

BEFORE THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

DOCKET NO. HP22-001

**IN THE MATTER OF THE APPLICATION BY SCS CARBON TRANSPORT LLC FOR
A PERMIT TO CONSTRUCT A CARBON DIOXIDE PIPELINE**

**DIRECT TESTIMONY OF DARREN KEARNEY
ON BEHALF OF THE PUBLIC UTILITIES COMMISSION STAFF
June 23, 2023**

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EXHIBITS

Exhibit_DK-1: Responses to Staff Data Requests

Exhibit_DK-2: Resume

Exhibit_DK-3: Department of Public Safety Consultation Letter

Exhibit_DK-4: Department of Transportation Consultation Letter

Exhibit_DK-5: Department of Health Consultation Letter

Exhibit_DK-6: Third-Party Environmental Inspector Permit Condition

Exhibit_DK-7: Public Liaison Officer Permit Condition

1 I. INTRODUCTION AND QUALIFICATIONS

2
3 **Q. State your name.**

4 A. Darren Kearney.

5
6 **Q. State your employer and business address.**

7 A. South Dakota Public Utilities Commission, 500 E Capitol Ave, Pierre, SD, 57501.

8
9 **Q. State your position with the South Dakota Public Utilities Commission.**

10 A. I am a Staff Analyst, which is also referred to as a Utility Analyst.

11
12 **Q. What is your educational background?**

13 A. I hold a Bachelor of Science degree, majoring in Biology, from the University of
14 Minnesota. I also hold a Master of Business Administration degree from the University
15 of South Dakota.

16
17 **Q. Please provide a brief explanation of your work experience.**

18 A. I began my career in the utility industry working as contract biologist for Xcel Energy,
19 where I conducted biological studies around power plants, performed statistical analysis
20 on the data collected, and authored reports in order to meet National Pollutant Discharge
21 Elimination System (NPDES) permit requirements.

22
23 After two years of performing biological studies, I then transitioned into an environmental
24 compliance function at Xcel Energy as a full-time employee of the company and became
25 responsible for ensuring Xcel's facilities complied with the Oil Pollution Act of 1990. This
26 involved writing Spill Prevention Control and Countermeasure (SPCC) plans and
27 ensuring Xcel's facilities implemented those plans. I was also responsible for the
28 company's Environmental Incident Response Program, which involved training Xcel
29 employees on spill reporting and response, managing spill cleanups, and mobilizing in-
30 house and contract spill response resources.

31
32 I was in that role for approximately three years and then I transitioned to a coal-fired
33 power plant at Xcel and became responsible for environmental permitting and
34 compliance for the plant. Briefly, my responsibilities involved ensuring that the facility

1 complied with all environmental permits at the plant, which included a Clean Air Act Title
2 V Air Permit, a Clean Water Act NPDES permit, and a hazardous waste permit. I also
3 drafted reports on the plant's operations for submission to various agencies as required
4 by permit or law. After three years at the power plant, I left Xcel Energy to work for the
5 South Dakota Public Utilities Commission (hereafter "PUC" or "Commission").
6

7 I have been at the PUC for more than ten years now. During my employment with the
8 PUC, I worked on a variety of matters in the energy and utility space. The major dockets
9 that I have worked on are energy conversion facility siting, transmission siting, pipeline
10 siting, wind energy facility siting, energy efficiency programs, and PURPA avoided costs.
11 I also work on matters involving the Midcontinent Independent System Operator (MISO),
12 specifically wholesale electricity market issues, transmission cost allocation and regional
13 transmission planning. I also attended several trainings on public utility policy issues,
14 electric grid operations, regional transmission planning, electric wholesale markets, and
15 utility ratemaking.
16

17 My resume is provided as Exhibit_DK-2.
18

19 **II. PURPOSE OF TESTIMONY**

20
21 **Q. On whose behalf was this testimony prepared?**

22 A. This testimony was prepared on behalf of the Staff of the South Dakota Public Utilities
23 Commission.
24

25 **Q. What is the purpose of your direct testimony?**

26 A. The purpose of my direct testimony is to: 1) provide an overview of the review performed
27 by Staff for SCS Carbon Transport LLC's (hereafter "Applicant" or "SCS") Application, 2)
28 introduce Staff's witnesses, 3) highlight facts the Commission may be interested in, 4)
29 identify certain concerns Staff has with the Application, and 5) highlight a few permit
30 conditions that Staff will be advocating for.
31
32
33
34

1 **III. REVIEW OF THE APPLICATION**

2
3 **Q. Did you review SCS’s Application for a permit to construct a carbon dioxide**
4 **pipeline?**

5 A. Yes. I also reviewed the figures, appendixes, discovery responses produced by all
6 parties, SCS’s direct and supplemental testimony and comments the PUC received from
7 the public. Further, I reviewed all supplemental filings made by SCS, including the
8 Supplement of the Application.
9

10 **Q. Were other Staff involved in the review of the Application?**

11 A. Yes. Staff Analyst Jon Thurber and Staff Attorney Kristen Edwards also assisted in
12 reviewing the Application.
13

14 **Q. Explain, in your words, the main role of the PUC Staff in the Application**
15 **proceedings.**

16 A. After receiving the Application filing, Staff completed a review of the contents of the
17 Application as it relates to the Energy Facility Siting statutes, SDCL 49-41B, and Energy
18 Facility Siting Rules, ARSD 20:10:22. Staff then identified information required by
19 statute or rule that was either missing from the Application or unclear within the
20 Application and requested SCS to provide or clarify that information (see Exhibit_DK-1).
21 Staff also hired two consultants to assist with reviewing the Application.
22

23 Finally, Staff assisted intervenors and affected landowners by providing responses to
24 questions on the carbon dioxide pipeline, the siting process at the PUC and the
25 opportunities available for individuals to be heard by the Commission. If the landowners
26 had specific concerns with the pipeline, Staff often recommended that those individuals
27 file comments in the docket for the Commission’s review. Where appropriate, Staff also
28 included some of the landowners’ questions or concerns in Staff’s data requests sent to
29 SCS to have them address the issue.
30

31 **Q. What consultants did Staff hire and what was their scope of work?**

32 A. Staff hired ERM, Inc. and RCP Inc.
33

1 ERM is a consulting firm with subject matter expertise in environmental reviews and was
2 hired by Staff to review sections of the Application that covered routing, the current
3 environmental setting, potential impacts the project could have on the environment, risk
4 assessment, and plume modeling. Staff tasked ERM to review the Application with a
5 critical eye to ensure the appropriate information is provided by SCS so that the
6 Commission has the necessary information to assess the Applicant's burden of proof
7 under SDCL 49-41B-22. Further, Staff asked ERM to review the mitigation measures
8 proposed by SCS to ensure they align with industry best practices. Finally, Staff asked
9 ERM to review the plume modeling and risk assessment conducted by SCS to assure
10 they were adequately performed. ERM's subject matter experts include Brian Sterner,
11 Alissa Ingham, Matthew Frazell, Gary Napp, Amy Cottrell, Herbert Pirela, and Sara
12 Thronson. Please see their prefiled testimony for further details on the review
13 performed by each subject matter expert.
14

15 RCP is a consulting firm with subject matter expertise in PHMSA regulation and pipeline
16 engineering. Staff tasked RCP with reviewing the Application and any relevant
17 documents to determine whether SCS and its carbon dioxide pipeline will meet, or has
18 the ability to meet, the Pipeline and Hazardous Materials Safety Administration's
19 (PHMSA) pipeline safety regulations found in 49 CFR Part 195. Please see the prefiled
20 testimony of William Byrd for further details on the review performed by RCP.
21

22 **IV. STATE AGENCY CONSULTATION**

23
24 **Q. Did Staff reach out to any state agencies for input on a proposed carbon dioxide
25 pipeline?**

26 A. Yes. For this docket, Staff reached out to the Department of Game, Fish, and Parks
27 (GF&P), State Historic Preservation Office (SHPO), Department of Agriculture and
28 Natural Resources (DANR), Department of Public Safety (DPS), Department of Health
29 (DOH), and Department of Transportation (DOT).
30

31 **Q. What state agencies did Staff subpoena for testimony?**

32 A. Staff subpoenaed DANR, GF&P, and SHPO for their testimony. These agencies have
33 expertise and local knowledge in subject matters that SCS was required to address in its
34 Application pursuant ARSD Chapter 20:10:22.

1
2 Witnesses from DANR include Trish Kindt, who will testify on DANR's spill response
3 program, and Jaron Condley, who will testify on the state's geologic resources. SCS's
4 Application identified the appropriate permits the project needs to obtain from DANR so
5 Staff did not find a need to have a DANR witness cover the agency's permitting
6 requirements. GF&P's witness is Hilary Morey who is the environmental review
7 coordinator for the GF&P and she will testify on SCS's consultation with GF&P and
8 recommendations GF&P has to minimize impacts to wildlife. SHPO's witness is Jenna
9 Carlson Dietmeier, who will testify on cultural resource impacts.

10
11 Please refer to the prefiled direct testimony of the witnesses noted above for further
12 details on their review of SCS's Application.

13
14 **Q. Why didn't Staff subpoena a witness from DPS?**

15 A. DPS provided a letter noting that their role would be more of a supportive role in the
16 event of a release. Since DPS wouldn't be the lead agency in coordinating response
17 activities, Staff felt that there was no need to subpoena them for testimony. Attached as
18 Exhibit_DK-3 is the consultation letter Staff received from DPS.

19
20 **Q. Why didn't Staff subpoena a witness from DOT?**

21 A. DOT provided a letter noting a crossing permit would be needed from the DOT for the
22 installation of the pipeline across state highways or interstates. In Table 1 of the
23 Supplement of the Application SCS noted that they need to apply for a permit from the
24 DOT. Since the information communicated by SCS in the Application aligned with the
25 consultation letter Staff received from DOT, Staff didn't find a need to subpoena a
26 witness from DOT. Attached as Exhibit_DK-4 is the consultation letter Staff received
27 from DOT.

28
29 **Q. Why didn't Staff subpoena a witness from DOH?**

30 A. DOH did not offer any comments on carbon dioxide pipelines and simply noted that if
31 there is a specific concern raised during the permitting process, DOH would be willing to
32 evaluate the concern when it arises.

1 To my knowledge, the main health concern raised is the potential for a carbon dioxide
2 release to asphyxiate inhabitants and livestock within the project area. I am not aware of
3 anyone disputing the fact that carbon dioxide at certain concentrations could lead to
4 adverse health impacts, including asphyxiation, so I didn't find a need to reach out to
5 DOH for comment or testimony on that concern.

6
7 Attached as Exhibit_DK-5 is the consultation letter Staff received from DOH.

8
9 **V. APPLICATION COMPLETENESS**

10
11 **Q. Was SCS's Application considered complete at the time of filing?**

12 A. At the time of the filing, the application was generally complete. However, as identified
13 earlier in my testimony, Staff requested further information, or clarification, from SCS
14 that Staff believed was necessary to satisfy the requirements of SDCL 49-41B and
15 ARSD 20:10:22. It is Staff's position that ARSD 20:10:22:04(5) allows for the applicant
16 to provide additional information throughout the Commission's review period where that
17 rule states:

18
19 "The truth and accuracy of the application shall be verified by the
20 applicant. ***Each application shall be considered to be a continuing***
21 ***application***, and the applicant must immediately notify the commission
22 of any changes of facts or applicable law materially affecting the
23 application. This duty continues up to and includes the date on which
24 the permit is issued or denied." (ARSD 20:10:22:04(5)) **{emphasis**
25 **added}**

26
27 Finally, I would note that an applicant supplementing its original application with
28 additional information as requested by Staff is not unusual for siting dockets.

29
30 **Q. Based on your review of the Supplement of the Application, responses to Staff's**
31 **data requests and SCS's testimony, do you find the Application to be complete?**

32 A. SCS has provided information that touched on main requirements in SDCL Chapter 49-
33 41B and ARSD Chapter 20:10:22. However, in my testimony and the testimony of Staff's
34 subject matter experts there are recommendations for SCS to provide additional
35 information that would be helpful for SCS to support its burden of proof.

1
2 **VI. THE ROUTE**
3

4 **Q. What is SCS's proposed route?**

5 A. On February 7, 2022, SCS filed a proposed route that identified several alternatives
6 under consideration. In the testimony of Mr. Jimmy Powell filed with the Application,
7 SCS identified three categories of route changes (realignments, minor reroutes, and
8 major reroutes) and noted that additional route modifications are expected. On April 8,
9 2022, SCS filed a project overview map identifying route alternatives that were selected
10 and preliminary route segments that were abandoned. On June 16, 2022, SCS filed a
11 letter restating the types of route changes and noted that SCS will inform the
12 Commission of major route changes as they occur and committing to file an updated
13 route map capturing all other route changes (minor and realignments) in July of 2022.

14
15 On August 1, 2022, SCS filed updated appendixes 6A, 6B, and 6C of the Application
16 that provided the most current route as of that date. Then, on October 13, 2022, SCS
17 filed its Supplement of the Application with the amended appendixes 6A, 6B, and 6C
18 once again updated. On June 5, 2023, SCS filed an Amended Appendix 6A and a letter
19 noting that is the exhibit SCS plans to introduce at the evidentiary hearing. Finally, on
20 June 21, 2023, SCS filed amended appendixes 6A, 6B, and 6C with the most current
21 route.
22

23 **Q. Are you aware of any major route changes captured in the Amended Appendix 6A**
24 **filed on June 21, 2023?**

25 A. This map shows the previous route and the updated route. After looking over the map,
26 there are a few segments of the route that changed approximately ½ mile from the route
27 provided on October 13, 2022. I will need to send discovery to SCS on those changes
28 to determine if they were material in nature, where Staff would consider them to be a
29 major route change.
30

31 **Q. Is it important to understand how the route has evolved over time? If yes, why?**

32 A. Yes. Changes to the route could materially impact the information provided in the
33 Supplement of the Application. Environmental surveys and the identification of potential

1 project impacts are route specific. As such, any major reroutes could impact the
2 information and conclusions made in the Supplement of the Application.

3
4 Staff also has concerns regarding notice to landowners should a major reroute occur.
5

6 **Q. Please elaborate on Staff's notice concerns associated with route changes.**

7 A. SDCL 49-41B-5.2 states, in part, "[w]ithin thirty days following the filing of an application
8 for permit, the applicant shall notify, in writing, the owner of record of any land that is
9 located within one-half mile of the proposed site where the facility is to be constructed."
10 The statute is silent on how to handle notice if the location of the facility changes during
11 the Commission's review process.
12

13 Since SCS's notice was sent based on the route at the time the Application was filed, it
14 would be pragmatic for SCS to notify the newly impacted owners of record about the
15 new route when a major reroute occurs. Without this notice, the owners of record may
16 not know that the pipeline route has changed from the original route. A reasonable
17 person may not have sought to intervene if the original route was a few miles away or
18 not on their property but otherwise may want to intervene if the route is within one-half
19 mile of them or on their property. As such, the notice would afford that person the ability
20 to file for late intervention because of the route change.
21

22 **Q. Are you aware of any major reroutes or route changes that you would advocate
23 for notice to newly impacted landowners?**

24 A. Not at this time. In response to Staff's Data Request 3-4, SCS stated: "... had the
25 implemented route variances reported in the Supplement to the Application been applied
26 at the time of the original Application, 49 other landowners would also have received
27 notice..." and "...Applicant has voluntarily taken steps since supplementing its
28 Application to apprise these landowners of the route variances." In addition, SCS's
29 witness Mr. Erik Schovanec opined in his direct testimony filed on November 4, 2022,
30 that SCS does not anticipate any major reroutes. Major reroutes are the type of route
31 changes that could impact new landowners where Staff would advocate for the
32 notification of the newly impacted landowners.
33

1 I plan to send discovery on the June 21, 2023, route filing to determine whether the route
2 changes impacted new landowners and whether those landowners were informed of the
3 new route.
4

5 **Q. As noted above, SCS filed an Amended Appendix 6A, Amended Appendix 6B, and**
6 **Amended Appendix 6C on June 21, 2023. Have any of the other map sets included**
7 **with the Supplement of the Application been updated?**

8 A. I am not aware of a filing that updates all map sets that were filed with the Application or
9 the Supplement of the Application. SCS should file all new map sets included in the
10 Supplement of the Application so the record is clear as to the route that is being
11 permitted.
12

13 **VII. LOCAL LAND USE PREEMPTION**

14

15 **Q. Has SCS committed to design, construct, operate, and maintain the pipeline and**
16 **valve stations in compliance with applicable zoning and county permit**
17 **requirements?**

18 A. Yes. On page 8 of the Supplement of the Application, SCS notes that the applicable
19 local regulatory agencies will be contacted prior to construction/improvement to ensure
20 the Project complies with local ordinance. SCS also notes its intent to apply for
21 Conditional Use Permits where applicable in the same paragraph of the Application.
22 Further, in Section 5.5.4 of the Supplement of the Application, SCS also commits to
23 complying with all local ordinances. However, SCS also states on page 8 of the
24 Supplement of the Application that SCS “intends to introduce evidence at hearing to
25 seek a finding from the Commission pursuant to SDCL 49-41B-28 and applicable
26 cases.”
27

28 **Q. What is the Commission’s statutory authority pursuant to SDCL 49-41B-28?**

29 A. Pursuant to SDCL 49-41B-28:

30 “A permit for the construction of a transmission facility within a
31 designated area may supersede or preempt any county or municipal land use,
32 zoning, or building rules, regulations, or ordinances upon a finding by the Public
33 Utilities Commission that such rules, or regulation, or ordinances, as applied to
34 the proposed route, are unreasonably restrictive in view of existing technology,
35 factors of cost, or economics, or needs of parties where located in or out of the

1 county or municipality. Without such a finding by the commission, no route shall
2 be designated which violates local land-use zoning, or building rules, or
3 regulations, or ordinances.”
4

5 **Q. Did SCS request supersession of any specific local land use controls by the**
6 **Commission?**

7 A. Yes. The original Application did not identify SCS’s intent to ask the Commission to
8 supersede local land use controls; however, in the Supplement of the Application, SCS
9 identified that it will present evidence at the hearing for the Commission to make a SDCL
10 49-41B-28 finding for the local land use controls listed below.

- 11 1) McPherson County Moratorium
 - 12 2) Brown County Moratorium
 - 13 3) Spink County Moratorium
 - 14 4) increased fees in Edmunds County
- 15

16 **Q. Did SCS provide any support in the Supplement of the Application for the**
17 **Commission to base its finding on?**

18 A. No, I do not believe so. SCS did add Appendix 13 to the Supplement of the Application
19 that provides the county ordinances SCS takes issue with. However, SCS did not
20 include any evidence supporting that the local controls are “unreasonably restrictive in
21 view of existing technology, factors of cost, or economics, or needs of parties where
22 located in or out of the county or municipality” as applied to the proposed route.

23
24 While SCS did identify what ordinances are unreasonably restrictive in their view, they
25 did not explain “why” each ordinance is unreasonably restrictive based on the factors
26 listed in the paragraph above and did not provide evidence supporting the “why.” Given
27 this, Staff asked for the “why” and supporting information in Staff Data Request 3-6. The
28 question Staff asked was:

29
30 3.6. On a county-by-county basis, and with specificity, identify each requirement
31 in county or municipal land use, zoning, or building rules, regulations, or
32 ordinances that the Applicant requests the Commission issue a SDCL 49-41B-28
33 finding on in order to supersede said requirement. In addition, please provide
34 support for each requirement as to why it is unreasonably restrictive in view of
35 existing technology, factors of cost, or economics, or needs of parties where
36 located in or out of the county or municipality.
37

- 1 **Q. Did SCS provide the requested information in response to Staff Data Request 3-6?**
 2 A. Not really. SCS provided the table below. The table identifies the “why” but doesn’t
 3 provide further support for the “why.”

Table DR 3.6-1

COUNTY/ MUNICIPALITY	PIPELINE ORDINANCE LINK	ORDINANCE REQUIREMENTS	Basis for Recommendation
Brown	https://www.brown.sd.us/sites/default/files/pdfs/commission/2022/0719Minutes2.pdf	RESOLUTION #33-22 A RESOLUTION ESTABLISHING A TEMPORARY MORATORIUM ON THE ISSUANCE OF CONDITIONAL USE PERMITS AND BUILDING PERMITS ON HAZARDOUS WASTE PIPELINES IN BROWN COUNTY, SOUTH DAKOTA. The Board of Brown County Commissioners does hereby impose a temporary moratorium on the issuance of any and all permits, licenses, or approvals for the construction, installation, or use of any transmission pipeline requiring the approval of the South Dakota Public Utilities Commission, traversing those lands contained within the unincorporated areas of Brown County, South Dakota, including the construction of any transmission pipeline related infrastructure, with said moratorium running for such a length of time that will give the Planning and Zoning Commission an opportunity to complete their review process or one year from the date of this Resolution is enacted.	Pipeline moratorium enacted by county

4

Table DR 3.6-1

COUNTY/ MUNICIPALITY	PIPELINE ORDINANCE LINK	ORDINANCE REQUIREMENTS	Basis for Recommendation
Edmunds	https://edmunds.sdcounties.org/files/2022/08/Utilities-on-Right-of-Way.pdf	Edmunds County Utility Permit Fee Schedule - Hazardous Utility (occupancy) - must be encased -\$5,000.00 Plus additional per each crossing - \$50,000.00 Plus additional per each longitudinal mile - \$100,000.00	Permit fee is prohibitively expensive and not in line with other county permit fees in the state.
McPherson	https://mcpherson.sdcounties.org/files/2022/02/January-11th-special-meeting.pdf	place a moratorium on hazardous liquid transmission pipelines as defined in Title 49 CFR Section 192.3 and Title 49 CFR 195.2 and Title 49 CFR 193.2007; this moratorium shall remain in place until a revised McPherson County zoning ordinance can be approved and take effect.	Pipeline moratorium enacted by county
Spink	http://www.spinkcounty-sd.org/minutes/2022-07-19.pdf	A RESOLUTION ESTABLISHING A TEMPORARY MORATORIUM ON THE ISSUANCE OF CONDITIONAL USE PERMITS AND BUILDING PERMITS ON HAZARDOUS WASTE PIPELINES IN SPINK COUNTY, SOUTH DAKOTA(#22-24) the Board of Spink County Commissioners does hereby impose a temporary moratorium on the issuance of any and all permits, licenses, or approvals for the construction, installation, or use of any hazardous waste pipeline, particularly those pipelines requiring the approval of the South Dakota Public Utilities Commission, traversing those lands contained within the unincorporated areas of Spink County, South Dakota, with said moratorium running for such a length of time that will give the Planning and Zoning Commission an opportunity to complete their review process, however, the temporary moratorium may be in effect for the length of one (1) year with a provision of an extended length of time of no longer than one (1) additional year from the date this Resolution is ratified.	Pipeline moratorium enacted by county

5

6

- 7 **Q. Since the Supplement of the Application was filed in October of 2022, are you**
 8 **aware of any changes to the local land use controls that SCS intends to ask the**
 9 **Commission to supersede?**

- 10 A. Yes. In response to Staff’s data request 4-1, SCS identified the following:

- 1 1) Moratoria are thought to have expired in Hyde, Hand, and McPherson
2 counties,
3 2) McPherson and Brown counties have passed ordinances, and
4 3) Minnehaha and Spink counties were considering ordinances.
5

6 **Q. At this time, do you have an understanding of what local land use controls SCS**
7 **will ask the Commission to make a SDCL 49-41B-28 finding on?**

8 A. No, I do not. It was my understanding that the request would be for the moratorium in
9 certain counties and the Edmunds County fees. However, after reviewing SCS's
10 response to Staff's data request 4-1, it appears there are other ordinances that have
11 been passed or are in the works for which SCS may request the Commission issue a
12 SDCL 49-41B-28 finding.
13

14 **Q. Has SCS obtained all applicable local permits required for the project?**

15 A. No. Table 33 in the Supplement of the Application shows all the local permits and
16 approvals the Project needs. I am not aware of what approvals and permits SCS has
17 received to date; however, I don't believe it is many.
18

19 **Q. Are there any specific county requirements that may cause issues with SCS's**
20 **proposed route?**

21 A. Yes. It is my understanding that the Lincoln County Commission will be considering an
22 ordinance that includes a setback of 750-feet. It is also my understanding that
23 Minnehaha County recently approved an ordinance with a setback of 330-feet from the
24 property line. Further, SCS's response to Staff Data Request 4-1 notes that a handful
25 of other counties are considering or working on ordinances.
26

27 **Q. Do you expect SCS to be able to identify all specific local land use controls and/or**
28 **ordinances that they will request the Commission make a SDCL 49-41B-28 finding**
29 **on prior to key milestones in the procedural schedule?**

30 A. Certain county ordinances may not be finalized prior to Staff's direct testimony filed on
31 June 23, 2023. These ordinances may not even be finalized prior to the evidentiary
32 hearing that begins on September 11, 2023. It will be difficult for the Commission to
33 make a finding to supersede an ordinance that isn't in existence yet.

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Q. Has SCS provided the information pursuant to SDCL 49-41B-28 for the Commission to make a finding?

A. No. SCS has provided no information to support that each local regulation it takes issue with is unreasonably restrictive in view of existing technology, factors of cost, or economics, or needs of parties where located in or out of the county or municipality.

Q. Does SCS intend to notify each county that it is asking the Commission to supersede their local land use control or requirement?

A. No. In response to Staff Data Request 4-1(d), SCS stated the following:

“Applicant has not considered notifying the counties and has no plans to notify the counties at present. All counties were notified of the filing of the Application at the time statute requires it. The intervention period has passed.”

Q. Should a county be notified of each specific local requirement that SCS is asking the Commission to supersede and be afforded the ability to participate in this case?

A. Yes. It is Staff’s position that SCS should inform each county of the specific ordinance for which it intends to ask the Commission to supersede. This would allow the county to have the opportunity to participate in the Commission’s process and defend their local ordinance before the Commission.

Q. Are you aware of a county that has not been granted party status that SCS may ask the Commission to supersede their ordinances?

A. As noted later in my testimony, several counties have intervened in this docket. However, Minnehaha County did not file for party status. Minnehaha County did file a comment letter so it shows the county does have some interest in the Commission’s permitting process. If Minnehaha County was notified that SCS is requesting the Commission to supersede its ordinances, the county may be more inclined to intervene and defend their ordinances.

1 **Q. Does Staff support SCS's request to invoke SDCL 49-41B-28 during the**
2 **proceedings for this Application?**

3 A. No. The only current local regulations that SCS has clearly identified they want the
4 Commission to supersede are Edmunds County's fees and Brown County's moratorium.
5 I have not seen support from SCS that Edmunds County's fees are excessive in terms of
6 factors of cost or economics.

7
8 A request for the supersession of a local land use control is significant. It is Staff's
9 opinion that in order for the Commission to make the statutorily required finding, the local
10 land use control needs to be identified with specificity and early in the Application
11 process so that all parties, including the applicable local government, have adequate
12 time to present evidence on the matter.

13
14 Since the information pursuant to the law was not provided in the Supplement of the
15 Application or through discovery in advance of Staff's testimony deadline, Staff
16 recommends that such a finding be requested in a separate docket when the information
17 is available. This approach would also avoid a process in which the Commission is
18 asked to preemptively supersede ordinances that are not yet in place or known with
19 specificity.

20

21 **VIII. VIEWS OF LOCAL UNITS OF GOVERNMENT**

22

23 **Q. Have any counties impacted by SCS's proposed route been granted party status?**

24 A. Yes. Brown, Clark, Edmunds, Hand, Hamlin, Hyde, Kingsbury, Lake, Lincoln, McCook,
25 McPherson, Miner, Spink, and Turner counties have been granted party status.

26

27 **Q. Have any counties withdrawn as a party?**

28 A. Yes. Hand County filed for, and received Commission approval to, withdraw their party
29 status.

30

31 **Q. Did any counties that don't have party status offer comment to the Commission?**

1 A. Yes. On April 6, 2022, Minnehaha County submitted written comments to the
2 Commission.¹ The letter identified concerns raised by the public at the county level
3 including safety, emergency response training, landowner liability, decommissioning,
4 and the lack of permit condition enforcement by the Public Utilities Commission on a
5 past project. Minnehaha County closed the letter by noting they concur with the
6 concerns and urged "... the Public Utilities Commission to seriously consider the
7 comments of the citizens of South Dakota as a primary variable in determining the
8 outcome of this PUC Docket HP22-001."

9
10 On April 7, 2022, Moody County submitted written comments to the Commission.²
11 Moody County commented that they have chosen to implement a twelve-month
12 moratorium on pipeline development to afford the county time to "put into place a series
13 of standards that will promote the stability of existing land uses, and protect existing land
14 uses from inharmonious influences and harmful intrusions." The letter concluded by
15 stating "... it is the sincere hope of the Moody County Commission that, during these
16 next twelve months, the South Dakota Public Utilities Commission will forbear from
17 approving the application of any and all parties desiring to place new pipelines traversing
18 through, or upon, the unincorporated lands of Moody County."

19
20 **Q. Have any cities or townships impacted by SCS's proposed route been granted
21 party status?**

22 A. Yes. The City of Leola, Town of Humboldt, City of Hartford, City of Tea, City of
23 Carthage, Mellette Township, Hoffman Township, Red Rock Township, Humboldt
24 Township, Valley Springs Township, and Clear Lake Township received party status.

25
26 **Q. Based on your experience with past siting dockets, have you seen this level of
27 interest from local units of government before?**

28 A. No. This case has the highest amount of local unit of government interest that I have
29 seen during my tenure. This is a large, linear project crossing many local governments,

¹ Minnehaha County comment letter can be found at:
<https://puc.sd.gov/commission/dockets/HydrocarbonPipeline/2022/HP22-001/comments/MinnehahaCoAttach.pdf>

² Moody County comment letter can be found at:
<https://puc.sd.gov/commission/dockets/HydrocarbonPipeline/2022/HP22-001/comments/MoodyCo.pdf>

1 and it appears that local government units are participating in response to concerns
2 raised by their constituents.

3
4 **Q. Can other local government units still participate in this proceeding?**

5 A. Yes. The Commission accepts public comments for the duration of this proceeding.
6

7 **Q. Please explain the significance of local government participation in the siting
8 process?**

9 A. Pursuant to SDCL 49-41B-22(4), the applicant has the burden of proof to establish the
10 facility will not unduly interfere with the orderly development of the region with due
11 consideration having been given the views of governing bodies of affected local units of
12 government. Based on this, the views of affected local units of government are factored
13 into the Commission's decision and Staff supports their participation in this process.
14

15 **Q. Is it Staff's role to support the views of the affected local units of government
16 before the Commission?**

17 A. While Staff may highlight for the Commission certain concerns or comments raised by
18 local units of government, it is not Staff's role to build a case that supports the views of
19 local units of government. Local units of government should intervene in the docket and
20 present their case to the Commission for consideration.
21

22 **Q. Does the Commission have the authority to relocate the pipeline route?**

23 A. No. SDCL 49-41B-36 specifically states that the Commission is not delegated the
24 authority to route a transmission facility. The applicant proposes the route and the
25 Commission either approves or denies the proposed route based on evidence in the
26 record and the applicant's burden of proof in SDCL 49-41B-22.
27

28 **IX. RISK ASSESSMENT AND PLUME MODELING**

29
30 **Q. A reoccurring concern raised at the public input meetings and comments received
31 by the Commission was the safety of inhabitants located near SCS's proposed
32 pipeline. How do you think about this concern?**

33 A. First, SCS has the burden of proof under SDCL 49-41B-22(3) to establish by the
34 preponderance of evidence that the pipeline "will not *substantially impair* the health,

1 safety, or welfare of the inhabitants.” Note that I emphasized the language “substantially
2 impair” as that is the key phrase for which the Commission will need to assess the
3 proposed project. As I think about how to assess whether the pipeline will cause
4 substantial impairment to health and safety, I believe there are two main tools to use for
5 that assessment. Those tools are a quantitative risk assessment, which informs on the
6 likelihood of a pipeline rupture, and a plume model (also known as an air dispersion
7 model), which informs on what the impacts to the inhabitants may be if there is a rupture.
8

9 **Q. Did SCS provide a quantitative risk assessment so that the Commission could**
10 **understand the probability of a pipeline release occurring?**

11 A. SCS did not include a quantitative risk assessment with the Application or Supplement of
12 the Application. As such, Staff asked that SCS provide one in Staff Data Request 3-10.
13 In response to that data request, SCS provided a confidential draft of a risk assessment.
14

15 **Q. Did SCS’s quantitative risk assessment identify the probability of a release from**
16 **the pipeline?**

17 A. Yes. [BEGIN CONFIDENTIAL] [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED] [END CONFIDENTIAL]
26

27 **Q. Did you translate SCS’s assessed failure rate to an expected rate of failure in**
28 **South Dakota?**

29 A. Yes. [BEGIN CONFIDENTIAL] [REDACTED]
30 [REDACTED]
31 [REDACTED]
32 [REDACTED]
33 [REDACTED]

1 [REDACTED]

2 [REDACTED] [END CONFIDENTIAL]

3
4 **Q. Does the assessed failure rate represent the expected rate of a worst-case**
5 **release?**

6 A. No. [BEGIN CONFIDENTIAL] [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10
[REDACTED]

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

11
12 [END CONFIDENTIAL]

13
14 **Q. Are you testifying on the robustness and accuracy of SCS's quantitative risk**
15 **assessment?**

16 A. No. Staff's witness Mr. Matthew Frazell will be testifying on that matter. My testimony
17 above is intended to highlight information received through discovery that the
18 Commission may be interested in. However, I will note that Mr. Frazell testifies that SCS
19 needs to better support its risk assessment and that additional information is needed
20 before he can make a determination on the robustness and accuracy of the assessment.

21
22 **Q. Did SCS provide a plume model so that the Commission could understand the**
23 **potential impact should a worst-case release occur?**

24 A. SCS did not include plume modeling in the Application or Supplement of the Application.
25 As such, Staff asked that SCS provide plume modeling in Staff Data Request 3-9. In

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

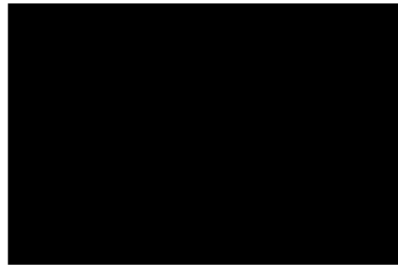
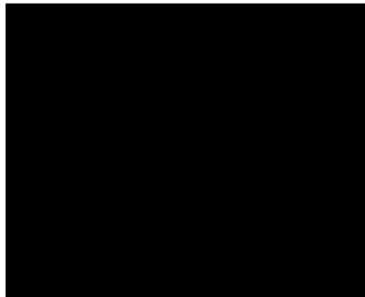
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[END CONFIDENTIAL]

Q. Do you have an idea of how many residences are located within the maximum distances identified in the previous question?

A. Yes. Staff requested this information in Staff Data Requests 4-11 (for the mainline) and 4-12 (for the trunk lines). Using the information received from SCS, I made the following tables to summarize how many residences are located within SCS's modeled maximum distances of possible minor impacts.

[BEGIN CONFIDENTIAL]



12
13
14

[END CONFIDENTIAL]

Q. Did SCS's plume model identify any HCAs that could be affected by the pipeline?

A. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL]

19

Q. What is the importance of identifying HCAs that could be affected by the pipeline?

A. Staff's witness Mr. William Byrd explains the purpose of identifying HCAs in his testimony. My general knowledge is that PHMSA has additional requirements for segments of a pipeline that could potentially affect an HCA. SCS notes in its [BEGIN CONFIDENTIAL] [REDACTED]

25

26

27

[REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL] Staff's witness Mr.

1 Matthew Frazell also provides testimony on HCAs and [BEGIN CONFIDENTIAL] [REDACTED]

2 [REDACTED]
3 [REDACTED] [END CONFIDENTIAL]
4

5 **Q. Are you testifying to the appropriateness and accuracy of SCS's plume modeling**
6 **data presented above?**

7 A. No. Staff's witness Mr. Matthew Frazell will be testifying on that matter. My testimony
8 above is intended to highlight information received through discovery that the
9 Commission may be interested in. However, I will note that Mr. Frazell testifies that SCS
10 has not provided the detailed inputs used in the modeling to allow assessment of the
11 reasonableness of the model.
12

13 **Q. Has any party in Docket HP22-001 filed a request to make the plume modeling**
14 **information available to the public?**

15 A. No request has been made to date. Staff has received numerous phone calls from
16 interested citizens and landowners represented by counsel Brian Jorde requesting to
17 view the plume modeling information, and Staff has suggested that they or their attorney
18 make a request to the Commission if they desire to view the information.
19

20 **Q. Why has Staff not filed a request to make the plume modeling information**
21 **available to the public?**

22 A. Staff has access to the information so it would be difficult for Staff to argue that we are
23 prejudiced by not having the information publicly available to review.
24

25 **Q. Does Staff have a position on whether PHMSA's jurisdiction federally preempts**
26 **the Commission from using plume modeling to inform its decision or to establish**
27 **certain permit conditions?**

28 A. The South Dakota legislature has tasked the Commission to determine whether the
29 proposed facility will not substantially impair the health, safety, or welfare of the
30 inhabitants as part of the Applicant's burden of proof in SDCL 49-41B-22(3). In addition,
31 SDCL 49-41B-11(6) requires the Applicant provide a statement of the reasons for the
32 selection of the proposed location. Plume modeling should inform the route of a carbon
33 dioxide pipeline to minimize the risk to the public and environment. The Commission

1 needs to evaluate the plume modeling to adequately assess the safety risks associated
2 with the proposed pipeline route.

3
4 The Commission has not issued a decision on federal preemption for this specific matter
5 and, further, Staff is not aware of a court order supporting a federal preemption
6 argument. Given this, Staff will err on the side of caution and assess the Application
7 consistent with the Commission's statutory authority.

8
9 **X. EMERGENCY RESPONSE PLANNING**

10
11 **Q. The Commission has heard concern from the public regarding the ability for local
12 first responders to respond to an event as well as concerns about the safety of
13 first responders. Did SCS address this concern in their Application?**

14 A. Yes. In section 6.5.2 of the Supplement of the Application SCS noted that an
15 Emergency Response Plan based on PHMSA regulation will be developed. Further, in
16 Section 6.6 of the Supplement of the Application, SCS notes that they will coordinate
17 with state and local emergency management services to develop emergency response
18 procedures. Finally, SCS filed Supplemental Testimony of Mr. Rod Dillon on November
19 3, 2022, that provides additional detail on the SCS's plans for developing an Emergency
20 Response Plan and coordination with local first responders.

21
22 **Q. Has SCS coordinated with any local first responders yet?**

23 A. Mr. Dillon testified in his Supplemental Testimony that he has met with County
24 Emergency Managers representing each county in which the project will be located. He
25 also noted that the Emergency Managers are aggregating first responder equipment
26 needs and that preparedness training will be scheduled for first responders once
27 construction begins.

28
29 **Q. Does SCS commit to funding any equipment needs for first responders?**

30 A. Somewhat. In response to Staff's Data Request 4-9, SCS notes that they intend to
31 purchase carbon dioxide and oxygen monitoring equipment. However, they also note
32 that other equipment requests for responding to a carbon dioxide release will be
33 evaluated on a case-by-case basis.

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Q. Did SCS provide a copy of its Emergency Response Plan?

A. Yes. A confidential draft of the Emergency Response Plan was provided in response to Staff's Data Request 5-5.

Q. Do you believe the Emergency Response Plan should be confidential?

A. No. During the public input meetings, several individuals voiced concerns about the preparedness of volunteer fire departments for responding to a carbon dioxide release. As such, it is Staff's position that the Emergency Response Plan should be made public so that first responders and local units of government can understand the response activities that will take place in the event of a release. Making the plan public would also allow individuals interested in the Emergency Response Plan the ability to critique the plan for robustness.

Q. Does Staff find that SCS has appropriately addressed the concerns surrounding emergency response planning?

A. I believe SCS is working to address the concerns regarding first responder safety and emergency response planning. I cannot, however, provide an opinion on the sufficiency of the Emergency Response Plan and steps taken by SCS to date. Local first responders and Emergency Managers would need to participate in any conversation surrounding the sufficiency of SCS's Emergency Response Plan.

Q. Have any first responders intervened in this matter?

A. Yes. Highmore Fire Department, Hartford Area Fire and Rescue, Humboldt Fire and Rescue, and Leola Volunteer Fire Department intervened in this docket and have the ability to raise any concerns with SCS's emergency response approach if desired.

XI. INDEMNITY BOND FOR DAMAGE TO ROADS AND BRIDGES

Q. Did SCS have a proposal for the amount of an indemnity bond for road and bridge damages according to SDCL 49-41B-38?

A. Staff asked SCS to provide a proposed road bond amount in Staff Data Request 1-6. SCS responded that they are still assessing the projects potential impacts to the roads; however, they offered that the Commission ordered a \$24 million road bond for the

1 Dakota Access Pipeline and SCS is expecting a comparable financial assurance
2 requirement.

3
4 **Q. Are you familiar with how the road bond amount was set for Dakota Access
5 Pipeline?**

6 A. Yes. The \$24 million bond amount was set based on ten percent of the project's
7 estimated direct spending in South Dakota of \$480 million and split over two construction
8 years. The project's total estimated cost for South Dakota was \$820 million. The \$24
9 million bond amount for Dakota Access equated to approximately 2.9 percent of the
10 project's estimated construction cost.

11
12 **Q. Does Staff recommend applying the same method to SCS?**

13 A. Yes. Staff would recommend using a similar percentage, 2.9 percent, of total project
14 cost to establish the bond amount for SCS. SCS estimates its total project cost in South
15 Dakota at \$795 million and this would equate to a bond amount of \$23 million.

16
17 **Q. Has SCS updated its project cost estimate to account for the recent inflation in the
18 economy?**

19 A. I don't recall seeing an updated project cost estimate in South Dakota that accounts for
20 the recent inflation in the economy.

21
22 **Q. Do you have a recommended bond amount?**

23 A. I recommend that the bond amount be set at 2.9 percent of the most current estimate for
24 the total project cost in South Dakota. I plan to send a data request to get an updated
25 project cost from SCS and will supplement my testimony at the hearing with Staff's
26 recommendation for a bond amount.

27
28 **XII. PERMIT CONDITIONS**

29
30 **Q. Does Staff plan to develop permit conditions for Commission consideration?**

31 A. Yes. Historically, Staff has developed permit conditions to offer for Commission
32 consideration in the event that the Commission finds the Applicant met its burden of
33 proof under SDCL 49-41B-22. Staff will offer a similar recommendation on permit
34 conditions in this case as well. Staff's willingness to work on conditions is not reflective

1 of the position Staff will take on the ultimate question in this docket (i.e. whether a permit
2 should be granted).

3
4 **Q. Will Staff discuss potential permit conditions with SCS?**

5 A. Yes. Staff usually works with Applicants to develop permit conditions. Negotiation on
6 language within certain conditions may occur and any disputes on permit condition
7 language will be presented to the Commission for consideration.

8
9 **Q. Would Staff be willing to work with intervenors on permit conditions?**

10 A. Yes. At this time, I have not reviewed intervenor testimony so I do not know what
11 opportunities exist for permit conditions that may satisfy intervenors' concerns. If
12 intervenors believe that there is a permit condition that can address their concerns, then
13 I encourage them to provide Staff with that condition for consideration.

14
15 **Q. What will Staff use as a starting point for permit conditions?**

16 A. Staff will use permit conditions from past pipeline dockets as a starting point for permit
17 conditions in this case. Pipeline construction results in similar environmental impacts if
18 sited appropriately regardless of the product flowing through the pipe and, thus, many
19 permit conditions recommended by Staff in this case will be similar to conditions
20 recommended by Staff in past pipeline dockets.

21
22 **Q. Do you have any permit conditions that you would like to highlight at this time?**

23 A. Yes. As of the date of this testimony, I would like to highlight the following permit
24 conditions that Staff will be advocating for:

- 25
26 1) Require the installation of pipeline warning tape,
27 2) Require the installation of a fiber optic leak detection system and strategically
28 located carbon dioxide sensors,
29 3) Require the use of certified construction inspectors with API 1169
30 certification,
31 4) Require the use of API Recommended Practice 1172: *Recommended*
32 *Practice for Construction Parallel to Existing Underground Transmission*
33 *Pipelines,*

- 1 5) Require a third-party environmental inspector during construction and
2 reclamation, and
3 6) Require a Public Liaison Officer.
4

5 **Q. Is the list above inclusive of all permit conditions that Staff recommends?**

6 A. No, it is not inclusive of all permit conditions. Staff will work with our subject matter
7 experts that provided testimony to determine if additional conditions are warranted.
8

9 **Q. Why is Staff recommending SCS be required to install pipeline warning tape?**

10 A. This condition is to further mitigate potential damage to the pipeline by a third party.
11 Staff's witness Mr. William Byrd recommends the use of pipeline warning tape as an
12 added layer of protection. Please refer to Mr. Byrd's testimony for further support.
13

14 I will note that in response to Staff Data Request 4-4, SCS noted that they would oppose
15 such a condition since current regulations and the use of the 811 one-call system
16 already mitigate the risk of third party damage. However, I will also note that another
17 operator has committed to the use of pipeline warning tape in South Dakota.
18

19 **Q. Why is Staff recommending SCS be required to install a fiber optic leak detection
20 system and strategically located carbon dioxide sensors?**

21 A. Staff's witness Mr. William Byrd notes in his testimony that SCS intends to use a Real
22 Time Transient Model (RTTM) for leak detection and noted that SCS did not commit to
23 install more direct forms of carbon dioxide leak detection such as fiber optic cables or
24 external carbon dioxide sensors. Mr. Byrd recommends that SCS use direct forms of
25 carbon dioxide detection (i.e., external carbon dioxide sensors) at pump stations, where
26 significant leaks are the most likely to occur.
27

28 While Mr. Byrd's testimony only recommends SCS use external carbon dioxide sensors
29 at pump stations, Staff believes that the Commission should require the use of fiber optic
30 leak detection as well to further mitigate the potential impact of a release by providing
31 rapid detection of the event at other locations along the pipeline. I will note that in
32 response to Staff Data Request 4-3, SCS states they would oppose such a condition
33 since they are already using the RTTM for leak detection. Their response appeared to
34 indicate that SCS couldn't use both methods for leak detection, for which Staff

1 disagrees. Based on Mr. Byrd's testimony and the fact that another operator has
2 committed to the use of a fiber optic leak detection system and direct carbon dioxide
3 sensors in addition to a RTTM, Staff recommends this added layer of protection for the
4 public be ordered by the Commission should the Commission grant the permit.
5

6 **Q. Why is Staff recommending the Commission require the use of API 1169 certified**
7 **construction inspectors?**

8 A. Staff's witness Mr. William Byrd makes this recommendation in his testimony. Please
9 see his testimony for further support.
10

11 **Q. Why is Staff recommending the Commission require SCS implement API**
12 **Recommended Practice 1172: *Recommended Practice for Construction Parallel to***
13 ***Existing Underground Transmission Pipelines?***

14 A. Staff's witness Mr. William Byrd makes this recommendation in his testimony since SCS
15 sited portions of its route to co-locate with the Dakota Access Pipeline. Please see his
16 testimony for further support.
17

18 **Q. Why is Staff recommending the Commission require a third-party environmental**
19 **inspector during project construction and reclamation?**

20 A. SCS commits to implementing a wide range of mitigation measures and best
21 management practices during construction. The Commission does not have the
22 resources to conduct frequent inspections of SCS's construction activities to ensure that
23 SCS is completing construction and reclamation in accordance with the commitments
24 SCS made or any permit conditions the Commission may attach to the permit. As such,
25 the third-party environmental inspector would be Staff's eyes and ears in the field and
26 report to Staff on SCS's construction activities. The Commission required a third-party
27 environmental inspector for the Dakota Access Pipeline and Staff found that the
28 inspector was a valuable resource for us. Attached as Exhibit_DK-6 is the third-party
29 environmental inspector condition that Staff will be advocating for in this case.
30

31 **Q. Why is Staff recommending the Commission require a public liaison officer for the**
32 **Project?**

33 A. A public liaison officer has been an extremely valuable resource for Staff and
34 Consumer Affairs when addressing concerns raised by impacted landowners in

1 past projects. Attached as Exhibit_DK-7 is the public liaison officer condition for
2 which Staff will advocate.

3
4 **Q. How is the public liaison officer different than the third-party environmental**
5 **inspector?**

6 A. A public liaison officer acts as a mediator between SCS and landowners to
7 address issues that arise during construction and reclamation. Further, the
8 public liaison officer is a resource for the public to contact should they have
9 questions about the project. The third-party environmental inspector, on the
10 other hand, will be focused solely on inspecting project construction and
11 reclamation to ensure SCS is complying with the commitments it made in the
12 Supplement of the Application, discovery responses, and testimony, as well as
13 the permit conditions.

14
15 **Q. At the public input meetings, several landowners raised a concern about the**
16 **pipeline's proposed depth of 4 feet and the potential for farm equipment to sink to**
17 **that depth. Is Staff planning to recommend a permit condition that requires the**
18 **pipeline be buried deeper?**

19 A. At this time, Staff does not intend to recommend the Commission require the
20 pipeline be buried deeper than the 4-foot depth SCS proposes. In Staff's Data
21 Request 1-19, Staff asked SCS if they would be willing to construct the pipeline
22 to a depth of 6-foot. SCS's response noted that a deeper trench will require a
23 larger workspace and this would increase the environmental and agricultural
24 impacts of the project. As such, Staff is not supportive of requiring a deeper
25 depth for the entire route of the pipeline. One potential path forward to address
26 the pipeline depth concern is for the Commission to take a more targeted
27 approach, where a permit condition could be written that requires SCS to work in
28 good faith to accommodate landowner requests for a deeper pipeline if the
29 request is made.

30
31 **XIII. CONCLUSION**

32
33 **Q. Is Staff making a recommendation to the Commission on whether the permit**
34 **should be granted at this time?**

1 A. No. Staff has yet to review intervenor testimony and wants to understand the concerns
2 and issues identified in that testimony before taking a position. Further, SCS can
3 address any outstanding issues raised by Staff and other parties through rebuttal
4 testimony and, to an extent, through the evidentiary hearing. In addition, I will note that
5 certain issues may be addressed through permit conditions.

6

7 With the above in mind, Staff reserves any position on granting the permit until such time
8 as we have a complete record upon which to base Staff's position.

9

10 **Q. Does this conclude your testimony?**

11 A. Yes, this concludes my written testimony. However, I reserve the right to amend my
12 testimony through supplemental testimony, rebuttal testimony and at the evidentiary
13 hearing if needed.