

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

<p>IN THE MATTER OF THE APPLICATION BY SCS CARBON TRANSPORT LLC FOR A PERMIT TO CONSTRUCT A CARBON DIOXIDE PIPELINE</p>	<p style="text-align: center;">HP22-001</p> <p style="text-align: center;">APPLICANT’S RESISTANCE TO LANDOWNERS’ MOTION FOR APPROVAL OF PARTY STATUS APPLICATIONS FILED AFTER APRIL 28, 2022, AND MOTION FOR EXTENSION OF INTERVENTION DEADLINE OR IN THE ALTERNATIVE MOTION FOR STAY OF ALL PROCEEDINGS</p> <p style="text-align: center;">AND</p> <p style="text-align: center;">APPLICANT’S RESISTANCE TO LANDOWNERS MOTION TO DISMISS</p>
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COMES NOW, the Applicant, by and through its attorney, resisting Landowners’ Motion for Approval of Party Status Applications filed after April 28, 2022, and Motion for Extension of Intervention Deadline or in the alternative, Motion for Stay of All Proceedings, and Landowners’ Motion to Dismiss. In support of its Resistance, the Applicant states as follows:

South Dakota Codified Law provides that parties who may proceed in this process 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.*” SDCL § 49-41B-17 (emphasis added). The applicable rule further provides that party status applications “shall be filed within 60 days from the date the facility siting application is filed.” ARSD 20:10:22:40

Movant now requests the Commission ignore the plain language of both SDCL § 49-41B and ARSD 20:10:22 and extend the Party Status deadline for sixty days, or grant a complete stay

in the proceeding, or dismiss the Application entirely. Applicant and Commission have provided both sufficient information and notification to possible interested parties, and the Applicant urges the Commission deny both motions made by Movant.

ARGUMENT

1. Applicant has provided a legally sufficient amount of information and content regarding the Application, pursuant to law, to continue this Application process.

Applicant has complied with all statutes and rules regarding the form and content for the Application for the permit, including SDCL § 49-41B-11 and ARSD 20:10:22:05. Applicant provided site descriptions, locations, and maps with the original application. When certain reroutes in Lake, McPherson, and Beadle Counties were requested by landowners, the Applicant reviewed those requests and determined they were workable. Applicant has, and will continue to, work with landowners going forward as this Application continues.

Movant claims that because small reroutes (approximately 6 miles in length, *see Applicant's Letter regarding Maps and Exhibit A, B, and C*) have been made to the 469 miles of proposed pipeline in South Dakota, the entire Application must be denied. This is an overly burdensome standard Movant is requesting for any Applicant to reach; it is neither practical nor provided for in statute. Applicant has certainly substantially complied with all statutory requirements regarding Application contents in ARSD 20:10:22 and SDCL 49-41B. Applicant provided the locations of the facility "sufficient to carry out the intent for which [the statute] was adopted." *Id.* An application can be amended as the process drives forward. There exists authority that specifically contemplates amendment of the Application and describes the format an amendment shall be filed in. *See* ARSD 20:10:22:04. Amendments and additions to siting applications have been commonplace in front of the Commission. In fact, amendments and

changes *should* occur. Feedback on projects, from stakeholders, should not be rejected because the process isn't open to it.

2. Applicant has provided adequate notice to interested parties.

Applicants have substantially complied with the laws governing notification for the facility siting permit. Landowners who reside within one-half mile of the proposed facility were properly and substantially notified of the Application and the date, time, and location of the public input meeting pursuant to SDCL § 49-41B-5.2. *See SCS Carbon Transport LLC's Letter regarding Proof of Mailing, 03/22/22.* The landowners whom Applicant seek easements from, including those on the reroutes, were all noticed and are on the notice list Applicant filed.

The Application was initially filed on February 7, 2022. Applicants noticed a vast majority of the landowners on the route, pursuant to SDCL § 49-41B-5.2, on February 11 and February 14, 2022. The total number of notices sent in the initial mailing was approximately 2,546. Applicants then provided notice to 156 landowners, that were unfortunately omitted from the original mailing, on March 10, 2022. The public meetings took place on March 22, 2022, to March 25, 2022. Sometime after the public input meetings, Applicant then made changes to the route at the requests of numerous landowners, which were previously discussed in Applicant's May 10 letter to the Commission. As discussed in that letter, a very small number of landowners are now within the one-half mile corridor that were previously not sent notices. With that information, Applicant posits they substantially complied with the requirements of SDCL § 49-41B-5.2 for the public input meeting.

“Substantial compliance” with a statute means actual compliance in respect to the substance essential to every reasonable objective of the statute. It means that a court should determine whether the statute has been followed sufficiently so as to carry out the intent for

which it was adopted. *White Eagle v. City of Fort Pierre*, 2000 S.D. 34, ¶ 6, 606 N.W.2d 926, 928 (quoting *State v. Bunnell*, 324 N.W.2d 418, 420 (S.D. 1982)).

Again, substantial compliance “means actual compliance in respect to the substance essential to every reasonable objective of the statute.” *White Eagle*, 2000 S.D. 34, ¶ 6, 606 N.W.2d at 928; *State v. Bunnell*, 324 N.W.2d 418, 420 (S.D. 1982); *R.B.O. v. Congregation of the Priests of the Sacred Heart, Inc.*, 2011 SD 87, ¶ 12, 806 N.W.2d 907, 911. Here, the objective of SDCL § 49-41B-5.2 was to timely notify landowners by mail of the nature and location of the facility, and the date, time, and location of the public input meetings. As of March 10, 2022, Applicant sent mail to *everyone* on the current known route and within the notification corridor prior to the public input meetings.

Finally, all persons in each county in which the facility is proposed to go through received constructive notice of the Application and the time, place, and purpose of public input meetings as required under SDCL § 49-41B-16. These required notices were published pursuant to law and prior to the Party Status Application deadline. Parties that have a direct interest in the Application had sufficient notification to determine whether they want to intervene in this process.

3. The application should not be stayed or extended past what Applicant requested, and the deadline for party status application should not be extended.

The Commission, “[w]ithin twelve months of receipt of the initial application... shall make findings in rendering a decision regarding whether a permit should be granted, denied, or granted upon such terms.” SDCL § 49-41B-24.

On May 9, 2022, Applicants moved for an extension of this deadline, pursuant to SDCL § 49-41B-24.1, and provided a proposed schedule giving some context to extending the deadline.

Applicant is well within the statutory authority provided by 49-41B-24.1, and this extension should be granted. All parties will benefit from the extension, and none will be prejudiced.

The intervenors lack the statutory authority to seek an extension. The commission lacks the authority to extend the deadline except if the Applicant moves for such.

Movants somehow object to Applicant's request to extend the deadline, but at the same time, request that the Application be stayed to allow more time for landowners. By requesting a stay, Movants essentially are requesting an extension. Movants arguments for staying, or an extension, of the application and Movant's arguments for extending the party status deadline are essentially the same. Movant claims that because new information will become available to the parties and the Commission throughout the Application process, and the Application will be updated accordingly with new information, the 12-month deadline outlined in SDCL § 49-41B-24 should be simply ignored.

Existing rule expressly contemplates that amendments and updates to applications do occur. ARSD 20:10:22:04. Applications of this nature should be updated. If an extension is granted to landowners every time new information comes to light within this application process, every application in front of the Commission will be unnecessarily extended.

Finally, Applicant opposes the request to extend the party status deadline. An application for party status must be filed within 60 days from the date the facility siting application is filed. ARSD 20:10:22:40. The deadline for party status applications was April 8, 2022, at 5 P.M. Movant claims that because Applicant has made certain reroutes, at the request of landowners, and Applicant failed to notify, the deadline should be extended. Statutes contemplate the amendment of applications, but they do not contemplate extending the deadline for party status applications. Applicant has substantially complied with both the notification requirements

associated with the application, and the requirements regarding the content of the application, and the party status deadline should not be extended.

The deadline for party status requirement is firm. It has been longstanding South Dakota Supreme Court precedent that words are given their plain meaning and effect, and statutes are read as a whole. If the Commission grants Movant's motions requesting to extend the party status deadline, the language in SDCL § 49-41B-17 and ARSD 20:10:22:40 are rendered superfluous. The party status deadline cannot be extended indefinitely as the process moves along and more information is gathered. The plain meaning of the statute and rules provide sixty days from the filing of the Application, and that is what the Applicant asks the Commission to recognize.

Conclusion

Movant claims the deadline for party status applications should be extended, that the Application should be dismissed, or that proceedings should be entirely stayed. During the Application process, more information will become available to the Applicant, the Landowners, the Public, and the Commission. The Applicant must be able to update information as it becomes available without its application being dismissed entirely. Movant has no statutory basis for such claims; Applicant has substantially complied with all requirements for a facility siting permit in front of the Commission, including notification and application contents, and will continue to do so. Based upon the plain meaning of the statutes and rules, as discussed herein, the motions for a stay in the proceeding or a dismissal of the application should be denied.

REQUEST FOR RELIEF

The Applicant respectfully requests the Commission deny the Landowners Motions dated April 28, 2022 and May 17, 2022.

Dated this 1st day of ~~May~~ ^{June}, 2022.

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