reasons;

b. terminate the easement upon Summit's or a successor's failure to operate the Proposed Hazardous Pipeline as a common carrier, which condition is necessary given that, unlike interstate natural gas and oil pipelines, no federal or state agency currently has ongoing jurisdiction over Summit's commercial arrangements to ensure that Summit would continue to operate the Proposed Hazardous Pipeline as a common carrier, assuming that it is found to be one.

72. By failing to impose these conditions that limit the extent of time of the takings, the IUC failed to limit its grant of eminent domain to that which is "necessary" to obtain the purported public use in violation Iowa Code § 479B.16(1) and is therefore a violation of Iowa Code § 17A.19(10)(b).

COUNT VII

IUC FINDINGS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE

73. Landowners incorporate by reference all preceding paragraphs.

74. The IUC found that Summit's pipeline would provide climate change benefits.

75. However, when Summit's Chief Commercial Officer, James Pirolli, was asked at hearing whether one of the purposes of the project was to help with global warming and climate change, he responded that "Summit doesn't take a position on climate change." Rather, Mr. Pirolli explained the purpose of the pipeline was "to help ethanol plants reduce their carbon intensity and help them be competitive in low-carbon fuel markets."

76. Consistent with Mr. Pirolli's testimony, while Summit presented evidence that the pipeline would capture 3.28 million metric tons of carbon dioxide per year, it failed to present

any evidence quantifying any alleged climate change benefit as a result of this capture. Instead, Mr. Pirolli testified there is "probably a benefit."

77. In contrast to Mr. Pirolli's speculation about a possible climate change benefit, the Sierra Club presented substantial evidence that Summit's pipeline would cause an increase in emissions, and the amount of carbon dioxide sequestered would be "miniscule" compared to the amount generated.

78. Accordingly, the IUC's finding of a climate change benefit is not supported by substantial evidence.

79. The IUC also found that tax credits were a benefit of Summit's pipeline project.

80. However, the evidence presented at hearing established that such tax credits are considered a cost to the public, not a benefit.

81. The evidence further established that Summit would be receiving tax credits in the estimated amount of $414 million per year for 12 years, and that these tax credits were far more than any tax payment or economic benefit being provided to the Counties.

82. Accordingly, the IUC's finding that tax credits are a benefit of the project was not supported by substantial evidence.

83. The IUC also found that Summit complied with the requirement of Iowa Code § 479B.5(7) to state "the relationship of the proposed project to the present and future land uses and zoning ordinances."

84. However, Summit's petition did not discuss or even mention the comprehensive plan or zoning ordinances of any county through which the pipeline will travel.

85. Rather, the petition stated in conclusory fashion that "[N]o significant impacts are anticipated as a result of the construction and operation of the Project and associated facilities, and the Project can be constructed and operated consistent with present and future land uses."

86. The evidence at hearing established that this statement was incorrect because industrial uses such as pipelines cannot be built in agricultural zones absent a variance or special exception, which Summit has not even sought.

87. IUC staff issued a report finding that the petition was deficient with respect to the zoning requirement.

88. The evidence further established that Summit has not complied with the zoning ordinances of counties that have adopted requirements specific to hazardous liquid pipelines.

89. Accordingly, the IUC's finding of compliance with Iowa Code § 479B.5(7) is not supported by substantial evidence.

90. Accordingly, the foregoing findings are not supported by substantial evidence and are in violation of Iowa Code § 17A.19(10)(f).

COUNT VIII

IUC ACTIONS INCONSISTENT WITH PRIOR AGENCY PRACTICE

91. Landowners incorporate by reference all preceding paragraphs.

92. The IUC's prior practice and precedent has been to issue pipeline permits "conditioned upon receipt of all other required permits and authorizations." *In Re: Dakota Access, LLC*, No. HLP-2014-0001, 2016 WL 943929, at *36 (Mar. 10, 2016).

93. Landowners requested the same condition for Summit's pipeline. Such a condition was particularly appropriate in this case because there is ongoing litigation between

Summit and several of the Counties over the validity of county zoning ordinances regulating hazardous liquid pipelines.

94. To date, Summit has refused to apply for county zoning permits, arguing that the zoning ordinances are preempted by state and federal law. That litigation is currently on appeal to the United States Court of Appeals for the Eighth Circuit. See *Couser v. Shelby County, et al.*, Eighth Circuit No. 23-3758*; Couser v. Story County, et al.*, Eighth Circuit No. 23-3760.

95. The IUC refused to impose the condition requested by the Landowners, reasoning that Summit's obligation to comply with county zoning ordinances stems from the validity of those laws and regulation, which is in dispute.

96. However, the fact that the validity of county zoning ordinances is currently being litigated in federal court only underscores the need for this condition. If the Eighth Circuit holds that county zoning ordinances are preempted, then county zoning permits are not required and this condition would impose no obligation on Summit as it relates to county zoning permits. However, if the Eighth Circuit upholds the validity of the county zoning ordinances, this condition would ensure Summit's compliance with the county zoning ordinances just like any other required federal, state, or local permit.

97. The IUC's failure to impose this condition is contrary to its prior practice and precedents and is therefore in violation of Iowa Code § 17A.19(10)(h). Therefore, if and only if the IUC is not reversed with direction to dismiss Summit's petition, then Landowners request the court modify the IUC order, as authorized by Iowa Code § 17A.19(10), to include a condition requiring receipt of all required permits and authorizations prior to the start of construction.

COUNT IX

ILLOGICAL AND IRRATIONAL REASONING AND UNJUSTIFIED APPLICATION OF FEDERAL PIPELINE SAFETY LAW TO FACTS RELATED TO CONSIDERATION

OF SAFETY RELATED CONDITIONS AND CONSIDERATION OF SAFETY IN ROUTING THE PROPOSED HAZARDOUS PIPELINE

98. Landowners incorporate by reference all preceding paragraphs.

99. The IUC's treatment of safety-related evidence in this proceeding was the product of reasoning so illogical as to render it wholly irrational.

100. Throughout the early stages of the proceeding, Summit argued that safety was not relevant to any criteria before the IUC and that any consideration of safety was preempted by the federal Pipeline Safety Act.

101. Summit was successful in resisting Landowners' and other parties' attempt to obtain safety-related information. Landowners were repeatedly prevented from obtaining material discovery related to safety issues follow Summit's position that such evidence was not relevant to the proceedings.

102. Nevertheless, on the eve of hearing, Summit filed direct and rebuttal testimony which included substantial discussion of safety.

103. Intervenors moved to strike Summit's evidence on the grounds that it should be estopped from presenting safety-related evidence considering its unequivocal position through the proceeding that safety was irrelevant and preempted.

104. The IUC denied the motions to strike without any legal analysis of the estoppel arguments.

105. In its final decision and order, the IUC made several contradictory and inconsistent findings related to safety.

106. For example, the IUC stated that "[w]hile the Board may consider safety as part of its analysis, the Board cannot impose safety criteria on Summit Carbon."

107. However, the IUC proceeded to impose a number of safety-related conditions on Summit's permit which had been conceded to by Summit itself.

108. Additionally, the IUC reasoned that it could not use dispersion modeling to assist with routing determinations because any modifications done based upon dispersion modeling "would be done under the guise of safety."

109. However, the IUC proceeded to approve Summit's route based on Summit's consideration of dispersion modeling.

110. The IUC's consideration of Summit's safety-related evidence, while disclaiming any ability to consider safety in response to other parties' arguments or evidence, was illogical and irrational and in violation of Iowa Code § 17A.19(10)(i) and (m).

COUNT X

FAILURE TO CONSIDER THE ADVERSE ECONOMIC IMPACTS ON IOWANS OF THE FEDERAL TAX CREDITS UNDERPINNING THE PROPOSED HAZARDOUS PIPELINE AND OF THE HIGHER FOOD AND FUEL PRICES THAT WOULD RESULT FROM OPERATION OF THE PROPOSED HAZARDOUS PIPELINE

111. Landowners incorporate by reference all preceding paragraphs.

112. In employing its balancing test to determine whether Summit's project would promote the public convenience and necessity, the IUC weighed the property taxes that would be paid by Summit to the Counties as a substantial benefit of the project.

113. However, the IUC failed to weigh the adverse economic impact on Iowans of the federal tax credits that Summit would receive.

114. The evidence established that Summit would be receiving tax credits in the estimated amount of $414 million per year for 12 years for its operations in Iowa (not including its operation in other states), and that these tax credits would have a far greater economic cost than any economic benefit provided to the Counties.

115. The IUC also determined that the ethanol industry's ability to access low carbon markets was a benefit that weighed in favor of the project.

116. However, the evidence at hearing established that access to low carbon markets will increase prices for consumers.

117. While acknowledging this fact, the IUC nonetheless found that such increased prices would be "enjoyed by farmers who are able to reap the benefits of the higher prices and receive a higher return on their product."

118. However, a financial benefit to the ethanol industry and farmers is not a benefit to the public.

119. The public will pay higher prices as a result of the pipeline.

120. Higher prices for consumers should have weighed against, not for, the project.

121. The IUC's weighing of the costs and benefits of the project was therefore illogical and irrational.

122. The adverse economic impacts of the tax credits Summit will receive and the higher food and fuel prices that will result from the Proposed Hazardous Pipeline are relevant and important matters that a rational decisionmaker should have considered in weighing the cost and benefits of the project. The IUC's failure to consider these relevant and important potential adverse impacts on Iowans violates Iowa Code § 17A.19(10)(j). Accordingly, the court should remand to the IUC for further hearings and deliberation on these adverse economic costs.

COUNT XI

TAKEN AS A WHOLE, THE MULTIPLE PROCEDURAL AND SUBSTANTIVE ERRORS COMMITTED BY THE IUC RENDER ITS FINAL ORDER UNREASONABLE, ARBITRARY, CAPRICIOUS, OR AN ABUSE OF DISCRETION

123. Landowners incorporate by reference all preceding paragraphs.

124. The above errors also render the IUC's final decision and order otherwise unreasonable, arbitrary, capricious, or an abuse of discretion within the meaning of Iowa Code § 17A.19(10)(n).

125. The errors identified herein may fit under multiple subparagraphs of Iowa Code § 17A.19(10). Landowners reserve the right to argue these errors under any of the subparagraphs in this section that might apply.

COUNT XII

THE IUC'S FAILURE TO GRANT INTERVENTION TO CERTAIN IMPACTED PERSONS OR ENTITIES IS A VIOLATION OF DUE PROCESS RIGHTS REQUIRING REHEARING

126. On or about July 10, 2023, pursuant to 199 Iowa Administrative Rule 7.13, certain Non-Exhibit H landowners filed requests for intervention.

127. Pursuant to 7.13(3), each of these Non-Exhibit H Landowner owns or has a possessory interest in land that is adjacent to or near Exhibit H land and/or have other concerns and has a significant interest in these proceedings and whether this proposed Hazardous Pipeline project is allowed to move forward and negatively impact their property and their legal interests, in what ways, and to what degree.

128. The impact upon these Non-Exhibit H landowners is unique to each of them and could not be and was not raised by other persons or entities that were granted intervenor status.

129. The following persons and entities include those who sought intervention but were denied intervenor status by the IUB on or about July 19, 2023, and were therefore not allowed to participate in the IUC proceedings or hearing and were unable to defend and protect and advocate their specific legal interests:

a. William and Vickie Beck

b. Golden Oaks, Inc. (Meghan Sloma and Dorothy Sloma)

c. Michael J. Main and Deborah D. Main

d. RKR Farms, LLC (Elizabeth H. Richards and Jane P. Richards)

130. On July 24, 2023, each of these persons and entities sought reconsideration of their intervention request denial and their denial of due process rights. The IUB denied reconsideration.

131. Each and all of the above-named persons and entities were denied due process of law. This was an egregious deprivation of procedural due process. In certain cases, the denied persons are located closer to and have more rights at stake than the nearest so-called "directly affected" landowner.

132. The above-named persons or entities meet the 7.13(3) factors for intervention. As immediately adjacent or nearby landowners to the proposed hazardous pipeline they each have interest in the subject matter of the hearing. The IUC granting of the permit and route affects legal interests and rights of these persons. No party to the hearing or proceedings represented these denied persons specific interests. There are no other means to protect the interests of those who were not given voice to express such interests. The participation of immediately adjacent and nearby landowners would have helped bring perspective to the fact that legal concerns and practical interests do not stop at the imaginary line we call a property border or boundary.

133. Given intervention is a far more lenient standard than those that have standing to sue in a civil context, the IUC erred by denying intervention.

134. The only remedy is to reverse the IUC final order and reverse the order issuing the permit and remand for new proceedings with specific instructions to grant intervention of the above-named aggrieved persons and entities.

COUNT XIII

THE IUC ERRED IN FINDING SUMMIT COMPLIED WITH CONDITIONS PRECEDENT NECESSARY TO BE GRANTED A PERMIT

135. Landowners incorporate by reference all preceding paragraphs.

136. The IUC's conditions precedent necessary for Summit to achieve permit issuance where inadequate but in any event not satisfied or complied with sufficiently for the IUC to grant said permit.

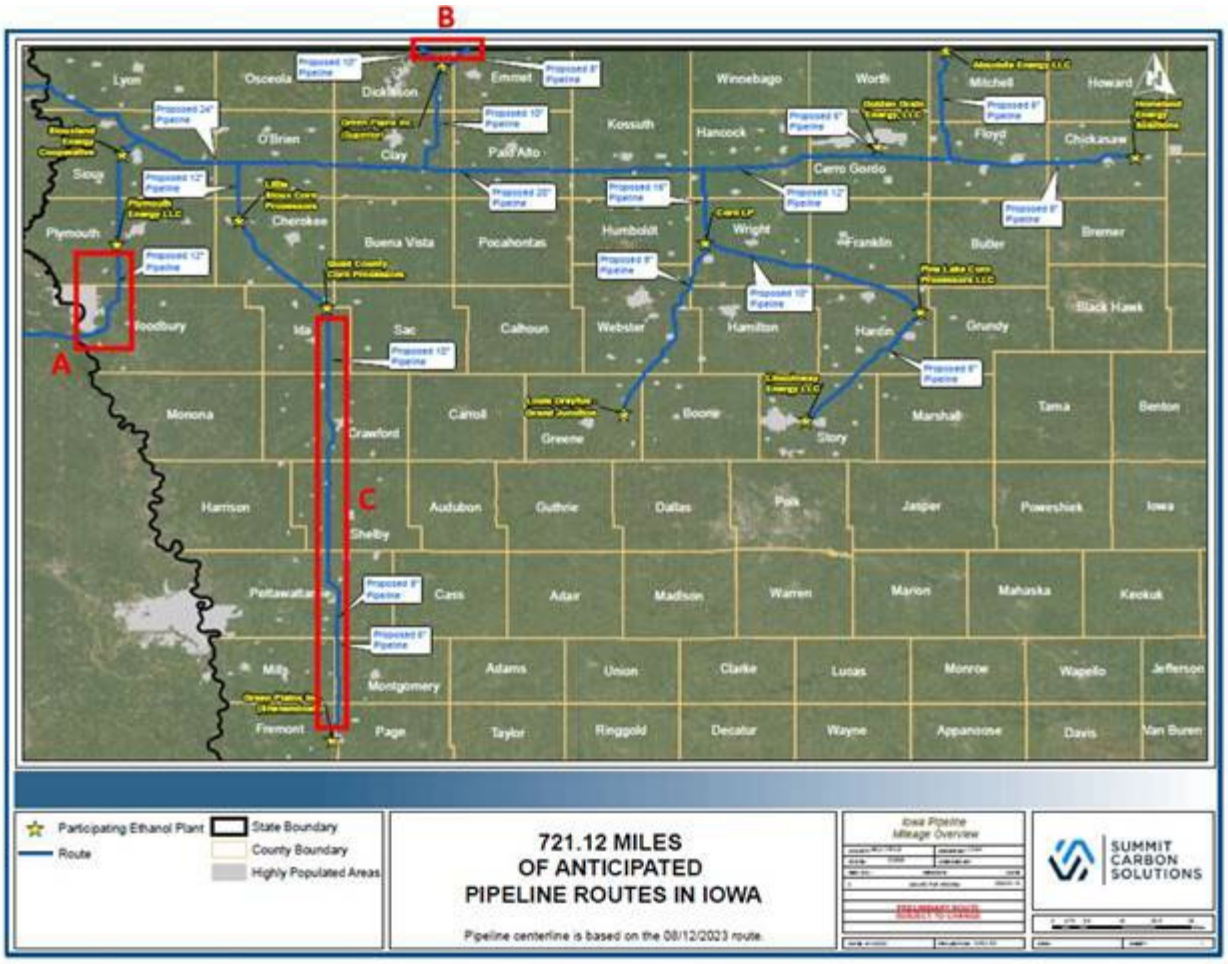
COUNT XIV

THE IUC ERRED IN FINDING SUMMIT'S PETITION COMPLIED WITH CHAPTER 479B.1

137. Landowners incorporate by reference all preceding paragraphs.

138. The Proposed Hazardous Pipeline project impacts are unduly burdensome and Proposed Hazardous Pipeline Route is not the least invasive and the IUC failed to appropriately consider these issues.

139. Without waiving any previously stated errors, Landowners specifically state the IUC erred in granting the areas identified as A, B, and C on the below proposed route map:



140. Area A depicts the entirety of the proposed route in Woodbury County and the portion of route south of Plymouth Energy LLC's ethanol plant. Summit failed to prove why it is either convenient or necessary to suffocate future growth of Sioux City and failed to prove any benefit this segment has to Woodbury County or southern Plymouth County residents. Summit testified this portion of their route would bring CO2 in from Nebraska exclusively. This portion of the route does nothing for any Iowa business or ethanol plant. Summit produced no evidence of why this Nebraska on-ramp into Iowa was necessary nor do they prove why they could not instead locate their Nebraska route entirely within Nebraska and connect to their pipeline in southeastern South Dakota. Absent persuasive justification as to why Woodbury and southern Plymouth counties should host this hazardous pipeline solely for a handful of possible CO2

emitters in Nebraska for the presently non-existent and un-approved Nebraska route, this portion of the route should have been denied. The IUC erred in approving this segment of the Proposed Hazardous Pipeline.

141. The two routes in Area B on the map above should be denied for the same reasons. Area B highlights two routes originating in Minnesota and terminating at the norther boundary of the Green Plains Inc., Superior ethanol plant in Dickinson County. Summit offered no evidence why its non-existent and un-approved Minnesota route impact northern Dickinson County as depicted. Summit could serve this Green Plains plant without impacting any land to the north to the Minnesota border. Additionally, Summit already has a different planned route from Minnesota into North Dakota where it seeks to permanently store CO2, Iowa need not be further scarred. The IUC erred in approving these segments of the Proposed Hazardous Pipeline.

142. Area C depicts an over 120-mile expanse from Ida County to Fremont County of proposed pipeline to connect to a single ethanol plant, the Great Plains, Inc. plant, in Shenandoah. Summit presented no evidence why connecting to this single plant is either publicly convenient or necessary and no justification of eminent domain needs over land in between Quad County Corn Processors in Ida County and Green Plains in Fremont County. The entirety of the proposed route south of Quad County Corn Processors facility should have been denied. The IUC erred in approving this segment of the Proposed Hazardous Pipeline.

143. The IUC failed to adequately review segments A, B, C, there was not sufficient evidence to justify the IUC approval related to these areas and the IUC findings related to approval of segments A, B, and C, were in error.

COUNT XV

THE IUC ERRED IN A MATERIAL WAYS GRANTING SUMMIT'S PERMIT AND EMINENT DOMAIN RIGHTS ON AND AGAINST EACH SPECIFIC LANDOWNERS' EXHIBIT H PARCEL(S)

144. Landowners each allege the IUC failed to adequately consider property specific features and property specific concerns when it approved Summit's route and when it specifically granted eminent domain rights across each of Landowners' Exhibit H parcels. Respondent is on notice of these concerns throughout the IUC hearing process, prefiled testimony, oral testimony, and subsequent briefing, all of which will be part of the appellate record, and which is not repeated but incorporated here.

145. As an example, Sharen, Sandra, and Lance Kleckner own two parcels impacted by Summit's project. During testimony on September 7th, 2023, Summit's witness, Erik Schovanek, discussed the Kleckners' parcels, largely focusing on the parcel that was home to the family's tree farm, which Mr. Kleckner stated had been started 30 years ago with intentions of expanding in the near future. Tr. 6569. Mr. Schovanek noted that while it could be costly, it was possible to bore under such a parcel. Tr. 2319-2320. In the Final Order, the IUB ordered Summit to bore the parcel that does not contain woodlands. pp. 339- 341. On July 15, 2024, Jorde Landowners' Application for Reconsideration or Rehearing & Joinder was filed, which noted that the Board had directed Summit to bore under the wrong parcel and requested the Board correct the error to ensure that the Kleckners' tree farm is damaged to the least possible extent. p. 19. This request was raised again in Jorde Landowners' Response to Summit's August 5, 2024, Filings, filed August 19, 2024. p. 7. The IUC has not specifically addressed the issue, forcing the Kleckners to face the severe risk of environmental and economic damage as a consequence of their inaction.

PRAYER FOR RELIEF

146. Landowners respectfully request the Court stay any action by Summit that it is taking or may take pursuant to the Final Order and Order granting permit, and specifically stay any attempt by or action by Summit to initiate or otherwise commence condemnation proceedings against any affected Exhibit H landowner, including but not limited to Landowners here. No such condemnation proceedings are appropriate until and unless the Court rules in favor of the IUC's determination that eminent domain is appropriate for this Proposed Hazardous Pipeline.

147. Landowners respectfully request the Court reverse the IUC's final decision and order and reverse its Order granting the permit on the basis the IUC lacked subject matter jurisdiction to conduct proceedings as requested by Summit under 479B and remand the matter to the IUC with instructions to dismiss Summit's petition.

148. Landowners and Non-Exhibit H landowners respectfully request the Court reverse the IUC's final decision and order and reverse its Order granting the permit on the basis the IUC denied due process of law to the Non-Exhibit H landowners and others and remand the matter to the IUC with instructions to dismiss Summit's petition.

149. In the alternative to either of the prior requests for dismissal, Landowners respectfully request the Court reverse the IUC's final decision and order and reverse the IUC order granting the permit and remand this matter back to the IUC:

a. With direction to the IUC that the Proposed Hazardous Pipeline does not promote the public convenience and necessity;

b. with direction to the IUC that Summit is not a common carrier;

c. find that Summit failed to satisfy the requirement of Iowa Code § 479B.5(7),

d. with direction to the IUC to rule on each proposed finding of fact submitted by all parties.

150. In the alternative to the above requests for relief, Landowners respectfully request the Court reverse the IUC's final decision and:

a. find that tax credits are a cost of the project not a benefit and direct the IUC to re-weigh the costs and benefits of the project on that basis;

b. direct the IUC to reconsider the proposed pipeline route by giving appropriate consideration to safety and dispersion modeling;

c. direct the IUC that if on remand and rehearing the IUC still authorizes eminent domain rights, then the IUC must impose conditions sufficient to ensure that any grant of eminent domain is no greater than necessary for the purported public use;

d. impose each and every route modification requested by Landowners; and

e. direct the IUC to fix all factual errors in the Final Order like the errors adversely affecting the Kleckners.

151. Landowners and Non-Exhibit H Landowners further request that the Court grant such other and further relief as the Court deems just and proper.

Petitioners, a/k/a Jorde Landowners and Non-Exhibit H Landowners,

By: /s/ *Brian E. Jorde*

Brian E. Jorde, AT0011638
Christian T. Williams, AT0011109
DOMINALAW Group
2425 S. 144th Street
Omaha, NE 68144
(402) 493-4100
bjorde@dominalaw.com

cwilliams@dominalaw.com

Petitioners a/k/a Jorde Landowners' Lawyers
and
Non-Exhibit H Landowners' Lawyers