

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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

HP22-001

REBUTTAL TESTIMONY OF

MICAH RORIE

ON BEHALF OF

SCS CARBON TRANSPORT LLC

SCS EXHIBIT #

July 7, 2023

1 **Q. Please state your name and business address for the record.**

2 A. My name is Micah Rorie. I am employed by SCS Carbon Transport, LLC, and my
3 business address is 2321 N Loop Drive, Suite 221, Ames, Iowa, 50010.

4 **Q. What is your position with SCS Carbon Transport, LLC (“SCS”)?**

5 A. I am the Senior Director of Land Services for Summit Carbon Solutions, LLC / SCS.

6 **Q. Please briefly describe your educational experience.**

7 A. I earned a Bachelor of Arts degree in economics from Texas A&M University in 2005. I
8 have more than 15 years’ experience in pipeline right-of-way acquisition and land operations
9 leadership. My experience spans 13 states, includes more than 5,000 miles of pipeline right-of-
10 way containing over 12,000 miles of pipeline infrastructure, and several thousand acres of fee
11 simple transactions. My experience in midwestern states, including South Dakota, has
12 encompassed all real estate-related phases of pipeline project execution, from concept to
13 reclamation and pipeline operations.

14 **Q. Please describe your duties with SCS.**

15 A. I am responsible for leading a team that handles all real estate-related phases of pipeline
16 project execution, from concept to reclamation and pipeline operations.

17 **Q. Have you previously submitted direct testimony and exhibits in this proceeding?**

18 A. No, I have not.

19 **Q. What is the basis for your rebuttal testimony?**

20 A. PUC staff and intervenors have raised several issues in their pre-filed written testimony
21 that fall within my area of responsibility for the company. Based on my knowledge of SCS’s
22 plans and practices, as well as my experience working in the industry, I am able to address these
23 issues on behalf of SCS.

24 **Q. PUC staff raised a question concerning notice to landowners should a major re-**
25 **routing of the pipeline occur. How would you respond to this issue?**

26 A. SCS does not anticipate any major reroutes occurring and notified the Commission of this
27 in a letter on May 23, 2023. SCS's view is the notice requirement under SDCL 49-41B-5.2
28 raised by staff concerns the initial notice of public meetings and the PUC intervention deadline.
29 The PUC published notice in local newspapers and conducted public meetings already in 2022
30 and the intervention deadline has passed. So, SCS believes the required notice has been fully
31 given under the statute.

32 While not required by statute, in December 2022, SCS did voluntarily contact certain landowners
33 by letter concerning an adjustment of the pipeline route that brought them within one-half mile
34 of a pipeline facility. This letter invited the landowner to contact the PUC with questions about
35 whether they could become a formal party to the PUC docket. To my knowledge, no landowner
36 subsequently asked the PUC to become a party to the docket.

37 **Q. Turning to the pre-filed testimony of Bert Schutza on behalf of WEB Water**
38 **Development Association, Inc. ("WEB"), how would you respond to his concern about**
39 **SCS's requirement in its easement document that landowners must check with SCS before**
40 **granting WEB an easement for future expansion?**

41 A. In my experience in the industry, such language is typical in a non-exclusive pipeline
42 easement scenario. SCS's intent in including such language in our easement is to cement
43 awareness of the pipeline's presence, thus promoting safety, while allowing SCS to assess if
44 another operator's crossing will unreasonably interfere with the installed pipeline. Should SCS
45 believe crossing adjustments or practical measures are warranted to ensure the protection of the
46 pipeline, the company needs to have the ability to interface directly with the crossing party. This

47 interest is not just specific to SCS, but really should be a concern for any operator of an
48 underground pipeline, including WEB. The intent is not to stop future expansion of WEB at all,
49 but rather collaborate if needed in order to facilitate a crossing that protects all parties involved.

50 **Q. Moving on to landowner pre-filed testimony, many landowners raised identical**
51 **concerns about the proposed easements labeling “approximate” locations and questioning**
52 **why the ability to make small adjustments to the pipeline route are important?**

53 A. In my experience with these types of projects, the ability to make changes to the route is
54 necessary due to the possibility of unanticipated discoveries during construction. These types of
55 small adjustments are often driven by factors such as constraints on construction or the need for
56 environmental or cultural resource avoidance. These unanticipated discoveries, even if they arise
57 on a neighboring property, could affect the final location of the pipeline and subsequent easement
58 boundaries. The flexibility to mitigate through or around such issues is typical in infrastructure
59 projects and SCS has taken a proactive approach to such situations by providing the ability for
60 these types of adjustments in the easements proposed to landowners.

61 **Q. Landowners have also questioned why it is important for SCS to impose limitations**
62 **on their ability to remove or grade soil, impound surface water, plant trees or landscaping,**
63 **or create other obstructions where the pipeline is located. How do you respond?**

64 A. In a word, my response is “safety.” SCS takes the safe operation of its pipeline very
65 seriously. In my experience in the pipeline industry, the kind of standard limitations referenced
66 by landowners are paramount for the safe operation of a pipeline system. The limited surface
67 rights SCS is acquiring must include the ability to safely access and operate the pipeline
68 facilities. Without the kind of unobstructed access we are seeking from landowners, SCS’s
69 ability to maintain the pipeline system can be compromised due to obstructions or removed

70 cover. Such a situation does not promote operational efforts and certainly does not optimize
71 safety, which is always the highest priority for SCS.

72 **Q. How would you respond to landowners' request that SCS indemnify them for all**
73 **other claims and damages other than gross negligence or willful misconduct?**

74 A. SCS's proposed easement already covers indemnification of a landowner for any loss,
75 damage, claim, or action resulting from the company's use of the easements. We think this is a
76 fair approach that recognizes the company has an obligation to make things right with the
77 landowner for losses SCS causes. However, it is not reasonable, and in my experience not
78 typical in the industry, for the company to agree to indemnify landowners for activity they
79 themselves are able to control and can avoid that may cause a loss or damage to another party.

80 **Q. What about landowners' criticism that SCS should indemnify them for any damages**
81 **outside of the specific easement areas, isn't that a valid concern?**

82 A. I think it is important to look at SCS's obligation to indemnify in terms of what rights
83 SCS has during and after construction. What SCS is seeking through its proposed easement are
84 specific rights with respect to installing and operating an underground pipeline. The easements
85 are specific as to where SCS is allowed to construct the pipeline and how SCS is allowed to
86 access the pipeline during its operation after construction and reclamation are completed. These
87 are limited rights, and SCS can control how it uses those rights within the easement. So it is
88 appropriate for SCS to indemnify landowners within the area it can control. However, the
89 landowner retains the ability to farm or otherwise use their property going forward. So for SCS
90 to agree to indemnify a landowner for other damage that occurs outside the easement areas, or as
91 a result of something that SCS has not done, is not in my view an appropriate reflection of the
92 rights SCS is acquiring through these easements.

93 **Q. Landowners have also raised concern that they will be forced to hire attorneys to**
94 **defend themselves in cases that are not due to gross negligence or willful misconduct. How**
95 **do you respond?**

96 A. I would say it is always difficult to respond to a hypothetical situation, and a lot will
97 depend on the specific facts involved. However, if a landowner is required to hire an attorney in
98 a case in which the company's use of the easement – not the landowner's gross negligence or
99 willful misconduct – is the ultimate cause of the issue, then SCS's standard easement obligates
100 the company to make the landowner whole for those expenses.

101 **Q. Some landowners have raised questions about SCS's communication with**
102 **landowners about how and where the landowner would prefer the pipeline to be placed on**
103 **their property. How would you respond?**

104 A. While in the majority of cases a landowner's preferred placement of the pipeline is not
105 always fully achievable, my team and I at SCS have participated in thousands of conversations
106 with landowners in order to make all reasonable efforts to address their concerns. The result of
107 our efforts and accommodations have been a number of route adjustments, most often very minor
108 in nature, that have been agreeable to both parties. However, as time goes on, and more of the
109 pipeline route is surveyed and secured through voluntary agreements, SCS's practical ability to
110 adjust the pipeline route in response to a landowner's specific request naturally reduces due to
111 several factors. Those factors include not only how the requested adjustment transfers impacts to
112 neighboring parcels, many of which may already have agreed to easements with the company,
113 but also limitations on SCS's ability to construct the pipeline at the proposed location, as well as
114 environmental or cultural survey constraints.

115 **Q. How will landowners be able to contact SCS during construction if there is an issue?**

116 A. SCS will have assigned right of way personnel stationed along the project footprint
117 during construction activities in order to efficiently communicate any landowner concerns to

118 appropriate parties. The company plans to provide contact information for such personnel to
119 landowners in each respective area prior to the commencement of construction.

120 **Q. Does this conclude your testimony?**

121 A. Yes.

122

123 Dated this 7th day of July, 2023

124

125

126 */s/ Micah Rorie*

127 Micah Rorie