

**STATE OF IOWA
DEPARTMENT OF COMMERCE
IOWA UTILITIES COMMISSION**

IN RE: SCS CARBON TRANSPORT, LLC PETITION FOR HAZARDOUS LIQUID PIPELINE PERMIT	DOCKET NO. HLP-2024-0001 MOTION TO DECLARE THE ACQUISITION OF CERTAIN LAND INTERESTS NONCOMPLIANT
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**MOTION TO DECLARE THE ACQUISITION
OF CERTAIN LAND INTERESTS NONCOMPLIANT**

COMES NOW, the Board of Supervisors for the County of Bremer, State of Iowa (“Bremer County” or “the County”), by and through the undersigned attorney, and pursuant to 199 IAC 7.12 moves the Iowa Utilities Commission (the “Commission”) to declare the acquisition of certain land interests noncompliant with Iowa Code chapter 479B. In support of its petition, Bremer County states the following:

1. SCS Carbon Transport, LLC (“Summit”) proposes in this docket to construct a hazardous liquid pipeline transporting carbon dioxide through Bremer County. See [the map filed](#) on March 4, 2024.
2. On March 28, 2024, Bremer County filed an [Objection](#) and a [Petition to Intervene](#) in this docket.
3. On July 5, 2024, the Commission [scheduled](#) an Informational Meeting to be held in Bremer County on **September 10, 2024**.
4. In 2021, Navigator Heartland Greenway (“Navigator”) proposed to route a similar carbon dioxide pipeline along a similar route in Bremer County. See IUB Docket No. HLP-2021-0003.

5. Navigator recorded in Bremer County certain memoranda of agreement with landowners indicating that it had executed “a Right-of-Entry, Easement and Option Agreement” with the landowners for its proposed pipeline (“the Easement Agreements”). See attached Exhibit A, Exhibit B, and Exhibit C.
6. The memoranda of agreement recorded by Navigator indicate that the Easement Agreements were executed on June 1, 2023, June 27, 2023, and July 26, 2023 respectively.
7. On August 16, 2024, [the Iowa Capital Dispatch reported](#), “Summit has purchased many of Navigator’s old agreements to expand its coverage area and save itself time by not needing to negotiate new agreements.” The article indicates that Summit officials “confirmed” these purchases. See O’Connor, Jack, *Summit Jumpstarts Pipeline Efforts with Purchase of Old Land Easement Agreements* (last accessed August 22, 2024) available at <https://iowacapitaldispatch.com/2024/08/16/summit-jumpstarts-pipeline-efforts-with-purchase-of-old-land-easement-agreements/>.
8. Iowa Code § 479B.4(6) provides that “A pipeline company seeking rights under this chapter shall not negotiate or purchase an easement or other interest in land in a county known to be affected by the proposed project prior to the informational meeting.” (emphasis added).
9. Iowa courts have found that compliance with similar informational meeting requirements in the electric franchise context are “a condition precedent to filing a franchise petition.” See *Richards v. Iowa State Commerce Commission*, 270 N.W.2d 616, 618 (1978).

10. Where applicants have failed to meet these conditions precedent, the Commission (or its predecessor agency) has dismissed an applicant's petition. See *id.* See also *In Re: MidAmerican Energy Company*, IUC Docket No. E-22416, "Order Dismissing Petition for Electric Transmission Line Franchise in Mills County Without Prejudice," available at 2019 WL 4736234.
11. Where an applicant for an electric line franchise has started construction prior to obtaining the franchise, the Commission has ordered construction of the line to cease and assessed civil penalties on the applicant. See *In Re: Corn Belt Power Cooperative*, IUC Docket No. E-21570, "Order Cancelling Hearing, Accepting Compromise, and Assessing Civil Penalty," available at 2002 WL 31245887.
12. Moreover, Iowa courts have refused to uphold agreements regarding land interests where such agreements do not observe the mandatory legal requirements specifically regulating the mode by which they must be exercised. See e.g. *Riley v. City of Hartley*, 565 N.W.2d 344, 348 (Iowa 1997).
13. The Easement Agreements entered into by Navigator, even if they were properly entered into prior to Navigator's informational meeting, cannot be purchased by Summit without violating the plain language of Iowa Code § 479B.4(6), which provides that "A pipeline company seeking rights under this chapter shall not negotiate or purchase an easement or other interest in land in a county known to be affected by the proposed project prior to the informational meeting." (emphasis added).

For all the reasons stated herein, Bremer County hereby moves the Commission to declare the following:

- (1) That all easement agreements for parcels in a county that were entered into prior to Summit's informational meeting in that county are noncompliant for purposes of Summit's pipeline in this docket.
- (2) That Summit must enter into new agreements with each landowner and only then after holding the required informational meeting in the county.
- (3) That Summit's petition for a permit in this docket will be dismissed if Summit contacts any landowners or purchases or negotiates any easement or other interest in land prior to the informational meeting in a county.
- (4) That the Commission lacks the power to approve a route that crosses parcels where easement agreements were executed prior to the required informational meeting.

Respectfully submitted,

By: /s/ Timothy J. Whipple_____

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