

# SCS Carbon Transport LLC, Case No. PU-22-391

## August 4, 2023, Special Meeting

### ND PUBLIC SERVICE COMMISSION

<p style="text-align: center;">1</p> <p style="text-align: center;">STATE OF NORTH DAKOTA PUBLIC SERVICE COMMISSION</p> <p style="text-align: center;">SCS Carbon Transport LLC Midwest Carbon Express CO2 Pipeline Project Siting Application</p> <p style="text-align: center;">Case No. PU-22-391</p> <p style="text-align: center;">TRANSCRIPT OF SPECIAL MEETING August 4, 2023</p>	<p>1 sessions. But I will say that getting together is a</p> <p>2 little tougher in a case with an alternate decisionmaker</p> <p>3 because you're not in the offices with us. And when we</p> <p>4 do, that does add cost to us for handling the case,</p> <p>5 which ultimately goes back to the Applicant because they</p> <p>6 file through a filing fee that we use for our costs in</p> <p>7 the case. So that's why -- another reason why I thought</p> <p>8 -- as I said, I thought the ultimate decision was</p> <p>9 obvious enough, why don't we just move forward and see</p> <p>10 if, in fact, we're all on the same page.</p> <p>11 We have really two main issues to decide in this</p> <p>12 case: the confidentiality -- the protection of</p> <p>13 information decision and then the case itself or the</p> <p>14 findings of facts, conclusion of law, and the final</p> <p>15 order. So with that --</p> <p>16 I guess I didn't ask if either of you had any</p> <p>17 opening comments.</p> <p>18 COMMISSIONER HAUGEN-HOFFART: No, I have no</p> <p>19 opening comment.</p> <p>20 SUBSTITUTE DECISIONMAKER DAWSON: No opening</p> <p>21 comments for me.</p> <p>22 COMMISSIONER CHRISTMANN: Okay. So to address</p> <p>23 the protection of information first, I move the</p> <p>24 Commission adopt the order on protection of information</p> <p>25 in SCS Carbon Transport LLC Midwest Carbon Express CO2</p> <p style="text-align: right;">PAGE 3</p>
<p>1 COMMISSIONER CHRISTMANN: Good morning,</p> <p>2 everyone. I call this special meeting of the North</p> <p>3 Dakota Public Service Commission to order. It is 10:01,</p> <p>4 Friday, August 4th, 2023. I am the Commission chairman,</p> <p>5 Randy Christmann, joined by fellow Commissioner Sheri</p> <p>6 Haugen-Hoffart and our alternate decisionmaker in this</p> <p>7 case, Mr. Tim Dawson. So we have a quorum.</p> <p>8 Earlier this week -- so we've had this case</p> <p>9 going on for -- since last fall when it was applied and</p> <p>10 in the beginning of February when we deemed the</p> <p>11 application complete.</p> <p>12 Earlier this week, I was in the process of</p> <p>13 planning a work session in this case. And for those of</p> <p>14 you who don't follow us, that would be a more informal</p> <p>15 thing where the decisionmakers and our staff kind of</p> <p>16 discuss concepts and stuff to prepare an order to vote</p> <p>17 on. And as I was working on that, the outcome seemed, I</p> <p>18 guess, so obvious to me that I just decided to work with</p> <p>19 staff on a draft order to see how it would look. And</p> <p>20 after working on it with them, it seemed even more</p> <p>21 obvious to me what the end case of this was.</p> <p>22 So I believe staff ultimately sent it to each of</p> <p>23 you, a draft to review. So you've had an opportunity to</p> <p>24 think about it, prepare amendment proposals, or you can</p> <p>25 reject my motions and we'll work on scheduling work</p> <p style="text-align: right;">PAGE 2</p>	<p>1 Pipeline Project Siting Application, Case No. PU-22-391.</p> <p>2 COMMISSIONER HAUGEN-HOFFART: Second.</p> <p>3 COMMISSIONER CHRISTMANN: On April 21st SCS</p> <p>4 filed an application for protection of information. On</p> <p>5 May 1st John H. Warford, Jr. filed an objection and also</p> <p>6 a request for hearing on that topic. On June 27th we</p> <p>7 held a hearing.</p> <p>8 The information for which SCS seeks protection</p> <p>9 is related to dispersion modeling in the event of a</p> <p>10 release of carbon dioxide from the pipeline. Given the</p> <p>11 sensitive nature of the information, SCS stated that it</p> <p>12 will request that PHMSA protect these materials from</p> <p>13 public release and is requesting the Public Service</p> <p>14 Commission to protect the information too.</p> <p>15 During the hearing, SCS argued that under state</p> <p>16 law, federal laws, the information -- and federal laws,</p> <p>17 the information should be protected. It argued that</p> <p>18 PHMSA has previously determined similar information such</p> <p>19 as spill modeling information should be protected to</p> <p>20 prevent its use by bad actors. SCS also stated that the</p> <p>21 determination has been affirmed by the courts. SCS</p> <p>22 provided examples demonstrating that the risk of the use</p> <p>23 of this information by bad actors is not hypothetical.</p> <p>24 Counsel for the Intervenors both acknowledge</p> <p>25 that some information likely should be subject to</p> <p style="text-align: right;">PAGE 4</p>

# SCS Carbon Transport LLC, Case No. PU-22-391

August 4, 2023, Special Meeting

## ND PUBLIC SERVICE COMMISSION

<p>1 protection but argued that all information being 2 protected cannot be correct. Both Intervenor's disputed 3 the federal protection cited as it relates to the 4 information. They also provided the past-sited -- they 5 also provided that past-sited projects with this agency 6 provided similar information without protection. 7 The purpose of the hearing was to determine 8 whether the application to protect the information from 9 public disclosure should be granted. 10 Refrigerated CO2 is defined by PHMSA as a 11 hazardous material. SCS pipeline meets the definition 12 of critical infrastructure under North Dakota Century 13 Code. 14 The disclosure of plume modeling could provide 15 information on where damaging or vandalizing the 16 pipeline by a bad actor would have a debilitating impact 17 on security and state public health and safety. So 18 prevention of receipt of this information by bad actors 19 necessitates the PSC limiting access to the information. 20 The argument that other entities previously 21 filed similar information without requesting protection 22 is unpersuasive. Therefore, there has been growing 23 vigilance for the protection of data and information 24 related to the operations and locations of critical 25 infrastructure. This is also reflected in legislative</p> <p style="text-align: right;">PAGE 5</p>	<p>1 fact, conclusions of law, and order in SCS Carbon 2 Transport LLC Midwest Carbon Express CO2 Pipeline 3 Project Siting Application, Case No. PU-22-391. 4 COMMISSIONER HAUGEN-HOFFART: Second. 5 COMMISSIONER CHRISTMANN: So a preliminary 6 statement, just some things that the public should be 7 aware of that I'll highlight. 8 On October 17th of 2022, SCS Carbon Transport 9 filed applications for a certificate of corridor 10 compatibility and for a route permit concerning 11 approximately 320 miles of carbon dioxide pipeline. 12 For the public to just -- because these terms 13 are used so much, very generally, the corridor is kind 14 of a working area. They applied for 300 feet. 200 feet 15 is kind of a common one. The route is really where the 16 pipeline would be within the corridor. This would be 17 in ten North Dakota counties. 18 Also on October 17th SCS filed an application 19 for waivers of procedures and time schedules. That is a 20 very common practice in these cases. 21 On February 1st of this year, the Commission 22 deemed the applications complete and issued a notice 23 scheduling four separate public hearings: March 14th at 24 Bismarck, March 28th at Gwinner, April 11th at Wahpeton, 25 and May 9th at Linton. So you can see we spread them</p> <p style="text-align: right;">PAGE 7</p>
<p>1 history. 2 So the conclusions of law on this would read 3 that the Commission concludes that the information is a 4 security system plan for critical infrastructure that 5 may be exempt from public disclosure, and concludes that 6 SCS's application satisfies the requirements of North 7 Dakota Century Code for protection of information. 8 And so the order would read "The Commission 9 orders the April 21, 2023, application of SCS Carbon 10 Transport LLC for protection of information is granted." 11 EXECUTIVE DIRECTOR KAHL: We have a motion and a 12 second. Is there any discussion? 13 Sensing none, I will move to roll call vote. 14 Chair Christmann. 15 COMMISSIONER CHRISTMANN: Aye. 16 EXECUTIVE DIRECTOR KAHL: Commissioner Haugen. 17 COMMISSIONER HAUGEN-HOFFART: Aye. 18 EXECUTIVE DIRECTOR KAHL: Substitute 19 Decisionmaker Dawson. 20 SUBSTITUTE DECISIONMAKER DAWSON: Aye. 21 EXECUTIVE DIRECTOR KAHL: Motion is approved. 22 COMMISSIONER CHRISTMANN: Well, one seemed 23 non-controversial within this group. Move to the next 24 topic. 25 I move the Commission adopt the findings of</p> <p style="text-align: right;">PAGE 6</p>	<p>1 out for the public's convenience. 2 Due to the length of the March 14th hearing, on 3 March 20th the Commission scheduled an additional 4 hearing for June 2nd at Bismarck. But the day before 5 that, on June 1st, SCS filed a motion to declare Emmons 6 County and Burleigh County ordinances superseded and 7 preempted. Also on June 1st, Randall Bakke filed a 8 petition to re-open the proceedings and schedule an 9 additional public hearing. Also on June 1st -- busy day 10 -- SCS filed the prefiled direct testimony of four 11 witnesses and a market research letter from Boulder 12 Appraisal. 13 The second day, on June 2nd, a public hearing 14 was held as scheduled here in Bismarck. 15 I'm going to go through some findings of fact. 16 There's pages of these, but some highlights that I think 17 should be taken note of. 18 One of the requirements, SCS initiated 19 correspondence seeking comments from federal, state, and 20 local agencies regarding the project. There are 44 of 21 them altogether that they sought information from. When 22 -- if we approve this, they're listed on the top of page 23 5 of the order, at least in this draft. 24 SCS conducted a Class I cultural literature 25 review and a desktop analysis for wetlands, waterbodies,</p> <p style="text-align: right;">PAGE 8</p>

# SCS Carbon Transport LLC, Case No. PU-22-391

August 4, 2023, Special Meeting

## ND PUBLIC SERVICE COMMISSION

<p>1 and other sensitive environmental resources.</p> <p>2 They conducted surveys for threatened and</p> <p>3 endangered species, critical habitats, wetlands,</p> <p>4 waterbodies, and trees and shrubs.</p> <p>5 And they conducted a Class III cultural resource</p> <p>6 inventory across a portion of the survey area. The</p> <p>7 Class III report was submitted to the State's Historical</p> <p>8 Preservation Office. And in a response dated March 1st,</p> <p>9 SHPO advised that the report does not meet the standards</p> <p>10 and they have not received a revised report addressing</p> <p>11 their concerns. SHPO concurrence is commonly required</p> <p>12 by the Commission for the issuance of a site certificate</p> <p>13 or route permit. SCS did not address SHPO's concerns</p> <p>14 further during the proceedings. Cultural resource</p> <p>15 impacts have not been properly addressed.</p> <p>16 The Commission received extensive, broad</p> <p>17 concerns regarding eminent domain, safety, the policy of</p> <p>18 permanent CO2 sequestration and storage, setback</p> <p>19 distances, irreparable harm to underground drain tile</p> <p>20 systems, impacts on property values, and the ability to</p> <p>21 obtain liability insurance due to this project.</p> <p>22 Having considered the public comments, the</p> <p>23 issues of eminent domain, safety compliance with PHMSA</p> <p>24 construction and operations, and permanent sequestration</p> <p>25 and storage of CO2 are outside the jurisdiction and</p> <p style="text-align: right;">PAGE 9</p>	<p>1 While some witnesses stretched the plausibility</p> <p>2 of the adverse impacts on future property values and</p> <p>3 development, based upon the record, the effects have not</p> <p>4 been adequately minimized for the welfare of the people</p> <p>5 and the environment of the state.</p> <p>6 A number of commenters provided that the project</p> <p>7 will make them unable to purchase liability insurance</p> <p>8 due to the risk of a release. SCS testified that it</p> <p>9 would hold the liability for a rupture of the project</p> <p>10 unless the rupture was caused by a third-party line</p> <p>11 strike. Based upon the testimony, no additional</p> <p>12 requirements are needed to ensure the project will have</p> <p>13 minimal adverse impacts on the liability insurance of</p> <p>14 the landowners.</p> <p>15 SCS requested the Commission to supersede and</p> <p>16 preempt the ordinances of both Emmons and Burleigh</p> <p>17 Counties. North Dakota Century Code supersedes and</p> <p>18 preempts any local land use or zoning regulations from</p> <p>19 the regulations, ordinances, and plans related -- except</p> <p>20 the ordinances related to road use agreements.</p> <p>21 Therefore, the question of whether the ordinances are</p> <p>22 unreasonably restrictive is moot because Century Code</p> <p>23 supersedes that.</p> <p>24 LIUNA, the Laborers International Union,</p> <p>25 intervened in this proceeding and submitted testimony</p> <p style="text-align: right;">PAGE 11</p>
<p>1 consideration of this Commission.</p> <p>2 Commenters asserted that greater setback</p> <p>3 distances should be considered for CO2 pipelines, but</p> <p>4 North Dakota Century Code specifies that areas within</p> <p>5 500 feet of an inhabited rural residence must be an</p> <p>6 avoidance area unless waived by the owner. No testimony</p> <p>7 was presented that provided a sufficient basis to depart</p> <p>8 from the avoidance requirements set forth in state</p> <p>9 statute.</p> <p>10 Several commenters asserted that the project</p> <p>11 will cause irreparable harm to their underground drain</p> <p>12 tile systems. Proper drain tile system repair and/or</p> <p>13 replacement will produce minimal adverse effects.</p> <p>14 Commenters and Intervenors asserted that the</p> <p>15 project will cause significant adverse effects on the</p> <p>16 value of their property and residential development</p> <p>17 projects. SCS filed a letter from Boulder Appraisal</p> <p>18 summarizing the effect of existing natural gas and</p> <p>19 hazardous liquids pipelines upon the development and</p> <p>20 sale of current residential properties in Bismarck. The</p> <p>21 filing was not tendered during a hearing and the parties</p> <p>22 and Commission were not afforded an opportunity to</p> <p>23 request the documents or witness as required by North</p> <p>24 Dakota Administrative Code. This limits the weight that</p> <p>25 the Commission is willing to provide to that document.</p> <p style="text-align: right;">PAGE 10</p>	<p>1 relating to the benefits of hiring a local labor force</p> <p>2 for transmission projects and the safety record of</p> <p>3 contractors SCS intends to use to construct the project.</p> <p>4 And I will say that LIUNA's assertions in</p> <p>5 relation to SCS's plans for the construction of the</p> <p>6 project are not applicable to our jurisdiction in this</p> <p>7 case, but I really appreciate their coming forth with</p> <p>8 the information they provide, especially regarding</p> <p>9 benefits of hiring local.</p> <p>10 I want to discuss a little bit the siting</p> <p>11 criteria that we work with under law. We've established</p> <p>12 criteria pursuant to North Dakota Century Code to decide</p> <p>13 the site, corridor, and route suitability evaluation and</p> <p>14 designation process. The criteria are classified</p> <p>15 in four categories. We have exclusion areas, avoidance</p> <p>16 areas, selection criteria, and policy criteria. And</p> <p>17 I'll discuss those.</p> <p>18 An exclusion area is a geographic area that must</p> <p>19 be excluded in the consideration of the route. Areas</p> <p>20 critical to the life stages of threatened or endangered</p> <p>21 animal or plant species are designated as exclusion</p> <p>22 areas. This project will cross the Missouri River, but</p> <p>23 it's using horizontal directional drilling. The piping</p> <p>24 plover habitat is not beneath the Missouri River so a</p> <p>25 reasonable buffer zone exists for the protection of the</p> <p style="text-align: right;">PAGE 12</p>

# SCS Carbon Transport LLC, Case No. PU-22-391

August 4, 2023, Special Meeting

## ND PUBLIC SERVICE COMMISSION

<p>1 piping plover's habitat and there's no evidence of an 2 adverse impact there.</p> <p>3 SCS's studies and surveys did not record any 4 other exclusion areas within the survey area. No other 5 exclusion areas were presented by an intervenor, the 6 public, or our Commission staff.</p> <p>7 Moving to avoidance areas, these are geographic 8 areas that may not be considered in the routing of a 9 transmission facility unless the applicant shows that, 10 under the circumstances, there is no reasonable 11 alternative. Economic considerations alone will not 12 justify the approval of avoidance areas.</p> <p>13 National Wildlife Refuges are designated 14 avoidance areas. SCS's studies and surveys identified 15 the Dakota Lake National Wildlife Refuge, which is in 16 Dickey County, and it is within the proposed corridor. 17 The refuge does not encompass more than 50 percent of 18 the corridor width and it will not be crossed by the 19 route and so the impact to the refuge is at an 20 acceptable minimum.</p> <p>21 Game Management Areas are also designated 22 avoidance areas. And SCS's studies and surveys 23 indicated that six waterfowl production areas are within 24 the proposed corridor. In four instances they encompass 25 greater than 50 percent of the corridor width. SCS did</p> <p style="text-align: right;">PAGE 13</p>	<p>1 avoidance areas were presented by an intervenor, the 2 public, or our staff.</p> <p>3 Moving to selection criteria, in accordance with 4 the Commission's selection criteria, a corridor or a 5 route shall be approved only if it is determined that 6 any significant adverse effects will be at an acceptable 7 minimum.</p> <p>8 The project's impact upon agriculture and 9 livestock will be at an acceptable minimum. However, 10 the Company has not taken steps to address some 11 outstanding legitimate impacts expressed by some 12 individual landowners during public comment or 13 demonstrated why a reroute is not feasible in those 14 instances.</p> <p>15 I want to point out some additional measures to 16 impact -- to minimize impact. SCS testified that it 17 will have an operations control center in Ames, Iowa, 18 that will be monitored 24 hours per day. The project 19 will include a supervisory control and data acquisition 20 system that will communicate with all field sites and 21 provide real-time information of the system's 22 operations. The operations control center will have the 23 capability to remotely shut down pump stations and 24 isolate pipeline segments in the event abnormal 25 operating conditions are observed.</p> <p style="text-align: right;">PAGE 15</p>
<p>1 not demonstrate that there is no reasonable alternative 2 to a route through the avoidance areas. Therefore, the 3 impacts on Game Management Areas in North Dakota are not 4 at an acceptable minimum.</p> <p>5 Areas that are geologically unstable are 6 avoidance areas. In a letter dated March 3rd, the North 7 Dakota Geological Survey noted 14 areas of potential 8 geologic instability within the project corridor. SCS 9 has not submitted information to the Commission 10 demonstrating how it has addressed the concerns raised 11 by the Geological Survey. SCS has not properly 12 addressed areas that are geologically unsuitable -- 13 unstable.</p> <p>14 Areas within 500 feet of a residence, school, or 15 place of business are avoidance areas. These avoidance 16 areas may be waived by the owner. SCS's studies and 17 surveys identified eight residential structures and one 18 business within 500 feet of the project. SCS has 19 provided a waiver for one of the residences. But SCS 20 submitted that it will not construct within 500 feet of 21 the remaining residences or businesses without obtaining 22 and filing with the Commission signed waivers from the 23 owners of these structures.</p> <p>24 SCS's studies and surveys did not record any 25 other avoidance areas within the survey area. No other</p> <p style="text-align: right;">PAGE 14</p>	<p>1 SCS noted in its application that meetings have 2 occurred with the emergency management directors of all 3 counties crossed by the project. The emergency 4 management directors were asked to provide a list of 5 equipment needs in order to respond to potential 6 incidents.</p> <p>7 SCS requested a 300-foot corridor width in its 8 application. For your reference, that is Finding of 9 Fact No. 6 back on page 3. And that is wider than what 10 this Commission has normally granted. During the 11 hearing, SCS testified that they would not object to the 12 PSC issuing a narrower corridor designation of 200 feet 13 in width.</p> <p>14 Commissioners also requested response from SCS 15 on a number of other issues. Some of the requests were 16 regarding rerouting the project on specific agricultural 17 properties; confirmation on the number of 500-foot 18 setback waivers required and obtained; follow-up with 19 the North Dakota Geological Survey; SHPO concurrence 20 status; and an analysis of a south Bismarck alternate 21 route. SCS either did not adequately address these 22 requests or did not tender a witness to answer questions 23 as, I mentioned before, is required under North Dakota 24 Administrative Code. The basis for SCS's recommended 25 denial of Mr. Bakke's June 1st petition to re-open the</p> <p style="text-align: right;">PAGE 16</p>

# SCS Carbon Transport LLC, Case No. PU-22-391

August 4, 2023, Special Meeting

## ND PUBLIC SERVICE COMMISSION

<p>1 proceeding and hold an additional public hearing was an 2 assertion by SCS that it has provided a full and 3 complete record in this proceeding.</p> <p>4 SCS has not provided sufficient evidence to 5 demonstrate that the location, construction, operation, 6 and maintenance of the project will produce minimum 7 adverse impacts upon the welfare of the citizens of 8 North Dakota with the existing record.</p> <p>9 So to highlight some of the conclusions of law 10 here, based on findings of fact here, North Dakota 11 Century Code supersedes and preempts any local land use 12 or zoning regulations aside from regulations, 13 ordinances, and plans related to road use agreements. 14 Therefore, the question of whether the ordinances are 15 unreasonably restrictive is moot.</p> <p>16 Adherence to applicable procedures, 17 requirements, and time schedules should not be waived. 18 To waive any procedures, requirements, and time 19 schedules as requested is inappropriate.</p> <p>20 SCS failed to meet its burden of proof to show 21 the location, construction, operation, and maintenance 22 of the project will produce minimal adverse effects on 23 the environment and upon the welfare of the citizens of 24 North Dakota.</p> <p>25 SCS failed to meet its burden of proof to show</p> <p style="text-align: right;">PAGE 17</p>	<p>1 realized something in there that I'm not comfortable 2 with and so I want to propose an amendment to what's in 3 front of you.</p> <p>4 And so if you would go to page 11, No. 42, in 5 the fourth line, and I -- so our first bullet will be on 6 this amendment. Then we'll get back to the order either 7 as presented or as amended.</p> <p>8 I move that the -- in the fourth line, the words 9 "plume modeling" be removed.</p> <p>10 EXECUTIVE DIRECTOR KAHL: We have a motion for 11 amendment. I'll take a roll call vote.</p> <p>12 COMMISSIONER CHRISTMANN: You need a second.</p> <p>13 EXECUTIVE DIRECTOR KAHL: Oh, sorry.</p> <p>14 COMMISSIONER HAUGEN-HOFFART: Second.</p> <p>15 EXECUTIVE DIRECTOR KAHL: Thank you.</p> <p>16 We now have a motion and a second on the 17 amendment.</p> <p>18 Chair Christmann.</p> <p>19 COMMISSIONER CHRISTMANN: Aye.</p> <p>20 EXECUTIVE DIRECTOR KAHL: Commissioner 21 Haugen-Hoffart.</p> <p>22 COMMISSIONER HAUGEN-HOFFART: Aye.</p> <p>23 EXECUTIVE DIRECTOR KAHL: Substitute 24 Decisionmaker Dawson.</p> <p>25 SUBSTITUTE DECISIONMAKER DAWSON: Aye.</p> <p style="text-align: right;">PAGE 19</p>
<p>1 the project will minimize adverse human and 2 environmental impact.</p> <p>3 And SCS failed to meet its burden of proof to 4 show the location, construction, and operation of the 5 project are compatible with environmental preservation 6 and efficient use of resources.</p> <p>7 If some of those sounded repetitive, those are 8 kind of responses to the things that we noticed publicly 9 that we were looking for answers to in our notice of 10 public hearings.</p> <p>11 So if you all agree with me on this, to kind of 12 just encapsulate, if this is approved, the Commission 13 would order SCS's application for a waiver of procedures 14 and time schedules is denied; their application for a 15 certificate of corridor compatibility is denied; their 16 application for a route permit is denied; their motion 17 to declare Emmons County and Burleigh County ordinances 18 superseded and preempted is moot; the petition to 19 re-open the proceedings and schedule an additional 20 public hearing is denied; and any outstanding procedural 21 motions are denied.</p> <p>22 With that, before I turn it over to whoever 23 wants to go first, spent a lot of time working on 24 something that I thought was quite clear and so that I'm 25 hopeful that you will agree with, and near the end I</p> <p style="text-align: right;">PAGE 18</p>	<p>1 EXECUTIVE DIRECTOR KAHL: The amendment is 2 adopted.</p> <p>3 COMMISSIONER CHRISTMANN: Okay.</p> <p>4 EXECUTIVE DIRECTOR KAHL: Was there any further 5 discussion on the original motion?</p> <p>6 COMMISSIONER CHRISTMANN: With those two words 7 removed.</p> <p>8 EXECUTIVE DIRECTOR KAHL: Is there any further 9 discussion on the amendment?</p> <p>10 COMMISSIONER HAUGEN-HOFFART: I apologize. 11 I just want, in reference to page 19, I believe, 12 of the order --</p> <p>13 COMMISSIONER CHRISTMANN: This is 12.</p> <p>14 COMMISSIONER HAUGEN-HOFFART: Oh, page -- I'm 15 sorry. No. 19. But I think it was clarified in the 16 conclusion of law where it states -- this has to do with 17 Emmons and Burleigh County ordinance. I just want to 18 say that public safety was a very extensive point to 19 this pipeline and route. And I acknowledge Emmons and 20 Burleigh County for bringing forth and working so 21 diligently on the safety for the community. And because 22 we're denying this route, I think for us to take that up 23 is moot. We shouldn't have to take that up because 24 we're denying it. And I don't want to see it --</p> <p>25 I believe, Mr. Christmann, in your order brought</p> <p style="text-align: right;">PAGE 20</p>

# SCS Carbon Transport LLC, Case No. PU-22-391

August 4, 2023, Special Meeting

## ND PUBLIC SERVICE COMMISSION

<p>1 forth, you're saying that -- in the order that the 2 motion to declare Emmons County and Burleigh County 3 ordinance is moot. I want to be clear on that. Or are 4 we saying that we are superseding that and accepting -- 5 overruling that? 6 COMMISSIONER CHRISTMANN: It's moot. My opinion 7 is that the law is clear. 8 COMMISSIONER HAUGEN-HOFFART: Okay. I don't 9 think that that's been properly vetted. I'm not saying 10 that I -- if it comes up before, that I'm going to agree 11 with it, but because, again, I'm going to emphasize that 12 that hasn't been vetted and public safety is an issue, 13 I'm going to move the Commission amend the finding of 14 facts, conclusion of law, and order as follows: Finding 15 of Fact Paragraph 19 is amended to -- 16 COMMISSIONER CHRISTMANN: Let me get to the 17 page. 18 Go ahead. 19 COMMISSIONER HAUGEN-HOFFART: Okay. Finding of 20 Facts, Paragraph 19 is amended to "SCS has requested the 21 Commission to supersede and preempt the ordinance of 22 both Emmons and Burleigh Counties, North Dakota. SCS 23 has not filed an application with either county for a 24 variance or waiver of their ordinance." 25 The Conclusion of Law, Paragraph 4, is amended</p> <p style="text-align: right;">PAGE 21</p>	<p>1 clause at the end, "upon a finding that the rule or 2 regulation or ordinance is unreasonably restrictive." 3 The legislature addressed that for electric projects. 4 But then looking at Chapter 49-22.1 dealing with 5 pipelines, gas and liquid facilities, again for the 6 plants, the energy conversion facilities, may not 7 supersede or preempt any local land use, zoning, or 8 building rules, regulations, or ordinances. But when it 9 gets to gas or liquid transmission facility, a pipeline 10 within a designated corridor supersedes and preempts any 11 local land use or zoning regulations, period. However, 12 the next section does point out that their road use 13 agreements can supersede ours. 14 So it -- I mean, people can ask their 15 legislators why they did electric different than 16 pipelines, but they did. And I'm going by what's 17 written in, I think, very clear law. 18 COMMISSIONER HAUGEN-HOFFART: Mr. Christmann, I 19 understand what the law says, but pertaining to this, 20 carbon capture has now filed an application within 21 either county for a variance or waiver of their 22 ordinance and we have not vetted this, what was -- we 23 are proposing that the route be denied. Therefore, it 24 kind of ends there. But to say we've concluded that, 25 I'm not comfortable with so I bring -- like I said, I</p> <p style="text-align: right;">PAGE 23</p>
<p>1 to "Due to the application being denied, the issue of 2 whether the county ordinances are automatically 3 superseded and exempted is moot." 4 And the removal of ordering Paragraph 4, No. 4. 5 That is my motion. 6 EXECUTIVE DIRECTOR KAHL: Is there a second? 7 COMMISSIONER CHRISTMANN: I will second it for 8 purpose of a discussion. 9 EXECUTIVE DIRECTOR KAHL: Thank you. 10 We have a motion and a second. Is there any 11 discussion? 12 COMMISSIONER CHRISTMANN: Yes. I just handed 13 out two sheets here with language from the Century Code. 14 You'll notice on one of them where it says page 7 on the 15 bottom, that's from Chapter 49-22.1-13, which has to do 16 with gas and liquid conversion and transmission 17 facilities like we're talking about here. The other one 18 that shows page 9 on the bottom, that is from Chapter 19 49-22-16. That has to do with electric energy 20 conversion and transmission facilities. 21 If you look at number 2 in the electric's, the 22 law makes clear that our decision may not supersede or 23 preempt local land use on a conversion facility -- a 24 power plant, say -- but on a transmission facility, our 25 decision does supersede the local's, but there's a</p> <p style="text-align: right;">PAGE 22</p>	<p>1 bring forward my motion. 2 EXECUTIVE DIRECTOR KAHL: Is there any further 3 discussion? 4 UNIDENTIFIED SPEAKER: (Inaudible). 5 COMMISSIONER HAUGEN-HOFFART: Mine? Yes, it is, 6 Mr. Tuttle (phonetic). 7 EXECUTIVE DIRECTOR KAHL: Is there any further 8 discussion? 9 SUBSTITUTE DECISIONMAKER DAWSON: Well, I'm 10 caught between a rock and a hard place. I agree with 11 Commissioner Christmann on his interpretation of the law 12 and that it is moot for that purpose, but it also may be 13 moot as a procedural matter as Commissioner 14 Haugen-Hoffart is talking about. If it came to us, 15 let's say, as a motion and we have that motion before 16 us, we can say that it's moot and we can decide it 17 without deciding the motion or we can decide the motion. 18 So there's two kinds of mootness here and both 19 of them have some validity. And, with that, I'm still 20 thinking about my answer to this. I'll come up with one 21 in a few seconds. 22 EXECUTIVE DIRECTOR KAHL: I will move to a roll 23 call vote if we are ready. 24 COMMISSIONER CHRISTMANN: This is on the motion 25 to amend --</p> <p style="text-align: right;">PAGE 24</p>

# SCS Carbon Transport LLC, Case No. PU-22-391

August 4, 2023, Special Meeting

## ND PUBLIC SERVICE COMMISSION

<p>1 EXECUTIVE DIRECTOR KAHL: Motion to amend. 2 COMMISSIONER CHRISTMANN: -- by Commissioner 3 Haugen-Hoffart. 4 EXECUTIVE DIRECTOR KAHL: Correct. 5 Chair Christmann. 6 COMMISSIONER CHRISTMANN: Nay. 7 EXECUTIVE DIRECTOR KAHL: Commissioner 8 Haugen-Hoffart. 9 COMMISSIONER HAUGEN-HOFFART: Aye. 10 EXECUTIVE DIRECTOR KAHL: Substitute 11 Decisionmaker Dawson. 12 SUBSTITUTE DECISIONMAKER DAWSON: Aye. 13 EXECUTIVE DIRECTOR KAHL: The amendment is 14 approved. 15 And we will move back to the motion on the order 16 as amended. 17 COMMISSIONER CHRISTMANN: And I know I followed 18 you as you went. So the amendments were on Section 19; 19 correct? 20 COMMISSIONER HAUGEN-HOFFART: I'm going to hand 21 you my motion here for (inaudible) record. 22 COMMISSIONER CHRISTMANN: Okay. But is it -- 23 the change was in section 19 and then order number -- 24 COMMISSIONER HAUGEN-HOFFART: Conclusions of Law 25 No. 4.</p> <p style="text-align: right;">PAGE 25</p>	<p>1 you who aren't familiar with this, it's a long-standing 2 tradition at the Commission, that we open up for 3 questions from the press after our meetings. We have 4 always thrived on being transparent. 5 I want to say, though, before we get into that, 6 that my decision on this case is not indicative of my 7 opinions regarding CO2 sequestration or importation of 8 CO2 via pipeline at all. This is only about this 9 project in this location under these circumstances. 10 And I also want to say that, for my part, I'm 11 going to leave most questions to our attorney in this 12 case, Mr. Zach Pelham. And the reason is that if the 13 Company chooses to start over and reapply, I don't want 14 any answers that I give here off the cuff to be taken as 15 a comprehensive to-do list for building a new 16 application and then, well, you didn't mention that. 17 It's not that. And if the Applicant chooses to appeal 18 this decision to the courts, I think it's just best to 19 let the official hearing records, the findings of fact, 20 the conclusions of law, and the orders stand for 21 themselves. 22 Did either of you have any comments before we 23 open it up for the press? 24 COMMISSIONER HAUGEN-HOFFART: No. I agree with 25 you, Chairman Christmann, that we don't know where this</p> <p style="text-align: right;">PAGE 27</p>
<p>1 COMMISSIONER CHRISTMANN: Conclusions of Law 2 No. 4. 19 and 4. 3 COMMISSIONER HAUGEN-HOFFART: Correct. 4 COMMISSIONER CHRISTMANN: That's it; right? 5 COMMISSIONER HAUGEN-HOFFART: And then the 6 removal of the order ordering Paragraph 4. 7 COMMISSIONER CHRISTMANN: Okay. 8 EXECUTIVE DIRECTOR KAHL: Is there any further 9 discussion on the order -- the motion of the order as 10 amended? 11 Sensing none, I will move to roll call vote. 12 Chair Christmann. 13 COMMISSIONER CHRISTMANN: Aye. 14 EXECUTIVE DIRECTOR KAHL: Commissioner 15 Haugen-Hoffart. 16 COMMISSIONER HAUGEN-HOFFART: Aye. 17 EXECUTIVE DIRECTOR KAHL: Substitute 18 Decisionmaker Dawson. 19 SUBSTITUTE DECISIONMAKER DAWSON: Aye. 20 EXECUTIVE DIRECTOR KAHL: The motion is 21 approved. 22 COMMISSIONER CHRISTMANN: Well, with a couple of 23 little changes, I think it turns out I was right, that 24 we're generally on the same page and the direction of 25 this case. And so I do want to say that, for those of</p> <p style="text-align: right;">PAGE 26</p>	<p>1 case is going to go so I too would refer to -- questions 2 to our counsel, Zach Pelham. 3 But I do want to say one thing. I am very 4 thankful for everyone who was very involved in this 5 case. To see the interest equals to me educating 6 ourselves on what the PSC does, our laws, and what it 7 all means. So I want to thank people for being engaged, 8 professional, and being here today. And I continue to 9 believe that ag and energy both have a place in this 10 state and that we can work collaboratively together. 11 So, with that, I just want to say thank you to 12 all of you for being so involved and professional in 13 these hearings. 14 COMMISSIONER CHRISTMANN: Okay. With that, we 15 will stick around outside of the official meeting and 16 take questions if there are questions. 17 And for you, Mr. Pelham, I'd ask that you grab a 18 microphone for that. 19 But, with that, this meeting is adjourned. 20 ----- 21 22 23 24 25</p> <p style="text-align: right;">PAGE 28</p>

# SCS Carbon Transport LLC, Case No. PU-22-391

August 4, 2023, Special Meeting  
ND PUBLIC SERVICE COMMISSION

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PAGE 29

# SCS Carbon Transport LLC, Case No. PU-22-391

## August 4, 2023, Special Meeting

### ND PUBLIC SERVICE COMMISSION

<b>1</b>	<b>6</b>	11:20, 17:13, 23:13 <b>agricultural</b> [1] - 16:16 <b>agriculture</b> [1] - 15:8 <b>ahead</b> [1] - 21:18 <b>alone</b> [1] - 13:11 <b>alternate</b> [3] - 2:6, 3:2, 16:20 <b>alternative</b> [2] - 13:11, 14:1 <b>altogether</b> [1] - 8:21 <b>amend</b> [3] - 21:13, 24:25, 25:1 <b>amended</b> [6] - 19:7, 21:15, 21:20, 21:25, 25:16, 26:10 <b>amendment</b> [8] - 2:24, 19:2, 19:6, 19:11, 19:17, 20:1, 20:9, 25:13 <b>amendments</b> [1] - 25:18 <b>Ames</b> [1] - 15:17 <b>analysis</b> [2] - 8:25, 16:20 <b>animal</b> [1] - 12:21 <b>answer</b> [2] - 16:22, 24:20 <b>answers</b> [2] - 18:9, 27:14 <b>apologize</b> [1] - 20:10 <b>appeal</b> [1] - 27:17 <b>applicable</b> [2] - 12:6, 17:16 <b>applicant</b> [1] - 13:9 <b>Applicant</b> [2] - 3:5, 27:17 <b>application</b> [15] - 2:11, 4:4, 5:8, 6:6, 6:9, 7:18, 16:1, 16:8, 18:13, 18:14, 18:16, 21:23, 22:1, 23:20, 27:16 <b>Application</b> [2] - 4:1, 7:3 <b>applications</b> [2] - 7:9, 7:22 <b>applied</b> [2] - 2:9, 7:14 <b>Appraisal</b> [2] - 8:12, 10:17 <b>appreciate</b> [1] - 12:7 <b>approval</b> [1] - 13:12 <b>approve</b> [1] - 8:22 <b>approved</b> [5] - 6:21, 15:5, 18:12, 25:14, 26:21 <b>April</b> [3] - 4:3, 6:9, 7:24 <b>area</b> [7] - 7:14, 9:6, 10:6, 12:18, 13:4, 14:25 <b>areas</b> [23] - 10:4, 12:15, 12:16, 12:19,	12:22, 13:4, 13:5, 13:7, 13:8, 13:12, 13:14, 13:22, 13:23, 14:2, 14:5, 14:6, 14:7, 14:12, 14:14, 14:15, 14:16, 14:25, 15:1 <b>Areas</b> [2] - 13:21, 14:3 <b>argued</b> [3] - 4:15, 4:17, 5:1 <b>argument</b> [1] - 5:20 <b>aside</b> [1] - 17:12 <b>asserted</b> [3] - 10:2, 10:10, 10:14 <b>assertion</b> [1] - 17:2 <b>assertions</b> [1] - 12:4 <b>attorney</b> [1] - 27:11 <b>August</b> [1] - 2:4 <b>automatically</b> [1] - 22:2 <b>avoidance</b> [13] - 10:6, 10:8, 12:15, 13:7, 13:12, 13:14, 13:22, 14:2, 14:6, 14:15, 14:25, 15:1 <b>aware</b> [1] - 7:7 <b>aye</b> [11] - 6:15, 6:17, 6:20, 19:19, 19:22, 19:25, 25:9, 25:12, 26:13, 26:16, 26:19	<b>burden</b> [3] - 17:20, 17:25, 18:3 <b>Burleigh</b> [7] - 8:6, 11:16, 18:17, 20:17, 20:20, 21:2, 21:22 <b>business</b> [2] - 14:15, 14:18 <b>businesses</b> [1] - 14:21 <b>busy</b> [1] - 8:9
<b>2</b>	<b>7</b>	<b>9</b>	<b>C</b>	
<b>2</b>	<b>A</b>			
2 [1] - 22:21 <b>200</b> [2] - 7:14, 16:12 <b>2022</b> [1] - 7:8 <b>2023</b> [2] - 2:4, 6:9 <b>20th</b> [1] - 8:3 <b>21</b> [1] - 6:9 <b>21st</b> [1] - 4:3 <b>24</b> [1] - 15:18 <b>27th</b> [1] - 4:6 <b>28th</b> [1] - 7:24 <b>2nd</b> [2] - 8:4, 8:13	<b>ability</b> [1] - 9:20 <b>abnormal</b> [1] - 15:24 <b>acceptable</b> [4] - 13:20, 14:4, 15:6, 15:9 <b>accepting</b> [1] - 21:4 <b>access</b> [1] - 5:19 <b>accordance</b> [1] - 15:3 <b>acknowledge</b> [2] - 4:24, 20:19 <b>acquisition</b> [1] - 15:19 <b>actor</b> [1] - 5:16 <b>actors</b> [3] - 4:20, 4:23, 5:18 <b>add</b> [1] - 3:4 <b>additional</b> [6] - 8:3, 8:9, 11:11, 15:15, 17:1, 18:19 <b>address</b> [4] - 3:22, 9:13, 15:10, 16:21 <b>addressed</b> [4] - 9:15, 14:10, 14:12, 23:3 <b>addressing</b> [1] - 9:10 <b>adequately</b> [2] - 11:4, 16:21 <b>adherence</b> [1] - 17:16 <b>adjourned</b> [1] - 28:19 <b>Administrative</b> [2] - 10:24, 16:24 <b>adopt</b> [2] - 3:24, 6:25 <b>adopted</b> [1] - 20:2 <b>adverse</b> [9] - 10:13, 10:15, 11:2, 11:13, 13:2, 15:6, 17:7, 17:22, 18:1 <b>advised</b> [1] - 9:9 <b>affirmed</b> [1] - 4:21 <b>afforded</b> [1] - 10:22 <b>ag</b> [1] - 28:9 <b>agencies</b> [1] - 8:20 <b>agency</b> [1] - 5:5 <b>agree</b> [5] - 18:11, 18:25, 21:10, 24:10, 27:24 <b>agreements</b> [3] -	11:20, 17:13, 23:13 <b>agricultural</b> [1] - 16:16 <b>agriculture</b> [1] - 15:8 <b>ahead</b> [1] - 21:18 <b>alone</b> [1] - 13:11 <b>alternate</b> [3] - 2:6, 3:2, 16:20 <b>alternative</b> [2] - 13:11, 14:1 <b>altogether</b> [1] - 8:21 <b>amend</b> [3] - 21:13, 24:25, 25:1 <b>amended</b> [6] - 19:7, 21:15, 21:20, 21:25, 25:16, 26:10 <b>amendment</b> [8] - 2:24, 19:2, 19:6, 19:11, 19:17, 20:1, 20:9, 25:13 <b>amendments</b> [1] - 25:18 <b>Ames</b> [1] - 15:17 <b>analysis</b> [2] - 8:25, 16:20 <b>animal</b> [1] - 12:21 <b>answer</b> [2] - 16:22, 24:20 <b>answers</b> [2] - 18:9, 27:14 <b>apologize</b> [1] - 20:10 <b>appeal</b> [1] - 27:17 <b>applicable</b> [2] - 12:6, 17:16 <b>applicant</b> [1] - 13:9 <b>Applicant</b> [2] - 3:5, 27:17 <b>application</b> [15] - 2:11, 4:4, 5:8, 6:6, 6:9, 7:18, 16:1, 16:8, 18:13, 18:14, 18:16, 21:23, 22:1, 23:20, 27:16 <b>Application</b> [2] - 4:1, 7:3 <b>applications</b> [2] - 7:9, 7:22 <b>applied</b> [2] - 2:9, 7:14 <b>Appraisal</b> [2] - 8:12, 10:17 <b>appreciate</b> [1] - 12:7 <b>approval</b> [1] - 13:12 <b>approve</b> [1] - 8:22 <b>approved</b> [5] - 6:21, 15:5, 18:12, 25:14, 26:21 <b>April</b> [3] - 4:3, 6:9, 7:24 <b>area</b> [7] - 7:14, 9:6, 10:6, 12:18, 13:4, 14:25 <b>areas</b> [23] - 10:4, 12:15, 12:16, 12:19,	<b>cannot</b> [1] - 5:2 <b>capability</b> [1] - 15:23 <b>capture</b> [1] - 23:20 <b>Carbon</b> [6] - 3:25, 6:9, 7:1, 7:2, 7:8 <b>carbon</b> [3] - 4:10, 7:11, 23:20 <b>case</b> [15] - 2:7, 2:8, 2:13, 2:21, 3:2, 3:4, 3:7, 3:12, 3:13, 12:7, 26:25, 27:6, 27:12, 28:1, 28:5 <b>Case</b> [2] - 4:1, 7:3 <b>cases</b> [1] - 7:20 <b>categories</b> [1] - 12:15 <b>caught</b> [1] - 24:10 <b>caused</b> [1] - 11:10 <b>center</b> [2] - 15:17, 15:22 <b>Century</b> [8] - 5:12, 6:7, 10:4, 11:17, 11:22, 12:12, 17:11, 22:13 <b>certificate</b> [3] - 7:9, 9:12, 18:15 <b>Chair</b> [3] - 19:18, 25:5, 26:12 <b>chair</b> [1] - 6:14 <b>change</b> [1] - 25:23 <b>changes</b> [1] - 26:23 <b>Chapter</b> [3] - 22:15, 22:18, 23:4 <b>chooses</b> [2] - 27:13, 27:17 <b>CHRISTMANN</b> [26] - 2:1, 3:22, 4:3, 6:15, 6:22, 7:5, 19:12, 19:19, 20:3, 20:6, 20:13, 21:6, 21:16, 22:7, 22:12, 24:24, 25:2, 25:6, 25:17, 25:22, 26:1, 26:4, 26:7, 26:13, 26:22, 28:14 <b>Christmann</b> [9] - 2:5, 6:14, 19:18, 20:25, 23:18, 24:11, 25:5, 26:12, 27:25 <b>circumstances</b> [2] - 13:10, 27:9	
<b>3</b>				
3 [1] - 16:9 <b>300</b> [1] - 7:14 <b>300-foot</b> [1] - 16:7 <b>320</b> [1] - 7:11 <b>3rd</b> [1] - 14:6				
<b>4</b>				
4 [7] - 21:25, 22:4, 25:25, 26:2, 26:6 <b>42</b> [1] - 19:4 <b>44</b> [1] - 8:20 <b>49-22-16</b> [1] - 22:19 <b>49-22.1</b> [1] - 23:4 <b>49-22.1-13</b> [1] - 22:15 <b>4th</b> [1] - 2:4				
<b>5</b>				
5 [1] - 8:23 <b>50</b> [2] - 13:17, 13:25 <b>500</b> [4] - 10:5, 14:14, 14:18, 14:20 <b>500-foot</b> [1] - 16:17				
		<b>B</b>		
		<b>bad</b> [4] - 4:20, 4:23, 5:16, 5:18 <b>Bakke</b> [1] - 8:7 <b>Bakke's</b> [1] - 16:25 <b>based</b> [3] - 11:3, 11:11, 17:10 <b>basis</b> [2] - 10:7, 16:24 <b>beginning</b> [1] - 2:10 <b>beneath</b> [1] - 12:24 <b>benefits</b> [2] - 12:1, 12:9 <b>best</b> [1] - 27:18 <b>between</b> [1] - 24:10 <b>Bismarck</b> [5] - 7:24, 8:4, 8:14, 10:20, 16:20 <b>bit</b> [1] - 12:10 <b>bottom</b> [2] - 22:15, 22:18 <b>Boulder</b> [2] - 8:11, 10:17 <b>bring</b> [2] - 23:25, 24:1 <b>bringing</b> [1] - 20:20 <b>broad</b> [1] - 9:16 <b>brought</b> [1] - 20:25 <b>buffer</b> [1] - 12:25 <b>building</b> [2] - 23:8, 27:15 <b>bullet</b> [1] - 19:5		

# SCS Carbon Transport LLC, Case No. PU-22-391

August 4, 2023, Special Meeting

## ND PUBLIC SERVICE COMMISSION

<p><b>cited</b> [1] - 5:3  <b>citizens</b> [2] - 17:7, 17:23  <b>clarified</b> [1] - 20:15  <b>Class</b> [3] - 8:24, 9:5, 9:7  <b>classified</b> [1] - 12:14  <b>clause</b> [1] - 23:1  <b>clear</b> [5] - 18:24, 21:3, 21:7, 22:22, 23:17  <b>CO2</b> [8] - 3:25, 5:10, 7:2, 9:18, 9:25, 10:3, 27:7, 27:8  <b>Code</b> [10] - 5:13, 6:7, 10:4, 10:24, 11:17, 11:22, 12:12, 16:24, 17:11, 22:13  <b>collaboratively</b> [1] - 28:10  <b>comfortable</b> [2] - 19:1, 23:25  <b>coming</b> [1] - 12:7  <b>comment</b> [2] - 3:19, 15:12  <b>commenters</b> [4] - 10:2, 10:10, 10:14, 11:6  <b>comments</b> [5] - 3:17, 3:21, 8:19, 9:22, 27:22  <b>Commission's</b> [1] - 15:4  <b>commissioners</b> [1] - 16:14  <b>common</b> [2] - 7:15, 7:20  <b>commonly</b> [1] - 9:11  <b>communicate</b> [1] - 15:20  <b>community</b> [1] - 20:21  <b>Company</b> [2] - 15:10, 27:13  <b>compatibility</b> [2] - 7:10, 18:15  <b>compatible</b> [1] - 18:5  <b>complete</b> [3] - 2:11, 7:22, 17:3  <b>compliance</b> [1] - 9:23  <b>comprehensive</b> [1] - 27:15  <b>concepts</b> [1] - 2:16  <b>concerning</b> [1] - 7:10  <b>concerns</b> [4] - 9:11, 9:13, 9:17, 14:10  <b>concluded</b> [1] - 23:24  <b>concludes</b> [2] - 6:3, 6:5  <b>Conclusion</b> [1] - 21:25  <b>conclusion</b> [3] - 3:14, 20:16, 21:14  <b>conclusions</b> [6] - 6:2,</p>	<p>7:1, 17:9, 25:24, 26:1, 27:20  <b>concurrence</b> [2] - 9:11, 16:19  <b>conditions</b> [1] - 15:25  <b>conducted</b> [3] - 8:24, 9:2, 9:5  <b>confidentiality</b> [1] - 3:12  <b>confirmation</b> [1] - 16:17  <b>consideration</b> [2] - 10:1, 12:19  <b>considerations</b> [1] - 13:11  <b>considered</b> [3] - 9:22, 10:3, 13:8  <b>construct</b> [2] - 12:3, 14:20  <b>construction</b> [5] - 9:24, 12:5, 17:5, 17:21, 18:4  <b>continue</b> [1] - 28:8  <b>contractors</b> [1] - 12:3  <b>control</b> [3] - 15:17, 15:19, 15:22  <b>controversial</b> [1] - 6:23  <b>convenience</b> [1] - 8:1  <b>conversion</b> [4] - 22:16, 22:20, 22:23, 23:6  <b>correct</b> [4] - 5:2, 25:4, 25:19, 26:3  <b>correspondence</b> [1] - 8:19  <b>corridor</b> [14] - 7:9, 7:13, 7:16, 12:13, 13:16, 13:18, 13:24, 13:25, 14:8, 15:4, 16:7, 16:12, 18:15, 23:10  <b>cost</b> [1] - 3:4  <b>costs</b> [1] - 3:6  <b>counsel</b> [2] - 4:24, 28:2  <b>counties</b> [2] - 7:17, 16:3  <b>Counties</b> [2] - 11:17, 21:22  <b>county</b> [3] - 21:23, 22:2, 23:21  <b>County</b> [9] - 8:6, 13:16, 18:17, 20:17, 20:20, 21:2  <b>couple</b> [1] - 26:22  <b>courts</b> [2] - 4:21, 27:18  <b>criteria</b> [7] - 12:11, 12:12, 12:14, 12:16, 15:3, 15:4  <b>critical</b> [5] - 5:12, 5:24, 6:4, 9:3, 12:20</p>	<p><b>cross</b> [1] - 12:22  <b>crossed</b> [2] - 13:18, 16:3  <b>cuff</b> [1] - 27:14  <b>cultural</b> [3] - 8:24, 9:5, 9:14  <b>current</b> [1] - 10:20</p> <p style="text-align: center;"><b>D</b></p> <p><b>Dakota</b> [17] - 2:3, 5:12, 6:7, 7:17, 10:4, 10:24, 11:17, 12:12, 13:15, 14:3, 14:7, 16:19, 16:23, 17:8, 17:10, 17:24, 21:22  <b>damaging</b> [1] - 5:15  <b>data</b> [2] - 5:23, 15:19  <b>dated</b> [2] - 9:8, 14:6  <b>Dawson</b> [5] - 2:7, 6:19, 19:24, 25:11, 26:18  <b>DAWSON</b> [6] - 3:20, 6:20, 19:25, 24:9, 25:12, 26:19  <b>dealing</b> [1] - 23:4  <b>debilitating</b> [1] - 5:16  <b>decide</b> [4] - 3:11, 12:12, 24:16, 24:17  <b>decided</b> [1] - 2:18  <b>deciding</b> [1] - 24:17  <b>decision</b> [6] - 3:8, 3:13, 22:22, 22:25, 27:6, 27:18  <b>Decisionmaker</b> [4] - 6:19, 19:24, 25:11, 26:18  <b>decisionmaker</b> [2] - 2:6, 3:2  <b>decisionmakers</b> [1] - 2:15  <b>declare</b> [3] - 8:5, 18:17, 21:2  <b>deemed</b> [2] - 2:10, 7:22  <b>defined</b> [1] - 5:10  <b>definition</b> [1] - 5:11  <b>demonstrate</b> [2] - 14:1, 17:5  <b>demonstrated</b> [1] - 15:13  <b>demonstrating</b> [2] - 4:22, 14:10  <b>denial</b> [1] - 16:25  <b>denied</b> [7] - 18:14, 18:15, 18:16, 18:20, 18:21, 22:1, 23:23  <b>denying</b> [2] - 20:22, 20:24  <b>depart</b> [1] - 10:7  <b>designated</b> [4] - 12:21, 13:13, 13:21,</p>	<p>23:10  <b>designation</b> [2] - 12:14, 16:12  <b>desktop</b> [1] - 8:25  <b>determination</b> [1] - 4:21  <b>determine</b> [1] - 5:7  <b>determined</b> [2] - 4:18, 15:5  <b>development</b> [3] - 10:16, 10:19, 11:3  <b>Dickey</b> [1] - 13:16  <b>different</b> [1] - 23:15  <b>diligently</b> [1] - 20:21  <b>dioxide</b> [2] - 4:10, 7:11  <b>direct</b> [1] - 8:10  <b>direction</b> [1] - 26:24  <b>directional</b> [1] - 12:23  <b>DIRECTOR</b> [26] - 6:11, 6:16, 6:18, 6:21, 19:10, 19:13, 19:15, 19:20, 19:23, 20:1, 20:4, 20:8, 22:6, 22:9, 24:2, 24:7, 24:22, 25:1, 25:4, 25:7, 25:10, 25:13, 26:8, 26:14, 26:17, 26:20  <b>directors</b> [2] - 16:2, 16:4  <b>disclosure</b> [3] - 5:9, 5:14, 6:5  <b>discuss</b> [3] - 2:16, 12:10, 12:17  <b>discussion</b> [8] - 6:12, 20:5, 20:9, 22:8, 22:11, 24:3, 24:8, 26:9  <b>dispersion</b> [1] - 4:9  <b>disputed</b> [1] - 5:2  <b>distances</b> [2] - 9:19, 10:3  <b>document</b> [1] - 10:25  <b>documents</b> [1] - 10:23  <b>domain</b> [2] - 9:17, 9:23  <b>down</b> [1] - 15:23  <b>draft</b> [3] - 2:19, 2:23, 8:23  <b>drain</b> [3] - 9:19, 10:11, 10:12  <b>drilling</b> [1] - 12:23  <b>Due</b> [1] - 22:1  <b>due</b> [3] - 8:2, 9:21, 11:8  <b>during</b> [5] - 4:15, 9:14, 10:21, 15:12, 16:10</p> <p style="text-align: center;"><b>E</b></p> <p><b>economic</b> [1] - 13:11</p>	<p><b>educating</b> [1] - 28:5  <b>effect</b> [1] - 10:18  <b>effects</b> [5] - 10:13, 10:15, 11:3, 15:6, 17:22  <b>efficient</b> [1] - 18:6  <b>eight</b> [1] - 14:17  <b>either</b> [6] - 3:16, 16:21, 19:6, 21:23, 23:21, 27:22  <b>electric</b> [3] - 22:19, 23:3, 23:15  <b>electric's</b> [1] - 22:21  <b>emergency</b> [2] - 16:2, 16:3  <b>eminent</b> [2] - 9:17, 9:23  <b>Emmons</b> [7] - 8:5, 11:16, 18:17, 20:17, 20:19, 21:2, 21:22  <b>emphasize</b> [1] - 21:11  <b>encapsulate</b> [1] - 18:12  <b>encompass</b> [2] - 13:17, 13:24  <b>end</b> [3] - 2:21, 18:25, 23:1  <b>endangered</b> [2] - 9:3, 12:20  <b>ends</b> [1] - 23:24  <b>energy</b> [3] - 22:19, 23:6, 28:9  <b>engaged</b> [1] - 28:7  <b>ensure</b> [1] - 11:12  <b>entities</b> [1] - 5:20  <b>environment</b> [2] - 11:5, 17:23  <b>environmental</b> [3] - 9:1, 18:2, 18:5  <b>equals</b> [1] - 28:5  <b>equipment</b> [1] - 16:5  <b>especially</b> [1] - 12:8  <b>established</b> [1] - 12:11  <b>evaluation</b> [1] - 12:13  <b>event</b> [2] - 4:9, 15:24  <b>evidence</b> [2] - 13:1, 17:4  <b>examples</b> [1] - 4:22  <b>except</b> [1] - 11:19  <b>excluded</b> [1] - 12:19  <b>exclusion</b> [5] - 12:15, 12:18, 12:21, 13:4, 13:5  <b>EXECUTIVE</b> [26] - 6:11, 6:16, 6:18, 6:21, 19:10, 19:13, 19:15, 19:20, 19:23, 20:1, 20:4, 20:8, 22:6, 22:9, 24:2, 24:7, 24:22, 25:1, 25:4, 25:7, 25:10,</p>
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# SCS Carbon Transport LLC, Case No. PU-22-391

## August 4, 2023, Special Meeting ND PUBLIC SERVICE COMMISSION

<p>25:13, 26:8, 26:14, 26:17, 26:20  <b>exempt</b> [1] - 6:5  <b>exempted</b> [1] - 22:3  <b>existing</b> [2] - 10:18, 17:8  <b>exists</b> [1] - 12:25  <b>Express</b> [2] - 3:25, 7:2  <b>expressed</b> [1] - 15:11  <b>extensive</b> [2] - 9:16, 20:18</p>	<p><b>fourth</b> [2] - 19:5, 19:8  <b>Friday</b> [1] - 2:4  <b>front</b> [1] - 19:3  <b>full</b> [1] - 17:2  <b>future</b> [1] - 11:2</p>	<p>25:3, 25:8, 26:15  <b>hazardous</b> [2] - 5:11, 10:19  <b>health</b> [1] - 5:17  <b>hearing</b> [13] - 4:6, 4:7, 4:15, 5:7, 8:2, 8:4, 8:9, 8:13, 10:21, 16:11, 17:1, 18:20, 27:19  <b>hearings</b> [3] - 7:23, 18:10, 28:13  <b>held</b> [2] - 4:7, 8:14  <b>highlight</b> [2] - 7:7, 17:9  <b>highlights</b> [1] - 8:16  <b>hiring</b> [2] - 12:1, 12:9  <b>Historical</b> [1] - 9:7  <b>history</b> [1] - 6:1  <b>HOFFART</b> [19] - 3:18, 4:2, 6:17, 7:4, 19:14, 19:22, 20:10, 20:14, 21:8, 21:19, 23:18, 24:5, 25:9, 25:20, 25:24, 26:3, 26:5, 26:16, 27:24  <b>Hoffart</b> [6] - 2:6, 19:21, 24:14, 25:3, 25:8, 26:15  <b>hold</b> [2] - 11:9, 17:1  <b>hopeful</b> [1] - 18:25  <b>horizontal</b> [1] - 12:23  <b>hours</b> [1] - 15:18  <b>human</b> [1] - 18:1  <b>hypothetical</b> [1] - 4:23</p>	<p>5:6, 5:8, 5:15, 5:18, 5:19, 5:21, 5:23, 6:3, 6:7, 6:10, 8:21, 12:8, 14:9, 15:21  <b>infrastructure</b> [3] - 5:12, 5:25, 6:4  <b>inhabited</b> [1] - 10:5  <b>initiated</b> [1] - 8:18  <b>instability</b> [1] - 14:8  <b>instances</b> [2] - 13:24, 15:14  <b>insurance</b> [3] - 9:21, 11:7, 11:13  <b>intends</b> [1] - 12:3  <b>interest</b> [1] - 28:5  <b>International</b> [1] - 11:24  <b>interpretation</b> [1] - 24:11  <b>intervened</b> [1] - 11:25  <b>intervenor</b> [2] - 13:5, 15:1  <b>Intervenors</b> [3] - 4:24, 5:2, 10:14  <b>inventory</b> [1] - 9:6  <b>involved</b> [2] - 28:4, 28:12  <b>lowa</b> [1] - 15:17  <b>irreparable</b> [2] - 9:19, 10:11  <b>isolate</b> [1] - 15:24  <b>issuance</b> [1] - 9:12  <b>issue</b> [2] - 21:12, 22:1  <b>issued</b> [1] - 7:22  <b>issues</b> [3] - 3:11, 9:23, 16:15  <b>issuing</b> [1] - 16:12  <b>itself</b> [1] - 3:13</p>	<p><b>kind</b> [6] - 2:15, 7:13, 7:15, 18:8, 18:11, 23:24  <b>kinds</b> [1] - 24:18</p>
<p style="text-align: center;"><b>F</b></p>	<p style="text-align: center;"><b>G</b></p>	<p style="text-align: center;"><b>I</b></p>	<p style="text-align: center;"><b>J</b></p>	<p style="text-align: center;"><b>L</b></p>
<p><b>facilities</b> [4] - 22:17, 22:20, 23:5, 23:6  <b>facility</b> [4] - 13:9, 22:23, 22:24, 23:9  <b>Fact</b> [2] - 16:9, 21:15  <b>fact</b> [5] - 3:10, 7:1, 8:15, 17:10, 27:19  <b>Facts</b> [1] - 21:20  <b>facts</b> [2] - 3:14, 21:14  <b>failed</b> [3] - 17:20, 17:25, 18:3  <b>fall</b> [1] - 2:9  <b>familiar</b> [1] - 27:1  <b>feasible</b> [1] - 15:13  <b>February</b> [2] - 2:10, 7:21  <b>federal</b> [4] - 4:16, 5:3, 8:19  <b>fee</b> [1] - 3:6  <b>feet</b> [7] - 7:14, 10:5, 14:14, 14:18, 14:20, 16:12  <b>fellow</b> [1] - 2:5  <b>few</b> [1] - 24:21  <b>field</b> [1] - 15:20  <b>file</b> [1] - 3:6  <b>filed</b> [1] - 4:4, 4:5, 5:21, 7:9, 7:18, 8:5, 8:7, 8:10, 10:17, 21:23, 23:20  <b>filing</b> [3] - 3:6, 10:21, 14:22  <b>final</b> [1] - 3:14  <b>findings</b> [5] - 3:14, 6:25, 8:15, 17:10, 27:19  <b>first</b> [3] - 3:23, 18:23, 19:5  <b>follow</b> [2] - 2:14, 16:18  <b>follow-up</b> [1] - 16:18  <b>followed</b> [1] - 25:17  <b>follows</b> [1] - 21:14  <b>force</b> [1] - 12:1  <b>forth</b> [4] - 10:8, 12:7, 20:20, 21:1  <b>forward</b> [2] - 3:9, 24:1  <b>four</b> [4] - 7:23, 8:10, 12:15, 13:24</p>	<p><b>Game</b> [2] - 13:21, 14:3  <b>gas</b> [4] - 10:18, 22:16, 23:5, 23:9  <b>generally</b> [2] - 7:13, 26:24  <b>geographic</b> [2] - 12:18, 13:7  <b>geologic</b> [1] - 14:8  <b>Geological</b> [3] - 14:7, 14:11, 16:19  <b>geologically</b> [2] - 14:5, 14:12  <b>given</b> [1] - 4:10  <b>grab</b> [1] - 28:17  <b>granted</b> [3] - 5:9, 6:10, 16:10  <b>greater</b> [2] - 10:2, 13:25  <b>group</b> [1] - 6:23  <b>growing</b> [1] - 5:22  <b>guess</b> [2] - 2:18, 3:16  <b>Gwinner</b> [1] - 7:24</p>	<p style="text-align: center;"><b>I</b></p>	<p><b>John</b> [1] - 4:5  <b>joined</b> [1] - 2:5  <b>Jr</b> [1] - 4:5  <b>June</b> [7] - 4:6, 8:4, 8:5, 8:7, 8:9, 8:13, 16:25  <b>jurisdiction</b> [2] - 9:25, 12:6  <b>justify</b> [1] - 13:12</p>	<p><b>labor</b> [1] - 12:1  <b>Laborers</b> [1] - 11:24  <b>Lake</b> [1] - 13:15  <b>land</b> [5] - 11:18, 17:11, 22:23, 23:7, 23:11  <b>landowners</b> [2] - 11:14, 15:12  <b>language</b> [1] - 22:13  <b>last</b> [1] - 2:9  <b>Law</b> [3] - 21:25, 25:24, 26:1  <b>law</b> [14] - 3:14, 4:16, 6:2, 7:1, 12:11, 17:9, 20:16, 21:7, 21:14, 22:22, 23:17, 23:19, 24:11, 27:20  <b>laws</b> [3] - 4:16, 28:6  <b>least</b> [1] - 8:23  <b>leave</b> [1] - 27:11  <b>legislative</b> [1] - 5:25  <b>legislators</b> [1] - 23:15  <b>legislature</b> [1] - 23:3  <b>legitimate</b> [1] - 15:11  <b>length</b> [1] - 8:2  <b>letter</b> [3] - 8:11, 10:17, 14:6  <b>liability</b> [4] - 9:21, 11:7, 11:9, 11:13  <b>life</b> [1] - 12:20  <b>likely</b> [1] - 4:25  <b>limiting</b> [1] - 5:19  <b>limits</b> [1] - 10:24  <b>line</b> [3] - 11:10, 19:5, 19:8  <b>Linton</b> [1] - 7:25  <b>liquid</b> [3] - 22:16, 23:5, 23:9  <b>liquids</b> [1] - 10:19  <b>list</b> [2] - 16:4, 27:15  <b>listed</b> [1] - 8:22  <b>literature</b> [1] - 8:24  <b>LIUNA</b> [1] - 11:24  <b>LIUNA's</b> [1] - 12:4  <b>livestock</b> [1] - 15:9  <b>LLC</b> [3] - 3:25, 6:10, 7:2  <b>local</b> [8] - 8:20, 11:18, 12:1, 12:9, 17:11, 22:23, 23:7, 23:11  <b>local's</b> [1] - 22:25  <b>location</b> [4] - 17:5, 17:21, 18:4, 27:9  <b>locations</b> [1] - 5:24  <b>long-standing</b> [1] - 27:1</p>
<p style="text-align: center;"><b>H</b></p>	<p><b>habitat</b> [2] - 12:24, 13:1  <b>habitats</b> [1] - 9:3  <b>hand</b> [1] - 25:20  <b>handed</b> [1] - 22:12  <b>handling</b> [1] - 3:4  <b>hard</b> [1] - 24:10  <b>harm</b> [2] - 9:19, 10:11  <b>HAUGEN</b> [19] - 3:18, 4:2, 6:17, 7:4, 19:14, 19:22, 20:10, 20:14, 21:8, 21:19, 23:18, 24:5, 25:9, 25:20, 25:24, 26:3, 26:5, 26:16, 27:24  <b>Haugen</b> [7] - 2:6, 6:16, 19:21, 24:14, 25:3, 25:8, 26:15  <b>HAUGEN-HOFFART</b> [19] - 3:18, 4:2, 6:17, 7:4, 19:14, 19:22, 20:10, 20:14, 21:8, 21:19, 23:18, 24:5, 25:9, 25:20, 25:24, 26:3, 26:5, 26:16, 27:24  <b>Haugen-Hoffart</b> [6] - 2:6, 19:21, 24:14,</p>	<p><b>identified</b> [2] - 13:14, 14:17  <b>Ill</b> [2] - 9:5, 9:7  <b>impact</b> [7] - 5:16, 13:2, 13:19, 15:8, 15:16, 18:2  <b>impacts</b> [7] - 9:15, 9:20, 11:2, 11:13, 14:3, 15:11, 17:7  <b>importation</b> [1] - 27:7  <b>inappropriate</b> [1] - 17:19  <b>inaudible</b> [1] - 25:21  <b>inaudible</b> [1] - 24:4  <b>incidents</b> [1] - 16:6  <b>include</b> [1] - 15:19  <b>indicated</b> [1] - 13:23  <b>indicative</b> [1] - 27:6  <b>individual</b> [1] - 15:12  <b>informal</b> [1] - 2:14  <b>information</b> [29] - 3:13, 3:23, 3:24, 4:4, 4:8, 4:11, 4:14, 4:16, 4:17, 4:18, 4:19, 4:23, 4:25, 5:1, 5:4,</p>	<p style="text-align: center;"><b>K</b></p> <p><b>KAHL</b> [26] - 6:11, 6:16, 6:18, 6:21, 19:10, 19:13, 19:15, 19:20, 19:23, 20:1, 20:4, 20:8, 22:6, 22:9, 24:2, 24:7, 24:22, 25:1, 25:4, 25:7, 25:10, 25:13, 26:8, 26:14, 26:17, 26:20</p>	

# SCS Carbon Transport LLC, Case No. PU-22-391

August 4, 2023, Special Meeting

## ND PUBLIC SERVICE COMMISSION

<p><b>look</b> [2] - 2:19, 22:21 <b>looking</b> [2] - 18:9, 23:4</p>	<p>25:21, 26:9, 26:20 <b>motions</b> [2] - 2:25, 18:21 <b>move</b> [10] - 3:9, 3:23, 6:13, 6:23, 6:25, 19:8, 21:13, 24:22, 25:15, 26:11 <b>moving</b> [2] - 13:7, 15:3 <b>must</b> [2] - 10:5, 12:18</p>	<p>28:15 <b>one</b> [9] - 6:22, 7:15, 8:18, 14:17, 14:19, 22:14, 22:17, 24:20, 28:3 <b>open</b> [5] - 8:8, 16:25, 18:19, 27:2, 27:23 <b>opening</b> [3] - 3:17, 3:19, 3:20 <b>operating</b> [1] - 15:25 <b>operation</b> [3] - 17:5, 17:21, 18:4 <b>operations</b> [5] - 5:24, 9:24, 15:17, 15:22 <b>opinion</b> [1] - 21:6 <b>opinions</b> [1] - 27:7 <b>opportunity</b> [2] - 2:23, 10:22 <b>order</b> [20] - 2:3, 2:16, 2:19, 3:15, 3:24, 6:8, 7:1, 8:23, 16:5, 18:13, 19:6, 20:12, 20:25, 21:1, 21:14, 25:15, 25:23, 26:6, 26:9 <b>ordering</b> [2] - 22:4, 26:6 <b>orders</b> [2] - 6:9, 27:20 <b>ordinance</b> [6] - 20:17, 21:3, 21:21, 21:24, 23:2, 23:22 <b>ordinances</b> [10] - 8:6, 11:16, 11:19, 11:20, 11:21, 17:13, 17:14, 18:17, 22:2, 23:8 <b>original</b> [1] - 20:5 <b>ourselves</b> [1] - 28:6 <b>outcome</b> [1] - 2:17 <b>outside</b> [2] - 9:25, 28:15 <b>outstanding</b> [2] - 15:11, 18:20 <b>overruling</b> [1] - 21:5 <b>owner</b> [2] - 10:6, 14:16 <b>owners</b> [1] - 14:23</p>	<p>5:5 <b>Pelham</b> [3] - 27:12, 28:2, 28:17 <b>people</b> [3] - 11:4, 23:14, 28:7 <b>per</b> [1] - 15:18 <b>percent</b> [2] - 13:17, 13:25 <b>period</b> [1] - 23:11 <b>permanent</b> [2] - 9:18, 9:24 <b>permit</b> [3] - 7:10, 9:13, 18:16 <b>pertaining</b> [1] - 23:19 <b>petition</b> [3] - 8:8, 16:25, 18:18 <b>PHMSA</b> [4] - 4:12, 4:18, 5:10, 9:23 <b>phonetic</b> [1] - 24:6 <b>Pipeline</b> [2] - 4:1, 7:2 <b>pipeline</b> [9] - 4:10, 5:11, 5:16, 7:11, 7:16, 15:24, 20:19, 23:9, 27:8 <b>pipelines</b> [4] - 10:3, 10:19, 23:5, 23:16 <b>pipng</b> [2] - 12:23, 13:1 <b>place</b> [3] - 14:15, 24:10, 28:9 <b>plan</b> [1] - 6:4 <b>planning</b> [1] - 2:13 <b>plans</b> [3] - 11:19, 12:5, 17:13 <b>plant</b> [2] - 12:21, 22:24 <b>plants</b> [1] - 23:6 <b>plausibility</b> [1] - 11:1 <b>plover</b> [1] - 12:24 <b>plover's</b> [1] - 13:1 <b>plume</b> [2] - 5:14, 19:9 <b>point</b> [3] - 15:15, 20:18, 23:12 <b>policy</b> [2] - 9:17, 12:16 <b>portion</b> [1] - 9:6 <b>potential</b> [2] - 14:7, 16:5 <b>power</b> [1] - 22:24 <b>practice</b> [1] - 7:20 <b>preempt</b> [4] - 11:16, 21:21, 22:23, 23:7 <b>preempted</b> [2] - 8:7, 18:18 <b>preempts</b> [3] - 11:18, 17:11, 23:10 <b>prefiled</b> [1] - 8:10 <b>preliminary</b> [1] - 7:5 <b>prepare</b> [2] - 2:16, 2:24 <b>presented</b> [4] - 10:7, 13:5, 15:1, 19:7 <b>Preservation</b> [1] - 9:8</p>	<p><b>preservation</b> [1] - 18:5 <b>press</b> [2] - 27:3, 27:23 <b>prevent</b> [1] - 4:20 <b>prevention</b> [1] - 5:18 <b>previously</b> [2] - 4:18, 5:20 <b>procedural</b> [2] - 18:20, 24:13 <b>procedures</b> [4] - 7:19, 17:16, 17:18, 18:13 <b>proceeding</b> [3] - 11:25, 17:1, 17:3 <b>proceedings</b> [3] - 8:8, 9:14, 18:19 <b>process</b> [2] - 2:12, 12:14 <b>produce</b> [3] - 10:13, 17:6, 17:22 <b>production</b> [1] - 13:23 <b>professional</b> [2] - 28:8, 28:12 <b>project</b> [20] - 8:20, 9:21, 10:10, 10:15, 11:6, 11:9, 11:12, 12:3, 12:6, 12:22, 14:8, 14:18, 15:18, 16:3, 16:16, 17:6, 17:22, 18:1, 18:5, 27:9 <b>Project</b> [2] - 4:1, 7:3 <b>project's</b> [1] - 15:8 <b>projects</b> [4] - 5:5, 10:17, 12:2, 23:3 <b>proof</b> [3] - 17:20, 17:25, 18:3 <b>proper</b> [1] - 10:12 <b>properly</b> [3] - 9:15, 14:11, 21:9 <b>properties</b> [2] - 10:20, 16:17 <b>property</b> [3] - 9:20, 10:16, 11:2 <b>proposals</b> [1] - 2:24 <b>propose</b> [1] - 19:2 <b>proposed</b> [2] - 13:16, 13:24 <b>proposing</b> [1] - 23:23 <b>protect</b> [3] - 4:12, 4:14, 5:8 <b>protected</b> [3] - 4:17, 4:19, 5:2 <b>protection</b> [13] - 3:12, 3:23, 3:24, 4:4, 4:8, 5:1, 5:3, 5:6, 5:21, 5:23, 6:7, 6:10, 12:25 <b>provide</b> [5] - 5:14, 10:25, 12:8, 15:21, 16:4 <b>provided</b> [9] - 4:22, 5:4, 5:5, 5:6, 10:7, 11:6, 14:19, 17:2, 17:4</p>
<p><b>M</b></p>	<p><b>N</b></p>	<p><b>O</b></p>	<p><b>P</b></p>	
<p><b>main</b> [1] - 3:11 <b>maintenance</b> [2] - 17:6, 17:21 <b>Management</b> [2] - 13:21, 14:3 <b>management</b> [2] - 16:2, 16:4 <b>March</b> [6] - 7:23, 7:24, 8:2, 8:3, 9:8, 14:6 <b>market</b> [1] - 8:11 <b>material</b> [1] - 5:11 <b>materials</b> [1] - 4:12 <b>matter</b> [1] - 24:13 <b>mean</b> [1] - 23:14 <b>means</b> [1] - 28:7 <b>measures</b> [1] - 15:15 <b>meet</b> [4] - 9:9, 17:20, 17:25, 18:3 <b>meeting</b> [3] - 2:2, 28:15, 28:19 <b>meetings</b> [2] - 16:1, 27:3 <b>meets</b> [1] - 5:11 <b>mention</b> [1] - 27:16 <b>mentioned</b> [1] - 16:23 <b>microphone</b> [1] - 28:18 <b>Midwest</b> [2] - 3:25, 7:2 <b>miles</b> [1] - 7:11 <b>Mine</b> [1] - 24:5 <b>minimal</b> [3] - 10:13, 11:13, 17:22 <b>minimize</b> [2] - 15:16, 18:1 <b>minimized</b> [1] - 11:4 <b>minimum</b> [5] - 13:20, 14:4, 15:7, 15:9, 17:6 <b>Missouri</b> [2] - 12:22, 12:24 <b>modeling</b> [4] - 4:9, 4:19, 5:14, 19:9 <b>monitored</b> [1] - 15:18 <b>moot</b> [10] - 11:22, 17:15, 18:18, 20:23, 21:3, 21:6, 22:3, 24:12, 24:13, 24:16 <b>mootness</b> [1] - 24:18 <b>morning</b> [1] - 2:1 <b>most</b> [1] - 27:11 <b>motion</b> [21] - 6:11, 6:21, 8:5, 18:16, 19:10, 19:16, 20:5, 21:2, 22:5, 22:10, 24:1, 24:15, 24:17, 24:24, 25:1, 25:15,</p>	<p><b>narrower</b> [1] - 16:12 <b>National</b> [2] - 13:13, 13:15 <b>natural</b> [1] - 10:18 <b>nature</b> [1] - 4:11 <b>nay</b> [1] - 25:6 <b>near</b> [1] - 18:25 <b>necessitates</b> [1] - 5:19 <b>need</b> [1] - 19:12 <b>needed</b> [1] - 11:12 <b>needs</b> [1] - 16:5 <b>new</b> [1] - 27:15 <b>next</b> [2] - 6:23, 23:12 <b>non</b> [1] - 6:23 <b>non-controversial</b> [1] - 6:23 <b>none</b> [2] - 6:13, 26:11 <b>normally</b> [1] - 16:10 <b>North</b> [16] - 2:2, 5:12, 6:6, 7:17, 10:4, 10:23, 11:17, 12:12, 14:3, 14:6, 16:19, 16:23, 17:8, 17:10, 17:24, 21:22 <b>note</b> [1] - 8:17 <b>noted</b> [2] - 14:7, 16:1 <b>notice</b> [3] - 7:22, 18:9, 22:14 <b>noticed</b> [1] - 18:8 <b>number</b> [5] - 11:6, 16:15, 16:17, 22:21, 25:23</p>	<p><b>object</b> [1] - 16:11 <b>objection</b> [1] - 4:5 <b>observed</b> [1] - 15:25 <b>obtain</b> [1] - 9:21 <b>obtained</b> [1] - 16:18 <b>obtaining</b> [1] - 14:21 <b>obvious</b> [3] - 2:18, 2:21, 3:9 <b>occurred</b> [1] - 16:2 <b>October</b> [2] - 7:8, 7:18 <b>Office</b> [1] - 9:8 <b>offices</b> [1] - 3:3 <b>official</b> [2] - 27:19,</p>	<p><b>page</b> [10] - 3:10, 8:22, 16:9, 19:4, 20:11, 20:14, 21:17, 22:14, 22:18, 26:24 <b>pages</b> [1] - 8:16 <b>Paragraph</b> [5] - 21:15, 21:20, 21:25, 22:4, 26:6 <b>part</b> [1] - 27:10 <b>parties</b> [1] - 10:21 <b>party</b> [1] - 11:10 <b>past</b> [2] - 5:4, 5:5 <b>past-sited</b> [2] - 5:4,</p>	

# SCS Carbon Transport LLC, Case No. PU-22-391

## August 4, 2023, Special Meeting ND PUBLIC SERVICE COMMISSION

<p><b>PSC</b> [3] - 5:19, 16:12, 28:6  <b>PU-22-391</b> [2] - 4:1, 7:3  <b>Public</b> [2] - 2:3, 4:13  <b>public</b> [18] - 4:13, 5:9, 5:17, 6:5, 7:6, 7:12, 7:23, 8:9, 8:13, 9:22, 13:6, 15:2, 15:12, 17:1, 18:10, 18:20, 20:18, 21:12  <b>public's</b> [1] - 8:1  <b>publicly</b> [1] - 18:8  <b>pump</b> [1] - 15:23  <b>purchase</b> [1] - 11:7  <b>purpose</b> [3] - 5:7, 22:8, 24:12  <b>pursuant</b> [1] - 12:12</p>	<p><b>Refuge</b> [1] - 13:15  <b>refuge</b> [2] - 13:17, 13:19  <b>Refuges</b> [1] - 13:13  <b>regarding</b> [5] - 8:20, 9:17, 12:8, 16:16, 27:7  <b>regulation</b> [1] - 23:2  <b>regulations</b> [6] - 11:18, 11:19, 17:12, 23:8, 23:11  <b>reject</b> [1] - 2:25  <b>related</b> [5] - 4:9, 5:24, 11:19, 11:20, 17:13  <b>relates</b> [1] - 5:3  <b>relating</b> [1] - 12:1  <b>relation</b> [1] - 12:5  <b>release</b> [3] - 4:10, 4:13, 11:8  <b>remaining</b> [1] - 14:21  <b>remotely</b> [1] - 15:23  <b>removal</b> [2] - 22:4, 26:6  <b>removed</b> [2] - 19:9, 20:7  <b>repair</b> [1] - 10:12  <b>repetitive</b> [1] - 18:7  <b>replacement</b> [1] - 10:13  <b>report</b> [3] - 9:7, 9:9, 9:10  <b>request</b> [3] - 4:6, 4:12, 10:23  <b>requested</b> [5] - 11:15, 16:7, 16:14, 17:19, 21:20  <b>requesting</b> [2] - 4:13, 5:21  <b>requests</b> [2] - 16:15, 16:22  <b>required</b> [4] - 9:11, 10:23, 16:18, 16:23  <b>requirements</b> [6] - 6:6, 8:18, 10:8, 11:12, 17:17, 17:18  <b>reroute</b> [1] - 15:13  <b>rerouting</b> [1] - 16:16  <b>research</b> [1] - 8:11  <b>residence</b> [2] - 10:5, 14:14  <b>residences</b> [2] - 14:19, 14:21  <b>residential</b> [3] - 10:16, 10:20, 14:17  <b>resource</b> [2] - 9:5, 9:14  <b>resources</b> [2] - 9:1, 18:6  <b>respond</b> [1] - 16:5  <b>response</b> [2] - 9:8, 16:14  <b>responses</b> [1] - 18:8</p>	<p><b>restrictive</b> [3] - 11:22, 17:15, 23:2  <b>review</b> [2] - 2:23, 8:25  <b>revised</b> [1] - 9:10  <b>risk</b> [2] - 4:22, 11:8  <b>River</b> [2] - 12:22, 12:24  <b>road</b> [3] - 11:20, 17:13, 23:12  <b>rock</b> [1] - 24:10  <b>roll</b> [4] - 6:13, 19:11, 24:22, 26:11  <b>route</b> [3] - 7:10, 7:15, 9:13, 12:13, 12:19, 13:19, 14:2, 15:5, 16:21, 18:16, 20:19, 20:22, 23:23  <b>routing</b> [1] - 13:8  <b>rule</b> [1] - 23:1  <b>rules</b> [1] - 23:8  <b>rupture</b> [2] - 11:9, 11:10  <b>rural</b> [1] - 10:5</p>	<p><b>section</b> [2] - 23:12, 25:23  <b>Section</b> [1] - 25:18  <b>security</b> [2] - 5:17, 6:4  <b>see</b> [5] - 2:19, 3:9, 7:25, 20:24, 28:5  <b>seeking</b> [1] - 8:19  <b>seeks</b> [1] - 4:8  <b>segments</b> [1] - 15:24  <b>selection</b> [3] - 12:16, 15:3, 15:4  <b>sensing</b> [2] - 6:13, 26:11  <b>sensitive</b> [2] - 4:11, 9:1  <b>sent</b> [1] - 2:22  <b>separate</b> [1] - 7:23  <b>sequestration</b> [3] - 9:18, 9:24, 27:7  <b>Service</b> [2] - 2:3, 4:13  <b>session</b> [1] - 2:13  <b>sessions</b> [1] - 3:1  <b>set</b> [1] - 10:8  <b>setback</b> [3] - 9:18, 10:2, 16:18  <b>several</b> [1] - 10:10  <b>shall</b> [1] - 15:5  <b>sheets</b> [1] - 22:13  <b>Sheri</b> [1] - 2:5  <b>show</b> [3] - 17:20, 17:25, 18:4  <b>shows</b> [2] - 13:9, 22:18  <b>SHPO</b> [3] - 9:9, 9:11, 16:19  <b>SHPO's</b> [1] - 9:13  <b>shrubs</b> [1] - 9:4  <b>shut</b> [1] - 15:23  <b>signed</b> [1] - 14:22  <b>significant</b> [2] - 10:15, 15:6  <b>similar</b> [3] - 4:18, 5:6, 5:21  <b>site</b> [2] - 9:12, 12:13  <b>sited</b> [2] - 5:4, 5:5  <b>sites</b> [1] - 15:20  <b>Siting</b> [2] - 4:1, 7:3  <b>siting</b> [1] - 12:10  <b>six</b> [1] - 13:23  <b>sorry</b> [2] - 19:13, 20:15  <b>sought</b> [1] - 8:21  <b>sounded</b> [1] - 18:7  <b>south</b> [1] - 16:20  <b>special</b> [1] - 2:2  <b>species</b> [2] - 9:3, 12:21  <b>specific</b> [1] - 16:16  <b>specifies</b> [1] - 10:4  <b>spent</b> [1] - 18:23  <b>spill</b> [1] - 4:19  <b>spread</b> [1] - 7:25</p>	<p><b>staff</b> [5] - 2:15, 2:19, 2:22, 13:6, 15:2  <b>stages</b> [1] - 12:20  <b>stand</b> [1] - 27:20  <b>standards</b> [1] - 9:9  <b>standing</b> [1] - 27:1  <b>start</b> [1] - 27:13  <b>state</b> [6] - 4:15, 5:17, 8:19, 10:8, 11:5, 28:10  <b>State's</b> [1] - 9:7  <b>statement</b> [1] - 7:6  <b>states</b> [1] - 20:16  <b>stations</b> [1] - 15:23  <b>status</b> [1] - 16:20  <b>statute</b> [1] - 10:9  <b>steps</b> [1] - 15:10  <b>stick</b> [1] - 28:15  <b>still</b> [1] - 24:19  <b>storage</b> [2] - 9:18, 9:25  <b>stretched</b> [1] - 11:1  <b>strike</b> [1] - 11:11  <b>structures</b> [2] - 14:17, 14:23  <b>studies</b> [5] - 13:3, 13:14, 13:22, 14:16, 14:24  <b>stuff</b> [1] - 2:16  <b>subject</b> [1] - 4:25  <b>submitted</b> [4] - 9:7, 11:25, 14:9, 14:20  <b>substitute</b> [4] - 6:18, 19:23, 25:10, 26:17  <b>sufficient</b> [2] - 10:7, 17:4  <b>suitability</b> [1] - 12:13  <b>summarizing</b> [1] - 10:18  <b>supersede</b> [6] - 11:15, 21:21, 22:22, 22:25, 23:7, 23:13  <b>superseded</b> [3] - 8:6, 18:18, 22:3  <b>supersedes</b> [4] - 11:17, 11:23, 17:11, 23:10  <b>superseding</b> [1] - 21:4  <b>supervisory</b> [1] - 15:19  <b>Survey</b> [3] - 14:7, 14:11, 16:19  <b>survey</b> [3] - 9:6, 13:4, 14:25  <b>surveys</b> [6] - 9:2, 13:3, 13:14, 13:22, 14:17, 14:24  <b>system</b> [3] - 6:4, 10:12, 15:20  <b>system's</b> [1] - 15:21  <b>systems</b> [2] - 9:20, 10:12</p>
<p style="text-align: center;"><b>Q</b></p> <p><b>questions</b> [6] - 16:22, 27:3, 27:11, 28:1, 28:16  <b>quite</b> [1] - 18:24  <b>quorum</b> [1] - 2:7</p>	<p style="text-align: center;"><b>S</b></p>	<p style="text-align: center;"><b>S</b></p>	<p style="text-align: center;"><b>S</b></p>	<p style="text-align: center;"><b>S</b></p>
<p style="text-align: center;"><b>R</b></p> <p><b>raised</b> [1] - 14:10  <b>Randall</b> [1] - 8:7  <b>Randy</b> [1] - 2:5  <b>re</b> [3] - 8:8, 16:25, 18:19  <b>re-open</b> [3] - 8:8, 16:25, 18:19  <b>read</b> [2] - 6:2, 6:8  <b>ready</b> [1] - 24:23  <b>real</b> [1] - 15:21  <b>real-time</b> [1] - 15:21  <b>realized</b> [1] - 19:1  <b>really</b> [3] - 3:11, 7:15, 12:7  <b>reapply</b> [1] - 27:13  <b>reason</b> [2] - 3:7, 27:12  <b>reasonable</b> [3] - 12:25, 13:10, 14:1  <b>receipt</b> [1] - 5:18  <b>received</b> [2] - 9:10, 9:16  <b>recommended</b> [1] - 16:24  <b>record</b> [7] - 11:3, 12:2, 13:3, 14:24, 17:3, 17:8, 25:21  <b>records</b> [1] - 27:19  <b>refer</b> [1] - 28:1  <b>reference</b> [2] - 16:8, 20:11  <b>reflected</b> [1] - 5:25  <b>refrigerated</b> [1] - 5:10</p>	<p><b>safety</b> [7] - 5:17, 9:17, 9:23, 12:2, 20:18, 20:21, 21:12  <b>sale</b> [1] - 10:20  <b>satisfies</b> [1] - 6:6  <b>schedule</b> [2] - 8:8, 18:19  <b>scheduled</b> [2] - 8:3, 8:14  <b>schedules</b> [4] - 7:19, 17:17, 17:19, 18:14  <b>scheduling</b> [2] - 2:25, 7:23  <b>school</b> [1] - 14:14  <b>SCS</b> [39] - 3:25, 4:3, 4:8, 4:11, 4:15, 4:20, 4:21, 5:11, 6:9, 7:1, 7:8, 7:18, 8:5, 8:10, 8:18, 8:24, 9:13, 10:17, 11:8, 11:15, 12:3, 13:25, 14:8, 14:11, 14:18, 14:19, 15:16, 16:1, 16:7, 16:11, 16:14, 16:21, 17:2, 17:4, 17:20, 17:25, 18:3, 21:20, 21:22  <b>SCS's</b> [9] - 6:6, 12:5, 13:3, 13:14, 13:22, 14:16, 14:24, 16:24, 18:13  <b>second</b> [10] - 4:2, 6:12, 7:4, 8:13, 19:12, 19:14, 19:16, 22:6, 22:7, 22:10  <b>seconds</b> [1] - 24:21</p>	<p><b>sections</b> [2] - 23:12, 25:23  <b>Section</b> [1] - 25:18  <b>security</b> [2] - 5:17, 6:4  <b>see</b> [5] - 2:19, 3:9, 7:25, 20:24, 28:5  <b>seeking</b> [1] - 8:19  <b>seeks</b> [1] - 4:8  <b>segments</b> [1] - 15:24  <b>selection</b> [3] - 12:16, 15:3, 15:4  <b>sensing</b> [2] - 6:13, 26:11  <b>sensitive</b> [2] - 4:11, 9:1  <b>sent</b> [1] - 2:22  <b>separate</b> [1] - 7:23  <b>sequestration</b> [3] - 9:18, 9:24, 27:7  <b>Service</b> [2] - 2:3, 4:13  <b>session</b> [1] - 2:13  <b>sessions</b> [1] - 3:1  <b>set</b> [1] - 10:8  <b>setback</b> [3] - 9:18, 10:2, 16:18  <b>several</b> [1] - 10:10  <b>shall</b> [1] - 15:5  <b>sheets</b> [1] - 22:13  <b>Sheri</b> [1] - 2:5  <b>show</b> [3] - 17:20, 17:25, 18:4  <b>shows</b> [2] - 13:9, 22:18  <b>SHPO</b> [3] - 9:9, 9:11, 16:19  <b>SHPO's</b> [1] - 9:13  <b>shrubs</b> [1] - 9:4  <b>shut</b> [1] - 15:23  <b>signed</b> [1] - 14:22  <b>significant</b> [2] - 10:15, 15:6  <b>similar</b> [3] - 4:18, 5:6, 5:21  <b>site</b> [2] - 9:12, 12:13  <b>sited</b> [2] - 5:4, 5:5  <b>sites</b> [1] - 15:20  <b>Siting</b> [2] - 4:1, 7:3  <b>siting</b> [1] - 12:10  <b>six</b> [1] - 13:23  <b>sorry</b> [2] - 19:13, 20:15  <b>sought</b> [1] - 8:21  <b>sounded</b> [1] - 18:7  <b>south</b> [1] - 16:20  <b>special</b> [1] - 2:2  <b>species</b> [2] - 9:3, 12:21  <b>specific</b> [1] - 16:16  <b>specifies</b> [1] - 10:4  <b>spent</b> [1] - 18:23  <b>spill</b> [1] - 4:19  <b>spread</b> [1] - 7:25</p>	<p><b>staff</b> [5] - 2:15, 2:19, 2:22, 13:6, 15:2  <b>stages</b> [1] - 12:20  <b>stand</b> [1] - 27:20  <b>standards</b> [1] - 9:9  <b>standing</b> [1] - 27:1  <b>start</b> [1] - 27:13  <b>state</b> [6] - 4:15, 5:17, 8:19, 10:8, 11:5, 28:10  <b>State's</b> [1] - 9:7  <b>statement</b> [1] - 7:6  <b>states</b> [1] - 20:16  <b>stations</b> [1] - 15:23  <b>status</b> [1] - 16:20  <b>statute</b> [1] - 10:9  <b>steps</b> [1] - 15:10  <b>stick</b> [1] - 28:15  <b>still</b> [1] - 24:19  <b>storage</b> [2] - 9:18, 9:25  <b>stretched</b> [1] - 11:1  <b>strike</b> [1] - 11:11  <b>structures</b> [2] - 14:17, 14:23  <b>studies</b> [5] - 13:3, 13:14, 13:22, 14:16, 14:24  <b>stuff</b> [1] - 2:16  <b>subject</b> [1] - 4:25  <b>submitted</b> [4] - 9:7, 11:25, 14:9, 14:20  <b>substitute</b> [4] - 6:18, 19:23, 25:10, 26:17  <b>sufficient</b> [2] - 10:7, 17:4  <b>suitability</b> [1] - 12:13  <b>summarizing</b> [1] - 10:18  <b>supersede</b> [6] - 11:15, 21:21, 22:22, 22:25, 23:7, 23:13  <b>superseded</b> [3] - 8:6, 18:18, 22:3  <b>supersedes</b> [4] - 11:17, 11:23, 17:11, 23:10  <b>superseding</b> [1] - 21:4  <b>supervisory</b> [1] - 15:19  <b>Survey</b> [3] - 14:7, 14:11, 16:19  <b>survey</b> [3] - 9:6, 13:4, 14:25  <b>surveys</b> [6] - 9:2, 13:3, 13:14, 13:22, 14:17, 14:24  <b>system</b> [3] - 6:4, 10:12, 15:20  <b>system's</b> [1] - 15:21  <b>systems</b> [2] - 9:20, 10:12</p>	

# SCS Carbon Transport LLC, Case No. PU-22-391

## August 4, 2023, Special Meeting ND PUBLIC SERVICE COMMISSION

<b>T</b>	<p>5:22  <b>unreasonably</b> [3] - 11:22, 17:15, 23:2  <b>unstable</b> [2] - 14:5, 14:13  <b>unsuitable</b> [1] - 14:12  <b>up</b> [7] - 16:18, 20:22, 20:23, 21:10, 24:20, 27:2, 27:23</p>	<b>Y</b>
<p><b>ten</b> [1] - 7:17  <b>tender</b> [1] - 16:22  <b>tendered</b> [1] - 10:21  <b>terms</b> [1] - 7:12  <b>testified</b> [3] - 11:8, 15:16, 16:11  <b>testimony</b> [4] - 8:10, 10:6, 11:11, 11:25  <b>thankful</b> [1] - 28:4  <b>themselves</b> [1] - 27:21  <b>therefore</b> [5] - 5:22, 11:21, 14:2, 17:14, 23:23  <b>thinking</b> [1] - 24:20  <b>third</b> [1] - 11:10  <b>third-party</b> [1] - 11:10  <b>threatened</b> [2] - 9:2, 12:20  <b>thrived</b> [1] - 27:4  <b>tile</b> [3] - 9:19, 10:12  <b>Tim</b> [1] - 2:7  <b>to-do</b> [1] - 27:15  <b>today</b> [1] - 28:8  <b>together</b> [2] - 3:1, 28:10  <b>top</b> [1] - 8:22  <b>topic</b> [2] - 4:6, 6:24  <b>tougher</b> [1] - 3:2  <b>tradition</b> [1] - 27:2  <b>transmission</b> [6] - 12:2, 13:9, 22:16, 22:20, 22:24, 23:9  <b>transparent</b> [1] - 27:4  <b>Transport</b> [4] - 3:25, 6:10, 7:2, 7:8  <b>trees</b> [1] - 9:4  <b>turn</b> [1] - 18:22  <b>turns</b> [1] - 26:23  <b>Tuttle</b> [1] - 24:6  <b>two</b> [4] - 3:11, 20:6, 22:13, 24:18</p>	<b>V</b>	<b>Z</b>
<b>U</b>	<p style="text-align: center;"><b>V</b></p> <p><b>validity</b> [1] - 24:19  <b>value</b> [1] - 10:16  <b>values</b> [2] - 9:20, 11:2  <b>vandalizing</b> [1] - 5:15  <b>variance</b> [2] - 21:24, 23:21  <b>vetted</b> [3] - 21:9, 21:12, 23:22  <b>via</b> [1] - 27:8  <b>vigilance</b> [1] - 5:23  <b>vote</b> [5] - 2:16, 6:13, 19:11, 24:23, 26:11</p> <p style="text-align: center;"><b>W</b></p> <p><b>Wahpeton</b> [1] - 7:24  <b>waive</b> [1] - 17:18  <b>waived</b> [3] - 10:6, 14:16, 17:17  <b>waiver</b> [4] - 14:19, 18:13, 21:24, 23:21  <b>waivers</b> [3] - 7:19, 14:22, 16:18  <b>wants</b> [1] - 18:23  <b>Warford</b> [1] - 4:5  <b>waterbodies</b> [2] - 8:25, 9:4  <b>waterfowl</b> [1] - 13:23  <b>week</b> [2] - 2:8, 2:12  <b>weight</b> [1] - 10:24  <b>welfare</b> [3] - 11:4, 17:7, 17:23  <b>wetlands</b> [2] - 8:25, 9:3  <b>wider</b> [1] - 16:9  <b>width</b> [4] - 13:18, 13:25, 16:7, 16:13  <b>Wildlife</b> [2] - 13:13, 13:15  <b>willing</b> [1] - 10:25  <b>witness</b> [2] - 10:23, 16:22  <b>witnesses</b> [2] - 8:11, 11:1  <b>words</b> [2] - 19:8, 20:6  <b>written</b> [1] - 23:17</p>	<p><b>year</b> [1] - 7:21</p> <p><b>Zach</b> [2] - 27:12, 28:2  <b>zone</b> [1] - 12:25  <b>zoning</b> [4] - 11:18, 17:12, 23:7, 23:11</p>
<p><b>ultimate</b> [1] - 3:8  <b>ultimately</b> [2] - 2:22, 3:5  <b>unable</b> [1] - 11:7  <b>under</b> [6] - 4:15, 5:12, 12:11, 13:10, 16:23, 27:9  <b>underground</b> [2] - 9:19, 10:11  <b>UNIDENTIFIED</b> [1] - 24:4  <b>Union</b> [1] - 11:24  <b>unless</b> [3] - 10:6, 11:10, 13:9  <b>unpersuasive</b> [1] -</p>		