

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

SIERRA CLUB IOWA CHAPTER,)	
)	
Petitioner,)	No.
)	
vs.)	
)	PETITION FOR JUDICIAL REVIEW
IOWA UTILITIES COMMISSION,)	
)	
Respondent.)	

Comes now the Petitioner and in support of this Petition for Judicial Review, states as follows:

INTRODUCTION

1. The Iowa Chapter of the Sierra Club has approximately 7,000 members across Iowa and is part of a national organization with over 700,000 members. Our mission is to preserve and protect Iowa’s environment. Among our concerns are the impact of industrial agriculture, spurred significantly by the emphasis on the production of corn for ethanol, and the impacts of climate change.

2. The Iowa Utilities Commission (IUC) (formerly called the Iowa Utilities Board) is the state agency authorized to regulate hazardous liquid pipelines pursuant to Chapter 479B of the Iowa Code. Pursuant to that authority, the IUC, on June 25, 2024, issued a decision granting a permit to Summit Carbon Solutions LLC to construct and operate a carbon dioxide pipeline in Iowa. This Petition challenges that decision by the IUC.

3. This case involves a proposal by Summit Carbon Solutions LLC (Summit) to construct and operate a pipeline to carry carbon dioxide from ethanol plants in Iowa to a sequestration site in North Dakota. The pipeline would slice through 29 Iowa counties, impacting prime farmland, being constructed within several hundred feet of numerous

occupied structures, and entering or coming close to the corporate limits of several cities. The scope of this project and the issues it presents are unprecedented.

VENUE

4. Venue is proper in this Court, pursuant to Iowa Code § 17A.19(2).

STANDING

5. Sierra Club members Paul Glade, Julie Glade, Sherry Webb and Dennis Valen are landowners impacted by Summit's pipeline. Their declarations establishing standing are hereto attached. Sierra Club has exhausted its administrative remedies by filing a Motion for Reconsideration pursuant to 199 I.A.C. § 7.27. The motion was denied by operation of law on August 14, 2024.

GROUND FOR RELIEF

6. The IUC has the duty to:

implement certain controls over hazardous liquid pipelines to protect landowners and tenants from environmental or economic damages which may result from the construction, operation, or maintenance of a hazardous liquid pipeline [and] to approve the location and route of hazardous liquid pipelines, and to grant rights of eminent domain where necessary.

Iowa Code § 479B.1. Furthermore, the IUC may grant a permit for a hazardous liquid pipeline only if the IUC "determines that the proposed services will promote the public convenience and necessity." Iowa Code § 479B.9.

7. Summit's application to the IUC makes the following claims:

a. The pipeline will enhance the Iowa ethanol industry, and that without the pipeline the Iowa ethanol industry would be at a significant disadvantage to ethanol plants in other states.

b. The pipeline will allow the Iowa ethanol industry to compete in low carbon fuel markets.

c. The pipeline will be important in reducing greenhouse gas emissions to combat climate change and will receive federal tax credits for doing so.

d. The pipeline will provide economic benefits to Iowa.

8. In its June 25, 2014, decision, the IUC made many factual findings and conclusion, and legal conclusions that are grounds for reversing the IUC decision pursuant to Iowa Code § 17A.19(10), including the following:

a. The IUC has no jurisdiction to hear and decide this case. Chapter 479B of the Iowa Code give the Commission jurisdiction over hazardous liquid pipelines. Iowa Code § 479B.1. And hazardous liquid is defined in § 479B.2(2) to include liquified carbon dioxide. Evidence was presented that the carbon dioxide in Summit's pipeline would be in a supercritical state, not a liquid. The Commission claimed that somehow supercritical carbon dioxide is a liquid within the meaning set forth in § 479B.2. The Commission further determined that even if Chapter 479B does not apply to Summit's project, Chapter 479 of the Iowa Code would apply, even though Summit did not make it application pursuant to Chapter 479. The Commission therefore made a decision based on an erroneous interpretation of the law whose interpretation is not clearly vested in the agency. The decision was also arbitrary, capricious and unreasonable.

b. The IUC determined that the federal tax credits for carbon capture and storage were a significant point in Summit's favor, allegedly allowing Iowa ethanol plants to engage in low carbon fuel markets and thus contributing to the effort to address climate change. Summit presented no expert witnesses on this issue. Sierra Club presented the

testimony of Dr. Mark Jacobson, a nationally recognized expert on energy issues. Furthermore, there was no evidence that the tax credits would benefit anyone besides the ethanol industry and Summit. The Commission therefore made a decision based on an erroneous determination of the facts not based on substantial evidence and an erroneous interpretation of the law. The decision was also arbitrary and capricious, unreasonable, and an abuse of discretion.

c. Summit's primary claim in support of the pipeline was that it would benefit the ethanol industry. But the evidence did not support this claim. It was based on pure speculation and reliance on the low carbon fuel markets. Dr. Jacobson testified that the low carbon fuel markets will soon be history, with the advent of electric vehicles. In fact, Summit's witness on the ethanol industry testified, in essence, that the pipeline would make no difference in the ethanol industry in Iowa and that any claim to the contrary would be based on speculation. The Commission therefore made a decision based on an erroneous determination of the facts not based on substantial evidence and an erroneous interpretation of the law. The decision was also arbitrary and capricious, unreasonable, and an abuse of discretion.

d. Summit claimed that the pipeline project would be an economic benefit to Iowa in terms of jobs and tax revenue. But Summit's economic expert used a model that only considered alleged economic benefits, not the costs. So there was no cost-benefit analysis. Sierra Club's economist explained why Summit's analysis was wrong and that in order to accurately determine the net economic benefit, a cost-benefit analysis was necessary. The Commission therefore made a decision based on an erroneous determination of the facts

not based on substantial evidence and an erroneous interpretation of the law. The decision was also arbitrary and capricious, unreasonable, and an abuse of discretion.

e. The safety of the pipeline was also an issue. The evidence showed conclusively that a rupture in the pipeline would release carbon dioxide, which is an asphyxiant and is toxic, at distances of over 1,000 feet. The evidence further showed that numerous residences and animal confinement buildings were within a few hundred feet of the proposed route of the pipeline. The Commission said that this issue weighed against Summit, but that Summit allegedly promises to undertake efforts to minimize the danger. However, these claimed mitigation efforts are directed to responses to a rupture, not addressing the route in order to reduce the impact of a rupture. Curiously, the IUC said that it could impose route changes to place the route farther away from residences and other critical areas. But it did not do so. The IUC decision did not move even one section of the proposed pipeline route to move the pipeline farther away from an area of danger. The Commission therefore made a decision based on an erroneous determination of the facts not based on substantial evidence and an erroneous interpretation of the law. The decision was also arbitrary and capricious, unreasonable, and an abuse of discretion.

f. The IUC granted Summit the power of eminent domain over the property of landowners who have refused to sign easements. The Iowa Supreme Court in a case involving the Dakota Access oil pipeline, *Puntenney v. IUB*, 928 N.W.2d 829 (Iowa 2019), issued the most definitive decision in Iowa on eminent domain involving a pipeline. The bottom line is that a private entity like Summit cannot be granted the power of eminent domain unless it is a common carrier. But the evidence showed that Summit is not a common carrier. It will be contracting individually with ethanol plants, not the public

generally, and it will own the carbon dioxide, so it will be carrying its own product, not carrying a product for hire. The IUC relied on the speculation (or outright lies) by Summit that it would in the future offer its services to uncommitted shippers and reserve 10% of the pipeline's capacity for those shippers. This assertion was designed to try to comply with the *Puntenney* court's reference to FERC requirements. But this reliance on *Puntenney* is misplaced. The FERC requirements are for oil pipelines over which FERC has jurisdiction (FERC does not have jurisdiction over carbon dioxide pipelines) and the 10% reserved for uncommitted shippers does not make an oil pipeline a common carrier. It is a FERC requirement for pipelines that are already common carriers. The Commission therefore made a decision based on an erroneous determination of the facts not based on substantial evidence and an erroneous interpretation of the law. The decision was also arbitrary and capricious, unreasonable, and an abuse of discretion.

9. Based on the conduct of the hearing and other proceedings in this case, the dismissive and discriminatory treatment of parties opposed to Summit by the Commission in comparison to the treatment of Summit and its supporting parties, and the dismissive tone and substance of the Commission's decision, it is clear that the Commission was not a fair and unbiased tribunal, and Sierra Club and other Summit opponents were denied due process. *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 881, 129 S.Ct. 2252, 173 L.Ed.2d 1208 (2009). *Accord, C. Line, Inc. v. City of Davenport*, 957 F.Supp.2d 1012, 1039 (S.D. Iowa 2013) ("It is fundamental that due process requires a fair and unbiased tribunal, regardless of whether that tribunal is in the context of a court hearing or some other administrative hearing."). The Commission's action was therefore unconstitutional and prejudiced the substantial rights of the parties opposing Summit's application for a permit.

10. Based on the foregoing, the IUC's action was:

a. Unconstitutional as applied and a violation of the substantial rights of the parties opposing Summit's application for a permit.

b. Based 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.

c. Based upon a determination of fact clearly vested by a provision of law in the discretion of the agency that is not supported by substantial evidence in the record before the Court when that record is viewed as a whole.

d. Based upon an irrational, illogical, or wholly unjustifiable interpretation of a provision of law whose interpretation has clearly been vested by a provision of law in the discretion of the agency.

e. The product of reasoning so illogical as to render it wholly irrational.

f. Based upon an irrational, illogical, or wholly unjustifiable interpretation of a provision of law whose interpretation has clearly been vested by a provision of law in the discretion of the agency.

g. Based upon an irrational, illogical, or wholly unjustifiable application of law to fact that has clearly been vested by a provision of law in the discretion of the agency.

h. Otherwise unreasonable, arbitrary, capricious, or an abuse of discretion.

RELIEF SOUGHT

WHEREFORE, Petitioner requests that the Court reverse and hold invalid the action of the IUC in granting a permit to Summit Carbon Solutions and in granting Summit the power of eminent domain.

/s/ *Wallace L. Taylor*

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