



KNOLL LEIBEL ^{LLP}
ATTORNEYS AT LAW

May 8, 2023

VIA U.S. & E-MAIL ONLY: ndpsc@nd.gov

Steve Kahl
Executive Secretary
North Dakota Public Service Commission
State Capitol
600 E Boulevard Ave, Dept 408
Bismarck, ND 58505-0480

RE: In the Matter of the Application of SCS Carbon Transport LLC for
Certificate of Corridor Compatibility and Route Permit for the Midwest
Carbon Express
Case No.: PU-22-391

Dear Mr. Kahl:

Enclosed for filing please find the following documents:

1. Affidavit of Rose Dotzenrod;
2. Declaration of Service.

This Affidavit is being filed with the North Dakota Public Service Commission (hereinafter "NDPSC") on behalf and at the request of Intervenor, Rose Dotzenrod. Rose has a direct and substantial interest in these proceedings, as well as legal property rights which may be substantially affected by NDPSC's findings and conclusions.

Sincerely,

KNOLL LEIBEL LLP

Steven J. Leibel

steve@bismarck-attorneys.com

SJL: rmo
Enclosures

211 PU-22-391 Filed 05/09/2023 Pages: 19
Affidavit of Rose Dotzenrod
Knoll Leibel, LLP, on behalf of and at the request of Intervenor Rose Dotzenrod
Steven J. Leibel

Steven J. Leibel, Partner

PO Box 858 · 1915 N. Kavaney Drive, Suite 3 · Bismarck, ND 58502-0858
Phone 701-255-2010 · Fax 701-255-1980 · Email steve@bismarck-attorneys.com · www.bismarck-attorneys.com

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

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

**AFFIDAVIT OF
ROSE DOTZENROD**

STATE OF NORTH DAKOTA)
COUNTY OF Richland)^{SS.}

Rose Dotzenrod, being first duly sworn, deposes and states the following is true and correct based upon her personal knowledge:

1. I own North Dakota land located NW 26 – T 135 N – R 51 W, Viking Township, Richland County.
2. I am providing this affidavit to clarify my testimony I gave at the Wahpeton, ND, PSC hearing. I was very emotional.
3. About 20 years ago, my husband and I made a major investment in our farm livelihood and our future. We purchased the School House Quarter at market value. We took out a loan for land and worked diligently to pay loans.

4. This quarter had productive soil. However, it had one major problem: the land did not have a functioning drainage outlet. Because of a high-water table, the land desperately needed drainage improvement to increase crop production. It took years to secure our only functioning water drainage outlet.
5. When we purchased the School House quarter, it was for our family and an investment in our livelihood. We borrowed money for environmental improvements. It took time, effort, and money, but with long term planning in mind, we made the decision to invest in an underground “socked” tile drainage system. Now, because of our underground drain tile infrastructure investment, it has become a very productive quarter of land. The soaked drain tile minimizes erosion, and our gravity system does not require electricity to operate.
6. Our son, Ben, now farms the School House Quarter. This quarter provides for his young, growing family. Approximately 20% of the profit on his planted acres in 2022 came from this property. This dramatically affects his family’s welfare.
7. Ben has implemented soil conservation practices over the past decade and has invested in specialized equipment to optimize conservation efforts and soil health. From the time we purchased the School House quarter, we have done all we could to improve and protect it.
8. The School House quarter drains through the underground soaked, tile system that runs from the west to the east. The soil of this quarter is unstable. The

tile system we have in place is unique. It relies on gravity and does not require the use of a lift pump.

9. We have already applied for, incurred expenses, and actively continued plans to improve the underground infrastructure and productivity with irrigation.
10. The placement of a pipeline meandering across the School House quarter will halt all those plans. It will stifle plans and suppress future infrastructure investment on this and other properties.
11. We have had plans for the irrigation project for some time. The water irrigation permit has been applied for and engineering expenses have already been incurred and paid for. The required public records searches required to be done by the Richland County Recorder have been completed. The required certified mailings to affected landowners and Government agencies have been completed. This has already been paid for. The required legal public notices have been published and advertised in the newspaper, and they have been paid for.
12. Based on the evidence, the proposed placement of a Carbon Dioxide Pipeline which meanders diagonally across the School House quarter will have many destructive consequences on the environment, environmental preservation, and safety. Due to concerns related to the environment and safety, this quarter is not the best route.

13. Our property is assessed, and we pay into the tax district for the water to flow into the legal drain. To accomplish a drainage outlet to the legal drain, we worked with neighbors, so we did not negatively affect their drainage.
14. Through several tile applications to the local Water Resource District, we learned that the landowner to the southwest did not want our water to flow to the legal drain in the township ditch adjacent to their property. The landowner to the northeast did not want our water to flow to the legal drain in the township ditch adjacent to their property. Finally, the adjacent landowner to the east, at considerable expense to us, agreed to allow us to place a solid tile line under their property for 1/2 mile at the northern end of their quarter putting the drain tile water directly into the legal drain. We communicated and persevered until we found success. We have an easement for that solid tile line recorded at the Courthouse.
15. The drain tile system has been working efficiently. When drain tile is installed, a spool of tile (similar to a spool of thread – only much much bigger) is used. The spool of tile is used so there are as few connections as possible. The connections can be the weak points in the system. Our drain tile system works by gravity and functions with significant environmental benefits. The installer stated it is an ideal tile system.
16. Our current drain tile system does not require an electrical Lift Pump, does not have electrical needs to operate the system, has no year-round electrical consumption or expenses and no monthly fees required to be paid even when

- the tile pump is not being used, requires no expense to have an electrical line trenched-in to power a Lift Pump for a distance to the end of the quarter including all the additional electrician's wiring fees, junction box, and so forth.
17. 'Socked' tile was used to minimize erosion because of soil instability. We also paid considerable additional expense to bury a solid tile line across the adjacent quarter, 1/2 mile, to reach the legal drain. If the pipeline causes too much damage to the tile, we may be forced to install an electric lift pump. Since the pump is on the other side the quarter from the electrical access it would cost us over \$15,000 just in electrical trenching fees alone.
18. This is our only substantial functioning outlet for water drainage in this high-water table environment. We have worked diligently and with steadfast effort to have an operationally efficient drainage system. However, the proposed carbon dioxide pipeline installation would cut every single field tile line on our property. During proposed pipeline installation, there will be no way to drain water from the School House quarter. If the pipeline is placed on the School House quarter, drainage will be negatively affected.
19. Beginning in August, 2021, carbon dioxide pipeline company agents have called. I have shared my concerns with Summit employees regarding the negative adverse effects of cuts and splicing of the many, many tile lines on the School House quarter. The Summit employees stated they had no way to find out or learn what land was tiled in Richland County. That is incorrect.

20. I have informed and explained to Summit employees there is mapping available for public viewing on the Richland County website. That mapping shows this quarter of land is tiled and that the School House Quarter drains by gravity. There are numerous parcels that are not tiled. I provided Summit with this information. Summit had no interest in that information.
21. During PSC hearings, questions have been asked regarding communication with and responses from Summit. In addition to the testimony provided by Ben Dotzenrod previously on his extensive attempts to reach a lower impact resolution, I will provide some of my interactions. I am still hesitant to share the communications.
22. After I received a letter from Summit Carbon in August 2021, I reached out by email. There was no response from Summit. I also, called Summit Carbon. My calls were not answered. My calls were sent to voice mail. I did not receive a response from Summit by email or a phone call.
23. I just previously mentioned one interaction with Summit regarding me informing them of availability of helpful Richland County online mapping regarding tiled and non-tiled land. In a separate conversation by phone, initiated by Summit, I again expressed concern in regard to the cutting of many tile lines, I received a very aggressive, very agitated response from Summit telling me very strongly from Summit "We are not going to bore under your tile". They offered no explanation or education as to why there is a need to cut through every single field tile line. As time moved on and no apparent progress

appeared to occur with Summit, I asked for the pipeline to be moved from the School House quarter. Summit did not respond.

24. Another time, When I asked for the pipeline to be moved from our property, I was told by Summit, "That costs a lot of money. Every time we move it, it costs us a lot of money." There was no mention of safety or environment, just money.

25. Summit held meetings in Leonard and Gwinner, ND, in 2022. I requested a simple map of the proposed locations of shut off valves in Richland County. I was told at the meeting - I would receive this map. Summit asked for, and I provided, my email address. I asked when I may anticipate receiving the shut off valve map. I was referred to another person. I was told by the gentleman, "Honey, before you get out of bed in the morning, you will have that map".

26. It has been more than a year. I still have not received the shut off valve map from Summit. That information is now available through the PSC Application.

27. At two different times in 2021, the carbon pipeline company called and asked for survey access. I did not give permission either time. My husband posted the School House quarter.

28. We later learned Summit had a crew of people trespassing on our posted land. The crew of people were trespassing on our posted land after they had been denied permission. I believe it was right before soybean harvest when the soybeans were standing in the field and in the final stages of dry down.

29. I received a letter from Summit, dated July 11, 2022, regarding survey permission with a statement of “10 days to reply or Summit will be forced to explore alternative means of accessing your property”.
30. After receiving this letter, we were unsure of what to do. Maybe we misunderstood what our landowner property rights are. I contacted one of our ND legislative district’s current, experienced legislators. I asked about property rights regarding this situation. They shared, it is their understanding, that I or any landowner have the right to deny access to the land in this situation.
31. I received a second letter, dated July 29, 2022, regarding survey access. This letter was from Summit’s attorneys, Fredrickson and Byron, signed by Attorney Bender. It stated, “if you do not respond, Summit will have no other alternative other than to initiate a legal action to obtain access to your property”.
32. These combined experiences, over time, give us logical reason for a high degree of uneasiness. Their verbal promises have not been carried out by them. The question any reasonable person would ask is, if this is how Summit Carbon communicates and does business before I sign an easement, how likely is it that communication and care and stewardship for the land and landowners would improve after Summit has accomplished their objective and an easement has been signed.

33. There is more, but I believe this gives a glimpse of my personal experience of interactions with Summit.
34. I am aware of the pipeline being moved by Summit off property at the request of a land operator. The land operator shared this directly with me.
35. I am also aware of the pipeline being moved by Summit off land at the request of landowners. The landowner shared this directly.
36. As I am writing this testimony, I find myself questioning the wisdom of my transparency in providing this information in this public forum. Writing about topics which have controversial viewpoints or may be contentious can bring unwanted attention.
37. On April 11, 2023, at the PSC Wahpeton Hearing, Summit Witness, Jeremy Ellingson, COO, Ellingson Drainage Incorp., provided oral testimony. Mr. Ellingson stated, "... all the drain tile are found, repaired, and kept at or better than when it started." Upon questioning, it came to light that Mr. Ellingson was referring to concrete and/or old, clay drain tile. Our property does not have clay tiles.
38. It was made absolutely clear to Summit our property was 100% drain tiled from August 2021 when I received my 1st letter from Summit. I have not met with any drain tile professionals or received a Drain Tile Fact Sheet. Mr. Ellingson also testified landowners had opportunity for education, "...through the Land Agents. Summit has also created, in conjunction with us, a Drain Tile Fact Sheet".

39. In reference to 'call backs' or repairs, Mr. Ellingson, stated they have 'very few' call backs or re-repairs. I have personal knowledge of property in our area of repairs being every couple years, in the exact same spot, for the last 10 years by Ellingson Drainage. I do not think the repeated repairs on this spot are a reflection of Ellingson Drainage. I believe it is indicative of the nature of the soil characteristics.

40. Mr. Ellingson stated they do not have problem spots. Yet, I am personally aware they do have problem spots they have been repairing for the past 10 years on these soil types.

41. I did not plan to speak of my experiences with Summit. However, after questions were asked at PSC hearings regarding communication with Summit, it seems vital to share some of my interactions this far with Summit.

42. Summit does not give a commitment or assurance that the drain tile system of our quarter will be fully functional as it now exists, prior to, the carbon dioxide pipeline crossing and cutting every single field tile line.

43. Also, Summit Carbon provides no offer or proof of functionality of the entire drain tile system, by an independent 3rd party, with diagnostic tools such as an underground tile scope or camera.

44. Similar to plumbing, drain tile works off a series of tubes and disruption to one part of a tube will likely have impacts to tubing downstream. It works as a system, not an isolated section. Additionally, the unstable, loose dirt will likely plug the downstream tile lines, this will block drainage from the right of way

area and beyond the right of way area. This drain tile system is the only significant water drainage outlet.

45. In order to repair those breaks, directly a result from the carbon pipeline, we will be at the mercy of the carbon pipeline company. The company employee or agent will be the only party that will determine if the break is caused due to the carbon dioxide pipeline. The carbon dioxide pipeline company can claim it is not due to their pipeline.

46. Also, the carbon pipeline company will decide if, when and what repairs will be made. Breaks and delay in repair will lead to crop production losses. Future crop loss will extend beyond the carbon dioxide pipeline right of way.

47. To my understanding, in the easement that Summit has provided, there is nothing holding Summit accountable in regard to tile repair outside or beyond the right of way. Recourse, for our family, from these potential losses, if pursued, will likely be expensive and a long, drawn-out situation.

48. Soil instability and high-water table, in addition to negative effects on the land's underground drainage system, the proposed pipeline would negatively affect years of soil conservation practices that have been implemented by our son, Ben, who farms the quarter.

49. The environmental benefits of these Conservation Practices will be lost once the proposed pipeline company digs up the ground. These conservation losses will extend beyond the area of the pipeline right of way. There is nothing

binding to hold Summit accountable to any of their verbal proposals that I am aware of.

50. Verbal assurances are easy. Summit Carbon is unwilling to provide written commitment and certainty of follow through with their verbal assurances. USDA, NRCS, Web Soil Survey maps, specific to the School House quarter, and the analyses show the unstable nature of the soil and the soil's corrosive nature of steel. Included previously in the Exhibit List.

51. The School House quarter has a high-water table and unstable soil, the proposed pipeline placement on our land will dramatically create further soil instability.

52. Disturbance of already unstable soil from the trenching of the proposed Carbon Dioxide Pipeline will create even more soil instability. In the area of where the tile lines will be cut and reconnected, solely because of the Carbon Dioxide pipeline, settling of soil and the likely resulting future breaks will occur at those now weak reconnections of tile. The carbon dioxide pipeline proposal will cut perpendicular to every single field tile line. As earlier explained, our quarter drains on a slope or grade through underground tile lines from west to the east. and then once off the School House quarter, the tile system then continues underground through a solid tile line to the legal drain one-half mile away.

53. The drain tile system was installed with drain tile lines that run west to east the length of the entire quarter. The tile lines drain water from west to the east

to ultimately reach the legal drain located to the east. As I understand it, the shallowest tile is generally on the west side of the quarter and it has the most variable depths on the east headland as it drains to the northeast corner before proceeding across the neighbor's property underground.

54. The pipeline company's routing choice action brings forth safety and unwanted liability concerns. The School House quarter is farmed west to east, Every time a round is made in the field from spring through harvest, the carbon dioxide pipeline trench will be driven over with heavy machinery by someone we love and care about. The Carbon Dioxide pipeline cuts, splices, and reconnections to the tile lines will have loose dirt around the tile lines. Soil naturally settles over time.

55. The weak places in the tile system will be where the carbon dioxide company made their cuts to the many field tile lines. Logic tells us there will be breaks in the tile lines at those reconnections which will be the weakest points in the tile runs.

56. On the surface of our quarter, there will be no indication of the lurking problem below. We will be unaware of the unseen cavern sink hole until the top layer of topsoil collapses, as the pipeline is crossed with very heavy equipment, through normal farming practices. It is challenging to believe that the integrity of a highly pressurized Carbon Dioxide Pipeline will not be compromised.

57. What is the impact to someone working in heavy equipment falling from the field's surface through an unseen underground cavern and onto a highly pressurized carbon dioxide pipeline? Not good.
58. Who in the family will be in the tractor or combine when it falls from the field's surface through a sink hole and into an underground cavern and on top of a highly pressurized carbon dioxide pipeline?? Not good.
59. We do not want anyone working on our School House quarter to be killed or maimed. With a resulting pipeline leak or rupture, there will be no time to react. Carbon dioxide is heavier than oxygen. The carbon dioxide will kill the internal combustion engine of the tractor or combine and suffocate anyone in the cavernous sink hole which is caused by the proposed pipeline.
60. This quarter is in the Wyndmere, North Dakota, fire and ambulance district. It is 18.3 miles from the Fire Station in Wyndmere to the school house on the quarter.
61. The Exhibit List has a letter from our insurance chief claims officer. This entire letter is of great significance. I will include some brief quotes from the letter. "Please be aware that your liability policy contains exclusions for losses caused by pollutants...This means that there may be no coverage from your policy in the event that there is a release of pollutants...Be aware that you may be at a substantially elevated risk of uninsurable exposure any time a third party is allowed on your property".

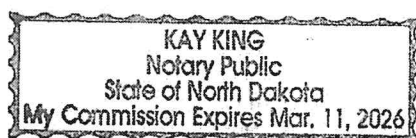
62. The risks to our School House quarter are very substantial. On our School House quarter, the carbon dioxide pipeline begets liability with no reward. There is nothing binding to hold Summit accountable to any of their verbal proposals.
63. Thank you for your patience as I have written of our purchase of the School House quarter just 20 years ago. It took years of time, effort, and money to secure our closed drainage outlet, an environmentally friendly socked gravity drain tile system and plans in progress for our irrigation project and our work to pay down loans.
64. Due to the high-water table, unstable soil, and increased risk of dangerous cavernous sink holes, unintentional third party strikes to the proposed carbon dioxide pipeline, and associated complications that include death to the land operator, insurance coverage problems it may not be wise to farm the School House quarter if the pipeline is placed across our property. Everything we have worked for is put at risk. We have provided options for a safer pipeline route with the provided Richland County mapping. I have shared communication interactions from Summit. Ben has implemented Conservation Farming Practices. Those practice's benefits will be lost once the pipeline trench and equipment disrupt the land. By farming this land, Ben now provides for his young, growing family.

65. I have outlined, with objective data, the many negative effects the placement of a proposed carbon dioxide pipeline will create, and our unique circumstance on our School House quarter.
66. It is critical that any pipeline route minimizes negative effects to the environment and is mindful of environmental preservation and is installed and maintained in the safest way possible. Due to important concerns, based on evidence, we believe and hopefully, you will agree the School House quarter, NW quarter 26 in Viking Township, Richland County is not that location.
67. I am humbly asking for the proposed carbon dioxide pipeline to be moved off our property. If a permit is granted, please choose a safer, better, and healthier route for the carbon dioxide pipeline. I appreciate and I am grateful for the opportunity to inform you about my family's unique situation on the School House quarter.
68. I declare, under penalty of perjury under the law of North Dakota, that the foregoing is true and correct.

Dated this 8th day of May, 2023.

Rose Dotzenrod
Rose Dotzenrod

Subscribed and sworn to before me this 8th day of May, 2023



Kay King
Notary Public

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

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

DECLARATION OF SERVICE

[1] Rosanne Ogden declares that I am of legal age and not a party to this action, and that I served the following document(s):

- 1. Affidavit of Rose Dotzenrod; and**
- 2. Declaration of Service.**

[2] On May 8, 2023, by sending a true and correct copy thereof by electronic means only to the following email addresses, to wit:

John Maurice Schuh Bar ID 08138
Special Assistant Attorney General
North Dakota Public Service
Commission
600 E. Boulevard Ave, Dept. 408
Bismarck, ND 58505-0480
jschuh@nd.gov

Lawrence Bender Bar ID 03908
Fredrikson & Byron, P.A.
1133 College Dr., Ste. 1000
Bismarck, ND 58501-1215
lbender@fredlaw.com

Hope Lisa Hogan Bar ID 05982
Administrative Law Judge
Office Of Administrative Hearings
2911 N. 14th St., Ste. 303
Bismarck, ND 58503
hlhogan@nd.gov

Zachary Evan Pelham Bar ID 05904
Pearce Durick PLLC
314 E. Thayer Ave.
P.O. Box 400
Bismarck, ND 58502-0400
zep@pearce-durick.com

John Hamre
Public Service Commission
State Capitol
600 E Boulevard Ave., Dept. 408
Bismarck, ND 58505-0480
jghamre@nd.gov

Brian E. Jorde
Domina Law Group
2425 S 144th St
Omaha NE 68144
bjorde@dominalaw.com

Kevin Pranis
LIUNA Minnesota & North Dakota
81 E Little Canada Rd
St. Paul MN 55117
kpranis@liunagrocc.com

Randall J. Bakke Bar ID 03898
Bradley N. Wiederholt Bar ID 06354
Bakke Grinolds Wiederholt
PO Box 4247
Bismarck, ND 58502-4247
rbakke@bgwattorneys.com
bwiederholt@bgwattorneys.com

North Dakota Public Service
Commission
ndpsc@nd.gov

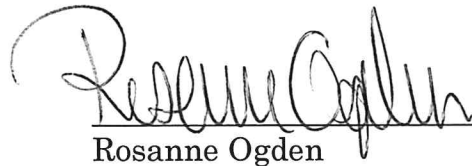
[3] and by sending the originals and seven (7) copies of said documents via U.S. Mail, at Bismarck, North Dakota with postage prepaid, to the following:

Steve Kahl
Executive Secretary
North Dakota Public Service Commission
State Capitol
600 E Boulevard Ave, Dept 408
Bismarck, ND 58505-0480

[4] The addresses of each party served are the last reasonably ascertainable e-mail address and post office address of such party.

[5] I declare, under penalty of perjury under the law of North Dakota, that the foregoing is true and correct.

Signed on the 8th day of May 2023 at Bismarck, North Dakota.


Rosanne Ogden