

**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**

HP22-001

**LANDOWNERS' RESISTANCE
TO SUMMIT'S MOTION TO
RECONSIDER**

Movants, affected Landowners, listed on attached Exhibit "A", collectively Resists Applicant's Motion to Reconsider Scheduling Order as follows:

I. The Commission has already considered the Applicant's arguments and established a fair and appropriate procedural schedule.

1. The procedural schedule has already been discussed and considered at length in this matter and Summit has had a full and fair opportunity to present arguments in favor of its proposed procedural schedule. Summit's latest Motion to Reconsider Scheduling Order simply restates the arguments already made to the Commission at two prior meetings. The Motion presents no new legal arguments and no facts that were unknown to the Commission when the schedule was granted. The Commission should deny Summit's Motion for Reconsideration.

2. SDCL § 49-41B-24.1 is short and direct. "Upon request of the applicant, the commission *may* extend the deadlines for commission action established in §§ 49-41B-24 and 49-41B-25." § 49-41B-24.1. *Emphasis Added.* Just as the commission has discretion whether the grant the extension or not, the commission has the discretion to determine the length of extension necessary. Nothing in the Statute grants the applicant any rights in setting its own schedule for adjudication.

3. Permitting a party to single-handedly set the schedule would be the absurd and unreasonable result Summit complains of. No contested proceeding, administrative, civil, or otherwise, would allow one party to control scheduling. The Commission has carefully considered the law as well as the facts and circumstances of the docket and set a schedule that works. This is how any adjudicative body would address scheduling. The current schedule rests on strong law and reason and should be upheld.

II. Summit's application deficiencies are the cause of the extension.

4. The current procedural schedule, while not ideal for Summit, is a creation of its own making. Summit filed its original application on February 7, 2022. On March 11, 2022, Summit acknowledged via letter that it had failed to notify 156 landowners of the project and public meetings within the time allotted by SDCL § 49-41B-5.2. On May 9, 2022, Summit moved for an extension of the twelve-month decision deadline. Not until October 13 did Summit file its amended Application materials and maps.

5. On November 18, 2022, staff brought to the attention of the parties and the Commission that there were still 49 South Dakota landowners within the one-half mile corridor who had not received notice of the project. Shockingly, when confronted with its failure to notify these 49 individuals, Summit stated that it would not be providing notice to the 49 landowners. Summit's position was that the public meetings have passed so there was no reason to provide notice to the 49 landowners. Summit's position ignored that SDCL § 49-41B-5.2 also "shall contain a description of the nature and location of the facility." Despite its November 18 declaration that notice is not necessary for the 49 affected landowners, Summit finally did mail notice on December 18, 2022.

6. Summit filed its initial application prematurely. Rather than withdrawing the application and filing when it was ready, Summit has attempted to have its cake and eat it to. That is to file application materials and notify landowners when it chooses but still hold the Commission to an unworkable procedural schedule asserting a perceived “right” in certain hearing dates. If Summit were truly concerned about corporate deadlines and competitor permitting, then it should have filed its completed application sooner and notified all landowners within the statutorily required time.

III. The current procedural schedule is appropriate under the circumstances.

7. The current schedule establishes an appropriate amount of time for the parties, commission, and staff to prepare for this unprecedented docket. It was adopted with input from the parties and staff and crafted to fit the circumstances of this particular docket. Critical to the Commission's consideration was attorney scheduling conflicts and spring farming schedules which have not changed. The September hearing dates were also adopted to soften the effect of the Summit's procedural mistakes. Landowners receiving notice of the project in December simply cannot be required to appear and prepare a case by April 24.

8. PUC Staff agrees that the recently established procedural schedule that set the evidentiary hearing to begin September 11, 2023 “should help to alleviate any concerns that might have arisen if newly noticed landowners wished to intervene and participate, as they will have several months to do so. The expanded schedule will also help prevent against any prejudice existing parties might have otherwise encountered by the late addition of parties.” *Staff Response to Landowners' Renewed Motion to Dismiss and Return Summit's Application. P. 2. January 9, 2022.* The Commission adopted that reasoning in its January 29, 2023 Order Denying Landowners' Renewed Motion to Dismiss and found “that the current procedural schedule

provided adequate time to accommodate those receiving late notice.” If the Commission grants Summit’s Motion to Reconsider Procedural Schedule, then it would generate a need to reconsider Landowner’s Renewed Motion to Dismiss as well.

9. Finally, Summit knows that a hearing beginning April 24 is simply not possible. The schedule has been set, and parties have planned accordingly. To move this matter five months closer would severely prejudice the landowners who received late notice, the parties who are preparing in accordance with the existing procedural order, and the commission staff. There is no legal or factual support for amending the procedural schedule at this time.

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