

**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
RESPONSE TO STAFF MOTION TO
DENY APPLICATION**

South Dakota has an outsized role in producing and transporting energy for the entire country, with the production of ethanol and sustainable aviation fuel being a key component of that effort. Much of that fuel is exported to other states, significantly helping South Dakota's economy, but South Dakota is a significant consumer of ethanol and soon to be consumer of sustainable aviation fuel.

Applicant's project will play a significant part of producing that energy, which has statewide benefits. SCS Carbon Transport continues to believe that this Commission should be the ultimate siting authority for this project. That is why SCS requested that this Commission preempt multiple county ordinances that have the intended or unintended effect of hampering projects like this one. Despite that continued belief, SCS heard this Commission loud and clear on Wednesday, September 6 when it ruled unanimously that it will not preempt local county ordinances for CO2 pipelines. For that reason, SCS has withdrawn its motion for preemption.

In response to that withdrawal, Commission Staff has asked the Commission to deny SCS's application outright because SCS's proposed route does not currently comply with local ordinances and SCS does not have waivers and/or county conditional use permits in hand. SCS understands Staff's position but believes that such a drastic outcome is not required by SDCL § 49-41B-22 and that a denial, at this stage of the proceeding, would waste resources that have already been expended on this application.

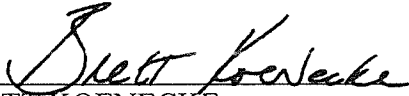
SDCL § 49-41B-22(1) provides that to obtain a permit, an applicant must show that the “proposed facility *will* comply with all applicable laws and rules.” (emphasis added) As the South Dakota Supreme Court recently explained, that dictate is “forward looking,” such that the applicant does not have to have each county permit in hand or necessarily be compliance with local ordinances at the time of the hearing. *Christenson v Crowned Ridge Wind, LLC*, 2022 S.D. 46, ¶ 30, 978 N.W.2d 741, 751. Instead, this Commission can “apply the forward-looking standard of SDCL 49-41B-22(1)” to “attach[] a condition to the permit requiring” that, before construction, the applicant be in compliance with all laws. *Id.* ¶ 33.

That is all SCS is asking for. Because so much effort and so many resources have been expended in preparing the application and for this hearing, SCS asks that the hearing continue that it be given the opportunity to prove the requirements of SDCL § 49-41B-22 and obtain a permit with the condition that it come into compliance with all applicable local ordinances before construction. If this Commission were to rule otherwise—if it were to hold that an applicant must have each county-level permit in hand before a hearing—then this and future projects may be unnecessarily delayed or terminated.

SCS therefore respectfully requests that the Commission deny Staff’s motion and that the hearing continue as scheduled.

Dated this 8th day of September, 2023.

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