

January 11, 2022

Christopher Hill
Director - Environmental
Summit Carbon Solutions
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RE: Carbon Dioxide Pipeline Projects in Minnesota

Dear Mr. Hill:

This letter is to inform you of events and actions that are on-going at Minnesota state agencies regarding carbon dioxide pipeline projects being discussed for proposal in Minnesota.

Background on State Agency Actions

On November 9, 2021, the Environmental Quality Board (EQB, the Board) received Citizen Petitions requesting that an Environmental Assessment Worksheet (EAW) be prepared on the Midwest Carbon Express and Heartland Greenway carbon dioxide (CO₂) pipeline projects.¹ On November 12, 2021, the EQB sent a letter to the Minnesota Public Utilities Commission (MPUC, the Commission) designating the MPUC as the responsible governmental unit (RGU) because of its responsibilities under Minn. Stat. § 216G for the routing of pipeline projects. The EQB designation of the MPUC as RGU was made under its authority as set out in Minn. R. 4410.0500, subp. 5. The EQB letter directed the Commission to determine the need for an EAW for each pipeline.

To make the decision on the need for an EAW, the RGU must compare the project to the mandatory EAW, EIS, and exemption categories listed in Minn. R. 4410.4300, 4410.4400, and 4410.4600, respectively. If the project should fall under any of these categories, environmental review is automatically required or prohibited. The standard for making the decision on the need for an EAW is provided in Minn. R. 4410.1100, subp. 6, which states that the RGU shall order the preparation of an EAW if the evidence presented demonstrates that, because of the nature or location of the proposed project, the project may have the potential for significant environmental effects. The RGU shall deny the petition if the evidence presented fails to demonstrate the project may have the potential for significant environmental effects.

¹ The EQB referrals, and Commission response to the EQB, have been filed for transparency in Commission Docket 21-836. No Commission action on these documents is required at this time.

On November 19, 2021, the MPUC sent a letter to the Board confirming receipt of the referrals, indicating that there did not appear to be a project as defined under Minn. R. 4410.0200, and stating that the Commission cannot act on either petition because no permit application has been filed.

DURATION OF EFFECT OF PETITION. Minn. R. 4410.110, subp. 9, reads as follows:

Subp. 9. Duration of effect of petition. If an RGU cannot act on a petition because no permit application has been filed, the application has been withdrawn, or the application has been denied, the petition remains in effect for no more than one year from the date on which it was filed with the EQB. While the petition remains in effect, part 4410.3100, subparts 1 and 2, apply to any proposed project for which the nature and location is substantially similar to the project identified in the petition.

Per the requirements of the rule, the petition will remain in effect for one year from the date on which it was filed with the EQB (November 9, 2021). During that time, a prohibition on final governmental decisions (Minn. R. 4410.3100) remains in effect for any proposed project for which the nature and location is substantially similar to the project identified in the petitions.

PROHIBITION ON FINAL GOVERNMENTAL DECISIONS. Minn. R. 4410.3100, in relevant part, reads as follows:

Subpart 1. Prohibitions. If an EAW or EIS is required for a governmental action under parts 4410.0200 to 4410.6500, or if a petition for an EAW is filed under part 4410.1100 that complies with the requirements of subparts 1 and 2 of that part, a project may not be started and a final governmental decision may not be made to grant a permit, approve a project, or begin a project, until:

- A. a petition for an EAW is dismissed;
- B. a negative declaration on the need for an EIS is issued;
- C. an EIS is determined adequate; or
- D. a variance is granted under subparts 3 to 7 or the action is an emergency under subpart 8.

To start or begin a project includes taking any action within the meaning of "construction," as defined in part 4410.0200, subpart 10.

Subp. 2. Public projects, prohibitions. If a project subject to review under parts 4410.0200 to 4410.6500 is proposed to be carried out or sponsored by a governmental unit, the governmental unit shall not take any action with respect to the project, including the acquisition of property, if the action will prejudice the ultimate decision on the project, until a petition has been dismissed, a negative declaration has been issued, or until the final EIS has been determined adequate by the RGU or the EQB, unless the project is an emergency under subpart 9 or a variance is granted under subparts 4 to 8. An action prejudices the ultimate decision on a project if it tends to determine subsequent development or to limit alternatives or mitigative measures.

When a CO2 pipeline permit application has been filed, the Commission will evaluate what action should be taken in response to the petition for an EAW.

Minnesota Public Utilities Commission Docket on Carbon Dioxide Pipeline Rulemaking

Additionally, on December 21, 2021 the Commission issued a notice requesting comment on the following topic in Commission Docket (U999/CI-847): “Should the Commission open a rulemaking proceeding to amend the definition of “hazardous liquid” in Minnesota Rule 7852.0100, subpart 18?”

Minnesota Statutes Chapter 216G grants the Commission authority to issue routing permits for pipelines that have a diameter greater than six inches and transport hazardous liquids. While some other states regulate carbon dioxide pipelines as hazardous liquids, Minnesota Rule 7852.0100, subpart 18, promulgated in 1988 and transferred from the EQB to the Commission in 2007, does not include liquified carbon dioxide in the definition of “hazardous liquid.” Given the increasing interest in carbon capture, usage, and storage, and reporting of potential pipeline developments in Minnesota, the Commission is evaluating whether it should commence a rulemaking to include liquified carbon dioxide in the definition noted above. A rulemaking takes significant time and resources to conduct. Currently, it is unknown if a change in the definition of hazardous liquids in the rule is appropriate, and it is unclear that a rulemaking change would affect the projects referenced in this letter.

How to Follow Along and Participate in Minnesota Public Utilities Commission Dockets

To access the filings in these referenced dockets, go to the Commission’s website at: mn.gov/puc/edockets, select *Go to eDockets Project Database*, enter the docket number (noted above), and select *Search*.

To sign up to receive key notices about docket actions or opportunities to participate (meetings, comment periods, etc.) contact docketing.puc@state.mn.us or 651-201-2246 with the docket number (noted above) and your name and email address.

To receive email notification when any new documents are filed in these matters visit: <https://www.edockets.state.mn.us/EFiling> and select *Subscribe to Dockets* and follow the prompts.

Minnesota Public Utilities Commission Contacts

If you have any questions, please direct them to Commission staff members Bret Eknes at 651-201-2236 bret.eknes@state.mn.us or Scott Ek at 651-201-2255 or scott.ek@state.mn.us

Sincerely,



Will Seuffert
Executive Secretary

Equal Opportunity Employer

cc: Service List Dkt. No. IP7093/M-21-879

CERTIFICATE OF SERVICE

I, Chrishna Beard, hereby certify that I have this day, served a true and correct copy of the following document to all persons at the addresses indicated below or on the attached list by electronic filing, electronic mail, courier, interoffice mail or by depositing the same enveloped with postage paid in the United States mail at St. Paul, Minnesota.

Minnesota Public Utilities Commission
LETTER TO SUMMIT CARBON SOLUTIONS

Docket Number **IP7093/M-21-879**

Dated this 11th day of January, 2022

/s/ Chrishna Beard

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Jake	Ketzner	jketzner@summitcarbon.com	Summit Carbon Solutions, LLC	10640 County Hwy D20 Alden, IA 50006	Electronic Service	No	OFF_SL_21-879_M-21-879
Generic Notice	Residential Utilities Division	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Electronic Service	Yes	OFF_SL_21-879_M-21-879
Will	Seuffert	Will.Seuffert@state.mn.us	Public Utilities Commission	121 7th PI E Ste 350 Saint Paul, MN 55101	Electronic Service	Yes	OFF_SL_21-879_M-21-879

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