

**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 RESPONSE TO
APPLICANT’S MOTION TO
SUSPEND CURRENT
SCHEDULING ORDER AND
EXTEND CURRENT DEADLINE
INDEFINITELY**

HP24-001

Commission staff (Staff) by and through its undersigned attorney, hereby submits this Response to Applicant’s Motion to Suspend Current Scheduling Order and Extend Current Deadline Indefinitely.

INTRODUCTION

On November 19, 2024, SCS Carbon Transport LLC (Applicant) filed an application with the South Dakota Public Utilities Commission (Commission) for a permit to construct and operate a carbon dioxide (CO₂) transmission pipeline across approximately 698 miles in the South Dakota portion of the project. On January 15-17, 2025, the Commission held public input meetings at six locations across the state of South Dakota. On January 31, 2025, the Commission issued an Order Establishing Procedural Schedule and Order Denying Request for Remote Testimony. This order, among other things, set deadlines for testimony, discovery, and an evidentiary hearing to occur from August through September of 2025. The Commission has granted party status to over 400 persons and entities. As the application was filed on November 19, 2024, SDCL § 49-41B-24 requires the Commission to render a decision before November 19, 2025. However, pursuant to SDCL § 49-41B-24.1, the Commission may extend the twelve-month deadline upon request of the Applicant. On March 12, 2025, the Applicant filed a Motion to Suspend Current Scheduling Order and Extend Current Deadline (Applicant’s Motion). On

March 13, 2025, the Commission issued a Notice of Hearing which states the Applicant's Motion will be heard at the April 10, 2025, meeting and states that responsive pleadings may be filed by the parties by March 27, 2025. Additionally, replies to the responsive pleadings may be filed by April 4, 2025.

REQUEST TO SUSPEND

Applicant's Motion asks the Commission to suspend the procedural schedule and to extend the deadline indefinitely. Applicant cites the passage of HB 1052 as the reason why suspension is appropriate. HB 1052, which was signed into law on March 6, 2024, states "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." Specifically, Applicant's Motion states:

With the passage of HB 1052, the Applicant's ability to obtain survey permission has changed. However, the project must survey the route completely in order to inform the Commission of the constructability prior to obtaining a permit. The surveys which are necessarily required to inform the route decisions as to right of way will be significantly delayed.

Applicant's Motion, p. 1-2.

The Commission does not have jurisdiction over eminent domain proceedings. However, the fact that eminent domain is not available to the Applicant at this time is relevant to many aspects of the Application, including surveys.

Applicant's Motion states that its ability to conduct necessary surveys has changed. With the passage of HB 1052, Applicant certainly may not conduct surveys via SDCL § 21-35-31 because HB 1052 specifically declares that eminent domain is not available for such purposes. However, it is unclear to Staff how the passage of HB 1052 changed Applicant's position regarding surveys. On August 21, 2024, the South Dakota Supreme Court (SDSC) ruled that

“the circuit courts erred in concluding that SCS is a common carrier pipeline authorized to exercise eminent domain authority.” *Betty Jean Strom Tr. v. SCS Carbon Transp., LLC*, 2024 SD 48, ¶ 33, 11 N.W.3d 71, 84. The court reversed the circuit court’s grant of summary judgment on this issue and remanded the case for further proceedings. *Id.* Staff is unaware of any proceedings that took place since the issuing of this decision that would have deemed Applicant eligible to conduct pre-condemnation surveys in accordance with SDCL § 21-35-31. Therefore, it is unclear how Applicant’s survey ability has changed with the passage of HB 1052 considering the SDSC’s opinion.

Applicant also states that the project must survey the route completely in order to obtain a permit. While a higher survey completion rate bolsters the quality of the Applicant’s studies, there is no requirement in law that the Applicant must have the route completely surveyed in order to receive a Permit.

The Commission has discretion whether or not to suspend the procedural schedule and to extend the deadline for Commission action. Regarding the twelve-month deadline, SDCL § 49-41B-24.1 states “Upon request of the applicant, the commission may extend the deadlines for commission action established in §§ 49-41B-24 and 49-41B-25.” Therefore, the Commission may, but is not required to, grant the request. This statute does not provide requirements or guidance on how long (or short) the extension must be. Staff interprets the statute to mean that once the Applicant asks the Commission for an extension, the Commission is free to decide a timeframe that it deems appropriate.

Staff supports the suspension of the current procedural schedule because it would be clearly imprudent to proceed with the timelines set out therein due to the consequences of HB 1052. However, Staff does not support the idea of an indefinite suspension of the matter with no

explanation provided as to what the goal of the suspension is. The Commission has granted an extension in the past when there was an explanation provided of what the extension would accomplish. In the North Bend Wind Project (EL21-018), for example, the applicant in that docket requested to extend the deadline so that the applicant could obtain a conditional use permit from the county. With the request at hand, it is unknown what the goal is for the proposed suspension period.

Applicant's Motion asks to suspend these proceedings because, it states, necessary surveys will be significantly delayed, making the current timeline unrealistic. However, as of March 20, 2025, Applicant is asking circuit courts to dismiss (without prejudice) lawsuits with South Dakota landowners because it "no longer seeks to survey the parcels in question in this action."¹ This statement to the circuit court makes it unclear what purpose a suspension of the PUC proceedings will serve because, in the Applicant's words, it will not be seeking necessary surveys. Absent the Applicant providing information to the contrary, the request to dismiss these lawsuits suggests to Staff that the Applicant has no plans to pursue the route on file anytime in the near future.

Staff may be more supportive of a suspension if Applicant provides a plan to proceed with the route as filed and a rough timeline for this plan to be executed. If the Commission decides to suspend the docket, Staff notes that there are logistical issues that should be addressed

¹ The full paragraph which contains this quote states:

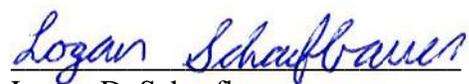
COMES NOW, SCS Carbon Transport LLC, above named by and through its undersigned counsel, and makes and files this Motion to Dismiss Without Prejudice. Based upon changes in the law that were passed by the South Dakota Legislature during the 2025 South Dakota Legislative Session and signed by Governor Rhoden (though not effective until July 1, 2025) and the status of this matter before the South Dakota Public Utilities Commission, SCS Carbon Transport LLC no longer seeks to survey the parcels in question in this action. Based on such, the question in front of the Court is now moot.

Mot. to Dismiss at 2, David and Valerie Rath Living Trust v. SCS Carbon Transport LLC, No. 45CIV22-000014.

relating to what happens when the Applicant decides it wants to end the suspension period and resume the Application process. Accordingly, in such a situation, Staff recommends the Commission put in place the following guardrails:

- Applicant must notify the Commission of its intent to resume the process at least 1 month in advance.
- Applicant must provide monthly status updates via letters filed into the docket and attend quarterly status hearings before the Commission.
- The Commission should have twelve months to process the docket and issue a decision once the Applicant resumes the process.

To conclude, Staff supports the suspension of the procedural schedule. However, absent further information provided, Staff does not support an indefinite suspension of the timeline for this docket. If the Commission decides to suspend the docket, Staff respectfully requests it put in place the guardrails outlined above.



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