

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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

HP22-001

SURREBUTTAL TESTIMONY OF

ERIK SCHOVANEC

ON BEHALF OF

SCS CARBON TRANSPORT LLC

SCS EXHIBIT #

August 31, 2023

1 **Q. Please state your name.**

2 A. Erik Schovanec.

3 **Q. Have you previously provided prefiled testimony in this docket?**

4 A. Yes. I filed Direct Testimony on November 4, 2022, and Rebuttal Testimony on July 7,
5 2023 on behalf of SCS Carbon Transport LLC (“SCS”) in support of the South Dakota
6 portion of the Midwest Carbon Express Project (the “Project”).

7 **Q. What is the purpose of your Surrebuttal Testimony?**

8 A. The purpose of my Surrebuttal Testimony is to provide: updates regarding the current
9 Project route and county ordinances; the Phase I Geohazard Assessment Report; the Phase
10 I Hydrotechnical Assessment Report; and provide updated responses to data requests
11 (“DRs”) sent by the South Dakota Public Utilities Commission (“Commission”) Staff.

12 **Q. What exhibits are attached to your Surrebuttal Testimony?**

13 A. The following exhibits are attached to my Surrebuttal Testimony:

- 14 • Exhibit 1: Phase I Geohazard Assessment.
- 15 • Exhibit 2: Phase I Hydrotechnical Hazard Assessment.
- 16 • Exhibit 3: Updated Response to Staff DR 1-20, with attachment (Control Center
17 Management and Leak Detection).
- 18 • Exhibit 4: Updated Response to Staff DR 5-2, with attachment (updated Horizontal
19 Directional Drilling (HDD) Inadvertent Return Plan).
- 20 • Exhibit 5: Proposed South Dakota Mainline Valves in High Consequence Areas.
- 21 **[CONFIDENTIAL]**
- 22 • Exhibit 6: Map of Spink County reflecting new setback distances.
- 23 • Exhibit 7: Map of McPherson County reflecting new setback distances.

1 • Exhibit 8: Spink County Ordinance Titles 17.02 (Definitions) and 17.29
2 (Hazardous Liquid Pipeline).

3 • Exhibit 9: McPherson County Ordinances #23-1 and #23-2.

4 **Q. Since the Supplement of the Application to the South Dakota Public Utilities**
5 **Commission for a Permit for the SCS Carbon Transport LLC (SCS) Pipeline Under**
6 **the Energy Conversion and Transmission Facility Act (“Supplement to the**
7 **Application”) was filed on October 13, 2022, have there been updates to the Project?**

8 A. Yes. As reflected in SCS’s filings in this docket, there have been updates to the Project
9 since the Supplement to the Application was filed.

10 **Q. Please provide an overview of how the Project has been updated since the Supplement**
11 **to the Application was filed.**

12 A. Adjustments to the route since the Supplement to the Application were realignments and
13 minor reroutes (no major reroutes) and were required primarily to either accommodate a
14 landowner request to seek an easement, to adjust the route to avoid sensitive areas found
15 during field surveys, modifications to avoid third party infrastructure, or for engineering or
16 constructability reasons.

17 Project’s current layout is depicted on the updated figures and updated Appendices 6A, 6B,
18 and 6C included in Exhibit 1 to the Surrebuttal Testimony of Jon Schmidt. The updated
19 Appendices 6A, 6B, and 6C include redline comparisons showing the changes from the
20 route filed on June 21, 2023.¹

¹ The previous route labeled “May 3, 2023 Filed Route” on updated Appendices 6A, 6B, and 6C (Exhibit 1(c) to the Surrebuttal Testimony of Jon Schmidt) refers to the route filed in the docket on June 21, 2023.

1 **Q. Have all landowners within ½ mile of the updated current route been mailed notice**
2 **of the Project?**

3 A. Yes. The updated route contained only minor route changes or realignments resulting in
4 one additional landowner coming within ½ mile of the proposed route. SCS mailed notice
5 to this landowner on August 28, 2023.

6 **Q. Do you have an update on the number and location of mainline valve sites?**

7 A. Yes. As depicted on Exhibit 5 (Proposed South Dakota Mainline Valves in High
8 Consequence Areas) [**CONFIDENTIAL**] there are currently 65 mainline valves located
9 in the state of South Dakota. The maps showing High Consequence Area (“HCA”) data
10 layers are provided as confidential to comply with the Pipeline and Hazardous Materials
11 Safety Administration’s (“PHMSA”) requirements. SCS has designed the pipeline system
12 in accordance with PHMSA requirements for valve locations and spacing requirements as
13 dictated by 49 C.F.R. § 195.260.

14 **Q. In prefiled testimony, Commission Staff witnesses discussed geologic conditions**
15 **crossed by the Project and recommended that a geohazard analysis be conducted for**
16 **the Project. Are you familiar with these comments?**

17 A. Yes.

18 **Q. Has SCS conducted a Phase I Geohazard Assessment for the Project?**

19 A. Yes. As stated in my Rebuttal Testimony, SCS commissioned a Phase I Geohazard
20 Assessment earlier this year, and a revised draft report was issued on June 9, 2023. Since
21 my Rebuttal Testimony was filed, the Phase I Geohazard Assessment has been further
22 updated and is included as Exhibit 1 to my Surrebuttal Testimony.

1 **Q. Could you discuss your role with respect to the Phase I Geohazard Assessment**
2 **conducted for the Project?**

3 A. The Phase I Geohazard Assessment was conducted at my team's direction. We oversaw
4 the preparation, review, and finalization of the report.

5 **Q. What is the purpose of the Phase I Geohazard Assessment?**

6 A. The Phase I Geohazard Assessment identifies and assesses potential geohazards along the
7 Project route. As detailed in the report, no localized geohazard features that typically pose
8 the greatest threats to pipeline construction and/or operation, such as landslides, sinkholes,
9 or active faults, were identified along the proposed route. The Phase I Geohazard
10 Assessment also contains recommendations for potential minimization and/or mitigation
11 measures for construction and operations.

12 **Q. Related to the Phase I Geohazard Assessment, did SCS also conduct a Phase I**
13 **Hydrotechnical Hazard Assessment for the Project?**

14 A. Yes. SCS conducted a Phase I Hydrotechnical Hazard Assessment for the Project, which
15 is included as Exhibit 2 to my Surrebuttal Testimony.

16 **Q. Could you discuss your role with respect to the Phase I Hydrotechnical Hazard**
17 **Assessment conducted for the Project?**

18 A. The Phase I Hydrotechnical Hazard Assessment was conducted at my team's direction.
19 We oversaw the preparation, review, and finalization of the report.

20 **Q. What is the purpose of the Phase I Hydrotechnical Hazard Assessment?**

21 A. The Phase I Hydrotechnical Hazard Assessment reviews and evaluates the waterbody
22 crossings along the route to assess the potential for hydrotechnical hazards that may
23 warrant additional evaluation or crossing design modifications. As discussed in the report,

1 after design modifications to various crossings, all waterbody crossings are classified as
2 “low hazard” for hydrotechnical hazard.

3 **Q. Commission Staff has sent seven sets of DRs to SCS as part of this proceeding. Have**
4 **you been involved in reviewing and responding to certain DRs from Staff?**

5 A. Yes.

6 **Q. Is it your understanding that SCS has an obligation to provide updated responses, as**
7 **needed?**

8 A. Yes.

9 **Q. Do you have any updates to Staff DR 1-20, which is included in Staff Exhibit S1a?**

10 A. Yes. Lawrence Meredith prepared the original response to Staff DR 1-20. As Mr. Meredith
11 is no longer working on this Project, I am replacing Mr. Meredith as the responder for this
12 DR and am providing an updated response, which is included as Exhibit 3 to my Surrebuttal
13 Testimony. Included as an attachment to the updated response is a document titled *Control*
14 *Center Management and Leak Detection*, which provides additional information on the
15 strategy SCS will employ for pipeline leak detection and the general control center
16 responses for alarms and emergency conditions.

17 **Q. Do you have any updates to Staff DR 5-2, which is included in Staff Exhibit S1a?**

18 A. Yes. I am replacing Jason Zoller as the responder for Staff DR 5-2 and am providing an
19 updated response, which is included as Exhibit 4 to my Surrebuttal Testimony. Included
20 as an attachment to the response is the Project’s updated HDD Inadvertent Return Plan,
21 which has been revised to provide additional information on prevention, monitoring, and
22 mitigation measures that will be implemented if an inadvertent return of drilling fluid
23 occurs despite prevention efforts.

1 **Q. Do you have any updates regarding local land use controls?**

2 A. Yes.

3 • Spink County’s moratorium on pipelines expired on July 19, 2023. However, at an
4 August 8, 2023 meeting, Spink County approved and adopted changes to Ordinance
5 Title 17.02 (Definitions) and approved and adopted Ordinance Title 17.29 (Hazardous
6 Liquid Pipeline); these will become effective September 12, 2023.

7 • Brown County’s moratorium on pipelines expired on July 19, 2023, but it is our
8 understanding based on statements at the July 18, 2023 county commission meeting
9 that the county is considering enacting a new moratorium on pipelines. Brown
10 County’s Ordinance #243, enacted on April 25, 2023, is still in effect.

11 • On January 11, 2022, McPherson County approved a moratorium on pipelines. It is
12 unclear if this moratorium has expired. However, On August 15, 2023, McPherson
13 County approved and adopted Ordinance #23-1 (Hazardous Material Pipeline
14 Ordinance) and **McPherson County Ordinance #23-2.**

15 **Q. Regarding Spink County - have you reviewed Spink County Ordinance Titles 17.02**
16 **(Definitions) and 17.29 (Hazardous Liquid Pipeline)?**

17 A. Yes.

18 **Q. How does the Spink County Ordinance purport to regulate SCS’s proposed route?**

19 A. Spink County Ordinance Title 17.29 regulates hazardous liquid pipelines. The ordinance,
20 which acknowledges that its standards may be “more stringent” than those set by this
21 Commission, establishes a half-mile (2,640 ft) setback from the property line of “schools,
22 daycares, churches, residential dwelling, livestock facilities, or any structure that has
23 residential living quarters within.” The Spink County Ordinance also contains a setback of

1 two miles for “High Consequences Areas,” which are “structures containing 10 or more
2 persons with limited mobility, such as nursing homes and hospitals, and for structures with
3 permitted occupancies of 100 or more persons, such as schools, churches, shipping, and
4 entertainment facilities.”

5 **Q. Does SCS’s proposed route comply with the setback distances in Spink County
6 Ordinance Title 17.29?**

7 A. No.

8 **Q. Is there any theoretical pipeline route through Spink County that would comply with
9 the setback distances in Spink County Ordinance Title 17.29**

10 A. No. Attached as Exhibit 6 is a map showing the setback distances and SCS’s proposed
11 route.

12 **Q. Before Spink County enacted Ordinance Title 17.29 did SCS incur cost associated
13 with the proposed route in Spink County?**

14 A. Yes. In the eighteen months before Spink County enacted its ordinance, SCS paid over
15 \$14.5 million to landowners for ROW and expended an additional \$6 million for
16 engineering, surveys, and other ROW services related to the tracts along the proposed
17 routes in Spink County.

18 **Q. Regarding McPherson County – have you reviewed the McPherson County
19 moratorium on pipelines?**

20 A. Yes.

21 **Q. Have you reviewed McPherson County Ordinance #23-1 (Hazardous Material
22 Pipeline Ordinance)?**

23 A. Yes.

1 **Q. How does McPherson County Ordinance #23-1 purport to regulate SCS's proposed**
2 **route?**

3 A. Ordinance 23-1 includes the following setbacks for hazardous liquid pipelines: one mile
4 from any occupied dwelling, mobile home, or manufactured home; 500 feet from any
5 adjoining property line of a non-participating landowner; and 1,000 feet from a water well
6 that is documented and/or mapped with the South Dakota Department of Natural Resources
7 Water Well Completion Reports. The ordinance also establishes a new permitting scheme
8 for hazardous liquid pipelines and an application fee, to be established by resolution. Under
9 the ordinance, after the applicant submits an extensive amount of information, including a
10 county-wide economic benefit analysis and carbon pollution estimate, McPherson County
11 would hold its own public hearings, and the Board of Adjustments has the authority to
12 approve, deny, or modify the permit application.

13 **Q. Does SCS's proposed route comply with the setback distances in McPherson County**
14 **Ordinance #23-1?**

15 A. No.

16 **Q. Is there any theoretical pipeline route through McPherson County that would**
17 **comply with the setback distances in McPherson County Ordinance #23-1?**

18 A. No, there is no practical way for SCS to navigate these setbacks under any theoretical route.
19 There are significant grassland easements in McPherson County along the only theoretical
20 path through the county. U.S. Fish and Wildlife Service requested that there be no surface
21 impacts to any of these grassland easements and that any crossing would therefore require
22 a horizontal directional drill (HDD). At the locations of the only theoretical routes through
23 the county, there are large, densely clustered grassland easements, which would result in

1 Summit needing to complete a 16,000+ foot HDD to navigate, which is not physically
2 possible. Exhibit 7 shows the grassland easements in McPherson County and the setback
3 distances in McPherson County Ordinance #23-1, except the 500 ft. setback from property
4 lines of any adjoining property line of a non-participating landowner, which would add
5 further restrictions to a route once it was established.

6 **Q. Have you reviewed McPherson County Ordinance #23-2?**

7 A. Yes.

8 **Q. How does McPherson County Ordinance #23-2 purport to regulate SCS's proposed**
9 **route?**

10 A. The ordinance sets a "level of cultivation" in McPherson County at "[n]ot less than two (2)
11 feet below all tile lines and drainage pipes and equipment on any cultivated agricultural
12 land; [n]ot less than six (6) feet below the surface of all cultivated and non-cultivated
13 agricultural land and the lowest point of any ditch in a public right of way; [and] [n]ot less
14 than six (8) feet below the surface of any right of way of any public drainage facility and
15 any maintained or non-maintained drivable surface of any county, town or municipal
16 street/highway and/or right of way."

17 **Q. Before McPherson County enacted Ordinances #23-1 and #23-2 did SCS incur cost**
18 **associated with the proposed route in McPherson County?**

19 A. Yes. In the eighteen months before McPherson County enacted its ordinances, SCS spent
20 \$5.2 million on easements and \$5 million on ROW services, surveys, and engineering
21 efforts.

22 **Q. Can you provide an updated list of the counties with ordinances/land use controls that**
23 **SCS is requesting the Commission supersede and preempt?**

1 A. Yes. The following counties have ordinances/land use controls that SCS is requesting the
2 Commission supersede and preempt:

3 Brown County

4 Spink County

5 Minnehaha County

6 McPherson County

7 **Q. Does this conclude your Surrebuttal Testimony?**

8 A. Yes.

1 Dated this 31st day of August, 2023.

2

3 */s/ Erik Schovanec*

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Erik Schovanec

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