

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

ORDER GRANTING PETITION TO INTERVENE

[1] Burleigh County filed a Petition to Intervene dated July 31, 2023. On July 31, 2023, via email to the undersigned Administrative Law Judge (ALJ), Bismarck Intervenors represented by Attorney Randall Bakke indicated no objection to Burleigh County's motion. On August 1, 2023, the Intervenors collectively represented by Attorneys Steven Leibel and Brian Jorde filed a Response to Burleigh County's motion stating no objection to the motion and that Burleigh County should be allowed to intervene. No response to Burleigh County's motion was received from Summit, Laborers District Council of Minnesota and North Dakota (LIUNA), or the Public Service Commission (Commission). The ALJ issued an Order dated August 18, 2023 denying the motion on the grounds it was moot. The Public Service Commission issued its Findings of Fact, Conclusions of Law, and Order denying Summit's Petition on August 4, 2023. In its Order, the Commission found the issue of preemption of local ordinances moot.

[2] After issuance of the ALJ's Order, Summit filed a Petition for Reconsideration.

[3] On August 30, 2023, Burleigh County, by and through its Board of County Commissioners, filed a second Petition to Intervene in the above referenced case. The Petition indicates intervention is sought to respond to the SCS Carbon Transport LLC's (Summit) Petition for Reconsideration specifically Summit's request to declare Burleigh and Emmons County Ordinances superseded and preempted.

[4] On July 10, 2023, the ALJ issued an Order Granting Emmons County Petition for Intervention to address the preemption of local ordinances. Burleigh County’s motion details similar grounds for intervention.

[5] North Dakota Century Code § 28-32-28 addresses intervention in adjudicative proceedings and provides:

An administrative agency may grant intervention in an adjudicative proceeding to promote the interests of justice if intervention will not impair the orderly and prompt conduct of the proceeding and if the petitioning intervenor demonstrates that the petitioner's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of statute or rule. The agency may impose conditions and limitations upon intervention. The agency shall give reasonable notice of the intervention to all parties. An administrative agency may adopt rules relating to intervention in an adjudicative proceeding.

[6] The North Dakota Public Service Commission (“Commission”) has adopted its own rules relating to intervention. The Commission’s rule on intervention provides in part as follows:

Any person with a substantial interest in a proceeding may petition to intervene in that proceeding by complying with this section. An intervention may be granted if the petitioner has a statutory right to be a party to the proceeding; or the petitioner has a legal interest which may be substantially affected by the proceeding, and the intervention would not unduly broaden the issues or delay the proceeding. The commission may impose conditions and limitations on an intervention to promote the interests of justice.

1. Contents of petition to intervene. A petition to intervene must be in writing and must set forth the grounds for intervention, the position and interest of the petitioner in the proceeding, what the petitioner would contribute to the hearing, and whether the petitioner's position is in support of or in opposition to the relief sought.

....

N.D. Admin. Code § 69-02-02-05.

[7] The Petition sets forth the grounds for intervention, the position and interest of the Intervenor, what the Intervenor can contribute to the hearing, and the Intervenor’s position with respect to the relief sought by the applicant. The Intervenor has presented sufficient information

to satisfy the statutory intervention requirements set forth in N.D.C.C. § 28-32-28 and N.D. Admin. Code § 69-02-02-05.

[8] Having considered the written submission of the Intervenor and the applicable statutory provisions and administrative rules, **IT IS HEREBY ORDERED:**

[9] The Petition to Intervene filed by Burleigh County is **GRANTED**.

[10] Burleigh County shall be permitted to appear as an Intervenor in PSC Case No. PU-22-391 to respond to Summit's Petition for Reconsideration and the issue of superseding and preemption of county ordinances.

Dated at Bismarck, North Dakota, this 5 day of September 2023.

State of North Dakota
Public Service Commission

By 

Hope L Hogan
Administrative Law Judge
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CERTIFICATE OF SERVICE

The undersigned certifies that the original of the **ORDER GRANTING PETITION FOR INTERVENTION** was sent by electronic mail and mailed, inside mail, at the State Capitol, on the 5 day of September 2023, to:

John Schuh
Special Assistant Attorney General
North Dakota Public Service Commission
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and that true and correct copies of the above document were sent by electronic mail on the 5 day of September 2023, to:

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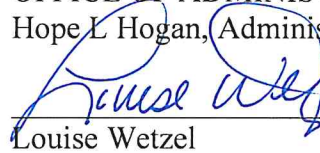
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Hope L Hogan, Administrative Law Judge



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