

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

SCS Carbon Transport LLC
Midwest Carbon Express CO2 Pipeline Project
Siting Application

Case No. PU-22-391
OAH FILE No. 20230002

ORDER GRANTING PETITION FOR INTERVENTION

[1] On May 16, 2023, Chad Moldenhauer filed a Petition for Intervention in the above referenced case.

[4] On May 19, 2023, SCS Carbon Transport LLC (Summit) filed an objection to the Petition. Summit argues that Mr. Moldenhauer's Petition was untimely. Summit believes the June 2nd hearing is a continuation of the March 14, 2023 Bismarck hearing and therefore Mr. Moldenhauer should have filed his Petition no later than March 3, 2023.

[2] North Dakota Century Code § 28-32-28 addresses intervention in adjudicative proceedings and provides:

An administrative agency may grant intervention in an adjudicative proceeding to promote the interests of justice if intervention will not impair the orderly and prompt conduct of the proceeding and if the petitioning intervenor demonstrates that the petitioner's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of statute or rule. The agency may impose conditions and limitations upon intervention. The agency shall give reasonable notice of the intervention to all parties. An administrative agency may adopt rules relating to intervention in an adjudicative proceeding.

[3] The North Dakota Public Service Commission ("Commission") has adopted its own rules relating to intervention. The Commission's rule on intervention provides in part as follows:

Any person with a substantial interest in a proceeding may petition to intervene in that proceeding by complying with this section. An intervention may be granted if the petitioner has a statutory right to be a party to the proceeding; or the petitioner has a legal interest which may be substantially affected by the proceeding, and the

intervention would not unduly broaden the issues or delay the proceeding. The commission may impose conditions and limitations on an intervention to promote the interests of justice.

1. Contents of petition to intervene. A petition to intervene must be in writing and must set forth the grounds for intervention, the position and interest of the petitioner in the proceeding, what the petitioner would contribute to the hearing, and whether the petitioner's position is in support of or in opposition to the relief sought.

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N.D. Admin. Code § 69-02-02-05.

[5] Mr. Moldenhauer's petition was filed more than 10 days prior to the June 2nd hearing and approximately 63 days after the March 14, 2023 hearing.

[6] The Commission initially scheduled four hearing dates in the above referenced matter. Because of the length of the first hearing on March 14th in Bismarck, North Dakota, the Commission scheduled a fifth hearing date to allow additional hearing time regarding the portions of the pipeline in Oliver, Morton, and Burleigh Counties. However, the March 30, 2023 Notice of Public Hearings does not designate the June 2nd hearing as a continuation of the March 14, 2023 hearing.

[7] Currently there are 15 witnesses scheduled to testify for the intervening parties. Mr. Moldenhauer has been named as a witness for Intervenor John H. Warford Jr. Granting Mr. Moldenhauer intervenor status will not unduly delay or prejudice the June 2nd hearing. However, allowing Mr. Moldenhauer to call additional witnesses would unduly burden the hearing and should not be permitted at this late stage of the proceeding.

[8] The Intervenor has presented sufficient information to satisfy the intervention requirements set forth in N.D.C.C. § 28-32-28 and N.D. Admin. Code § 69-02-02-05. The Petition should be granted with conditions and limitations to ensure no undue delay of the June 2, 2023 hearing.

Having considered the written submission of the Intervenor and the applicable statutory provisions and administrative rules, **IT IS HEREBY ORDERED:**

[8] The Petition to Intervene filed by Chad Moldenhauer is **GRANTED**.

[9] Mr. Moldenhauer may testify but may not call any additional witnesses at the June 2, 2023 hearing.

Dated at Bismarck, North Dakota, this 24 day of May 2023.

State of North Dakota
Public Service Commission

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Administrative Law Judge
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