

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

Case No. 08-2024-CV-03622

APH Farms, Arden Hagerott, Jonathan Hagerott,
Janel Olson, Valera Hayen, Kari Curran, Scott Irmén,
Mary Jo Irmén, Leon Mallberg, Staroba Revocable
Living Trust, Loren Staroba, Diane Staroba, and
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.

JUDGMENT

[¶1] On October 9, 2026, the Court issued its *Order Affirming in Part, Reversing in Part, and Remanding* and directed entry of judgment. That order decides this appeal and the consolidated appeal, *Burleigh County v. North Dakota Public Service Commission*, Case No. 08-2024-CV-03614. The appeals challenge orders of the North Dakota Public Service Commission (the “PSC”) on the application of SCS Carbon Transport LLC (“Summit”) for a certificate of corridor compatibility and route permit for its carbon dioxide pipeline. Based on that order, IT IS ORDERED AND ADJUDGED:

[¶2] **August 4, 2023, Order on Protection of Information.** The PSC’s classification of Summit’s dispersion model (the “Dispersion Model”) as a security system plan under N.D.C.C. § 44-04-24(1), (2)(b) is AFFIRMED. The order is REVERSED to the extent it granted, without

findings, Summit's request to waive the redacted-version requirement of N.D.A.C. § 69-02-09-01(5). That request is REMANDED to the PSC for findings.

[¶3] **February 7, 2024, Order.** The PSC's conclusion that a route permit automatically supersedes and preempts local land use and zoning regulations under N.D.C.C. § 49-22.1-13(2)(b) is REVERSED.

[¶4] **November 15, 2024, Findings of Fact, Conclusions of Law, and Order.** The following parts of the order are REVERSED and REMANDED: (a) the PSC's findings and conclusions that the Emmons County and Burleigh County ordinances are superseded and preempted, including its findings that the ordinances are unreasonably restrictive on their face and directly conflict with N.D.C.C. § 49-22.1-03; (b) the PSC's denial of Burleigh County's motion to reconsider the protection of the Dispersion Model; (c) the PSC's finding that Summit adequately addressed the request for an analysis of a southern route around Bismarck; and (d) the PSC's conclusion that the project will produce minimal adverse effects upon the welfare of the citizens of North Dakota. Burleigh County's separate challenge to the property value finding is not properly before the Court. The November 15, 2024, *Findings of Fact, Conclusions of Law, and Order* is AFFIRMED in all other respects.

[¶5] **September 15, 2023, Order on Petition for Reconsideration.** Emmons County's challenge to this order is not properly before the Court. Even if the Court reached the merits, it would find the order was in accordance with N.D.C.C. § 28-32-40. The order is not disturbed.

[¶6] **Remand.** On remand, the PSC must: (a) decide separately, for each county, whether Summit has shown by a preponderance of the evidence that the county's ordinance is "unreasonably restrictive in view of existing technology, factors of cost or economics, or needs of consumers regardless of their location" under N.D.C.C. § 49-22.1-13(2)(c), and state findings of fact and

conclusions of law that explain its decision; (b) rule again on Burleigh County's motion to reconsider the protection of the Dispersion Model, address the evidence that the Dispersion Model was shown to persons not shown to be Summit employees or authorized agents, and decide whether a redacted public version is possible under N.D.A.C. § 69-02-09-01(5), and, if it is not, explain why a waiver is warranted; (c) state findings on the southern route that address the evidence Burleigh County presented and explain why the single southern alignment Summit provided answers that evidence; and (d) state express findings on whether public welfare, apart from the safety standards reserved to the Pipeline and Hazardous Materials Safety Administration, supports granting the certificate and route permit. The PSC may also address whether Summit has shown that any requirement in either county's ordinance is "in direct conflict with ... federal laws or rules" under N.D.C.C. § 49-22.1-13(2)(c). If the PSC addresses that question, it must consider each county's ordinance separately and state findings that explain its decision. When the PSC states its southern-route findings, it may consider the eastern-route evidence and the property value testimony discussed in the Court's order. The PSC may decide the remanded issues on the existing record or may take additional evidence. If it takes additional evidence, it must comply with N.D.C.C. § 28-32-35 and, if it relies on information in its own possession, N.D.C.C. § 28-32-25.

[¶7] **Interim effect.** The certificate of corridor compatibility and route permit remain in effect while the PSC proceeds on remand. The Dispersion Model remains protected until the PSC decides the remanded issues.

[¶8] **Attorney's fees and costs.** The requests of the Appellants and of Burleigh County, the appellant in No. 08-2024-CV-03614, for attorney's fees and costs under N.D.C.C. § 28-32-50(1) are DENIED.

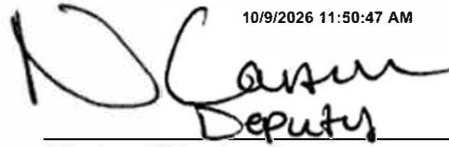
[¶9] **Further review.** Any party aggrieved by the PSC's decision on remand may appeal that

decision as provided in N.D.C.C. § 28-32-42(1).

WITNESS the hand and seal of this Court in the City of Bismarck, State of North Dakota, this

____ day of October, 2026.

10/9/2026 11:50:47 AM

A handwritten signature in black ink, appearing to read "K. Carson", written over a horizontal line.

Clerk of District Court
Burleigh County, North Dakota
Case Number 08-2024-CV-03622