November 21, 2022

Via e-filing

Scott Ek
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101

Re: In the Matter of the Application of Summit Carbon Solutions, LLC, for a Routing Permit for the Otter Tail to Wilkin Carbon Dioxide Pipeline Project in Otter Tail and Wilkin Counties, Minnesota; PUC Docket Number: IP-7093/PPL-22-422

Dear Mr. Ek,

Public Employees for Environmental Responsibility (PEER) respectfully submits these supplemental comments on the Minnesota Public Utilities Commission's (Commission) above-captioned matter. PEER limits this comment to responding to the applicant's reply comment.

I. Response to Summit Carbon Solutions, LLC, (Summit) reply comments

Summit takes issue with two matters raised by PEER's initial comment: the failure of the application to meaningfully discuss environmental justice; and the proposed scheduling of environmental review and the contested case hearing. PEER disagrees with Summit's characterization of these issues.

A. Environmental Justice

It is true, as Summit states in it comment, that the application includes a subheading titled "Environmental Justice."[1] If the Commission only judges applications based on the subject headings of the table of contents and the applicant's ability to fill pages with general statements, then completeness review is a relatively meaningless step in the Commission's permitting process.

The application's discussion of environmental justice in the section Summit identified begins with a primer on the concept of what various governments think environmental justice is and an attempt to demonstrate that "no further environmental justice analysis is

[1] Summit Reply Comment, Document ID No. 202211-190618-01, at 6.

required" because the areas that the applicant chose to directly cross[2] with the project do not meet the criteria discussed.[3] Nonetheless, the application establishes that the project *does* cross an environmental justice community, namely census tract 9609.[4]

The section goes on to discuss the generic construction and operation impacts that may affect people living around the project,[5] but contains no analysis of the differential impact on environmental justice communities who may: be disproportionately impacted by existing cumulative impacts; have higher incidence of relevant health issues (i.e. asthma or heart disease); and have a lower ability to mitigate impacts (i.e. such as upgrading their housing to reduce noise or pollution infiltration, or moving elsewhere). There is a dearth of information on what residents are concerned about or how this project might differentially impact the identified environmental justice community. Unsurprisingly, with no discussion of the disproportionate and cumulative impacts on the identified environmental justice community, the application finds "no impacts on these populations are anticipated to occur as a result of the construction and operation of the Project."[6]

Just as important as the limited analysis offered by the applicant in this "Environmental Justice" section, is the narrow scope of the data offered. The application only addressed potential environmental justice communities that were crossed by the project, ignoring that both water and air pollution can spread great distances. Moreover, the application only discusses communities in Minnesota, when it is apparent that several environmental justice communities exist immediately across the state border and will be closely skirted by the applicant's pipeline network. An environmental justice map produced by the U.S. Department of Energy (to satisfy requirements under the Justice40 initiative of President Biden's Executive Order 140008) shows that in North Dakota there are environmental justice communities in Wahpeton and the Lake Traverse Indian Reservation, to the north and south, respectively, of the proposed project route:[7]

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[2] As discussed below, other project proposers, regulatory agencies, and courts have held themselves to a higher standard (e.g. modeling impacts such as spills in waterways for dozens of miles downstream) and include a pipeline corridor for assessing the potential for environmental impacts. However, Summit's application apparently only allows for the possibility that a census tract can be impacted if it is physically crossed. This omission of data may be improved upon with an EIS that has a larger scope of review.

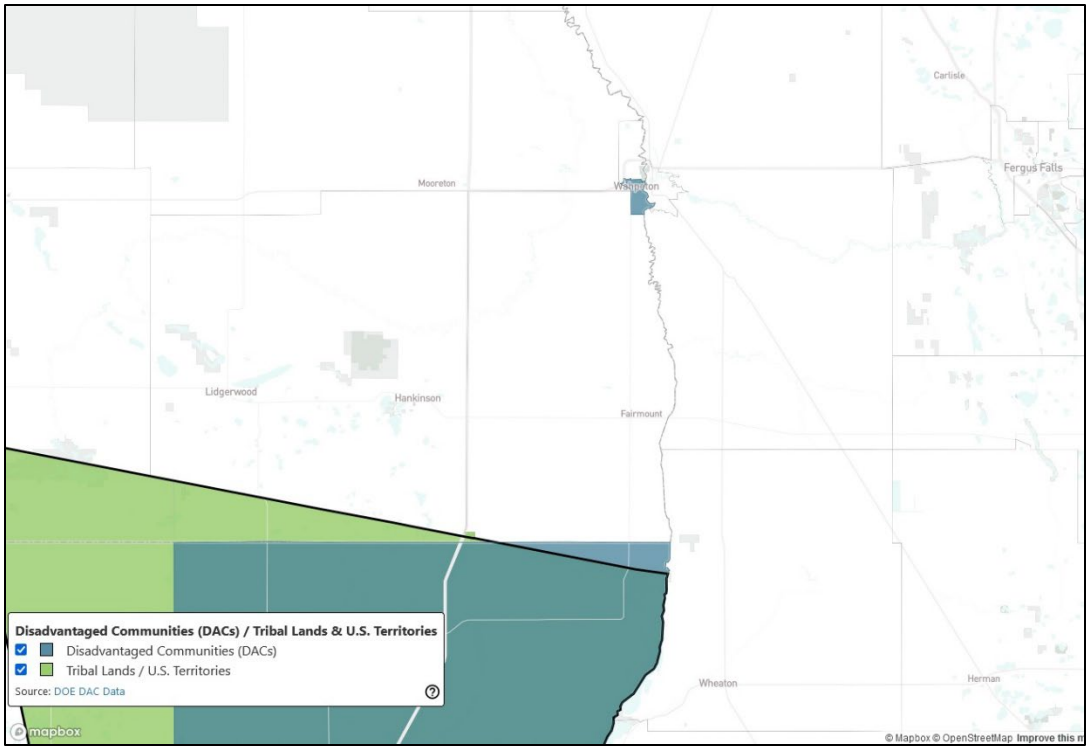
[3] Application, Document ID No. 20229-189023-02, at 43.

[4] *Id.* at 44.

[5] *See generally id.* at 46–47.

[6] *Id.* at 47.

[7] U.S. Department of Energy, Energy Justice Mapping Tool - Disadvantaged Communities Reporter, https://energyjustice.egs.anl.gov/ (last visited Nov. 21, 2022).



An acid pipeline spill could flow to these communities in the Red River watershed – similar to the Dakota Access oil pipeline's potential significant environmental impact to the Standing Rock Reservation. In the federal litigation over the environmental review of Dakota Access's project, the court found that the scope of analysis was too narrow (limited to a pipeline corridor one mile across) and therefore artificially did not include reservation lands, even though a pipeline spill could flow downstream and impact the water supply of the Tribe.[8] Summit's application risks making the same mistake, greatly limiting the scope of analysis to artificially discount the number and type of environmental justice communities that may be significantly impacted.

[8] Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers, 255 F.Supp.3d 101, 140 (D.D.C. 2017) (concluding: "The Corps need not necessarily have addressed that particular issue, but it needed to offer more than a bare-bones conclusion that Standing Rock would not be disproportionately harmed by a spill. Given the cursory nature of this aspect of the EA's analysis, the Court agrees with the Tribe that the Corps did not properly consider the environmental-justice implications of the project and thus failed to take a hard look at its environmental consequences."). The court also discussed how a spill analysis of 14 or 40 miles downstream from the pipeline water crossing would be reasonable, considering comparable environmental analyses. *Id.* at 138 (citing environmental review documents provided by the Tribe).

As PEER's initial comment suggested, the Commission may view Summit's application as incomplete on this topic and require additional information upon which to build the record. Or, as with the Dakota Access environmental review, it may be later viewed as a deficiency making the Commission's own analysis incomplete and inadequate. The decision rests with the Commission to characterize whether this application is complete merely because it has identified subjects in a table of contents, and what level of rigorous environmental review to now require in order to assure compliance with Minnesota law. What is clear is that the application barely discusses environmental justice, and contains no analysis that is meaningful or relevant to these threatened and disproportionately vulnerable communities.

B. Timing environmental review and contested case hearing

In a footnote Summit bemoans the possibility of "procedural irregularities, such as those suggested by PEER to bifurcate the environmental review process from the hearing proceeding by requiring an adequacy decision prior to the hearing process."[9] Far from being a procedural irregularity, assuring that environmental review is adequate before the ALJ develops the record in a contested case hearing is in keeping with procedural due process and the precedent-setting nature of this application.

First, it is not irregular for the Commission or an ALJ to require a full factual record before making permitting decisions on an application. Indeed, doing otherwise risks violating the applicant and other parties' rights to due process. Producing a complete and legally adequate EIS prior to asking parties to make their arguments on the merits of the application is a reasonable precaution to take – especially, as noted in PEER's initial comment, as there have been recent examples where the Commission deemed EERA's analysis inadequate and required more environmental review, but there was no time built into the permitting schedule to accommodate the reanalysis. Since such an outcome is similarly likely in this permitting process, it would make sense for the Commission to properly order the procedure so it can vet the environmental review before the proceeding moves to the next phase.

Secondly, this is especially the case for Summit's application as it is proposing a first-of-its-kind carbon pipeline network in the state of Minnesota. While EERA is familiar with environmental review of routing crude oil pipelines, it has never done the analysis on this type of project. Also, Summit's avowed plan is to grow this network regionally over time, so the instant proceeding may set precedents for future stages of this project.[10] Based on the unique nature of this proposal, is likely that the Commission will find omissions or

[9] Summit Reply Comment at 10, n.14.

[10] As discussed by PEER and many others in initial and reply comments, any environmental review of Summit's proposed project should be as complete as possible and avoid segmenting environmental review of the overall project into many small pieces.

errors in the first environmental review prepared on this application, and it should not force a constitutional due process violation for the Commission to require sufficient additional analysis under MEPA. While the legislature has set an overall time limit for the review of route permits in statute,[11] which is duplicated in Commission rules,[12] both the statute and rules affirm the Commission may vary those timelines for cause.[13] The Commission can find cause for a longer permit review timeline here, such as needing additional time for a thorough review of a totally new type of pipeline network that poses new and different risks to the public and environment, or to provide sufficient opportunities for public comment and participation.[14]

This proposed procedure is only "irregular" if the Commission accepts the flawed logic that this pipeline is no different from any other that the Commission has permitted in the past. Since this is a new technology, and Summit's network is only poised to continue growing from what is permitted now, it is unreasonable to assume that the exact same procedures and practices are called for in the first-ever Commission review of a carbon pipeline proposal.

II. Conclusion

For the reasons stated above and in PEER's earlier comments, the Commission should grant CURE's citizen petition and order an EIS for the applicant's proposed pipeline network. Only after the EIS is deemed adequate should the Commission go on to order a contested case hearing on this application. Summit's attempts to shorten and short-circuit a full review of its application should be rejected in favor of protecting public health and Minnesota's resources.

/s/ Hudson Kingston
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[11] Minn. Stat. 216G.02, Subd. 3(b)(5).
[12] Minn. R. 7852.0800.
[13] *See id.*, Minn. Stat. 216G.02, Subd. 3(b)(5) (both stating that the 9-month timeline for permit review can be extended "for cause").
[14] For example: CURE has suggested that additional public meetings should be scheduled for this application process, and Tribal Nations have expressed an interest for better consultation on this project and other matters at the Commission.