

OFFICE OF CONSUMER ADVOCATE

DIRECT TESTIMONY

OF

SCOTT C. BENTS

**IN RE: SUMMIT CARBON SOLUTIONS, LLC
DOCKET NO. HLP-2021-0001**

July 24, 2023

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1. Background and Summary of Conclusions

Q: Please state your name and business address.

A: Scott Bents, 1375 East Court Avenue, Des Moines, Iowa 50319.

Q: By whom and in what capacity are you employed?

A: I am employed by the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, as a Utility Regulation Engineer.

Q: What is the OCA?

A: The OCA is a division of the Iowa Department of Justice headed by the Consumer Advocate. Iowa Code Section 475A.2 authorizes the OCA to represent the interests of utility consumers generally and the public generally in all proceedings before the Board.

Q: Describe your education and experience.

A: I have a Bachelor of Arts degree in Mechanical Engineering as well as a Master of Science degree in Mechanical Engineering with a co-major in Biorenewable Resources and Technology (BRT). Both degrees are from Iowa State University.

Prior to working for the OCA, I was a Utility Regulation Engineer with the Iowa Utilities Board (IUB or Board). I worked on resource adequacy, transmission planning, and cost allocation issues at the federal and regional level. Since joining the OCA, I have worked on rate cases, electric transmission line franchise petitions, pipeline permits, hazardous liquid pipeline permits, energy efficiency plans, generator siting applications, rule-

1 makings, filings for complaints, and service boundary modifications. I am also
2 engaged in transmission planning and resource adequacy issues through my
3 participation in various committees with both the Midcontinent Independent
4 System Operator (MISO) and the Organization of MISO States (OMS).

5 **Q: Have you previously testified before the Board?**

6 A: Yes. I have previously testified in electric transmission line, hazardous liquid
7 pipeline, energy efficiency, and rate case proceedings before the Board.

8 **Q: What did you do to prepare your testimony in this proceeding?**

9 A: I reviewed documents filed in this docket, including Board staff reports and
10 correspondence, the petition and exhibits thereto, and prefiled testimony and
11 exhibits. In addition, I reviewed discovery materials provided to OCA in the
12 course of OCA's investigation.

13 **Q: What is the purpose of your direct testimony in this proceeding?**

14 A: Summit Carbon Solutions, LLC (Summit or SCS) has filed a petition for
15 constructing approximately 688 miles¹ of 6- to 24-inch diameter hazardous
16 liquid pipeline (pipeline) in twenty-nine Iowa counties² to be used for the
17 transportation of carbon dioxide, with a maximum allowable operating
18 pressure (MAOP) of 2,183 pounds per square inch gage (psig) and a normal

¹ Schovanec Petition Staff Report Testimony, p. 3, line 22, filed July 10, 2022.

² Petition Attachment – Revised, filed July 11, 2023. Counties are Boone, Cerro Gordo, Cherokee, Chickasaw, Clay, Crawford, Dickinson, Emmet, Floyd, Franklin, Fremont, Green, Hancock, Hardin, Ida, Kossuth, Lyon, Montgomery, O'Brien, Page, Palo Alto, Plymouth, Pottawattamie, Shelby, Sioux, Story, Webster, Woodbury, and Wright.

1 operating pressure of 1,200 to 2,150 psig, and maximum capacity of 12 million
2 metric tons per year. The purpose of my testimony is to address the following
3 issues:

4 **Statutory Criteria**

- 5 • *Completeness of petition* per Iowa Code Chapter 479B and 199 IAC
6 13.3(1): I will explain that Summit appears to have filed the required
7 petition and exhibits.

- 8 • *Status of permits* per 199 IAC 13.3(1)(e): I will explain that it appears SCS
9 is in the process of acquiring the necessary permits, and recommend that
10 SCS acquire and file all relevant permits with Board prior to beginning
11 construction.

- 12 • *Possible use of alternative routes* per Iowa Code § 479B.5(6) and 199 IAC
13 13.3(1)(f)(2)(2): I will explain that Summit appears to have considered
14 alternative routes.

- 15 • *The relationship of the proposed project to the present and future land use*
16 *and zoning ordinances* per Iowa Code § 479B.5(7) and 199 IAC
17 13.3(1)(f)(2)(3): I will explain that Summit appears to have considered
18 present and future land uses, but recommend that Summit provide more
19 details regarding route modifications made in response to meetings with
20 county officials.

- 1 • *The inconvenience or undue injury which may result to property owners as*
2 *a result of the proposed project* per Iowa Code § 479B.5(8) and 199 IAC
3 13.3(1)(f)(2)(4): I will explain that Summit has acknowledged in its filings
4 that safety is related to inconvenience and undue injury but has declined to
5 provide any follow up information. For eminent domain parcels, I
6 recommend that the Board study the inconvenience and undue injury to
7 individual landowners on a parcel by parcel basis.
- 8 • *Land acquisition* per Iowa Code Chapter 479B and 199 IAC 13: I will
9 explain that it appears Summit is requesting eminent domain for the
10 remaining 1,035 parcels.
- 11 • *Financial condition of permittee* per Iowa Code § 479B.13 and 199 IAC
12 13.3(1)(d): I will explain that it appears Summit has the ability to finance
13 the project; however, it is unclear how SCS will cover any damages related
14 to the construction, maintenance, and operation of the pipeline. As
15 explained below, I recommend that the Board require Summit to maintain
16 liability insurance to ensure prompt and reliable payment of damages
17 resulting from construction, maintenance or operation of the line.
- 18 • *Land restoration plan* per Iowa Code § 479B.20, 199 IAC 13.11, and 199
19 IAC 9: I will explain that Summit has filed a land restoration plan that
20 appears compliant with 199 IAC chapter 9, however I recommend that

1 “wet conditions” and related decisions to proceed with construction be
2 more clearly defined.

- 3 • *Promote the public convenience and necessity* per Iowa Code § 479B.9 and
4 199 IAC 13.3(1)(f)(1): I will discuss the useful life of the project, and
5 recommend the Board carefully review the project’s revenue sources from
6 federal tax credits and low carbon fuel markets. I will also recommend the
7 Board use a balancing test to weigh the public benefits against the public
8 detriments, just as the Board did in the Dakota Access Pipeline (DAPL)
9 case.

10 **Q: Are you sponsoring any exhibits as part of this filing?**

11 A: Yes. I am sponsoring OCA Bents Direct Exhibit 1, which contains SCS’s
12 responses to OCA Data Requests 4, 19, 27, 33, 34, 50, 51, 53, 54, 55, 59, 63,
13 66, and 68 and Farm Bureau’s Data Request No. 20b in this proceeding.

14 **2. Conclusions Regarding Statutory Criteria**

15 **A. Completeness of Petition per Iowa Code Chapter 479B and 199**
16 **IAC 13.3(1)**

17 **Q: Does SCS’s petition appear to be complete?**

18 A: Yes, the petition appears complete. The IUB Staff Report filed June 26, 2023
19 identified some deficiencies but also concluded on page 11 the filings are
20 sufficient to proceed with a hearing. OCA does not dispute the IUB Staff
21 Report.

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B. Status of Permits per 199 IAC 13.3(1)(e)

Q: Has SCS acquired all necessary permits for this project?

A: No. However, 199 IAC 13.3(1)(e)(2) does not require all permits to be acquired before filing the petition. On July 14, 2023 SCS filed an Exhibit E, which must contain consents from the appropriate public highway authorities, railroad companies, as well as other state and federal agencies. SCS also placed a “Federal and State Permit Tracker” in Table 4 of its Exhibit F, which does not appear to be the Board’s required location for tracking state and federal permits.

OCA understands that Chapter 13 allows the Board to approve construction on other parts of the pipeline to commence while SCS is waiting on the final permits. OCA recommends: 1) that SCS explain its reasoning for not placing all its permit tracking information in Exhibit E as required by the Board’s rules in 13.3(1)(e), and 2) SCS submit updates to the Board on the status and finalization of the permits prior to commencement of construction.

C. Possible Use of Alternative Routes per Iowa Code § 479B.5(6) and 199 IAC 13.3(1)(f)(2)(2)

Q: Did SCS consider alternative routes for this project?

1 A: Yes. Based on filings and direct testimony provided by SCS,^{3,4,5} it appears
 2 that SCS used Geographic Information System (GIS) software that contained
 3 datasets relating to existing infrastructure, buildings, and land formations,
 4 among other things. The GIS software used that information to provide an
 5 optimized route. SCS stated in direct testimony that it is continuing to refine
 6 the route based on conversations with state and federal agencies as well as
 7 landowners.⁶ This methodology appears to demonstrate that SCS has
 8 considered, and is continuing to consider, alternative routes. The Board also
 9 found this routing method to be reasonable in the DAPL case.⁷

10 OCA believes that Summit's overall routing methodology appears
 11 consistent with the requirements and Board precedent on this matter. This does
 12 not mean that OCA agrees the proposed route is correct and proper at all
 13 locations. Landowners and members of the public may present evidence
 14 relevant to routing at particular locations. The Board should carefully consider
 15 this evidence as it considers the route.

16 **D. The Relationship of the Proposed Project to the Present and Future**
 17 **Land Use and Zoning Ordinances per Iowa Code § 479B.5(7) and**
 18 **199 IAC 13.3(1)(f)(2)(3)**

19 **Q: Please discuss how SCS considered the relationship of the proposed**

³ SCS Exhibit F, Section 3.0, p. 8, filed July 14, 2023.

⁴ See Summit Powell Direct Testimony, pp. 6-7, filed May 25, 2023.

⁵ See Summit Schovanec Direct Testimony, pp. 3-5, filed May 25, 2023.

⁶ Summit Schovanec Direct Testimony, p. 5, lines 1-12, filed May 25, 2023.

⁷ See HLP-2014-0001, Final Decision and Order, p. 68, filed March 10, 2016.

1 **project to the present and future land use and zoning ordinances.**

2 A: SCS stated that while preparing the Petition for filing it reviewed the land uses
3 and county ordinances in place at that time, and the reviews showed the land
4 uses were appropriate for the pipeline. SCS further stated that any changes in
5 county zoning ordinances restricting construction of a carbon dioxide pipeline
6 occurred well after the project was announced.⁸ SCS has stated that such
7 county zoning ordinances are preempted by the Board’s authority,⁹ and that
8 SCS has already worked with several cities and counties with specific concerns
9 about specific pipeline locations and modified the route alignment in
10 coordination with officials in those counties.¹⁰

11 OCA takes no position at this time on the issue of preemption and
12 continues to monitor this issue. OCA also encourages SCS to provide in its
13 rebuttal testimony details on the specific modifications it made to the route
14 alignment in coordination with county officials, as SCS Witness Schovanec
15 described.

16 **E. The Inconvenience or Undue Injury Which May Result to Property**
17 **Owners as a Result of the Proposed Project per Iowa Code**
18 **§ 479B.5(8) and 199 IAC 13.3(1)(f)(2)(4)**

19 **Q: Please discuss how SCS considered the inconvenience or undue injury**
20 **which may result to property owners as a result of the proposed project.**

⁸ Schovanec Petition Staff Report Testimony, p. 4, lines 7-17.

⁹ Schovanec Petition Staff Report Testimony, p. 4, lines 18-19.

¹⁰ Schovanec Petition Staff Report Testimony, p. 5, lines 3-5.

1 A: SCS initially addressed “inconvenience or undue injury” in Section 5.0 of
2 Exhibit F in its petition. In that same section, SCS also mentioned safety,
3 apparently as a means of addressing those same issues of inconvenience and
4 undue injury. This is worth mentioning because the topic of safety and the
5 Board’s related jurisdiction has been the subject of significant discussion in
6 this docket.¹¹ For its part, SCS has made safety a significant part of its direct
7 testimony: SCS Witness Dillon discussed safety extensively with respect to
8 emergency response, Witness Godfrey discussed safety extensively with
9 respect to pipeline design and Pipeline and Hazardous Materials Safety
10 Administration (PHMSA) regulations, Witness McCown discussed safety
11 extensively at a high level again with respect to federal regulations, and
12 Witness Muhlbauer discussed risk analysis and its effect on safety. SCS has
13 also stated that “...the Board has properly adopted rules for what a valid
14 pipeline permit petition must include...”,¹² which presumably means SCS
15 supports the Board’s consideration of “inconvenience or undue injury” as part
16 of the approval process.

17 Because of the filing methodology used by SCS, along with its direct
18 testimony and statements made in this docket, I will discuss safety as a subset
19 of “inconvenience and undue injury” within my testimony.

20 **Q: What has SCS done to address inconvenience and undue injury?**

¹¹ See Order Addressing Motion for Reconsideration and Petitions to Intervene, filed February 10, 2023 and earlier related filings.

¹² Reply Brief, p. 9, footnote 4, filed December 5, 2022.

1 A: For damages occurring during the construction process or crop losses after
 2 pipeline construction is complete, SCS filed the statement of damage claims as
 3 required by Iowa Code § 479B.27 and 199 IAC 13.2(5)(a)(11) and 13.3(3).¹³
 4 For construction of the pump stations^{14,15,16} along the pipeline route, SCS
 5 confirmed that it will be responsible for the costs for any electrical system
 6 upgrades.¹⁷

7 To prevent damages from occurring during the operation of the
 8 pipeline, SCS provided details to the OCA on its decision to use pipe with a
 9 heavier wall than required by PHMSA in areas where SCS deemed it
 10 appropriate.¹⁸ Summit also committed to inspecting 100% of the pipeline's
 11 girth welds during construction, where code only requires 10% to be
 12 inspected.¹⁹ SCS also stated that it is studying the benefit of Emergency Flow
 13 Restricting Devices (EFRD).²⁰

14 In the event of an unintended release during operation, SCS is in the
 15 process of coordinating with local emergency officials to make sure they have

¹³ Exhibit G, Attachment G-1, filed January 28, 2022.

¹⁴ OCA Bents Direct Exhibit 1, SCS Response to OCA Data Request #27.

¹⁵ OCA Bents Direct Exhibit 1, SCS Response to OCA Data Request #55.

¹⁶ OCA Bents Direct Exhibit 1, SCS Response to OCA Data Request #50.

¹⁷ See OCA Bents Direct Exhibit 1, SCS Response to OCA Data Request #66.

¹⁸ See OCA Bents Direct Exhibit 1, SCS Response to OCA Data Request #59.

¹⁹ Summit Godfrey Direct Testimony, p. 9, lines 10-12.

²⁰ SCS Godfrey Direct Testimony, pp. 6-7.

1 the proper training and equipment,^{21,22,23} and is apparently planning to use SCS
2 employees as emergency responders in its initial response effort.²⁴

3 **Q: What concerns do you have regarding inconvenience and undue injury?**

4 A: SCS stated in direct testimony that carbon dioxide pipelines were initially built
5 in the United States in the 1950's, that there are currently over 5,000 miles in
6 operation, and no carbon dioxide pipeline leaks or releases resulted in a
7 fatality, injury to the public, impact to wildlife, or water contamination.²⁵ It is
8 possible that carbon dioxide pipelines have a very low incident rate. However,
9 it is also possible that the low incident rate is related to the relatively small
10 mileage of carbon dioxide pipelines, given there are almost 3.7 million miles²⁶
11 total of gas and hazardous liquid pipeline in service in United States, of which
12 5,000 miles of carbon dioxide pipelines apparently make up less than 0.2%.
13 This relatively low number of installed miles requires careful scrutiny from the
14 Board to protect Iowans.

15 OCA attempted to learn more about the potential for inconvenience and
16 undue injury to Iowans,^{27,28} but SCS objected, stating "...the Board cannot
17 decide the issues in this docket based on safety as such considerations are

²¹ OCA Bents Direct Exhibit 1, SCS Response to OCA Data Request #34.

²² OCA Bents Direct Exhibit 1, SCS Response to OCA Data Request #53.

²³ OCA Bents Direct Exhibit 1, SCS Response to OCA Data Request #54.

²⁴ OCA Bents Direct Exhibit 1, SCS Response to OCA Data Request #33.

²⁵ Summit Godfrey Direct Testimony, pp. 7-8.

²⁶ Summit McCown Direct Testimony, p. 7, line 10.

²⁷ OCA Bents Direct Exhibit 1, SCS Response to OCA Data Request #19.

²⁸ OCA Bents Direct Exhibit 1, SCS Response to OCA Data Request #51.

1 preempted.”²⁹ SCS has chosen to make safety a central issue in its filing by
2 tying it to inconvenience and undue injury while simultaneously resisting any
3 additional inquiry into those issues. The record is incomplete in this area.

4 **Q: How should the Board address inconvenience and undue injury with**
5 **respect to eminent domain?**

6 A: In the Dakota Access Pipeline case the board reviewed each eminent domain
7 parcel on a case by case basis in order to determine if granting eminent domain
8 would cause inconvenience and undue injury, and how any such inconvenience
9 or undue injury could be mitigated or avoided. In one example, the Board did
10 not grant eminent domain authority because the intervening landowners
11 provided both prefiled and in-person testimony regarding future plans to
12 expand an existing turkey operation. The Board stated that such modifications
13 “...are reasonable to reduce the inconvenience and undue injury to the
14 Lenharts from the proposed route.”³⁰

15 OCA recommends the Board follow the same parcel by parcel review
16 process for this proposed pipeline to reduce inconvenience and undue injury to
17 landowners.

18 **F. Land Acquisition per Iowa Code Chapter 479B and 199 IAC 13**

19 **Q: What is the status of SCS’s land acquisition efforts for this petition?**

²⁹ OCA Bents Direct Exhibit 1, SCS Response to OCA Data Request #63.

³⁰ See HLP-2014-0001, Final Decision and Order, pp. 130-132, filed March 10, 2016.

1 A: As of June 19, 2023, SCS was requesting eminent domain authority for the
2 remaining 1,035 parcels for this project.³¹

3 **Q: Do you have any additional comments about the status of land acquisition**
4 **for this pipeline?**

5 A: OCA is aware that some of the remaining landowners have expressed
6 opposition to voluntary easements and/or discontinued communication with
7 SCS. OCA continues to monitor these issues. OCA encourages the Board to
8 evaluate inconvenience and undue injury on a parcel by parcel basis. As
9 explained above, evidence related to inconvenience and undue injury may be
10 relevant to the Board's determination regarding eminent domain.

11 **G. Financial Condition of Permittee per Iowa Code § 479B.13 and 199**
12 **IAC 13.3(1)(d)**

13 **Q: How will the project be funded and costs for this pipeline be recovered?**

14 A: SCS stated in direct testimony that the total project cost across five states will
15 be approximately \$5.5 billion and the capital investment in Iowa will be about
16 \$990 million. The project will be funded from private investors, as well as
17 banks and other lenders. The project's revenues will come from a combination
18 of federal tax credits and the price premium from selling ethanol into low
19 carbon fuel markets.³²

³¹ Eminent Domain Staff Report, p. 7, filed July 10, 2023.

³² See Summit Pirollo Direct Testimony, pp. 7-9.

1 Since the costs of the carbon dioxide pipeline system, including the
2 electrical system upgrades explained earlier, will not be passed onto Iowa
3 ratepayers, OCA has no objection to the project cost or the recovery
4 mechanism.

5 **Q: Has SCS demonstrated financial ability to cover any damages related to**
6 **the construction, maintenance, and operation of the pipeline?**

7 A: In its initial application, SCS provided proof of a \$250,000 surety bond for the
8 “...construction and operation of a hazardous liquids pipeline in Iowa.”³³ This
9 amount was set in 479B.13 in 1995 by the seventy-sixth Iowa General
10 Assembly, and is neither indexed to inflation nor has it ever been adjusted in
11 the twenty-eight years since it was established.

12 OCA asked SCS to provide any additional evidence demonstrating
13 SCS’s ability to pay any and all damages related to operating the pipeline.
14 SCS stated it will “...procure and maintain “All Risk” Property insurance and
15 Third Party Liability insurance consistent with best industry practice, as
16 required by law, and in compliance with counterparty insurance requirements,
17 including those of financing parties or contained in agreements with
18 landowners.”³⁴

19 It’s important to note SCS’s use of the term “as required by law”,
20 because beyond the \$250,000 bond mentioned earlier, Iowa Code

³³ Exhibit D, filed January 28, 2022.

³⁴ OCA Bents Direct Exhibit 1, SCS Response to OCA Data Request #68.

1 Chapter 479B does not require any additional proof of financial ability to cover
 2 damages. However, per Iowa Code § 479B.9 and 199 IAC 13.3(1)(d) the
 3 Board may require additional surety or insurance policies. In DAPL, the
 4 largest and most recent hazardous liquid pipeline case prior to Summit's, the
 5 Board ordered Dakota Access to obtain and maintain a general liability policy
 6 in an amount of no less than \$25 million and provide proof of such insurance to
 7 the Board prior to commencing operations.³⁵ I recommend the Board similarly
 8 require SCS to obtain and maintain adequate liability insurance.

9 **Q: Do you have a recommendation regarding the amount of liability coverage**
 10 **the Board should require?**

11 A: Unfortunately, I am unable to provide a specific recommendation based on the
 12 evidence available to OCA at the time of my testimony. As I explained above,
 13 SCS has not provided OCA with adequate information regarding the safety
 14 risks of the pipeline. I consider this information to be relevant to an
 15 assessment of the appropriate level of insurance coverage. I ask Summit to
 16 elaborate on the insurance it will maintain and its ability to pay damages in its
 17 rebuttal testimony and at hearing. OCA may make more specific
 18 recommendations for conditions related to insurance or other aspects of
 19 financial responsibility in briefs.

³⁵ HLP-2014-0001, Final Decision and Order, pp. 69-70, filed March 10, 2016.

1 **Q: Will OCA’s recommended conditions regarding financial responsibility be**
2 **limited to insurance requirements?**

3 A: Not necessarily. In its voluntary easement, SCS indemnifies landowners “from
4 and against any claim or liability or loss from personal injury or property
5 damage resulting from or arising out of the use of the Easements...”³⁶ OCA
6 believes that all landowners, and not just landowners who signed voluntary
7 easements, should get the protections of this provision. In addition, OCA has
8 broader concerns about the risk of uncompensated loss resulting from a
9 potential incident on the line. OCA asks SCS to address in its rebuttal
10 testimony and be prepared to address at hearing its understanding of its liability
11 for damages resulting from incidents on its pipeline under various scenarios,
12 including for damage or injury to bystanders or neighbors of the line. In legal
13 briefs, OCA may recommend that the Board impose conditions beyond
14 insurance requirements to address risk of uncompensated loss resulting from
15 the line to the Iowa public.

16 **H. Land Restoration Plan per Iowa Code § 479B.20, 199 IAC 13.11,**
17 **and 199 IAC 9**

18 **Q: Has SCS filed a land restoration plan that is in compliance with 199**
19 **IAC 9?**

³⁶ OCA Bents Direct Exhibit 1, SCS Response to OCA Data Request #4, Form Easement Agreement, clause 6.

1 A: Yes, it appears the land restoration plan filed by SCS complies with 199 IAC 9.
2 However, I recommend the Board provide additional guidance regarding
3 construction in wet conditions.

4 **Q: What concerns do you have?**

5 A: After the Final Decision and Order on the DAPL pipeline, the Board opened
6 rule making docket RMU-2016-0013 to update its rules for land restoration and
7 requested stakeholder comments.³⁷ After receiving comments, the Board
8 decided the best course of action was to close RMU-2016-0013 and open
9 docket RMU-2020-0009, "...to rescind chapter 9 and adopt a new chapter 9
10 that reorganizes and clarifies portions of the chapter, retains certain provisions,
11 and introduces new provisions to address issues that have arisen in regard to
12 the restoration of agricultural lands during and after pipeline construction."³⁸
13 Construction in wet conditions, and who had authority to determine whether
14 construction should be halted, was a key point of discussion in both these
15 dockets. The Board issued an order adopting the new rules on May 12, 2021.

16 The current rules in 199 IAC 9.5(12) have the potential for ambiguity
17 with these two sentences:

18 The county inspector, in consultation with the pipeline
19 company and the landowner or person in possession of the
20 land pursuant to a lease, if present, shall determine when
21 construction should not proceed in a given area due to wet
22 conditions. The county inspector shall have the sole

³⁷ RMU-2016-0013, Order Requesting Stakeholder Comment on Potential Rule Changes, filed July 17, 2019.

³⁸ RMU-2020-0009, Order Closing Docket No. RMU-2016-0013, Opening Docket No. RMU-2020-0009, and Commencing Rule Making, p. 2, filed October 16, 2020.

1 authority to determine whether construction should be
2 halted due to wet conditions.

3 The first sentence makes the decision about construction in wet conditions
4 sound like a collaboration, while the second sentence states the county
5 inspector makes the final call. Given the potential for wet conditions to delay
6 construction timelines as well as the significant affects that soil compaction can
7 have on future crop yields, county inspectors will experience considerable
8 pressure from both the pipeline company and landowners. OCA believes that
9 the second sentence adds clarity and specificity to the first sentence. I
10 recommend the Board make it very clear that the decision to halt construction
11 is entirely up to the county inspector. The pipeline company and the
12 landowner can give their input; however, the final decision belongs to the
13 county inspector. This is important because SCS has previously stated that the
14 decision to halt construction in wet conditions "...will be made by the
15 construction manager in consultation with a project manager..."³⁹

16 Another related concern that I have is the following sentence in 199

17 IAC 9.5(12):

18 To facilitate construction in wet soils, the pipeline
19 company may elect to remove and stockpile the topsoil
20 from the traveled way, install mats or padding, or use other
21 methods acceptable to the county inspector.

22 This sentence must not be taken to be a separate decision that the pipeline
23 company can make on its own, removed from the county inspector's sole

³⁹ OCA Bents Direct Exhibit 1, SCS Response to Farm Bureau Data Request #20b.

1 discretion on construction in wet conditions. OCA’s position is that removing
 2 and stockpiling soil from the traveled way, as well as installing mats or
 3 padding in order to facilitate construction in wet conditions, are techniques that
 4 must be first approved by the county inspector before the pipeline company
 5 can implement them. I recommend the Board make this clear in its final order
 6 on this docket.

7 Finally, I recommend that in the course of this proceeding the Board
 8 and the parties seek to identify an objective standard or test for “wet
 9 conditions”, in order to remove subjectivity around the current definition.
 10 OCA may make recommendations regarding an objective standard or test in its
 11 briefs.

12 **I. Promote the Public Convenience and Necessity per Iowa Code**
 13 **§ 479B.9 and 199 IAC 13.3(1)(f)(1)**

14 **Q: How does SCS assert this project promotes the public convenience and**
 15 **necessity?**

16 **A:** In its Exhibit F, SCS appears to identify five distinct ways in which this project
 17 promotes the public convenience and necessity: 1) by benefitting Iowa’s
 18 ethanol and agriculture industries; 2) by offering carbon dioxide transportation
 19 and storage services to other industrial facility owners; 3) by creating jobs
 20 through the construction and operation of the pipeline; 4) by sequestering
 21 carbon for the purposes of combatting climate change; and 5) by providing a

1 safer means of transporting carbon dioxide as compared to rail and truck
2 transport.⁴⁰

3 **Q: Do you agree that this project can benefit Iowa's ethanol and agriculture**
4 **industries?**

5 A: Yes, however the long-term benefit to Iowa's ethanol and agriculture industries
6 seems to be dependent on the continued existence of two things: 1) federal tax
7 credits and 2) low carbon fuel markets. It is not clear what the long-term
8 viability is for both the tax credits or the low carbon fuel markets. OCA's
9 investigation into this issue is ongoing. Further evidence from SCS on the
10 long-term viability of low carbon fuel markets would be helpful to evaluate the
11 long-term economic benefits of this proposed project.

12 **Q: Do you agree this project will create jobs through the construction and**
13 **operation of the pipeline?**

14 A: SCS states that it anticipates positive economic benefits due to the construction
15 and operation of the pipeline.⁴¹ While OCA did not perform its own
16 estimation of the significance of these benefits, the examples cited by SCS
17 appear to be positive economic benefits for Iowa.

18 **Q: Do you have comments on the other areas which SCS asserts this project**
19 **promotes the public convenience and necessity?**

⁴⁰ Exhibit F, Section 1.0, pp. 1-2, filed July 14, 2023.

⁴¹ Summit Phillips Direct Testimony, pp. 7-8, filed May 25, 2023.

1 A: Not at this time. I recommend the Board use a balancing test to weigh "...the
2 public benefits of the proposed project against the public and private costs or
3 other detriments as established by the evidence in the record", just as the Board
4 did in the Dakota Access Pipeline case.⁴²

5 **Q: Does this conclude your testimony?**

6 A: Yes.

⁴² See HLP-2014-0001, Final Decision and Order, p. 16, filed March 10, 2016.

STATE OF IOWA)
) **SS: AFFIDAVIT OF SCOTT C. BENTS**
COUNTY OF POLK)

I, Scott C. Bents, being first duly sworn on oath, depose and state that I am the same Scott C. Bents identified in the foregoing Direct Testimony; that I have caused the foregoing Direct Testimony to be prepared and am familiar with the contents thereof, and that the foregoing Direct Testimony as identified therein is true and correct to the best of my knowledge, information and belief as of the date of this Affidavit.

/s/ Scott C. Bents
Scott C. Bents

Subscribed and sworn to before me, A Notary Public, in and for said County and State, this 24th day of July, 2023.

/s/ Jennifer L. Johnson
Notary Public
Signed Original on File

My Commission expires: October 17, 2025.