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

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

DOCKET HP 22-001

**LANDOWNERS' MOTION TO
DISMISS AND IN THE
ALTERNATIVE MOTION FOR
STAY AND OBJECTION TO
SUMMIT'S MOTION TO EXTEND
DEADLINES AND FOR
SCHEDULING ORDER AND
MOTION TO EXTEND DEADLINES**

Movants, affected Landowners, are all persons as listed on **Attachment "A"**, collectively state as follows:

OVERVIEW

1. On May 9, 2022, SCS Carbon Transport, LLC, hereafter referred to as "Hazardous Pipeline Applicant", moved the Commission for an order extending the decision deadline to June 15, 2023, and for a Scheduling Order.

2. This matter should be returned and dismissed for failure to file an application generally in the form and content required by this chapter and the rules promulgated thereunder. *SDCL 49-41B-13(2)*. Hazardous Pipeline Applicant has admitted and affirmed numerous Application deficiencies such that the appropriate course is to dismiss this Application and close this docket. In the alternative, Landowners move for a stay of all current proceedings and request no deadlines be established until a conforming and complete Application is filed and that the Commission decision be scheduled for one year from the date, if ever, a conforming and complete Application is filed. Discussion of a procedural schedule is premature until a full and complete Application is filed, including final opening testimony and the clearly defined and described route. This has not occurred.

3. While Landowners agree the deadline for ultimate Commission decision should be extended, if this matter is not dismissed in its entirety, then they do not agree with the proposed deadlines suggested. It is inappropriate, given the ever-changing route, which is paramount to the

Application for Permit, to set any such progression deadlines at this point for the reasons argued below.

ARGUMENT

I. The Application does not meet statutory and regulatory requirements and must be dismissed.

4. SDCL 49-41B-22 details Hazardous Pipeline Applicant’s burden of proof that it must establish during these proceedings. The burdens that must be met cannot be analyzed until the route for which a permit is sought is known, not only to Applicant, but to the Commission, all Parties, and by all potentially affected persons. It is impossible to analyze what threats this proposed hazardous pipeline may pose to the environment, to social, or to economic conditions of persons in the siting area if we do not have a definite route we are analyzing. To date, there is no such route. We simply have a piecemeal and unorganized composition of maps with no clear and definitive route location. We are also confronted with the possibility of further re-routes as Applicant has suggested we will not know the final proposed route until October of this year.¹ Current and future re-routes cause significant uncertainty surrounding this Application. A complete and amended Application must be submitted so the route is known, and the impact of that route can be properly assessed.

5. The February 2022 Application is incomplete. Hazardous Pipeline Applicant must first comply with applicable law and describe the location of its proposed project which naturally includes the route. SDCL 49-41B-11(2). Further, ARSD 20:10:22:11 requires site description and a “description of the specific site and its location...” The “specific” site and location of this proposed hazardous pipeline are still unclear.

6. On February 7, 2022, SCS filed its original application and proposed route. On April 8, 2022, SCS notified the Commission of a significant change to the pipeline route. A broad aerial map was submitted with the notification. Route changes occurred in Lincoln, Minnehaha, Lake, Miner, Edmunds, McPherson, and Beadle Counties. The changes in three of the Counties (Lake, McPherson, and Edmunds) had not previously been identified in the permit application as alternative routes. Amended maps of Lake, McPherson, and Edmunds County were filed on May 10, 2022; however, specific site maps depicting the currently proposed route for Lincoln, Minnehaha, Lake, and Beadle Counties have not been submitted. In addition, an amended

¹ See Applicant’s Motion May 9, 2022, Motion to Extend Deadline

application as required by ARSD 20:10:22:04(7) has not been filed. By failing to provide a specific site location, Applicant has failed to file an application generally in the form and content required by this chapter and the rules promulgated thereunder; therefore, the Application should be dismissed. *SDCL 49-41B-13(2)*.

7. 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*.

8. Applicant acknowledged in a March 11, 2022, letter to the Commission that it failed to properly notify 156 landowners to whom notice was required. SCS elected to continue with its informational meeting schedule rather than mailing new notices to all parties. The April 11th route change further compounds Applicant's notice deficiencies and does so at a time when the public and newly effected landowners and residents can no longer participate in the public input meetings. Applicant has made some assertions concerning who on the latest route has received notice; however, these assertions do not give a complete explanation of who has and has not received notice. Applicant's incomplete assessment of notice recipients have not been supported with evidence. Further, Applicant concedes that there are owners near the latest route who did not receive notice of the application as required by law.²

9. Applicant has failed to notify all required owners in the time prescribed by statute. *SDCL 49-41B-5.2*. Further, the notices themselves were deficient for failure to accurately state the "location of the facility." *Id.* Presumably, Applicant seeks to avoid repeating public input meetings by requesting an extension of time rather than withdrawing and resubmitting its application. While this may be most convenient for Applicant, it is not the proper course and cuts at the very core of the public and affected landowner's ability to understand the scope of the permit being sought.

² See May 10, 2022, Letter from Applicant's Attorney to SDPUC.

10. Recently a permit Applicant has withdrawn its application and re-submitted an amended Application due to notice failure. In Docket Number EL17-047 - In the Matter of the Application of Crowned Ridge Wind, LLC for a Facility Permit to Construct a 230 kV Transmission Line and Associated Facilities from Codington County to the Big Stone South Substation, Applicant voluntarily withdrew its Application due to an incorrect date for a Public Input Hearing in a notice that went out to landowners. Crowned Ridge Wind employed a cautionary approach to ensure that all those entitled to notice received it and that the notice given was adequate. While proper notice and right to be heard are always important, the intricacies and complexity of the present matter make it absolutely critical that notice requirements are met. Therefore, the proper course is for the Application to be returned or voluntarily withdrawn.

11. For the above stated reasons, Landowners move the Commission to act pursuant to SDCL 49-41B-13 (2) and either deny the Application on its face or return it to Applicant for failure to abide by the form and content required under SDCL 49 and Commission rules.

II. Alternatively, the Parties should have adequate time from the submission of a complete Application to prepare their case.

12. Given the deficiencies in the present application, the most appropriate course is for these proceedings to be dismissed by the Commission or the application voluntarily withdrawn whereby applicant can reapply when its Application is complete, which Applicant projects will be October 13, 2022.³

13. Instead, what applicant proposes is that this process be a moving and ever-changing target based on applicant's timetable without regard to all affected or potentially affected persons or the Commission and its staff. This approach is neither legally supported nor appropriate given the circumstances. What will likely be packaged by Applicant as a "common sense" approach to modifying deadlines is instead an admission that applicant is simply not prepared at this time to file a complete application and not prepared to proceed.

14. This matter should be dismissed; however, in the alternative, all action on this permit application should be stayed until and unless Hazardous Pipeline Applicant files its "updated application, supporting testimony, and route"⁴ as required by law. Whenever that occurs the process can arguably follow the twelve-month timeline outlined in SDCL 49-41B-24. Landowners object to effectively starting this process on October 13, 2022, and having the hearing a short 5 months

³ See Applicant's May 9, 2022, Motion pg 1.

⁴ *Id.*

later. Applicant does not account for any more time for intervention and provides only 2.5 months from application filing to Intervenor direct testimony which is not a sufficient amount of time. A significant amount of discovery must occur prior to Landowners being able to develop their testimony and there will no doubt be discovery disputes that arise needing time to resolve.

15. If October 13, 2022, is the date Applicant's will finally submit its legally compliant amended Application, evidence, and route, then the Commission's decision deadline could be October 13, 2023. Alternatively, if the final Order should issue on June 15, 2023, as Applicant suggests, then Applicant must have its new application, testimony, and route on file not later than June 15, 2023. Additionally, in either instance, the Commission should order Applicant to prove it has mailed notice directly to each and every landowner in the notice area of whatever the actual route is and file that list of names and address with the Commission, then the Party Status deadline should be open for 60-days after the date the new application is filed, consistent with S.D. Admin. R. 20:10:22:40 because then, and only then, will this be a lawful and transparent process relative to all those potentially affected. The Commission should also require new maps of each county showing the actual proposed route and noting all landowners within at least 2 miles of either side of the route.

16. While the appropriate Commission action is dismissal of the February 7, 2022, Application, should the Commission decline to dismiss this proceeding in its entirety, then these proceedings should be stayed until the new application and supporting materials including the actual route are filed. Whenever that occurs, Landowners then suggest the following procedural schedule:

- a. Complete and Accurate Application filed – Date Unknown
- b. Party Status Deadline – 60 days from previous date
- c. Staff Direct Testimony filed – 60 days from previous date
- d. Intervenor Direct Testimony filed – 120 days from previous date
- e. Applicant Rebuttal to all Testimony filed – 30 days from previous date
- f. Discovery Deadline – 45 days from previous date
- g. Intervenor/Staff Surrebuttal – 45 days from previous date
- h. Hearing Commences – 30 days from previous date
- i. Post Hearing Briefs all Parties simultaneously filed – 45 days from previous date
- j. Commission Order – whenever reasonable after all briefing

17. The typical 12-month schedule is not sufficient for a matter of this complexity, size, and novelty. Through SDCL 49-1-1 the South Dakota Legislature empowered the Commission to

make rules regarding the “regulation of proceedings before the commission, including forms, notices, applications, pleadings, orders to show cause and the service thereof, all of which shall conform to those used in South Dakota courts.” The Commission enacted a rule authorizing extension of time at ARSD 20:10:01:14 which reads: “Adjournment and extensions. Adjournments and extensions of time may be granted upon application of a party, in the discretion of the commission.” Landowners argue the Commission has authority to extend, as is reasonable here, the ultimate decision time period beyond the 12-month timeline, especially in light of Hazardous Pipeline Applicant’s recent statements:

- a. This docket does not need to move with such fervor.⁵
- b. This is a docket where we are not under a time crunch.⁶
- c. Don’t think we are on a rocket docket.⁷

CONCLUSION

18. This proceeding should be dismissed. SDCL 49-41B-11(2) requires Applicant’s Application to include a “[D]escription of the nature and location of the facility.” Because the filing Application determines the final decision deadline, and because that decision must be based upon a specific known route (which we don’t yet have), Applicant has failed to abide by requisite law. This approach has created unnecessary confusion and expenditure of time and resources state-wide, with the Commission and its staff, and with Landowners and must stop. Dismissal is appropriate and allows Applicant to regroup, have more discussions with landowners to garner support for its proposed hazardous pipeline, and they are not prejudiced to re-apply when they are prepared to do so.

19. If this matter is not dismissed, then it must be stayed to allow for a reasonable timeline for the docket to advance and all concerned persons to effectively participate in these historic proceedings. Applicant has the right to request an extension of the 12-month decision deadline found in SDCL § 49-41B-24 but recall that the deadline is premised on Applicant filing an application that fully complies with law, which the one as filed February 7, 2021, does not. Based on its repeated comments that there is no rush in this docket and no other deadlines are presently in place, Hazardous Pipeline Applicant would not suffer prejudice if a stay was imposed.

⁵ See April 14, 2022, recording <https://puc.sd.gov/commission/media/2022/puc04142022.mp3> at approximately 34:14

⁶ *Id.* at approximately 35:34

⁷ *Id.* at approximately 37:05

However, in any event, it is premature to establish procedural deadlines – other than a deadline for a conforming Application.

20. Landowners urge the Commission to reasonably utilize SDCL 49-1-1 and ARSD 20:10:01:14 as appropriate and when and if we reach the point procedural deadlines need to be established to follow Landowners above suggested progression sequences.

REQUEST FOR RELIEF

21. Landowners respectfully request this matter be dismissed.

22. 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. Once a complete application and state-wide proposed route are known, then consider setting reasonable deadlines after consultation with all parties.

23. Landowner/Movants request all other relief deemed reasonable and necessary.

Respectfully Submitted,

By: /s/ Brian E. Jorde

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NOTICE OF HEARING

Landowners respectfully request these Motions be heard at the Commissions regularly scheduled meeting on June 8, 2022, at a time convenient for the Commission as there are pending motions related to this filing that will be heard that day.

CERTIFICATE OF SERVICE

Brian Jorde of Domina Law Group PC LLO hereby certifies that on May 17, 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