

# MAY ADAM

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March 11, 2022

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Public Utilities Commission  
Attn: Patricia Van Gerpen, Executive Director  
VIA E-MAIL ONLY: [patty.vangerpen@state.sd.us](mailto:patty.vangerpen@state.sd.us)

**RE: In the Matter of the Application by SCS Carbon Transport, LLC for a Permit to Construct a Carbon Dioxide Pipeline**  
**PUC Docket: HP22-001**  
MAGT File: 0515

Dear Ms. Van Gerpen:

As you are aware, statute requires the PUC to hold public meetings about the proposed project within a set time frame after the application has been filed. Statute also requires the Commission to publish notice of those meetings, and the Applicant to mail notice by Certified Mail of those same meetings at set dates. Those dates are based on the date of filing of the application. Accordingly, the project caused to be mailed out approximately 2,500 certified letters to landowners within 1/2 mile of the proposed project as the law requires. We did so in a timely fashion.

Subsequent to that mailing, our office began to receive calls from letter recipients which is not at all unusual. We took more calls from landowners than expected given prior experience, and so I asked an associate to scour the notice list and make sure that we had properly noticed the upcoming meetings. Upon doing so, we discovered that there were omissions from the list, and we determined to go forward with sending notice to those individuals.

The reasons for the omissions are found in the interplay between publicly available information, timing, and the process for developing the notification list. We caused, then, on March 10, 156 additional notices of the upcoming meetings to be sent from my office at an approximate cost of \$1,200.00. We regret the omission.

Most of the letters sent yesterday went to McPherson County owners on the main line. Due to the scheduling of the mailing and the scheduling of a tax event in McPherson County, main line letter recipients were being held in a file pending further information from McPherson County. When that information became available, it was transmitted without the main line information which was already prepared. The error was inadvertent, and we regret it. However, notice has

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gone out in accordance with the previously determined scheduled meetings, and we think it best to go forward.

The notice required to be sent in 49-41b is not jurisdictional. There is no requirement that a letter be picked up, a return of service be obtained, nor is there a conferring of rights upon a recipient which triggers due process. The project permit proceedings can go forward without the participation of people who choose not to respond to the mailing. Such a determination is thought to be consistent with all prior determinations of this Commission upon such question. I do not recall many, if any, permit proceedings where the notice of public meetings was mailed out perfectly. Land ownership changes, the availability of public data, and inadvertent errors and omissions all work to defeat the notion of perfect public notice by mail for the meetings.

We think, by far, the best course of action least confusing to the public and to affected land owners is to proceed with the meeting schedule previously determined. To send out new notices of new meetings would, in our mind, simply confuse the issue further. Thank you for your attention to this. We look forward to discussing it with you on Tuesday at the Commission meeting.

Very truly yours,

MAY, ADAM, GERDES & THOMPSON LLP



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BK | jrw