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IN THE IOWA DISTRICT COURT FOR POLK COUNTY

SHELBY COUNTY, WRIGHT COUNTY, FLOYD COUNTY, WOODBURY COUNTY, DICKINSON COUNTY, KOSSUTH COUNTY, EMMET COUNTY, HARDIN COUNTY, and FRANKLIN COUNTY, Petitioners, v. IOWA UTILITIES COMMISSION f/k/a IOWA UTILITIES BOARD, Respondent.	CASE NO. CVCV067849 **PROOF REPLY BRIEF OF SHELBY COUNTY, WRIGHT COUNTY, FLOYD COUNTY, WOODBURY COUNTY, DICKINSON COUNTY, KOSSUTH COUNTY, EMMET COUNTY, HARDIN COUNTY, and FRANKLIN COUNTY**

Petitioners Shelby County, Wright County, Floyd County, Woodbury County, Dickinson County, Kossuth County, Emmet County, Hardin County, and Franklin County ("the Counties"), pursuant to the Order on Amended Briefing Schedule issued on March 13, 2025, submit the following Proof Reply Brief:

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES **PAGES**

STATUTES

INTRODUCTION

After issuing a 507-page Final Decision and Order, replete with contradictions and errors, and after seeking an extension from this court "in order to properly respond" to Petitioners' briefs, the Iowa Utilities Commission ("IUC" or "the Commission") can muster just 44 pages of briefing in defense of its decision to grant Summit Carbon Solutions, LLC ("Summit") a permit. Apparently believing its Final Decision and Order is sufficient and that it "contains no legal errors," the Commission argues this court "need only scrutinize the record to see if there is substantial evidence supporting the agency's decision." Respondent IUC's Brief at 12, 14.

The Commission even accuses Petitioners of "using this appellate process as an attempt to relitigate nearly each and every factual issue already heard and decided by the Commission *rather than asserting any actual legal error*." *See* Respondent IUC's Brief at 20 (emphasis added). On the contrary, the Counties pleaded and briefed eight specific violations of the Iowa Administrative Procedure Act. *See* Judicial Review Brief of the Counties at 1–3. These are assertions of "actual legal error," despite the Commission's attempt to mischaracterize them otherwise.

Rather than respond to the specific grounds asserted by the Counties, the Commission's brief primarily addresses just three issues "common to all petitioners." *See* Respondent IUC's Brief at 14. This is plainly an attempt by the Commission to divert attention from its most egregious errors by focusing only on the issues to which the Commission wants to respond, rather than the issues the Counties are actually raising. As the Counties argued in their initial brief, the Commission made many legal errors in the Final Decision and Order, yet several of those errors are not properly addressed in the Commission's initial brief. The Counties maintain

that all of these errors should be addressed on review whether or not the other Petitioners are asserting them and whether or not the Commission chooses to respond to them.

ARGUMENT

The Commission claims, twice on the same page of its brief, that it has addressed "most, if not all" of the Petitioners' arguments in the Final Decision and Order. *See* Respondent IUC's Brief at 19. However, neither the Final Decision and Order nor the Commission's initial brief properly address all the issues raised in the Counties' proof brief. Instead, the Commission makes mostly cursory assertions that the Final Decision and Order "correctly applied the relevant law" and that it "contains no legal error."

Among the several specific errors described in the Counties' proof brief, there are three significant legal errors, largely ignored by the Commission in its initial brief, that the Counties focus on in this reply brief: (1) the Commission's failure to consider higher consumer prices in the constitutional public use analysis; (2) the Commission's plainly inconsistent, illogical, and prejudicial consideration of safety during the course of the proceedings; and (3) the Commission's illogical application of the "balancing test" factors in its determination of public convenience and necessity.

A. The Commission has not properly addressed the Counties' constitutional "public use" arguments related to higher consumer prices.

The Commission accuses the Petitioners of going "to great lengths to distinguish the case at hand from *Puntenney*." *See* Respondent IUC's Brief at 15. On the contrary, the Counties agree that *Puntenney* is the leading case in this area and should control the analysis. Rather than distinguishing *Puntenney*, the Counties' brief explains how the Commission *misapplied* the leading case in the Final Decision and Order. In its response brief, the Commission does not make a specific response to the Counties' arguments and instead offers mostly sweeping, general

statements about the correctness of the Final Decision and Order. *See* Respondent IUC's Brief at 14.

1. *The IUC argues common carrier status is sufficient in order to avoid addressing the burden of higher consumer prices.*

It should be unmistakable to anyone reading *Puntenney*, especially to one of the parties in that case, that the Iowa Supreme Court does not treat a common carrier determination as dispositive of the public use question. In *Puntenney*, the court analyzed at length the impact of consumer prices on the question of public benefit, even though the Federal Energy Regulatory Commission ("FERC") had *already determined* that the pipeline met federal common carrier standards. *Puntenney v. Iowa Utilities Bd.*, 928 N.W.2d 829, 843 (Iowa 2019). The fact that FERC found that the pipeline was a common carrier did not end the *Puntenney* court's analysis of public benefit for constitutional purposes. Thus, the Iowa Supreme Court employs a two-part test when determining the question of a constitutional public use.

The Commission's Final Decision and Order in this case wrongly treated the common carrier question as determinative. *See* Final Decision and Order at 287 ("The Iowa Supreme Court in *Puntenney* was clear that a common carrier 'has long been recognized in Iowa as a valid public use…'"). *See also* Final Decision and Order at 288 ("Based upon this requirement in *Puntenney*, Summit Carbon meets the definition of common carrier and is eligible to be vested with the right of eminent domain."). *See also* Final Decision and Order at 295 ("The Board finds Summit Carbon is providing a service to the public, indiscriminately, and will operate as a common carrier under Iowa common law. Therefore, the Board will vest Summit Carbon with the right of eminent domain…."). In its initial proof brief, the Commission persists in this mistaken argument, asserting that "Summit Carbon is a common carrier which, in turn, satisfies

the public use requirement." *See* Respondent IUC's Brief at 24. This is a clearly erroneous application of law and must be reversed.

Moreover, the Commission was on notice of this issue prior to issuing its Final Decision and Order. In their post–hearing brief to the Commission, the Counties pointed out that *Puntenney* required more than a common carrier determination, and they were particularly clear that the Commission must consider the impact of higher consumer prices as part of the constitutional public use analysis. Nevertheless, the Commission refused to consider such arguments. *See* Final Decision and Order at 296 ("With regard to all the other arguments surrounding eminent domain related to Summit Carbon's proposed hazardous liquid pipeline, the [Commission] is unpersuaded by the arguments and will not discuss them further in this order."). Therefore, the Commission wrongly applied the *Puntenney* case in the Final Decision and Order.

The Commission asserts, "There is no requirement to show any additional public use. Petitioners are incorrect in their assertion that *Puntenney* requires both a finding that Summit Carbon is a common carrier *and* that the pipeline furthers a valid public use." *See* Respondent IUC's Brief at 25. The Commission also asserts that "once the Commission in the case at hand found Summit Carbon to be a common carrier, the public use requirement was met." *See* Respondent IUC's Brief at 26–27.

However, the *Puntenney* court's recognition of the validity of public use by a private entity was limited to the extent "the primary benefit is a reduction in operational costs." *Puntenney*, 928 N.W.2d at 848. This limitation was further underscored by the court's discussion of *S.E. Iowa Co-Op. Elec. Ass'n v. Iowa Utilities Bd.*, 633 N.W.2d 814, 820 (Iowa 2001), which recognized that that "the public is served" when they can "obtain service at a lower cost." The *Puntenney* court also held, "While the pipeline is undeniably intended to return profits to its

owners, the record indicates that it also provides public benefits in the form of cheaper and safer transportation of oil, which in a competitive marketplace results in lower prices for petroleum products. As already discussed, the pipeline is a common carrier with the potential to benefit all consumers of petroleum products, including three million Iowans" *Puntenney*, 928 N.W.2d at 849. Finally, the Court further held, "This reasoning applies here. The record indicates that the Dakota Access pipeline will lead to 'longer-term, reduced prices on refined products and goods and service dependent on crude oil and refined products.'" *Id.* at 850. In short, while it may be necessary for a pipeline seeking eminent domain right to be a common carrier, it is not sufficient. If it were otherwise, the *Puntenney* court would not have engaged in an extended discussion of the benefits of lower prices. *See generally id.* at 848–50.[1]

The Commission's Final Decision and Order not only ignores the cost-related portions of the *Puntenney* case, it actually argues that higher prices are a *good* thing, finding that "this premium paid by ethanol plants for corn is enjoyed by farmers who are able to reap the benefits of the higher prices and receive a higher return on their product." *See* Final Decision and Order at 141. Clearly, the Commission was focused on the private profits of ethanol producers and farmers, rather than the public benefits of lower consumer prices generally. The "benefits" asserted by the Commission are not broadly shared by the public, but instead are limited to farmers and ethanol producers. In fact, these "higher prices" are a burden on the public.

2. *The Commission erroneously focuses on who uses the pipeline, rather than who benefits from it.*

Because the *Puntenney* case clearly does not recognize higher consumer prices as a valid, constitutional public use, the Commission is forced to argue that a common carrier determination

[1] The Counties note that to the extent the Final Decision and Order addresses their arguments about higher prices, it was only addressed in the public convenience and necessity portion of the order. Under *Puntenney*, the issue of higher prices should have been part of the constitutional public use analysis as well.

is all that is required. *See* Respondent IUC's Brief at 25–27. However, by treating the common carrier determination as dispositive of the constitutional question, the Commission makes the same mistake as the landowners in *Puntenney*. The Final Decision and Order focused on Summit's proposal to reserve capacity on the pipeline for "walk-up shippers." *See* Final Decision and Order at 288. ("Based upon the record, Summit Carbon has committed to reserving 10 percent of the capacity of its proposed hazardous liquid pipeline for walk–up customers… Based upon this requirement in *Puntenney*, Summit Carbon meets the definition of common carrier and is eligible to be vested with the right of eminent domain."). Which is to say that the Commission is focused only on who *uses* the pipeline, rather than who *benefits* from it. The Supreme Court clearly rejected this approach. *See Puntenney*, 928 N.W.2d at 849 ("The fundamental flaw of landowners' argument is that they focus entirely upon who *uses* the pipeline rather than who *benefits* from it."). The Commission's arguments on common carrier are clearly erroneous, and its findings should be reversed on the basis that higher consumer costs are not a valid, constitutional public use or benefit.

B. The Commission has not addressed the Counties' argument that the treatment of safety-related evidence was so internally inconsistent as to render it illogical and wholly irrational in violation of Iowa Code § 17A.19(10)(i).

In their opening brief, the Counties argued at length that the Commission's treatment of safety-related evidence was inconsistent, illogical, and irrational because: (1) the Commission acceded to Summit's argument that safety-related information was preempted by the Pipeline Safety Act ("PSA") and not relevant, yet the Commission allowed Summit to introduce voluminous evidence on safety; and (2) the Commission refused to consider safety when determining the pipeline route because safety is preempted, yet the Commission imposed a number of substantive safety conditions on Summit's permit. *See* Counties' Brief at 60–72.

In its brief, the Commission fails to address this argument or attempt to justify the blatant inconsistencies in its Final Decision and Order. That omission is glaring. In fact, the only discussion of safety in the Commission's brief is found at pages 37–39, where the Commission argues that the safety requirements in its order do not conflict with federal Pipeline and Hazardous Materials Safety Administration ("PHMSA") regulations. *See* Respondent IUC's Brief at 37–39. However, that is not the correct standard. Under the PSA, "[a] state authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation." *See* 49 U.S.C. § 60104(c). According to the Eighth Circuit, "This Congressional grant of exclusive federal regulatory authority precludes state decision-making in this area altogether and leaves no regulatory room for the state to either establish its own safety standard or supplement the federal safety standards." *Kinley Corp. v. Iowa Utilities Bd.*, 999 F.2d 354, 357 (8th Cir. 1993). The PSA "leaves nothing to the states in terms of substantive safety regulation of interstate pipelines, regardless of whether the local regulation is more restrictive, less restrictive, *or identical* to the federal standards." *ANR Pipeline Co. v. Iowa State Commerce Com'n*, 828 F.2d 465, 470 (8th Cir. 1987) (emphasis added). Thus, whether the safety conditions imposed on Summit's permit are consistent with PHMSA regulations does not save them from preemption.

The Commission recognized that "[w]hile the Board may consider safety as part of its analysis, the Board cannot impose safety criteria on Summit." *See* Final Decision and Order at 222. Nonetheless, the IUC proceeded to impose a number of substantive safety requirements on Summit's permit:

- Requiring Summit to provide annual training to all local first responders (Final Decision and Order at 220);

- Requiring Summit to supply carbon dioxide monitors to each emergency management vehicle in communities impacted by the pipeline (Final Decisions and Order at 220);

- Requiring Summit to provide grants to county emergency response agencies to purchase additional safety equipment (Final Decision and Order at 220);

- Requiring Summit to use a supervisory control and data acquisition ("SCADA") system and a real time transient model ("RTTM") leak detection system to monitor the pipeline from the operations control center ("OCC") (Final Decision and Order at 221);

- Requiring Summit to conduct X-ray inspections of 100 percent of all pipelines welds, above the 10 percent required by PHMSA (Final Decision and Order at 221);

- Requiring Summit to hydrotest the pipeline at 125 percent maximum operating pressure ("MOP") (Final Decision and Order at 221);

- Requiring Summit to use thicker walled pipes and ductile arrestors (Final Decision and Order at 221);

- Requiring Summit to have its integrity management program ("IMP") cover its entire pipeline systems and not just high consequence areas ("HCAs") as required by PHMSA (Final Decision and Order at 221);

- Requiring Summit to provide emergency response training to emergency responders, provide carbon dioxide monitors to first responders, and comply with all PHMSA regulations regarding emergency response (Final Decision and Order at 223); and

- Requiring Summit to utilize and provide a Buxus-type system for emergency managers (Final Decision and Order at 223).

Summit attempts to justify the Commission's imposition of safety criteria, while also arguing that any attempt to regulate safety is preempted, by claiming that the Commission merely "observed that Summit would have certain safety measures in place," which is "not the same as regulating the location or operation of the pipeline based up on safety." *See* Summit's Brief at 82. However, this argument mischaracterizes the Commission's Final Decision and

Order, which repeatedly imposed the safety criteria as *conditions* or *requirements* of Summit's permit. *See* Final Decision and Order at 221 ("The Board will make these conditions, as well as others, as part of Summit Carbon's permit discussed later in this order...."); 222 ("The Board will require Summit Carbon to implement these features."); and 223 ("The Board will place these conditions on Summit Carbon's permit.").

At the same time the Commission was imposing substantive safety standards on Summit's permit, the Commission refused to consider safety when making routing determinations. The Commission stated it would "not use the dispersion modeling to assist with routing determinations or routing modifications, because any modification done based upon the dispersion modeling would be done under the guise of safety." *See* Final Decision and Order at 244. However, the PSA does not preempt state authorities from regulating the location and routing of pipelines, which is outside of PHMSA's jurisdiction. *See* 49 U.S.C. § 60104(e) ("This chapter does not authorize the Secretary of Transportation to prescribe the location or routing of a pipeline facility."). Additionally, the Eighth Circuit has confirmed that the PSA "does not prohibit local governments from considering safety" when making siting and routing decisions. *Couser v. Shelby County, Iowa*, 139 F.4th 664, 671 (8th Cir. 2025).

Although the Commission recognized that it was appropriate to consider safety in determining whether Summit should be granted a permit under Iowa Code chapter 479B, *see* Final Decision and Order at 218, it refused to require Summit to file safety-related information requested by the other parties, apparently acquiescing to Summit's argument that "documentation regarding safety is not relevant to any criteria before the Board...." *See* Summit's Initial Brief on Federal Preemption; Order Addressing Motion for Reconsideration. However, the Commission later permitted Summit, over the objection of the Counties and other

parties, to introduce voluminous safety-related evidence at the hearing. *See* Order Denying Motion to Strike. As such, the Commission allowed Summit to use safety as both a shield and a sword, or to "have its cake and eat it, too," by precluding the other parties from obtaining safety-related information from Summit on the basis that safety is preempted, while ultimately allowing Summit to rely on safety evidence to support its case. This was patently unfair and inconsistent. *Cf. Nolan v. Glynn*, 163 Iowa 146, 142 N.W. 1029, 1031 (1913) (holding that it is unfair and inconsistent to permit a party to use the physician-patient privilege as both a sword and a shield).

As demonstrated above, the Commission's imposition of safety criteria on Summit's permit while recognizing that such safety criteria are preempted, its refusal to consider safety when making routing determinations when such consideration is clearly not preempted, and its refusal to compel Summit to produce safety-related information while later allowing Summit to rely on safety-related evidence to support its case, are so "internally inconsistent they are irreconcilable and thus 'the product of reasoning that is so illogical as to render it wholly irrational' in violation of Iowa Code section 17A.19(10)(i)." *International Association of Fire Fighters, Local 1366 v. City of Cedar Falls*, 21 N.W.3d 441, 450 (Iowa Ct. App. 2024). While the power of judicial review does not confer authority to substitute the court's judgment for that of the agency, in this case it is the Commission "that disagrees with itself." *Id.* at 449. Such irreconcilable inconsistencies are not entitled to any deference by this Court. *Id.* at 450.

C. The Commission has not addressed the Counties' argument that the balancing test was applied illogically and irrationally.

The public convenience and necessity balancing test "weigh[s] the public benefits of the proposed project against the public and private costs or other detriments as established by the evidence in the record." *Puntenney*, 928 N.W.2d at 833. The costs and benefits must be placed on the correct sides of the scale. While various factors may be given different weight in the

analysis, the Commission may not, for example, treat something as a benefit when it is clearly a cost.

In justification of its decision, the Commission identified "three significant national issues: federal tax credits, low carbon fuel markets, and climate change." *See* Final Decision and Order at 105. The Commission also identified "two state issues: ethanol and economic impact." *See* Final Decision and Order at 125; Respondent IUC's Brief at 19. While these factors may properly be considered in the balancing test, they must be weighed on the correct side of the scale and considered in a consistent and logical manner. In this case, the Commission failed to do so.

The Counties' petition for judicial review raises the general question of whether the Commission's use of the balancing test is logical and rational, specifically alleging the Commission either failed to account for costs or improperly treated costs as benefits. Notably, the Commission treated taxes, consumer costs, and routing in a wholly illogical and irrational manner, so much so that the order is clearly arbitrary and unreasonable. *See* Counties' Brief at 73–74; *see also* Iowa Code §§ 17A.19(10) (i), (*l*), (m), (n). In reply to the Counties, the Commission essentially responds with "*See Final Decision and Order.*" This response is insufficient and unavailing, yet also revealing.

Although the Commission chooses to avoid the Counties' arguments on taxes and consumer costs, the Counties reiterate several prominent examples of the Commission's illogical, irrational, and results-oriented actions in determining public convenience and necessity.

1. *The Commission erred by treating both tax expenditures and tax revenues as public benefits in the balancing test.*

With respect to tax credits, the Commission argues that the federal 45Q and 45Z tax credits, which are direct payments from the government to industry, and 45Z tax credits available

to ethanol plants, should be weighed as a benefit that is "heavily in favor" of Summit's project. *See* Final Decision and Order at 109–11. Throughout its analysis, the Commission never separately considers the value of the tax credits—$414 million per year for 12 years, as estimated by Summit—as a cost to the public. *See* Summit Phillips Direct Exhibit 1 at 17. This is despite an Iowa statute and despite uncontroverted evidence in the record clearly establishing that tax credits are a cost to the public—tax *expenditures* ultimately funded by taxpayers. *See* Hearing Transcript Volume 14 at 3801 ("It's a cost to the taxpayer for sure."); Hearing Transcript Volume 14 at 3853 ("[T]ax credits are always considered a cost."); and Iowa Code § 2.48(1) ("'[T]ax expenditure' means an exclusion from the operation or collection of a tax imposed in this state. *Tax expenditures include tax credits*, exemptions, deductions, and rebates." (emphasis added)). Summit asserts the Counties' insistence on proper accounting "is simply bad public policy." *See* Summit Brief at 98. The Counties maintain the Commission's approach is not just illogical accounting, but clear legal error in the application of the balancing test.

In its Final Decision and Order, the Commission made great efforts to dismiss the huge fiscal costs of the tax credits to taxpayers. First, the Commission wrongly portrayed the tax credits as simply reducing Summit's federal tax bill when, under 45Q and 45Z, the tax credits are "refundable" or "direct pay" credits. Second, the Commission attempted to argue they were not expected to raise the national debt, an assertion based only on the testimony of Summit's commercial officer. Finally, the Commission attempted to distinguish a tax credit from a tax refund, arguing that to receive a tax credit a taxpayer must first take a particular government-incentivized action. *See* Final Decision and Order at 110, 239. However, whether these tax incentives are characterized as a credit or a refund is immaterial. Both are considered "tax expenditures" under Iowa law. *See* Iowa Code § 2.48(1). These arguments are not merely the

Commission attributing the wrong amount of weight to a factor; instead, they are the Commission putting the factor on the wrong side of the scale.

At the same time, under the state issue of "economic impact," the Commission readily treated Summit's speculative projected tax payments to state and local governments as a public benefit. *See* Final Decision and Order at 155–56. In doing so, the Commission wrongly shifted the evidentiary burden from Summit, who was seeking the permit, to the Counties and other intervenors who were not, arguing that the intervenors needed to show the extent to which the estimated revenues presented by Summit would be offset by costs incurred by the taxpayers. *See* Final Decision and Order at 154.

The Commission cannot logically treat tax contributions and tax expenditures both as benefits of the project without committing reversible legal error. It is the Commission's self-contradictory treatment of both tax expenditures and tax revenues as public benefits that gives rise to the Commission's legal error, not the fact that taxes were included in the balancing test. The Commission's treatment of tax expenditures *received* by Summit as a benefit to the public, while at the same time also treating tax revenues *paid* by Summit as a benefit, is so inconsistent and irrational as to be irreconcilable, and it clearly shows that the Commission's final order "disagrees with itself." *Int'l Ass'n of Fire Fighters, Loc. 1366 v. City of Cedar Falls*, 21 N.W.3d 441, 449 (Iowa Ct. App. 2024).

2. *The Commission erred by declining to weigh higher consumer costs as a cost to the public within the balancing test.*

The Commission considered low carbon fuel markets as a national factor and ethanol as a state factor within the balancing test, finding both weigh in favor of Summit's project. *See* Final Order at 114–16, 139–42. The two factors relate to the production and sale of ethanol. *Puntenney* makes clear that the public may benefit from a hazardous liquid pipeline when it produces

"longer-term, reduced prices" for consumers. 928 N.W.2d at 841. *Puntenney* further demonstrates that any benefits to the private parties sponsoring a project are distinct from benefits to the public. *See id.* (recognizing price reductions as public benefits, "even though the pipeline also provides [separate] benefits to the shippers of crude oil"). Despite these clear holdings, the Commission treated higher corn and fuel prices, which are undisputed private benefits to farmers and ethanol producers, as benefits to the *public*. *See* Final Decision and Order at 116, 142.

The economics of Summit's proposed pipeline are intended to (and likely will) result in higher corn prices and higher fuel prices. *See generally* Corn Processors' Brief. Meanwhile, there are no indications that the pipeline will increase the supply of ethanol as the producers seek new markets to increase demand, further increasing fuel costs. The rise in commodity and fuel prices will ripple through the supply chain, causing consumers, the public, to pay higher prices for food and fuel. Nevertheless, the Commission declined to weigh increases in consumer prices as a public cost when reviewing the two factors in the balancing test. *See* Final Decision and Order at 141.

When analyzing public costs and benefits within the ethanol factor, the Commission dismissed arguments about increased consumer prices as unpersuasive. *See* Final Decision and Decision at 141. In its initial brief to the Commission post–hearing, the Counties pointed to ample evidence in the record from Summit demonstrating the likelihood of high or higher corn and ethanol prices, as well as evidence that denying that the pipeline would lead to lower corn prices, evidence clearly important to the *Puntenney* court. Moreover, in this proceeding, Intervenors Corn Processors directly argue in favor of the benefits of higher corn and ethanol prices to farmers and the ethanol producers, not to the public at large.

Nonetheless, ignoring once again any public cost resulting from higher consumer prices, the Commission somehow convinced itself that ethanol plants pay a premium for corn now, so price increases are already factored into the market. In doing so, the Commission overlooks any possibility of *even higher* premiums and prices, as well as ignoring the detriment posed by deliberately sustaining artificially high consumer prices and costs. *See* Final Decision and Order at 141. In an especially indicative passage, the Commission even argued that the government and citizens are willing to pay higher costs. *See* Final Decision and Order at 141. This reasoning is not only contrary to the rationale of *Puntenney*, it wrongly puts higher costs to consumers on the *benefits* side of the scale and represents an irrational and illogical application of the balancing test in contravention of the Iowa Administrative Procedure Act. *See* 928 N.W.2d at 841 (lower consumer prices are public benefits); Iowa Code §§ 17A.19(10)(l), (m).

3. *The Commission erred by declining to weigh public costs and benefits pertaining to the pipeline's North-South Lateral.*

Summit's proposed pipeline route, as approved by the Commission, includes a North–South Lateral line running approximately 123 miles from Ida County to Fremont County to connect one small ethanol plant to the pipeline system. The Counties argued the Commission should deny this trunk line as failing to promote the public's convenience and necessity, but the Commission declined to separately apply the balancing test to the North-South Lateral. The public costs associated with this portion of pipeline are even greater in degree, given the disparity between the significant route length for limited resulting carbon sequestration. Nevertheless, the Commission relied upon the private benefits to Summit and the Fremont County ethanol plant to reject the Counties' argument. Doing so was illogical, irrational, and wholly unjustifiable. *See* Final Order at 64–65; Iowa Code §§ 17A.19(10)(l), (m).

In denying the Counties' request to deny the North-South Lateral, or at least to evaluate it individually, the Commission reasoned "[a]dopting the arguments surrounding the proposed denial . . . would effectively prohibit the construction of any pipeline in Iowa ever, as any segment or lateral would always be a small portion of a pipeline system." *See* Final Order at 64. Further, the Commission determined that assessing the North-South Lateral individually "would single out the Fremont County ethanol plant and dismiss the needs of the ethanol plant in Fremont County as well as any benefit derived from Summit Carbon's proposed hazardous liquid pipeline." *See* Final Order at 65. The Commission's first point is illogical and irrational when reviewed in the context of the Commission's statutory authority: "[t]he commission may grant a permit in whole *or in part* . . . ." *See* Iowa Code § 479B.9; Iowa Code § 17A.19(10)(l). Under the Commission's reasoning, if denying a pipeline lateral for its failure to promote the public convenience and necessity would "effectively prohibit the construction of any pipeline in Iowa ever," then it has failed to give effect to express text within Section 479B.9. *See* Final Order at 64; Final Order at 501–06 (Byrnes, Bd. Member, dissenting on this issue). The Commission's refusal to review the lateral's public convenience and necessity on this basis borders on absurd. *See* Iowa Code §§ 17A.19(10)(l), (m), (n).

Moreover, the Commission's second point about the needs of and benefits to the Fremont County ethanol plant illogically, irrationally, and unjustifiably relies upon the private interests of the specific plant and Summit without regard for public costs and benefits specific to this lateral. This prioritization of private interests is illogical and irrational under the *Puntenney*-approved balancing test for the *public* convenience and necessity, which weighs the public costs and benefits. *See* 928 N.W.2d at 841; Iowa Code §§ 17A.19(10)(l), (m). Not only does the Commission invoke private benefits to justify its decision but it fails to recognize the inequities

between the balance of public costs and benefits for the project as a whole and that balance specific to this route section. Because the public convenience and necessity standard requires weighing the public costs and benefits, the Commission's reasoning lacks logic under the relevant law.

For these reasons, the Commission's reasoning and ultimate decision not to deny the North-South Lateral, or at least to review it individually, is an illogical and irrational interpretation of Iowa Code § 479B.9; an irrational and illogical application of the balancing test of public costs and public benefits to this section of pipeline, where the costs are greater in degree than in the context of the pipeline as a whole; and is altogether unreasonable, arbitrary and capricious. *See* Iowa Code §§ 17A.19(10)(l), (m), (n).

CONCLUSION

The Commission made many errors in its 507-page Final Decision and Order. The Counties pleaded and briefed several of those errors. Among the most egregious of those errors are the Commission's unconstitutional public use analysis, its illogical and self-contradictory treatment of safety, and its illogical application of the balancing test. The Commission's brief makes very little effort to address any of these errors, yet they are all significant and they all represent independent grounds for reversing the Commission's grant of a permit to Summit.

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4922-0653-8070-2\20586-017