

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

<b>IN THE MATTER OF THE APPLICATION BY</b>	)	<b>ORDER GRANTING</b>
<b>SCS CARBON TRANSPORT LLC FOR A</b>	)	<b>MOTION FOR PROTECTIVE</b>
<b>PERMIT TO CONSTRUCT A CARBON</b>	)	<b>ORDER</b>
<b>DIOXIDE TRANSMISSION PIPELINE</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), 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 469 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, and Jayne and Blaise Fogarty.

On November 8, 2022, Applicant filed a Motion for Protective Order and a Motion for Scheduling Order.

The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26 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.

At its regularly scheduled meeting on November 18, 2022, the Commission considered the Applicant's motions. After hearing argument from the parties, the Commission voted unanimously to issue a Scheduling Order once the parties have had an opportunity to confer on scheduling dates. If the parties cannot mutually agree on a Scheduling Order, each party shall submit its proposal by December 9, 2022. As for the Motion for Protective Order, after hearing argument from the parties, the Commission voted unanimously to impose protective provisions on parties' discovery of materials deemed confidential, subject to the provisions of ARSD 20:10:01:39 through 20:10:01:44 and to add the language "in accordance with state law or administrative rules pertaining to the retention of records" in paragraph 13. It is therefore

ORDERED, that Applicant, Intervenor parties, and the Commission's Staff (Parties) shall treat information provided to them by any other Party to the case through discovery that is identified by the providing Party as "Confidential" as confidential information subject to the Commission's rules regarding confidential information and to the following additional protective provisions of this Protective Order:

1. Documents to be filed or provided to a Party pursuant to this Order for which the filing or providing Party seeks confidential treatment shall be stamped or sealed as "Confidential" in accordance with the Commission rules regarding the marking and filing of confidential information or shall be identified as "Confidential" information on the document or in the cover document for such information or file.

2. All documents marked Confidential filed by a Party or provided or disclosed by any Party to any other Party through discovery, including depositions, shall be treated as confidential information by the receiving Party pursuant to ARSD 20:10:01:39 through 20:10:01:44 and SDCL 15-6-26(c), except that access to and use of such information by the receiving Party's counsel of record for purposes of preparation for the proceedings in this matter and use in the proceedings shall be permitted subject to the provisions of this Protective Order.

3. Any Party, and their attorney, receiving Confidential information from another Party, or from the Commission in the case of filed documents, is responsible to the Commission and to the providing Party for limiting disclosure only to such Party's attorneys of record, their co-counsel, and professional staff. In addition, expert witnesses retained by the parties entitled to access to confidential information pursuant to the terms of this Protective Order may review confidential documents provided that each such expert is identified to the Applicant in advance of the disclosure and each such expert has signed a Non-Disclosure Agreement.

4. The Parties, their attorneys and other employees, agents, consultants and representatives shall be subject to a standard of good faith in their election to designate information as confidential and their disclosure, receipt, custody and use of Confidential information. The producing Party (i) will only seek confidential treatment for information having bona fide trade secret or proprietary value, containing sensitive personal identification information, or required to be maintained as confidential by state or federal law or regulation or by contract, (ii) will make reasonable efforts to narrow the scope of information designated as confidential, and (iii) upon request of the receiving Party, will confer in good faith to narrow the scope of information designated as confidential to the minimum redaction that will not compromise the confidentiality or propriety value of the information for which confidential treatment is justified.

5. The Commission shall treat Confidential Information produced pursuant to this

Order as confidential information subject to ARSD 20:10:01:39 through 20:10:01:44, provided that such confidential information is marked as confidential and, in the case of filed documents, filed in accordance with the Commission's filing rules for confidential information. The Commission shall conduct all hearings involving Confidential Information in camera with only Commission employees, the Parties' attorneys and other authorized persons present during the portion of the hearing in which such information is offered or discussed. Any person, other than a Commission employee or a Party, who desires to have access to Confidential information shall comply with the procedures of ARSD 20:10:01:42 and 20:10:01:43.

6. Persons obtaining access to Confidential Information under this Order shall use the information only in the conduct or settlement of this proceeding and any judicial proceeding arising out of it and shall not use such information for any purpose unrelated to the conduct of this proceeding, including business, governmental, commercial, political, or public relations purposes. Persons obtaining access to Confidential Information under the terms of this Order may disclose, describe, or discuss the Confidential Information in any pleading filed in this proceeding, provided that such pleading is stamped "Confidential" and filed under seal, and provided that a separate public version is filed in which all Confidential Information is redacted.

7. Documents, including Confidential Information, received by a Party through discovery shall be subject to SDCL 15-6-5(g) and shall not be filed except in accordance with the exceptions set forth in that statute or an order of the Commission.

8. If an attorney for purposes of another proceeding, a court, or another administrative agency subpoenas or orders production of the Confidential Information, the Party or person having access to the Confidential information to whom the order or subpoena is directed shall promptly notify the providing Party of the pendency of such subpoena or order.

9. Nothing in this Order shall prevent or otherwise restrict counsel for a Party from rendering advice to their client regarding this proceeding and, in the course thereof, making professional analysis and use of the Confidential Information, provided, that in rendering such advice and otherwise communicating with such client, counsel shall not make disclosure of any confidential fact or assertion except to other counsel of record except in accordance with the procedures set forth in this Protective Order, the Commission's rules, or a subsequent order of the Commission.

10. The Parties and their attorneys are responsible for employing reasonable measures to control, consistent with this order, duplication of, access to, and distribution of copies of the Confidential information. Parties shall not duplicate any stamped information identified by the providing Party as Confidential except working copies and for filing at the Commission under seal.

11. This Order shall not be construed as a determination by the Commission or an agreement or concession by any Party that any document or data provided under the terms of this Order in fact contains Confidential information entitled to protection. This Order is not intended to diminish any Party's right, through appropriate motion, to contest the entitlement of any particular document or data to confidential treatment or to request a more limited scope designation with respect to a document or data, such as redaction of only the particular information required by law, rule or contract to be kept confidential, sensitive personal identity information, competitively valuable material or other material properly entitled to confidential treatment.

12. This Order is not intended to prohibit any Party from (i) objecting to production, or to production only subject to special protective measures, of any material having particular sensitivity, such as material subject to homeland security or other federal or state statutes, rules or orders, (ii) objecting to production of documents on grounds of relevancy, materiality, admissibility, undue burdensomeness or other recognized grounds for objection to discovery, or (iii) objecting to the relevancy, materiality, or admissibility into evidence in this proceeding of any of the Confidential information furnished or received pursuant to this Order.

13. Within two weeks after final resolution of this proceeding (which includes administrative or judicial review), Parties and their attorney(s) shall return all copies of Confidential information and all analyses or other compilations which contain any of the Confidential information in their possession to providing Parties or their attorneys in accordance with state law or administrative rules pertaining to the retention of records, or destroy all such Confidential information and certify, under penalty of perjury, that such destruction has occurred. In the case of analyses or compilations containing Confidential information, all Confidential information set forth in such document shall be redacted if the document is to be retained and a copy of the redacted version shall be served on the disclosing party(ies) at least ten days before disclosure of the redacted version is made to anyone other than the authorized recipients.


14. The provisions of this Order shall not terminate at the conclusion of this proceeding. It is further

ORDERED, that the Parties shall confer with each other on scheduling dates. If the Parties cannot mutually agree on a Scheduling Order, each Party shall submit its proposal by December 9, 2022.

Dated at Pierre, South Dakota, this 29<sup>th</sup> day of November 2022.

<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 deHueck</u>
Date: <u>11/29/22</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:



CHRIS NELSON, Commissioner



GARY HANSON, Commissioner



JOSH HAEDER, Acting Commissioner