

IOWA UTILITIES COMMISSION

IN RE:

SUMMIT CARBON SOLUTIONS, LLC

DOCKET NO. HLP-2021-0001

ORDER ISSUING PERMIT

On June 25, 2024, the Utilities Commission (Commission) issued its final decision and order regarding Summit Carbon Solutions, LLC's (Summit Carbon), petition for hazardous liquid pipeline permit. As a part of its decision, the Commission required Summit Carbon to make numerous compliance filings which the Commission considered as a part of its final decision calculus. The Commission did not set a specified date by which Summit Carbon needed to respond, but did state the permit would only be issued once Summit Carbon submits the compliance filings and they are approved by the Commission.

On August 5, 2024, Summit Carbon filed the compliance filings required by the Commission. Summit Carbon filed revised exhibits A and I, its revised Environmental Construction Plan, a statement of confidence that it should be able to obtain the \$100 million insurance policy prior to commencing construction, and revised Exhibit H's, as revised on August 26, 2024. As it relates to the revised Exhibit H's, Summit Carbon states it made the globally applicable changes to all outstanding Exhibit H's as required by the Commission, and it made the modifications ordered by the Commission as well as other necessary modifications to other parcels based on changes ordered by the Commission. Summit Carbon states it is attempting to comply with the Commission's

DOCKET NO. HLP-2021-0001

PAGE 2

order, but if it is unable to obtain the necessary modifications on adjoining parcels, it will request the Commission allow it to use the initial route proposed by Summit Carbon.

Besides conditioning the modifications ordered by the Commission on obtaining modified or new voluntary easements, Summit Carbon asked the Commission to determine between two routing options on H-DI-067. Summit Carbon states option one would require four 90-degree turns on the parcel to have it route along the eastern boundary of the parcel. The second option would move the route nearer to the eastern boundary of the parcel but run straight north and south across the parcel.

On August 19, 2024, Jorde Landowners¹ filed their response to Summit Carbon's filings. Jorde Landowners assert Summit Carbon's filing is an impermissible request for reconsideration due to its failure to strictly comply with the Commission's June 25, 2024 order. Jorde Landowners state Summit Carbon is attempting to make its own rules when it comes to not complying with the Commission's order, and the Commission should reject such arguments from Summit Carbon.

As it relates to specific issues, Jorde Landowners identify several areas and reasons the Commission should not issue Summit Carbon its permit based upon the current compliance filings. First, Jorde Landowners identify clerical errors within numerous Exhibit H parcel filings, which they assert have been present since May 2023, and Summit Carbon has not fixed the errors to date.

Second, Jorde Landowners assert the Commission ordered boring to occur on several parcels as part of its final order; however, Summit Carbon did not amend the

¹ Jorde Landowners is a group of landowners represented by Brian Jorde.

DOCKET NO. HLP-2021-0001

PAGE 3

easement language to reference boring and only adjusted the technical drawings instead. Jorde Landowners state, absent clear language, landowners may misinterpret or misunderstand the requirements Summit Carbon is to follow, and the Commission should require Summit Carbon to include boring language in the easement to avoid confusion.

Third, Jorde Landowners assert Summit Carbon did not comply with the Commission's routing requirements on H-HD-031, H-KO-035, H-KO-002, H-KO-051, and H-SH-038. Jorde Landowners state for H-HD-031 and H-SH-038 Summit Carbon did not move the route the required 300 feet, with H-HD-031 being less than 300 feet and H-SH-038 being more than 300 feet. On H-KO-002 and H-KO-035, Jorde Landowners state Summit Carbon moved the route away from the southern property boundary, as required by the order, to the north to accommodate wind turbines located to the south of the parcel. Jorde Landowners state there is no reason for the deviations proposed by Summit Carbon as the setback requirements are usually the height of the turbine to the tip of the blade at the highest point. Jorde Landowners also state the route shown in the revised H-KO-051 fails to comply with the Commission's order as it continues straight for a few hundred feet after crossing the stream before angling to the northeast where the order requires it to angle once it crosses the stream.

Fourth, Jorde Landowners state the easement language includes the phrase "up to" prior to the pipeline diameter for each parcel. Jorde Landowners state the Commission should require "up to" to be removed from the easement language so there is an exact size of pipe for each parcel.

DOCKET NO. HLP-2021-0001

PAGE 4

Fifth, Jorde Landowners assert there is an error between which parcel, either H-CR-012 or H-CR-013, needs to be bored. Jorde Landowners assert parcel H-CR-013 should be bored and not H-CR-012, which the Commission ordered. Jorde Landowners state the Commission should clarify it is H-CR-013 that needs to be bored and require Summit Carbon to file revised exhibits accordingly.

Sixth, Jorde Landowners state the Commission should reject the modifications on H-PA-030, H-PA-031, and H-PA-032. Jorde Landowners state the modifications ordered on these parcels were not requested by the landowners.

Seventh, Jorde Landowners state the easement language modification on H-FL-001 will likely still kill the trees on the easement as the boring may result in damage to the root structure of the trees within the easement. Jorde Landowners state the Commission should reject the language and require Summit Carbon to file revised easement language making it clear that no tree loss or damage to trees is to occur in the easement area.

Eighth, Jorde Landowners state the Commission should require Summit Carbon to comply with the Commission's order for the route on H-DI-067. In the alternative, Jorde Landowners propose an alternative route that would move the southern entrance point nearer to the eastern boundary, continue north along the eastern boundary, turn west, and then turn north before leaving the parcel near the eastern boundary of H-DI-063.

Ninth, Jorde Landowners state the temporary construction easements for H-HD-024 and H-HD-098 are unacceptable due to the increase in the acreage amount of temporary easement needed due to the Commission's ordered route modification. On

DOCKET NO. HLP-2021-0001

PAGE 5

H-PA-053, Jorde Landowners state the acreage amount grew as well. Lastly, on H-CL-002, Jorde Landowners state there are three temporary construction easements but there are only two listed in the Exhibit H.

Tenth, Jorde Landowners state the revised Exhibit I does not comply with the Commission's requirement related to clearances from drainage tile and to go deeper to avoid being in line with the drainage tile on property. Jorde Landowners state the Commission should require Summit Carbon to include the six-foot clearance from tile and include this provision in the eminent domain easement language.

Eleventh, Jorde Landowners assert the letter Summit Carbon submitted about its insurance does not establish it has insurance, but is simply a letter stating it should be able to obtain insurance in that amount in the future.

Lastly, Jorde Landowners provide a table of the conditions imposed by the Commission and Summit Carbon's perceived compliance with them.

After review of the filings, the Commission finds Summit Carbon has substantially complied with the requirements of its June 25, 2024 order and will issue Summit Carbon its permit. Summit Carbon will be required to address some additional issues, as discussed below, but such issues can be addressed after the issuance of the permit. The issuance of the permit does not allow Summit Carbon to immediately commence construction, as there are still several conditions from the Commission's June 25, 2024 order Summit Carbon must establish prior to commencing construction.

The Commission approves the modifications and justifications for why an ordered modification could not be obtained as described by Summit Carbon, unless otherwise ordered. As it relates to H-DI-067, the Commission will require Summit Carbon to utilize

DOCKET NO. HLP-2021-0001

PAGE 6

option two for the route; however, Summit Carbon will be required to bore the length of the parcel to reduce the impact of the route along the property. Summit Carbon will be required to submit a revised exhibit depicting any modifications necessary to accommodate this requirement. Additionally, Summit Carbon states H-KO-025 was modified as ordered by the Commission; however, the revised Exhibit H for this parcel does not show the modification. Summit Carbon will be required to submit a revised H-KO-025 depicting the modification.

With regard to Summit Carbon's request to allow it to petition the Commission to use its proposed route should it not be able to obtain the necessary agreements, the Commission finds this question should be addressed on a case-by-case basis. The Commission notes this request appears to comply with the requirements of 199 Iowa Administrative Code 13.7(2) addressing deviations outside the approved permanent route easement.

While the Commission finds most of Jorde Landowners' issues to be meritless and need no further discussion, the Commission will specifically address the phrase "up to" easement language, the drainage tile clearance issue for purposes of clarification, and the statement regarding the insurance filing. First, the Commission finds no issue with the inclusion of the phrase "up to" before the pipeline diameter in the Exhibit H easement language. The Commission required the modification from the blanket "not to exceed twenty-four inches" language to a specific diameter for what is being proposed. This required modification was to ensure a planned eight-inch diameter pipe could not be increased to 24 inches, increasing the burden on the property. The inclusion of the "up to" language ensures the pipeline is not larger than the size needed

DOCKET NO. HLP-2021-0001

PAGE 7

and allows Summit Carbon to install a smaller diameter size, if necessary, which would decrease the burden on the property. The Commission finds no issue with this language.

Second, the Commission has conditioned Summit Carbon's permit on compliance with ensuring adequate clearance between drainage tile and Summit Carbon's pipe, as well as ensuring it will go deeper, when necessary, to avoid being in line with installed tile. As an initial matter, nowhere does the order state that Summit Carbon is to stay six feet away from drainage tile. What the order does state is that Summit Carbon is to stay 12 to 24 inches away from drainage tile and to go deeper, if necessary, in order to not be in line with existing drainage tile on the parcel. *In re Summit Carbon Solutions, LLC*, Docket No. HLP-2021-0001, *Final Decision and Order*, pp. 92, 97–98 (Iowa Util. Bd. June 25, 2024). This requirement is encapsulated in the Commission's order as well as Summit Carbon's Exhibit I. Therefore, the Commission will not require further modification to Exhibit I and will not require the terms to be added to the easement language of Exhibit H.

Lastly, the Commission agrees with Jorde Landowners that Summit Carbon's commitment for insurance is not a filing of proof of insurance as required by the Commission. Summit Carbon is still required to file proof of insurance prior to commencing construction.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. Pursuant to Iowa Code chapter 479B, the permit for Summit Carbon Solutions, LLC's, hazardous liquid pipeline shall be issued concurrently

DOCKET NO. HLP-2021-0001

PAGE 8

with this order.

2. Summit Carbon Solutions, LLC, shall file any necessary revised documents related to the modification on H-DI-067.

3. Summit Carbon Solutions, LLC, shall file the revised documents related to H-KO-025.

4. Nothing in this order shall be construed to modify any of the conditions stated in the Utilities Commission's June 25, 2024 order unless explicitly stated above.

5. The Utilities Commission retains subject matter jurisdiction of this docket for purposes of receiving, considering, and acting upon such additional filings as may be appropriate.

UTILITIES COMMISSION

Erik M. Helland 2024.08.28
10:01:12 -05'00'

Joshua Byrnes Date: 2024.08.28
13:48:21 -05'00'

ATTEST:

Jackie Yearington 2024.08.28
15:07:34 -05'00'

Sarah Martz Date: 2024.08.28
10:03:47 -05'00'

Dated at Des Moines, Iowa, this 28th day of August, 2024.