

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE APPLICATION BY)	ORDER DENYING
SCS CARBON TRANSPORT LLC FOR A)	APPLICATION OF SCS
PERMIT TO CONSTRUCT A CARBON)	CARBON TRANSPORT LLC
DIOXIDE TRANSMISSION PIPELINE)	
)	HP24-001

PROCEDURAL HISTORY

On November 19, 2024, the South Dakota Public Utilities Commission (Commission) received an Application for a Permit to Construct a Carbon Dioxide Transmission Pipeline (Application) from SCS Carbon Transport LLC (Summit or Applicant), a limited liability company owned by Summit Carbon Solutions, LLC. Applicant proposes to construct and operate a carbon dioxide (CO₂) transmission pipeline (Project). The Project, which has been named the Midwest Carbon Express pipeline, is approximately 2,500 miles of pipelines for the transportation of CO₂ from ethanol plants across five states to underground injection wells in North Dakota. The South Dakota portion of the Project is approximately 698 miles, crossing 23 counties.

On November 21, 2024, the Commission issued a Notice of Application; Order for and Notice of Public Input Meeting; Notice of Opportunity to Apply for Party Status and electronically transmitted notice of the filing and the intervention deadline of January 24, 2025, to interested individuals and entities on the Commission's PUC Weekly Filings electronic listserv. The Commission held public input meetings on the Application at six locations in proximity to the route on January 15-17, 2025. The Commission has received and granted Applications for Party Status from a number of persons, including governmental entities. A number of persons previously granted party status have since withdrawn their party status.

A procedural schedule was adopted by the Commission by Order dated January 31, 2025. On March 12, 2025, Applicant filed a Motion to Suspend Current Scheduling Order and Extend Current Deadline Indefinitely (Motion to Suspend Schedule). The Commission then issued a Notice of Hearing, scheduling the Motion to Suspend Schedule to be heard on April 10, 2025. On March 27, 2025, attorney Brian Jorde, representing several intervenors, filed a Landowners' Motion to Deny Application, which the Commission also noticed to be heard on April 10, 2025. At its regularly scheduled Commission meeting on April 10, 2025, the Commission voted unanimously to deny the Motion to Suspend Schedule and requested that the Applicant be prepared to present a plan at the April 22, 2025, Commission meeting on how the Applicant intended to move forward. The Commission also voted to defer the Landowners' Motion to Deny Application until the April 22, 2025, Commission meeting.

On April 16, 2025, the Applicant filed a Motion to Reconsider Applicant's Motion to Extend Deadline (Motion to Reconsider).¹ The Commission then issued a Notice of Hearing on Less Than Ten Days' Notice, scheduling the Motion to Reconsider Applicant's Motion to Extend Deadline to be heard on April 22, 2025. On April 17, 2025, Commission staff filed a Response and Recommendation. On April 17, 2025, the Applicant filed a Response to Commissioners. On April

¹ Based upon the Commission's decision in this Order, the Motion to Reconsider, as well as any pending request for withdrawal of party status, is now moot.

22, 2025, attorney Ryan D. Cwach, representing several landowners, filed Doug Lowes' Amended Declaration. On April 22, 2025, Intervening Landowners filed additional Declarations in Support of Landowners' Motion and/or Request to Deny Application and Landowners' Opposition to Summit's Motion to Reconsider Applicant's Motion to Extend Deadline and Landowners' Reassertion of Motion to Deny Application.

The Commission has jurisdiction over this proceeding pursuant to SDCL Chapters 1-26 and 49-41B, and ARSD Chapter 20:10:22. At its regularly scheduled Commission meeting, and pursuant to the notices of hearing, the Commission considered the pending motions on April 22, 2025.

After hearing from the parties, the Commission voted 2-1 to deny the application pursuant to SDCL 49-41B-13(2), Commissioner Nelson dissenting.²

FINDINGS

The Commission finds as follows, pursuant to SDCL 49-41B-13(2) - Failure to file an application generally in the form and content required by this chapter and the rules promulgated thereunder:

1. Pursuant to SDCL 49-41B-13(2), an application may be denied, returned, or amended, at the discretion of the Commission, for failure to file an application generally in the form and content required by SDCL Chapter 49-41B and ARSD Chapter 20:10:22.
2. The Commission finds that the route in the application is not viable as a result of 1) the enactment of HB 1052 into law banning the use of eminent domain; 2) Applicant communicating to the Commission that it has no plans to challenge HB 1052;³ and 3) declarations from a number of landowners along the route stating they will not voluntarily grant survey access or enter into easement agreements for the proposed project.⁴
3. Applicant was unable to articulate a plan to cause the route proposed in this docket to be viable.
4. For these reasons, the Commission finds, as a matter of law and fact, Applicant is without a route for this Project.
5. Accordingly, the Commission finds that the application does not contain a route that sets forth the specific site and location of the project as required by SDCL 49-41B-11(2) and ARSD 20:10:22:11.
6. The Commission also finds that the application does not contain a description of the nature and location of the facility, an estimated date of commencement of construction and duration of construction, a statement of the reasons for the selection of the proposed location, and environmental studies prepared relative to the facility as required by SDCL 49-41B-11.

² Commissioner Nelson dissents based upon the timing of this decision.

³ Applicant's Response to Commissioners, 04/17/25, p. 2.

⁴ Declaration in Support of Landowners' Motion And/Or Request to Deny Application, 04/09/25; Intervening Landowners' Declarations in Support of Landowners' Motion and/or Request to Deny Application, 04/22/25.

For the above reasons, the Commission finds that the form and content of SCS Carbon Transport LLC's application is materially lacking and incomplete.

FINAL DECISION

Based upon the foregoing findings and pursuant to SDCL 49-41B-13(2), the Commission hereby denies, without prejudice, the Application of SCS Carbon Transport LLC in docket HP24-001. The Commission voted 2-1 (Nelson Dissenting) that the Application failed to satisfy the form and contents required by SDCL 49-41B-13(2); 49-41B-11, and ARSD 20:10:22:11.

It is therefore

ORDERED, that the Application is Denied without prejudice.

NOTICE OF ENTRY AND OF RIGHT TO APPEAL

PLEASE TAKE NOTICE that this Final Decision and Order was duly issued and entered on the 25th day of April 2025. Pursuant to SDCL 1-26-32, this Final Decision and Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties. Pursuant to ARSD 20:10:01:30.01, an application for a rehearing or reconsideration may be made by filing a written petition with the Commission within 30 days from the date of issuance of this Final Decision and Order; Notice of Entry. Pursuant to SDCL 1-26-31, the parties have the right to appeal this Final Decision and Order to the appropriate Circuit Court by serving notice of appeal of this decision to the circuit court within thirty (30) days after the date of service of this Notice of Decision.

Dated at Pierre, South Dakota, this 25th day of April 2025.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically or by mail.

By: *Ami L. Fierst*

Date: 04/25/2025

BY ORDER OF THE COMMISSION:

Gary Hanson

GARY HANSON, Chairperson

CHRIS NELSON, Commissioner
Dissenting

Kristie Fiegen

KRISTIE FIEGEN, Commissioner