

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**

**HP22-001**

**MINNEHAHA COUNTY'S MOTION TO  
INTERVENE FOR LIMITED PURPOSE  
AND MOTION FOR TIME CERTAIN  
TO PRESENT EVIDENCE ON COUNTY  
PREEMPTION**

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Minnehaha County and the Minnehaha County Commissioners (“Minnehaha County”), by and through the undersigned counsel appearing specially on their behalf, hereby move the Commission for an order permitting Minnehaha County to intervene for the limited purposes of (a) objecting to Applicant’s Motion for Order Preempting County Ordinances, filed on August 21, 2023; and (b) moving for a time certain for the parties to present evidence on the issue of county preemption. Minnehaha County joins the Motion filed by PUC staff to set Applicant’s Motion for Order Preempting County Ordinances for the last two days of evidence on September 27<sup>th</sup> and 28<sup>th</sup>, 2023.

Given the significance of Minnehaha County’s interest in Summit’s recently-filed motion to preempt its duly-enacted ordinance and the complexity of the issues raised therein, Minnehaha County respectfully requests an order granting its request to intervene and an opportunity to be heard.

As it relates to Summit’s intent to introduce evidence related to its county preemption motion, Minnehaha County respectfully requests that such evidence only be presented at a time certain after the conclusion of Summit’s rebuttal testimony. This evidentiary hearing is currently scheduled to take place in Fort Pierre, South Dakota from September 11-September 16, 2013,

September 18-September 21, 2023, and September 25-September 28, 2023. It would be costly and prejudicial to Minnehaha County and its witnesses to travel to and from the evidentiary hearing for the entire 13-day hearing when its sole interest is defending against Summit's preemption motion. That issue can be addressed at a time certain with no prejudice to Summit. Because Minnehaha County takes no position with respect to the remaining evidence that Summit or other Intervenors intend to offer throughout the evidentiary hearing, the PUC should set aside time at the end of the evidentiary hearing schedule to address the preemption motion.

In addition, Summit did not formally request the PUC to preempt or supersede Minnehaha County's ordinance or submit evidence in support of its motion to preempt until it submitted pre-filed rebuttal testimony of James Powell on July 11, 2023. *See Powell Rebuttal Testimony*, p. 8. Therefore, procedurally, permitting Summit to introduce evidence on the county preemption issue during its case-in-chief is procedurally inappropriate and may confuse the issues. This is yet another, independently-sufficient reason why the preemption motion should be addressed at a discrete time, which most naturally falls on the last two days of the scheduled hearing.

For these reasons, Minnehaha County joins in PUC Staff's request that evidence related to the issue of preemption be presented on the final two days of the hearing, September 27 and September 28, 2023. Alternatively, if the schedule of the evidentiary hearing is subsequently modified, Minnehaha County requests that the issue of county preemption be addressed at a separately scheduled time in early October.

Minnehaha County further moves the Commission to grant it leave to provide prefiled testimony in opposition to Summit's Motion no later than 10 days in advance of the time certain scheduled by the Commission to hear the preemption issue. The current deadline of September 6, 2023 leaves too little time, particularly in view of the Labor Day holiday. Minnehaha County also asks that the PUC set a separate deadline by which Minnehaha County may submit written briefing

on the merits of Summit's preemption motion in accordance as part of its scheduling order addressing post-trial briefing. Finally, Minnehaha County respectfully submits that this Motion and the parallel Motion from PUC staff should be addressed as part of the September 6, 2023 Commission meeting.

Date: August 31, 2023.

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