

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

<b>IN THE MATTER OF THE APPLICATION BY )</b>	<b>ORDER FOR AND NOTICE</b>
<b>SCS CARBON TRANSPORT LLC FOR A )</b>	<b>OF EVIDENTIARY HEARING</b>
<b>PERMIT TO CONSTRUCT A CARBON )</b>	
<b>DIOXIDE TRANSMISSION PIPELINE )</b>	
<b>)</b>	<b>HP22-001</b>

On February 7, 2022, the South Dakota Public Utilities Commission (Commission) received an Application for a Permit to Construct a Carbon Dioxide Transmission Pipeline (Application) from SCS Carbon Transport LLC (Applicant or SCS), a limited liability company owned by Summit Carbon Solutions, LLC. Applicant proposes to construct and operate a carbon dioxide (CO<sub>2</sub>) transmission pipeline (Project). The Project is approximately 2,000 miles of pipelines for the transportation of CO<sub>2</sub> from more than 30 ethanol plants across five states, including seven ethanol plants in South Dakota, to underground injection control facilities in North Dakota. The proposed route of the main line enters South Dakota in Lincoln County at the Iowa/South Dakota border and extends in a northwesterly direction, exiting the state at the South Dakota/North Dakota border in McPherson County. In addition to the main line, the proposed Project includes lateral and trunk lines connecting ethanol plants to the main line. The proposed length of pipelines through South Dakota is approximately 477 miles and would cross the counties of Beadle, Brown, Clark, Codington, Edmunds, Hamlin, Hand, Hyde, Kingsbury, Lake, Lincoln, McCook, McPherson, Minnehaha, Miner, Spink, Sully, and Turner.

On February 9, 2022, Vice Chairperson Kristie Fiegen filed a letter delivered to Governor Kristi Noem advising of a conflict of interest under SDCL 49-1-9 after learning of family ownership of land on the proposed Project route. On February 10, 2022, the Commission issued a Notice of Application; Order for and Notice of Public Input Meetings; Notice of Opportunity to Apply for Party Status. Pursuant to ARSD 20:10:22:40, the deadline for persons to file an application for party status was April 8, 2022. On February 16, 2022, Josh Haeder, State Treasurer, was appointed by Governor Noem to serve as an Acting Commissioner in this docket. On February 24, 2022, the Commission issued an Order Assessing Filing Fee; Order Authorizing Executive Director to Enter into Consulting Contracts. Public input meetings were held March 22 through March 25, 2022, at various locations in the Project's footprint.

On April 26, 2022, the Commission issued an Order Granting Party Status Applications. On May 5, 2022, the Commission issued an Order Granting Party Status; Order Denying Party Status; Order Granting Withdrawal. On May 13, 2022, the Commission issued an Order Granting Party Status; Order Denying Party Status. On June 13, 2022, the Commission issued an Order Granting, in part, Motion to Extend Final Decision Deadline; Order Denying Landowners' Motion to Dismiss and, in the alternative, Motion for Stay. The Commission has issued orders granting requests to withdraw party status to Daniel Hoey on behalf of Intervenor West Central School District, Greg Alvine, Hand County, Jayne and Blaise Fogarty, and Jody Eli-Ackerman.

On January 11, 2023, the Commission issued an Order Granting Motion for Procedural Schedule; Order Granting Withdrawal of Party Status. On January 19, 2023, the Commission issued an Order Denying Renewed Motion to Dismiss and Return Summit's Application, or in the Alternative, a Motion for Stay. On January 30, 2023, the Commission issued an Order For and Notice of Motion Hearing on Less than 10 Days' Notice. On February 15, 2023, the Commission issued an Order Denying Motion to Reconsider Procedural Schedule; Order Setting Date for Final Decision and Order and established a procedural schedule with an evidentiary hearing to commence September 11, 2023, and established November 15, 2023, as the deadline for a final decision. On April 18, 2023, the Commission issued an Order Granting Motion for Ten-Day Discovery Response Deadline. On

August 8, 2023, Commission granted Staff's Motion for Time Certain for Witness Testimony for witnesses William R. Byrd, Jaron Condley, Matthew Frazell, Brian Sterner and Alissa Ingham. Specifically, Staff requested those witnesses be permitted to testify beginning on September 19, 2023, and into September 20, 2023, if necessary.

The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26, 15-6, and 49-41B, and ARSD Chapters 20:10:01 and 20:10:22. The Commission may rely upon any or all of these or other laws of this state in making its determination.

A hearing will be held beginning at 9:00 a.m., CDT on September 11 through September 27, 2023, at the Casey Tibbs South Dakota Rodeo Center at 210 Verendrye Drive, Fort Pierre, South Dakota.

At the hearing, each party will be permitted to present an opening statement summarizing the evidence that such party will offer into evidence and to briefly and concisely state the issues involved in the case. Opening statements will be limited to 10 minutes, however, a party may submit their opening statement in writing.

The hearing will be a quasi-judicial contested case proceeding conducted pursuant to SDCL Chapter 1-26. All parties will have the opportunity to appear, present evidence, cross-examine the other parties' witnesses, and exercise all other rights afforded by SDCL Chapters 1-26 and 49-45, and ARSD Chapters 20:10:01. The Commission may also rely on any applicable rules of evidence including SDCL Chapter 19-19 in conducting the evidentiary hearing.

All parties have the right to be present and to be represented by an attorney. Pursuant to South Dakota law, natural persons maybe appear pro se, however, a company or entity must be represented by a licensed attorney. These rights and other due process rights will be forfeited if not exercised at the hearing. All persons testifying will be subject to cross-examination. The Commission's final decision will be based solely on the testimony and evidence offered and received into evidence at the hearing. If a party or its representative fails to appear at the time and place set for the hearing, a decision may be issued by default pursuant to SDCL 1-26-20. As a result of this hearing, the Commission will make a decision, including findings of fact and conclusions of law, on the issue set forth above. The Commission's final decision may be appealed by the parties to the circuit court and the State Supreme Court as provided by law.

For approval, Applicant must show that the proposed Project will comply with all applicable laws and rules, will not pose a threat of serious injury to the environment nor to the social and economic condition of inhabitants or expected inhabitants in the siting area, will not substantially impair the health, safety or welfare of the inhabitants, and will not unduly interfere with the orderly development of the region with due consideration having been given to the views of governing bodies of affected local units of government. Based upon these factors, the Commission will decide whether the permit to construct should be granted, denied, or granted upon such terms, conditions, or modifications of the construction, operation, or maintenance as the Commission finds appropriate. It is therefore

ORDERED, that the Commission will hold an evidentiary hearing on the Application and Project beginning on:

**Monday, September 11 – Saturday, September 16, 2023,  
Monday, September 18 – Thursday, September 21, 2023, and  
Monday, September 25 – Wednesday, September 27, 2023.**

**The first day will begin promptly at 9:00 a.m. CDT at the Casey Tibbs South Dakota Rodeo Center at 210 Verendrye Dr., Fort Pierre, South Dakota.**

Pursuant to the procedural schedule in this docket, all exhibits reasonably known to the offering party prior to the evidentiary hearing must be marked and filed by 5:00 p.m. CDT on September 6, 2023.

Pursuant to the Americans with Disabilities Act, these meetings will be held in physically accessible locations. Please contact the Public Utilities Commission at least 48 hours prior to the meeting if you have special needs so arrangements can be made to accommodate you.

The Commission's contact information is: Public Utilities Commission, 500 E. Capitol Avenue, Pierre, SD, 57501; phone (605) 773-3201.

Dated at Pierre, South Dakota, this 14<sup>th</sup> day of August 2023.

<b>CERTIFICATE OF SERVICE</b>
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically or by mail.
By: <u>Adam de Hueck</u>
Date: <u>8/14/23</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Gary Hanson  
GARY HANSON, Commissioner

Chris Nelson  
CHRIS NELSON, Commissioner

Josh Haeder  
JOSH HAEDER, Acting Commissioner