

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 PIPELINE	<b>HP22-001</b>  <b>PROTECTIVE ORDER</b>
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ORDERED, that Commission Staff and Parties shall treat Confidential Information (as defined in paragraph 4), filed with the Commission or provided through discovery by APPLICANT or another party, as confidential information subject to the Commission’s rules regarding confidential information, subject to the following protective provisions:

1. All marked Confidential Information filed by APPLICANT, or provided by a party, and not released pursuant to the terms of another order in this proceeding shall be treated as confidential information pursuant to ARSD 20:10:01:39 through 20:10:01:44, except that access to and use of such information by parties for purposes of preparation for the proceedings in this matter and use in the proceedings shall be permitted subject to the provisions of this Protective Order.

2. Any party receiving confidential information pursuant to this Order is responsible to the Commission and to the providing party (i) for limiting disclosure only to such third party experts and persons acting on a party’s behalf who have a bona fide need to review such information for purposes of preparing for the proceedings in this case (“Authorized Recipients”) and (ii) for the use, return and destruction of the disclosed information as provided by this Protective Order.

3. Any party receiving confidential information shall limit its Authorized Recipients to the minimum number of persons necessary to analyze the information and prepare for and present its evidence in this proceeding.

4. Documents provided pursuant to this Order for which a party seeks confidential treatment (“Confidential Information”) shall be stamped or sealed as “Confidential.” Before any disclosure of Confidential Information shall occur to a Party or Authorized Recipient, the Intervenor shall assure himself that the Authorized Recipient to whom the Confidential Information is to be disclosed has read and understands this Protective Order, has signed and agreed to abide by its terms, and understands that unauthorized disclosure or use of the Confidential Information is prohibited.

5. The Commission shall treat Confidential Information produced pursuant to this Order as confidential information subject to ARSD 20:10:01:39 through 20:10:01:44, provided that such confidential information is marked as confidential.

6. The Commission shall conduct all hearings involving Confidential Information in

camera with only Commission employees, the parties' attorneys and the Authorized Recipients present during the portion of the hearing in which such information is offered or discussed. Any person other than Commission employees or a party who desires to have access to confidential information shall comply with the procedures of ARSD 20:10:01:42 and 20:10:01:43.

7. Persons obtaining access to Confidential Information under this Order shall use the information only in the conduct or settlement of this proceeding and any judicial proceeding arising therefrom, and shall not use such information for any purpose unrelated to this proceeding, including unrelated business, governmental or commercial purposes. Persons obtaining access to Confidential Information under the terms of this Order may disclose, describe, or discuss the confidential information in any pleading filed in this proceeding, provided that such pleading is stamped confidential and filed under seal, and provided that a separate public version is filed in which all Confidential Information is redacted.

8. If a court or another administrative agency subpoenas or orders production of the Confidential Information, a party with knowledge of the subpoena or order shall immediately notify the providing party of the pendency of such subpoena or order.

9. Nothing in this Order shall prevent or otherwise restrict counsel from rendering advice to their client regarding this proceeding and, in the course thereof, making professional analysis and use of the Confidential Information, provided, that in rendering such advice and otherwise communicating with such client, counsel shall not make disclosure of any confidential fact or assertion except to the Authorized Recipients and only in accordance with the procedures set forth in this Protective Order.

10. The provisions of this Order shall not terminate at the conclusion of this proceeding.

11. The parties are responsible for employing reasonable measures to control, consistent with this order, duplication of, access to, and distribution of copies of the Confidential Information. Parties shall not duplicate any stamped confidential document except working copies and for filing at the Commission under seal.

12. The parties, their Authorized Recipients and their other employees, agents, consultants and representatives shall be subject to a standard of good faith in their disclosure, receipt, custody and use of the Confidential Information.

13. Within two weeks after final resolution of this proceeding (which includes administrative or judicial review), parties and their attorney(s) shall return all copies of Confidential Information and all analyses or other compilations which contain any of the Confidential Information in their possession to attorneys for providing parties, or destroy all such Confidential Information and certify, under penalty of perjury, that such destruction has occurred. In the case of analyses or compilations containing Confidential Information, all Confidential Information set forth in such document shall be redacted if the document is to be retained and a copy of the redacted version shall be served on the disclosing party(ies) at least ten (10) days before disclosure of the redacted version is made to anyone other than the Authorized Recipients.

Dated at Pierre, South Dakota, this \_\_\_\_\_ day of November, 2022.