

STATE OF SOUTH DAKOTA)
):SS
COUNTY OF HUGHES)

IN CIRCUIT COURT

SIXTH JUDICIAL CIRCUIT

<p>SCS CARBON TRANSPORT, LLC, Applicant, vs. KRISTIE FIEGEN, in her official capacity as South Dakota Public Utilities Commissioner, Respondent.</p>	<p>32CIV25- CERTIFICATE OF SERVICE</p>
--	--

The undersigned hereby certifies that true and correct copies of:

1. Notice of Application in Lieu of Summons;
2. Application for Writ of Mandamus and Exhibits A, B, C, D, E and F;
3. Affidavit of Jess Vilsack;
4. Admission of Service;
5. Motion for Admission Pro Hac Vice; and
6. Notice of Appearance.

in the above-entitled matter were served by United States mail, first class, postage prepaid, together with a return envelope, postage prepaid, addressed to the sender, upon Attorney General, Marty Jackley, 1302 E. Hwy 14, Suite 1, Pierre, South Dakota 57501-8501 pursuant to SDCL § 15-64-4(D)(6).

Dated this 23rd day of January 2025.


MYERS BILLION, LLP

By _____

Joshua D. Zellmer, P.C.
Attorneys for Applicant
230 S. Phillips Ave., Suite 300
P.O. Box 1085
Sioux Falls, SD 57101-1085
Phone: (605) 336-3700
Fax: (605) 336-3786
e-mail: jzellmer@myersbillion.com

STATE OF SOUTH DAKOTA)
 :SS
COUNTY OF HUGHES)

IN CIRCUIT COURT

SIXTH JUDICIAL CIRCUIT

<p>SCS CARBON TRANSPORT, LLC,</p> <p style="text-align: center;">Applicant, vs.</p> <p>KRISTIE FIEGEN, in her official capacity as South Dakota Public Utilities Commissioner,</p> <p style="text-align: center;">Respondent.</p>	<p style="text-align: center;">32CIV25-</p> <p style="text-align: center;">APPLICATION FOR WRIT OF MANDAMUS</p>
---	--

Under SDCL Ch. 21-29, Applicant SCS Carbon Transport, LLC (“Summit”) is entitled to a writ of mandamus directing Commissioner Kristie Fiegen, a duly elected commissioner of the South Dakota Public Utilities Commission (the “Commission”), to recuse herself from participating in Docket HP24-001, which is currently pending before the Commission. The basis for this recusal is the same conflict of interest that Commissioner Fiegen herself concluded required her recusal in Dockets HP22-001 and HP14-002. By virtue of both statute and constitutional principle, a commissioner may not participate in a proceeding in which she has a conflict of interest. SDCL § 49-1-19; *Nw. Bell Tel. Co. v. Stofferahn*, 461 N.W.2d 129, 132-33 (S.D. 1990). Commissioner Fiegen has a clear legal duty to recuse, and that duty is appropriately enforced by mandamus.

Parties, Jurisdiction, and Venue

1. Summit is a limited liability company organized under the laws of Delaware, is registered to do business in South Dakota, and has its principal place of business in Ames, Iowa.

2. Kristie Fiegen is one of three commissioners elected to the Commission. She was recently reelected to her position in the general election held in November 2024. She was formerly the chairperson of the Commission.

3. This Court has jurisdiction over this matter under SDCL § 21-29-1.

4. This matter is appropriately venued in Hughes County. The Commission has its offices and conducts business at the State Capitol, so Summit's right to mandamus based on Commissioner Fiegen's refusal to disqualify herself arose in Hughes County. SDCL § 15-5-2(2).

Summit's Application and Commissioner Fiegen's Conflict of Interest

5. On November 19, 2024, Summit filed an application with the Commission for a permit under SDCL Ch. 49-41B to construct and operate the Midwest Carbon Express Pipeline. The application was docketed as HP24-001 and is currently pending.

6. Previously, on February 7, 2022, Summit filed an application before the Commission to permit the same proposed pipeline. The application was docketed as Docket HP22-001.

7. In Docket HP22-001, Commissioner Fiegen recused herself by letter dated February 9, 2022. A copy of the letter is attached as **Exhibit A**.

8. Commissioner Fiegen's letter states that the proposed pipeline would cross land "owned by [her] sister-in-law ([her] husband's sister) and [her] sister-in-law's husband." On the basis of this fact, Commissioner Fiegen acknowledged that she had a conflict of interest and that, under SDCL § 49-1-9, she was required to disqualify herself from participating in the docket.

9. In accordance with SDCL § 49-1-9, Governor Noem appointed State Treasurer Josh Haeder to act as a commissioner in Docket HP22-001 in place of Commissioner Fiegen, and the docket proceeded without Commissioner Fiegen's participation.

10. In Commissioner Fiegen's recusal letter in Docket HP22-001, she added that the proposed pipeline route crossed land owned by her sister-in-law and her sister-in-law's husband was similar to the route of another pipeline, the Dakota Access Pipeline, which had previously been permitted by the Commission in Docket HP14-002.

11. As acknowledged in the letter, Commissioner Fiegen also disqualified herself under SDCL § 49-1-9 from participation in Docket HP14-002, and Governor Daugaard appointed State Auditor Rich Sattgast to serve as acting commissioner in her stead. A copy of Commissioner Fiegen's recusal letter dated January 8, 2015, is attached as **Exhibit B**.

12. The route for the Midwest Carbon Express Pipeline at issue in Docket HP24-001 crosses land owned by Commissioner Fiegen's sister-in-law and her sister-in-law's husband. The land is located in McCook County. Now, as when Commissioner Feigen recused herself in Docket HP22-001, the land was owned in trust. It was deeded into trust on November 30, 2016. The trustees are Commissioner Fiegen's sister-in-law and her sister-in-law's husband.

13. Commissioner Fiegen's sister-in-law and her sister-in-law's husband, acting as trustees, have signed an easement granting Summit the right to construct and operate the pipeline across their land. Summit has paid them \$88,755.00 for the easement and prepaid damages.

Proceedings before the Commission in Docket HP24-001

14. Since Summit filed its application in Docket HP24-001, the Commission has entered an order dated November 21, 2024, giving notice of the application, notice of public-input meetings scheduled the week of January 13, 2025, and notice of the opportunity to apply for party status in the docket. The Commission also entered an order dated December 20, 2024, assessing a filing fee, authorizing the executive director of the Commission to enter into consulting contracts, and granting party status to some applicants. Commissioner Fiegen has

participated in the docket by attending meetings at which those issues were discussed and decided, and her signature is on each of the orders noted above.

15. The Commission has scheduled public-input meetings under SDCL § 49-41B-16 for January 15 through January 17, 2025. The purpose of the public-input meetings is to hear public comments regarding Summit's application and the proposed pipeline for construction. Commissioners usually attend the public-input meetings.

16. Commission staff has proposed a procedural schedule for the docket, but the Commission has not yet entered a procedural schedule. Under SDCL § 49-41B-24, Summit's application must be decided within one year of its filing.

17. The Commission has not yet addressed any substantive issues in the docket.

Commissioner Fiegen's Refusal to Disqualify Herself

18. Given Commissioner Fiegen's participation in the Docket HP24-001, Summit filed a letter on January 2, 2025, asking that she recuse herself under SDCL § 49-1-9 on the basis of the same conflict of interest she identified as the basis for her disqualification in Dockets HP22-001 and HP14-002. A copy of Summit's letter is attached as **Exhibit C**.

19. The next day, Commissioner Fiegen filed a letter stating in its entirety: "I am an elected Public Utilities Commissioner and will carry out my duties as such. I do not have a legal conflict. I am sitting on the docket." A copy of the letter is attached as **Exhibit D**.

Count One--Mandamus

20. Commissioner Fiegen has a conflict of interest based on her close family members' ownership of land crossed by the proposed Midwest Carbon Express Pipeline, Summit's payment to Commissioner Fiegen's family members for an easement, and their ongoing interest in whether the pipeline is permitted, constructed, and operated.

21. The conflict of interest is the same familial conflict for which Commissioner Fiegen disqualified herself in two previous pipeline dockets.

22. Commissioner Fiegen's letter refusing to disqualify herself in Docket HP24-001 offers no explanation why the fact of her close family members' ownership of land crossed by the proposed pipeline does not constitute a conflict of interest.

23. Commissioner Fiegen's failure to explain why she does not have a conflict and her refusal to disqualify herself in Docket HP24-001 after she disqualified herself in Docket HP22-001 (involving the same project) and Docket HP14-002 are inconsistent with "the very appearance of complete fairness" that must be present in a quasi-judicial proceeding. *Armstrong v. Turner County Bd. Of Adjustment*, 2009 S.D. 81, ¶ 23, 772 N.W.2d 643, 651.

24. A permit proceeding under SDCL Ch. 49-41B is a quasi-judicial proceeding in which the due process guarantee of the South Dakota Constitution applies.

25. Due process requires a public official who participates in a quasi-judicial proceeding to recuse where the risk of actual bias is unacceptable, including in circumstances in which the official's family member stands to benefit from the proceeding. *See Hanig v. City of Winner*, 2005 S.D. 10, ¶¶18-20, 692 N.W.2d 202, 208-09.

26. When a judge or other public official participates in a proceeding in which the official had a conflict of interest and should have recused herself, the orders entered in that proceeding may be void. *See Hanig*, 692 N.W.2d at 209-10 (concluding that a conflict of interest invalidated the city council's decision and remanding for a new hearing); *Estate of Paul O'Farrell v. Grand Valley Hutterian Brethren*, No. 30482, 2024 WL 5164820, at *1 (S.D. Dec. 18, 2024) (vacating all orders entered by a circuit judge and remanding for the appointment of a replacement judge based on circuit court judge's refusal to recuse). As a consequence, any final

decision of the Commission in Docket HP24-001 (whether it be to approve or deny the pending application) may be rendered vulnerable on appeal, and all the resources expended by all parties involved in any proceedings before the conflicted official are likely to be wasted.

27. More fundamentally, under SDCL § 49-1-9, Commissioner Fiegen has a duty to disqualify herself based on the conflict of interest.

28. The duty arises by statute and is mandatory: “[N]o commissioner shall participate in any hearing or proceeding in which he has any conflict of interest.” SDCL § 49-1-9.

29. Under SDCL § 21-29-2, Summit has no plain, speedy, and adequate remedy in the ordinary course of law to remedy Commissioner Fiegen’s refusal to recuse herself.

30. Summit has a clear legal right to an order from this Court requiring Commissioner Fiegen to perform her duty under SDCL § 49-1-9 to disqualify herself in Docket HP24-001.

31. This Petition is supported by the Affidavit of Jess Vilsack.

Wherefore, Summit prays that the Court: (1) issue a peremptory writ of mandamus under SDCL Ch. 21-29, in the form attached as **Exhibit E**, commanding Commissioner Fiegen to recuse herself in Docket HP24-001; or, in the alternative, (2) issue an alternative writ of mandamus under SDCL Ch. 21-29, in the form attached as **Exhibit F**, commanding Commissioner Fiegen recuse herself in Docket HP24-001 or appear at a hearing before this Court to show cause why a peremptory writ should not be entered; and (3) grant any further relief that the Court deems proper, including an award of Summit’s costs.

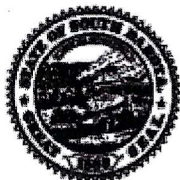
Dated this 23rd day of January, 2025.


MYERS BILLION, LLP

By _____

Joshua D. Zellmer, P.C.
Attorneys for Applicant
230 S. Phillips Ave., Suite 300
P.O. Box 1085
Sioux Falls, SD 57101-1085
Phone: (605) 336-3700
Fax: (605) 336-3786
e-mail: jzellmer@myersbillion.com

E X H I B I T A



Chris Nelson, Chairman
Kristie Fiegen, Vice Chairperson
Gary Hanson, Commissioner

South Dakota

PUBLIC UTILITIES COMMISSION

500 East Capitol Avenue
Pierre, South Dakota 57501-5070
www.puc.sd.gov

(605) 773-3201

Consumer Hotline
1-800-332-1782

Email
puc@state.sd.us

February 9, 2022

The Honorable Kristi Noem
Governor of South Dakota
Office of the Governor
500 E. Capitol Ave.
Pierre, SD 57501

RE: SDCL 49-1-9 Notification of Conflict of Interest

Dear Governor Noem:

Currently pending before the Public Utilities Commission is Docket HP22-001, in the Matter of the Application by SCS Carbon Transport LLC for a Permit to Construct a Carbon Dioxide Transmission Pipeline. In this docket, SCS Carbon Transport LLC has applied for a facility permit to construct and operate a carbon dioxide (CO₂) transmission pipeline (Project). The Project is approximately 2,000 miles of pipelines for the transportation of CO₂ from more than 30 ethanol plants across five states, including seven ethanol plants in South Dakota, to underground injection control facilities in North Dakota. The proposed pipelines cross 18 counties in South Dakota.

I have recently been informed that the proposed pipelines would cross land owned by my sister-in-law (my husband's sister) and her husband. This route is similar to the route in Docket HP14-002 in which I also disqualified myself due to the same conflict of interest as in this docket. Pursuant to SDCL 49-1-9, a Public Utilities Commissioner may not participate in a proceeding in which the Commissioner has a conflict of interest. Given this familial relationship, I am regretfully disqualifying myself from participating in this proceeding.

As required by SDCL 49-1-9, I hereby certify that I am disqualifying myself from participating in this docket and request that you appoint an elected constitutional officer, other than the attorney general, as a member of the Commission in my place. In order to give notice of my disqualification, I am filing this letter in Docket HP22-001.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Kristie Fiegen".

Kristie Fiegen
Vice Chairperson, Public Utilities Commission

E X H I B I T B



Gary Hanson, Chairperson
Chris Nelson, Vice Chairperson
Kristie Fiegen, Commissioner



PUBLIC UTILITIES COMMISSION

500 East Capitol Avenue
Pierre, South Dakota 57501-5070
www.puc.sd.gov

Capitol Office
(605) 773-3201
1-866-757-6031 fax

Grain Warehouse
(605) 773-5280
(605) 773-3225 fax

Consumer Hotline
1-800-332-1782

January 8, 2015

The Honorable Dennis Daugaard
Governor of South Dakota
Office of the Governor
500 E Capitol Ave
Pierre, SD 57501

Dear Governor Daugaard:

Currently pending before the Public Utilities Commission is Docket HP14-002, In the Matter of the Application of Dakota Access, LLC for an Energy Facility Permit to Construct the Dakota Access Pipeline. In this docket, Dakota Access, LLC has applied for a facility permit to construct and operate the Dakota Access Pipeline Project, which is a proposed 1,134 mile, 12-inch to 30-inch diameter pipeline that will connect the Bakken and Three Forks crude oil production areas in North Dakota to existing pipeline infrastructure in Illinois. According to the application, approximately 271.6 miles of the proposed pipeline would be constructed within South Dakota, crossing 13 counties in the eastern half of the state.

I have recently been informed that the proposed pipeline would cross land owned by my sister-in-law (my husband's sister) and her husband in the counties of McCook and Minnehaha. Pursuant to SDCL 49-1-9, a Public Utilities Commissioner may not participate in a proceeding in which the Commissioner has a conflict of interest. Given this familial relationship, I am regretfully disqualifying myself from participating in this proceeding.

As required by SDCL 49-1-9, I hereby certify that I am disqualifying myself from participating in this docket and request that you appoint an elected constitutional officer, other than the attorney general, as a member of the Commission in my place. In order to give notice of my disqualification, I am filing this letter in Docket HP 14-002.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Kristie Fiegen".

Kristie Fiegen
Commissioner, Public Utilities Commission

E X H I B I T C

January 2, 2025

Commissioner Kristie Fiegen
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

Re: *In the Matter of the Application by SCS Carbon Transport LLC* (HP24-001)

Dear Commissioner Fiegen:

This letter addresses your participation in Public Utilities Commission Docket HP24-001, which concerns the application submitted by SCS Carbon Transport LLC ("*Summit*"), for a permit to construct a carbon-dioxide transmission pipeline. In two different pipeline dockets, including a previous Summit docket, you determined that you had a conflict of interest requiring your recusal. Given that the material facts supporting your previous decisions have not changed, Summit respectfully requests that you recuse yourself in this matter under SDCL § 49-1-9 and that you ask the Governor to appoint an elected official to act in your place. As with your previous decisions, the facts and established South Dakota law support a decision that you should step aside.

In a letter dated February 9, 2022, and filed in Docket HP22-001, you informed the Governor that you would recuse yourself in that docket, which involved Summit's previous application to construct and operate a pipeline to transmit carbon dioxide. This letter is attached as **Exhibit A**. In this letter, you explained that Summit's proposed pipeline was set to "cross land owned by [your] sister-in-law ([your] husband's sister) and her husband." You noted further that the route contemplated by that project was "similar to the route in Docket HP14-002 in which [you] also disqualified [your]self due to the same conflict of interest." On those bases, you concluded you had no choice but to recuse yourself from considering Summit's application for a permit.

You were right to take this step. By statute, a commissioner may not "participate in any hearing or proceeding in which [s]he has any conflict of interest." SDCL § 49-1-9. This statute requires recusal if there is a conflict of interest. And close familial interests qualify as such a conflict. The route at issue in Summit's pending application still crosses land owned by your sister-in-law and her husband, and they have been paid a substantial sum of money by Summit for easement rights to construct and operate the pipeline on their property. Thus, the same concerns that supported your decision to recuse in HP22-001 and HP14-002 also require recusal here. Moreover, the fact that you previously declared that you had a conflict of interest in these two dockets itself supports recusal here because "the very appearance of complete fairness must be present." *Armstrong v. Turner Cnty. Bd. of Adjustment*, 772 N.W.2d 643, 651 (S.D. 2009).

Although there have been few occasions when an applicant and a commissioner disagreed about the existence of a conflict, established South Dakota law provides clear guidance on when a disqualifying conflict exists for someone in your position. In a case involving Commissioner

Stofferahn's refusal to recuse, the South Dakota Supreme Court considered his refusal. *Nw. Bell Tel. Co. v. Stofferahn*, 461 N.W.2d 129, 133 (S.D. 1990). While § 49-1-9 puts the onus on a commissioner to recuse herself, the South Dakota Constitution does not permit a commissioner to participate in a matter for which she should have rightfully recused: "[A] fair trial in a fair tribunal is a basic requirement of due process," and that right is paramount to the terms of any statute that would afford lesser protection. *Id.* at 132-33. In other words, while the duty to recuse is statutory, the existence of a conflict of interest presents a constitutional issue.

The standard for disqualification is a high one. *Miles v. Spink Cnty. Bd. of Adjustment*, 972 N.W.2d 136, 149 n.15 (S.D. 2022). But disqualification is warranted if the record establishes "either actual bias on the part of the [commissioner] or the existence of circumstances that [led] to . . . an unacceptable risk of actual bias." *Stofferahn*, 461 N.W.2d at 133. If the surrounding circumstances demonstrate a "capacity to tempt the official to depart from [her] duty, then the risk of actual bias is unacceptable and the conflict of interest is sufficient to disqualify the official." *In re Conditional Use Permit No. 13-08*, 855 N.W.2d 836, 842 (S.D. 2014) (internal quotation omitted); *see also* Code of Conduct and Conflict of Interest Policy (created by the State Board of Internal Control pursuant to SDCL § 1-56-6(3)) ("A Board member must abstain from participation in the discussion and vote on a quasi-judicial official action of the Board if a reasonably-minded person could conclude that there is an unacceptable risk . . . that the Board member's interest or relationship creates a potential to influence the member's impartiality.")

The South Dakota Supreme Court elaborated on this standard in *Hanig v. City of Winner*, 692 N.W.2d 202 (S.D. 2005). This case involved a prospective restaurant and bar owner who applied to his local city council for the renewal of his liquor license. *Id.* at 203-05. After a hearing, the application was denied. *Id.* at 204. In response, the applicant pointed out that one of the councilmembers who participated in the vote—a waitress at an establishment in competition with the applicant's business—had been pressured by her employer to deny the renewal application. *Id.* at 204, 206. The applicant also argued that the councilmember, whose income depended in large part on tips, stood to lose out if the applicant's business led to "reduced patronage" for her employer. *Id.* at 206. Ultimately, the court agreed with the applicant and concluded that the councilmember's interest was "of sufficient magnitude" to disqualify her. *Id.* at 209.

More important than the *Hanig* court's ultimate disposition is its reasoning. The court first identified a general principle "that public policy demands that officials normally disqualify themselves when they have a business or personal interest in the subject on which they must vote, regardless of whether this interest creates an actual bias." *Id.* Then, after surveying approaches adopted by other jurisdictions, it identified at least four cases in which an official's personal interests meant that the risk of bias was unacceptably high. These cases are: (i) circumstances in which the official herself has a "[d]irect pecuniary interest" in the outcome of the process; (ii) circumstances in which one possible outcome will financially benefit or harm "one closely tied to the official, such as an employer or family member"; (iii) circumstances in which an outcome will impact a "blood relative or close friend" in a way that, while of a nonfinancial character, is "of great importance"; and (iv) circumstances in which the official's "judgment may be affected

because of membership in some organization and a desire to help that organization further its policies.” *Id.* at 208-09 (internal quotation omitted).

At the same time, the court also introduced two limiting principles: First, in any of these scenarios, the interest in question “must be different from that which the . . . officer holds in common with members of the public.” *Id.* at 208 (quoting *Bluffs Dev. Co. v. Bd. of Adjustment*, 499 N.W.2d 12, 15 (Iowa 1993)). Second, “the interest must be direct, definite, capable of demonstration, not remote, uncertain, contingent, unsubstantial, or merely speculative or theoretical.” *Id.* (internal quotation omitted). These limitations are designed to balance two competing interests. On the one hand, “the public is entitled to have their representatives perform their duties free from any personal or pecuniary interest that might affect their judgment.” *Bluffs*, 499 N.W.2d at 15. On the other, courts must take care not to impose standards so restrictive that they “handicap[]” the operation of governing bodies by inadvertently discouraging service by “capable men and women.” *Id.* (internal quotation omitted).

Although the South Dakota Supreme Court has recently addressed legislative conflicts of interest involving appropriations, see *In re Noem*, 2024 S.D. 11, 3 N.W.3d 465, that decision does not address conflicts of interest for a decisionmaker in a quasi-judicial proceeding and is therefore inapposite. The decisions in *Hanig*, *Stofferahn*, *Miles*, and *Conditional Use Permit No. 13-08* apply in this context. These decisions remain good law and establish the applicable standards.

Under this framework, your disqualification is warranted. As you have previously acknowledged, the pipeline for which Summit is seeking a permit would cross land that is owned by your close family members. They have a direct stake in the decision to grant or deny Summit’s requested permit regardless of their support for or opposition to the pipeline: If, for example, they were practically or philosophically opposed to the pipeline, their natural preference would be for the permit to be denied so that its construction would not be permitted on their property. If, by contrast, they supported the project, they would have a financial interest in seeing the permit approved, as they stand to gain financially from the implementation of the project. The fact that your sister-in-law and her husband have been paid for the easement rights they granted to Summit does not change this analysis: They may hope that the permit is denied because then they would have been paid for easement rights that will not be used.

By extension, you have either a direct personal interest or an indirect pecuniary interest in the project. See *Hanig*, 692 N.W.2d at 209; see also Judith K. Meierhenry, *The Due Process Right to an Unbiased Adjudicator in Administrative Proceedings*, 36 S.D. L. Rev. 551, 563 (1991) (explaining that, to be disqualifying, “[t]he gain or loss from the outcome of the proceedings may directly benefit the adjudicator, or may benefit . . . family members . . . with whom the adjudicator is affiliated”). This interest is unique to you, rather than shared with the public at-large, and it is predicated on the planned impact of the project, rather than some “speculative or theoretical” connection. See *Hanig*, 692 N.W.2d at 208 (internal quotation omitted). In short, even if you have no direct financial or other stake in the decision to approve or deny the permit, your close family

members will be affected financially by the Commission's decision on Summit's pending application.

The law does not allow a public official faced with an indirect pecuniary interest of this sort to avoid disqualification based on her belief that she is capable of overcoming a close family interest. Again, actual bias is not required; an "unacceptable risk of actual bias" is sufficient. *Permit No. 13-08*, 855 N.W.2d at 842. To the extent there is good reason to think that a close family relationship would create "a possible temptation" for the average official "to depart from [her] duty, then the risk of actual bias is unacceptable" and disqualification is warranted. *Holborn v. Deuel Cnty. Bd. of Adjustment*, 955 N.W.2d 363, 376 (S.D. 2021) (internal quotation omitted); *Permit No. 13-08*, 855 N.W.2d at 842. Because your family has a direct interest in the approval or denial of the permit, and because you previously recused yourself in two dockets based on the same facts, a court almost certainly would find it inappropriate for you to participate in this docket.

Your decision to recuse yourself will have at least three benefits: First, voluntary recusal ensures that there will be no need for the issue to be litigated. Second, recusal will minimize the risk that the Commission's decision is overturned on appeal because of a conflict of interest, as well as the waste of resources that would entail. *See Hanig*, 692 N.W.2d at 209-10 (concluding the conflict of interest invalidated the city council's decision and remanding for a new hearing); *Estate of Paul O'Farrell v. Grand Valley Hutterian Brethren*, No. 30482, 2024 WL 5164820, at *1 (S.D. Dec. 18, 2024) (vacating all orders entered by a circuit judge and remanding for the appointment of a replacement judge based on circuit court judge's refusal to recuse). Third, and most importantly, recusing voluntarily will maintain the Commission's status as an impartial decisionmaker in the eyes of both the public and future applicants.

Summit respectfully requests that you voluntarily recuse yourself under SDCL § 49-1-9 from further participation in Docket HP24-001. We look forward to your reply. Thank you for your consideration.

Very truly yours,

Summit Carbon Solutions, LLC



By _____
Jess Vilsack, General Counsel

Attachment

EXHIBIT D



Kristie Fiegen, Chairperson
Gary Hanson, Vice Chairman
Chris Nelson, Commissioner

South Dakota

PUBLIC UTILITIES COMMISSION

500 East Capitol Avenue
Pierre, South Dakota 57501-5070
<https://puc.sd.gov>

(605) 773-3201

Consumer Hotline
1-800-332-1782

Email
puc@state.sd.us

Summit Carbon Transport, LLC
Jess Vilsack
General Counsel
2321 N. Loop Drive
Ames, IA 50010

January 03, 2025

RE: In the Matter of the Application by SCS Carbon Transport LLC (HP24-001)

Dear Jess Vilsack:

I am an elected Public Utilities Commissioner and will carry out my duties as such. I do not have a legal conflict. I am sitting on the docket.

Thank you,

Kristie Fiegen

Chairperson Kristie Fiegen
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

E X H I B I T E

STATE OF SOUTH DAKOTA)
 :SS
COUNTY OF HUGHES)

IN CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT

<p>SCS CARBON TRANSPORT, LLC, Applicant, vs. KRISTIE FIEGEN, in her official capacity as South Dakota Public Utilities Commissioner, Respondent.</p>	<p>32CIV25- PEREMPTORY WRIT OF MANDAMUS</p>
--	---

Applicant SCS Carbon Transport LLC (“Summit”) filed a petition seeking a peremptory writ of mandamus under SDCL § 21-29-1 compelling Commissioner Kristie Fiegen to recuse herself due to a conflict of interest from participation in Docket HP24-001 pending before the South Dakota Public Utilities Commission. Summit provided notice of its petition to Commissioner Fiegen. Notice was consistent with SDCL § 21-29-5. The Court held a hearing on the petition, at which the parties were represented by counsel of record. Having considered the pleadings, all of the documents on file, the oral and written arguments of counsel, and otherwise being fully advised, it is hereby

ORDERED that Summit’s petition for a peremptory writ of mandamus is GRANTED; it is further

ORDERED that Commissioner Fiegen is directed to recuse herself from further participation in Docket HP24-001 and to give notice to the Governor of her recusal as required by statute.

BY THE COURT:

Circuit Court Judge

E X H I B I T F

STATE OF SOUTH DAKOTA)
)
) :SS
COUNTY OF HUGHES)

IN CIRCUIT COURT

SIXTH JUDICIAL CIRCUIT

<p>SCS CARBON TRANSPORT, LLC,</p> <p style="text-align: center;">Applicant,</p> <p>vs.</p> <p>KRISTIE FIEGEN, in her official capacity as South Dakota Public Utilities Commissioner,</p> <p style="text-align: center;">Respondent.</p>	<p style="text-align: center;">32CIV25-</p> <p style="text-align: center;">ALTERNATIVE WRIT OF MANDAMUS</p>
--	--

The Applicant, SCS Carbon Transport, LLC (“Summit”), pursuant to SDCL § 21-29-3 having submitted an Application for Writ of Mandamus and supporting Affidavit of Jess Vilsack, which Affidavit alleges the Applicant is beneficially interested in this matter pursuant to SDCL § 21-29-2, and the Applicant alleging that no plain, speedy, and adequate remedy in the ordinary course of law exists for Applicant regarding the relief it seeks; and with Applicant alleging that:

1. Respondent, Kristie Fiegen, in her official capacity as a Commissioner on the South Dakota Public Utilities Commission (“Commission”) previously recused herself from Docket HP14-002 wherein Applicant filed an application with the Commission for a permit under SDCL Ch. 49-41B to construct and operate the Dakota Access Pipeline;
2. Respondent previously recused herself from Docket HP22-001 wherein Applicant filed an application with the Commission for a permit under SDCL Ch. 49-41B to construct and operate the Midwest Carbon Express Pipeline on the basis that proposed pipeline would cross land owned by her sister-in-law and sister-in-law’s

husband. Respondent also noted that the proposed route was similar to the route of the Dakota Access Pipeline in Docket HP14-002;

3. Applicant has filed an application with the Commission for a permit under SDCL Ch. 49-41B to construct and operate a pipeline the Midwest Cabron Express Pipeline. The proposed route for the proposed pipeline crosses land owned by Respondent's sister-in-law and her sister-in-law's husband.
4. Pursuant to SDCL § 49-1-9, "[N]o commissioner shall participate in any hearing or proceeding in which he has any conflict of interest." By law, Respondent has a duty to disqualify herself from Docket HP24-001 based on the conflict of interest.

Notice was consistent with SDCL § 21-29-5. The Court having considered the pleadings, all of the documents on file, and otherwise being fully advised, it is hereby

ORDERED that Summit's application for an alternative writ of mandamus is GRANTED; it is further

ORDERED that Commissioner Fiegen is directed, immediately upon receipt of this Writ, to recuse herself from further participation in Docket HP24-001 and to give notice to the Governor of her recusal as required by statute, it is further

ORDERED that the parties appear before this Court in the Hughes County Courthouse in Pierre, South Dakota on the ___ day of ___, 2025 at ___ o'clock __.M. or as soon thereafter as the parties may be heard and that Respondent show cause, if any she has, why a Peremptory Writ of Mandamus should not be issued by this Court requiring Respondent to recuse herself from Docket HP24-001, which is currently pending before the South Dakota Public Utilities Commission.

BY THE COURT:

Circuit Court Judge

STATE OF SOUTH DAKOTA)
 :SS
COUNTY OF HUGHES)

IN CIRCUIT COURT

SIXTH JUDICIAL CIRCUIT

<p>SCS CARBON TRANSPORT, LLC, Applicant, vs. KRISTIE FIEGEN, in her official capacity as South Dakota Public Utilities Commissioner, Respondent.</p>	<p>32CIV25- AFFIDAVIT OF JESS VILSACK IN SUPPORT OF APPLICATION FOR WRIT OF MANDAMUS</p>
--	--

STATE OF IOWA)
 :SS
COUNTY OF STORY)

I, Jess Vilsack, being first duly sworn on oath, depose and state as follows:

1. I am employed as general counsel for SCS Carbon Transport, LLC ("*Summit*"). By virtue of that position, I have personal knowledge of the proposed Midwest Carbon Express Pipeline project proposed by Summit (the "*Pipeline*") and of Summit's past and current proceedings before the South Dakota Public Utilities Commission (the "*Commission*").

2. Summit is a limited liability company organized under the laws of Delaware and is registered to do business in South Dakota.

3. Summit's principal place of business is located in Ames, Iowa.

4. The Pipeline, as proposed, will span a total of approximately 2,500 miles across five states. In South Dakota, the Pipeline's proposed route runs across the border between Iowa and Lincoln County in the south and across the border between Brown and McPherson Counties and North Dakota in the north—with several branches splintering off in between.

5. Part of the Pipeline's proposed route traverses ground in McCook County.

6. As part of Summit's participation in Docket HP22-001, a previous docket that also concerned a permit application for the Pipeline, I learned that Commissioner Fiegen had elected to recuse herself from that docket on the basis of her sister-in-law and her sister-in-law's husband owning property that would be traversed by the Pipeline's proposed route.

7. Through subsequent research, I confirmed that the Pipeline was set to cross multiple tracts of land in McCook County (the "*Property*"), and that this land was owned by the Jeffrey A. Ordal Living Trust, dated November 30, 2016 (the "*Trust*").

8. The Property was deeded into the Trust on November 30, 2016.

9. The trustees of the Trust are Jean Fiegen Ordal and Jeffrey A. Ordal, who are Commissioner Fiegen's sister-in-law and her sister-in-law's husband, respectively.

10. I have since confirmed that the ownership of the Property is the same today as it was when Commissioner Fiegen recused herself in Docket HP22-001.

11. The proposed Pipeline route at issue in Docket HP24-01 crosses the Property.

12. As such, on March 21, 2022, the Ordals, acting as trustees for the Trust, signed an easement granting Summit the right to construct and operate the pipeline across the Property. Summit has since paid them \$88,755.00 for the easement and prepaid damages regarding the Property.

13. Summit filed its application for a permit to construct the Pipeline with the Commission in Docket HP24-001 on November 19, 2024.

14. Since the filing, in my role as general counsel, I have tracked any filings on Docket HP24-001 and have attended any meetings scheduled in Docket HP24-001.

15. The Commission entered a November 21, 2024, order giving notice of the application, notice of public-input meetings scheduled the week of January 13, 2025, and notice of the opportunity to apply for party status in the docket. The Commission also entered a December 20, 2024, order assessing a filing fee, authorizing the executive director of the Commission to enter into consulting contracts, and granting party status to some applicants.

16. To date, Commissioner Fiegen has participated in Docket HP24-001 by attending meetings at which the above issues were discussed and decided. In addition, Commissioner Fiegen's signature appears on each of the orders noted above.

17. The Commission has scheduled public-input meetings under SDCL § 49-41B-16 in Docket HP24-001 for January 15 through January 17, 2025, during which the Commission will hear public comments regarding Summit's application and the Pipeline for construction.

18. In previous dockets in which Summit has been involved, I have observed that Commissioners usually attend these public-input meetings.

19. Commission staff has proposed a procedural schedule for Docket HP24-001, but the Commission has not yet entered a procedural schedule.

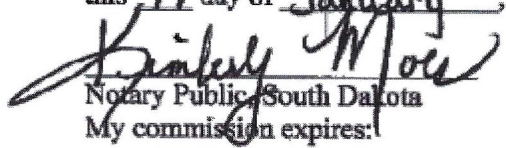
20. The Commission has not yet addressed any substantive issues in the docket.

Dated this 17 day of January, 2025.

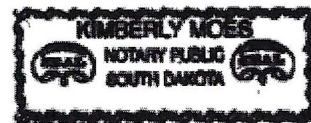


Jess Vilsack
General Counsel, SCS Carbon Transport, LLC

Subscribed and sworn to before me
this 17th day of January, 2025.



Notary Public, South Dakota
My commission expires:



My Commission Expires: 1-10-28

