STATE OF NORTH DAKOTA	IN DISTRICT COURT
COUNTY OF BURLEIGH	SOUTH CENTRAL JUDICIAL DISTRICT
APH Farms, et al., Appellant, v. North Dakota Public Service Commission, et al., Appellees.	Case No. 08-2024-CV-03622
And	
Burleigh County, Appellant, v. North Dakota Public Service Commission and SCS Carbon Transport LLC, Appellees.	Case No. 08-2024-CV-03614

RESPONSE BRIEF OF SCS CARBON TRANSPORT LLC

INTRODUCTION

[¶ 1] The North Dakota Public Service Commission (the "Commission") entered an order granting Appellee SCS Carbon Transport LLC ("Summit") a certificate of corridor compatibility and route permit for an interstate carbon dioxide pipeline under North Dakota's Energy Conversion and Transmission Facility Siting Act. Appellants Burleigh County, Emmons

County[1], APH Farms, Kari Curran, Arden Hagerott, Jonathan Hagerott, Valera Hayen, Mary Jo Irmen, Scott Irmen, Leon Mallberg, Janel Olson, the Staroba Revocable Living Trust, Diane Staroba, Loren Staroba, and James Tiegs (collectively, "Appellants") now request this Court to reverse that decision. The record and governing law do not support that request. The Commission conducted a lengthy, public, and comprehensive administrative process, developed a substantial evidentiary record, and ultimately issued a final order in November 2024 granting Summit's application after Summit addressed the concerns identified in the Commission's earlier denial. The final decision of the Commission was lawful, reasoned, and supported by the evidence, and it is entitled to deference on judicial review. (Findings of Fact, Conclusions of Law and Order, R908:1-18); N.D.C.C. ch. 49-22.1.

[¶ 2] This appeal arises from a multi-year administrative proceeding that began when Summit filed its application in October 2022. Appellants actively participated throughout, intervening and urging denial. The Commission held approximately a dozen public hearings and received thousands of filings. Rather than attempting to recount the entire record, Summit's response focuses on the discrete Commission actions that Appellants have placed at issue: the Commission's order maintaining the confidentiality of Summit's dispersion modeling materials, (Order on Protection of Information, R526:1-4); the Commission's determination that certain county zoning ordinances would be preempted if a route permit issued, (Order, R586:1-3); the Commission's initial order denying the application, (Findings of Fact, Conclusions of Law, and Order, R530:1-12); and the Commission's final order granting the application after reconsideration and supplementation of the record. (Findings of Fact, Conclusions of Law and Order, R908:1-18).

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[1] Emmons County is an appellee in both the above-captioned appeals. Solely for the sake of convenience, Emmons County is referred to herein as an "appellant," and Summit addresses Emmons County's arguments in favor of reversal either in isolation or collectively with those raised by the appellants in the above-captioned appeals.

[¶ 3] Appellants' confidentiality challenge is built on the premise that they were entitled to examine Summit's dispersion model (the "Dispersion Model") in order to litigate pipeline safety and emergency planning before the Commission. The Commission correctly maintained confidentiality because the Dispersion Model constitutes a protected security system plan under North Dakota law and is also subject to federal protections as sensitive security and vulnerability information prepared in connection with Pipeline Hazardous Materials Safety Administration ("PHMSA")-regulated emergency response and integrity management planning. (Order on Protection of Information, R526:1-4); N.D.C.C. § 44-04-24; 49 C.F.R. §§ 195.402(e), 195.408, 195.452; 49 C.F.R. Part 1520; 49 U.S.C. § 60101 *et seq.*; 5 U.S.C. §§ 552(b)(4), 552(b)(7)(F). Nothing in the record indicates the Dispersion Model played any role in the Commission's decision to approve Summit's application, and Appellants cannot show prejudice from nondisclosure. (Order on Protection of Information, R526:1-4); (Findings of Fact, Conclusions of Law and Order, R908:1-18). Hence, Appellants' arguments largely repackage policy objections—especially safety concerns—into claims of legal error. But the County ordinances at the center of Appellants' preemption challenge were enacted for the express purpose of regulating pipeline safety through setbacks, emergency response obligations, and abandonment requirements, a subject matter that is preempted in this context after a route permit is granted. (Letter enclosing Ordinance No. 23-01-01, R179:1-2); (Response to Request for Additional Information - Burleigh County HLP Ordinances, R314:1-19); Request the Plume Modeling Information be made Available to the Public, R522:1-2); ((Part 2 of 4) - June 2, 2023 Formal Hearing Transcript (Full and Condensed), R494:316); ((Part 1 of 2) March 14, 2023 Formal Hearing Transcript (Full & Condensed), R209:416–17); (Order, R586:3).

[¶ 4] The procedural history also matters. The Commission initially denied Summit's application in July of 2023 based on concerns including alleged impacts to property values and residential development, unresolved landowner impacts and rerouting feasibility, and the absence of a south Bismarck alternative route analysis. (Findings of Fact, Conclusions of Law, and Order, R530:¶¶16–17, 32, 42). Summit petitioned for reconsideration and sought to supplement the record. (Petition for Reconsideration, Notice of Route Adjustment and Request for Limited Rehearing, R531;1-22).

[¶ 5] The Commission granted reconsideration, held additional hearings, and received additional evidence demonstrating rerouting efforts, minimized impacts, and a detailed south Bismarck alternative route analysis showing the southern option would impose greater overall impacts than Summit's proposed route. (Response to Supplemental Filing Request 3.1.5, R572:1-23). Based on the supplemented record, the Commission issued a final order granting the application in November of 2024, finding landowner assertions regarding property value and development impacts were unsupported, and crediting Summit's evidence that pipeline easements do not materially affect buyer preferences or sale prices of comparable parcels. (Findings of Fact, Conclusions of Law and Order, R908:¶¶16–17). The Commission also addressed insurance concerns, noting Summit's commitment to maintain at least an additional $25 million in general liability coverage for the North Dakota portion of the pipeline and to hold liability for rupture absent a third-party line strike. (*Id.* at ¶¶ 18, 47).

[¶ 6] Judicial review is governed by N.D.C.C. § 28-32-46. Under that standard, this Court must affirm the Commission's order unless Appellants carry their burden to demonstrate a specified ground for reversal, such as legal error, failure to comply with required procedures, denial of a fair hearing, or findings not supported by the greater weight of the evidence. The

Commission's findings of fact are entitled to great weight, and the Court does not reweigh evidence or substitute its judgment for that of the Commission. In short, Appellants must identify reversible legal error or show that the Commission's findings lack evidentiary support. They cannot do so here. The Commission acted within its statutory authority, followed appropriate procedures, and issued a final order supported by the record. The Court should therefore affirm. (Findings of Fact, Conclusions of Law and Order, R908:1-18); N.D.C.C. § 28-32-46.

COURSE OF THE PROCEEDINGS

[¶ 7] The record of underlying proceedings reflects a thorough and labor-intensive administrative process. Summit filed its consolidated Siting Act application on October 17, 2022. The Commission deemed the application complete on February 1, 2023, issued formal notice, and framed the governing statutory questions that would control the decision, including whether the project would produce minimal adverse effects on the environment and public welfare, remain compatible with environmental preservation and efficient resource use, and minimize adverse impacts while ensuring reliability and orderly fulfillment of energy needs. (Notice of Filings and Public Hearings, R168:1-3). The Commission then expanded the hearing schedule by issuing a second notice setting an additional hearing date while maintaining the same core issues for decision. (Notice of Public Hearings, R315:1-3).

[¶ 8] The Commission conducted a total of five public hearings on Summit's application. Summit presented testimony from ten witnesses and responded to more than thirty separate requests from the Commission and Commission staff for additional information. (Response to Staff Request for Information, R163:1-7); (Letter enclosing copy of Tetra Tech Memo and Right-of-Way Chart, R337:1-5); (Response to Request for Information, R344:1-15); (Response to Requests for Additional Information, R394:1-21); (Response to 9 May 2023 Request for Information, R407:1-4); (Response to Intervenor John Warford's Motion to Compel, R417:1-33);

(Response to Request for Additional Information, R437:1-21). The Commission also received testimony from numerous witnesses and members of the public. By the end of the June 2, 2023, hearing in Bismarck, the Commission had developed an extensive record for decision.

[¶ 9] In addition to the merits of the siting application, the proceeding involved significant motion practice requiring separate briefing and Commission action. Summit filed an application seeking confidential treatment of dispersion modeling and related risk assessment information. (Application to Protect Information, R340:1-7). Summit also filed a motion asserting that county ordinances were preempted. (Motion and Brief to Declare Emmons County and Burleigh County Ordinances Superseded and Preempted, R423:1-18). The Commission heard arguments on both requests, accepted post-hearing briefing from the parties and intervenors, and held a special meeting to consider proposed orders. (Notice of Hearing on Protection of Information and Change of Venue, R502:1); (June 27, 2023 Formal Hearing Transcript, R508:1-128); (Post-Hearing Brief, R518:1-24); (Post-Hearing Brief, R519:1-55); (Post-Hearing Brief, R520:1-57). In other words, the Commission actively considered evidence and legal argument on these interlocutory issues as they arose, rather than deferring them or treating them as informal matters.

[¶ 10] On August 4, 2023, the Commission issued Findings of Fact, Conclusions of Law, and an Order denying Summit's application. (Findings of Fact, Conclusions of Law, and Order, R530:1-12). The denial order reflected a close, granular review of the record, identifying multiple categories where Summit met its burden and discrete areas where the Commission found additional work was required. (*Id.*). The Commission also granted Summit's request to protect certain information and deemed the preemption motion moot in light of the denial posture.

[¶ 11] Summit then initiated the Commission's reconsideration process by filing a petition for reconsideration, notice of route adjustment, and request for limited hearing. (Petition for

Reconsideration, Notice of Route Adjustment and Request for Limited Rehearing, R531;1-22). Summit's submission included significant proposed route adjustments, including moving the project substantially north of Bismarck and outside areas identified in Bismarck's future land use planning. (*Id.*). Intervenors filed responses both opposing and supporting reconsideration. (Petition to Intervene & Response in Opposition for Reconsideration, Notice of Route Adjustment & Request for Limited Rehearing, R536:1-12); (Response in Opposition to Petition for Reconsideration, Notice of Route Adjustment, and Request for Limited Rehearing, R538:1-15); (Response in Opposition to Petition for Reconsideration, R539:1-8); (Response to Petition for Reconsideration, Notice of Route Adjustment and Request for Limited Rehearing, R540:1-2); (Response in Opposition to Petition for Reconsideration, Notice of Route Adjustment & Request for Limited Rehearing, R541:1-37). On September 15, 2023, the Commission granted reconsideration to allow Summit to present relevant evidence demonstrating that the identified deficiencies had been addressed, emphasizing the goal of a just, speedy, and inexpensive determination on a complete record. (Order on Petition for Reconsideration with Dissenting Opinion of Commissioner Haugen-Hoffart, R549:1-3).

[¶ 12] Following reconsideration, the Commission issued a formal request for supplemental filings and data that led to significant additional development of the evidentiary record. (Request for Supplemental Filing and Data Request 3, R560:1-2). Summit responded through a series of filings, including a southern route analysis, updated reroute mapping and studies, agency correspondence, geologic stability information, and measures addressing landowner concerns, totaling more than 1,800 pages of supplemental material. (Response to Request for Additional Information, R561:1-26); (Response to Supplemental Filing Request 3.1.5, R572:1-23); ((Part 1 of 8) - Response to Supplemental Filing Requests 3.1.1 & 3.1.2, R574:1-190); ((Part 2 of 8) - Response to Supplemental Filing Requests 3.1.1 & 3.1.2, R575:1-190); ((Part 4 of 4) - Response to Supplemental Filing Requests 3.1.1 & 3.1.2, R576:1-132); ((Part 3 of 8) -

Response to Supplemental Filing Requests 3.1.1 & 3.1.2, R577:1-220); ((Part 4 of 8) - Response to Supplemental Filing Requests 3.1.1 & 3.1.2, R578:1-220); ((Part 5 of 8) - Response to Supplemental Filing Requests 3.1.1 & 3.1.2, R579:1-236); ((Part 6 of 8) - Response to Supplemental Filing Requests 3.1.1 & 3.1.2, R580:1-237); ((Part 1 of 2) - Response to Supplemental Filing Requests 3.1.4, R582:1-175); ((Part 2 of 2) - Response to Supplemental Filing Requests 3.1.4, R583:1-151); (Response to Supplemental Filing Request 3.1.3, R593:1-13). The Commission then issued a notice setting three public hearings focused on the route adjustments and the deficiencies identified in the denial order. (Notice of Public Hearing, R605:1-3).

[¶ 13] The Commission further expanded the schedule by setting additional technical hearing dates to accommodate intervenor scheduling conflicts, ensuring intervenors had the opportunity to cross-examine Summit's witnesses and present their own evidence. (Notice of Technical Hearings, R659:1-2). All hearings proceeded as scheduled under the Commission's notices. (Notice of Public Hearing, R605:1-3); (Notice of Technical Hearings, R659:1-2). As Summit implemented route adjustments and responded to the Commission's directives, multiple intervenors withdrew in response to reroutes and landowner-specific mitigation that reduced or eliminated some intervenors' concerns. (Notice of Withdrawal by Bismarck Intervenors, R598:1-4); (Notice of Partial Withdrawal, R614:1-5); (Notice of Partial Withdrawal Dated April 2, 2024, R619:1-5). In other words, the procedures implemented by the Commission produced meaningful consensus-building, rather than simply a collection of testimony.

[¶ 14] In sum, the Commission's course of proceedings involved formal issue framing, multiple rounds of public hearings, extensive staff-driven data requests, contested motion practice with briefing and argument, a detailed denial order identifying specific deficiencies, a structured reconsideration process, voluminous supplemental filings, additional public and technical hearings, and a narrowed dispute following significant route adjustments. (Notice of Filings and Public Hearings, R168:1-3); (Notice of Public Hearings, R315:1-3); (Response to Staff Request

for Information, R163:1-7); (Letter enclosing copy of Tetra Tech Memo and Right-of-Way Chart, R337:1-5); (Response to Request for Information, R344:1-15); (Response to Requests for Additional Information, R394:1-21); (Response to 9 May 2023 Request for Information, R407:1-4); (Response to Intervenor John Warford's Motion to Compel, R417:1-33); Response to Request for Additional Information, R437:1-21); (Application to Protect Information, R340:1-7); (Motion and Brief to Declare Emmons County and Burleigh County Ordinances Superseded and Preempted, R423:1-18); (Notice of Hearing on Protection of Information and Change of Venue, R502:1); ((Part 1 of 4) - June 2, 2023 Formal Hearing Transcript (Full and Condensed), R493:1-216); ((Part 2 of 4) - June 2, 2023 Formal Hearing Transcript (Full and Condensed), R494:1-216); ((Part 3 of 4) - June 2, 2023 Formal Hearing Transcript (Full and Condensed), R495:1-217); ((Part 4 of 4) - June 2, 2023 Formal Hearing Transcript (Full and Condensed), R496:1-216); Post-Hearing Brief, R518:1-24); Post-Hearing Brief, R519:1-55); Post-Hearing Brief, R520:1-57); (Findings of Fact, Conclusions of Law, and Order, R530:1-12); (Petition for Reconsideration, Notice of Route Adjustment and Request for Limited Rehearing, R531:1-22); (Order on Petition for Reconsideration with Dissenting Opinion of Commissioner Haugen-Hoffart, R549:1-3); (Request for Supplemental Filing and Data Request 3, R560:1-2); (Response to Request for Additional Information, R561:1-26); (Response to Supplemental Filing Request 3.1.5, R572:1-23); ((Part 1 of 8) - Response to Supplemental Filing Requests 3.1.1 & 3.1.2, R574:1-190); ((Part 2 of 8) - Response to Supplemental Filing Requests 3.1.1 & 3.1.2, R575:1-190); ((Part 4 of 4) - Response to Supplemental Filing Requests 3.1.1 & 3.1.2, R576:1-132); ((Part 3 of 8) - Response to Supplemental Filing Requests 3.1.1 & 3.1.2, R577:1-220); ((Part 4 of 8) - Response to Supplemental Filing Requests 3.1.1 & 3.1.2, R578:1-220); ((Part 5 of 8) - Response to Supplemental Filing Requests 3.1.1 & 3.1.2, R579:1-236); ((Part 6 of 8) - Response to Supplemental Filing Requests 3.1.1 & 3.1.2, R580:1-237); ((Part 1 of 2) - Response to Supplemental Filing Requests 3.1.4, R582:1-175); ((Part 2 of 2) - Response to Supplemental Filing

Requests 3.1.4, R583:1-151); (Response to Supplemental Filing Request 3.1.3, R593:1-13); (Notice of Public Hearing, R605:1-3); (Notice of Technical Hearings, R659:1-2); (Notice of Withdrawal by Bismarck Intervenors, R598:1-4); (Notice of Partial Withdrawal, R614:1-5); (Notice of Partial Withdrawal Dated April 2, 2024, R619:1-5). The Court should therefore evaluate Appellants' claims of error in light of this context, which demonstrates a careful and laborious agency process culminating in a final decision grounded on an extensive record.

STANDARD OF REVIEW

[¶ 15] Section 28-32-46, N.D.C.C., provides the standard of review for this appeal. That statute states that the Court "must affirm" the Commission's order unless it finds one of the following to be true:

> 1. The order is not in accordance with the law.
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> * * *
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> 3. The provisions of [N.D.C.C. ch. 28-32] have not been complied with in the proceedings before the agency.
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> 4. The rules or procedure of the agency have not afforded the appellant a fair hearing.
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> 5. The findings of fact made by the agency are not supported by a preponderance of the evidence.
>
> 6. The conclusions of law and order of the agency are not supported by its findings of fact.
>
> 7. The findings of fact made by the agency do not sufficiently address the evidence presented to the agency by the appellant.
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> * * *

Id.[2]

[2] Appellants concede that items 2 and 8 of N.D.C.C. § 28-32-46 are not relevant to this appeal. (Brief of Appellant Burleigh County, R918:¶89).

[¶ 16] The Commission's "findings of fact are entitled to great weight." *Northern States Power Co. v. Public Serv. Comm'n*, 73 N.D. 211, 212, 13 N.W.2d 779, 781 (1944). Courts "do not substitute [their] judgment for that of the [Commission] or make independent findings." *Voigt v. North Dakota Pub. Serv. Comm'n*, 2017 ND 76, ¶ 9, 892 N.W.2d 149. Instead, they "determine only whether a reasoning mind reasonably could have determined that the factual conclusions reached were proved by the weight of the evidence from the entire record." *Id.*

LAW AND ARGUMENT

I. THE COMMISSION'S TREATMENT OF SUMMIT'S DISPERSION MODEL DID NOT DEPRIVE BURLEIGH COUNTY OF A FAIR HEARING, AND THE COMMISSION CORRECTLY MAINTAINED CONFIDENTIALITY UNDER NORTH DAKOTA LAW.

A. The Commission Did Not Rely on the Dispersion Model in Its Decision.

[¶ 17] Burleigh County contends it was denied a fair hearing because the Commission kept Summit's Dispersion Model confidential. Burleigh County's position is transparent; it wanted access to Summit's Dispersion Model so it could attempt to use that material to persuade the Commission that Summit's pipeline is unsafe and to deny the application on that basis. Burleigh County states it was forced to accept Summit's assurances "on blind faith," and asserts administrative agencies may not rely on undisclosed evidence while simultaneously denying parties the ability to "test, challenge, or rebut" that evidence. (Brief of Appellant Burleigh County, R918:¶33).

[¶ 18] Burleigh County's argument fails for two independent reasons. First, the record does not support the premise that the Commission relied on the Dispersion Model as a basis for its decision. Second, even if Burleigh County had been given access to the Dispersion Model, its intended use of the Model was to litigate pipeline safety, which the Commission expressly disclaimed as outside its jurisdiction. (Findings of Fact, Conclusions of Law and Order, R908:¶13

(stating safety compliance with PHMSA construction and operation requirements is outside the Commission's jurisdiction and consideration)). A party is not denied a fair hearing because it cannot obtain and deploy a confidential document to make arguments the agency is not permitted to decide.

[¶ 19] Second, even if Burleigh County had been provided access to the Dispersion Model, its intended use of the Model was to litigate pipeline safety, which the Commission expressly disclaimed as outside its jurisdiction. (Findings of Fact, Conclusions of Law and Order, R908:¶13). In other words, the Dispersion Model would bear only on the safety of Summit's pipeline in the event of a release. The Commission has expressly disclaimed jurisdiction to adjudicate safety compliance, stating that safety compliance with PHMSA construction and operation standards is outside the Commission's jurisdiction and consideration. (Findings of Fact, Conclusions of Law and Order, R908:¶13). That jurisdictional limitation is consistent with controlling federal law principles that prohibit state regulation of safety for interstate transmission facilities. *See, e.g.*, *Couser v. Shelby Cnty., Iowa*, 139 F.4th 664, 669 (8th Cir. 2025).

[¶ 20] Courts addressing similar state pipeline permits have recognized the same limitation. A state agency may not deny a pipeline permit on the ground that the pipeline would not be safe enough. *See, e.g.*, *Save Our Illinois Land v. Illinois Commerce Comm'n*, 2022 IL App (4th) 210008, ¶ 90, 200 N.E.3d 870. Likewise, the Eighth Circuit has held that a state agency could not deny a state pipeline permit for safety reasons. *See Kinley Corp. v. Iowa Utilities Bd., Utilities Div., Dep't of Commerce*, 999 F.2d 354, 359 (8th Cir. 1993). That is exactly why the Commission properly characterized safety compliance as outside its jurisdiction. (Findings of Fact, Conclusions of Law and Order, R908:¶13).

[¶ 21] Accordingly, even if Burleigh County had obtained the Dispersion Model and attempted to use it to argue the pipeline is unsafe, the Commission would have been barred from denying the permit based on those arguments. Burleigh County's inability to use confidential materials the Commission did not rely upon, is not a denial of Burleigh Counties right to a "fair hearing".

B. *Williams Elec. Co-op., Inc. v. Montana-Dakota Utilities Co.* Controls and Forecloses the Fair-Hearing Claim.

[¶ 22] The North Dakota Supreme Court's decision in *Williams Elec. Co-op., Inc. v. Montana-Dakota Utilities Co.*, 79 N.W.2d 508 (N.D. 1956), squarely addresses the type of "fair hearing" claim Burleigh County advances. In *Williams Elec. Co-op.,* the appellant argued it had been denied a fair hearing because the Commission allegedly considered "extra record" material without providing an opportunity to "answer, explain, refute or cross-examine upon its contents." 79 N.W.2d at 525. The Court rejected that argument for two reasons that apply with full force here.

[¶ 23] *Williams Elec. Co-op.* first recognized the controlling statutory principle. The Commission is prohibited from considering evidence or information without first affording each party the opportunity to examine the information and to cross-examine the person furnishing it. *See* N.D.C.C. § 28-32-25. The Court held it must "presume" that if extra record information was in the agency's possession, the agency would have complied with the statute by giving the appellant an opportunity to respond. *Williams Elec. Co-op.,* 79 N.W.2d at 525. Where the record did not show that such a process occurred, the presumption controlled and "the presumption prevail[ed] that no 'extra record' evidence or information entered into the decision." *Id.*

[¶ 24] *Williams Elec. Co-op.* also held that the allegedly withheld material in that case was "wholly immaterial" to the issue before the Commission, and that any inquiry about it would have

been collateral. 79 N.W.2d at 526. In that circumstance, the inability to pursue questioning on the collateral matter did not deny the appellant a fair hearing. *Id.* The Court's reasoning is explicit: a "fair hearing" does not imply a right to questioning on irrelevant matters. *Id.* The same two principles defeat the County's claim in this appeal.

[¶ 25] As to the first principle, there is no evidence the Dispersion Model was a consideration in the Commission's ultimate decision to grant Summit's application. The Commission's final order does not mention the Dispersion Model. Burleigh County's theory therefore depends on speculation that the Commission relied on confidential materials in reaching its decision. *Williams Elec. Co-op.* supplies the appropriate analytical framework for such speculation. This Court "must presume" that if the Commission had considered the Dispersion Model as evidence bearing on its decision, the Commission would have complied with N.D.C.C. § 28-32-25 by providing an opportunity for Burleigh County to examine and respond. *Williams Elec. Co-op.,* 79 N.W.2d at 525. Because the record does not show that such a process occurred, the controlling presumption is that the Dispersion Model did not enter into the Commission's decision. *Id.* That presumption forecloses Burleigh County's effort to convert confidentiality into reversible due process error.

C. Burleigh County Cannot Demonstrate Prejudice.

[¶ 26] Equally important, Burleigh County's fair hearing claim fails for the additional reason that it cannot demonstrate prejudice. Burleigh County acknowledges the variables and considerations necessary to conduct dispersion modeling, demonstrating it was fully capable of retaining an expert to generate its own dispersion analysis or at minimum to run sensitivity scenarios using publicly available meteorological and topographical inputs, together with reasonable assumptions on operational parameters. (Brief of Appellant Burleigh County, R918:¶46). Burleigh County's claim of prejudice is also internally inconsistent. Burleigh County

argues it was forced to accept Summit's assurances "on blind faith," yet it did not pursue the most direct mechanism for testing its own theory: commissioning and offering independent modeling. A party is not prejudiced by the absence of a document where it had the practical ability to develop and present the very type of technical analysis it says was indispensable.

D. The Commission Properly Maintained Confidentiality Under North Dakota Law.

[¶ 27] Although the foregoing demonstrates that the correctness of the confidentiality ruling is not dispositive of the fair hearing claim, Burleigh County separately argues that the Commission erred by maintaining confidentiality. Those arguments are unavailing. The Commission found that "the confidentiality of [the Dispersion Model] has been maintained by [Summit]." (Order on Protection of Information, R526:¶10).

[¶ 28] The County's claim that Summit publicly disclosed the Dispersion Model is contrary to that finding. Summit did not release the Dispersion Model to the general public. Summit shared information related to dispersion modeling with emergency responders and certain government officials in a series of closed meetings conducted between November 7, 2023, and May 16, 2024, including attendees from Burleigh, Dickey, Emmons, Mercer, Morton, Oliver, Cass, Richland, McIntosh, Logan, and Sargent Counties, as well as the City of Bismarck. These meetings included first responders and officials responsible for emergency planning and response. These meetings were not open to the general public.

[¶ 29] Summit maintained confidentiality through the manner and conditions of the disclosures. Summit used verbal and written warnings regarding the confidential nature of the information. The information was presented in a slide deck that was displayed but not copied or distributed, and the slide deck was clearly marked as confidential. Those measures are consistent with preserving confidentiality of security-sensitive infrastructure information while still

providing critical information to those with a need to know for emergency preparedness and public safety responsibilities.

[¶ 30] Summit also shared limited portions of the slide deck with Chad Wachter, a local real estate developer, to address objections raised by Wachter, who at the time was a party to the proceeding. That meeting was a closed meeting. The portions shown were labeled as confidential, Wachter was informed the information was sensitive and confidential, and Wachter acknowledged the confidential nature of the meeting and the information during his testimony. Wachter was not provided copies and was not allowed to make copies of the materials shown. Burleigh County's effort to relabel controlled, need-to-know disclosures as "public disclosure" is incorrect as a matter of record and logic.

[¶ 31] The foregoing is corroborated by the governing provisions of North Dakota's open records statute. Under that law, the only category of information that depends on an absence of prior public disclosure is trade secret information. *See* N.D.C.C. § 44-04-18.4 (providing that trade secret, proprietary, commercial, and financial information is confidential if it has not been previously publicly disclosed). By contrast, security system plans remain protected even after disclosure to another entity. N.D.C.C. § 44-04-24(5) provides that records deemed exempt under that section and disclosed to another entity continue to be exempt in the possession of the receiving entity. Burleigh County's waiver-by-disclosure theory therefore fails as a matter of statutory text.

[¶ 32] The County also argues the Dispersion Model is not a "security system plan" within the meaning of N.D.C.C. § 44-04-24. The Commission heard and rejected that contention. The Commission concluded the Dispersion Model "could provide information on where damaging [or] vandalizing the pipeline by a bad actor would have a debilitating impact on security and state public health and safety." (Order on Protection of Information, R526:¶10). That finding aligns

with the statutory definition, which protects records and presentations "relating directly to the physical … security of … critical infrastructure." N.D.C.C. § 44-04-24(2)(b). A model that identifies consequence zones and high-impact locations can relate directly to security because it provides a roadmap for maximizing harm. The Commission's determination that such information falls within the security system plan exemption is consistent with the statute and entitled to deference.

[¶ 33] Burleigh County finally contends that even if the Dispersion Model qualifies as a security system plan, the Commission should have required Summit to disclose portions allegedly unrelated to security. That argument ignores the Legislature's choice in N.D.C.C. § 44-04-24. The statute is structured to keep security system plans confidential in their entirety, not merely isolated excerpts. If the Legislature had intended partial disclosure as the default rule for such plans, it would have drafted § 44-04-24 in the manner of N.D.C.C. § 44-04-25, which expressly limits confidentiality to "only those portions" of certain records used to produce plans for protection against threats of violence or other harm. The Legislature did not use that limiting language in § 44-04-24, and courts must respect that drafting choice. In any event, the highly confidential and sensitive nature of the Dispersion Model makes redaction impracticable because public disclosure of any part could still enable misuse and defeat the purpose of the statute.

[¶ 34] Even if Burleigh County could persuade this Court that the Commission should have handled confidentiality differently, that would not warrant reversal because the County cannot show it was prejudiced in a way that mattered to an issue within the Commission's authority. Burleigh County sought access to advance safety arguments the Commission could not adjudicate. (Order on Protection of Information, R526:1-4); *Couser*, 139 F.4th at 669; *Save Our Illinois Land*, 2022 IL App. (4th) 210008, ¶ 90; *Kinley*, 999 F.2d at 359. The Commission's final

order does not rely on the Dispersion Model, and the presumption required by *Williams Elec. Co-op.* confirms the Model did not enter into the Commission's decision. 79 N.W.2d at 525. The inability to pursue irrelevant inquiry does not constitute an unfair hearing. *Id.* at 526.

[¶ 35] For all these reasons, Burleigh County's confidentiality and fair hearing arguments should be rejected, and the Commission's order should be affirmed.

II. THE COMMISSION CORRECTLY CONCLUDED THAT THE BURLEIGH AND EMMONS COUNTY ORDINANCES ARE SUPERSEDED AND PREEMPTED.

A. How N.D.C.C. § 49-22.1-13 Supersedes and Preempts Local Land Use and Zoning Regulations.

[¶ 36] Section 49-22.1-13 provides the Legislature's framework for how local requirements interact with a Commission-issued certificate or route permit. Subsection (1) sets the baseline rule: subject to limited exceptions, "the issuance of a certificate of site compatibility or a route permit is … the sole site or route approval required to be obtained by the utility." N.D.C.C. § 49-22.1-13(1). Subsection (2) then specifies the "except as provided" qualifications relevant here. For gas or liquid transmission facilities within a designated corridor, subdivision (b) establishes the default rule of statewide uniformity: "Except as provided in this section, a permit for the construction of a gas or liquid transmission facility within a designated corridor supersedes and preempts any local land use or zoning regulations." N.D.C.C. § 49-22.1-13(2)(b). The remaining subdivisions identify discrete carve-outs and procedures that operate alongside that default rule, not in place of it.

[¶ 37] Subdivision (c) addresses road use agreements and requires the applicant to comply with them before approval, while also describing when a permit "may supersede and preempt" certain political subdivision requirements upon a specified evidentiary showing, including direct conflict with state or federal law. N.D.C.C. § 49-22.1-13(2)(c). Subdivision (d) imposes a notice-and-listing procedure for local requirements and provides that requirements not timely filed

"are superseded and preempted." N.D.C.C. § 49-22.1-13(2)(d). Subdivision (e) then clarifies that an applicant must comply with listed local requirements only to the extent they are "not otherwise superseded by the commission." N.D.C.C. § 49-22.1-13(2)(e).

[¶ 38] Read together, subdivisions (c), (d) and (e) confirm that subdivision (b) supplies the general rule that a route permit supersedes and preempts local land use and zoning regulations within a designated corridor, while subdivisions (c) through (e) address distinct subjects (road use agreements and procedures) and do not convert the categorical supersession and preemption in subdivision (b) into a discretionary, ordinance-by-ordinance mechanism.

B. The Commission's Interpretation of the Siting Act Is Reasonable and Entitled to Deference.

[¶ 39] Burleigh County and Emmons County both challenge the Commission's determination that their respective ordinances are superseded and preempted. To avoid any confusion caused by the overlap in their respective arguments, and for the sake of convenience, this Part II.B will simply refer to Burleigh County and/or Emmons County as the "County," and addresses each argument raised without separately crediting its proponent.

[¶ 40] The County characterizes the Commission's supersession and preemption determinations as pure questions of law that are fully reviewable. This is incorrect because North Dakota courts "generally defer to an administrative agency's reasonable interpretation of its governing statutes." *Black Hills Trucking, Inc. v. North Dakota Indus. Comm'n*, 2017 ND 284, ¶ 19, 904 N.W.2d 326. Even accepting that framing, however, the County's argument fails because it reads N.D.C.C. § 49-22.1-13(2) in a manner that disregards the structure of the subsection, ignores the Legislature's use of mandatory language, and attempts to preserve local safety regulation in an area where federal law and the Siting Act do not permit it. The Commission was charged with administering N.D.C.C. ch. 49-22.1 and interpreting how the Siting Act's

express supersession provision functions after a corridor and route are approved. The Commission's interpretation was not only reasonable; it is the interpretation that best harmonizes the statutory text and avoids rendering key provisions unworkable.

[¶ 41] The County begins by citing its general zoning authority under N.D.C.C. § 11-33-01 and argues that its ordinance regulating hazardous liquid pipelines remains enforceable. That argument skips the critical point: the Siting Act is a more specific, later-enacted framework that expressly addresses the relationship between Commission-issued route permits and local land use and zoning regulations for gas and liquid transmission facilities within designated corridors. The question is not whether counties possess general zoning authority. The question is what the Legislature directed should occur when the Commission issues a route permit for a gas or liquid transmission facility within a designated corridor. N.D.C.C. § 49-22.1-13(2)(b) answers that question directly.

[¶ 42] Subdivision (b) states that, "[e]xcept as provided in this section, a permit for the construction of a gas or liquid transmission facility within a designated corridor supersedes and preempts any local land use or zoning regulations." The County seeks to convert that supersession rule into a discretionary, case-by-case inquiry requiring individualized findings as to each ordinance. That reading conflicts with the Legislature's chosen language. The Legislature used "supersedes and preempts," not "may supersede and preempt," and it conditioned that supersession only on what is "provided in this section." The proper way to honor the statutory structure is to treat subdivision (b) as establishing the general rule of supersession upon permit issuance, while giving effect to the specific carve-outs and procedural mechanisms elsewhere in the subsection.

[¶ 43] That is exactly what the Commission did. The ordinances at issue are not road use agreements. They are local land use and zoning regulations directed at the siting and operation of

a hazardous liquid pipeline through setbacks, emergency response obligations, and abandonment requirements. They therefore fall squarely within the class of local regulations that subdivision (b) says are superseded and preempted when a route permit issues, subject to the "except as provided" qualifiers.

[¶ 44] The County's central statutory argument is that subdivision (b) cannot mean what it says unless the Commission first conducts an additional analysis under subdivisions (c) through (e) and makes findings that each local ordinance is unreasonably restrictive or conflicts with state or federal law. That argument fails for three reasons.

[¶ 45] First, it collapses two different categories the Legislature treated differently. Subdivision (c) expressly addresses road use agreements and separately addresses the circumstances under which a permit "may supersede and preempt" certain "requirements of a political subdivision" if the applicant makes a specified showing. The County insists that the second sentence of subdivision (c) cannot be limited to road use agreements because the second sentence uses the words "regulations or ordinances." But subdivision (c) begins by expressly directing that, "[b]efore a gas or liquid transmission facility is approved, the commission shall require the applicant to comply with the road use agreements of the impacted political subdivision." It then describes when a permit "may" supersede certain political subdivision requirements upon a showing. That structure reflects a legislative judgment that road use agreements occupy a distinct category requiring affirmative compliance and a separate preemption standard. The Commission's interpretation gives effect to that road-use carve-out without rewriting subdivision (b)'s general supersession rule for local zoning and land use ordinances.

[¶ 46] Second, the County's reading undermines subdivision (b) itself. If every local land use or zoning regulation remained fully enforceable unless and until the Commission made

ordinance-by-ordinance findings of unreasonable restrictiveness or direct conflict, then subdivision (b)'s broad supersession clause becomes largely surplusage. Subdivision (b) would no longer operate as the default rule; it would merely restate a discretionary power already described in subdivision (c). The Legislature's decision to include a categorical supersession rule in subdivision (b) cannot be reconciled with the County's attempt to turn that rule into a discretionary, case-by-case mechanism duplicating subdivision (c).

[¶ 47] Third, the County mischaracterizes subdivisions (d) and (e). Subdivision (d) establishes a notice-and-listing procedure. The Commission must notify local governments, and upon notice, a political subdivision must provide a listing of local requirements. The consequence for failing to list requirements at least ten days before hearing is that the requirements "are superseded and preempted." The County seizes on that consequence to argue that timely-filed requirements must therefore remain enforceable unless the Commission affirmatively supersedes them. But that reading ignores the broader statutory context. Subdivision (d) addresses the timing and waiver consequences for a political subdivision's failure to timely identify local requirements. It is not framed as a limitation on subdivision (b)'s supersession rule after a permit is granted. Instead, it ensures the Commission has adequate notice of local requirements in advance of hearings and prevents late-asserted local conditions from disrupting the orderly siting process. The "ten days before" clause functions as a procedural backstop; it does not transform subdivision (b)'s supersession command into a discretionary inquiry in every case.

[¶ 48] The landowner Appellants also challenge the Commission's preemption ruling, presenting largely the same argument as the County. The landowner Appellants emphasize the distinction between a certificate of corridor compatibility and a route permit, arguing that this distinction supports their reading of N.D.C.C. § 49-22.1-13. The distinction is moot, however,

because the Commission ultimately issued Summit a route permit. The landowner Appellants' argument thus ultimately fails for the same reasons that the County's argument fails, as addressed in detail above. The statute plainly states "a permit for the construction of a gas or liquid transmission facility within a designated corridor supersedes and preempts local land use or zoning regulations." N.D.C.C. § 49-22.1-13(2)(b). Accordingly, the Commission's preemption ruling is correct and should be affirmed.

C. The Ordinances Are Independently Preempted Because They Regulate Interstate Pipeline Safety.

[¶ 49] Subdivision (e) similarly does not preserve local ordinances the way the County suggests. It provides that an applicant shall comply with local requirements provided pursuant to subdivision (d) "which are not otherwise superseded by the commission." The County treats that as proof that all listed ordinances remain enforceable unless and until the Commission makes individualized findings. But "otherwise superseded" naturally includes supersession by operation of the permit itself under subdivision (b), as well as any additional supersession the Commission may expressly impose. Reading subdivision (e) to require an individualized supersession finding in every instance would again neuter subdivision (b). The Commission's reading avoids that internal conflict, gives effect to each provision, and preserves the Legislature's evident intent that a route permit provides uniformity and finality for transmission facilities within designated corridors.

[¶ 50] Even if the Court were to accept the County's preferred reading of N.D.C.C. § 4-22.1-13(2), the result does not change because the ordinances are preempted under the statute's "direct conflict" language and under federal law governing interstate pipeline safety. The County's ordinances are not neutral land-use measures of general applicability. They impose safety standards tailored to hazardous liquid pipelines, including two-mile setbacks, emergency

response obligations, and abandonment requirements. The County's own evidence confirms the "primary motivation" behind these ordinances was safety. County officials testified the ordinances were "specifically related to safety," "primarily on life safety," and directed toward "public safety" and "protection of life safety." (March 14, 2023 Formal Hearing Transcript, R209:416-17). Those admissions matter because federal law prohibits state and local entities from adopting safety standards for interstate pipeline facilities.

[¶ 51] Under the Pipeline Safety Act ("PSA"), "[a] State authority may not adopt … safety standards for interstate pipeline facilities." 49 U.S.C. § 60104(c). This statute is "a sweeping exercise of express preemption," *Couser v. Shelby Cnty. Iowa*, 681 F. Supp. 3d 920, 935 (S.D. Iowa 2023), and courts "have uniformly recognized its expansive scope." *Enbridge Energy, Ltd. P'ship v. Whitmer*, No. 1:20-CV-1141, 2025 WL 3707609, at *9 (W.D. Mich. Dec. 17, 2025). By enacting this statute, "Congress intended to preclude states from regulating *in any manner whatsoever* with respect to the safety of interstate transmission facilities." *Couser*, 139 F.4th at 669. Therefore, the statute "leaves nothing to the states in terms of substantive safety regulation of interstate pipelines, regardless of whether the local regulation is more restrictive, less restrictive, or identical to the federal standards." *ANR Pipeline Co. v. Iowa State Commerce Comm'n*, 828 F.2d 465, 470 (8th Cir. 1987) (emphasis added). Any action by a State authority whose "primary motivation" is pipeline safety is a safety standard preempted by the PSA. *Couser*, 139 F.4th at 671.

[¶ 52] In addition, the PHMSA—the federal agency tasked with enacting safety standards under the PSA—has enacted regulations regarding setbacks, *see* 49 C.F.R. § 195.210; emergency response obligations, *see* 49 C.F.R. § 195.402(e); and abandonment requirements, *see* 49 C.F.R. § 195.402(c)(10). Courts have therefore determined that "setback, emergency response, and

abandonment provisions" are all safety standards regardless of motivation. *Couser*, 139 F.4th at 673.

[¶ 53] The same is true in this case. The County's setback requirement is not a mere zoning preference. It is a safety buffer imposed specifically on hazardous liquid pipelines. Likewise, emergency response planning mandates and abandonment requirements are classic safety regulation topics addressed by federal pipeline safety regulations. Whether labeled "zoning" or "land use," these provisions regulate the safety of an interstate pipeline. Under federal law, that is not within the County's authority. Because N.D.C.C. § 49-22.1-13(2)(c) expressly authorizes supersession and preemption where local requirements are "in direct conflict with state or federal laws or rules," the ordinances are preempted on this independent ground even under the County's interpretation.

D. The Ordinances Directly Conflict With The Siting Act And State Law.

[¶ 54] This also answers the County's repeated refrain that the Commission failed to make findings regarding technology, cost, economics, or consumer needs. The Commission found the ordinances were unreasonably restrictive on their face and in direct conflict with law. Where the conflict with federal safety preemption is dispositive, the County's demand for extensive, alternative findings is futile. The ordinances cannot be enforced against an interstate pipeline regardless of whether the County believes the restrictions are justified.

[¶ 55] The County also argues its two-mile setback cannot "directly conflict" with N.D.C.C. § 49-22.1-03 because the 500-foot avoidance-area criterion is a floor rather than a ceiling. That argument misses the Commission's point and ignores how the Siting Act operates. Section 49-22.1-03 directs the Commission to develop criteria for identifying exclusion and avoidance areas and mandates that areas within 500 feet of an inhabited rural residence be designated as avoidance areas, subject to waiver. That provision establishes a statewide siting

framework administered by the Commission. The County's ordinance seeks to replace that statewide siting framework with a local rule that effectively prohibits routing anywhere within two miles of an occupied structure, regardless of the Commission's corridor designation, the Commission's avoidance-area criteria, waiver provisions, or the Siting Act's balancing of impacts.

[¶ 56] Even if N.D.C.C. § 49-22.1-03 does not expressly state "no setback may exceed 500 feet," the County's ordinance still conflicts with the Siting Act's allocation of decision-making authority. The Legislature assigned the Commission the role of evaluating corridor and route suitability under statewide criteria and issuing permits that supersede local land use and zoning regulations within designated corridors. A local ordinance that functionally forbids the Commission-approved route in large swaths of the state is incompatible with that statutory design. *See* N.D.C.C. § 49-22.1-07(5) (providing that the Commission, rather than any local government, "shall designate a route for the construction of a gas or liquid transmission facility"). The County's attempt to characterize its ordinance as merely "more protective" is, in practice, an attempt to vest final siting authority in the County for interstate transmission facilities—authority the Siting Act withholds after a permit issues.

[¶ 57] In addition, the County's "no direct conflict" standard is too narrow. A direct conflict does not require an express textual contradiction. Conflict exists where local regulation stands as an obstacle to the accomplishment and execution of the full purposes and objectives of the governing statutory scheme or where it seeks to regulate in a field reserved to another sovereign. *See, e.g.*, *Environ. Driven Solutions v. Dunn County*, 2017 ND 45, ¶¶ 7–16, 890 N.W.2d 841 (discussing the preemption of county zoning ordinances by the North Dakota Industrial Commission's regulation of oil and gas development throughout the state). Here, the ordinance's two-mile setback, emergency-response mandates, and abandonment requirements are

designed to regulate safety and to prevent construction of an interstate pipeline within Burleigh County. That is the very definition of conflict with federal safety preemption and with the Siting Act's supersession mechanism.

E. The Ordinances Are Unreasonably Restrictive and Operate as an Effective Ban.

[¶ 58] The County further argues the Commission lacked authority to characterize the ordinances as unreasonably restrictive without making findings regarding technology, cost, economics, or consumer needs. The argument misunderstands what the Commission found and what the record shows. A two-mile setback from any occupied structure for a hazardous liquid pipeline is, on its face, the kind of constraint that makes routing in and near developed or developing areas functionally impossible. When combined with emergency response obligations and abandonment requirements tailored to a specific type of pipeline, the ordinances operate not as ordinary zoning but as an effective ban.

[¶ 59] That is why the Commission's determination of unreasonable restrictiveness was justified. A regulation can be unreasonably restrictive on its face when it imposes conditions that, given existing technology and real-world routing constraints, are impossible or nearly impossible to satisfy and would defeat the statewide siting process. The record contains admissions and testimony reflecting the safety-driven purpose of the ordinances and their intended effect on the proposed route. The Commission was entitled to evaluate the ordinances as written and to conclude they were incompatible with the siting framework and thus unreasonably restrictive.

[¶ 60] The County also attempts to link its ordinance argument to assertions that Summit failed to identify viable southern and eastern routes around Bismarck. That contention does not change the supersession and preemption analysis. The ordinances are legal instruments asserted as independent barriers to the project, and the Siting Act specifically addresses how such local

barriers are treated after a route permit issues. Moreover, the Commission's record on reconsideration includes Summit's route adjustments and its Southern Route Analysis filing. Whether the County preferred different routing is a merits dispute addressed through the Commission's siting criteria and the Commission's findings, not through the continued enforceability of local safety ordinances.

[¶ 61] Finally, the County also attempts to leverage safety concerns and related evidence into procedural arguments, including references to the Dispersion Model. The controlling principle is straightforward. A fair hearing does not imply a right to question witnesses or obtain materials solely to press arguments on matters the agency is not permitted to decide. As noted above, *Williams Elec. Co-op.* holds that "fair hearing" does not include questioning on irrelevant matters. The County's ordinances and its requested use of dispersion modeling are aimed at pipeline safety regulation, an area the Commission cannot regulate for interstate transmission facilities. The County's inability to use Commission proceedings to litigate preempted safety standards does not establish procedural unfairness and does not supply a basis for reversal.

[¶ 62] Ultimately, the County's statutory interpretation would transform N.D.C.C. §49-22.1-13(2)(b) from a supersession rule into a discretionary preemption mechanism duplicative of subdivision (c), and it would empower counties to impose pipeline-specific safety regimes that federal law forbids and the Siting Act otherwise supersedes after a route permit is issued. The Commission correctly rejected that approach. The ordinances are superseded and preempted under N.D.C.C. § 49-22.1-13, and they are independently preempted because they regulate interstate pipeline safety through setbacks, emergency response requirements, and abandonment provisions. The Commission's legal conclusions on this point should be affirmed.

III. BURLEIGH COUNTY'S "NO VIABLE SOUTHERN OR EASTERN ROUTE" ARGUMENT MISSTATES THE RECORD AND THE COMMISSION'S FINDINGS.

A. Burleigh County Misstates Summit's Legal Obligations and the Standard of Review.

[¶ 63] Burleigh County attempts to convert the Commission's initial request for additional information into a legal requirement that Summit "identify a viable southern route and eastern route around Bismarck" that satisfies Burleigh County's preferences. But the Siting Act did not require Summit to prove a particular alternate route, and the Commission did not condition approval on the County's preferred routing outcome. The Commission's task is to decide whether the permitted route, as proposed and conditioned, produces minimal adverse effects and satisfies the statutory and administrative criteria. Burleigh County's brief repeatedly argues as if Summit bore a duty to design a route that avoids Bismarck in the precise manner Burleigh County deems best, including a route it claims could be placed "further away" through "more rural townships." Such a position obviously misstates the legal standard. The governing question is whether Summit met its burden on the route the Commission approved after the rehearing record was supplemented and tested.

B. The Record Shows Summit Conducted a Meaningful Southern Route Analysis.

[¶ 64] The Commission initially denied Summit's application in August 2023 because, among other reasons, the existing record did not include sufficient evidence on certain topics, including an analysis of a south Bismarck alternative. (Findings of Fact, Conclusions of Law, and Order, R530:¶42). Summit then pursued reconsideration and undertook the additional work the Commission requested, even though a separate alternate-route analysis is not a standalone statutory prerequisite to approval. On rehearing, the Commission found Summit had adequately addressed the concerns that drove the initial denial, including the availability (or lack thereof) of a south

Bismarck route and other landowner concerns. (Findings of Fact, Conclusions of Law and Order, R908:¶45). Burleigh County's argument effectively requests this Court to reweigh that conclusion and substitute Burleigh County's route preferences for the Commission's factual and policy judgment—something the standard of review does not permit.

[¶ 65] Burleigh County's central argument is that Summit's "southern route analysis" was "no analysis at all" and an "affront" to the Commission's prior order. That is rhetoric, not a fair description of the record. Summit filed a detailed southern route analysis in response to the Commission's supplemental filing request. (Response to Supplemental Filing Request 3.1.5, R572:1-23). Summit identified a defined southern route study area, evaluated routing risks across numerous categories, and compared a southern alternative against the preferred route north of Bismarck using a structured, criteria-driven approach. (*Id.*). Summit's evaluation addressed, among other things, geohazard and constructability issues associated with a Missouri River crossing in the southern study area, environmental constraints along the river corridor, the likelihood of increased permitting risk and controversy associated with a southern crossing near Lake Oahe, and practical encroachment constraints including the number of potential proximity issues requiring waivers and the relationship to Bismarck's extraterritorial planning area. (*Id.*).

C. Burleigh County's Routing and Development Claims Request the Court to Reweigh Evidence.

[¶ 66] Burleigh County focuses on a map prepared by its witness and argues the southern alternative would run near or through existing developments and within Bismarck's extraterritorial limits, and it highlights testimony describing how difficult it would be to route through subdivisions. (BC Exhibit BC102 - Burleigh Cty Proposed Pipeline Route Map (South Route), R849:1); *see also* ((Part 1 of 3) - May 29, 2024 Formal Hearing Transcript (Full and Condensed), R743:62-64). But those points do not establish that Summit failed to analyze a southern route.

They confirm what Summit's analysis and the record demonstrated: the southern study area presents significant routing constraints, including development and encroachment constraints, and the southern corridor introduces its own set of risks and impacts that the Commission was entitled to weigh. (Response to Supplemental Filing Request 3.1.5, R572:1-23); (Findings of Fact, Conclusions of Law and Order, R908:¶45). Burleigh County cannot simultaneously argue that a southern route would be infeasible because of development, then claim Summit acted in bad faith for concluding the southern route posed greater overall impacts than the Commission-approved route.

[¶ 67] Burleigh County argues Summit did not act in "good faith" because it did not reach out to certain governmental entities, townships, agencies, tribes, or landowners regarding a hypothetical southern route, and it did not conduct certain surveys south of Bismarck. (May 28, 2024 Formal Hearing Transcript, R741:238-48). Summit maintains that it acted in good faith, but even accepting those assertions as accurate descriptions of portions of the testimony, they do not establish legal error. The Siting Act does not require an applicant to obtain advance political endorsement for every hypothetical alternative corridor, nor does it require an applicant to perform full field-level survey work for each alternative route concept before the Commission can evaluate whether the proposed route meets the statutory criteria. The Commission required Summit to supplement the record, Summit submitted substantial supplemental materials, and the Commission provided Burleigh County extensive opportunities to test Summit's submissions through additional hearings and cross-examination. (Request for Supplemental Filing and Data Request 3, R560:1-2); (Response to Request for Additional Information, R561:1-26); (Response to Supplemental Filing Request 3.1.5, R572:1-23); (Notice of Public Hearing, R605:1-3); (Notice of Technical Hearings, R659:1-2).

[¶ 68] Burleigh County's argument is also incomplete as a matter of administrative process. Summit's southern route filing was not a private exercise. It was a formal submission in a contested case, followed by public and technical hearings where intervenors were permitted to probe assumptions, criticize conclusions, and argue for different outcomes. Burleigh County did exactly that. The Commission nonetheless found Summit had adequately addressed the south Bismarck route impacts and other deficiencies cited in the denial order. (Findings of Fact, Conclusions of Law and Order, R908:¶45). Disagreement with that conclusion is not reversible error.

[¶ 69] Burleigh County claims Summit failed to provide discernible maps and that the maps lacked landmarks and identifying information. (BC Exhibit BC100 - SCS Petition for Reconsideration (Pages 1, 8 Only), R847:1-2); (BC Exhibit BC106 - SCS Bismarck Route Analysis Revision:2 (Page 12 Only), R853:1-2). The record demonstrates the opposite in the only sense that matters on appeal: the Commission repeatedly requested additional information, Summit supplied extensive supplemental filings, and the Commission evaluated route adjustments and alternatives through multiple additional hearings and technical sessions. (Request for Supplemental Filing and Data Request 3, R560:1-2); (Response to Request for Additional Information, R561:1-26); (Response to Supplemental Filing Request 3.1.5, R572:1-23); (Response to Supplemental Filing Request 3.1.3, R593:1-13); (Notice of Public Hearing, R605:1-3); (Notice of Technical Hearings, R659:1-2); ((Part 1 of 8) - Response to Supplemental Filing Requests 3.1.1 & 3.1.2, R574:1-190); ((Part 2 of 8) - Response to Supplemental Filing Requests 3.1.1 & 3.1.2, R575:1-190); ((Part 4 of 4) - Response to Supplemental Filing Requests 3.1.1 & 3.1.2, R576:1-132); ((Part 3 of 8) - Response to Supplemental Filing Requests 3.1.1 & 3.1.2, R577:1-220); ((Part 4 of 8) - Response to Supplemental Filing

Requests 3.1.1 & 3.1.2, R578:1-220); ((Part 5 of 8) - Response to Supplemental Filing Requests 3.1.1 & 3.1.2, R579:1-236); ((Part 6 of 8) - Response to Supplemental Filing Requests 3.1.1 & 3.1.2, R580:1-237); ((Part 1 of 2) - Response to Supplemental Filing Requests 3.1.4, R582:1-175); ((Part 2 of 2) - Response to Supplemental Filing Requests 3.1.4, R583:1-151); (Notice of Technical Hearings, R659:1-2). Burleigh County itself prepared and offered maps purporting to depict its understanding of the proposed routing, which further confirms that the route information was sufficiently concrete to be analyzed, challenged, and debated in the administrative record. (BC Exhibit BC101 - Burleigh Cty Pipeline Route Before and After Map, R848:1); (BC Exhibit BC102 - Burleigh Cty Proposed Pipeline Route Map (South Route), R849:1). Burleigh County's complaint is therefore not that the Commission lacked information to decide, but that the Commission decided against the County's preferred siting outcome.

[¶ 70] Burleigh County argues Summit "ostensibly" moved the route east but did not move it in all places, moved it west in some locations, and that the reroute is closer to Bismarck, closer to existing subdivisions, and runs under an I-94 rest area. (BC Exhibit BC101 - Burleigh Cty Pipeline Route Before and After Map, R848:1); ((Part 1 of 3) - May 29, 2024 Formal Hearing Transcript (Full and Condensed), R743:52-59). Those are not legal defects. They are merits arguments about where, within a corridor, the route should be placed. Summit's burden was not to prove an "eastern route" that eliminates all proximity concerns. Summit's burden was to show that the approved route—after adjustments and conditions—meets the Siting Act's criteria and produces minimal adverse effects. The Commission evaluated those disputes, considered the supplemented record, and determined Summit adequately addressed the concerns that prompted the initial denial, including the route impacts and measures taken to address landowner concerns.

(Findings of Fact, Conclusions of Law and Order, R908:¶45). Burleigh County cannot repackage its disagreement with route placement into a claim that Summit "failed" to provide an "eastern route" when the Commission's final order reflects that the Commission considered the route adjustments and found Summit carried its burden.

[¶ 71] A significant portion of Burleigh County's argument relies on testimony from developers and others forecasting harm to future development and property values, and on the assertion that the reroute is within a growth corridor. ((Part 1 of 2) - May 30, 2024 Formal Hearing Transcript (Full and Condensed), R746:17-32); ((Part 3 of 4) - June 2, 2023 Formal Hearing Transcript (Full and Condensed), R495:8-21). The Commission addressed this testimony directly in its final order. It acknowledged landowner assertions about adverse effects on property value and development, but found those assertions were unsupported by evidence, while Summit presented evidence showing little to no buyer preference differences and no significant sales-price differences for comparable parcels with and without pipeline easements. (Findings of Fact, Conclusions of Law and Order, R908:¶¶16-17). That is the Commission's finding on the evidentiary record, and it is not displaced by the County's insistence that certain witnesses were "surprised," "upset," or believe the pipeline should be many miles farther away. ((Part 1 of 2) - May 30, 2024 Formal Hearing Transcript (Full and Condensed), R746). The Court does not reweigh testimony or choose among competing narratives on appeal.

[¶ 72] Burleigh County argues Summit "failed to meet its burden" under the Commission's prior order and points to the denial order's findings regarding property values, landowner impacts, rerouting feasibility, and alternative route analysis. (Findings of Fact, Conclusions of Law, and Order, R530:¶¶17, 32, 42). That argument fails to account for the procedural posture. The denial order was not the final decision; it was the beginning of a

reconsideration process. Summit petitioned for reconsideration, the Commission granted it, required extensive supplemental submissions, held additional hearings, and then issued a final order granting the application after finding Summit had adequately addressed the deficiencies that prompted the denial. (Petition for Reconsideration, Notice of Route Adjustment and Request for Limited Rehearing, R531:1-22); (Order on Petition for Reconsideration with Dissenting Opinion of Commissioner Haugen-Hoffart, R549:1-3); (Response to Supplemental Filing Request 3.1.5, R572:1-23); (Notice of Public Hearing, R605:1-3); (Notice of Technical Hearings, 659:1-2); (Findings of Fact, Conclusions of Law and Order, R908:¶45). Burleigh County's brief treats the denial order as if it remained controlling after reconsideration, but the Commission's final order is the operative decision on appeal.

[¶ 73] Accordingly, Burleigh County's route argument is ultimately an invitation to re-litigate routing preferences and reweigh testimony about development and proximity impacts. Summit was not required by the Siting Act to appease Burleigh County with its analysis of potential southern and eastern routes. Even so, Summit provided the southern route analysis the Commission requested, supported it with a structured, multi-factor evaluation, and tested it through additional hearings. (Response to Supplemental Filing Request 3.1.5, R572:1-23); (Notice of Public Hearing, R605:1-3); (Notice of Technical Hearings, 659:1-2). The Commission then found Summit adequately addressed the concerns that drove the initial denial, including the questions surrounding a southern route. (Findings of Fact, Conclusions of Law and Order, R908:¶45). Burleigh County's disagreement with that conclusion does not establish legal error and provides no basis for reversal.

IV. OTHER ARGUMENTS BY THE APPELLANTS HAVE NO MERIT.

A. The Commission Did Not Err by Declining to Adjudicate Interstate Pipeline Safety, and Burleigh County's Attempt to Repackage Safety Objections as "Public Welfare" Considerations Is Legally Untenable.

[¶ 74] Burleigh County argues the Commission "refused to consider public health and welfare" and other "relevant considerations" that purportedly are not preempted by PHMSA. To the contrary, federal law occupies the field of safety regulation for interstate pipeline facilities and bars state agencies from adopting or enforcing safety standards for those facilities. The Commission correctly recognized that it lacks jurisdiction to regulate safety compliance with PHMSA construction and operational standards and would have erred had it treated safety as a basis to approve or deny the route permit. Burleigh County's argument requests this Court to require the Commission to do what federal law prohibits.

[¶ 75] Burleigh County's reliance on phrases such as "public health," "public welfare," and "safety issues" does not change the substance of what it seeks: a state-level adjudication of pipeline safety risk and emergency response readiness as a condition of siting approval. That is precisely the kind of safety regulation Congress reserved to PHMSA under the PSA. A local or state decisionmaker may not evade preemption by relabeling safety determinations as "welfare" determinations when the operative question remains whether the pipeline is "safe enough," whether emergency response plans are sufficient, or whether plume modeling and similar safety analyses satisfy Burleigh County's expectations.

[¶ 76] Burleigh County's argument also rests on a factual mischaracterization of the reconsideration proceedings. The Commission did not "refuse to consider welfare." The Commission conducted a full Siting Act evaluation focused on the criteria within its authority, including route impacts, avoidance and exclusion areas, minimization of adverse impacts, and the evidentiary support for asserted effects on property values, development, and related land-use

impacts. The Commission addressed those issues in its final order and made findings that are entitled to deference on review. Burleigh County is attempting to convert PHMSA-governed safety questions into grounds for reversal by reframing them as "welfare" considerations. That effort should be rejected as a matter of law.

[¶ 77] Finally, Burleigh County's complaint about lack of access to Summit's Dispersion Model does not demonstrate error on this point. Burleigh County sought the Dispersion Model for a purpose the Commission could not lawfully entertain: to litigate and challenge Summit's safety case and emergency response assumptions as a basis to deny the permit. Denial of a platform to litigate an irrelevant or preempted issue is not denial of a fair hearing. A fair hearing does not include an entitlement to pursue questioning or obtain discovery solely to make arguments the agency is not permitted to decide.

B. The Commission Was Not Required to Delay Its Decision in Anticipation of Future PHMSA Regulations, and Burleigh County's "Wait for Rulemaking" Theory Is Contrary to the Siting Act and Administrative Finality.

[¶ 78] Burleigh County contends the Commission should have postponed its decision until PHMSA issued "expected new regulations" following Satartia. That argument fails as a matter of law and practical administration.

[¶ 79] The Siting Act requires the Commission to process and decide applications within the statutory framework and time limits the Legislature established. The Commission is not authorized to place a proceeding in indefinite suspension because a federal agency may issue future amendments to safety regulations. PHMSA's regulatory program is continuous. If "anticipated updates" were enough to halt state siting proceedings, pipeline projects would be perpetually stalled because federal rulemaking is iterative, incremental, and ongoing. Burleigh County's theory would effectively create a standing moratorium on siting decisions any time PHMSA is

considering amendments—an outcome not contemplated by the Siting Act and inconsistent with orderly administration.

[¶ 80] More importantly, Commission approval does not insulate Summit from future PHMSA rules. The pipeline must comply with PHMSA's safety regulations as they exist now and as they may be amended in the future. PHMSA retains its full enforcement authority regardless of any state siting permit, including compliance orders, civil penalties, and other remedies under federal law. The Commission's issuance of a route permit does not freeze the applicable safety standards at the time of the Commission's decision. If PHMSA adopts new requirements, Summit must comply. Burleigh County therefore cannot show prejudice from the Commission issuing its siting order before any later PHMSA amendments.

[¶ 81] Burleigh County's insinuation that Summit's request for expedition is "suspect" is also irrelevant. The question on appeal is whether the Commission acted within its statutory authority and followed required procedures. The Commission's obligation is to decide the case on the record and under governing law, not to align its decision-making calendar with federal rulemaking timelines or to speculate about why any party sought prompt action.

C. The Commission Adequately Addressed the Insurance Issue That Was Before It, and Burleigh County's Demand for Additional Insured Status and Private Indemnity Terms Exceeds the Commission's Authority and the Siting Act's Requirements.

[¶ 82] Burleigh County argues the Commission's order "fails to address" insurance issues, asserting that CO_2 may be treated as a pollutant and that landowners' personal insurance may not cover a release, particularly if caused by someone other than Summit. Burleigh County also complains that Summit did not provide an agreement naming landowners as additional insureds and that Summit's easement indemnity provision purportedly requires landowners to "prove fault."

[¶ 83] That argument fails for three separate reasons. First, the County overstates the Commission's obligation. The Siting Act does not transform the Commission into a regulator of private insurance, nor does it authorize the Commission to require applicants to negotiate bespoke insurance endorsements for each landowner as a condition of siting approval. The Commission's task is to determine whether the proposed facility and route satisfy the statutory criteria and whether adverse effects have been adequately minimized. Insurance disputes about how third-party insurers define "pollutants" or allocate coverage are not a siting criterion and are not a contemplated basis for denial.

[¶ 84] Second, even though it was not required to do so, the Commission did address the insurance-related concerns raised in the record. The Commission acknowledged landowner assertions about difficulty obtaining insurance and determined that additional conditions were not necessary given Summit's commitments, including maintaining substantial liability coverage for the project and committing to bear liability for a rupture absent a third-party line strike. The Commission's finding was that, in light of Summit's commitments, no further requirements were needed to ensure minimal adverse impacts on landowners' liability insurance requirements. That is a classic discretionary, record-based determination and should not be disturbed on appeal merely because Burleigh County preferred more stringent private contractual arrangements.

[¶ 85] Third, Burleigh County's argument about the easement indemnity clause is misplaced. The cited indemnity language allocates responsibility for claims "resulting from or arising out of" the company's use of the easement, with carveouts for claims caused by the landowner. That provision is a private contract term, and the Commission's role is not to rewrite easements. In addition, Burleigh County's suggestion that landowners would inevitably be forced into costly fault litigation is speculative and does not establish that the Commission's order was

unlawful or unsupported by evidence. The Commission had before it Summit's stated insurance and liability commitments and concluded those commitments were sufficient for purposes of the siting decision. That finding is entitled to deference.

[¶ 86] Burleigh County's "pollutant exclusion" point also does not show legal error. Even if some landowners' private policies treat CO_2 as a pollutant, that does not mean landowners are left without protection. Liability for pipeline releases is not determined by the presence or absence of a landowner's private insurance policy; it is determined by applicable liability rules and the pipeline operator's obligations, including the operator's own insurance and responsibility for damages. The Commission reasonably concluded that Summit's commitments addressed the concern at the level relevant to a siting determination.

D. Summit's Application and Petition for Reconsideration Comply with N.D.C.C. ch. 49-22.1.

[¶ 87] Emmons County argues that the Commission erred by allowing Summit to effectively amend its application through its petition for reconsideration. (Brief of Emmons County, R913:¶¶31-37 ("[Summit's] Petition for Reconsideration contains material amendments to the application at issue. Changes were made to the actual route of the pipeline.")). That argument fails for four independent reasons.

[¶ 88] First, Emmons County cannot raise the argument. Emmons County was granted intervention for the limited purpose of addressing whether its ordinance is preempted under N.D.C.C. § 49-22.1-13. (Order Granting (30 June 2023) Petition for Intervention, R516:1-5). Being confined to that issue, it may not argue other issues relating to the Commission granting Summit's petition for reconsideration.

[¶ 89] Second, Emmons County's argument is outside the scope of the present appeal. When a party appealing an agency decision "does not enumerate an issue in their specifications of

error, [courts] will not consider the issue on appeal." *Beam v. North Dakota Workforce Safety & Ins. Fund*, 2020 ND 168, ¶ 7, 946 N.W.2d 486. The issue of whether the Commission erred by allowing Summit to effectively amend its application through its petition for reconsideration was not enumerated in any of the Appellants' specification of errors and so the Court may not consider the issue.

[¶ 90] Third, the premise of Emmons County's argument—that Summit amended its application—is incorrect. The route in Summit's application was a *proposed* route. During the proceedings, the Commission expressed concerns about the proposed route. In response, Summit offered an alternative route, which is something explicitly contemplated by the Siting Act. *See* N.D.C.C. § 49-22.1-09(5) ("The [Commission] is guided by … [a]lternatives to the proposed site, corridor, or route that are developed during the hearing process and which minimize adverse effects."). Offering an alternative route is not the same thing as amending an application.

[¶ 91] Fourth, even if the Commission's actions could be characterized as permitting an amendment to Summit's application, it had the authority to do so. The Commission has the authority to grant a petition for reconsideration "on such terms as it may prescribe." N.D.C.C. §28-32-40(4). And one term that the Commission could prescribe is allowing Summit to amend its application

[¶ 92] Finally, Appellants state that Summit was required to obtain "two separate approvals" from the Commission for its certificate of corridor compatibility and its route permit. (Appellants' Brief, R915:¶¶ 32–33). It is unclear whether this assertion is intended to point out a flaw in Summit's application or the Commission's proceedings. To the extent that it is, however, Appellants are mistaken. N.D.C.C. § 49-22.1-08 provides that a utility "may file a separate application for a certificate or permit, or combined into one application." Thus Summit was not

precluded from filing a single application for a certificate of corridor compatibility and route permit and the Commission was likewise not prohibited from approving Summit's application as such.

E. Burleigh County's Attorney-Fee Request Fails Because the Commission's Decision Was Substantially Justified, and Fees Are Unavailable Unless Burleigh County Prevails and the Agency Lacked Substantial Justification.

[¶ 93] Burleigh County seeks attorney's fees under N.D.C.C. § 28-32-50 and asserts the Commission acted without substantial justification. That request fails on both prongs of the statute. As a threshold matter, fee-shifting is contingent on the County prevailing on the merits. If the Commission's order is affirmed, the fee request fails as a matter of law. Even if the County were to obtain some relief, fees are not automatic unless the Court also finds the Commission acted without substantial justification—meaning the Commission's position lacked a reasonable basis in law and fact such that a reasonable person could not think it correct.

[¶ 94] Burleigh County's "no substantial justification" claim is built on the same arguments addressed above, and those arguments are at minimum debatable and, in key respects, plainly incorrect. The Commission's safety-jurisdiction determination was not only substantially justified; it was compelled by federal preemption principles governing interstate pipeline safety regulation. The Commission's decision not to adjudicate PHMSA compliance, plume modeling sufficiency, or emergency response adequacy as a permitting criterion is exactly what a reasonable agency would do to avoid federal conflict.

[¶ 95] The Commission's confidentiality ruling regarding dispersion modeling materials was also substantially justified. The Commission applied the state statute governing security system plans and made findings regarding the sensitive nature of the information and the public safety consequences of misuse. At a minimum, the Commission's statutory interpretation and protective handling approach were reasonable, and "substantial justification" does not require the

agency to be ultimately correct on every contested legal question. It requires only a reasonable basis in law and fact.

[¶ 96] The Commission's supersession and preemption determinations regarding local ordinances were likewise substantially justified. The Commission applied the Siting Act's express supersession language and acted consistently with the statutory purpose of providing statewide siting uniformity for transmission facilities within designated corridors, while recognizing the distinct treatment of road use agreements. Even if Burleigh County disputes that interpretation, the existence of a reasonable statutory reading and a coherent legal rationale defeats any claim that the Commission acted without substantial justification.

[¶ 97] Burleigh County's attempt to impose a duty on the Commission to delay its decision for anticipated federal rulemaking is also not a plausible basis for fees. The Siting Act contemplates timely agency decision-making. The Commission's decision to proceed to final order on the record before it—knowing that federal safety rules remain federally enforceable and continue to evolve—was a reasonable exercise of administrative judgment.

[¶ 98] Finally, Burleigh County's insurance arguments illustrate why fees are unwarranted. The Commission addressed the insurance-related testimony, credited Summit's commitments, and made a reasoned determination that no additional requirements were needed. That is the opposite of arbitrary action. It is a record-based agency judgment. Disagreement does not equate to lack of substantial justification.

[¶ 99] For all of these reasons, Burleigh County's fee request should be denied. The Commission acted within its authority, proceeded through an extensive process, issued a final order supported by evidence, and adopted positions that a reasonable person could think correct.

That is substantial justification, and it defeats N.D.C.C. § 28-32-50 even if the Court were to disagree with any discrete aspect of the Commission's reasoning.

CONCLUSION

[¶ 100] This appeal is an effort by the Appellants to unwind a final, record-based agency decision by reframing disagreement with the outcome as legal error. But the Commission's final order reflects exactly what North Dakota administrative law requires: a full contested-case process, extensive opportunities to present evidence and cross-examine witnesses, careful attention to the statutory criteria the Legislature assigned the Commission, and reasoned findings supported by the record. What the Appellants seek is not correction of a procedural defect or misapplication of law, but a second opportunity to litigate issues already decided—one that would require this Court to reweigh evidence, expand the Commission's jurisdiction into federally preempted safety regulation, and rewrite the Siting Act's supersession framework. The law does not permit that result.

[¶ 101] The Appellants' fair-hearing and confidentiality arguments fail at the threshold because they depend on a premise the record does not support and on an objective the Commission could not lawfully pursue. The Commission's final order does not rely on Summit's Dispersion Model as a basis for approval, and speculation cannot substitute for proof. Under *Williams Elec. Co-op.*, where the record does not show that undisclosed evidence entered into the decision, the presumption is that it did not. Just as importantly, the asserted purpose for obtaining the Dispersion Model was to litigate pipeline safety and emergency-response adequacy as grounds for denial—issues the Commission correctly recognized as outside its jurisdiction and preempted by federal law governing interstate pipeline safety. A party is not denied a fair hearing because it cannot obtain confidential materials to advance arguments the agency is not permitted to decide, and the inability to pursue irrelevant inquiry is not a due-process violation.

[¶ 102] The Commission's confidentiality determinations are independently sound. The record supports the Commission's findings that confidentiality was maintained, that limited disclosures occurred only in controlled, non-public settings to individuals with a need to know, and that the information at issue falls within North Dakota's statutory protections for security-sensitive records relating to critical infrastructure. The Appellants' waiver-by-disclosure theory finds no support in the statutory text. The Commission's conclusion that the Dispersion Model could be misused to maximize harm is a reasonable application of the Legislature's security-system-plan protections and is entitled to deference. In any event, the Appellants have not demonstrated prejudice tied to any issue the Commission was authorized to decide.

[¶ 103] On the core statutory questions, the Commission correctly concluded that the county ordinances are superseded and preempted. The Siting Act does not permit statewide siting decisions to be overridden by a patchwork of local pipeline-specific regulations. The Legislature adopted a clear rule: after a route permit issues for a gas or liquid transmission facility within a designated corridor, that permit supersedes and preempts local land-use and zoning regulations except as expressly provided. The Appellants' interpretation would nullify that rule, collapse distinct statutory provisions into one, and render the Act unworkable. The Commission's interpretation harmonizes the statutory scheme, preserves statewide uniformity, and is at least reasonable, and therefore entitled to judicial deference.

[¶ 104] Independently, the ordinances cannot be enforced because they regulate interstate pipeline safety and operate as effective bans. The record confirms their purpose and effect: setbacks, emergency-response obligations, and abandonment requirements directed at hazardous liquid pipelines. Federal law occupies the field of interstate pipeline safety regulation. A state or local authority cannot do indirectly, through labels such as zoning or public welfare, what

Congress has expressly forbidden. The Commission properly refused to adjudicate safety compliance as a siting criterion and correctly concluded the ordinances conflict with federal law and the Siting Act's allocation of authority.

[¶ 105] The Appellants' routing arguments likewise fail to establish reversible error. They misstate Summit's obligations under the Siting Act and ignore the posture of this case. The initial denial order was not the final decision; it initiated a reconsideration process that produced extensive supplemental filings, route adjustments, additional hearings, and full opportunities for testing the evidence. After that process, the Commission expressly found that Summit had adequately addressed the concerns that prompted the denial. The Appellants now request this Court to substitute their preferred routing outcomes for the Commission's factual and policy judgments. Appellate review does not allow that substitution.

[¶ 106] The remaining arguments suffer from the same defect. The Commission was not required to delay its decision in anticipation of possible future federal rulemaking. It was not authorized to impose private insurance endorsements or rewrite easement indemnity provisions as a condition of siting approval. And the Commission acted within its authority in managing reconsideration and evaluating alternatives contemplated by the Siting Act. Disagreement with those judgments does not equate to legal error.

[¶ 107] Finally, the request for attorney's fees fails. Fee-shifting requires both prevailing on the merits and a showing that the Commission lacked substantial justification. The Commission's positions were reasonable, and on critical issues—federal safety preemption, the limits of state authority, and statutory supersession—they were compelled by law. That alone defeats any claim for fees.

[¶ 108] In the end, the Appellants' arguments share a single theme: dissatisfaction with the outcome of a statewide siting process and an effort to impose conditions, routing decisions, and safety adjudications the Commission was not empowered to impose. The Commission followed the law, respected federal preemption, conducted an exhaustive and fair process, and issued a final order supported by substantial evidence. The Court should affirm the Commission's order in all respects and deny the request for attorney's fees.

Dated this 20th day of March, 2026.

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