

**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**

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**STAFF’S RECOMMENDATION
REGARDING PARTY STATUS
APPLICATIONS FOR THE
FEBRUARY 11, 2025
COMMISSION MEETING**

HP24-001

INTRODUCTION

Commission staff (Staff) hereby submits this recommendation for all outstanding applications for party status to be addressed at the February 11, 2025, Commission meeting.

This recommendation is consistent with Staff’s interpretation of the applicable legal standards for the granting of party status, namely SDCL 49-41B-17 and ARSD 20:10:01:15.05. As Staff is merely one party to this docket, this recommendation should not be construed as the position of the Commission itself.

In an attempt to provide clarity and ease of understanding, Staff is providing an excel sheet as an attachment to Staff’s recommendation on the remaining applications for party status. This attachment includes Staff’s notes on each particular applicant and also the basis for Staff’s recommendation for each applicant. This attachment has four tabs: 1) A full list of all party status applications; 2) Staff’s Recommended List for Denial; 3) A list of applicants who filed after the deadline; and 4) Commissioner Nelson’s list of exceptions from the January 28, 2025, Commission meeting.

1. Full list tab: This list includes all applications for party status to date. Pending applicants are listed first with a status of “U.” The list was then sorted by whether the individuals were on the Applicant’s notice list and then sorted again in alphabetical order by first

name. Those who have already been granted party status are listed toward the bottom of this page in alphabetical order. Those pending applicants who are highlighted in red represent Staff's recommendation for denial of these applicants. Those who are highlighted in red will also appear in tab 2, which is Staff's recommended list for denial.

2. Staff's Recommended List for Denial: This tab includes, in alphabetical order by first name, those applicants for which Staff did not find a sufficient direct interest or other grounds for party status in accordance with the law. Columns in this tab include Staff's justification for its recommendation and associated notes.
3. Filed After Deadline: This tab is comprised of those applications that were received after January 24, 2025. Those highlighted in red are applicants for which Staff recommends denial. Staff will further address these applications in this document.
4. Commission Nelson's 1-28-25 List: This tab is comprised of applicants Commissioner Nelson highlighted and deferred at the January 28, 2025, Commission meeting. Staff made this list to provide additional context for its recommendation on these applicants since there were questions/concerns at prior meetings. This tab is for informational purposes – the applicants listed are already included in the prior tabs.

The remainder of this memo addresses certain issues that will hopefully provide color to Staff's recommendation. Staff's recommendation for the Commission can be found at the conclusion of this memo.

NOTICE LIST

There is a column in the attachment titled "On Notice List." If an applicant has a "Y" in this column, that means the applicant received noticed of the proposed project pursuant to SDCL 49-41B-5.2. For these applicants, Staff was able to verify that they are landowners within one

half (0.5) mile of the proposed project as these applicants can be found in Exhibit B – Landowner List Confidential (filed on January 13, 2025).

2 MILE DISTANCE

Consistent with Staff’s position from previous filings and Commission meetings, Staff believes those who reside, own, or rent land within 2 miles of the proposed project have a direct interest pursuant to law and should be granted party status. For those located farther than two miles, Staff believes the burden of proof for a direct interest has not been met, absent further information.

SYSTEMATIC AND CONTINUOUS PRESENCE IN PROJECT AREA

Staff acknowledges that, although some applicants may not reside, own land, or rent land within two miles of the project, applicants may spend enough time near the proposed project to have a direct interest. To determine these cases, Staff recommends the Commission apply a standard of systematic and continuous presence in the project area. In other words, one’s presence in the project area should be predictable, consistent, and not based on speculation. For example, Rachael Foster, Shawna Baysinger, and Jeannette Knigge’s place of employment is within 1.47 miles of the proposed project. This is a sufficient direct interest to Staff because it is a consistent, predictable, and prolonged amount of time spent within 2 miles of the project.

NO DISCERNABLE DIRECT INTEREST

For those applicants listed in Staff’s Denial List, Staff has reviewed their applications and found them to either be located farther than two miles from the proposed project or couldn’t verify their location with the information provided. Additionally, for these applicants, Staff has not seen an interest that would allow for party status in accordance with the law. Staff notes that the applicants carry the burden of proof to show that they have a direct interest in the proposed

project. Staff would encourage these applicants to appear at the February 11th meeting to prove up their case or to correct any inaccuracies that exist.

APPLICATIONS FILED AFTER DEADLINE

The intervention deadline in this docket was January 24, 2025. Our laws state “[a] petition to intervene which is not timely filed with the commission may be granted by the commission if granting the intervention will not unduly prejudice the rights of other parties to the proceeding or if denial of the petition is shown to be detrimental to the public interest.” ARSD 20:10:01:15.02. Staff does not believe any party will be unduly prejudiced by the granting of these late applications and provides a recommendation for each as if they were timely filed.¹ Staff created a separate tab for these late applicants in the attachment. Staff recommends denial for those applicants highlighted in red, and these late applicants are incorporated into Staff’s Denial List.

CONCLUSION

Staff recommends the Commission approve/deny the pending applications for party status in accordance with the attachment to this memo. Specifically, Staff recommends the Commission grant all pending applications for party status except for those listed in Staff’s Recommended List for Denial found in the attachment. Absent further information, Staff recommends those applications found in Staff’s Recommended List for Denial be denied.

In closing, Staff notes that all government entities, associations, or any non-individual granted party status will need to be represented by an attorney. Individuals, of course, need not be an attorney and may represent themselves before the Commission.

¹ Staff notes that this position should not be considered precedent-setting, and Staff reserves the right to object to late-filed applications in future dockets and encourages people to comply with the filing deadline.

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