

**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**

HLP24-001

**Leroy Braun, et al. Response to Staff’s
December 13, 2024, Memorandum
Regarding Party Status Applications**

LeRoy Braun, and all other Intervenors represented by Brian Jorde and Ryan Cwach, collectively respond to Staff’s December 13, 2024, Memorandum Regarding Party Status Applications:

Overview

1. There are two well established paths for obtaining party status and intervention in a Commission docket. First, live within the “siting area”, and/or second, be “directly interested.” Given the first path provides for a purely objective standard, Movants suggest the second path, “directly interested” should utilize broader and more expansive factors.

Argument

2. SDCL 49-41B-17(4) states:
“Any person residing in the area where the facility is proposed to be sited, or any directly interested person, if timely application therefore is made as determined by the commission pursuant to rule. An application for party status in a proceeding under this chapter must contain a detailed statement of the interests and reasons prompting the application.”
3. This statute describes an individual party to a PUC proceeding as 1) “[A]ny person residing in the area where the facility is proposed to be sited and 2) “...any directly interested person...”

4. To determine the confines of the first path to party status we need to understand the meaning of “...in the area where the facility is proposed to be sited...” SDCL 49-41B-2(10) defines “siting area” as “that area within ten miles in any direction of a proposed energy conversion facility...” While Summit’s proposed pipeline is distinctly not an energy conversion facility, this statute provides legal guidance that any person residing within ten (10) miles of the proposed route – in either direction, e.g. those residing within the siting area, should have automatic Party status so long as they timely and properly complete and submit a Party Status Application.

5. Staff’s Memorandum, to the contrary, and discussion during the January 14, 2025 hearing, deals with path number 2 for Party status, the “directly interested” person path. Staff suggested a 2-mile distance from the proposed hazardous pipeline route be the “standard for considering direct interest.” (Memo pg 1) However, because path number 1 already has a geographic limitation, 10 miles in all directions from the proposed route, Movants suggests path number 2 should consider more practical factors.

6. The more subjective, “directly interested” persons path to Party status, gives the PUC latitude to establish limiting criteria. Staff suggested the analysis around “directly interested” be first confined to a fixed geographic location of two miles. Movants here suggests an initial limiting criteria of a 2-mile confinement is not appropriate for the “directly interested” analysis because it appears to foreclose Party status to those that have significant interactions or time spent within the 2-mile limiting zone but may not live or own a business within in that zone.

7. Movants concede there has to be a cut-off on some basis, not everyone in the world or even the region could be considered “directly interested” so there has to be some objective basis and standards for establishing “directly interested” even if that objective basis has some subjectivity to it. Staff gives insight in its Memo is that “it is fair to assume that those party status applicants within two miles of the project are directly impacted...” (Memo pg 2) and considered experience with similar dockets, safety, economic factors and a likelihood to be exposed to the construction related inconveniences that would be present should the Commission approve this Permit

application. When staff refers to applicants “within” 2-miles that seems to suggest only those persons living or owning business within 2-miles qualify as “directly interested.”

8. Movants here encourage the Commission consider more flexible factors when analyzing “directly interested.” Given any person living within 10-miles is within the siting area and automatically able to intervene, considering additional factors that establish some degree of either significant or frequent contacts within a geography between 2 to 5 miles of the proposed route is suggested. While not an exhaustive list, the following examples are some qualifiers when determining path number 2 for intervention, the “directly interested” path, that may be appropriate:

- a. Works within X miles of proposed route;
- b. Owns a business within X miles proposed route;
- c. Leases a home or land within X miles of proposed route;
- d. Has minor children attending school weekly within X miles of the proposed route or is an adult attending school weekly within X miles of the proposed route;
- e. Is caregiver for an elderly or disabled person residing within X miles of the proposed route;
- f. Regularly conducts business and personal affairs withing X miles of the route;
- g. Worships weekly within X miles of the proposed route; and
- h. Other reasonable factors establishing frequent contacts, or if infrequent, significant contacts, like owning a business or property within the determined geographic distance from the proposed route.

9. Essentially, how much of your weekly life on an annual basis is spent within some reasonable distance from the proposed hazardous pipeline or do you have significant economic interests within that certain distance? This is probably a more practical way to analyze who is “directly interested.”

10. As mentioned during the Hearing on January 14, 2025, you could be a business owner within 2 miles of the proposed route who lives half the year in another

state and travels outside of South Dakota often in the months you live here and yet you are automatically in based on your legal status as homeowner, landowner, or resident. Or, you could live 15 miles away from the proposed route but conduct a significant part of your weekly life within a reasonable distance from the proposed pipeline, such as dropping kids off at school, going to work, shopping, attending church, and/or other daily activities, but not obtain Party status based on Staff's current suggestion on how to analyze "directly interested."

Conclusion

11. Residents within 10 miles are automatically intervenors if we follow the only definition of "siting area" available, as long as they comply with the Party Status Application requirements.

12. The "directly interested" path towards intervention allows the PUC to consider more factors and circumstances that may be relevant. At the end of the day, we believe we are all trying to get to the same place and that is not denying folks Party status who legitimately and practically have significant physical or economic presence within a reasonable distance from the proposed project, regardless of if they have a direct legal interest within that same distance, such as home or business ownership.

13. Movants respectfully request the Commission err on the side of inclusivity when determined who is "directly interested" for any persons making a reasonable case of current frequent or significant contacts within a designated zone or area from the proposed pipeline and its related potential construction activities.

Dated: January 20, 2025

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CERTIFICATE OF SERVICE

On January 20, 2025, a true and correct copy of the forgoing was served electronically to persons on the PUC Service List for this Docket.

/s/ Brian E. Jorde
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