

**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**

**HP24-001

APPLICANT'S RESPONSE TO
COMMISSIONERS**

COMES NOW, the Applicant, by and through its attorneys of record, and provides this Response to the Commissioners as it regards the Applicant's plan with respect to the docket and the route described therein.

On March 12, 2025, the Applicant filed a Motion to Suspend the Current Scheduling Order and Extend the Current Deadline for Commission action pursuant to SDCL § 49-41B-24.1. Landowners represented by Brian Jorde filed a memorandum requesting to deny the motion filed by Applicant on March 27, 2025. Staff also responded to the Applicant's motion on March 27, 2025. Applicant filed a Reply to those responses on April 4, 2025.

The Commission heard argument regarding Applicant's motion, and the responses and replies subsequently, filed at the April 10, 2025 hearing. The Commission, after hearing arguments and asking question of the parties regarding the motion, responses and reply, requested the Applicant present the Commission with a specific plan regarding how it intends to proceed with the docket, and to appear at the April 22, 2025 Commission meeting to explain that plan. In response, the Applicant provides the following:

"HB 1052 does not kill the proposed project. Rather than viewing this legislation as an obstacle to the proposed project," Rhoden said in an email released to media. "I encourage Summit and others to view it as an opportunity for a needed reset. Voluntary easements for this proposed project will still be able to move forward... In fact, without the threat of eminent domain, the opportunity might finally be available for trust to be rebuilt and for more productive conversations to occur between Summit and South Dakota landowners." KeloTV March 6, 2025

At the forefront of the bill was Republican Rep. Karla Lems, its prime sponsor. She said nothing in the law prohibits Summit Carbon Solutions from moving forward with its project.

“If you have a great project that is going to be a boon for the people of South Dakota, and you are doing business in the right way, and it’s a project that you have buy-in for, I think you’re going to get this project done,” Lems said. “I said that at the very beginning that if you take eminent domain off the table, you do business with people in the right way, I believe that you get the project done.”

Gov. Larry Rhoden said he recently spoke with officials from POET, whose ethanol facilities stand to benefit from the pipeline. Rhoden said POET expressed disappointment in the bill. He said he told them the ball is in Summit’s court.

“If Summit chooses not to go forward with a pipeline, that’s their choice,” Rhoden said. “There are still options that they could work on.”

In Sioux Falls on the Open for Opportunity Tour, Lt. Gov. Tony Venhuizen indicated he thinks HB 1052 was a new beginning, not a shift in the state’s business mindset.

“There have been some people saying does it send a more general message? I don’t know if it does, I mean we just spent the day meeting with businesses and talking about their development and new facilities and plans to build new facilities and the development in downtown (Sioux Falls),” Venhuizen said. “And not one person has brought it up all day as a factor in their decision making. I really hope that’s an issue we can move on from.” South Dakota Public Broadcasting, Jackson Dierks, Some believe pipeline bill gave state 'black eye' among business community, April 9, 2025

The Applicant takes these state officials at their word regarding their statements and this project. Given these statements, the Applicant prefers to work with the current application and the current route rather than seeking court orders in federal district court and/or seeking to refer HB 1052 to the voters. The Applicant believes threatening legal action is counter-productive to attempting to do business in good faith in the state. Instead, the Applicant intends to make significant efforts and undertake several tasks in the coming weeks and months to advance the project and prepare to proceed with a new scheduling order, if the Commission grants the Applicant’s request.

Perhaps obviously, Applicant has sought to connect ALL the South Dakota ethanol plants to the project, leaving none behind and ensuring that the economic benefits to South Dakota

agriculture can accrue across the widest portion of the state possible. Over 90% of the state's ethanol producers have chosen to participate in the project. The Applicant has invested more than \$150 million in South Dakota on route development, surveys, permitting, and easement negotiations. As a result, the project is very large in scope and affects many people. It's well over twice the mileage of previously permitted pipeline projects in South Dakota. In fact, some segments of the project which have significantly more landowner acceptance than others. By reducing the number of participating plants, eliminating those more problematic line segments and thereby minimizing the project's footprint, Applicant can reduce the overall number of opposed landowners and also focus attention and resources on those who remain affected.

Landowners are all individuals and have individual needs and motivations, and their views evolve. In fact, one person, Douglas Lowe, who was claimed in a docket filing as saying he would never sign an easement, already has done so. See attached Exhibit. Recognizing that, once the Applicant has determined those segments upon which to focus, Applicant intends to roll out new offers to landowners on those remaining segments and to continue to negotiate the purchase of options for easements across their property. Those options for easements would be exercised only if all the landowners agree and if the project is ultimately permitted to proceed.

There is no such thing as a perfect route. Changing this application's route and involving new landowners will not result in a route which is somehow acceptable to all. However, reducing the project footprint by eliminating some of the laterals will not require a new route involving new landowners. Rather, Applicant will work within the existing route on file with the Commission by eliminating portions of that route and will not add to or displace the route shown in the application. Thus, no new permit application is necessary and requiring such a filing would be a waste of the Commission's time and resources. Applicant will make a submission

showing the reductions in scope when that work, which cannot reasonably be accomplished within the time between the filing of Landowners' motion to deny the application and today, is completed.

Applicant then intends to:

- a. consult the participating ethanol plants
- b. undertake a review of the scope of the project
- c. determine which segments may be more likely to achieve full acceptance
- d. communicate to the Commission and parties which segments of the project will be dropped from the current application.
- e. seek to sign options for easements
- f. once complete with options, restart the facility permit process with this application.

Accordingly, the Applicant asks to exercise SDCL 49-41B-24.1 such that the Commission extend the deadline for commission action to determine whether the State is in fact "Open for Business."

Dated this 17th day of April, 2025.

MAY, ADAM, GERDES & THOMPSON LLP

BY:



BRETT KOENECKE
CODY L. HONEYWELL
AARON P. SCHEIBE
503 South Pierre Street; P.O. Box 160
Pierre, South Dakota 57501-0160
Telephone: (605)224-8803; Fax: (605)224-6289
brett@mayadam.net
cody@mayadam.net
aaron@mayadam.net

WOODS, FULLER, SHULTZ & SMITH P.C.
JAMES E. MOORE
P.O. Box 5027
Sioux Falls, South Dakota 57117
Telephone: (605)336-3890
james.moore@woodsfuller.com

Attorneys for Applicant

CERTIFICATE OF SERVICE

Brett Koenecke, of May, Adam, Gerdes & Thompson LLP, certifies that on the 17th day of April, 2025, he electronically filed and served through the PUC filing system a true and correct copy of the foregoing in the above-captioned action to the service list of docket HP24-001.

A handwritten signature in black ink, reading "Brett Koenecke", written over a horizontal line.

BRETT KOENECKE