

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

**SCS CARBON TRANSPORT LLC'S
OBJECTION TO LANDOWNERS'
MOTION TO RETURN APPLICATION**

Last week, on August 18, Brian Jorde, on behalf of the “Intervening Landowners” moved the Commission to return SCS’s application based upon the North Dakota Public Service Commission’s preliminary ruling denying SCS’s permit application. That motion is not supported by law, logic, or facts (which Landowners get wrong). SCS respectfully requests that the Commission deny the motion.

To begin, there is no legal basis for the Commission to return SCS’s application. Under SDCL § 49-41B-13, which is the sole legal authority for Landowners’ motion, “[a]n application may be denied, returned or amended at the discretion of the public utilities commission for . . . [a]ny *deliberate misstatement of a material fact* in the application or in accompanying statements or studies required of the applicant.” SDCL § 49-41B-13(1) (emphasis added). Landowners do not point to a single “deliberate misstatement of material fact” that SCS made at the time it filed its application, and the North Dakota PSC’s preliminary ruling cannot create a “deliberate misstatement of material fact” where there had been none. In fact, nowhere in its application does SCS claim to have a North Dakota permit; it states that it will seek one, which it is still doing. So

on its face, SDCL § 49-41B-13(1) does not apply and the application cannot be returned on that basis.

Even if SDCL § 49-41B-13(1) were somehow applicable, the statute is phrased in the permissive—i.e., the “application *may* be denied, returned or amended *at the discretion* of the public utilities commission.” SDCL § 49-41B-13(1) (emphasis added). But, there is no basis to delay this proceeding any further.

First, Landowners are wrong about the status of the North Dakota PSC proceeding. They claim that SCS “has no pending application in North Dakota” (Mot. ¶ 4) and that SCS “is not challenging or appealing [North Dakota’s] decision.” Br. at 6. Both statements are false. The same day that Landowners filed their Motion to Return Application, SCS filed a petition for reconsideration with North Dakota. *See* Pet. for Reconsideration, Not. of Route Adjustment, & Request for a Limited Rehearing, *In re Application of SCS Carbon Transp. LLC*, Case No. PU-22-391 (N.D. Pub. Serv. Comm’n Aug. 18, 2023), <https://apps.psc.nd.gov/webapps/cases/psdocketdetail?getId=22&getId2=391&getId3=371#>. So North Dakota’s denial is not final, and SCS’s petition for reconsideration, which addresses the North Dakota PSC’s concerns, is pending. The Commission should continue with SCS’s application while proceedings progress in other states, just like the Commission has up until now. In the face of similar arguments advanced by Mr. Jorde and others, the Iowa Utilities Board has done just that, starting its hearing two days ago on August 22.

Landowners also claim that SCS’s application should be returned because consideration of the application “does not ensure the orderly and timely development” of the facility and because “[j]udicial economy and efficiency dictate” a return of the application. Br. at 4, 5. That is not a

legal basis to return the application, as SDCL § 49-41B-13(1) says nothing about judicial economy or efficiency. But even so, Landowners are wrong about that too. These state permitting proceedings were always going to move in tandem, and the *least* efficient outcome would be to delay this proceeding any further. SCS's application has been pending before the Commission for over a year and a half; the parties have engaged in extensive discovery and motions practice; and the scheduled and noticed hearing is less than a month away. Any further delay would only waste the resources that have already been expended to go to hearing in just a few short weeks.

SCS intends to construct its project in an orderly and timely manner, and a temporary setback in the North Dakota permitting process does not change that. SCS has current, active proceedings in North Dakota with its pending petition for reconsideration. SCS is actively working toward a permit there, and there is nothing that prohibits SCS from reapplying in North Dakota if needed. SCS fully intends to site its route and sequester CO₂ in North Dakota and continues to work with each permitting authority to achieve its project goals. SCS's application remains valid, accurate, and ripe for consideration. This proceeding should therefore continue as scheduled.

At bottom, Landowners' theory is that if SCS does not yet have a routing permit from North Dakota, the Commission cannot receive an application in this State. That premise is unsupported by any authority and is impractical, false, and inconsistent with past Commission precedent. Landowners motion should be denied.

REQUEST FOR RELIEF

SCS respectfully requests that the Commission deny Landowners' Motion to Return the Application.

Dated this 24th day of August, 2023.

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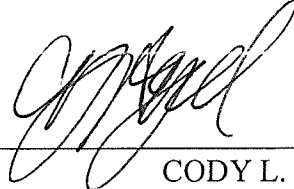
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CERTIFICATE OF SERVICE

Cody L. Honeywell, of May, Adam, Gerdes & Thompson LLP hereby certifies that on this 24th day of August, 2023, he served a true and correct copy of the foregoing in the above-captioned matter via the South Dakota Public Utilities Commission filing system and via electronic and/or United States mail, first class postage thereon prepaid, to the service list of PUC Docket HP22-001, at their last known addresses, to-wit:



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