

April 21, 2023

**HAND DELIVERED**

Mr. Steve Kahl  
Executive Secretary Director  
North Dakota Public Service Commission  
600 E. Boulevard, Dept. 408  
Bismarck, ND 58505-0480

**RE: SCS Carbon Transport LLC  
Midwest Carbon Express Project  
Case No. PU-22-391**

Dear Mr. Kahl:

Please find enclosed herewith for filing with the North Dakota Public Service Commission, an original and seven (7) copies of the following:

1. Application to Protect Information.

Also enclosed herewith, please find a Compact Disc (CD) containing this letter and the above-referenced documents in PDF format. The information sought to be protected by the Application to Protect Information is enclosed herewith in a separate, sealed envelope marked "PROTECTED INFORMATION – PRIVATE" in accordance with § 69-02-09-02 of the North Dakota Administrative Code.

Should you have any questions, please advise.

Sincerely,

/s/ Lawrence Bender

LAWRENCE BENDER

LB/tjg  
Enclosures

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF NORTH DAKOTA**

IN THE MATTER OF THE APPLICATION  
OF SCS CARBON TRANSPORT LLC FOR  
A CERTIFICATE OF CORRIDOR  
COMPATIBILITY AND ROUTE PERMIT  
FOR THE MIDWEST CARBON EXPRESS  
PROJECT IN BURLEIGH, CASS, DICKEY,  
EMMONS, LOGAN, MCINTOSH,  
MORTON, OLIVER, RICHLAND AND  
SARGENT COUNTIES, NORTH DAKOTA

CASE NO. PU-22-391

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**Application of SCS Carbon Transport LLC to Protect Information**

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Pursuant to North Dakota Administrative Code (“NDAC”) § 69-02-09-01, SCS Carbon Transport LLC (“Summit”) submits this application to protect from disclosure certain confidential information to be filed with the North Dakota Public Service Commission (“Commission”) in the above-captioned matter. The purpose of this application for protection of information is to protect from public disclosure certain security system plans pursuant to North Dakota Century Code (“NDCC”) § 44-04-24.

A security system plan includes “records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, communications or consultations” relating to critical infrastructure if the plan or portion of the plan is in the possession of a public entity. *See* NDCC § 44-04-24(2)(b)(1). Critical infrastructure includes hazardous liquid pipeline systems. *See* NDCC § 44-04-24(2)(a).

In connection with its proposed interstate carbon dioxide pipeline system, Summit is required to develop an Emergency Response Plan (“ERP”) and Integrity Management Plan (“IMP”) in accordance with the requirements of the Pipeline and Hazardous Materials Safety Administration (“PHMSA”). *See* 49 C.F.R. §§ 195.402(e), 195.408 and 195.452. PHMSA

administers a national pipeline safety compliance oversight and enforcement program and is responsible for ensuring the safety of interstate carbon dioxide pipelines. *See* 49 U.S.C. § 60101 *et seq.* The ERP and IMP each qualify as “security system plans” under § 44-04-24 of the North Dakota Century Code because each contain confidential and sensitive information relating to Summit’s proposed carbon dioxide pipeline (the “Pipeline”) and potential threats to the Pipeline. The Pipeline meets the definition of “critical infrastructure” under § 44-04-24(2)(a) of the North Dakota Century Code.

In connection with the preparation of the ERP and IMP, Summit is required to conduct dispersion modeling relating to a release of carbon dioxide from the Pipeline (the “Dispersion Model”). Summit will submit the results of the Dispersion Model (the “Model Outputs”) and the risk assessment associated therewith (the “Risk Assessment”) to PHMSA as part of that agency’s review of the adequacy and completeness of ERP, IMP and other programs that Summit is required to develop. Given the sensitive nature of the Model Outputs and Risk Assessment, Summit will request that PHMSA protect these materials from public release under the Agency’s regulations for submission of confidential information. *See* 49 C.F.R. §§ 190.343 and 7.29.

As part of its submittal of the Model Outputs and Risk Assessment to PHMSA, Summit will seek protections for these materials, including under the Freedom of Information Act (“FOIA”) and other authorities. Specifically, the Model Outputs and Risk Assessment qualify for protection under FOIA Exemptions 4 and 7(F). *See* 5 U.S.C. §§ 552(b)(4) and 552(b)(7)(F). Exemption 4 protects confidential commercial information that is customarily kept private. Exemption 7(F) protects information that could reasonably be expected to endanger the life or physical safety of any individual.

The Model Outputs and Risk Assessment are also subject to protection under a U.S. Department of Homeland Security (“DHS”) program for protection of transportation-related Sensitive Security Information (“SSI”). *See* 49 C.F.R. Part 1520. When submitted to PHMSA, these materials would qualify as vulnerability assessments under DHS regulations that require confidential treatment and special handling. *See* 49 C.F.R. §§ 1520.5(b)(5) and 1520.9. Given the confidential commercial nature of the Model Outputs and Risk Assessment, and, more importantly, the utility of such materials to those who may wish to damage to pipeline facilities,<sup>1</sup> Summit expects to receive federal protections against public release of these materials.

Although the Model Outputs and Risk Assessment must be protected from public release for the reasons described above, it should also be noted that Summit is required to use these materials to develop numerous safety programs intended to protect the public in the event of a release. These programs include the IMP and ERP noted above, as well as Summit's required Public Awareness Program. *See* 49 C.F.R. § 195.440.

The Commission has requested a copy of the Model Outputs and Risk Assessment. Summit has agreed to provide unredacted copies of the Model Outputs and Risk Assessment provided that such information is afforded the same confidentiality and protection it is given under federal law, discussed above.

Accordingly, Summit requests that protection be given to the unredacted Model Outputs and Risk Assessment attached hereto as Exhibit A and submitted to the Commission by Summit in this matter and any other information which may be submitted to the Commission which was

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<sup>1</sup> *See* South Dakota, Iowa confirm pipeline vandalism, AP News, March 21, 2017 *available at* <https://apnews.com/article/65dd5cb6e6e84bfc977f54de5bfaa6e6>. *See* ‘How to Blow Up a Pipeline’ explores vigilante eco-sabotage, AP News, Apr. 5, 2023, *available at* <https://apnews.com/article/climate-change-film-how-to-blow-up-a-pipeline-f9df6f1bf398476fea6c5aa33fe468ab>

prepared in connection with or as a part of the ERP or IMP. Specifically, Summit requests that the information be available only to the Administrative Law Judge, the Commission, the Commission's counsel, and the Commission's siting analysts.

Furthermore, Summit respectfully requests that the Commission waive the requirement to file redacted, public versions of the Model Outputs and Risk Assessment pursuant to NDAC § 69-02-09-01. The filing of a redacted version of the Information is not possible due to the highly confidential and sensitive nature of the information sought to be protected and the potential negative consequences which may result from the public disclosure of any part or portion thereof.

Dated this 21st day of April, 2023.

FREDRIKSON & BYRON, P.A.

By: /s/ Lawrence Bender  
LAWRENCE BENDER, ND Bar #03908  
1133 College Drive, Suite 1000  
Bismarck, ND 58501  
(701) 221-8700  
lbender@fredlaw.com

*Attorneys for SCS Carbon Transport LLC*

**EXHIBIT A**

**PROTECTED INFORMATION – PRIVATE**

**SENSITIVE SECURITY INFORMATION under 49 CFR Parts 15 and 1520 -  
CONFIDENTIAL commercial information subject to protection under FOIA  
Exemption 4 and 7(F) 5 U.S.C. 552(b)(4) and 552 (b)(7)(F).**

**[Provided in separate, sealed envelope in accordance with NDAC § 69-02-09-02(2).]**

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**SCS Carbon Transport LLC  
Midwest Carbon Express CO2 Project  
Sitting Application**

**CASE NO. PU-22-391**

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that a true and correct copy of the following:

1. Letter to S. Kahl forwarding documents for filing; and
2. Application to Protect Information.

were, on April 21, 2023, filed with the North Dakota Public Service Commission and served electronically to the following:

Hope L. Hogan  
hlhogan@nd.gov

John Hamre  
jghamre@nd.gov

John Schuh  
jschuh@nd.gov

Zachary Pelham  
zep@pearce-durick.com

Randall J. Bakke  
rbakke@bgwattorneys.com

Bradley N. Wiederholt  
bwiederholt@bgwattorneys.com

Steven Leibel  
steve@bismarck-attorneys.com

David Knoll  
david@bismarck-attorneys.com

Brian E. Jorde  
bjorde@dominalaw.com

Kevin Pranis  
kpranis@liunagroc.com

Dated this 21st day of April, 2023.

FREDRIKSON & BYRON, P.A.

By: /s/ Lawrence Bender

Lawrence Bender, ND Bar #03908  
1133 College Drive, Suite 1000  
Bismarck, ND 58501  
lbender@fredlaw.com  
(701) 221-8700