



Gary Hanson, Chairman
Chris Nelson, Vice Chairman
Kristie Fiegen, Commissioner

South Dakota

PUBLIC UTILITIES COMMISSION

500 East Capitol Avenue
Pierre, South Dakota 57501-5070
<https://puc.sd.gov>

(605) 773-3201

Email
puc@state.sd.us

February 27, 2025

Patricia Van Gerpen
Executive Director
Public Utilities Commission
500 E. Capitol Avenue
Pierre, SD 57501

RE: HP24-001, February 28, 2025 Agenda Item

Ms. Van Gerpen,

Commission staff (Staff) hereby submits this Letter regarding the HP24-001 agenda item for the February 28, 2025 Commission meeting. The items to be addressed at this meeting are: 1) shall the Commission grant Intervenor Harlan Young's request to withdraw from party status; 2) shall the Commission grant party status to those Applicants deferred from prior meetings; and 3) shall the Commission grant party status to those who filed after the January 24, 2025 deadline and have applications outstanding? Additionally, Staff believes there are applicants who were inadvertently denied at the previous meeting that should be reconsidered.

1. Staff recommends the Commission grant Intervenor Harlan Young's request to withdraw from party status.
2. Staff recommends the Commission take the actions listed below regarding those Applicants deferred from prior Commission meetings. As a means of providing context for our recommendations, Staff relies on our previous filings and arguments regarding a two mile standard for inclusion in this matter. In reliance on Staff's experience in similar dockets, taking into consideration factors including but not limited to economic impacts, construction activities, and the dispersion analysis provided in this docket, Staff came to the conclusion that, from Staff's perspective, those who reside or own land within two miles of the proposed project should be deemed to have met their burden of proving a direct interest pursuant to SDCL 49-41B-17. For those outside two miles, Staff feels the burden of proving a direct interest still needs to be met by that applicant for party status.

Landowners argue that the Commission should decide that everyone located within ten miles is considered directly interested based on proximity to the project. In support of this argument, Landowners rely on SDCL 49-41B-2(10) which defines the "siting area" as "that area within ten miles in any direction of a proposed energy conversion facility" While the Commission has the discretion to implement this ten mile distance, the Commission is not obligated to use this standard. This definition of a "siting area" is specific to energy conversion facilities. There is nothing in chapter 49-41B which suggests this project-specific definition extends to all other types of facilities. The Commission is free to determine at which distance someone should be considered directly interested in relation to a CO2 pipeline.

a. **For Approval:**

- i. Charles D Dubbe: Staff recommends approval based on information provided in Jorde Landowners' Motion for Party Status.
- ii. Jacqueline J Leibel: Staff recommends approval based on information provided in Jorde Landowners' Motion for Party Status.
- iii. Joyce Grenz: Staff recommends approval based on information provided in Jorde Landowners' Motion for Party Status.
- iv. Julie Burkhart: Consistent with our position at previous meetings, Staff recommends approval based on Ms. Burkhart's connection to property that is located within two miles of the proposed project.
- v. Lorena C Dubbe: Staff recommends approval for the same reasons as that of Charles D Dubbe, above.
- vi. Stacy Sinner: Staff recommends approval based on information provided in Jorde Landowners' Motion for Party Status. From the information provided, Staff believes Ms. Sinner falls into the category of continuous and systematic presence in the project area.

b. **For Denial:**

- i. Alicyn R Wager: Ms. Wager's application states that she works less than 2 miles from the proposed pipeline, and her child goes to school less than 2 miles from the proposed pipeline. On these points, the application did not provide the address of the workplace or school. Therefore, Staff could not verify the information. Staff recommends denial due to lack of information provided.
- ii. Bruce Burkhart: Mr. Burkhart's application did not provide a residence, legal description, or other information showing a direct interest. Staff recommends denial due to a lack of information provided.
- iii. Charles Kludt: Staff makes a recommendation for denial of Charles Kludt. Staff has confirmed Mr. Kludt is the president of the South Dakota Firefighters Association (SDFFA). However, the application is unclear as to whether Mr. Kludt is applying on behalf of himself or the Association. While Staff believes the SDFFA would have a direct interest, Charles Kludt is listed as the one who will be named as a party to the docket. Attempts to contact Mr. Kludt and clarify have been unsuccessful. If the Commission interprets the application as being on behalf of the SDFFA, Staff recommends granting the Application.
- iv. Francies Buttemeier: The interest stated in this application is solely that the applicant attends church one half mile from the proposed project. With the information provided, Staff cannot discern a direct interest and recommends denial.

- v. Judy Nelson: Ms. Nelson's application states that she owns land within 1.5 miles of the proposed project. However, the application does not provide the legal description of this land. Therefore, Staff cannot verify the claim. The application also states that Ms. Nelson attends church one half mile from the proposed project. With the information provided, Staff cannot discern a direct interest and recommends denial.
 - vi. Lee Ann Pierce: Ms. Pierce's application states that she owns land within 5 miles of the proposed project. The application does not provide an address or legal description. Staff recommends denial based on insufficient information and belief that Ms. Pierce is located farther than two miles from the proposed project.
 - vii. Mark LeBrun: Per Mr. LeBrun's application, his interest is that he has a daughter who resides in Chester and a granddaughter attending college in Aberdeen. Staff finds the application lacks sufficient information and therefore recommends denial.
 - viii. Nathan D Wager: Staff recommends denial for the same reasons offered regarding Alicyn R Wager.
 - ix. Ronald L Shelburg: Mr. Shelburg's application claims the same interest as that of Francies Buttemeier, found above, and therefore Staff recommends denial for those same reasons.
3. To Staff's knowledge, there is one applicant who filed after the January 24, 2025 deadline and has an application outstanding: Allison Farms Inc./Keith Allison. By law, the Commission *may* grant late intervention "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 merely notes that we do not feel we are unduly prejudiced by the hypothetical granting of this application and leave this to the Commission's discretion.
 4. Staff believes the Commission's previous order denying party status may not have reflected the intent of Commissioner Fiegen as two Applications for Party Status were denied that Commissioner Fiegen recommended granting (see Commissioner Fiegen's 2/10/25 filing). Dan De Roon & Travis and Kenny Hostler were affected by this discrepancy. Staff believes it would be appropriate for these two applicants to be reconsidered at the February 28, 2025 Commission meeting. If that occurs, Staff recommends approval for both. Staff recommends approval of Dan De Roon based on information provided in Jorde Landowners' Motion for Party Status. Staff also recommends approval for Travis and Kenny Hostler as they confirmed to Staff that they own land directly impacted by the route (Bruce Pody LLC).
 5. Jorde Landowners' Motion for Party Status argues for the granting of several applicants who have already been denied by the Commission. Staff interprets this request as a potential application for a rehearing pursuant to ARSD 20:10:01:29. Should the Commission wish to reconsider these denials, Staff requests additional time to file a response regarding the interpretation of the law with respect to land located outside of this state.

Dated this 27th day of February, 2025

Logan Schaeffbauer

Logan D. Schaeffbauer

Staff Attorney

South Dakota Public Utilities Commission

500 East Capitol Avenue

Pierre, SD 57501

Phone (605) 773-3201

Logan.Schaeffbauer@state.sd.us