

**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 ON LABORERS DISTRICT COUNCIL OF MINNESOTA  
AND NORTH DAKOTA'S MOTION TO COMPEL DISCOVERY**

[1] On May 1, 2023, Intervenor Laborers District Council of Minnesota and North Dakota (LIUNA) served Applicant SCS Carbon Transport LLC (Summit) with Interrogatories. LIUNA's request contained four interrogatories with one of Summit's proposed construction contractor - Pumpco, Inc. - the subject of the interrogatories.

[2] Summit responded to the Interrogatories on May 15, 2023. Summit's response provided no information and only listed multiple objections to the requests for information.

[3] On May 19, 2023, LIUNA filed a motion to compel requesting an order compelling Summit to provide the requested information. The motion was brought pursuant to N.D. Rules of Civil Procedure 33 and 37.

[4] On May 26, 2023, Summit filed a response to LIUNA's motion to compel. Summit requests the motion be denied because LIUNA did not certify that LIUNA made a good faith attempt to confer about discovery.

[5] This action is subject to the provisions of the Administrative Agency Practice Act (AAPA). Under the AAPA, the parties are permitted to conduct discovery in accordance with the North Dakota Rules of Civil Procedure. N.D.C.C. § 28-32-33. The Rules 33 and 37 are applicable to the pending motion. Under Rule 37:

(1) In General. On notice to other parties and all affected persons, a party may move for an order compelling discovery. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make discovery in an effort to obtain it without court action.

N.D. R. Civ. P. 37(a)(1).

[7] The undersigned Administrative Law Judge (ALJ) has reviewed LIUNA's motion and finds there is no certification that a good faith attempt to confer with Summit was made, nor does LIUNA address this requirement. The Rule requires such certification to be filed. Thus, the motion is not ripe for consideration on the merits.

[8] LIUNA's interrogatories are modest in scope and likely the parties could work through the discovery issues if they met and conferred. Thus, it seems appropriate that LIUNA take this additional step prior to any consideration of compelled compliance.

[9] Additionally, the last hearing on Summit's application is scheduled for June 2, 2023. LIUNA has not explained why it did not make its discovery requests sooner and how it intends to provide any information sought through discovery. The Commission has previously held that its siting authority does not extend to contractor selection. The Applicant, if approved, would be required to comply with any standards for constriction, restoration and operation ordered by the Commission. *See* Case No. PU-15-744, Findings of Fact, Conclusions of Law, and Order (Dkt. 40). If LIUNA refiles its motion, the motion should address these additional issues.

**IT IS HEREBY ORDERED:**

[10] Intervenor Laborers District Council of Minnesota and North Dakota's Motion to Compel is **DENIED**.

Dated at Bismarck, North Dakota this 1 day of June 2023.

State of North Dakota  
Public Service Commission

  
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