

**BEFORE THE PUBLIC SERVICE COMMISSION
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

DIRECT TESTIMONY OF

MICAH RORIE

ON BEHALF OF

SCS CARBON TRANSPORT LLC

June 1, 2023

I. WITNESS INTRODUCTION

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND PRESENT POSITION.

A. My name is Micah Rorie. My business address is 2321 N. Loop Drive, Suite 221, Ames IA 50010.

Q. HAVE YOU TESTIFIED IN THIS MATTER PREVIOUSLY?

A. Yes.

Q. HAVE YOU DESCRIBED FOR THE NORTH DAKOTA PUBLIC SERVICE COMMISSION (“COMMISSION”) YOUR EDUCATIONAL BACKGROUND AND WORK EXPERIENCE?

A. Yes.

Q. HAVE YOU PREVIOUSLY PROVIDED TESTIMONY BEFORE THE NORTH DAKOTA PUBLIC SERVICE COMMISSION (“COMMISSION”)?

A. Yes.

Q. HAVE YOU DESCRIBED YOUR DUTIES WITH RESPECT TO THIS PROJECT FOR THE COMMISSION?

A. Yes.

Q. WHAT IS THE PURPOSE OF THIS ADDITIONAL TESTIMONY?

A. To provide an update to the Commission regarding SCS Carbon Transport, LLC’s indemnification as it relates to concerns regarding landowner property and liability insurance.

II. INDEMNIFICATION

Q. DOES SCS CARBON TRANSPORT, LLC OFFER ANY FORM OF INDEMNIFICATION IN THE EASEMENTS THEY HAVE ACQUIRED IN NORTH DAKOTA?

A. Yes. SCS Carbon Transport, LLC has acquired approximately 75% of the mileage required to construct the proposed pipeline. There have been dozens of attorneys retained by landowners who have reviewed those easements and in particular our indemnification language. Our standard indemnification language states:

Indemnification. Company agrees to indemnify and hold Landowner harmless from and against any claim or liability or loss from personal injury or property damage resulting from or arising out of the use of the Easements by Company, its servants, agents or invitees, excepting, however, such claims, liabilities or damages as may be due to or caused by the acts of Landowner, or its servants, agents or invitees.

Q. WHAT DOES SCS CARBON TRANSPORT CONSIDER AS “USE” AS DESCRIBED IN YOUR INDEMNIFICATION LANGUAGE?

A. Once an easement is executed, any entrance onto the land for purposes of survey, construction or operation would constitute a “use” of the easement by SCS or any of its servants or agents.

Q. ARE YOU AWARE OF THE LETTER SUBMITTED AS EXHIBIT W173 IN THIS MATTER?

A. Yes. It is a letter from Brad Nold, Chief Claims Officer with Farmers Union Insurance. A copy of this letter is attached hereto as Exhibit A.

Q. HAVE YOU READ THE LETTER?

A. Yes. I have read the letter and I would like to draw attention to the final paragraph in which Mr. Nold clearly states, “As always, any utility, pipeline, or other third-party exposure presents a substantial exposure to you from a liability perspective, *unless the third party provides clear, contractual language which specifically holds you harmless.*”

Q. HAVE YOU EVER MET WITH FARMERS UNION OR BRAD NOLD?

A. Yes, on June 8, 2022, we held a virtual meeting with Farmers Union which included myself along with other members of the Summit team and included Matt Perdue and Brad Nold from Farmers Union.

Q. WHAT WAS THE PURPOSE OF THE MEETING?

A. The purpose of the meeting was to share with Farmer Union, and in particular, Mr. Nold, our stance on how indemnification would be addressed in our easement agreements and to seek their feedback. While another purpose of the meeting was to further understand how insurance providers may behave post construction of the pipeline, the issue that prompted the meeting was to dispel the notion that landowners would no longer be able to insure their property if the pipeline was installed. We wanted to directly address the statement I pointed out earlier, which said, *“unless the third party provides clear, contractual language which specifically holds you harmless.”*

Q. WHAT WAS YOUR UNDERSTANDING OF LANDOWNER INSURABILITY FOLLOWING THIS MEETING?

A. Following the meeting, we felt confident that Landowners would still be able to secure farm policies to continue their farming and/or ranching operations and that all forms of the indemnification language cited in our easement agreements would provide adequate coverage for any claim or liability or loss from personal injury or property damage resulting from or arising out of the use of the Easements.

Q. DOES THIS CONCLUDE YOUR PREPARED DIRECT TESTIMONY?

A. Yes, it does.

Dated this 1st of June 2023.

/s/ Micah Rorie

Micah Rorie

EXHIBIT A



Farmers Union Insurance Company
PO Box 2020
Jamestown, ND 58401
Phone: 701.252.2701
Online: www.fumic.com

Dear Valued Policy Holder,

This letter acknowledges your inquiry into the CO2 pipeline that you expect to run through your property.

Farmers Union Insurance (FUI) is aware of the potential CO2 pipeline project in your area and wants you to be fully aware of the protections provided by your liability insurance policy's provisions, limitations, and coverages.

Your liability policy provides indemnity coverage and legal defense for any claim made against you as a result of your actions related to your farm liability or personal liability. It is first and foremost important to understand that your policy will only respond if you are legally liable for bodily injury or property damage as a result of your actions, inactions, or your alleged actions/inactions.

Please be aware that your liability policy contains exclusions for losses caused by pollutants. The policy may also exclude coverage for your responsibility to clean up, remove, treat, detoxify, remediate, or in any way respond to a loss caused by or due to pollutants. This means that there may be no coverage from your policy in the event that there is a release of pollutants.

You should understand that in the event that your land or property may be sold, leased, or transferred, any potential loss is subject to the insurance that is active at the time of the occurrence. Over time, the pipeline may become useless or ineffective, and if the policy is no longer in force at the time of the occurrence, you will be provided with no defense or legal indemnification.

FUI strongly recommends that you seek legal counsel prior to signing any contractual agreement. The contractual agreement will contemplate hold harmless agreements, waivers of subrogation, and potentially, the addition of outside parties as additional insureds on your policy. These contemplations are extremely important and could bind you to legal responsibilities in the event of a loss.

All claims are subject to their own merit, and as a result, it is not possible for FUI to provide you with a definitive summary of what may or may not be subject to coverage. As with all liability claims, FUI will provide coverage if you are legally liable, or deny coverage at the point it is determined that you have no coverage from your liability policy.

As always, any utility, pipeline, or other third-party exposure presents a substantial exposure to you from a liability perspective, unless the third party provides clear, contractual language which specifically holds you harmless. While no definitive coverage analysis can be provided until facts of a loss are contemplated, be aware that you may be at a substantially elevated risk of uninsurable exposure any time a third-party is allowed on your property.

Sincerely,

A handwritten signature in black ink, appearing to read "Brad Nold", written over a light blue horizontal line.

Brad Nold, AIC, AINS
Chief Claims Officer

W173
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