



August 17, 2023

Charley Bruce  
Energy Facilities Planner  
Minnesota Public Utilities Commission  
121 Seventh Place East, Suite 350  
St. Paul, MN 55101

Re: Request for a variance and extension in the schedule for docket 22-422 for good cause

Dear Mr. Bruce,

CURE submits this request to the Minnesota Public Utilities Commission (Commission) in response to the statements made by Summit Carbon Solutions (SCS) in a reported ex parte communication made to the Commission on August 11, 2023.<sup>1</sup> Pursuant to Minnesota Statute § 216G.02, subd. 3(b)(5) and Minnesota Rule 7852.0800, CURE requests that the Commission resolve to extend the nine-month deadline for the route permit procedure for cause. The Commission should pause its proceeding, including the scoping of an Environmental Impact Statement (EIS) for the applicant's project/projects, until there is evidence that the Commission is not wasting agency resources reviewing a proposed pipeline segment with no end point.

The facts surrounding Summit's plan have materially changed, making it nearly impossible to scope or complete an adequate EIS. On August 5, 2023, the North Dakota Public Services Commission (NDPSC) denied SCS's application for a route permit and certificate of need for its proposed Midwest Carbon Express pipeline. The Commission explicitly found that:

SCS has failed to meet its burden of proof to show the location, construction, operation, and maintenance of the Project will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota....

SCS has failed to meet its burden of proof to show the Project will minimize adverse human and environmental impact while ensuring continuing system reliability and integrity, and ensuring that energy needs are met and fulfilled in an orderly and timely fashion....

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<sup>1</sup> Ex Parte Communication, *In the Matter of the Application of Summit Carbon Solutions, LLC for a Route Permit for the Otter Tail to Wilkin Carbon Dioxide Pipeline Project in Otter Tail and Wilkin Counties, Minnesota*, Commission Docket No. 22-422, Aug. 11, 2023, eDockets No. 20238-198180.

SCS failed to meet its burden of proof to show the location, construction, and operation of the Project are compatible with environmental preservation and efficient use of resources.<sup>2</sup>

In the docket before this Commission, SCS has stated that the intended purpose is to capture carbon dioxide (CO<sub>2</sub>) from industrial facilities, initially ethanol plants, and transport the CO<sub>2</sub> via pipeline to a sequestration site in North Dakota. Without a permit—or even a pending permit application—that would allow the CO<sub>2</sub> captured in Minnesota to move through North Dakota to the designated sequestration site, there is no viable purpose and thus, no project to be permitted. The EIS cannot be scoped because at present, and until SCS proves otherwise to North Dakota regulators, the identified purpose for this EIS is impracticable and impossible.<sup>3</sup> The Otter Tail to Wilkin portion of the Midwest Carbon Express project (and the connected 213 miles<sup>4</sup> of pipeline proposed for the same project in ten other Minnesota counties) is for all practical purposes a pipeline to nowhere. NDPSC’s outright denial of SCS’s permits also demonstrates that the company’s assurances that its project will move forward as planned are unsubstantiated and fanciful. The Commission cannot in good faith proceed with the permitting process and environmental review of the project with such an uncertain future, with no pending project before the NDPSC and no permit to inject its waste should it ever find a way to transport it to North Dakota.<sup>5</sup>

Ultimately SCS may never obtain a permit from the NDPSC, in which case it will have to come up with alternative plans to transport this waste to another state or use a different technology in North Dakota. In either case, the EIS in this proceeding would have to be substantially rewritten, requiring considerable additional effort on behalf of Commission staff and the Department of Commerce’s environmental review staff. Pausing this process while the uncertainty is hammered out in other states is a reasonable measure to avoid costly do-overs and restarts.

The legislature has mandated that the Department of Commerce must “prevent the waste or unnecessary spending of public money” in the course of its duties as a regulator of public utilities with the Commission.<sup>6</sup> Completing a thorough environmental review for a project that, at present, cannot be constructed or operate as SCS planned, would be a prime example of wasting the Commission’s and the Department of Commerce’s resources. As such, the Commission has good cause to extend the permitting process

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<sup>2</sup> North Dakota Public Service Commission, *Findings of Fact, Conclusions of Law, and Order*, 11-12, Aug. 4, 2023.

<sup>3</sup> The draft purpose of the project offered by EERA is still subject to the Commission’s approval, but if there is no sequestration site, it will not be possible to merely amend the purpose and continue with this proceeding, as the only viable alternative for analysis that would reduce the carbon intensity of these facilities would be a no action alternative with no pipeline construction. The EIS should not be prepared merely to analyze no action versus an imaginary alternative, nor should the Commission entertain a totally hypothetical project that is not viable to build due to changed circumstances in other states.

<sup>4</sup> Summit Carbon Solutions continues to update its map for the Minnesota portions of its Midwest Carbon Express. The most recent map was created on July 6, 2023, and is available at <https://summitcarbonsolutions.com/project-footprint/>.

<sup>5</sup> SCS has not applied for a Class VI Injection Well permit with the NDPSC, and so at this point, is not permitted to sequester any CO<sub>2</sub> captured from partner facilities. North Dakota Mineral Resources, *Class VI – Geologic Sequestration Wells*, <https://www.dmr.nd.gov/dmr/oilgas/ClassVI>.

<sup>6</sup> Minn. Stat. § 216A.07, subd. 6(1).

beyond the regular period contemplated in statute, unless and until the applicant can show that its proposed project has the means and permits required to achieve its stated purpose. If SCS is forced to change its plans and therefore its purpose, it will be able to resubmit its application to the Commission, just as it now will be obligated to do at the NDPSC.

SCS's ex parte communications also reveal that the Commission cannot accurately determine the scope of environmental review for the Otter Tail-Wilkin portion of the Midwest Carbon Express because SCS's lawyer stated that the company now apparently plans to break up the Minnesota portions of the pipeline on a county-by-county basis.<sup>7</sup> As CURE warned the Commission previously, such tactics "ignore the cumulative impacts of what SCS has itself identified as 'the largest carbon capture and storage project in the world.'"<sup>8</sup> The Commission should not rush to finalize the scope of its current EIS until it has this additional information from SCS, and has the information it needs to address commenters' repeated concerns that the EIS in this docket does not legally cover the entire "project" consistent with the Minnesota Environmental Policy Act (MEPA).<sup>9</sup> Furthermore, nothing in MEPA itself currently requires the Commission to rush into a decision on the EIS because none of its timing provisions have been triggered.<sup>10</sup>

For the reasons above, the Commission should not move forward with the route permitting process until there is more clarity regarding SCS's project, its ultimate purpose and viability, and the wisdom of throwing agency resources down a tube in the ground that may never connect to anything. Accordingly, the Commission should resolve to extend the nine-month pipeline route permit deadline until the applicant can show meaningful acceptance by NSPSC of all applications through regularly published reports on the status of the project as described in the scoping EAW.

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<sup>7</sup> SCS's lawyer explains the company's plans to segment its project into numerous separate applications thus: "Summit Carbon also plans to advance applications for the additional routes in southern Minnesota and expects to submit its an application for the Martin County and Jackson County projects in the coming months." See Ex Parte Communication, supra note 1, at 2.

<sup>8</sup> CURE, *Petition for Reconsideration and Hearing*, 7, Commission Docket No. 22-422, Feb. 27, 2023, eDockets No. 20232-193462-01.

<sup>9</sup> "To the extent that there are any procedural inconsistencies in preparation of the environmental impact statement between chapter 7852 and chapter 4410, the Commission varies chapter 7852 and directs that chapter 4410 shall control." *Order Accepting Application, Requiring Environmental Impact Statement, and Denying Petition; Notice of and Order for Hearing, In the Matter of the Application of Summit Carbon Solutions, LLC for a Route Permit for the Otter Tail to Wilkin Carbon Dioxide Pipeline Project in Otter Tail and Wilkin Counties, Minnesota*, Commission Docket No. 22-422, Feb. 6, 2013, at 18, eDockets No. 20232-192950-01.

<sup>10</sup> Minn. R. 4410.2800, subp. 3. Under MEPA, a 280-day timeline for completing an Environmental Impact Statement (EIS) and making a determination of adequacy begins once the preparation of notice of the EIS is published in the EQB Monitor. The Commission has not published such a notice, so the timeline for determining adequacy has yet to start. If the Commission waits until the notice is published, any variance in timing will have to be approved by both the PUC and the applicant or approved by the governor.

Sincerely,

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