

September 29, 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's
Renewal of its Motion to Declare
Burleigh and Emmons County
Ordinances Superseded and
Preempted
SCS Carbon Transport LLC
Midwest Carbon Express Project
Case No. PU-22-391**

Dear Mr. Kahl:

Enclosed herewith, please find the following documents for filing with the North Dakota Public Service Commission ("Commission") in the above-referenced case:

1. SCS Carbon Transport LLC's Renewal of its Motion to Declare Burleigh and Emmons County Ordinances Superseded and Preempted; and
2. Certificate of Service.

An original and seven (7) copies of the foregoing are enclosed herewith. Also enclosed is a Compact Disc (CD) containing this letter and the above-referenced documents in PDF format.

Should you have any questions, please advise.

Sincerely,



LAWRENCE BENDER

LB/me
Enclosures

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**Renewal of Motion to Declare Burleigh and Emmons
County Ordinances Superseded and Preempted**

SCS Carbon Transport LLC

Lawrence Bender, Fredrikson & Byron, P.A.

**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, DICKY, EMMONS,
LOGAN, MCINTOSH, MORTON,
OLIVER, RICHLAND AND SARGENT
COUNTIES, NORTH DAKOTA

CASE NO. PU-22-391

**SCS CARBON TRANSPORT LLC'S RENEWAL OF ITS MOTION TO
DECLARE BURLEIGH AND EMMONS COUNTY ORDINANCES
SUPERSEDED AND PREEMPTED**

In June of this year, SCS Carbon Transport filed a motion requesting that the Commission declare—as part of its final order on the permit application—that ordinances in Burleigh County and Emmons County are preempted under N.D.C.C. § 49-22-16(2) as applied to SCS's pipeline. Specifically, SCS asked that the Commission make the following findings of fact and conclusions of law:

1. The Emmons County Ordinance, the March 6 Burleigh County Ordinance, and the March 20 Burleigh County Ordinance are automatically preempted and superseded under N.D.C.C. § 49-22.1-13(2)(b).
2. The Emmons County Ordinance and the March 20 Burleigh County Ordinance are unreasonably restrictive in view of existing technology, factors of cost or economics, or needs of consumers regardless of their location.
3. The Emmons County Ordinance and the March 20 Burleigh County Ordinance conflict with state law, namely the State's policy of promoting carbon sequestration.
4. The Emmons County Ordinance, the March 6 Burleigh County Ordinance, and the March 20 Burleigh County Ordinance conflict with federal law, namely Pipeline Safety Act.

At its proceeding on August 4, the Commission discussed the automatic preemptive effect of N.D.C.C. § 49-22.1-13(2)(b) but ultimately denied SCS's preemption motion as moot. With the Commission now granting SCS's rehearing request, SCS hereby renews its motion for preemption and incorporates its previous briefing.

SCS also respectfully requests that the Commission determine the first issue above—that is, whether all local ordinances are automatically preempted under N.D.C.C. § 49-22.1-13(2)(b)—before the evidentiary hearing on SCS's motion for reconsideration. This threshold issue will affect the evidence presented in the upcoming hearing by both SCS and intervenors and thus a pre-hearing decision will save both the parties and the Commission time and resources. If the Commission determines, as SCS argues, that a permit from this Commission automatically preempts local ordinances under N.D.C.C. § 49-22.1-13(2)(b), then there would be no need for the Commission to consider the other reasons for preemption, including whether the ordinances are unreasonably restrictive in view of existing technology, factors of cost or economics, or needs of consumers regardless of their location.

Therefore, SCS renews its preemption motion and asks that the Commission take up the motion, at least in part, before the hearing on the merits of SCS's motion to reconsider its application.

Dated this 29th day of September 2023.

FREDRIKSON & BYRON, P.A.

By: 

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**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, being of legal age, hereby certify that a true and correct copy of the following:

1. Letter to S. Kahl forwarding documents for filing; and
2. SCS Carbon Transport LLC's Renewal of its Motion to Declare Burleigh and Emmons County Ordinances Superseded and Preempted.

were, on September 29, 2023, filed with the North Dakota Public Service Commission and served electronically to the following:

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Dated this 29th day of September, 2023.

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