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<p>APH Farms, et al.,  Appellant,  v.  North Dakota Public Service Commission, et al.,  Appellees.</p>	<p>Case No. 08-2024-CV-03622</p> <p><b>RESPONSE TO MOTION FOR EXTENSION OF APPEAL BRIEF SCHEDULE</b></p>
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[¶ 1] Appellee SCS Carbon Transport LLC (“Summit”) submits this brief in response to the Motion for Extension of Appeal Brief Schedule filed by Appellant Burleigh County (“Burleigh County”). As noted in Burleigh County’s supporting brief, Summit did not agree to the 60-day extension of the briefing schedule now requested by Burleigh County. It is the practice of the undersigned to routinely grant reasonable extensions as a matter of course, and Summit is agreeable to a 30-day extension of the briefing schedule, but Summit believes that a 60-day extension is excessive.

[¶ 2] Counsel for Burleigh County proposed a 30-day extension to the briefing schedule on November 21, 2025, after the parties received the Court’s Notice of Briefing Schedule (Doc. ID# 147). *See* Declaration of Lawrence Bender (“Bender Decl.”) ¶ 2. As of November 25, 2025, all parties had agreed to a 30-day extension. *Id.* ¶ 2, Ex. 2. On December 2, 2025, counsel for Burleigh County, without warning or explanation, proposed that the briefing schedule be extended by sixty days, rather than the thirty days previously agreed upon by the parties. *Id.* ¶ 4. On December 3, 2025, the undersigned advised counsel for Burleigh County that Summit would not stipulate to a 60-day extension because such an extension was excessive but indicated that

Summit would agree, as it already had, to a 30-day extension. On December 5, 2025, counsel for the North Dakota Public Service Commission (“Commission”) proposed a 45-day extension of the briefing schedule as a compromise. *Id.* ¶ 8. The proposal was tentatively agreed to by counsel for the above-captioned landowner appellants. *Id.* ¶ 9. Counsel for Burleigh County rejected the compromise and responded that a 45-day extension would be inadequate (despite initially proposing a 30-day extension two weeks prior) and that Burleigh County would be filing a motion for extension. *Id.* ¶ 10. Shortly thereafter, Burleigh County filed the Motion for Extension of Appeal Brief Schedule.

[¶ 3] The above-captioned appeal was commenced in December 2024. The extension requested by Burleigh County would unreasonably delay the resolution of this appeal, soon to enter its second year before the Court. Respectfully, Summit does not believe that Burleigh County has demonstrated good cause for a 60-day extension. Summit acknowledges that we are amid the year-end holiday season; however, the 30-day extension previously proposed by Burleigh County and agreed to by all parties would have extended Burleigh County’s deadline to January 20, 2026, nearly three weeks after New Year’s Day.

[¶ 4] Summit also acknowledges that the administrative record is voluminous and that the record, including hearing transcripts, is still in the process of being filed with the Court and uploaded to its online docket. But the entirety of the administrative record, including audio transcriptions of every hearing, have been available to all parties (in fact, have been publicly available on the Commission’s website) since the issuance of the underlying order more than a year ago on November 15, 2024. *Id.* ¶ 11. The fact that the Court is only now receiving a copy of the administrative record does not mitigate the fact that all parties had access to that record sufficient to prepare to meet whatever briefing schedule the Court may set.

[¶ 5] The foregoing is particularly true for Burleigh County, who earlier in this case objected to the Commission’s preparation of the complete administrative record on the grounds that much of the record was of no use to its appeal. Nearly a year ago, on December 26, 2024, counsel for Burleigh County stated to counsel for the Commission that “Given the number, length, and varying topics and locations of the hearing days held in this matter, much of which is irrelevant to this appeal, this seems to be an ideal case to agree to an appropriate stipulation limiting the testimony to be transcribed as part of the record on appeal.” *Id.* ¶ 12. Burleigh County’s counsel specifically sought to exclude hearing transcripts from the administrative record (though Burleigh County now claims it needs to review transcripts for all fourteen days), stating that it “would potentially avoid tens of thousands of dollars of unnecessary transcription expenses and save time in waiting for the transcript to be completed.” *Id.*

[¶ 6] Accordingly, Summit does not believe there is good cause for a 60-day extension of the current briefing schedule. Summit instead proposes the Court grant a 30-day extension of the briefing schedule, making the Appellant’s principal brief due January 20, 2026, the Appellee’s response brief due February 20, 2026, and the Appellant’s reply brief due March 6, 2026.

Dated this 5th day of December, 2025.

FREDRIKSON & BRYON, P.A.

By:  \_\_\_\_\_

Lawrence Bender (#03908)  
Spencer D. Ptacek (#08295)  
304 East Front Avenue, Suite 400  
Bismarck, ND 58504-5639  
(701) 221-8700  
lbender@fredlaw.com  
sptacek@fredlaw.com

*Attorney for SCS Carbon Transport LLC*