

September 13, 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 seven (7) copies of the following:

1. Letter to S. Kahl forwarding documents for filing;
2. Letter in Response to Derrick Braaten's Letter on Behalf of Emmons County filed September 8, 2023; and
3. 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/caj
Enclosures

September 13, 2023

HAND DELIVERED

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 Commissioners:

On September 8, 2023, Mr. Derrick Braaten, on behalf of Emmons County, submitted a copy of a recent motion filed by the South Dakota Public Utilities Commission ("SD PUC"). *See* Docket No. 390. In its letter, Emmons County alleges that the SD PUC moved to deny the application filed by SCS Carbon Transport LLC ("Summit") "based on its failure to comply with local zoning laws like those of Emmons County." *Id.* On September 12, 2023, the Landowner Intervenor¹ filed a "Notice of Additional Evidence" indicating that the SD PUC denied Summit's application and alleging that Summit "would not be prejudiced if required to reapply in North Dakota." *See* Docket No. 393. This information was presumably filed to influence the North Dakota Public Service Commission's ("Commission") decision on Summit's petition for reconsideration ("Petition for Reconsideration") and/or Summit's Motion to Declare Emmons County and Burleigh County Ordinances Superseded and Preempted ("Preemption Motion"). *See* Docket Nos. 371 and 282.

Not only is it improper for the Commission to take official notice of the SD PUC decision on Summit's application (or any other state's proceedings), the information filed by Emmons County and the Landowner Intervenor is grossly misleading and provided without context. Specifically, both intervenors fail to advise the Commission that the SD PUC motion and ultimate denial was in response to Summit voluntarily withdrawing its motion before the SD PUC to preempt local zoning ordinances. As the Commission is aware, Summit has not withdrawn its Preemption Motion. *See* Docket No. 282. Emmons County and the Landowner Intervenor imply that the Commission should, or is able to, reach the same conclusion as the SD PUC based on North Dakota law; however, the laws which govern preemption of local zoning ordinances in South Dakota are not the same as those in North Dakota.

¹ Intervenor represented by Mr. Brian Jorde, Steven Leibel and David Knoll.

Furthermore, the Commission should be aware that Summit was prepared to, but had not yet commenced the public hearing process in South Dakota at the time its application was denied by the SD PUC. Accordingly, the denial of Summit's application in South Dakota did not result in a well-developed evidentiary record being thrown out. On the other hand, a denial of Summit's application in North Dakota would require that the existing, well-developed record in this case to be completely disregarded and all parties would be forced to submit an entirely new evidentiary record.

Clearly, these filings are yet another attempt by the intervenors to confuse and distract the Commission from the issues properly at this time and in this case. For the foregoing reasons, Summit respectfully requests that the Commission disregard the September 8, 2023 filing (Docket No. 390) made by Emmons County and the September 12, 2023 filing (Docket No. 393) made by the Landowner Intervenors.

Should you have any questions, please advise.

Sincerely,

A handwritten signature in blue ink, appearing to read 'L. Bender', with a stylized flourish extending from the end.

LAWRENCE BENDER

**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; and
2. Letter in Response to Attorney Derrick Braaten's letter filed on behalf of Emmons County, North Dakota.

were, on September 13, 2023, filed with the North Dakota Public Service Commission and served electronically to the following:

Hope L. Hogan
hlhogan@nd.gov

John Hamre
jghamre@nd.gov

John Schuh
jschuh@nd.gov

Zachary Pelham
zep@pearce-durick.com

Randall J. Bakke
rbakke@bgwattorneys.com

Bradley N. Wiederholt
bwiederholt@bgwattorneys.com

Steven Leibel
steve@bismarck-attorneys.com

David Knoll
david@bismarck-attorneys.com

Brian E. Jorde
bjorde@dominalaw.com

Kevin Pranis
kpranis@liunagroc.com

Derrick Braaten
derrick@braatenlawfirm.com

Julie Lawyer
bc08@nd.gov

Dated this 13th day of September, 2023.

FREDRIKSON & BYRON, P.A.

By: /s/Lawrence Bender

Lawrence Bender, ND Bar #03908
1133 College Drive, Suite 1000
Bismarck, ND 58501
lbender@fredlaw.com
(701) 221-8700

80182787 v1