

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

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.

Case No. 08-2024-CV-03622

And

Burleigh County,

Appellant,

vs.

North Dakota Public Service Commission and SCS Carbon Transport LLC,

Appellees.

**NORTH DAKOTA PUBLIC SERVICE COMMISSION'S
POSITION ON ORAL ARGUMENT REQUEST**

[¶1] The Court issued an Order dated March 16, 2026, allowing the parties to provide their positions on oral argument requested by some of the appellants in this administrative appeal. Dkt. No. 925. The Commission does not request oral argument. Its positions are clear from the Orders it has issued and from its appellee brief that was filed with the Court. Dkt. No. 930.

[¶2] There is nothing novel concerning the standard of review for a district court reviewing a decision to site a hazardous interstate pipeline in North Dakota. These pipelines are sited by the Commission regularly—using the same siting criteria established by the Commission’s regulations and the Legislative Assembly. The current appeal is more about issues the Commission, and this Court, have no jurisdiction over—the perceived safety of the line. Oral argument is not necessary to address the statutory issues the Court must consider on an appeal of an administrative agency decision. Spending four hours on argument of issues the Commission, and the Court, lack jurisdiction on, is not needed. The issue on appeal is whether the Commission’s decisions should be affirmed based on the standard of review set by our supreme court.

[¶3] If the Court decides to hold oral argument, the length of time should be in line with N.D.R.App.P. 34(b). While N.D.R.Ct. 9.1 provides few instructions to district courts reviewing administrative appeals, two to four hours is unnecessary to argue the appealed issues. Our supreme court routinely holds oral argument on cases with voluminous records and numerous issues—even “novel” issues. Here, efficiency would be best served by requiring the parties to adhere to basic and long-held constraints for appellate oral argument.

[¶4] If oral argument is ordered, what is good for the goose is good for the gander. Why should the district court, acting as an appellate court, be any different from the North Dakota Supreme Court in terms of length of appellate oral argument? The standard of review is no different. There is no reason the district court, acting as an appellate court, should afford appellants

more than a combined total of 30 minutes for oral argument and appellees a combined total of 20 minutes for oral argument. *See* N.D.R.App.P. 34(b). Parties in multi-party appeals routinely have to agree on how to “divvy up” time within these constraints. This allows the parties to *concisely* and *efficiently* make their point, answer any questions the appellate court may have, and to sit down: relying on the already lengthy written arguments that have been briefed.

[¶5] Regardless of what the Court decides to do with respect to oral argument, to put its money where its mouth is, if the Court decides to hold oral argument, the Commission requests that it be given 10 minutes for its oral argument.

Dated this 30th day of March, 2026.

/s/ Zachary E. Pelham
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