

June 12, 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 five (5) copies of the following:

1. Supplement to SCS Carbon Transport LLC's Brief in Support of Motion to Declare Emmons County and Burleigh County Ordinances Superseded and Preempted; and
2. Certificate of Service.

Also enclosed herewith, please find a Compact Disc (CD) containing this letter and the above-referenced documents in PDF format.

Should you have any questions, please advise.

Sincerely,

/s/Lawrence Bender

LAWRENCE BENDER

LB/cj
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

**Supplement to SCS Carbon Transport LLC's Brief in Support of Motion to Declare
Emmons County and Burleigh County Ordinances Superseded and Preempted**

SCS Carbon Transport LLC ("SCS"), by and through its counsel of record, respectfully requests that the North Dakota Public Service Commission ("PSC") allow SCS to supplement its Brief in Support of Motion to Declare Emmons County and Burleigh County Ordinances Superseded and Preempted ("Preemption Brief") filed with the PSC on June 1, 2023. *See* Docket No. 282. This supplement is proper under N.D.A.C. § 69-02-02-07.

As set forth in the SCS's Preemption Brief, Burleigh County adopted a zoning ordinance regulating hazardous liquid pipelines on March 20, 2023, and filed the same with the PSC on March 30, 2023 (the "March 20 Ordinance"). *See* Docket No. 161. The March 20 Ordinance requires hazardous liquid pipelines to be located a minimum of 10 miles from certain electric transmission lines. Burleigh County amended the March 20 Ordinance on April 17, 2023 (the "April 17 Ordinance"), and filed the same with the PSC on May 5, 2023. *See* Docket No. 206. SCS became aware of the April 17 Ordinance at the June 2, 2023 public hearing in Bismarck, North Dakota, one (1) day after SCS filed its Preemption Brief. SCS did not receive notice (from the PSC or Burleigh County) when the April 17 Ordinance was filed with the PSC and it does not

appear that Burleigh County served any of the parties in this case as is evidenced by the lack of a certificate of service in the docket entries.

Notice issues aside, the April 17 Ordinance does not affect the ultimate conclusion in SCS's Preemption Brief and the purpose of this supplement is to address a setback reduction in the April 17 Ordinance. Specifically, the April 17 Ordinance reduced the 10 mile electric transmission line setback to 1,000 feet. As a result, the map on Page 4 of the Preemption Brief is slightly inaccurate. However, as evidenced by the updated map attached hereto as Exhibit A, the setback reduction from 10 miles to 1,000 feet is immaterial because it does not change the ultimate result, i.e. no hazardous liquid pipeline can be constructed through Burleigh County due to the combination of the various setbacks set forth in the March 20 Ordinance, as amended by the April 17 Ordinance.¹

Accordingly, SCS respectfully requests that the PCS grant SCS the relief requested in its Preemption Brief.

Dated this the 14th day of June, 2023.

FREDRIKSON & BYRON, P.A.

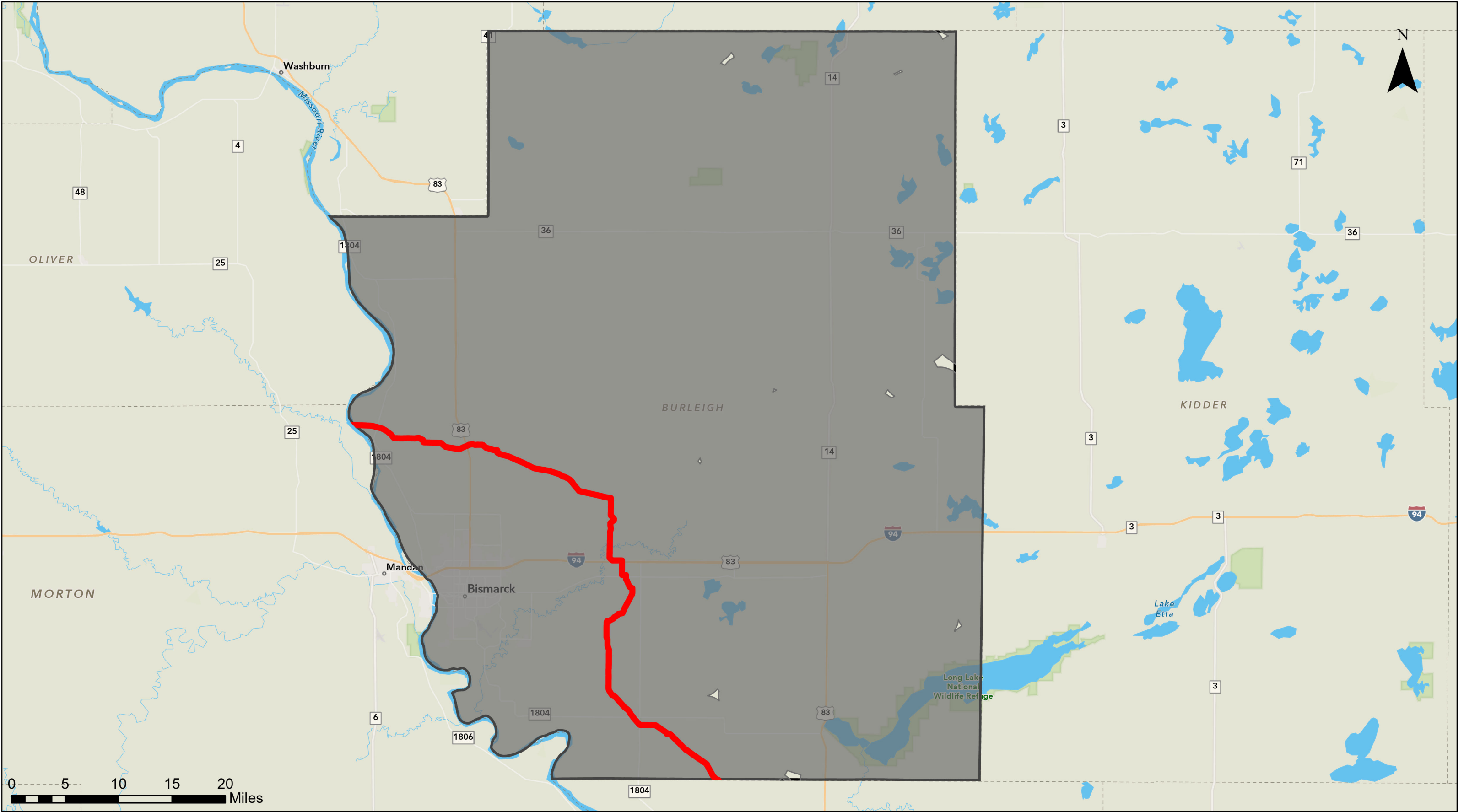
By: /s/ Lawrence Bender

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Attorneys for SCS Carbon Transport LLC

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¹ The map on Page 4 of the Preemption Brief was completely shaded, illustrating that no hazardous liquid pipeline could be constructed anywhere in Burleigh County. The map attached hereto as Exhibit A displays a small number of non-contiguous tracts where a hazardous liquid pipeline could be built.



**BURLEIGH COUNTY, NORTH DAKOTA
PIPELINE SETBACK ORDINANCE**

- MCE Pipeline Active Route
- All Setback Areas
- County Boundary

EXHIBIT A



Pipeline centerline is based on the 06/05/2023 route.

**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;
2. Supplement to SCS Carbon Transport LLC's Motion to Declare Emmons County and Burleigh County Ordinances Superseded and Preempted; and

were, on June 14, 2023, filed with the North Dakota Public Service Commission and served electronically to the following:

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Dated this 14th day of June, 2023.

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