

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

---

**REBUTTAL TESTIMONY OF**

**JAMES POWELL**

**ON BEHALF OF**

**SCS CARBON TRANSPORT LLC**

**SCS EXHIBIT #**

July 7, 2023

1 **Q. Please state your name and business address for the record.**

2 A. My name is James Powell. I am employed by SCS Carbon Transport, LLC, and my  
3 business address is (address).

4 **Q. What is your position with SCS Carbon Transport, LLC (“SCS”)?**

5 A. I am the Chief Operating Officer (COO).

6 **Q. Have you previously submitted direct testimony and exhibits in this proceeding?**

7 A. Yes.

8 **Q. Should risk modeling be used in inform siting decisions?**

9 A. As Mr. William Byrd testified, PHMSA requires that an operator evaluate risk  
10 associated with operating a pipeline that “could affect” a High Consequence Area (HCA) with a  
11 worse case discharge (WCD): *“PHMSA imposes special “integrity management” requirements*  
12 *on sections of pipelines that “could affect” an HCA with a “Worst Case Discharge” (WCD)”*.  
13 Mr. Byrd also testified that: *“The purpose of this modeling is to inform risk management*  
14 *decisions such as higher integrity pipe or enhanced emergency response”*.  
15 My experience aligns with Mr. Byrd’s testimony in that it is industry best practice to utilize risk  
16 assessments to determine whether “additional” measures should be taken to mitigate risk to  
17 HCAs rather than determine the location of the pipeline. Also, PHMSA only requires risk  
18 assessments for HCAs, and results are not applicable to pipeline segments located outside of an  
19 HCA. Conversely, in Mr. Matthew Frazell’s testimony, he suggests that *“The application would*  
20 *develop and use sound models, which denote where the pipeline has the potential to impact the*  
21 *health and safety of public, employees, and the environment; to be able to adjust the route of the*  
22 *pipeline to minimize these risks.”* Respectfully, and as previously stated, risk assessments are  
23 utilized to inform risk mitigating measures and not adjust the route of the pipeline unless the

24 operator determines mitigation is not practical. Regarding the Midwest Carbon Express Pipeline  
25 (MCE), which is the subject of this application, SCS has determined risk within the  
26 approximately .35 miles of direct affect, population derived HCAs , all of which are in the  
27 vicinity of ethanol plants, is manageable, and as such, SCS has/will implement risk mitigating  
28 measures including but not limited to: conservatively utilizing Overland Flow modeling to  
29 complement the Canary dispersion model, increasing pipe wall thickness, increasing the depth of  
30 cover, non-destructively testing 100% of girth welds, installing and activating an impressed  
31 cathodic protection system when the pipeline initiates operation (one year ahead of regulatory  
32 requirements), adding additional isolation valves, etc. Additionally, SCS will utilize its risk  
33 modeling and dispersion modeling to inform its Public Awareness and Emergency Response  
34 Programs.

35 **Q. Should dispersion modeling completed by SCS be used by the Commission to**  
36 **establish setback requirements?**

37 A. No. As previously stated and referenced in Mr. Byrd’s testimony, industry best practice  
38 is to utilize dispersion modeling to assess risks to HCAs and inform an operator’s design  
39 (material changes, equipment additions/modifications, etc.), Public Awareness and Emergency  
40 Response Programs, and Integrity Management Program. As Mr. Frazell testifies: “Most setback  
41 distances are regulatory code and standard driven...”. Regarding this application, the setback  
42 distance is set out in PHMSA regulations.

43 **§195.210 Pipeline location.**

44 (b) No pipeline may be located within 50 feet (15 meters) of any private dwelling, or  
45 any industrial building or place of public assembly in which persons work, congregate, or  
46 assemble, unless it is provided with at least 12 inches (305 millimeters) of cover...

47 Mr. Frazell also testifies that: *“By including dispersion modeling, as a component, in the*  
48 *required setback distance determination, the commission would be able to add an additional*  
49 *layer of protection against a potential release.”* As previously stated, PHMSA only requires that  
50 dispersion modeling is performed for HCAs so prescribing a setback based on dispersion model  
51 output across the entirety of the pipeline would essentially override safety judgements that  
52 PHMSA has already made and which are reflected in the federal regulations . As previously  
53 stated, SCS will voluntarily apply its IMP to the entire pipeline, even though it is only required  
54 for HCAs. And as part of that effort, SCS will evaluate modeling outputs all along the pipeline  
55 and develop preventative and mitigative measures along the entire pipeline route. In my  
56 experience, PHMSA will review SCS’s dispersion modeling output to confirm completeness and  
57 SCS’s Integrity Management Plan (IMP) to ensure appropriate measures have been taken to  
58 mitigate risks to HCAs. However, PHMSA will not require setback distances other than that  
59 prescribed in the code section referenced previously.

60 **Q. What appropriate setback distances should the commission be considering?**

61 A. The commission should not consider and/or impose a setback distance in addition to or  
62 different from that prescribed by PHMSA. Mr Frazell testifies that: *“The 40,000-ppm*  
63 *concentration threshold provides a balance between the impacts to health and safety, and the*  
64 *flexibility needed to route a pipeline.”* Additionally, Mr. Frazell testifies that: *“SCS has not*  
65 *provided sufficient detailed information pertaining to the risk modeling to adequately determine*  
66 *the accuracy of the stated risk associated with the release from the SCS pipeline system.”* It is  
67 unclear how Mr. Frazell can recommend a setback without a clear understanding of risk. The  
68 National Institute for Occupational Health and Safety (NIOSH) threshold of 40,000-ppm  
69 concentration was established for exposure in an indoor environment and not an atmospheric or

70 open-air environment. None the less, SCS conservatively utilized the NIOSH thresholds in its  
71 dispersant modeling. For perspective, a CO2 concentration of 40,000-ppm is equivalent to an  
72 Oxygen concentration of approximately 20.1%.

73  $.209 (1-.04) = .2006$  or ~20.1% (reference: API Draft CO2 Emergency  
74 Response Tactical Guidance Document)

75 The oxygen concentration needed for normal body function is approximately 19.5%.

76 As previously stated, ethanol plants which are the source of CO2 for the MCE pipeline, are  
77 located in the only direct effect HCAs in the South Dakota footprint and requiring an arbitrary  
78 setback would make routing a pipeline to these facilities generally impractical, and in some cases  
79 impossible.

80 Finally, I understand that setback requirements have not been imposed on previous oil and gas  
81 pipelines constructed in South Dakota and it would be unreasonable to make up new, ad hoc  
82 requirements for the MCE.

83 **Rebuttal to the Direct Testimony of Randall Harris**

84 **Q. Are union employees more qualified than non-union employees to perform pipeline**  
85 **construction activities?**

86 A. No. Top tier non-union contractors employ a core group of craftsmen who, in many  
87 cases, are retained for years and comprise the core working group for all pipeline construction  
88 projects. These individuals hone their skills just as an individual in a formal training or  
89 apprenticeship program. In fact, non-union contractors perform the majority of pipeline  
90 construction in the U.S. and arguably, provide more opportunity for their employees to use and  
91 improve their skills.

92

93 **Q. Have union contractors been employed on approximately half of all major oil and**  
94 **gas pipeline projects nationally?**

95 A. No. In the last ten years, the majority (over half) of new-construction pipeline projects  
96 (sheer number and cumulative mileage) have been constructed in the southern U.S. where union  
97 contractors find it difficult to complete. As such, the majority of the projects are completed by  
98 non-union contractors.

99 **Q. Has SCS provided LIUNA with a breakdown of contractors, both union and non-**  
100 **union, on the MCE project?**

101 A. Yes. For Clarification, SCS will employ three contractors: Precision Pipeline (union),  
102 Holloman (non-union), and PumpCo (non-union) in South Dakota. Project wide, union  
103 contractors are under contract to perform approximately 63% of the current MCE scope of work.

104 **Q. Does PumpCo have the requisite experience to successfully construct the pipeline**  
105 **construction scope of work in South Dakota that SCS has contracted with them to**  
106 **perform?**

107 A. Yes. PumpCo has performed more new pipeline construction than any other contractor  
108 (union or non-union) in the last 10 years – nearly 7,500 miles. While it is accurate to say  
109 PumpCo has completed the majority of their work in Texas, that is in large part because most  
110 pipeline construction in this country in recent years has been executed in Texas, New Mexico,  
111 and Louisiana. That said, PumpCo has performed work in North Dakota, Wyoming, and  
112 Pennsylvania which demonstrates they can construct in a climate similar to South  
113 Dakota. PumpCo’s safety performance over the last three years is also best in class:

| Pumpco, Inc. Health, Safety and Environmental (ESH) Metrics |      |      |      |                          |
|---|------|------|------|--------------------------|
| YEAR  | TRIR | EMR  | DART | Annual Manhours Complete |
| 2022  | 0.21 | 0.72 | .10  | 1,919,070                |
| 2021  | 0.68 | 0.65 | .51  | 3,519,497                |
| 2020  | 0.64 | 0.63 | .38  | 5,202,663                |

114

115 Finally, PumpCo’s scope of work for SCS is all 24” OD which will be automatic  
 116 welded. PumpCo has performed more automatic welded construction than any other contractor  
 117 over the last several years. After a rigorous evaluation, the Summit team, who has collectively  
 118 installed and operating over 20,000 miles of pipeline in most regions of this country and have  
 119 worked with all major pipeline construction contractors, have the utmost confidence in the  
 120 selection of PumpCo.

121 **Q. Will using non-union contractor(s) reduce the cumulative positive impacts for host**  
 122 **communities and the state of South Dakota?**

123 A. No. With ~900,000 residents in the entire state of South Dakota, any contractor (union  
 124 or non-union) will be challenged to locally source the balance of workers. Union contractors are  
 125 required to source ~50% of their workforce locally and the available pool of union labor in South  
 126 Dakota is challenging for a project with approximately 477 miles of pipeline to construct.  
 127 SCS’s scope is approximately 50% larger than the Dakota Access Pipeline project. While the  
 128 unions (LiUNA, IUOE, Teamsters, and Local 98 (welders)) represent they can provide ~17,000  
 129 workers (project wide), Crafts such as IUOE and the Teamsters are currently busy with non-  
 130 pipeline construction and the backlog is projected to overlap SCS’s current construction  
 131 period. Additionally, Union work requirements typically increase the size of a pipeline  
 132 construction spread by ~20-25%. That’s an additional ~2,500 labor personnel what would have  
 133 to be sourced in what’s forecasted to be a demanding market. Non-union contractors will bring

134 a large volume of their workers from their home location which will alleviate the risk of skilled  
135 labor not being available locally. Regardless of whether a contractor is union or non-union, the  
136 demand for local services (food, lodging, supplies, fuel, etc.) will be similar.

137 **Q. Does the 45Q tax credit require utilization of registered apprentices?**

138 A. SCS's legal interpretation of requirements associated with the 45Q tax credit does not  
139 require utilization of registered apprentices.

140 **Q. Should the PUC mandate SCS to utilize union contractors?**

141 A. No. SCS is required to complete construction in accordance with regulatory  
142 requirements imposed by PHMSA, the South Dakota PUC, etc. in addition to self-imposed  
143 requirements such as 100% non-destructive examination of girth welds. In addition, SCS must  
144 satisfy regulators that the MCE pipeline is fit for service via hydrostatic testing, etc. As  
145 previously stated, SCS employees have an enormous amount of pipeline construction experience  
146 and have employed a rigorous process of selecting the pipeline construction contractors.

147 **Rebuttal to the Direct Testimony of Darren Kearney**

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

150 A. When SCS submitted the initial filing on February 7, 2022, SCS committed to design,  
151 construct, operate, and maintain the pipeline and valve sites in compliance with South Dakota  
152 statutory requirements in effect at that time. SCS can no longer honor that commitment because  
153 three counties (McPherson, Brown, and Spink) have since enacted moratoriums that ban the  
154 proposed pipeline, and two counties (Brown and Minnehaha) have recently enacted ordinances  
155 with setback requirements that would prohibit a pipeline from being constructed along the



156 proposed route and would make construction of a pipeline anywhere through those counties  
157 impossible or impracticable.

158 **Q. Is SCS requesting that the Commission exercise its statutory authority to preempt**  
159 **and supersede any local land use, zoning, building rules, regulations, or ordinances because**  
160 **those laws or rules, as applied to the proposed route, are unreasonably restrictive in view of**  
161 **the existing technology, factors of cost, or economics, or needs of parties where located in or**  
162 **out of the county or municipality?**

163 A. Yes. SCS has already requested that the Commission preempt and supersede the Brown,  
164 McPherson, and Spink County moratoriums that ban the pipeline along the proposed route. SCS  
165 will also ask the Commission to preempt and supersede Brown County Ordinance #243, enacted  
166 on April 25, 2023, and Minnehaha County Ordinance MC16-179-23, enacted on June 6, 2023.  
167 (Attached as Exhibits 1 and 2)

168 **Q. Is SCS still requesting that the Commission preempt and supersede the Edmunds**  
169 **County crossing fees?**

170 A: No. Since SCS requested that the Commissioner preempt and supersede the Edmunds  
171 County road-crossing fees, Edmunds County has rescinded those fee increases.

172 **Q. Mr. Kearney testified that SCS has not provided any support in its Supplement of**  
173 **the Application upon which the Commission could find that the Brown, McPherson, and**  
174 **Spink moratoriums should be preempted. Do you agree with that?**

175 A. No. A ban on all pipelines in a county is, by definition, unreasonably restrictive as applied  
176 to the proposed route. There is no evidence that is necessary for the Commission to make that  
177 finding. The South Dakota legislature has entrusted this Commission with the task of permitting  
178 and siting pipelines in South Dakota. By banning pipelines altogether, the counties are usurping

179 this Commission’s authority. I’m not a lawyer, but if SDCL 49-41B-28 means anything at all, it  
180 must mean that a county’s ban on pipelines that are within the jurisdiction of this Commission is  
181 inherently and unreasonably restrictive.

182 **Q. Has SCS formally asked the Commission to preempt and supersede Brown County**  
183 **Ordinance #243, enacted on April 25, 2023, or Minnehaha County Ordinance MC16-179-**  
184 **23, enacted on June 6, 2023?**

185 A: Not before submitting this testimony. Because other counties, including Lincoln County,  
186 are considering similar setback ordinances, SCS believed it would be most efficient to update the  
187 Commission closer to the hearing. Lincoln County has not yet acted, however, so SCS is now  
188 formally requesting that the Commission preempt and supersede Brown County Ordinance #243,  
189 and Minnehaha County Ordinance MC16-179-23. (“Brown County Ordinance” and “Minnehaha  
190 County Ordinance”).

191 **Q. Will SCS notify Brown County and Minnehaha County of this request?**

192 A: Yes. SCS will send a courtesy copy of this testimony to the counties’ State’s Attorneys  
193 and will file a formal motion with the Commission requesting preemption. A courtesy copy of  
194 that motion will also be sent to the respective State’s Attorneys for Brown and Minnehaha  
195 counties.

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

197 A: The Brown County Ordinance, which is attached as Exhibit 1, requires that hazardous  
198 liquid pipelines, including pipelines that transport carbon dioxide, have a minimum setback of  
199 1,500 feet from the property line of all “cautionary uses,” which are defined as residential  
200 dwellings, any structure with a living quarters within it, schools, daycares, or churches.

201 **Q. You stated earlier that the Brown County Ordinance is unreasonably restrictive as**  
202 **applied to the proposed route. How?**

203 A. The ordinance's 1,500 ft. setback requirement are not only unreasonably restrictive as  
204 applied to the proposed route, they prohibit SCS's proposed routes in Brown County. Attached  
205 as Exhibit 3 is a map of Brown County that shows the areas in which the Brown County  
206 Ordinance prohibits the construction of pipelines. The red lines shows SCS's proposed routes. As  
207 the map reflects, the proposed routes are not possible under the Brown County Ordinance.  
208 Moreover, setback requirements would preclude *any* pipeline, along *any* route, from connecting  
209 to the Glacial Lakes Energy (GLE) ethanol plant in Aberdeen.

210 **Q. Before Brown County enacted the Brown County Ordinance, did SCS incur costs**  
211 **associated with the proposed route?**

212 A. Yes, significant cost. SCS purchased nearly \$1.5 million of ROW in Brown County before  
213 Brown County enacted the ordinance, and all of those easements would be worthless under the  
214 Brown County Ordinance. In addition, SCS has expended approximately \$3.5 million for  
215 engineering, surveys, and other ROW services related to the tracts along the proposed routes in  
216 Brown County.

217 **Q. You said that the Brown County Ordinance would preclude any pipeline, including**  
218 **SCS's pipeline, from connecting to the GLE ethanol plant in Aberdeen. How would that**  
219 **affect the GLE plant and Brown County?**

220 A. By connecting its Aberdeen plant to SCS's pipeline, GLE would receive an additional  
221 \$.10 to \$.35 per gallon of ethanol it sells. GLE produces approximately 50 million gallons of  
222 ethanol per year, so the Brown County Ordinance, by prohibiting SCS's route (and any route) to  
223 GLE's Aberdeen plant, would cost GLE and its shareholders \$5 million to \$17 million per year,

224 at a minimum. Worst yet, GLE's Aberdeen plant would become uncompetitive relative to other  
225 ethanol plants that do have access to a CO2 pipeline, leading to a catastrophic impact to Brown  
226 County. The demand for corn would decrease by approximately 22 million bushels and farmers  
227 would incur additional costs to transport to another market - if another market is even available.  
228 Additionally, approximately 40 full-time, high wage jobs would be eliminated and other  
229 businesses that supply GLE with goods and services would be adversely impacted.

230 **Q. Is there any practical pipeline route that would comply with the Brown County**  
231 **Ordinance?**

232 A. SCS' mainline and two trunklines are proposed to run through Brown County. One  
233 trunkline would connect GLE's Aberdeen plant to the mainline and the other trunkline would  
234 connect the Tharaldson ethanol plant in North Dakota to the mainline. As already stated, there is  
235 no alternative trunkline route that would comply with the Brown County Ordinance that can  
236 connect the GLE Aberdeen plant to the mainline. There is a theoretical, but impractical,  
237 alternative route in Brown County for the trunkline that connects the Tharaldson plant. That  
238 theoretical route is impractical and, even if possible, would increase costs by millions of dollars  
239 and affect landowners inside and outside of Brown County.

240 **Q. Can you explain why these alternative, theoretical routes would be impractical and**  
241 **how they would increase costs and affect additional landowners?**

242 A. A theoretical alternative trunkline route that would connect the Tharaldson plant to the  
243 mainline would be approximately two miles longer than the current proposed trunkline route and  
244 would require an additional 11,000 feet of horizontal directional drills under roads, two  
245 conservation easements, and a long, new drill of Elk Lake. The additional mileage and  
246 horizontal drills would add approximately \$6.85 million in cost. In addition, none of SCS's

247 current easements would cover this alternative theoretical route, so SCS would need to obtain  
248 easements from additional landowners in Brown County. The change in route for this trunkline  
249 would also require a change in route in McPherson County and Dickey County, North Dakota,  
250 negating the value of the easements SCS has obtained there and requiring new easements from  
251 additional landowners in those counties. In total, a theoretical rerouting of this trunkline would  
252 require easements from 16 additional landowners.

253 A theoretical alternative route for the mainline through Brown County that complies with the  
254 Brown County Ordinance would require an additional 2.6 miles of pipe and an additional 22,000  
255 feet of horizontal directional drills under additional roads, eight conservation easements, a  
256 grassland easement and multiple protected wetlands, adding approximately \$14 million in cost.  
257 In addition, none of SCS's current easements would cover this alternative theoretical route, so  
258 SCS would need to obtain easements from additional landowners in Brown County. The change  
259 in route for this trunkline would also require a change in route in Edmunds County and Spink  
260 County, negating the value of some of the easements SCS has obtained there and requiring new  
261 easements from additional landowners in those counties. In total, a theoretical rerouting of the  
262 mainline because of the Brown County Ordinance would require easements from 33 additional  
263 landowners. This new route would also require a 9,000 feet of 24" horizontal directional drill,  
264 which is impractical and maybe even impossible.

265 **Q. How does the Minnehaha County Ordinance purport to regulate SCS's proposed**  
266 **route?**

267 A. The Minnehaha County Ordinance, which is attached as Exhibit 2, provides that any  
268 person who files an application with this Commission for a permit to construct, maintain, or  
269 operate a transmission pipeline, which includes SCS's proposed pipeline, must apply to the

270 Minnehaha Planning and Zoning commission for a county permit. That county application  
271 requires that the pipeline company submit, among other things, plans and specifications, and  
272 emergency response and hazard mitigation plans as required by PHMSA. The Minnehaha  
273 County Ordinance further provides for a minimum “separation criteria” (i.e., setback) of 330 ft.  
274 between the parcel boundary of any dwelling, church, or business, 1,000 ft. from the parcel  
275 boundary of any public park or school, 5,280 ft. (1 mile) from any municipality with a  
276 population of 5,000 or more, 3,960 ft. (3/4 mile) from any municipality with a population  
277 between 500 and 5,000, and 2,640 ft. (1/2 mile) from any municipality with a population of less  
278 than 500.

279 **Q. You stated earlier that the Minnehaha County Ordinance is unreasonably restrictive**  
280 **as applied to the proposed route. How?**

281 A. The setback requirements of Minnehaha County Ordinance are not only unreasonably  
282 restrictive as applied to the proposed route, they prohibit the proposed route altogether. Attached  
283 as Exhibit 4 is a map of Minnehaha County that shows the areas in which the Minnehaha County  
284 Ordinance prohibits the construction of pipelines. The red line shows SCS’s proposed route. As  
285 the map reflects, the proposed route is not possible under the Minnehaha County Ordinance.

286 **Q. Is there any practical pipeline route that would comply with the Minnehaha County**  
287 **Ordinance?**

288 A. Practical? No. Theoretical, yes. Rerouting the pipeline would cost millions of dollars and  
289 affect hundreds of other landowners in Minnehaha County and neighboring Turner County.

290 **Q. Can you explain why a theoretical route through Minnehaha County that complies**  
291 **with the setback requirements would increase costs by millions of dollars?**

292 A. A route that would comply with the setback requirements would be over 34 miles long,  
293 encompassing an estimated 110 different tracts of land that are owned by 90 different  
294 landowners. The current route is 28.8 miles long, encompassing 90 tracts and 75 different  
295 landowners, over 57% of whom have already signed voluntary easements with SCS and been  
296 paid for those easements. The costs to SCS of this theoretical route include but are not limited to  
297 the following:

298 (1) the theoretical route would add 5.55 miles to SCS's total pipeline length in Minnehaha  
299 County, increasing cost by \$11 million for the pipeline, which costs over \$2 million per mile.

300 (2) SCS has spent over \$4 million on existing right-of-way services, including engineering and  
301 surveys. If the ordinance is allowed to stand, those costs, almost all of which were incurred  
302 before Minnehaha County passed its ordinance, would be wasted. Those same services would  
303 need to be incurred along a theoretical route at an estimated cost of approximately \$5 million.

304 (3) Before Minnehaha County passed the ordinance, SCS had already been publicly acquiring  
305 right-of-way along the proposed route for months, purchasing over 15 miles at a cost of \$3.8  
306 million. If the Minnehaha County Ordinance were allowed to stand, the \$3.8 million spent on  
307 easements will be wasted. For the theoretical route, millions more would need to be spent on  
308 right-of-way acquisition.

309 (4) SCS has already purchased a pump station along the proposed route in Minnehaha County.  
310 If the Minnehaha County Ordinance were allowed to stand, that pump station would be useless  
311 to SCS. A new pump station would need to be purchased for a new theoretical route.

312 **Q. You said that the Minnehaha County Ordinance would affect landowners in Turner**  
313 **County. How so?**

314 A. A theoretical pipeline route through Minnehaha County that complies with the  
315 ordinance’s setback requirements would require the pipeline to enter Minnehaha County at a  
316 different location, which, in turn, would require a rerouting of the pipeline in Turner County.  
317 Additional landowners would be affected in Turner County, and SCS would be required to  
318 purchase significantly more right-of-way easements in Turner County. In addition, some of the  
319 easements that SCS purchased in Turner County would now be worthless.

320 **Q. In addition to the substance of the Brown County Ordinance and Minnehaha**  
321 **County Ordinance, does the timing in which these ordinances were passed effect the**  
322 **reasonableness of the restrictions as applied to proposed pipeline route?**

323 A. Yes, as noted above, SCS has invested millions of dollars based on the county zoning  
324 ordinances in place over the past 17 months since SCS filed its application. SCS committed to  
325 design, construct, operate, and maintain the pipeline and valve sites in compliance with South  
326 Dakota statutory requirements in effect at the time of the SCS’s initial filing (February 7, 2022).  
327 It is impractical to require SCS to adjust to ordinances and moratoriums that may be enacted well  
328 after SCS has filed a permit application with the South Dakota PUC. If so, how would an  
329 applicant predict where the “goalpost” may be at any given point in the process? And if  
330 subsequent ordinances were passed and the applicant were forced to comply, statutory  
331 requirements stipulating information necessary for approval at the time an application is filed  
332 would have to evolve during the process as well. Allowing counties to change the rules while the  
333 process is underway, as Brown County and Minnehaha County have, would cause unpredictable  
334 delay, unpredictable costs, and unnecessary and irreparable damage to SCS, its partner facilities,  
335 and affected parties including landowners that have partnered with SCS to advance the MCE  
336 project. Ultimately, if each of the 18 counties traversed by the MCE project can dictate new and



337 ever-changing requirements for the design, construction, operation, and maintenance of the  
338 pipeline and valve sites, the jurisdiction of the South Dakota PUC as well as PHMSA would be  
339 superseded and infrastructure investment in South Dakota would halt.

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

342 A. In Mr. Kearney’s testimony, he states: *“Since the information pursuant to the law was not*  
343 *provided in the Supplement of the Application or through discovery in advance of Staff’s*  
344 *testimony deadline, Staff recommends that such a finding be requested in a separate docket when*  
345 *the information is available. This approach would also avoid a process in which the*  
346 *Commission is asked to preemptively supersede ordinances that are not yet in place or known*  
347 *with specificity.”* If the PUC were to adopt such an approach, future infrastructure projects may  
348 never be built. Local units of government could wait until late in the PUC process and pass an  
349 ordinance that would delay and potentially kill any project. A more reasonable approach would  
350 be to require an operator to comply with ordinances that are in place when an application to the  
351 PUC is filed. If the operator believes one, or more, of those ordinances should be preempted by  
352 the PUC, then such a motion can be made and evaluated by the PUC on a case-by-case basis.

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

355 A. It is not unexpected that a local unit of government would have interest in the largest  
356 pipeline project ever proposed in the state of South Dakota. It is important to note that a  
357 minority of the 18 South Dakota counties traversed by the MCE pipeline have implemented  
358 ordinances that effectively disallow the construction of the proposed pipeline route. It’s also  
359 important to note that, to date, SCS has secured an easement with approximately 560 (~70%)

360 landowners for approximately 332 miles. Clearly, a majority of the affected constituents in  
361 these 18 counties support the project, and, as such, it would be a mischaracterization to say that a  
362 local unit of government is representing the interest of of the majority of its constituents.

363 **Q. Does the commission have the authority to relocate the pipeline route?**

364 A. As Mr. Kearney testifies: “*SDCL 49-41B-36 specifically states that the Commission is*  
365 *not delegated the authority to route a transmission facility.*” The reference to this section of the  
366 statute seems to contradict Mr. Frazell’s recommendation in his testimony that the 40,000-ppm  
367 concentration threshold for a CO2 release should be used to route the pipeline.

368 **Q. Was SCS’s plume model used to help establish the pipeline’s route?**

369 A. Mr. Kearney is correct in his assumption that SCS’s dispersion model was used to  
370 identify risk associated with a potential CO2 release and modify design, construction, and  
371 operational plans to eliminate and/or mitigate such risks. As previously stated, SCS has  
372 implemented various changes in the design and construction planning that in its experience will  
373 effectively mitigate risk. This risk reduction is quantified in SCS’s risk assessment.

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

375 A. Yes.

376

377 Dated this 7th day of July, 2023.

378

379

380 */s/ James Powell*

381 James Powell