

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

IN DISTRICT COURT
SOUTH CENTRAL JUDICIAL DISTRICT

CIVIL NO. 08-2024-CV-03622

APH Farms, Arden Hagerott, Jonathan
Hagerott, Janel Olson, Valera Hayen, Kari
Curran, Scott Irmen, Mary Jo Irmen, Leon
Mallberg, Staroba Revocable Living Trust,
Loren Staroba, Diane Staroba, James Tiegs,

Appellants,

vs.

North Dakota Public Service Commission,
SCS Carbon Transport LLC, John H.
Warford, Jr. Revocable Trust, Chad Wachter,
Chad Moldenhauer, City of Bismarck,
Laborers District Council of Minnesota and
North Dakota, Emmons County, and
Burleigh County,

Appellees.

**REPLY BRIEF IN SUPPORT OF
MOTION FOR EXTENSION OF
APPEAL BRIEF SCHEDULE**

[¶1] On December 5, 2025, Burleigh County filed a *Motion for Extension of Appeal Brief Schedule* (Index # 478), requesting the Court extend the deadline for appeal briefs (Index # 147) by 60-days as follows:

- Appellant’s Brief - February 20, 2026
- Appellee’s Brief - March 20, 2026
- Reply Brief – April 6, 2026

[¶2] Also on December 5, 2025, SCS Carbon Transport LLC (“Summit”) filed a response in opposition to Burleigh County’s motion (Index # 484) (“Summit Response”). Burleigh County hereby submits this brief in reply to the Summit Response.

[¶3] Summit relies on discussions between the attorneys from approximately a year ago in December 2024, which was well before Judge Reich issued his Order on June 6, 2025 (Index # 49; Civil No. 08-2024-CV-3614), advising the entire transcript must be transcribed and the entire PSC record be filed and prepared as the record on appeal. Although there were significant discussions between the parties about limiting the record on appeal, as cited to by Summit's attorney Lawrence Bender, ultimately the Court decided otherwise. Thus, the fact that there were discussions, including by Burleigh County's attorney in December 2024 about limiting the record is irrelevant and also moot in light of Judge Reich's Order requiring a more complete record.

[¶4] Since discussing an extension of 30 days as a possible extension of time for appellants to submit their appeal briefs, and as explained to attorney Bender on several occasions, subsequent developments have shown that time limitation (30 days) to be too short. This includes because counsel for Burleigh County has had depositions scheduled in January for two full weeks, other pleadings and briefs being due, and the upcoming holidays, as well as other depositions Burleigh County's counsel has scheduled in February for almost 2 weeks. Summit does not explain how it would be prejudiced by a 60-day extension, and thus no prejudice apparently exists. Instead, it appears Summit wants to disregard the scheduling difficulties by other counsel for unexplained non-cooperative reasons. In addition, the record in this case is still being input by the Clerk of Court given the volume of document and materials, which encompass the record. Until the entire record is input by the Clerk of Court, the record will not be available in a written format for the parties and their legal counsel to review.

[¶5] Counsel for Summit suggests that there was insufficient time for the other parties to consider a 45-day extension of time to complete briefing rather than agreeing to 60-days. However, Summit overlooks the fact that all counsel for the parties in this case, except Summit, have

stipulated to a 60-day extension and therefore the issue of considering a 45-day extension is moot and a non sequitur.

[¶6] Summit also argues that the hearing transcript could have been reviewed by Burleigh County counsel long ago. However, the hearing transcript was in audio format only which could not be cited to easily in any appeal brief. Essentially Summit asserts Burleigh County should incur the cost to review the voluminous hearing transcript twice, once in audio format and again in written format (which would be required to provide citations to the record). It would cost-prohibitive and unreasonable for Burleigh County to repeat these steps.

[¶7] In addition, there is still pending before the Court Summit's motion to dismiss Burleigh County's lawsuit claims based on alleged procedural issues. Index # 16; Civil No. 08-2024-CV-3614. It is presently uncertain whether Summit agrees or disagrees that Judge Reich's June 6, 2025 Order dismissed Summit's motion to dismiss Burleigh County's claims on procedural grounds, or not. Given that scenario, it would be unreasonable for Burleigh County to commence review of the record on appeal until such time as Summit's motion to dismiss Burleigh County's claims based on alleged procedural grounds was finally decided by the Court.

[¶8] For all these reasons, Burleigh County respectfully requests the Court extend the current briefing deadlines by 60 days as agreed upon by all parties, except Summit. *See* Index # 481.

Dated this 8th day of December, 2025.

BAKKE GRINOLDS WIEDERHOLT

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