
**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 FOR
APPROVAL OF PARTY STATUS
APPLICATIONS FILED AFTER
APRIL 8, 2022, AND
MOTION FOR EXTENSION OF
INTERVENTION DEADLINE
OR IN THE ALTERNATIVE
MOTION FOR STAY OF ALL
PROCEEDINGS**

Movants/Affected Landowners state as follows:

OVERVIEW

1. Movant/Affected Landowners bringing these motions, by and through their counsel, are the persons, entities, organizations and business, identified in **Attachment #1**, incorporated herein, and collectively referred to as “Landowners” and “Movants”.
2. Landowners, collectively and individually on behalf of themselves and each other, respectfully request each and all of their Applications for Party Status be approved, including all of theirs that were filed after April 8, 2022, at 5 P.M. and up to present time.
3. All such Landowner Applicants are directly affected by this proposed hazardous pipeline and SCS Carbon Transport, LLC, hereafter referred to as “Hazardous Pipeline Applicant”, suffers no prejudice to these approvals nor to an extension of the Party Status deadline based on both the procedural posture of this Docket and Hazardous Pipeline Applicant’s own admissions.
4. If the Party Status deadline is not extended, then a stay of all proceedings is appropriate until Hazardous Pipeline Applicant corrects and amends its operative pleading – its Application from which this entire docket is contingent upon.

ARGUMENT

5. S.D. Admin. R. 20:10:22:40 states that party status applications “shall be filed within 60 days from the date the facility siting application is filed.” To be included for consideration for party status you must have a direct interest in the proceedings. To know if you have a direct

interest in these proceedings the Application for Permit must provide sufficient information to ascertain such an interest and detailed maps indicated who precisely is affected is the only sure method of knowing you have interests that may need to be protected.

6. On April 8, 2022, Hazardous Pipeline Applicant filed a letter disclosing material changes in its proposed route and included a vague overview map with the changes noted but to insufficient detail to determine precisely what the new routes were or who was impacted despite this information being readily available and at the fingertips of Hazardous Pipeline Applicant. No direct notice of such changes has been provided to any affected landowners and unless you happen to be checking the PUC docket in this matter daily you still would have no idea of these material changes.

7. Once the Application contents changed and multiple new routes emerged on April 8, 2022, it is reasonable that the deadline for Party Status should correspondingly be moved out sixty (60) days, analogous to S.D. Admin. R. 20:10:22:40 provision for sixty (60) days after filing of the Application. Since the Application has now materially changed and Hazardous Pipeline Applicant stated in its April 8, 2022, letter that “[O]ur SD PUC application and exhibits will be updated to reflect these changes in the near future,” it logically follows additional time is reasonable for affected South Dakota landowners to have time to consider their legal rights in seeking Party Status and protecting their interests. Alternatively, the Party Status deadline should be moved to sixty (60) days after the date whenever Hazardous Pipeline Applicant gets around to updating its Application so folks can finally have an idea on who actually is affected, thus triggering the Party Status filing clock.

8. During the recent PUC hearing of April 14, 2022, Hazardous Pipeline Applicant made these statements or expressed these sentiments:

- a. They are not surprised at all by the broad showing of interest considering the unprecedented size and scope of this project.¹
- b. This docket does not need to move with such fervor.²
- c. This is a docket where we are not under a time crunch.³
- d. We know who is on the route and who we seek easements from.⁴

¹ See April 14, 2022, recording at approximately 31:48.
<https://puc.sd.gov/commission/media/2022/puc04142022.mp3>.

² *Id.* at approximately 34:14

³ *Id.* at approximately 35:34

⁴ *Id.* at approximately 35:45

- e. Don't think we are on a rocket docket.⁵
- f. Intervenors are not slowing down the process.⁶

9. Landowners/Movants agree with the above sentiments and given multiple vague new routes have recently come to light and the Application will be amended at some unknown time in the future, it is not reasonable that Party Status Applications be cut off as of April 8 or 14 or until and unless Hazardous Pipeline Applicant finalizes its Application so that all participants in this docket currently and all South Dakotans directly affected based upon the new Application be afforded an opportunity to review, research, understand, and decide if Party Status is the appropriate route for them.

10. PUC Staff, experts on this matter and individuals who may have access to confidential filings that could further assist them beyond the general public as to where exactly are the new routes, where themselves unable to clearly ascertain what exactly the Hazardous Pipeline Applicant now wants to be considered in its Application.⁷

11. While it is unfortunate that Hazardous Pipeline Applicant has intentionally failed to provide the PUC and file publicly detailed maps that show each parcel clearly affected by their proposed project, that failure while the cause of confusion for both Landowners/Movants, PUC Staff, and other would-be-affected persons, should not act to cut off additional Party Status approvals. Hazardous Pipeline Applicant has kept its route – the very route at the heart of its Application for which it seeks PUC approval and for which Party Status is based upon, largely a secret to this day -that is there choice, but choices have consequences and that consequence should not be that affected persons are disallowed to participate in this critically important proceeding.

12. It is a bit difficult for any persons involved to properly proceed until and unless Hazardous Pipeline Applicant corrects and amends its operative pleading – its Application from which this entire docket is contingent upon. Until this occurs what is it exactly that they are requesting? What is it exactly that all the PUC resources invested are reviewing? What is it exactly that intervenors are analyzing in terms of their specific risks and affects? A stay is appropriate and will cause no prejudice.

⁵ *Id.* at approximately 37:05

⁶ *Id.* at approximately 41:06

⁷ See top of page 5 of Staff Response to New and Deferred Applications for Party Status, April 22, 2022

CONCLUSION

13. It is reasonable to conclude that the current sixty (60) day time deadline for filing Party Status applications triggered by the Application filing is because this time period was deemed sufficient for those armed with the Application and all its detail and content to be able to intelligently make a decision as to whether invest there time, efforts, and resources to the task of being an active Party to any given docket. It is not reasonable to use a Party Status application deadline weeks or months before Hazardous Pipeline Applicant has filed a complete and accurate Application.

14. Application has the right to request an extension of the 12-month found in SDCL § 49-41B-24 and 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 all presently filed Party Status applications for those persons residing, or owning or operating a business within the ten (10) mile corridor of whatever the current route actually is were all granted Party Status or if there was also an extension of the Party Status deadline.

15. A stay should be granted for the reasons discussed herein if the PUC does not allow an extension of time for Party Status deadline.

REQUEST FOR RELIEF

16. Landowners/Movants respectfully request the PUC grant all currently filed Party Status applications for those persons meeting the directly interested threshold as determined at the April 14, 2022, PUC meeting and that the PUC enter an order extending the Party Status deadline for at least sixty (60) days after April 8, 2022, and preferably sixty (60) days after Hazardous Pipeline Applicant makes good on its commitment to update its Application and Exhibits based upon its numerous April 8, 2022, route modifications.

17. Landowner/Movants request a stay in these proceedings until the operative Application with all Exhibits is filed so all persons can then know exactly what is requested by Hazardous Pipeline Applicant and what is the precise subject matter of these proceedings.

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

Respectfully Submitted,

By: /s/ Brian E. Jorde

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