BEFORE THE IOWA UTILITIES COMMISSION

IN RE:	)	
	)	Docket No. HLP-2021-0001
SUMMIT CARBON SOLUTIONS LLC	)	

SIERRA CLUB'S MOTION TO RECONSIDER

Comes now Sierra Club Iowa Chapter, pursuant to 199 I.A.C. § 7.27, and in support of this Motion to Reconsider, states as follows:

1. On June 25, 2024, the Commission issued a decision granting a permit to Summit to construct and operate a hazardous liquid pipeline, and granting Summit the power of eminent domain.

2. In that decision the Commission made findings of fact and conclusions of law that were incorrect or unsupported by substantial evidence.

3. "[A]n appropriate ground for rehearing or reconsideration of a final decision by the Board [now the Commission] is an error of fact or law." *In Re: Coggon Solar LLC*, I.U.B. Docket No. GCU-2021-0001 (Jan. 6, 2023).

4. The errors of fact or law in the Commission's decision in this case are the following:

a. The Commission 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 erred in accepting Summit's claims and in giving undue weight to this issue.

b. 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 duel 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 erred in accepting Summit's claims and in giving undue weight to this issue.

c. 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, Dr. Silvia Secchi, 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 erred in accepting Summit's claims and in giving undue weight to this issue.

d. 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 Board 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 Commission 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 Commission decision did not move even one section of the proposed pipeline route to move the pipeline farther away from an area of danger.

e. The Commission 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 Commission 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. Based on the foregoing, the Commission should not have authorized eminent domain.

WHEREFORE, Sierra Club Iowa Chapter requests that the Commission reconsider its decision as set forth herein for the reasons explained above.

/s/ *Wallace L. Taylor*

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