
From: Cody Honeywell
Sent: Thursday, May 18, 2023 2:55 PM
To: BJorde@dominalaw.com; ryan@birmcwachlaw.com
Cc: Brett Koenecke <brett@mayadam.net>
Subject: RE: SCS PUC Docket HP22-001

See attached for signed copies.

Thank you,

Cody Honeywell



May, Adam, Gerdes, & Thompson, LLP
503 S. Pierre Street
PO Box 160
Pierre, SD 57501
(605)224-8803
cody@mayadam.net

This e-mail is a transmittal from May, Adam, Gerdes & Thompson LLP and may contain information which is privileged, confidential, and protected by attorney-client or attorney work-product privileges. This transmission is only for the intended recipient named in this e-mail. If you are not the recipient indicated in this e-mail (or responsible for delivery of this message to the intended recipient), you may not copy or deliver the e-mail to anyone. In such case, you should destroy this e-mail without retaining an archive copy, and notify the sender immediately. Unauthorized use or distribution is prohibited and may be unlawful. Viewing or sending electronic mail to the sender of May, Adam, Gerdes & Thompson LLP does not by itself create an attorney-client relationship.

Internal Revenue Service regulations require that certain types of written advice include a disclaimer. To the extent this transmission contains advice relating to a Federal Tax Issue, unless expressly stated otherwise, the advice is not intended or written to be used, and it cannot be used by the recipient or any other taxpayer, for the purpose of avoiding Federal tax penalties, and was not written to support the promotion or marketing of any such transaction or matter discussed herein.

From: Cody Honeywell
Sent: Friday, May 5, 2023 4:37 PM
To: BJorde@dominalaw.com; ryan@birmcwachlaw.com
Cc: Brett Koenecke <brett@mayadam.net>
Subject: SCS PUC Docket HP22-001

Ryan and Brian,

Please see the attached responses from SCS to Rod and Joy Hohn's requests. As you will see, these copies do not have Mr. Powell's wet signature as of yet, but we will get you signed copies as soon as possible.

Thank you,

Cody Honeywell



May, Adam, Gerdes, & Thompson, LLP
503 S. Pierre Street
PO Box 160
Pierre, SD 57501
(605)224-8803
cody@mayadam.net

This e-mail is a transmittal from May, Adam, Gerdes & Thompson LLP and may contain information which is privileged, confidential, and protected by attorney-client or attorney work-product privileges. This transmission is only for the intended recipient named in this e-mail. If you are not the recipient indicated in this e-mail (or responsible for delivery of this message to the intended recipient), you may not copy or deliver the e-mail to anyone. In such case, you should destroy this e-mail without retaining an archive copy, and notify the sender immediately. Unauthorized use or distribution is prohibited and may be unlawful. Viewing or sending electronic mail to the sender of May, Adam, Gerdes & Thompson LLP does not by itself create an attorney-client relationship.

Internal Revenue Service regulations require that certain types of written advice include a disclaimer. To the extent this transmission contains advice relating to a Federal Tax Issue, unless expressly stated otherwise, the advice is not intended or written to be used, and it cannot be used by the recipient or any other taxpayer, for the purpose of avoiding Federal tax penalties, and was not written to support the promotion or marketing of any such transaction or matter discussed herein.

**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;">SCS CARBON TRANSPORT LLC'S OBJECTIONS AND RESPONSES TO ROD AND JOY HOHN'S 1ST SET OF REQUESTS FOR ADMISSIONS</p>
--	---

SCS Carbon Transport LLC (“SCS” for short), by and through its attorneys of record and under ARSD 20:10:01:22.01 and SDCL §§ 15-6-26 and 15-6-36, responds to Landowners/Intervenors Rod and Joy Hohn’s First Set of Requests for Admissions dated April 21, 2023, in the above-captioned matter. These responses are made without waiving or intending to waive any objection as to relevance, privilege, or admissibility of any information provided in response to the Requests in any subsequent proceeding of this or any other action on any ground. SCS designates its responses as “Confidential” under the Protective Order in this matter.

REQUEST FOR ADMISSION #1: Admit that if any carbon dioxide is captured, transported, and ultimately stored and or sequestered in Illinois by you, you have no plan to attempt to use such stored and sequestered carbon dioxide for any purposes including but not limited to enhanced oil recovery.

RESPONSE: SCS objects to the Request because it calls for irrelevant information. SCS also objects to the Request because it is vague and ambiguous and denies it on that basis. Subject to and without waiving those objections, denied. SCS does not, for instance, have plans to operate a CO₂ pipeline in Illinois.

REQUEST FOR ADMISSION #2: Admit there is no requirement of the South Dakota Public Utilities Commission that you conduct surveys upon any of the parcels of land in the State of South Dakota where you intend to locate your hazardous pipeline.

RESPONSE: SCS objects to the Request because it calls for a legal conclusion and for irrelevant information. Subject to and without waiving those objections, denied.

REQUEST FOR ADMISSION #3: Admit there is no South Dakota state law requiring that you conduct an examination or survey upon any of the parcels of land in the State of South Dakota where you intend to locate your hazardous pipeline.

RESPONSE: SCS objects to the Request because it calls for a legal conclusion and for irrelevant information. Subject to and without waiving those objections, denied.

REQUEST FOR ADMISSION #4: Admit there is no Federal law requiring that you conduct an examination or survey upon any of the parcels of land in the State of South Dakota where you intend to locate your hazardous pipeline.

RESPONSE: SCS objects to the Request because it calls for a legal conclusion and for irrelevant information. Subject to and without waiving those objections, denied.

REQUEST FOR ADMISSION #5: Admit that you failed to timely and properly notify multiple landowners owning property located within one-half mile of your proposed hazardous pipeline route in South Dakota.

RESPONSE: SCS objects to the Request because it calls for a legal conclusion. Subject to and without waiving that objection, denied.

REQUEST FOR ADMISSION #6: Admit your survey and examination of landowners land may include drilling tools and activities such as continuous flight augers, hollow stem augers, wet rotary drills, or rock coring drills.

RESPONSE: SCS objects to the Request because it calls for irrelevant information. SCS also objects to the Request because it is vague and ambiguous and denies it on that basis. Subject to and without waiving those objections, SCS admits that the types of surveys and examinations that SCS may seek to perform on a landowner's property depend on the property at issue and that some—but not all—surveys and examinations may involve drilling tools like continuous flight augers, hollow stem augers, wet rotary drills, or rock coring drills.

REQUEST FOR ADMISSION #7: 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: SCS objects to the Request because it is vague and ambiguous and calls for irrelevant information. Subject to and without waiving those objections, denied.

REQUEST FOR ADMISSION #8: 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: SCS objects to the Request because it is vague and ambiguous and calls for irrelevant information. Subject to and without waiving those objections, denied.

REQUEST FOR ADMISSION #9: 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: SCS objects to the Request because it is vague and ambiguous and calls for irrelevant information. Subject to and without waiving those objections, denied.

REQUEST FOR ADMISSION #10: 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: SCS objects to the Request because it is vague and ambiguous and calls for irrelevant information. Subject to and without waiving those objections, denied.

REQUEST FOR ADMISSION #11: 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: SCS objects to the Request because it is vague and ambiguous and calls for irrelevant information. Subject to and without waiving those objections, denied.

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

RESPONSE: SCS objects to the Request because it is vague and ambiguous and calls for irrelevant information. Subject to and without waiving those objections, denied.

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

RESPONSE: SCS objects to the Request because it is vague and ambiguous and calls for irrelevant information. Subject to and without waiving those objections, denied.

REQUEST FOR ADMISSION #14: Admit that the waste product carbon dioxide, when transported in a pipeline to be stored or sequestered, is not merchandise.

RESPONSE: SCS objects to the Request because it is vague and ambiguous and calls for irrelevant information. Subject to and without waiving those objections, denied.

REQUEST FOR ADMISSION #15: Admit that the waste product carbon dioxide, when transported in a pipeline to be stored or sequestered, is not an article of trade.

RESPONSE: SCS objects to the Request because it is vague and ambiguous and calls for irrelevant information. Subject to and without waiving those objections, denied.

REQUEST FOR ADMISSION #16: Admit that the waste product carbon dioxide, when transported in a pipeline to be stored or sequestered, is not an article of commerce.

RESPONSE: SCS objects to the Request because it is vague and ambiguous and calls for irrelevant information. Subject to and without waiving those objections, denied.

REQUEST FOR ADMISSION #17: Admit that the State of South Dakota Legislature has not delegated the power of eminent domain to Carbon Dioxide pipeline companies.

RESPONSE: SCS objects to the Request because it calls for a legal conclusion and for irrelevant information. Subject to and without waiving those objections, denied.

REQUEST FOR ADMISSION #18: Admit that the act of transporting carbon dioxide emitted from Ethanol plants in South Dakota to be stored or sequestered in North Dakota is not a public use.

RESPONSE: SCS objects to the Request because it calls for a legal conclusion and for irrelevant information. Subject to and without waiving those objections, denied.

REQUEST FOR ADMISSION #19: Admit that SCS CARBON TRANSPORT LLC, is not a public utility.

RESPONSE: SCS objects to the Request because it is vague and ambiguous, calls for a legal conclusion, and calls for irrelevant information and on those bases denies it.

REQUEST FOR ADMISSION #20: Admit that SCS CARBON TRANSPORT LLC, is not an employee of a public utility.

RESPONSE: SCS objects to the Request because it is vague and ambiguous, calls for a legal conclusion, and calls for irrelevant information and on those bases denies it.

REQUEST FOR ADMISSION #21: Admit that SCS CARBON TRANSPORT LLC, does not currently own or operate even one inch of an existing carbon dioxide pipeline.

RESPONSE: SCS objects to the Request because it is vague and ambiguous and denies it on that basis.

REQUEST FOR ADMISSION #22: Admit that based on the holding in *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063, 210 L. Ed. 2d 369 (2021) SDCL 21-35-31 is unconstitutional.

RESPONSE: SCS objects to the Request because it calls for a legal conclusion. Subject to and without waiving that objection, denied.

REQUEST FOR ADMISSION #23: Admit that if a South Dakota landowner refuses to sign an easement for your proposed hazardous carbon dioxide pipeline that you believe is necessary for your hazardous pipeline to be constructed, you would file a condemnation proceeding against such a landowner using the powers of eminent domain.

RESPONSE: SCS objects to the Request because it calls for irrelevant information. SCS also objects to the Request because it is vague and ambiguous in referring to a hypothetical South Dakota landowner and denies it on that basis.

REQUEST FOR ADMISSION #24: Admit that your proposed hazardous carbon dioxide pipeline's purpose is economic development to benefit your company and is [sic] owners and investors.

RESPONSE: SCS objects to the Request because it calls for irrelevant information. Subject to and without waiving that objection, denied. The Request speaks in terms of a singular "purpose" when the proposed pipeline has multiple purposes, including but not limited to business operations, environmental motivations, and CO₂ transportation.

REQUEST FOR ADMISSION #25: Admit that hazardous carbon dioxide pipelines are not defined as a condemning authority anywhere in South Dakota law.

RESPONSE: SCS objects to the Request because it calls for a legal conclusion and for irrelevant information. Subject to and without waiving those objections, denied.

REQUEST FOR ADMISSION #26: Admit that your proposed hazardous carbon dioxide pipeline is clearly and unambiguously for the constitutionally impermissible purpose of economic development to benefit private parties, i.e. your company and its owners and investors.

RESPONSE: SCS objects to the Request because it calls for a legal conclusion and for irrelevant information. Subject to and without waiving those objections, denied.

REQUEST FOR ADMISSION #27: Admit that none of the South Dakota located Ethanol Plants that you have either offtake agreements with or letters of intent or similar “need” your proposed hazardous Carbon Dioxide pipeline for any purpose.

RESPONSE: SCS objects to the Request because it calls for a legal conclusion and for irrelevant information. SCS also objects to the Request because it is vague and ambiguous and denies it on that basis.

REQUEST FOR ADMISSION #28: Admit that you will own the CO₂ you intend to transport on your proposed pipeline.

RESPONSE: SCS objects to the Request because it calls for irrelevant information. Subject to and without waiving that objection, denied.

REQUEST FOR ADMISSION #29: Admit that under your business model you are not transporting CO₂ “for hire” from any ethanol plant located in South Dakota.

RESPONSE: SCS objects to the Request because it calls for a legal conclusion and for irrelevant information. Subject to and without waiving those objections, denied.

REQUEST FOR ADMISSION #30: Admit that under your business model you are not transporting CO₂ “for hire” from any ethanol plant located anywhere.

RESPONSE: SCS objects to the Request because it calls for a legal conclusion and for irrelevant information. Subject to and without waiving those objections, denied.

Dated this 18th, day of May, 2023.

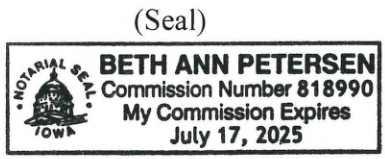


James Powell

IN WITNESS WHEREOF I hereunto set my hand and official seal this 18 day of May, 2023.



Notary Public ~~South Dakota~~ Iowa
Notary Print Name:
My Commission Expires:



AS TO OBJECTIONS

Counsel signs these answers as to the foregoing stated objections, as required by the South Dakota Rules of Civil Procedure.

Dated this 5th day of May, 2023.

MAY, ADAM, GERDES & THOMPSON LLP

BY: /s/ Brett Koenecke
BRETT KOENECKE
CODY L. HONEYWELL
P.O. Box 160
Pierre, SD 57501-0160
(605) 224-8803
brett@mayadam.net
cody@mayadam.net
Attorneys for SCS Carbon Transport, LLC

CERTIFICATE OF SERVICE

Cody L. Honeywell of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 5th day May, 2023, he did serve, through electronic mail, a true and correct copy of the foregoing to the following at their last known address, to-wit:

Ryan Cwach
ryan@birmcwachlaw.com

Brian E. Jorde
bjorde@dominalaw.com

/s/ Cody L. Honeywell
CODY L. HONEYWELL