

**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**

---

\*  
\*  
\*  
\*  
\*

**STAFF MEMORANDUM ON  
INTERVENTION**

**HP22-001**

Staff provides this memorandum in order to provide clarity on Staff’s position regarding intervention in hopes that it is informative for the public as we prepare for the upcoming public input meetings. This memorandum should not be read as a response to any application for party status that has been filed or as a deterrent to those interested. It should merely serve as a guide to those considering their options for participation and to encourage those seeking party status to be as clear as possible when completing the interest section of the application.

The Commission has not yet had the opportunity to opine on SDCL 49-41B-17 as it pertains to individual intervenors since the statute was amended in 2019. SDCL 49-41B-17 provides in relevant part that

Parties to a proceeding under [Chapter 49-41B] unless otherwise provided include...

[a]ny person residing in the area where the facility is proposed to be sited, or any directly interested person, if timely application therefore is made as determined by the commission pursuant to rule. An application for party status in a proceeding under this chapter must contain a detailed statement of the interests and reasons prompting the application.

This creates two categories of individual persons who are parties pursuant to SDCL 49-41B-17(4): persons residing in the area and persons with a direct interest. The former is self-explanatory, and not subjective. However, the question of direct interest is more complex.

SDCL 49-41B-17(4) requires an applicant for party status to provide a detailed statement of interests. In order to determine whether a person is entitled to intervention as directly interested, one must apply the facts provided in the application for party status to the law and precedent.

The South Dakota Supreme Court has held that “the interest which entitles a party to intervene must be a direct interest, by which the intervening party is to obtain immediate gain or suffer loss by the judgment which may be rendered between the original parties.” *Jackson v. Board of County Commissioners for Pennington County*, 76 SD 495, 500, 81 NW2d 686, 689 (1957).

While the intervention statutes of the states differ, there is a general concurrence in the decisions that the interest which entitles a person to intervene in a suit between other parties must be in the matter in litigation and of such direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment. The interest must be one arising from a claim to the subject matter of the action or some part thereof, or a lien upon the property or some part thereof; one whose interest in the matter of litigation is not a direct or substantial interest, but is an indirect, inconsequential, or contingent one, cannot intervene.

*Id.* (quoting 39 Am.Jur. Parties § 61).

The United States Supreme Court has also taken this position. In *Sierra Club v. Morton*, the Supreme Court held that the Sierra Club lacked standing to challenge construction of a ski resort because the Sierra Club did not allege that any of its members would be significantly affected by the development of the ski resort. *Morton*, 405 US 727 (1972)<sup>1</sup>. The *Morton* Court

---

<sup>1</sup> Though not relevant here, Staff notes that following *Morton*, Congress took specific action to expand participation in certain federal proceedings. Nonetheless, the standard discussed in *Morton* remains relevant to those proceedings not addressed by that Congressional action.

stated that although it did not deny that the ski resort could cause ‘injury in fact’, “the ‘injury in fact’ test requires more than injury to a cognizable interest. It requires that the party seeking review be himself among the injured.” *Id.* at 735.

Therefore, in order to be entitled to intervention as an individual with a direct interest pursuant to SDCL 49-41B-17, a person must demonstrate that they will suffer immediate gain or loss if the Commission grants or if the Commission denies a siting permit in this docket.

It is also important to note that, for the purposes of SDCL Chapter 49-41B, including intervention, a “person” is not limited to a human individual. SDCL 49-41B-2(9) defines a person as “an individual, partnership, limited liability company, joint venture, private or public corporation, association, firm, public service company, cooperative, political subdivision, municipal corporation, government agency, public utility district, or any other public or private entity, however organized.” Thus, when read in conjunction with SDCL 49-41B-17, a group whose members would be directly impacted would also be entitled to intervention.

### **CONCLUSION**

It is our hope that this memorandum is a useful tool to those persons interested in participating in this docket. Staff would also like to remind everyone that, as with all Commission dockets, the ability to provide written comments is available to everyone throughout the process. This is a useful tool for those who do not qualify for intervention or who wish to voice their opinion but do not want to become a formal party.

Dated this 17th day of March 2022.

A handwritten signature in blue ink that reads "Kristen Edwards". The signature is written in a cursive style and is positioned above a solid horizontal line.

Kristen N. Edwards

Staff Attorney

South Dakota Public Utilities Commission

500 East Capitol Avenue

Pierre, SD 57501

Phone (605)773-3201

[Kristen.edwards@state.sd.us](mailto:Kristen.edwards@state.sd.us)