

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 PIPELINE

**HP22-001**

**APPLICANT'S REPLY TO  
LANDOWNERS' OPPOSITION TO  
MOTION FOR SCHEDULING ORDER  
AND BOARD REQUEST FOR  
SCHEDULING PROPOSALS**

COMES NOW, the Applicant, by and through its attorney, replying to Landowners' Opposition to Applicant's Motion for Scheduling Order and Board (sic) Requests for Scheduling Proposals filed on December 12, 2022. For its reply, the Applicant states as follows:

On November 18, 2022, the Commission voted unanimously to issue a scheduling order once the parties have had an opportunity to confer on scheduling dates. If the parties could not mutually agree on a scheduling order, each party shall submit a proposal by December 9, 2022. Staff filed a proposal on December 9, 2022. The Applicant filed a letter supporting Staff's proposal on December 9, 2022. Intervenors represented by Mr. Jorde (hereinafter referred to as Intervenors) failed to submit a proposal by the December 9, 2022 deadline. Intervenors then filed a proposal on December 12, 2022 along with opposition to the Commission's scheduling order and the Staff's proposal.

Intervenors appear to insist that

1. the PUC should continue this docket indefinitely until such time Summit has ninety percent of easements on hand,
2. because other lawsuits are pending in various Circuit Courts across the State, a scheduling order is "premature",

3. this docket should mimic other unspecified court proceedings and thus take “at least two years” from Summit’s application on February 7, 2022, or
4. All of the above.

The Applicant opposes all of these insistences. There is no legal authority that supports any of these positions, nor has the Commission in practice ever conditioned its review of an Application on securing a specified percentage of easements. In making their demands, which appear to be intended largely to delay the Commissions proceedings rather than address issues within the scope of the Commission’s open docket, Intervenors simply ignore SDCL 49-41B-24, which requires complete findings by the Commission within one year of the application. Applicant previously requested an extension to this deadline until June 15, 2023, pursuant to SDCL 49-41B-24.1. It is certainly not unusual for a docket such as this to be completed within a one-year timeframe from the Application, as evidenced from past dockets. In fact, as a result of Applicant’s request for extension, this will be the longest time any party has ever had to conduct discovery and seek Commission action on such an application. Section 24 of the siting chapter is in place in order to keep dockets moving on applications such as this. The vast experience of the Commission and parties to dockets is that these matters such as this, of similar and greater complexity, are routinely heard, examined and decided by the Commission in timeframes far shorter than the one presented here.

Intervenors’ counsel seeks delay here in this proceeding by any means, as he does in all other forums in which the project is at issue. He knows that delay can be fatal to projects, more so than any other tactic which project opponents might apply. A self-proclaimed “Pipeline

Fighter,”<sup>1</sup> Intervenor’s counsel is the creator of an umbrella organization that he calls the Easement Action Teams Landowners and Lawyers Cooperative. (He calls them LLCs or Easement Teams for short).<sup>2</sup> The LLCs were franchised in order to oppose the Keystone XL pipeline, and each are now active in the states through which SCS’s pipeline will travel (except Minnesota where Counsel is actively pitching his idea).<sup>3</sup>

Intervenor’s counsel makes clear in his public presentations and frequent media interviews<sup>4</sup> that he is not simply acting in his capacity as an attorney for particular clients and that his goal in a given case is not limited to issues relating to a particular client’s unique interests. Instead, counsel and the Easement Teams act as a PR machine that garner media coverage, “shar[e] information state to state,”<sup>5</sup> and use processes to delay pipeline projects. In a video recently posted to YouTube, Mr. Jorde told one group of potential clients that “I pretty much spend all day talking to landowners in different states and then strategizing and then filing lawsuits and coming up with different ideas of how we can slow down the works.”<sup>6</sup> He boasted that “every piece” of his litigation related to the Keystone pipeline “played a part to *delay, delay,*

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<sup>1</sup> *Experts: Brian Jorde, Managing Lawyer, Domina Law Group*, Pipeline Fighters Hub (last visited Dec. 12, 2022), <https://pipelinefighters.org/expert/brian-jorde/>; *see also id.*, *About* (last visited Dec. 12, 2022), <https://pipelinefighters.org/about/>.

<sup>2</sup> *About the Easement Action Teams Landowners & Lawyers Cooperative (LLC)*, Easement Action Teams LLC (last visited Dec. 12, 2022), <https://easement-action-teams-llc.squarespace.com/llc>.

<sup>3</sup> CUREmn, *Defending Property Rights and Easements*, YouTube (Oct. 10, 2022), <https://www.youtube.com/watch?v=jCLs1i792wA>

<sup>4</sup> *See, e.g., This is Winnable*, Manchester Press (Sept. 21, 2022) [https://www.manchesterpress.com/news/this-is-winnable/article\\_c2ad7e88-efb3-5eaf-9865-79bf43f6b1e4.html](https://www.manchesterpress.com/news/this-is-winnable/article_c2ad7e88-efb3-5eaf-9865-79bf43f6b1e4.html); *Iowa’s CO2 Pipeline Fight, One Year In*, Northwest Iowa Times (Nov. 1, 2022), [https://www.nwestiowa.com/news/iowas-co2-pipeline-fight-one-year-in/article\\_842349be-57e1-11ed-9409-2f89a8a384f5.html](https://www.nwestiowa.com/news/iowas-co2-pipeline-fight-one-year-in/article_842349be-57e1-11ed-9409-2f89a8a384f5.html); *Carbon Storage Plans Prompt Concerns in Tribal Areas*, Public News Service (Jan. 3, 2022), <https://www.publicnewsservice.org/2022-01-03/energy-policy/carbon-storage-plans-prompt-concerns-in-tribal-areas/a77220-1>; *Iowa Landowners United Against Use of Eminent Domain*, Iowa Public Radio (Feb. 24, 2022), <https://www.iowapublicradio.org/ipr-news/2022-02-24/iowa-landowners-unite-against-use-of-eminent-domain>; *Landowners Lawyer Fights Eminent Domain: Pipeline Hearings to Start in South Dakota*, AG Week (Mar. 17, 2022), <https://www.agweek.com/news/policy/landowner-lawyer-fights-against-eminent-domain-pipeline-hearings-to-start-in-south-dakota>.

<sup>5</sup> *Defending Property Rights and Easements*, at 27:50–28:46, <https://www.youtube.com/watch?v=jCLs1i792wA>.

<sup>6</sup> *Id.* at 33:25.

*delay* so other dominos can fall,” suggesting that this delay strategy can also work against CO<sub>2</sub> pipelines.<sup>7</sup>

It's clear that

1. Existing statute controls,
2. the dates proposed are workable and fit within the statutory framework which has served for years, and
3. Intervenors' arguments fall short.

### REQUEST FOR RELIEF

The Applicant respectfully requests the Commission adopt the procedural schedule put forth by Staff on December 9, 2022.

Dated this 19 day of December, 2022.

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

BRETT KOENECKE

CODY L. HONEYWELL

AARON SCHEIBE

*Attorneys for SCS Carbon Transport LLC*

503 South Pierre Street

P.O. Box 160

Pierre, South Dakota 57501-0160

Telephone: (605) 224-8803

Fax: (605) 224-6289

[brett@mayadam.net](mailto:brett@mayadam.net)

[cody@mayadam.net](mailto:cody@mayadam.net)

[aaron@mayadam.net](mailto:aaron@mayadam.net)

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<sup>7</sup> *Id.* at 40:09 (emphasis added).