

STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH

IN DISTRICT COURT  
SOUTH CENTRAL JUDICIAL DISTRICT

CIVIL NO. 08-2024-CV-03622

APH Farms, Arden Hagerott, Jonathan )  
Hagerott, Janel Olson, Valera Hayen, Kari )  
Curran, Scott Irmen, Mary Jo Irmen, Leon )  
Mallberg, Staroba Revocable Living Trust, )  
Loren Staroba, Diane Staroba, James Tiegs, )  
Appellants, )  
vs. )  
North Dakota Public Service Commission, )  
SCS Carbon Transport LLC, John H. )  
Warford, Jr. Revocable Trust, Chad Wachter, )  
Chad Moldenhauer, City of Bismarck, )  
Laborers District Council of Minnesota and )  
North Dakota, Emmons County, and )  
Burleigh County, )  
Appellees. )

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**BRIEF OF APPELLANT BURLEIGH COUNTY  
REGARDING REQUEST FOR ORAL ARGUMENT**

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[¶1] On March 16, 2026, the Court issued an Order (Index # 925) allowing the parties to submit supplemental briefing regarding whether oral argument should be held, and addressing the length requested for the hearing, and if a hearing is granted, how the time should be allocated. Burleigh County submits this brief in response to the Court’s March 16, 2026, Order.

[¶2] Burleigh County respectfully requests a four (4) hour oral argument time period on this appeal, with each side<sup>1</sup> having two (2) hours to be divided among the attorneys on each side as they may agree amongst themselves. In the event the parties on one side cannot agree on a division of their total allocated two (2) hours, then the time for that side would be equally divided. This allocation would be fair to all participants at the hearing, and would allow enough time for the complicated issues in this appeal to be addressed.

[¶3] Burleigh County asserts that oral argument would assist the Court in analyzing this factually and procedurally complex appeal, which involves multiple significant and novel issues. The record on appeal is extensive, consisting of numerous (fourteen) public hearings before the Public Service Commission (Index #s 209-210, 226, 325-326, 426-427, 493-496, 666-669, 726-729, 740-753), spanning multiple dates and locations, and including testimony from expert witnesses, emergency management officials, land developers, and affected citizens. The procedural history is likewise complex, involving multiple motions (over twenty motions, applications, and/or petitions were filed by the parties with the PSC and two motion hearings were heard by the PSC), including motions for reconsideration, motions relating to protection of information, interlocutory rulings on issues of preemption and evidentiary limitations, and the final order, all of which are now before the Court on appeal.

[¶4] The appeal raises several important and, in many respects, novel issues, including: whether the Public Service Commission improperly relied on undisclosed and untested evidence, specifically Summit's dispersion modeling, while prohibiting meaningful examination of that

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<sup>1</sup> Burleigh County and the Landowners are on one side of the appeal, and SCS Carbon Transport LLC and the Public Service Commission are on the other side. Emmons County has advised it does not seek argument time, but will answer any questions the Court may have for Emmons County. (Index # 932)

evidence; whether the Public Service Commission erred in concluding that Burleigh County's duly enacted zoning ordinances were automatically superseded and preempted without making the findings required by North Dakota law; whether the Public Service Commission's approval of the route is unsupported by sufficient evidence in light of Summit's failure to conduct a legitimate analysis of alternative routes around Bismarck; and whether the Public Service Commission failed to adequately consider public safety, emergency preparedness, and evolving federal regulatory standards governing carbon dioxide pipelines, and other issues. Many of these issues implicate questions of statutory interpretation, administrative due process, and the proper scope of agency authority. These matters would benefit from direct engagement with the Court through oral argument and allowing the Court to address any questions or comments the Court might have.

[¶5] Additionally, this case presents issues of substantial public importance, including the siting of a high-pressure carbon dioxide pipeline near populated areas and the extent of local governmental authority to protect public health and safety. The proceedings have drawn significant attention from the press and public at-large, and a full oral argument would aid both the Court and the public in understanding the legal and factual issues at stake.

Dated this 25<sup>th</sup> day of March, 2026.

BAKKE GRINOLDS WIEDERHOLT

By: /s/ Randall J. Bakke

Randall J. Bakke (#03898)  
Special Assistant State's Attorneys for  
Burleigh County  
300 West Century Avenue  
P.O. Box 4247  
Bismarck, ND 58502-4247  
(701) 751-8188  
[rbakke@bgwattorneys.com](mailto:rbakke@bgwattorneys.com)

*Attorney for Appellant Burleigh County*