

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

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**IN THE MATTER OF THE  
APPLICATION  
BY SCS CARBON TRANSPORT, LLC  
FOR A PERMIT TO CONSTRUCT  
A CARBON DIOXIDE  
TRANSMISSION PIPELINE**

**HLP22-001**

**LANDOWNERS' RENEWED  
MOTION TO DISMISS &  
RETURN SUMMIT'S  
APPLICATION  
OR  
IN THE ALTERNATIVE  
MOTION FOR STAY**

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Movants, affected Landowners, listed on attached Exhibit "A", collectively state and move as follows:

**SUMMARY**

1. On May 17, 2022, Landowners filed their initial Motion to Dismiss. Hearing occurred on that motion June 8, 2022, at which time discussion was had that Landowners could refile its Motion to Dismiss should underlying facts framing the basis of Landowners' argument not materially improve. They have not. Summit continues to be in violation of South Dakota legal requirements, and they have since publicly admitted this during the November 18, 2022, PUC meeting<sup>1</sup>. They have failed to follow the law and the PUC has no other option but to return their Application as it is impossible for Summit to go back in time and correct their errors. Those folks within the half-mile corridor Summit made the business decision to not send lawful notice to have been

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<sup>1</sup> See November 18, 2022, recording <https://puc.sd.gov/commission/media/2022/puc11182022.mp3> at 30:55 to 32:25.

deprived the opportunity to participate in hearings and this docket do date and that bell can't be un-rung.

### ARGUMENT

2. Applicant Summit Carbon Solutions (hereafter “Summit”) filed an application for a permit to construct a hazardous pipeline facility in South Dakota on February 10, 2022.

3. On May 9, Summit filed a Motion to extend the Commission’s 12-month decision deadline until June 15, 2023. In doing so Summit requested until October of 2022 to file its completed application and required route map. This effectively left the proceeding in limbo as intervenors awaited a complete application.

4. On October 13, 2022, Summit filed a Supplemental Application with updated mapping and more potential re-routes. The currently proposed route represents a significant deviation from the originally proposed route.

5. A reroute creates serious implications for statutory notice requirements.

SDCL 49-41B-5.2 states:

**Within thirty days following the filing of an application for permit, the applicant shall notify, in writing, the owner of record of any land that is located within one-half mile of the proposed site where the facility is to be constructed.** For purposes of this section, the owner of record is limited to the owner designated to receive the property tax bill sent by the county treasurer. The notice shall be mailed by certified mail. The notice shall contain a description of the nature and location of the facility. Any notification required by this section shall state the date, time, and location of the public input meeting... (emphasis added)

6. At a hearing on November 18, 2022, counsel for Summit acknowledged that there are several landowners who now fall within the one-half mile of the amended pipeline route who have not been provided the requisite notice pursuant to SDCL § 49-41B-5.2. Summit indicated it has no intention to provide the statutorily requires notice and proposes to move forward to an adjudication on its application.<sup>2</sup>

7. Summit's excuse for its decision to forego providing the required notice was that there are no currently scheduled public input meetings to notify the newly affected landowners of. Stated another way – Summit's tactic is to advance this docket as far as possible without following the law because they are worried the more South Dakota landowners that are told they may be affect actually learn this fact, the more opposition the project will face.

8. Importantly, SDCL § 49-41B-5.2 is not merely intended to provide notice of upcoming public meetings. The required notice also informs affected landowners of the filing of the application and provides a description of the nature and location of the proposed facility. Without such notice, an affected landowner may not know the project is proposed to be constructed in such close proximity to their property. This knowledge could certainly impact a landowner's desire to intervene in the proceeding. There is nothing in the text of SDCL § 49-41B-5.2 that says such notice is **only** to be sent **if** there is a Public Meeting scheduled.

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<sup>2</sup> *Id.*

9. SDCL § 49-41B-5.2 is not permissive. An applicant **shall** notify by certified mail all owners within one-half mile. Summit cannot escape this requirement. And for good reason. The Commission cannot be sure that all affected South Dakotans have had an opportunity to be heard until the statutory notice requirements are met. There is simply no justification for moving forward with this proceeding.

10. Rather than simply requiring Summit to remedy their intentional procedural failure and rather than awarding Summit for its brazen disregard of the law and landowners due process rights, Landowners request the Commission return the Application pursuant to SDCL § 49-41B-13(2). Summit has been on notice of these issues and Landowners' arguments on this topic since May 17, 2022, and they have chosen to double and triple down on their legal failings.

11. At the November 18, 2022, hearing, the Commission asked counsel for Summit if it could provide assurance that no further re-routes were forthcoming. Summit indicated the unique posture of this proceeding in that only 50% of the required right-of-way has been secured within South Dakota. For that reason, Summit could not commit to no further major or minor re-routes. Summit also admitted that re-routes would implicate landowners within the half-mile corridor.

12. The route of the project not only implicates notice requirements, but it also affects other portions of the Application. Uncertainty concerning the route indicates unreadiness by Summit to move forward. It also prejudices other parties who need to prepare a case based upon a final and complete application.

13. The failure to obtain 85%-90% of Summit's proposed route at this stage in the PUC process suggests that many re-routes, minor and major, will necessarily have to occur work around the significant landowner opposition to this Application. This also suggests that proper legal notice is paramount to a proceeding that would otherwise be deficient and tainted.

14. Summit's application should be returned and resubmitted when the route is more definitive, and all requires notices can be and in fact are provided.

### **IN THE ALTERNATIVE**

15. If the PUC will not hold Summit accountable for its intentional disregard of the law, the PUC must stay these proceedings until there is a final Application, a final route, and proof that all legal notices have been provided. Until that time, PUC resources and the parties time and money is being wasted on an Application that is nowhere near ready for intelligent analysis let alone final Hearing.

### **REQUEST FOR RELIEF**

Landowners respectfully request this matter be dismissed.

Should this matter not be dismissed, Landowners respectfully request the Commission order a stay in these proceedings until Applicant presents a completed application, including a definitive proposed route for which it seeks a permit, and proof the have complied with all applicable notice laws.

Landowners request all other relief deemed reasonable and necessary.

By: /s/ Brian E. Jorde

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*Landowners' Lawyers*

### **CERTIFICATE OF SERVICE**

Brian Jorde of Domina Law Group PC LLO hereby certifies that on December 19, 2022, he filed and served via the South Dakota Public Utilities Commission website and electronic mail a true and correct copy of the foregoing in the above-captioned matter to the e-mail service list.

/s/ Brian E. Jorde  
Brian E. Jorde