

**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	HLP22-001 LANDOWNERS' MOTION FOR CLARIFICATION AND MODIFICATION OF PROTECTIVE ORDER
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Landowners as noted on the attached Exhibit A state as follows:

1. Summit filed a proposed Protective Order which was voted on and approved by the Commission at its November 18, 2022, meeting. There are several portions of the Protective Order that Landowners respectfully request clarification as well as modification or amendment.

2. It is the position of Landowners that any request for confidential treatment of information presented must be in accordance with the administrative procedure contained in ARSD 20:10:01:39-44.

3. For that reason, the entry of a protective order is premature as no request for confidential information has been submitted or considered by the Commission. Should information submitted be classified as confidential following the appropriate procedure, the Commission should consider the appropriate protective order at that time.

4. If the Commission maintains its preemptively entered Protective Order, there are several portions of the Protective Order that Landowners respectfully request clarification on.

5. In paragraph #1 the Protective Order provides or appears to provide that any party who in their sole and unilateral decision simply mark something as "Confidential" that then automatically triggers all of the processes and procedures found within the Protective Order. Landowners request clarification if this is in fact true or if the party asserting a confidentiality designation has first the duty to request confidentiality pursuant

to ARSD 20:10:01:41 and prove said confidentiality pursuant to ARSD 20:10:01:42 prior to putting all other party recipients and witnesses and third parties under the cumbersome and expensive approach of marking, preserving, and policing that unilaterally determined confidentiality as laid out in the Protective Order.

6. In paragraph #2 the Protective Order references “a bona fide need” in terms of a restriction on who is allowed to view the alleged confidential information. Landowners request a definition of what “a bona fide need” means otherwise it finds this impossible to instruct on and police this term.

7. In paragraph #3 of the Protective Order, it states “the minimum number of persons necessary” in terms of those who will have access to the alleged confidential information. Landowners request a definition of “the minimum number of persons necessary” and specifically how anyone is to police this or determine that too many people received data or information or exactly how this paragraph is supposed to apply.

8. Paragraph #4 also has confusing provisions in that there's a requirement that an Intervenor must assure him or herself that the each and every recipient of any alleged confidential information must have read and understands the Protective Order. This is an unduly burdensome requirement if it means that each Intervenor must individually undertake the determination and make the evaluation of whether or not a third party understands each and every word and line of the Protective Order.

9. Paragraph #5 is duplicate of what is already stated in paragraph #1.

10. Paragraph #6 appears to be particularly unenforceable as it appears to state that during the public hearing on this particular application, that if at any time an alleged confidential document is to be used with the witness, or alleged confidential information is to be discussed at all, or to be offered into evidence, that the entire hearing room would need to be cleared of any persons other than Commission employees, the party's attorneys, and the authorized recipients. This is completely unworkable in a public hearing and Landowners request amendment to this provision as well as clarification on this provision.

11. In paragraph #8 the word “immediately” is undefined and should be clarified to have a certain number of days in which such communication should be known.

12. Paragraph #9 is not clear of whether or not this is intending to prevent Landowner clients from being privy to the alleged confidential information. One could read that unless they are also an authorized recipient, a client themselves can't even be informed of any contents or significance of any alleged confidential information.

13. Landowners seek further clarification on paragraph #10 that presumes to enforce the terms of this Protective Order until the end of time. If the parties are required to destroy or otherwise return confidential information that would make paragraph #10 moot or appear to.

14. A final comment is that Protective Orders like this put a massive burden and considerably increase the time and expense in the handling of documents that under this Protective Order can be deemed confidential by any person without any justification. For information submitted to be considered confidential, it must meet the definition contained in ARSD 20:10:01:39, and the submitting party must satisfy the burden of proving its confidential as outlined in ARSD 20:10:01:42. The treatment of information as confidential is the exception, not the rule. The Landowners respectfully request this Protective Order be amended or supplemented to require that the Party claiming confidentiality to satisfy the requirements of ARSD 20:10:01:39-44. Specifically, Landowners request the commission clarify that any request for confidentiality comply with ARSD 20:10:01:41 and 20:10:01:41:01 rather than the unilateral decision by a party to “mark” a document as confidential.

REQUEST FOR RELIEF

Landowners each request an Order further clarifying all of the issues raised herein as well as modification or amendment as necessary in hopes to conserve resources of all involved and avoid confrontation related to these issues.

Landowners each lastly request any and all other relief deemed necessary.

By: /s/ Brian E. Jorde

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