

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE APPLICATION
BY SCS CARBON TRANSPORT, LLC
FOR A PERMIT TO CONSTRUCT A
CARBON DIOXIDE PIPELINE

HP22-001

RESPONSE TO LANDOWNER MOTION
TO DISMISS OR IN THE ALTERNATIVE
STAY THE PROCEEDING

Comes now, Dakota Ethanol, LLC, Glacial Lakes Energy, LLC, Redfield Energy, LLC and Ringneck Energy, LLC, (hereinafter referred to collectively as “the Ethanol Plants”) by and through their counsel of record and resists the certain Landowners’ (“Landowners”) Motion for Approval of Party Status Applications filed after April 28, 2022 and Motion for Extension of Intervention Deadline or in the Alternative, Motion for Stay of all Proceedings, as well as a Motion to Dismiss. In support of their response hereunder, the Ethanol Plants state as follows:

In what can be seen as an effort to delay the permitting process for the Applicant in this docket, Landowners through counsel offer the Commission several opportunities to expand its statutory authority and to add or read into its very rules and governing statutes language that does not exist. The Commission should, in the motions pending and filed by the Landowners on April 28 and May 17, 2022, reject the requests and those efforts.

The Ethanol Plants have a unique interest that is direct both for their facilities themselves and also for their membership and agricultural partners in seeing the Applicant’s project move forward. Carbon capture and sequestration ensures that the US ethanol market and ethanol plants that utilize such efforts will be able to maintain a competitive balance with other biofuel producers who by other available carbon capture and sequestration opportunities otherwise have

a competitive advantage. For these plants in South Dakota to maintain an equal footing with other ethanol and biofuel plants outside of the state, able to currently capture or limited carbon produced in the production process, the Applicant and its project is essential not only for themselves but for the agricultural communities and producers that support them.

In resisting the motion of the Landowners and joining to the extent relevant the motion of the Applicant in resistance, the Landowners' requests must be denied for several reasons. It is true that SDCL 49-41B-5.2 and 40-41B-11(2) require a description of a location of a facility. ARSD 20:10:22:11 describes this as a general site description, specific only to location with respect to State, County and other political subdivisions. Landowners ask for the Commission in their pending motions to require in its reading of statute and rule that the term "location" including a specificity not there. They seek with strict detail a route at this stage of the application process so as to not allow any alteration or movement of the pipeline itself. Failure to do this causes in the Landowners' pleadings a failure of service and incomplete application warranting dismissal under SDCL 49-41B-13(2). A statute which requires an application "generally" in the form required.

The Ethanol Plants would argue that Landowners are seeking to impart with their framing of the issue before the Commission an engineering certainty or absolute. This ignores statutes and rules governing an application that provides for additions and modifications to the facility. See SDCL 49-41B-11(5). See also, ARSD 20:10:22:12 and 25. The Landowners' ask under SDCL 49-41B-13(2) makes those other statutes or rules meaningless.

The Landowners suggestion to its logical end would have the Commission require an applicant to not only have engineering certainty but have all required easements and landowner specific requests accounted for prior to application. This is found nowhere in the law.

Alternative arguments to stay by the Landowners that ARSD 20:10:22:40 reestablishes a 60 day application for party status period is not provided for in rule or statute and again reflects the wishes of the Landowners seeking to add language to what governs the Commission's review. The application has been submitted and the Commission can determine that it complies at this point of the proceeding. The requirements of SDCL 49-41B-22 will be determined in the process of the docket. The requirements of SDCL 49-41B-22 are not now a reason to grant the Landowners requested relief.

The Landowners also suggest the Commission act under authority that is clearly not found in statute to delay or extend the period in which the Commission has to act on the application. SDCL 49-41B-24.1. Protests about the fairness or the reasonableness of the Commission acting on its own at the requests of a third party cannot overcome the statutory authority limiting the ability of the Commission.

Asking the Commission to ignore, or change plain language in statute is asking the Commission to improperly act in a manner tantamount "to judicial supervision of the legislature." *In re West River Elec. Assn, Inc.* 675 NW2d 222, 228 (S.D. 2004), quoting *State v. Galati*, 365 NW2d 575, 577 (S.D. 1985). When interpreting a statute, this Commission, acting as a Court, must give the plain meaning of the statute its effect. Plain meaning is given to the words and phrases of a statute. See, *Heinemeyer v. Heartland Consumer Power Dist.* 757 NW2d 772, 775 (S.D. 2008). *internal citations omitted.* Here, the rules and statutes the Landowners seek relief under are clear and unambiguous and provide no help to their efforts.

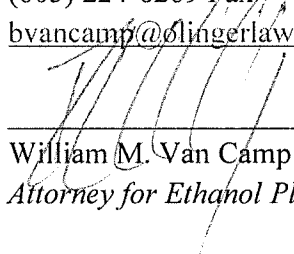
If a party wishes to obtain status in this docket as a late intervener, rules already exist for that. No stay is necessary. A party may always intervene past a deadline with Commission approval if its interests are distinct from the public at large, the other parties would not be

unduly prejudiced by the admission, an act by the Commission will impact the party uniquely and directly and the public interest will be detrimentally impacted by the party not being granted late intervention. See, ARSD 20:10:01:15.02.

The Ethanol Plants would ask the motion of the Landowners be denied and the docket proceed accordingly.

Dated this 1st day of June, 2022.

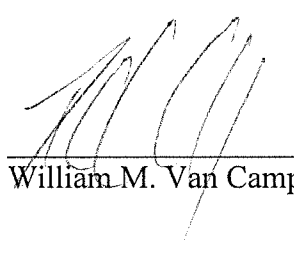
OLINGER, LOVALD, MCCAHERN,
& VAN CAMP, P.C.
117 East Capitol Avenue
PO Box 66
Pierre, South Dakota 57501-0066
(605) 224-8851 Phone
(605) 224-8269 Fax
bvancamp@olingerlaw.net



William M. Van Camp
Attorney for Ethanol Plants

CERTIFICATE OF SERVICE

William M. Van Camp, attorney for the Ethanol Plants hereby certifies on June 1, 2022, he filed and served via electronic means and pursuant to direction from the Commission and true and correct copy of the foregoing in the above-captioned docket to the parties listed on the attached service list via email.



William M. Van Camp

SERVICE LIST

patty.vangerpen@state.sd.us; Kristen.edwards@state.sd.us; darren.kearney@state.sd.us;
jon.thurber@state.sd.us;
Brett@mayadam.net;
cody@mayadam.net;
Jpowell@summitcarbon.com;
jvilsack@summitcarbon.com;
eschovanec@summitcarbon.com;
chill@summitcarbon.com;
joycealderson@yahoo.com;
mandihagemann@hotmail.com;
kunzelml@gmail.com;
Audreyjo83@hotmail.com;
hartfordstuff@peoplepc.com;
grossfarms04@gmail.com;
fishingwaldners@gmail.com;
jodi@bigsiouxcws.com;
balderso76@gmail.com;
duane.sutton@browncounty.sd.gov;
ckhauck411@gmail.com;
carthagecity@alliancecom.net;
cityhall@hartfordsd.us;
leola@valleytel.net;
dzulkosky@iw.net;
christine.tarbox@state.sd.us;
donaldsieverding@yahoo.com;
clbasler@itctel.com;
lemsfarmland@gmail.com;
bonnema@midco.net;
bdkutzler@gmail.com;
davidj@alliancecom.net;
tdlarson@unitelsd.com;
kappermancm@aol.com;
cattlecents@gmail.com;
leisethdpl@hotmail.com;
lemsfarmland@gmail.com;
edwdd@brookings.net;
becklaw@midconetwork.com;
richardhaase@unitelsd.com;
erdmannangus@valleytel.net;
bealdersons@gmail.com;
moore@femelectric.coop;
todd@wslawfirm.net;
ckhauck411@gmail.com;
ga.fossum@hotmail.com;

Gaylynn.hagemann@gmail.com;
gweisser@valleytel.net;
eklewis@goldenwest.net;
ghilt1972@gmail.com;
jjh@abe.midco.net;

Torkelson2010@hotmail.com;
Dixie.opdahl@state.sd.us;
auditor@handcountysd.org;
ffemshart@unitelsd.com;
helenmaryschmidt@hotmail.com;
hshort57@gmail.com;
sfeickert@valleytel.net;
humfireamb@midconetwork.com;
cityhall@humboldtsd.org;
stevenpias@gmail.com;
hydeaud@venturecomm.net;
jmiles@siouxvalley.net;
jarret.haven@gmail.com;
jthaven@nvc.net;
Jboll83@gmail.com;
topfarms@svrv.com;
sjdonahue@hotmail.com;
limingje@gmail.com;
jeff.pospisil@dakotasumc.org;
jodyeliackerman@gmail.com;
earthworm43sd@hotmail.com;
anderson_jdsa@hotmail.com;
djgrenz@nvc.net;
todd@wslawfirm.net;
klreden@siouxvalley.net;
heykevinj@hotmail.com;
office@kingbrookruralwater.com;
kingsburycountysa@wslawfirm.net;
lemsfarmland@gmail.com;
kgrace2434@gmail.com;
ljbr@goldenwest.net;
lakegovt@lake.sd.gov;

kelli.wollmann@lake.sd.gov;
lbnick@venturecomm.net;
andfamily@venturecomm.net;
tzantow@valleytel.net;
leolafire2016@gmail.com;
tlarson@lcrws.org;
bollranch4@gmail.com;
wgolden@lincolncountysd.org;

jmeader@lincolncountysd.org;

ldansmannichols@gmail.com;
gracel-58@hotmail.com;
linette.steinmetz@gmail.com;
lischad96@gmail.com;
khoefert@hotmail.com;
klreden@siouxvalley.net;
mlharden7474@gmail.com;
marschickens@icloud.com;
mjschmidt@dedicatedmed.com;

husmann@hotmail.com;
mccookaud@triotel.net;
austinhoffman@valleytel.net;
mfisch@nvc.net;
mbcfisch@nvc.net;
jmiles@siouxvalley.net;
minerauditor@minercountysd.org;
ngrace914@gmail.com;
gracel-58@hotmail.com;
gracel-58@hotmail.com;
noreen@venturecomm.net;
pat.beckman08@gmail.com;
kdwommack@gmail.com;
Patty57104@midco.net;
leisethp@itctel.com;
lemsfarmland@gmail.com;
bret@merklelaw.com;
jmnandersen@yahoo.com;
Sh5875@comcast.net;
ljbr@goldenwest.net;
richardhaase@unitelsd.com
s2740@hotmail.com;
dross@nrctv.com;
rod8792@hotmail.com;
atq@goldenwest.net;
shariheidenspronk@gmail.com;
b_boboitt@comcast.net;

signeb@comcast.net;
manager@siouxruralwater.com;
karasemmler@sdaonline.com;
vfischbach@nvc.net;
Sh5875@comcast.net;
tomhuls@icloud.com;
tom_spisak@hotmail.com;
lbasler59@yahoo.com;
tgobele@hotmail.com;
ltleshuz@goldenwest.net;
cityhall@humboldtsd.org;
thilt@wsbks.com;
troy_skelton@hotmail.com;
Mickmick60@yahoo.com;
jon_beal@budsiouxfalls.com;
ahammrich@webwater.org;
daniel.hoey@k12.sd.us;
wh401889@hotmail.com;
Torkelson2010@hotmail.com;
2gntzland@valleytel.net;
gpldc@aol.com;
mlor@liuna.org;
nrunke@local49.org;
pruntyfarms@hotmail.com;
frankalvine@gmail.com;
pruntyfarms@hotmail.com;
pruntyfarms@hotmail.com;

rrsieh@valleytel.net;
pruntyfarms@hotmail.com;
highmorefd@venturecomm.net;
Kristie57456@gmail.com;
Dmjones1941@outlook.com;
John.d.parker@sd.nacdn.net;
pruntyfarms@hotmail.com;
dsacahill@kc.surewest.net;
gfalvine@gmail.com;
sarahprunty@hotmail.com;
Agroman02@aol.com;
fran@wildwaterwest.com;
jed_anliker@hotmail.com;
Jjbender929@yahoo.com;
bonnemamark@gmail.com;
Cat_rider@nvc.net;
camplois@hotmail.com;
lindaandbobc@gmail.com;
topfarms@svtv.com;
jrfauth@valleytel.net;
smfauth@valleytel.net;
smfauth@valleytel.net;
lancefeickert@hotmail.com;
sfeickert@valleytel.net;
Fog.9@yahoo.com;
Cassandraj.hinz@gmail.com;
drvetmike@yahoo.com;
aaronkappes@gmail.com;
tekappes@gmail.com;
Alambert2019@yahoo.com;
gary@lamontenterprises.biz;
Reetta.sieh@k12.sd.us;
Mike_mardian@hotmail.com;
Rebecca.melland@outlook.com;
r.meyer@midco.net;
tzantow@valleytel.net;
millermotorsportsllc@gmail.com;
machmi@hotmail.com;
Philfly2@gmail.com;
Kevinrath62@gmail.com;
marcusrath@icloud.com;
Al_evie@outlook.com;
jervinanddolly@live.com;
jwolf@itctel.com;
tzantow@valleytel.net;
dprogers@riterlaw.com;
bvancamp@olingerlaw.net;
bjorde@dominalaw.com;