

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

<p>IN THE MATTER OF THE APPLICATION BY SCS CARBON TRANSPORT LLC FOR A PERMIT TO CONSTRUCT A CARBON DIOXIDE TRANSMISSION PIPELINE</p>	<p style="text-align: center;">HLP22-001</p> <p style="text-align: center;">STAFF’S RESPONSE TO LANDOWNER/INTERVENOR ROD AND JOY HOHN’S 1st SET OF REQUESTS FOR ADMISSIONS TO SOUTH DAKOTA PUBLIC UTILITIES COMMISSION</p>
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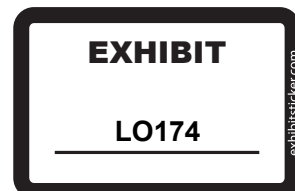
South Dakota Public Utilities Commission Staff (Staff) makes the following responses to Requests for Admissions. Staff objects to definitions and directions in answering the requests to the extent that such definitions and directions deviate from the South Dakota Rules of Civil Procedure. Staff further objections to these Requests insofar as the Requests are directed to the South Dakota Public Utilities Commission (Commission), rather than Staff. However, Staff submits its Responses on behalf of Staff and not the Commission, as per our understanding from a similar request in Docket HP22-002.

REQUEST FOR ADMISSION #1: Admit that Applicant, SCS Carbon Transport LLC, failed to follow the letter of the law regarding SDCL 49-41B-5.2.

RESPONSE: Objection. This request calls for a legal conclusion. Subject to and without waiving its object, Staff admits.

REQUEST FOR ADMISSION #2: Admit that Applicant failed to timely and properly notify multiple landowners owning property located within one-half mile of its proposed hazardous pipeline route in South Dakota.

RESPONSE: Objection, this request calls for a legal conclusion. Staff further objects to the question as vague, specifically as to the phrase “properly notify”. Because the request also uses the word “timely”, Staff assumes that “properly notify” means something other than timely. Subject to and without waiving its objection, Staff admits that the information Staff has at this time indicates that Applicant did not send notice within 30 days of filing the Application as required by SDCL 49-41B-5.2 to a number of landowners.



REQUEST FOR ADMISSION #3: Admit that no public meetings have been held for the benefit of affected landowners whom Applicant failed to timely notice under SDCL 49-41B-5.2.

RESPONSE: Objection, this request is based on an improper assumption that calls for a legal conclusion. Staff further objects to the question as vague in that the term “public meetings” is vague or ambiguous, as is the phrase “for the benefit of”. Subject to and without waiving its objection, Staff admits that it does not have knowledge of any public input meetings as contemplated by SDCL 49-41B-15 and 49-41B-16 being held other than those held on March 22-25, 2022. If Applicant or another party or entity held public meetings, Staff may not have knowledge of that. As far as who the meetings that were held on March 22-25, 2022, were “for the benefit of”, it is Staff’s position that the PUC published newspaper notice and held those meetings for the benefit of all interested persons, including those landowners who received late notice.

REQUEST FOR ADMISSION #4: Admit that the waste product carbon dioxide, when transported in a pipeline to be stored or sequestered, is not a good sold freely to the public.

RESPONSE: Objection. Staff objects to the request as being ambiguous and argumentative and based upon an improper assumption as to the use of the term “waste product” and the term “freely sold”. In addition, Staff objects to this request as irrelevant to the proceedings in this docket, since SDCL 49-41B-2.1(2) includes carbon dioxide pipelines as a transmission facility that is subject to the PUC's jurisdiction. Subject to and without waiving its objection, Staff responds that it lacks sufficient information to admit or deny.

REQUEST FOR ADMISSION #5: Admit that the waste product carbon dioxide, when transported in a pipeline to be stored or sequestered, is not a gas traded in bulk in the commodity market.

RESPONSE: Objection. Staff objects to the request as being argumentative and based upon an improper assumption as to the use of the term “waste product”. In addition, Staff objects to this request as irrelevant to the proceedings in this docket, SDCL 49-41B-2.1(2) includes carbon dioxide pipelines as a transmission facility that is subject to the PUC's jurisdiction. Subject to and without waiving its objection, Staff responds that it lacks sufficient information to admit or deny.

REQUEST FOR ADMISSION #6: Admit that the waste product carbon dioxide, when transported in a pipeline to be stored or sequestered, is not a liquid traded in bulk in the commodity market.

RESPONSE: Objection. Staff objects to the request as being argumentative and based upon an improper assumption as to the use of the term “waste product”. In addition, Staff objects to this

request as irrelevant to the proceedings in this docket, since SDCL 49-41B-2.1(2) includes carbon dioxide pipelines as a transmission facility that is subject to the PUC's jurisdiction. Subject to and without waiving its objection, Staff responds that it lacks sufficient information to admit or deny.

REQUEST FOR ADMISSION #7: Admit that the waste product carbon dioxide, when transported in a pipeline to be stored or sequestered, is not a gas traded in bulk in the spot market.

RESPONSE: Objection. Staff objects to the request as being argumentative and based upon an improper assumption as to the use of the term “waste product”. In addition, Staff objects to this request as irrelevant to the proceedings in this docket, since SDCL 49-41B-2.1(2) includes carbon dioxide pipelines as a transmission facility that is subject to the PUC's jurisdiction. Subject to and without waiving its objection, Staff responds that it lacks sufficient information to admit or deny.

REQUEST FOR ADMISSION #8: Admit that the waste product carbon dioxide, when transported in a pipeline to be stored or sequestered, is not a liquid traded in bulk in the spot market.

RESPONSE: Objection. Staff objects to the request as being argumentative and based upon an improper assumption as to the use of the term “waste product”. In addition, Staff objects to this request as irrelevant to the proceedings in this docket, since SDCL 49-41B-2.1(2) includes carbon dioxide pipelines as a transmission facility that is subject to the PUC's jurisdiction. Subject to and without waiving its objection, Staff responds that it lacks sufficient information to admit or deny.

REQUEST FOR ADMISSION #9: Admit that the waste product carbon dioxide, when transported in a pipeline to be stored or sequestered, is not a good.

RESPONSE: Objection. Staff objects to the request as being argumentative and based upon an improper assumption as to the use of the term “waste product”. Staff also objects on the grounds that this request calls for a legal conclusion. In addition, Staff objects to this request as irrelevant to the proceedings in this docket, since SDCL 49-41B-2.1(2) includes carbon dioxide pipelines as a transmission facility that is subject to the PUC's jurisdiction. Subject to and without waiving its objection, Staff responds that it lacks sufficient information to admit or deny.

REQUEST FOR ADMISSION #10: Admit that the waste product carbon dioxide, when transported in a pipeline to be stored or sequestered, is not a ware.

RESPONSE: Objection. Staff objects to the request as being argumentative and based upon an improper assumption as to the use of the term “waste product”. In addition, Staff objects to this

request as irrelevant to the proceedings in this docket, since SDCL 49-41B-2.1(2) includes carbon dioxide pipelines as a transmission facility that is subject to the PUC's jurisdiction. Staff also objects on the grounds that this request calls for a legal conclusion. Subject to and without waiving its objection, Staff responds that it lacks sufficient information to admit or deny.

REQUEST FOR ADMISSION #11: Admit that the waste product carbon dioxide, when transported in a pipeline to be stored or sequestered, is not merchandise.

RESPONSE: Objection. Staff objects to the request as being argumentative and based upon an improper assumption as to the use of the term “waste product”. Staff also objects on the grounds that this request calls for a legal conclusion. In addition, Staff objects to this request as irrelevant to the proceedings in this docket, since SDCL 49-41B-2.1(2) includes carbon dioxide pipelines as a transmission facility that is subject to the PUC's jurisdiction. Subject to and without waiving its objection, Staff responds that it lacks sufficient information to admit or deny.

REQUEST FOR ADMISSION #12: Admit that the waste product carbon dioxide, when transported in a pipeline to be stored or sequestered, is not an article of trade.

RESPONSE: Objection. Staff objects to the request as being argumentative and based upon an improper assumption as to the use of the term “waste product”. Staff also objects on the grounds that this request calls for a legal conclusion. In addition, Staff objects to this request as irrelevant to the proceedings in this docket, since SDCL 49-41B-2.1(2) includes carbon dioxide pipelines as a transmission facility that is subject to the PUC's jurisdiction. Subject to and without waiving its objection, Staff responds that it lacks sufficient information to admit or deny.

REQUEST FOR ADMISSION #13: Admit that the waste product carbon dioxide, when transported in a pipeline to be stored or sequestered, is not an article of commerce.

RESPONSE: Objection. Staff objects to the request as being argumentative and based upon an improper assumption as to the use of the term “waste product”. In addition, Staff objects to this request as irrelevant to the proceedings in this docket, since SDCL 49-41B-2.1(2) includes carbon dioxide pipelines as a transmission facility that is subject to the PUC's jurisdiction. Staff also objects on the grounds that this request calls for a legal conclusion. Subject to and without waiving its objection, Staff responds that it lacks sufficient information to admit or deny.

REQUEST FOR ADMISSION #14: Admit that the State of South Dakota Legislature has not delegated the power of eminent domain to Carbon Dioxide pipeline companies.

RESPONSE: Objection. Staff objects to this request as irrelevant to the proceedings in this

docket, since SDCL 49-41B-2.1(2) includes carbon dioxide pipelines as a transmission facility that is subject to the PUC's jurisdiction. Subject to and without waiving its objection, Staff responds that it lacks sufficient information to admit or deny but is generally aware that this question is pending before a number of circuit courts in this state. However, this is not a subject matter upon which Staff has sufficient expertise to opine.

REQUEST FOR ADMISSION #15: Admit that the act of transporting carbon dioxide emitted from Ethanol plants in South Dakota to be stored or sequestered in Illinois is not a public use.

RESPONSE: Objection. Staff objects to this request as irrelevant to the proceedings in this docket, since SDCL 49-41B-2.1(2) includes carbon dioxide pipelines as a transmission facility that is subject to the PUC's jurisdiction. Subject to and without waiving its objection, Staff responds that it lacks sufficient information to admit or deny.

REQUEST FOR ADMISSION #16: Admit that SCS CARBON TRANSPORT LLC, is not a public utility.

RESPONSE: Staff objects to this request as ambiguous with respect to the term “public utility”, as different courts and jurisdictions have found “public utility” to mean different things. Subject to and without waiving its objection, Staff admits that SCS Carbon Transport LLC is not a public utility as defined by SDCL 49-34-11.1 or 49-34A-1(12).

REQUEST FOR ADMISSION #17: Admit that SCS CARBON TRANSPORT LLC, is not an employee of a public utility.

RESPONSE: Staff objects to this request as ambiguous with respect to the term “public utility”, as different courts and jurisdictions have found “public utility” to mean different things. Subject to and without waiving its objection, Staff admits that that SCS Carbon Transport LLC is not, to Staff’s knowledge, an employee of public utility as defined by SDCL 49-34-11.1 or 49-34A-1(12).

REQUEST FOR ADMISSION #18: Admit that SCS CARBON TRANSPORT LLC, does not currently own or operate even one inch of an existing carbon dioxide pipeline.

RESPONSE: Admit

The responses to this Request for Admissions were compiled by PUC Staff members Darren Kearney, Jon Thurber, and Kristen Edwards.

Dated this 04th day of May 2023.



Kristen N. Edwards
Staff Attorney
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501
Phone (605)773-3201
Kristen.edwards@state.sd.us

Objections to the Requests for Admissions were made by Staff Attorney Kristen Edwards.

Dated this 04th day of May 2023.



Kristen N. Edwards
Staff Attorney
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501
Phone (605)773-3201
Kristen.edwards@state.sd.us