

BURLEIGH COUNTY STATE'S ATTORNEY

JULIE LAWYER
STATE'S ATTORNEY

August 30, 2023

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

**RE: In the Matter of SCS Carbon Transport LLC
Midwest Carbon Express CO₂ Pipeline Project
Siting Application
Case No: PU-22-391**

Dear Mr. Kahl:

Enclosed for filing in Case No. PU-22-391, please find the original and seven copies of the following:

1. Burleigh County's Petition to Intervene;
2. Burleigh County's Response in Opposition to SCS Carbon Transport LLC's Petition For Reconsideration, Notice Of Route Adjustment And Request For Limited Rehearing

A digital copy will also be sent via e-mail.

Sincerely,



Julie Lawyer
State's Attorney

Enclosures

378 PU-22-391 Filed: 8/30/2023 Pages: 12
**Petition to Intervene & Response in Opposition for
Reconsideration, Notice of Route Adjustment &
Request for Limited Rehearing**
Burleigh County Board of Commissioners
Julie Lawyer, State's Attorney

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

SCS Carbon Transport LLC
Midwest Carbon Express CO₂ Pipeline Project
Siting Application

Case No: PU-22-391

BURLEIGH COUNTY'S PETITION TO INTERVENE

Pursuant to N.D.A.C. § 69-02-02-05, Burleigh County, by and through its Board of County Commissioners, hereby petitions to intervene in the above-captioned proceedings. The County previously filed a petition to intervene dated July 31, 2023. That petition was denied as moot on August 18, 2023 after the Public Service Commission issued its Findings of Fact, Conclusions of Law and Order dated August 4, 2023, denying by SCS Carbon Transport LLC's Certificate of Corridor Compatibility and Route Permit.

On August 18, 2023, SCS Carbon Transport LLC filed a Petition for Reconsideration, Notice of Route Adjustment and Request for Limited Rehearing. In its Petition, SCS Carbon Transport LLC provided a route adjustment through Burleigh County, along with other route adjustments and proposed changes to its planned pipeline. The Burleigh County route adjustments and any reconsideration of the Commission's Findings of Fact, Conclusions of Law and Order would continue to implicate the rights and interests of Burleigh County. Therefore, Burleigh County renews its request to intervene and respond to SCS Carbon Transport LLC's Petition for Reconsideration.

The County makes this petition based upon the following:

1. The Board of County Commissioners has the authority to regulate and restrict
"the location and the use of buildings and structures and the use, condition of
use, or occupancy of lands for residence, recreation and other purposes."
N.D.C.C. § 11-33-01. Under that authority, on March 20, 2023, the Board of

Commissioners of Burleigh County adopted zoning ordinance Article 8, Section 27 as it relates to Hazardous Liquid Pipelines. (Exhibit 1).

2. On June 1, 2023, SCS Carbon Transport LLC filed its Motion and Brief to Declare Emmons County and Burleigh County Ordinances Superseded and Preempted. (Docket 282).
3. North Dakota law states, "A certificate of site compatibility for a gas or liquid energy conversion facility may not supersede or preempt any local land use; zoning; or building rules, regulations or ordinances, and a site may not be designated which violates local land use; zoning or building rules, regulations, or ordinances." N.D.C.C. § 49-22.1-13(2)(a). A "gas or liquid energy conversion facility" includes "[a] gas or liquid transmission line and associated facilities designed for or capable of transporting ... carbon dioxide." N.D.C.C. § 49-22.1-01(7)(a).
4. The brief filed by SCS Carbon Transport LLC claims the Burleigh County ordinance would ban construction of carbon dioxide within Burleigh County which is not accurate. Zoning ordinances adopted by the Board of County Commissioners only applies to those cities and townships that have not retained their own zoning authority. N.D.C.C. § 11-33-20. While the current proposed pipeline route is through areas of Burleigh County subject to the zoning ordinance, there are still accessible routes through Burleigh County that are not affected by the zoning ordinance. (Exhibit 2).
5. The legal rights and legal interests of Burleigh County and its citizens will be affected by the Public Service Commissioner's decisions in this matter and, while our position does align with those of the prior intervenor's and that of Emmons County, their interests are not the same as that of Burleigh County.

6. Burleigh County's intervention will not delay the proceedings in this matter as the issues have been adequately briefed by the prior intervenor's and Emmons County, and Burleigh County is not requesting any delay or additional public hearings on this matter.
7. Burleigh County was made aware of this motion and brief by an attorney for the intervenor. While SCS Carbon Transport LLC filed a motion challenging Burleigh County's authority and ordinance, Burleigh County was never served with or provided a courtesy copy of the filing. Therefore, good cause under N.D.A.C. § 62-02-02-05 has been shown as Burleigh County was not properly notified of the challenge.
8. Burleigh County has a legal interest in its authority to enact ordinances and respond to challenges of that authority and those ordinances. The ordinances enacted were done so under the authority granted to Boards of County Commissioners under state law and do not conflict with state or federal laws, regulations, or rules.
9. Burleigh County opposes SCS Carbon Transport LLC's Motion to Declare Emmons County and Burleigh County Ordinances Superseded and Preempted.

Based on the above reasons, Burleigh County petitions to intervene in this matter.

Dated this 30th day of August, 2023.

/s/ Julie Lawyer
Julie Lawyer
Burleigh County State's Attorney
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STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

SCS Carbon Transport LLC
Midwest Carbon Express CO₂ Pipeline Project
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Case No: PU-22-391

**BURLEIGH COUNTY'S RESPONSE IN OPPOSITION TO SCS CARBON
TRANSPORT LLC'S PETITION FOR RECONSIDERATION, NOTICE OF
ROUTE ADJUSTMENT AND REQUEST FOR LIMITED REHEARING**

Burleigh County, in its response to SCS Carbon Transport LLC's Petition for Reconsideration, Notice of Route Adjustment and Request for Limited Rehearing, states the same concerns it had to SCS Carbon Transport LLC's Motion to Declare Emmons County and Burleigh County Ordinances Superseded and Preempted and hereby incorporates the responses of the intervenors and Emmons County. (See Dockets 345, 348, and 350). The responses and exhibits of the intervenors and Emmons County adequately address the issue and the law in this case and Burleigh County's response would mirror their law and argument in this matter.

Burleigh County adopted a county ordinance and a zoning ordinance relating to hazardous liquid pipelines which were filed with the PSC. (Dockets 161, 206).

As stated in law cited by the incorporated briefs, Burleigh County through its Board of County Commissioners, has the authority under state law to adopt and enact ordinances and zoning ordinances relating the hazardous liquid pipelines. The ordinances enacted are not regulatory in nature and do not contravene federal or state laws, rules, or regulations.

Burleigh County's ordinances do not ban SCS Carbon Transport LLC from building its pipeline in Burleigh County nor does it regulate or create an undue hardship.

SCS Carbon Transport LLC has petitioned for reconsideration of the North Dakota Public Service Commission's (PSC) Findings of Fact, Conclusions of Law, and Order issued August 4, 2023, wherein the PSC denied SCS Carbon Transport LLC applications for 1) waiver of

procedures and time schedules; 2) Certificate of Corridor Compatibility; and 3) Route Permit. On August 18, 2023, SCS Carbon Transport LLC filed a Petition for Reconsideration, Notice of Route Adjustment and Request for Limited Rehearing. In its Petition, SCS Carbon Transport LLC provided a route adjustment through Burleigh County, along with other route adjustments and proposed changes to its planned pipeline. Included within the Petition is a map of Burleigh County marking the original route and a proposed route modification. (Petition, page 8, Figure 1). The map is small with no specific markers or landmarks to be able to identify the proposed route and whether the proposed route is through those portions of Burleigh County which are governed by the Burleigh County zoning ordinance. (Docket 161).

Along with its Petition, SCS Carbon Transport LLC has included an Appendix A – Revised Appendix 1 (Map Book), which includes maps of the affected areas of North Dakota with the “October 17, 2023 [sic] Original PSC Application Route” and “Updated Proposed Project Route 08/15/2023”. Maps of Burleigh County are at Pages 34-46 of Appendix A. There are no maps included which show details of the “Updated Proposed Project Route 08/15/2023”. Instead, the map at page 44 shows “Start of Proposed Bismarck Re-Route” but does not have the proposed route included on the map. Page 45 shows the “End of Proposed Bismarck Reroute”, again with no proposed route included on the map. There are no maps included of the proposed route between the area of Burleigh County shown on page 44 and the area of Burleigh County shown on page 45. The proposed route is not included in the Appendix A – Revised Appendix 1 (Map Book).

Burleigh County has no information or details describing the new proposed route. Nor has the County been contacted by SCS Carbon Transport LLC regarding its new proposed route. See Exhibit 1 – Affidavit of Mitch Flanagan.

While N.D.C.C. § 49-22.1-18 provides the right of an aggrieved party to request a rehearing, that right is not absolute. The statute does not require the Commission to conduct a rehearing, but if a rehearing is granted, the rehearing must comply with N.D.C.C. Ch. 28-32.

There must be some basis for the right to a rehearing, not just a request from the aggrieved party. While SCS Carbon Transport LLC has stated its reasons for the request for a rehearing, there is no supporting basis for which to grant a rehearing. In particular, there is a proposed reroute through Burleigh County with no supporting documentation to indicate exactly where that rerouting would take place.

If SCS Carbon Transport is proposing a new route, that would require new environmental impact information, cultural studies of the new route, and other information required for the Commission to consider under N.D.C.C. § 49-22.1-09. Because the proposed reroute through Burleigh County is unknown, this information cannot be considered by the Commission and the proper procedure would be to require SCS Carbon Summit Transport to file a new siting application, providing detailed information regarding their proposed reroute and any impacts that new route has as required by 49-22.1-09.

Dated this 30th day of August, 2023.

/s/ Julie Lawyer
Julie Lawyer, BAR ID 05693
Burleigh County State's Attorney
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Bismarck, ND 58501
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STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

SCS Carbon Transport LLC
Midwest Carbon Express CO₂ Pipeline Project
Siting Application

Case No: PU-22-391

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the following documents:

1. Burleigh County's Petition to Intervene;
2. Burleigh County's Response in Opposition to SCS Carbon Transport LLC's Petition For Reconsideration, Notice Of Route Adjustment And Request For Limited Rehearing

were on August 30, 2023, filed with the North Dakota Public Service Commission and served electronically to the following:

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Dated this 30th day of August, 2023.

/s/ Julie Lawyer
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Burleigh County State's Attorney
514 E Thayer Avenue, Bismarck, ND 58501
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STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

SCS Carbon Transport LLC
Midwest Carbon Express CO2 Pipeline Project
Siting Application

Case No: PU-22-391
OAH File No: 20230002

AFFIDAVIT OF MITCH FLANAGAN

STATE OF NORTH DAKOTA)
) SS.
COUNTY OF BURLEIGH)

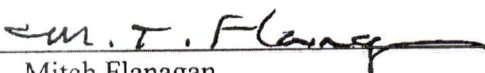
Being duly sworn, Mitch Flanagan, testifies:

1. I am the Building Official-Director for the Burleigh County Building/Planning/Zoning Department and I have held this position since 2019.
2. I have reviewed SCS Carbon Transport LLC's ("Summit") *Petition for Reconsideration, Notice of Route Adjustment and Request for Limited Hearing* dated August 18, 2023 ("Petition") [doc. 371-30], along with Summit's Exhibit A (Revised Appendix 1 – Map Book) ("Map Book") [doc. 371-40].
3. On August 22nd, 2023, I contacted the Public Service Commission ("PSC") to inquire whether the PSC has a more precise map of Summit's newly proposed re-route and was informed by the PSC that there was no such map.
4. Figure 1 in the Petition is a map showing a Burleigh County "Proposed Route Modification". Very little detail is provided on the map. For example, no highways or other landmarks are shown and no scale is provided. Figure 1 is essentially useless

as a means to determine the location of Summit's proposed re-route of the pipeline in Burleigh County.

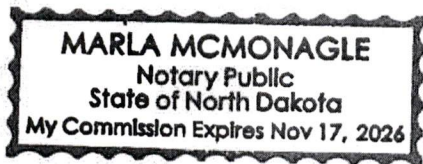
5. Additionally, in its Petition, Summit states, "The map book attached as Exhibit A is intended to amend and replace Appendix 1 (ND PSC Aerial Map Book) of Summit's Application." However, upon my review of the pages in the map book where the Proposed Route Modification should be located, I found none of those pages is included. The pages that would contain the proposed re-route in Burleigh County have been entirely omitted. The Map Book does not describe or show Summit's proposed re-route at all.
6. Based on my review of the materials submitted by Summit to the PSC, I am unable to determine the location of Summit's proposed re-routing of its pipeline corridor to the north of Bismarck. Therefore, I have no way to determine if it is in compliance with Burleigh County's ordinances or whether it does or does not "avoid [] existing and planned housing developments" as asserted by Summit in its Petition.
7. Additionally, while it appears based on Table 1 that much of Summit's proposed re-route would be in Townships that are in the County's zoning jurisdiction and thus subject to the County's ordinances, Summit has never reached out to my office to discuss its proposed re-route.

Dated this 28th day of August, 2023.

By: 
Mitch Flanagan

STATE OF NORTH DAKOTA)
) SS.
COUNTY OF BURLEIGH)

The foregoing **AFFIDAVIT OF MITCH FLANAGAN** was subscribed and sworn to before me, a notary public, on this 28 day of August, 2023.



Marla McMonagle
Notary Public
My Commission Expires: 11/17/26