

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 LANDOWNER INTERVENORS'
MOTION TO COMPEL DISCOVERY**

[1] On May 23, 2024, the group of intervenors represented by Knoll Leibel LLP and Domina Law Group (Landowner Intervenors), filed a Motion to Compel discovery from SCS Carbon Transport LLC (Summit). Specifically, the Landowner Intervenors request Summit be compelled to provide responses to Requests No. 1, 2 through 7, and 14 through 16 of Intervenors' Interrogatories, Request for Admissions, and Requests for Production to SCS Carbon Transport LLC – Set 3 (PSC Dkt. #481). Generally, Landowner Intervenors seek the GIS shapefiles for the proposed pipeline route, information regarding the creation of the dispersion modeling, third party affiliated entities, communication with ethanol plants, and “standard” discovery requests.

[2] Summit filed a reply brief dated June 3, 2024 in opposition to the motion to compel. Summit argues the motion should be denied because the motion is untimely and because Landowner Intervenors failed to confer in good faith prior to filing its motion.

[3] Landowner Intervenors filed a reply brief in support of its motion dated June 10, 2024. Landowner Intervenors argue that their motion is not untimely because the deadline to file closing briefs has not expired and there is a pending motion requesting further hearing on the dispersion modeling. Landowner Intervenors also argue that strict adherence to the Rules of Civil Procedure, specifically the meet and confer rule, is not required.

[4] 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). While not all the North Dakota Rules of Civil Procedure are applicable to this administrative proceeding, the discovery rules are applicable as they are specifically incorporated by the AAPA.

[5] Landowner Intervenors have not filed any sort of certification that a good faith attempt to confer was made. Summit's answers to the initial discovery requests were filed and served on April 11, 2024. *See* PSC Dkt. #514. The only rationale given for waiting over a month to follow-up on the discovery responses was the pending motion for reconsideration regarding preemption. It does not appear that the scope of the outstanding discovery requests has anything to do with preemption, and if there is a connection Landowner Intervenors have failed to explain what it is. Giving Summit two days to respond to the request to meet and confer was not a good faith attempt. Landowner Intervenors have not complied with Rule 37.

[6] The Commission denied Summit's application on August 4, 2023 and granted Summit's Petition for Reconsideration on September 15, 2023. The Commission filed the Notice of Public Hearing on March 21, 2024 (PSC Dkt. #465) setting the dates for additional hearings. Landowner Intervenors were aware of the anticipated hearing dates as of this date. Landowner Intervenors have served Summit with four sets of discovery requests with the first set served and filed on March 21, 2024, approximately six months after the Commission granted the Petition for Reconsideration.

[7] The undersigned Administrative Law Judge previously denied motions to compel discovery as being untimely and that is appropriate in this case as well. Landowner Intervenors waited until the new hearing dates were set to begin discovery. The motion is now being considered after all the scheduled hearings have concluded and there are no further hearings contemplated. Landowner Intervenors failed to explain how any relevant information obtained through the responses it seeks would be entered into the record. Thus, regardless of whether the evidence is relevant, or likely to lead to relevant evidence, the request for compelled discovery is untimely.

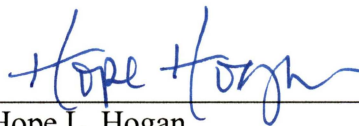
[8] Lastly, Landowner Intervenors' discovery Request No. 1 requests information that falls under the scope of the Order issued on February 28, 2023 protecting certain information from public disclosure. PSC Dkt. #59. Specific under that Order, "GIS data related to the location of the proposed facilities, the proposed corridor and route, and the criteria evaluated, including, without limitation, the location of cultural, archaeological, historical, or paleontological site" was protected from public disclosure. *Id.*

IT IS HEREBY ORDERED:

[9] Landowner Intervenors' Motion to Compel is **DENIED**.

Dated at Bismarck, North Dakota this 2 day of July 2024.

State of North Dakota
Public Service Commission



Hope L. Hogan
Administrative Law Judge
Office of Administrative Hearings
2911 North 14th Street – Suite 303
Bismarck, North Dakota 58503
Telephone: (701) 328-3200