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	**DOCKET HP 24-001** **INTERVENING LANDOWNERS' MEMORANDUM BRIEF IN RESPONSE TO SUMMIT'S MOTION FOR INDEFINITE DELAY AND IN SUPPORT OF LANDOWNERS' MOTION TO DENY APPLICATION**

INTRODUCTION

Applicant SCS Transport, LLC (hereinafter "Summit") claims it must conduct multiple surveys on each targeted parcel of its proposed 700-mile route prior to the Public Utilities Commission (hereinafter "PUC") being able to evaluate the Application. For the PUC to grant the Application, Summit must comply will all applicable laws and rules. Summit knowingly and willingly submitted an Application which they admit cannot comply with at least 28 such laws or rules across 5 counties and now must "pause indefinitely" to do more necessary due diligence. To construct, operate, and maintain its proposed pipeline, Summit must obtain easements granting right-of-way access across, under, on, and through each targeted parcel of its proposed 700-mile route.

For the reasons stated herein, the above are legal and practical impossibilities. Because Summit has proposed a route it cannot forcibly survey and cannot construct, the Application should not be indefinitely delayed, but rather denied.

Should Summit desire a route through South Dakota, it needs to go back to the drawing board and submit a route that 1) Summit can survey, 2) complies with all applicable laws and rules, and 3) can be constructed. For the PUC to hold the current docket open, even under indefinite delay status, will not and cannot make the proposed route viable. Thus, Landowners respectfully request the PUC deny the application.

RELEVANT LAW

"The Commission shall grant, with or without conditions, or deny an application for permit" for a carbon dioxide transmission pipeline "within twelve months of receipt of the initial application." SDCL § 49-41B-24.

An applicant, like Summit, can request the commission "extend the deadlines for commission action." SDCL § 49-41B-24.1.

All applications for a permit must contain among other information, "the description of the nature and location of the facility," "the estimated date of commencement of construction," a "statement of the reasons for the selection of the proposed location," "the purpose of the facility," "estimated consumer demand and estimated future energy needs of those consumers directly served by the facility," and "environmental studies prepared relative to the facility." SDCL § 49-41B-11(2),(3), (6), (8) and (11).

The Commission may deny or return an application for failure to file an application generally in the form and content required by SDCL Ch. 49-41B and the rules promulgated thereunder. SDCL § 49-41B-13.

Summit has the burden of proof "to establish each and all by a preponderance of the evidence:

(1) The proposed facility will comply with all applicable laws and rules;

(2) The facility will not pose a threat of serious injury to the environment nor to the social and economic condition of inhabitants or expected inhabitants in the siting area. An applicant for an electric transmission line, a solar energy facility, or a wind energy facility that holds a conditional use permit from the applicable local units of government is determined not to threaten the social and economic condition of inhabitants or expected inhabitants in the siting area;

(3) The facility will not substantially impair the health, safety or welfare of the inhabitants; and

(4) The facility will not unduly interfere with the orderly development of the region with due consideration having been given the views of governing bodies of affected local units of government."

SDCL § 49-41B-22.

The Commission may supersede or preempt county zoning, regulations, or ordinances but only upon a finding on an as applied basis that such zoning, regulation, or ordinance is "unreasonably restrictive in view of existing technology, factors of cost, or economics, or needs of parties where located in or out of the county or municipality." SDCL § 49-41B-28.

RELEVANT FACTS

On September 13th, 2023, the Public Utilities Commission entered an order denying Summit's first application. The PUC's order "specifically found that the proposed route violated county ordinances and could not be permitted pursuant to SDCL § 49-41B-28, making any representations within the application that the applicant would comply with all laws and regulations, including local ordinances, material misstatements of fact." The application was returned without prejudice.

On March 7, 2024, Senate Bill 201 was enrolled. Section 6 of SB 201 amended 49-41B-28 so that a PUC permit automatically supersedes and preempts any county zoning, regulation, or ordinance concerning a CO2 pipeline. SB 201 removed any discretion of the PUC to determine whether County zoning, regulations, or ordinances are or are not unreasonably restrictive. *See* S.B. 201, 2024 Leg. 99th Sess. (S.D. 2024) (available at:https://sdlegislature.gov/Session/Bill/25010/267346).

SB 201 was signed by Governor Noem on March 26, 2024. *See* S.J. 528, 2024 Leg., 99th Session, (S.D. 2024) (available at: https://mylrc.sdlegislature.gov/api/Documents/267387.pdf#page=528).

On November 5, 2024, South Dakota voters statewide soundly rejected RL 21 (SB 201) with 65 of 66 counties voting to reject SB 201 and any infringement upon local control of counties. *See* SOUTH DAKOTA SECRETARY OF STATE, BOARD OF CANVASSERS, 2024 OFFICIAL RECORD OF VOTES, at 27-28 (Nov. 12, 2024) (available at: https://sdsos.gov/elections-voting/assets/2024%20Assets/Recount-Canvass-and-Canvass-Docs-General/2024GeneralElectionCanvassWithCert.pdf).

Summit filed its second application for permit on November 19, 2024. May Adams Letter to PUC (November 19, 2024) (in docket). This second application is materially

different because the proposed project is now much larger - approximately 700 miles in total. APPLICATION TO THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION FOR A PERMIT FOR THE SCS CARBON TRANSPORT LLC PIPELINE UNDER THE ENERGY CONVERSION AND TRANSMISSION FACILITY ACT, SCS TRANSPORT, LLC (Nov. 19, 2024) (hereinafter "Application")

In its sworn testimony and filings Summit admits it has applied for a route that does not and cannot comply with the following rules, regulations, or ordinances in these counties:

a. Brown 4.0606/4.0706/4.1507/4.1607
b. Edmunds "Hazardous Liquid Pipeline (HLP)"
c. Edmunds "Minimum Setback Requirements." 1
d. Edmunds "Minimum Setback Requirements." 2
e. Edmunds "Minimum Setback Requirements." 3
f. McPherson 2607.1.d
g. McPherson 2608
h. McPherson 2610.8
i. McPherson 2611.1
j. McPherson 2611.2
k. McPherson 2611.5
l. McPherson 2611.8
m. McPherson 2613.2
n. McPherson 2613.4
o. McPherson 2613.5
p. McPherson 2613.8
q. McPherson 2614.5
r. McPherson 2616
s. McPherson 2621.1
t. Minnehaha 12.18.B.7
u. Minnehaha 12.18.c Dwellings, Churches, and Businesses - 330'

(measured from property line)

v. Minnehaha 12.18.c Municipal Boundaries: Second Class (Population between 500 and 5,000) - 3,960'

w. Sanborn 523.1.r

x. Spink 17.2904

y. Spink 17.2906.1

z. Spink 17.2906.2

aa. Spink 17.2908.1.a

bb. And there are 13 more instances where Summit is uncertain if it can comply and is "…waiting for discovery responses from the County."

See Kylie Lange Prefiled Testimony (dated January 31, 2025), Ex. 14 (in Docket).

Summit failed to submit any specific evidence of actual attempts to comply with the above referenced ordinances short of miscellaneous communicaitons with government officials about the route. *See generally* Kylie Lange Prefiled Testimony (dated January 31, 2025) (in Docket). Summit took no concrete steps to comply with said ordinances despite knowing it need to exhaust those local governmental efforts prior to submitting the Application on November 19, 2024.

On March 6, 2025, the Governor signed into law HB 1052 which states:

> "Notwithstanding the provisions of any other law, a person may not exercise the right of eminent domain to acquire right-of-way for, construct, or operate a pipeline for the preponderant purpose of transporting carbon oxide."

H.B. 1052, 2025 Leg., 100th Session, (S.D. 2025) (available at: https://mylrc.sdlegislature.gov/api/Documents/284078.pdf#page=475).

Summit cannot survey private property without obtaining explicit landowner consent, which is voluntary, because Summit is not "vested with the authority to take private property for public use[…]." SDCL § 21-35-31.

Summit requests the PUC to a) suspend the current scheduling order and b) extend "indefinitely the current deadline for Commission action…" Summit confirms its application is for a "specific route[.]" MOTION TO SUSPEND CURRENT SCHEDULE ORDER

AND EXTENT CURRENT DEADLINE INDEFINITELY, IN THE MATTER OF APPLICATION BY SCS CARBON TRANSPORT, LLC FOR A PERMIT TO CONSTRUCT A CARBON DIOXIDE TRANSMISSION PIPELINE, HP 24-001 (March 12, 2025) (in docket). Summit states it needs a number of surveys to prove the "feasibility of constructing and operating the facility over the applied for specific route. Summit states the surveys they seek "will be significantly delayed." Id.

According to Summit allies in the legislature, Summit has obtained approximately 49% of the easements for its proposed "approximately 698 miles of carbon dioxide (CO2) pipeline" in South Dakota. S.J. 438, 2024 Leg., 100 Session, (S.D. 2025) (Statement of David Wheeler) (available at https://sdpb.sd.gov/sdpbpodcast/2025/sen31.mp3#t=3008. *See also* Application at 1.

In support of Landowners' motion to deny, they submit over 79 Declarations[1] of landowners representing a significant number of miles of the Project. The Declarants are clear: they will not grant any future survey access to Summit nor will they enter into any easement agreements with Summit. *See generally* Landowner Declarations. In fact, all intervening landowners represented by Jorde and Cwach unequivocally oppose a hazardous carbon dioxide pipeline crossing through their respective properties.

ARGUMENT - OVERVIEW

The Commission is required to approve or deny a permit within one year from the acceptance of an application to approve or deny a permit SDCL § 49-41B-24. A decision must be rendered in this proceeding by November 19, 2025. Summit invokes SDCL § 49-41B-24.1 to request that the Commission waive the November 19, 2025, deadline indefinitely because HB 1052 clarified that carbon oxide pipelines are not entitled to

[1] South Dakota has adopted the Uniform Unsworn Declaration Act. An unsworn statement can be used whenever a sworn statement can be used. SDCL § 18-7-4. Unless specifically required, an affidavit filed with a court is not required to be notarized. SDCL § 18-7-4.1. South Dakota's civil procedure applies to PUC hearings. SD Admin. R. § 20:10:01:01.02.

eminent domain. The loss of Summit's ability to colorfully claim eminent domain limits Summit's ability to complete necessary and legally required surveys in a timely fashion.

Summit provides no insight or guidance as to how long Summit believes it will take to comply with legal requirements. The indefinite request creates uncertainty for affected landowners, Commission staff, and the Commission itself regarding what to expect from this docket. It is neither just nor practical to keep the entire docket in limbo until some unknown time in the future that suits Summit, particularly where over 350 miles of targeted land is owned by persons who have not agreed to easements and many who will not agree to surveys.

STANDARD OF REVIEW

The Commission "is not bound by stare decisis, and therefore it can redefine its views to reflect its current view of public policy regarding the utility industry." In re Admin. Appeal of Ehlebracht, 2022 S.D. 19, ¶ 29, 972 N.W.2d 477, 487 (SD 2022).

Summit requests that this docket be paused indefinitely under SDCL § 49-41B-24.1. The Commission *may* extend the one-year deadline of SDCL§ 49-41B-24 upon the request of an applicant. This is discretionary function of the Commission. The meaning of "shall" versus "may" is well-settled in South Dakota jurisprudence. In statutory construction, the South Dakota Supreme Court finds across multiple different types of actions that the use of the word may, shall or must "*is the single most important textual consideration determining whether a statute is mandatory or directory*." In re Estate of Flaws, 2012 SD 3, 811 N.W.2d 749, (2012) (citing Matter of Groseth Intern, Inc., 442 N.W.2d 229, 232 n.3 (SD 1989).

Intervening Landowners file a substitute motion that Summit's application be denied under SDCL § 49-41B-13(1) & (2). The Commission *may* deny and return the application when a deliberate misstatement of a material fact is in the application or in accompanying statements or studies. SDCL § 49-41B-13(1). The Commission *may* deny the application for failing to be in the form and have the content required by law and rules. SDCL § 39-41B-13(2).

1. The indefinite request demonstrates that deliberate material misstatements are in the Application and necessary content is not.

SDCL § 49-41B-11 outlines the 12 pieces of information that are required in any application for a Commission permit. These 12 subsections include "(2) description of the nature and location of the facility; (3) estimated date of commencement of construction and duration of construction;" "(6) statement of the reasons for the selection of the proposed location;" "(9) estimated consumer demand and estimated future energy needs of those consumers directly served by the facility;" and "(11) environmental studies prepared relative to the facility." SDCL § 49-41B-11.

South Dakota administrative rule further defines and clarifies application contents. S.D. Admin. R. § 20:10:22:05. "A general site description, including a description of the specific site and its location with respect to state, county, and other political subdivisions" is required. S.D. Admin. R. § 20:10:22:11. Maps showing prominent features, including places of historical significance are required. Id.

A. Summit's application of this proposed path is reliant on eminent domain, which is a legal and factual impossibility.

No party nor their counsel can reasonably claim that this particular project is not highly controversial. We could disagree about the nature or legitimacy of the controversy while still acknowledging it exists. Summit amplified the controversy through its successful efforts to ram through a law, commonly known as SB 201, that purported to give rights to landowners, but in reality stripped landowners and local governments of longstanding rights and authorities. South Dakota citizens referred this law, and the South Dakota voters unequivocally defeated the law despite Summit's well-financed campaign in favor of it. This issue has completely transformed the legislative and executive make up of the South Dakota Republican Party with numerous incumbent supporters of SB 201 losing their primary elections and anti-carbon pipeline individuals leadership roles the South Dakota Republican Party. This issue is not just a Republican issue. The legislature passage of HB1052 was overwhelmingly bipartisan.

This proceeding is not and should not be about politics, but the merit of the application. These political realities however are discussed in this brief to highlight that Summit chose to make certain material representations in a legal and political climate with incredible uncertainty. Events and time have created certainty. Before it was a disputed legal question as to whether Summit can use eminent domain, but legislation has now resolved it. Summit previously asserted it had certain rights to complete surveys of land against a landowner's wishes. The South Dakota Supreme Court found that Summit was wrong. Betty Jean Strom Trust v. SCS Carbon Transport, LLC, 11 N.W.2d 71, 2024 S.D. 38. The Application and its contents were speculative on November 19, 2024. Now, they are false.

Summit acknowledges that the inability to threaten eminent domain against landowners eliminates Summit's ability to complete necessary and legally required surveys without the landowner's consent. Summit's Application indicates "eminent domain" is necessary to complete the project on the proposed path. *See* APPLICATION at Section 4.2, Pg.41 (*stating that the proposed route reduces the use of eminent domain but does not eliminate it*). Summit likely will not admit it, but Intervening Landowner's Declarations demonstrate that the current proposed pipeline path cannot be the final one. The Legislature and Governors' actions have codified landowners' rights to control whether Summit employees and agents may enter upon their land.

Even if Summit could get 100% of the surveys it seeks, which it cannot, and even if the PUC were to supersede and preempt every single Summit-challenged ordinance, which it is unlikely to do, Summit still does not have easements for approximately 350 miles of applied for proposed route and no reasonable prospect of obtaining them. Because the PUC has siting authority and not routing authority, the PUC is essentially handcuffed to either approve Summit's specific route requested by granting the application or enter an order denying the application. As a result, there is no actual construction timeline grounded in any rational factual basis. The hurdles to constructability of the submitted route render such route a legal and practical impossibility, and the Application, therefore, does not meet the content requirements of South Dakota law.

B. Summit's application demonstrates it has not made a good faith effort to comply with local ordinances in violation of the Commission's former directive.

Summit's first application was rejected because Summit's application contained material misstatements concerning its ability to comply with local ordinances. During that hearing, this Commission suggested, or warned, Summit to make a good faith effort to comply with local ordinances, or if ultimately unable to comply, demonstrate that those efforts failed despite best efforts. Now, Summit expressly states that it "will comply with local regulations to review proposed Project measures within their respective counties and municipalities before construction." APPLICATION, at Section 5.5.3, Pg. 133-135. Summit has made no effort to do so and fails to provide any sort of timeline for doing so. In fact, Summit has been more litigious and adversarial towards local governments in this proceeding than the previous one in hopes that the PUC will void every ordinance Summit makes no effort to comply with.

The invocation of SDCL § 49-41B-28 to ask a state commission to usurp that local authority is nearly unprecedented in the Commission's history. Only two applicants in the entire history of the Commission have invoked this statute. In the early 1980s, as part of the MANDAN project to run an electrical transmission line through South Dakota, Nebraska Public Power District asked the Commission to invalidate local zoning rules.. The second applicant was the recent Navigator carbon dioxide project. In both situations, despite the passage of time and commissioners, the Commission, recognizing the abhorrent nature of the request, flat out refused to consider it, and refused to exercise such authority.

While the Commission is not bound by precedent, the Navigator project was recent, and the ordinances in question in that proceeding are also attacked in this proceeding. This same Commission found that the commission's invocation of preemption under SDCL § 49-41B-28 is discretionary and is an extreme remedy. COMMISSION ORDER DENYING APPLICANT'S MOTION TO PREEMPT COUNTY ORDINANCES UNDER SDCL 49-41B-28, PUC, IN THE MATTER OF THE APPLICATION OF NAVIGATOR HEARTLAND GREENWAY LLC FOR A PERMIT UNDER THE SOUTH DAKOTA ENERGY CONVERSION AND TRANSMISSION

FACILITIES ACT TO CONSTRUCT THE HEARTLAND GREENWAY PIPELINE IN SOUTH DAKOTA, HP22-002, at 2, (September 13, 2023) (hereinafter "Navigator Preemption Order"). Further, the Commission observed that the Navigator carbon pipeline serves no valid purpose towards meeting the energy requirements of the people and the legislative intent of South Dakota's public utility laws. Navigator Preemption Order at 2. Therefore, preemption was not appropriate. This is a different applicant, but it is a carbon pipeline that is materially not different from the Navigator pipeline. In fact, a portion of this pipeline is the former Navigator pipeline.

It is apparent from the prefiled testimony that Summit has made nominal efforts since its previous application was rejected for failing to meet the exact local ordinances. Summit has not applied for any county permits and has not even provided the Commission with a schedule for such compliance. This shows that Summit has not committed to applying for and acquiring county permits in time for the Commission to determine how the counties actually would apply their ordinances to the proposed route. Summit's permit timing, or lack thereof, does not comply with the law, because the county permitting process could result in modifications to the project that make it entirely different from the proposed route in the Application. Summit's Application forces the PUC to speculate as to the description of the location of the facility. SDCL § 49-41B-11(2). Such speculation evidences that the Application has material misstatements within it.

It was also true in the Navigator proceeding that Navigator made no substantive efforts to even comply with the local ordinance. Minnehaha County's ordinance does not reject the pipeline; and, in fact, if sufficient waivers from neighboring landowners are acquired, the pipeline can be approved at the county level with a simple and inexpensive special permitted use permit. Alternatively, like many other uses, Summit can apply for a conditional use permit, which would eliminate the need to obtain waivers. This would require Summit to submit itself to a local hearing on its permit, but it is unfathomable that the requirement of a public hearing is unreasonably restrictive. The conditional use permit would be heard and handled under the same standards as any other proposed conditional use. In the Navigator proceeding, this lack of effort by the Applicant was sufficient grounds

to reject Navigator's request for preemption. The Commission specifically stated that because Navigator had failed to *exhaust* its ability to work with counties to comply with the ordinance and because there was no evidence that it could not comply, Navigator had not met its burden. Navigator Preemption Order at 2. Summit has indicated that it can comply, but has made no effort, let alone exhaust its efforts, to work with South Dakota local jurisdictions. This is a material misstatement and evidences insufficient information in the Application.

C. Even if Summit could provide a timeline for the project after HB 1052, the types and amount of surveys to be completed are significant, time consuming, and should have been completed already.

Summit has not completed necessary surveys for the specific route to be considered. With the passage of HB 1052, all parties acknowledge that the project path is going to change. The Application cannot sufficiently describe the *specific* site of the Project when additional surveys must be completed and easements must be obtained. Summit has no ability to complete the route without voluntary input from affected landowners. Landowner Declarations that accompany this motion unequivocally state that the hazardous carbon dioxide pipeline is not allowed to go through their land. Summit's route location is deliberate misstatement and it demonstrates that the Application contains only a *speculative* site of the proposed pipeline.

Summit's need to complete biological and cultural surveys to determine feasibility of construction and operation of the project further shows that the Application contains material misstatements and is deficient in the content on these particular topics. The Commission's rules require the applicant to calculate the environmental effects to show the "impact on health and welfare of human, plant and animal communities[.] S.D. Admin. R. § 22:10:22:13. There are numerous geological requirements. S.D. Admin. R. § 20:10:22:14. The application must contain information on the impact on "landmarks and cultural resources of historic, religious, archaeological, scenic, natural, or other cultural significance." S.D. Admin. R. § 20:10:22:23. Undoubtedly, Summit's Application includes this information, but the content is clearly inadequate in light of Summit's motion. Summit

is essentially asking for an opportunity to re-write the contents of the Application for an unknown route while the rest of the interested parties must wait indefinitely. The more appropriate approach is to deny and return the Application to Summit. If Summit is able to complete sufficient further due diligence, nothing in law or practice prohibits them from filing a third application.

2. The Application before the Commission is not sufficiently "ripe" to merit consideration.

The Commissioners are not judges, but the commission is a quasi-judicial board. South Dakota judges are required to determine if a lawsuit before them is "ripe" for the Court's consideration. Summit's motion calls into question if its proposed carbon sequestration pipeline is ripe. "Ripeness involves the timing of judicial review and the principle that '[j]udicial machinery should be conserved for problems which are real and present or imminent, not squandered on problems which are abstract or hypothetical or remote." Steinmetz v. State, DOC Star Acad., 2008 S.D. 87, ¶ 17, 756 N.W.2d 392, 399 (*citing* Meinders v. Weber*,* 2000 SD 2, ¶ 39, 604 N.W.2d 248, 263). A conflict must be imminent. Kneip v. Herseth, 87 S.D. 642, 214 N.W.2d 93, 99 (S.D. 1974). "[C]ourts ordinarily will not render decisions involving future rights contingent upon events that may or may not occur." Boever v. S. Dakota Bd. of Accountancy, 526 N.W.2d 747, 750 (S.D. 1995) (internal citations omitted). "Courts should decide only mature controversies, eschewing advisory opinions and conjectural questions." *Id.* (citing *Kneip v. Herseth,* 87 S.D. 642, 214 N.W.2d 93, 96.

Summit's motion indicates that there is no real, present, or imminent application for permit for this Commission to rule on. Summit has to survey the entire 700 mile route. Summit will attempt to do so over land owned by persons who are hostile to Summit's hazardous carbon dioxide sequestration pipeline. Summit has no remedy to this hostility other than to speculate for alternative routes.

It is impractical to think Summit will be able to conduct each and every survey it seeks given affected landowners can exercise their legal right to say 'no thank you.' In fact, Summit admits that at best case, obtaining the surveys will be "significantly delayed." The

truth is Summit will never obtain all the surveys it states it needs for the current route. In this case, it is an impossibility to provide the Commission with the information the Commission requires to render a decision in this matter.

Waiting is not the same thing as doing nothing. The Commission's docket may increase during the indefinite period and become more difficult to manage. Commission staff will nevertheless have to remain dedicated to this particular proceeding, ready to fit it in once Summit has finally completed its due diligence, which is impossible and that frankly should have been done before the application was even submitted. Landowners will have to remain vigilant and retain its counsel to participate in a proceeding that is in limbo but available to restart at any moment.

CONCLUSION

Summit has done this to itself. Summit submitted the Application days after voters overwhelmingly rejected RL21 (SB 201). Summit instead pushed forward knowing its proposed route could not comply with many rules and regulations. Summit's decision not to engage local governments and instead seek pre-emption while continuing to ignore the legitimate regulatory interests of local governments should not be rewarded. Summit continues to target hundreds of land parcels where the landowners made clear their rejection of survey access and easements. Summit was repeatedly told to come up with a route that respected local control and respected landowners' desire to simply say 'no thank you." But Summit, inexplicably pushed on and now wants the Commission to bail out an Application that contains deliberate material misstatements of fact, proposes an indefinite and speculative location for its proposed pipeline, and seeks a route that is both legal and practically impossible. The challenges and inconsistencies of the pending Application are too numerous to be saved by even an indefinite delay. Extending the statutorily mandated deadline will not make the Application viable. If Summit truly developed a compliant route, such route would be significantly different, requiring new notices for newly affected landowners, more public input meetings, re-opening the intervention deadline. Effectively the entire process will have to start over.

Landowners respectfully request the Commission deny Summit's request for indefinite delay and instead enter an order denying the application.

Dated March 27, 2025.

By: */s/ Brian E. Jorde*
Brian E. Jorde, Esq., *Pro Hac Vice*
Domina Law Group pc llo
2425 S. 144th Street
Omaha, NE 68114
(402) 493-4100
bjorde@dominalaw.com

By: */s/ Ryan Cwach*
Ryan Cwach, Esq.
Birmingham & Cwach Law Offices, PLLC
202 W. 2nd St.
Yankton, SD 57078
Telephone: 605-260-4747
ryan@birmcwachlaw.com

Lawyers for Landowners/Movants