

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

SCS Carbon Transport LLC  
Midwest Carbon Express CO2 Pipeline  
Project Siting Application

Case No.  
PU-22-391

**TRANSCRIPT OF SPECIAL MEETING**

**August 4, 2023**

1           COMMISSIONER CHRISTMANN: Good morning,  
2 everyone. I call this special meeting of the North  
3 Dakota Public Service Commission to order. It is 10:01,  
4 Friday, August 4th, 2023. I am the Commission chairman,  
5 Randy Christmann, joined by fellow Commissioner Sheri  
6 Haugen-Hoffart and our alternate decisionmaker in this  
7 case, Mr. Tim Dawson. So we have a quorum.

8           Earlier this week -- so we've had this case  
9 going on for -- since last fall when it was applied and  
10 in the beginning of February when we deemed the  
11 application complete.

12           Earlier this week, I was in the process of  
13 planning a work session in this case. And for those of  
14 you who don't follow us, that would be a more informal  
15 thing where the decisionmakers and our staff kind of  
16 discuss concepts and stuff to prepare an order to vote  
17 on. And as I was working on that, the outcome seemed, I  
18 guess, so obvious to me that I just decided to work with  
19 staff on a draft order to see how it would look. And  
20 after working on it with them, it seemed even more  
21 obvious to me what the end case of this was.

22           So I believe staff ultimately sent it to each of  
23 you, a draft to review. So you've had an opportunity to  
24 think about it, prepare amendment proposals, or you can  
25 reject my motions and we'll work on scheduling work

1 sessions. But I will say that getting together is a  
2 little tougher in a case with an alternate decisionmaker  
3 because you're not in the offices with us. And when we  
4 do, that does add cost to us for handling the case,  
5 which ultimately goes back to the Applicant because they  
6 file through a filing fee that we use for our costs in  
7 the case. So that's why -- another reason why I thought  
8 -- as I said, I thought the ultimate decision was  
9 obvious enough, why don't we just move forward and see  
10 if, in fact, we're all on the same page.

11 We have really two main issues to decide in this  
12 case: the confidentiality -- the protection of  
13 information decision and then the case itself or the  
14 findings of facts, conclusion of law, and the final  
15 order. So with that --

16 I guess I didn't ask if either of you had any  
17 opening comments.

18 COMMISSIONER HAUGEN-HOFFART: No, I have no  
19 opening comment.

20 SUBSTITUTE DECISIONMAKER DAWSON: No opening  
21 comments for me.

22 COMMISSIONER CHRISTMANN: Okay. So to address  
23 the protection of information first, I move the  
24 Commission adopt the order on protection of information  
25 in SCS Carbon Transport LLC Midwest Carbon Express CO2

1 Pipeline Project Siting Application, Case No. PU-22-391.

2 COMMISSIONER HAUGEN-HOFFART: Second.

3 COMMISSIONER CHRISTMANN: On April 21st SCS  
4 filed an application for protection of information. On  
5 May 1st John H. Warford, Jr. filed an objection and also  
6 a request for hearing on that topic. On June 27th we  
7 held a hearing.

8 The information for which SCS seeks protection  
9 is related to dispersion modeling in the event of a  
10 release of carbon dioxide from the pipeline. Given the  
11 sensitive nature of the information, SCS stated that it  
12 will request that PHMSA protect these materials from  
13 public release and is requesting the Public Service  
14 Commission to protect the information too.

15 During the hearing, SCS argued that under state  
16 law, federal laws, the information -- and federal laws,  
17 the information should be protected. It argued that  
18 PHMSA has previously determined similar information such  
19 as spill modeling information should be protected to  
20 prevent its use by bad actors. SCS also stated that the  
21 determination has been affirmed by the courts. SCS  
22 provided examples demonstrating that the risk of the use  
23 of this information by bad actors is not hypothetical.

24 Counsel for the Intervenors both acknowledge  
25 that some information likely should be subject to

1 protection but argued that all information being  
2 protected cannot be correct. Both Intervenors 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

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

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

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,

1 and other sensitive environmental resources.

2 They conducted surveys for threatened and  
3 endangered species, critical habitats, wetlands,  
4 waterbodies, and trees and shrubs.

5 And they conducted a Class III cultural resource  
6 inventory across a portion of the survey area. The  
7 Class III report was submitted to the State's Historical  
8 Preservation Office. And in a response dated March 1st,  
9 SHPO advised that the report does not meet the standards  
10 and they have not received a revised report addressing  
11 their concerns. SHPO concurrence is commonly required  
12 by the Commission for the issuance of a site certificate  
13 or route permit. SCS did not address SHPO's concerns  
14 further during the proceedings. Cultural resource  
15 impacts have not been properly addressed.

16 The Commission received extensive, broad  
17 concerns regarding eminent domain, safety, the policy of  
18 permanent CO2 sequestration and storage, setback  
19 distances, irreparable harm to underground drain tile  
20 systems, impacts on property values, and the ability to  
21 obtain liability insurance due to this project.

22 Having considered the public comments, the  
23 issues of eminent domain, safety compliance with PHMSA  
24 construction and operations, and permanent sequestration  
25 and storage of CO2 are outside the jurisdiction and

1 consideration of this Commission.

2 Commenters asserted that greater setback  
3 distances should be considered for CO2 pipelines, but  
4 North Dakota Century Code specifies that areas within  
5 500 feet of an inhabited rural residence must be an  
6 avoidance area unless waived by the owner. No testimony  
7 was presented that provided a sufficient basis to depart  
8 from the avoidance requirements set forth in state  
9 statute.

10 Several commenters asserted that the project  
11 will cause irreparable harm to their underground drain  
12 tile systems. Proper drain tile system repair and/or  
13 replacement will produce minimal adverse effects.

14 Commenters and Intervenors asserted that the  
15 project will cause significant adverse effects on the  
16 value of their property and residential development  
17 projects. SCS filed a letter from Boulder Appraisal  
18 summarizing the effect of existing natural gas and  
19 hazardous liquids pipelines upon the development and  
20 sale of current residential properties in Bismarck. The  
21 filing was not tendered during a hearing and the parties  
22 and Commission were not afforded an opportunity to  
23 request the documents or witness as required by North  
24 Dakota Administrative Code. This limits the weight that  
25 the Commission is willing to provide to that document.

1           While some witnesses stretched the plausibility  
2 of the adverse impacts on future property values and  
3 development, based upon the record, the effects have not  
4 been adequately minimized for the welfare of the people  
5 and the environment of the state.

6           A number of commenters provided that the project  
7 will make them unable to purchase liability insurance  
8 due to the risk of a release. SCS testified that it  
9 would hold the liability for a rupture of the project  
10 unless the rupture was caused by a third-party line  
11 strike. Based upon the testimony, no additional  
12 requirements are needed to ensure the project will have  
13 minimal adverse impacts on the liability insurance of  
14 the landowners.

15           SCS requested the Commission to supersede and  
16 preempt the ordinances of both Emmons and Burleigh  
17 Counties. North Dakota Century Code supersedes and  
18 preempts any local land use or zoning regulations from  
19 the regulations, ordinances, and plans related -- except  
20 the ordinances related to road use agreements.  
21 Therefore, the question of whether the ordinances are  
22 unreasonably restrictive is moot because Century Code  
23 supersedes that.

24           LIUNA, the Laborers International Union,  
25 intervened in this proceeding and submitted testimony

1 relating to the benefits of hiring a local labor force  
2 for transmission projects and the safety record of  
3 contractors SCS intends to use to construct the project.

4 And I will say that LIUNA's assertions in  
5 relation to SCS's plans for the construction of the  
6 project are not applicable to our jurisdiction in this  
7 case, but I really appreciate their coming forth with  
8 the information they provide, especially regarding  
9 benefits of hiring local.

10 I want to discuss a little bit the siting  
11 criteria that we work with under law. We've established  
12 criteria pursuant to North Dakota Century Code to decide  
13 the site, corridor, and route suitability evaluation and  
14 designation process. The criteria are classified  
15 in four categories. We have exclusion areas, avoidance  
16 areas, selection criteria, and policy criteria. And  
17 I'll discuss those.

18 An exclusion area is a geographic area that must  
19 be excluded in the consideration of the route. Areas  
20 critical to the life stages of threatened or endangered  
21 animal or plant species are designated as exclusion  
22 areas. This project will cross the Missouri River, but  
23 it's using horizontal directional drilling. The piping  
24 plover habitat is not beneath the Missouri River so a  
25 reasonable buffer zone exists for the protection of the

1 piping plover's habitat and there's no evidence of an  
2 adverse impact there.

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.

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.

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.

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

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.

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.

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.

24 SCS's studies and surveys did not record any  
25 other avoidance areas within the survey area. No other

1 avoidance areas were presented by an intervenor, the  
2 public, or our staff.

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.

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.

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.

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.

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.

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

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.

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.

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.

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.

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.

25 SCS failed to meet its burden of proof to show

1 the project will minimize adverse human and  
2 environmental impact.

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.

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.

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.

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

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.

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.

8 I move that the -- in the fourth line, the words  
9 "plume modeling" be removed.

10 EXECUTIVE DIRECTOR KAHL: We have a motion for  
11 amendment. I'll take a roll call vote.

12 COMMISSIONER CHRISTMANN: You need a second.

13 EXECUTIVE DIRECTOR KAHL: Oh, sorry.

14 COMMISSIONER HAUGEN-HOFFART: Second.

15 EXECUTIVE DIRECTOR KAHL: Thank you.

16 We now have a motion and a second on the  
17 amendment.

18 Chair Christmann.

19 COMMISSIONER CHRISTMANN: Aye.

20 EXECUTIVE DIRECTOR KAHL: Commissioner  
21 Haugen-Hoffart.

22 COMMISSIONER HAUGEN-HOFFART: Aye.

23 EXECUTIVE DIRECTOR KAHL: Substitute  
24 Decisionmaker Dawson.

25 SUBSTITUTE DECISIONMAKER DAWSON: Aye.

1 EXECUTIVE DIRECTOR KAHL: The amendment is  
2 adopted.

3 COMMISSIONER CHRISTMANN: Okay.

4 EXECUTIVE DIRECTOR KAHL: Was there any further  
5 discussion on the original motion?

6 COMMISSIONER CHRISTMANN: With those two words  
7 removed.

8 EXECUTIVE DIRECTOR KAHL: Is there any further  
9 discussion on the amendment?

10 COMMISSIONER HAUGEN-HOFFART: I apologize.

11 I just want, in reference to page 19, I believe,  
12 of the order --

13 COMMISSIONER CHRISTMANN: This is 12.

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 --

25 I believe, Mr. Christmann, in your order brought

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

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

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

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 --

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.

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

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

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 -----

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STATE OF NORTH DAKOTA     ) ss.

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Dated this date of February 19, 2026.

Lisa A. Hulm

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