

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

IN THE MATTER OF THE APPLICATION BY)	ORDER GRANTING MOTION
SCS CARBON TRANSPORT LLC FOR A)	TO DENY APPLICATION OF
PERMIT TO CONSTRUCT A CARBON)	SCS CARBON TRANSPORT
DIOXIDE TRANSMISSION PIPELINE)	LLC
)	
)	
)	HP22-001

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 (CO₂) transmission pipeline (Project). The Project is approximately 2,000 miles of pipelines for the transportation of CO₂ 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. Party status has been granted to numerous individuals and entities.

On August 14, 2023, the Commission issued an Order for and Notice of Evidentiary Hearing, noticing the evidentiary hearing in this docket to commence on September 11, 2023.

On August 18, 2023, intervenors represented by attorney Brian Jorde (Landowners) filed Landowners' Motion to Return Application. In the Motion to Return Application, Landowners request the Commission return the Application pursuant to SDCL 49-41B-13(1). Following a hearing on the motion, the Landowners' Motion to Return Application was denied.

On August 21, 2023, SCS filed a Motion for Order Preempting County Ordinances. By a filing made on September 7, 2023, SCS withdrew its Motion for Order Preempting County Ordinances. In response to the withdrawal of SCS's, Commission Staff filed a Motion to Deny Application on September 8, 2023. In its Motion to Deny Application, Commission Staff argued

that because SCS was no longer requesting preemption and the proposed route violated county ordinances in four South Dakota counties, SCS's permit must be denied as a matter of law based on the applicant's burden of proof set forth in SDCL 49-41B-22(1) and the requirement that no route shall be designated that violates local ordinances without preemption pursuant to SDCL 49-41B-28. Commission Staff cited to material misstatements contained within the Application regarding SCS's ability to comply with local ordinances and requested the Application be denied without prejudice pursuant to SDCL 49-41B-13(1) and (2). The Motion was joined by Intervenor Landowners represented by Attorney Brian Jorde. On September 8, 2023, SCS filed a Response to Staff Motion to Deny Application. In its response, SCS argued that SDCL 49-41B-22(1) is forward looking, such that the applicant does not necessarily need to have each county permit in hand or be in compliance with local ordinances at the time of the evidentiary hearing.

The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26 and 49-41B. As part of the evidentiary hearing in this docket on September 11, 2023, the Commission took up Staff's Motion to Deny Application. After hearing from the parties, the Commission unanimously voted to grant the Motion and Deny the Application pursuant to 49-41B-13. The Commission specifically found that the proposed route violated county ordinances and could not be permitted pursuant to SDCL 49-41B-28, making any representations within the Application that the Applicant would comply with all laws and regulations, including local ordinances, material misstatements of fact.

It is therefore

ORDERED, that the Motion to Deny Application is granted and SCS's Application is denied without prejudice pursuant to SDCL 41-41B-13.

Dated at Pierre, South Dakota, this 13th day of September 2023.

CERTIFICATE OF SERVICE	
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.	
By:	<u>Adam C. Hueck</u>
Date:	<u>9/13/23</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Gary Hanson
GARY HANSON, Commissioner

Chris Nelson
CHRIS NELSON, Commissioner

Josh Haeder
JOSH HAEDER, Acting Commissioner