

**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' OPPOSITION TO  
SUMMIT'S MOTION FOR  
SCHEDULING ORDER AND  
BOARD REQUEST FOR  
SCHEDULING PROPOSALS  
&  
IN THE ALTERNATIVE  
LANDOWNERS' PROPOSED  
SCHEDULING ORDER**

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Landowners as noted on the attached Exhibit A state as follows:

1. On November 4, 2022, Summit filed a Motion for Scheduling Order. However, as of November 4, 2022, and continuing to this day, Summit has failed to file a complete Application.
2. In addition, Landowners continue to object because this Docket is nowhere near a point where discussions about a Scheduling Order are appropriate let alone determining a Scheduling Order. Presently, half of South Dakota landowners under threat of Summit's alleged eminent domain powers have not signed "voluntary" easements and don't want anything to do with this proposed hazardous pipeline. The PUC should conserve resources and taxpayer dollars and continue this docket on "indefinite" hold until such time Summit has 90% of all the easements its request in hand.
3. On November 18, 2022, the PUC ordered "the parties to work together to submit a procedural schedule for the Commission to consider by December 9, 2022." Given Applicant has 100% of the burden of proof in this matter and is the one that causes us all to be here Landowners presumed Applicant would circulate a time to meet and confer as directed by the PUC so we could "work together" on a schedule. This never occurred. So, Landowners, realizing the deadline was approaching reached out to Summit's counsel on Monday December 5, 2022, as shown below:

## PUC Schedule



Brian Jorde

To Justin Bell  
Cc Ryan Cwach; Jordan Custer



Mon 12/5/2022 8:46 PM

Follow up. Start by Tuesday, December 6, 2022. Due by Tuesday, December 6, 2022.

Justin:

1. Do you have a proposal about a scheduling order for the PUC proceeding?
2. We were supposed to work together and try if we can agree.
3. Happy to review what your thoughts are.

Respectfully,

[Brian E. Jorde](#)

Lawyer

DOMINALAW Group pc llo

[www.dominalaw.com](http://www.dominalaw.com)

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4. Instead, what was happening in the meantime is Summit called the PUC staff to find dates near its proposed hearing date of sometime in April 2023 and then PUC staff, using Summit's requested dates, prepared the PUC staff's proposed deadlines. After Summit got what it wanted from the PUC staff it then it responded to Landowners as below:

## PUC schedule



Brett Koenecke <brett@mayadam.net>

To Brian Jorde; Jordan Custer; nick@mwhlawyers.com  
Cc Justin Bell; Cody Honeywell; Aaron Scheibe; jvilsack@summitcarbon.com;  
 Ryan Koopmans



Wed 12/7/2022 5:24 PM

You forwarded this message on 12/7/2022 6:48 PM.

Mr Jorde

Justin passed along to me your email about scheduling the PUC docket. I had reached out to the PUC office to get some hearing dates and hadn't gotten back to you. My client likes the schedule Ms. Edwards put out earlier today and plans to support that request. The dates I got were to start April 17 for two weeks, start April 24 for two weeks or start later in May and wrap up before the end of the month. I felt like splitting the difference was best and my client agrees. If you have another proposal I'm sure we'd consider it.

BK

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Summit was pleased with what it prompted PCS staff to do by only requesting availability in the April 2023 timeframe thus ensuring what it wanted would now become promoted by PUC staff.

5. Seeing that there was not going to be any concept of “work together” with Summit, Landowners called PUC staff to request alternative dates but was told the scheduler was out and to call back on Monday December 12, 2022. Landowners will do this and report back with new proposed dates.

6. Presently lawsuits are pending across South Dakota pursuant to Summit’s claim they are vested with eminent domain powers. Landowners don’t share this view and these matters are and will be litigated over the next several months in various circuit courts. This litigation should play out so the South Dakota Supreme Court can determine if Summit has eminent domain powers. This is an important issue to have determined. It is premature to discuss a potential Scheduling Order at this stage, however, if a schedule was to be considered, an April-May 2023 hearing is not practical. That is a terrible time for farmers right in the heart of major spring work and preparatory work for planting. In addition to that, your undersigned is lead trial lawyer in a two-week jury trial in Iowa with multiple parties that has been set for many months during the time of the Summit proposed April-May 2023 hearing.

7. In short, Landowners object to any schedule being set but if one is to be set Landowners specifically object to any hearing in April-May 2023 for the reasons above and because that is far too fast for the magnitude of Applicant’s request.

8. In the alternative to the reasonable suggestion of staying the PUC proceeding, Landowners endorse the following schedule format:

- a. Valid Application on filed: Has not occurred so date is to be determined
- b. Applicant Direct Testimony filed: 30 days from deadline (a) above (assuming a valid Application is every filed)
- c. Staff Testimony filed: 60 days from deadline (b) above
- d. Intervenors’ Direct Testimony filed: 150 days from deadline (c) above
- e. Applicant’s Rebuttal Testimony filed: 45 days from deadline (d) above
- f. Completion of all discovery: 30 days from deadline (e) above
- g. Intervenors’ Surrebuttal Testimony filed: 30 days from deadline (f) above
- h. Pre-Hearing Motions and Witness and Exhibit List deadline: 30 days after deadline (g) above

- i. Hearing Dates – 14 days after deadline (h) above. Landowners request two weeks be set aside for the Hearing. (The earliest a hearing can reasonably occur is December 2023.)
- j. Post Hearing Opening Brief due – 60 days after last day of Hearing
- k. Post Hearing Reply Brief due – 30 days after deadline (j) above

9. The most basic two-party litigation in courts across South Dakota can routinely take two years or more from date of initial petition filing until adjudication at trial or final hearing. For a matter such as this Summit Docket, which is orders of magnitude larger and more complicated, it should not at all be a surprise that an intelligent and thoughtful time frame of at least two years from Summit's February 7, 2022, filing of its Petition for Hazardous Liquid Pipeline Permit would be the minimum amount of time required to analyze and vet Summit's first-of-a-kind proposal.

December 9, 2022

By: /s/ Brian E. Jorde

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*Landowners' Lawyers*