



Moss & Barnett

November 15, 2023

Via E-Mail

Steve Kahl, Executive Director
ND Public Service Commission
600 E. Boulevard Avenue, Dept. 408
Bismarck, ND 58505-0480

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

Dear Mr. Kahl:

The attached Petition to Intervene is submitted on behalf of the City of Bismarck in the above-referenced docket.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Patrick T. Zomer
Attorney at Law
P: (612) 877-5278
Pat.Zomer@lawmoss.com

PTZ/keb

Attachment

8869715v1

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

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

CASE NO. PU-22-391
PETITION TO INTERVENE

The City of Bismarck, North Dakota (“Bismarck” or the “City”) by and through its undersigned counsel and pursuant to North Dakota Administrative Code § 69-02-02-05, hereby petitions the North Dakota Public Service Commission (“Commission”) for intervention in the above-captioned proceeding. In support of this petition, Bismarck states and alleges as follows:

1. On October 17, 2022, SCS Carbon Transport LLC (“SCS”) filed applications for a carbon dioxide pipeline and associated facilities certificate of corridor compatibility and route permit. The Commission denied these applications on August 4, 2023.
2. On August 18, 2023, SCS filed a Petition for Reconsideration, Notice of Route Adjustment and Request for Limited Hearing (the “SCS Petition for Reconsideration”), proposing an alternative route for the carbon dioxide pipeline and requesting a hearing to present witness testimony in support of the petition and an amended order.
3. On September 15, 2023, the Commission issued its Order on Petition for Reconsideration, granting the SCS Petition for Reconsideration. The Order on Petition for Reconsideration provides that the Commission will determine the procedural schedule and issues to be considered for rehearing. As of the date of this petition, no procedural schedule has been established.
4. North Dakota Administrative Code § 69-02-02-05 provides that “[a]ny person with a substantial interest in a proceeding may petition to intervene in that proceeding”. 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.” The petition “must be filed at least ten days prior to the hearing, but not after except for good cause shown.”

5. Section § 69-02-02-05 further provides an “intervention may be granted if...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.”
6. Bismarck has legal interests that may be substantially affected by the proceeding.
 - a. First, Bismarck is responsible for coordinating and managing emergency management and fire activities throughout Burleigh and adjacent counties, through which the SCS pipeline may ultimately pass.¹ This includes the City’s role as a member of the State Regional Response Team for hazardous materials releases. Specifically, the City (along with Fargo, Grand Forks, Minot) comprise the North Dakota Department of Emergency Service’s (“ND DES”) Technical Response Teams.² These Technical Response Teams are trained and equipped to implement offensive mitigation measures when possible. When a hazardous materials release occurs, the local incident commander can request support through ND DES and/ or from Regional Response Team. Thus, the Bismarck Fire Department would be the lead on the Technical Response Team for many

¹ SCS’s October 31, 2023 Response to Data Requests indicates the pipeline will occupy approximately 50.89 miles of right of way in Burleigh county. *See* October 31, 2023 Response to Data Requests at 7, Table DR 3.3 (Document [411-010](#)).

² The Dickinson, Jamestown, Devils Lake and Williston Departments are Operational Teams that implement defensive measures and support the Technical Teams.

miles of the proposed SCS pipeline. Bismarck, as the entity responsible for these activities, has an interest in the routing and development of the proposed pipeline. For example, presence of the pipeline in the area within the City's Technical Response Team responsibilities will require additional safety training for its emergency response personnel.

- b. Second, the ultimate route for the pipeline remains in flux. The proximity of the pipeline to the City's existing boundaries has the potential to interfere with the Bismarck Comprehensive Plan "Together 2045."³ While Bismarck appreciates SCS's proposal to reroute the pipeline approximately 9.5 miles further north of the City,⁴ the location on the eastern side of the City limits appears to be unchanged. Proximity of the pipeline to the City also affects the health and safety of the residents of Bismarck and impacts the City's ability to grow consistent with its coordinated planning with Burleigh County.
 - c. Third, the Missouri River is a vital source of water for the citizens of the City. To date, crossing permits remain outstanding.⁵ While issuance of these permits may be outside of the Commission's jurisdiction, the route taken across the river is not and remains in controversy.
- 7. No other party to this proceeding can adequately represent the City's interests.
 - 8. The City's intervention will not unduly broaden the issues or delay the proceeding. To date, the Commission has not established a procedural schedule (including hearing date) or the issues to be considered for rehearing. Further, SCS itself continues to modify the

³ See City of Bismarck Resolution dated May 9, 2023 (Document [221-010](#)).

⁴ October 31, 2023 Response to Data Requests at 1 (Document [411-010](#)).

⁵ October 31, 2023 Response to Data Requests at 11-12, Table DR 3.7 (Document [411-010](#)).

proposed route permit.⁶ Thus, the City's participation will not unduly broaden the issues or delay the proceeding,⁷ which remain in flux. The City will cooperate with the Commission and parties to contribute to an efficient, expeditious process through whatever proceedings the Commission orders.⁸

9. The City neither supports nor opposes SCS's applications; rather, it merely seeks to protect its interests and those of its residents.

WHEREFORE, for the reasons sets forth above, Bismarck requests that the Commission grant this timely Petition to Intervene and permit Bismarck to participate in this proceeding with full rights as a party.

[Signature Page Follows]

⁶ October 31, 2023 Response to Data Requests at 1 (Document [411-010](#)).

⁷ Since the Commission has not established a new hearing date, this petition is timely, as it is filed at least ten days prior to the hearing. And there is good cause to permit the City's intervention at this date given the substantial modifications being proposed by SCS and the Commission's decision to reconsider SCS's applications.

⁸ If the Commission orders additional testimony, the City may provide factual witnesses regarding its interests in the proceeding. It may also participate in any evidentiary hearing, including, but not limited to, cross examination of witnesses or submitting any briefing ordered by the Commission.

Dated: November 15, 2023

Respectfully submitted,

By: _____/s/

Jannelle Combs
Bismarck City Attorney
City of Bismarck
221 North 5th Street
P.O. Box 5503
Bismarck, ND 58501
jcombs@bismarcknd.gov
(701) 355-1340
ND Attorney License # 05600
and

Patrick Zomer
Moss & Barnett, P.A.
150 South Fifth Street, Suite 1200
Minneapolis, MN 55402
Pat.Zomer@lawmoss.com
(612) 877-5278
ND Admission Pending

Attorneys on Behalf of the City of Bismarck

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

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

Case No. PU-22-391

DECLARATION OF SERVICE

1. Karen E. Berg declares that I am of legal age and not a party to this action, and that I served the following documents:

- a. Petition to Intervene on behalf of the City of Bismarck, North Dakota; and
- b. Declaration of Service.

2. On November 15, 2023, by sending a true and correct copy thereof by electronic means only to the following e-mail addresses, to-wit:

John Maurice Schuh, Bar ID 08138
Special Assistant Attorney General
North Dakota Public Service Commission
600 E. Boulevard Avenue, Dept. 408
Bismarck, ND 58505-0480
jschuh@nd.gov

Lawrence Bender, Bar ID 03908
Fredrickson & Byron, P.A.
1133 College Drive, Suite 1000
Bismarck, ND 58501-1215
lbender@fredlaw.com

Hope Lisa Hogan, Bar ID 05982
Administrative Law Judge
Office of Administrative Hearings
2911 N. 14th Street, Suite 303
Bismarck, ND 58503
hlhogan@nd.gov

Zachary Evan Pelham, Bar ID 05904
Pearce Durick PLLC
314 E. Thayer Avenue
P.O. Box 400
Bismarck, ND 58502-0400
zep@pearce-durick.com

John Hamre
Public Service Commission
State Capitol
600 E. Boulevard Avenue, Dept. 408
Bismarck, ND 58505-0480
jghamre@nd.gov

Brian E. Jorde
Domina Law Group
2425 S. 144th Street
Omaha, NE 68144
bjorde@dominalaw.com

Kevin Pranis
LIUNA Minnesota & North Dakota
81 E. Little Canada Road
St. Paul, MN 55117
kpranis@liunagroc.com

Randall J. Bakke, Bar ID 03898
Bradley N. Wiederholt Bar, ID 06354
Bakke Grinolds Wiederholt
P.O. Box 4247
Bismarck, ND 58502-4247
rbakke@bgwattorneys.com
bwiederholt@bgwattorneys.com

Steve Kahl, Executive Director
North Dakota Public Service Commission
600 E. Boulevard Avenue, Dept. 408
Bismarck, ND 58505-0480
ndpsc@nd.gov

Bret A. Dublinske
Fredrickson & Byron, P.A.
111 E. Grand Avenue, Suite 301
Des Moines, IA 50309-1884
bdublinske@fredlaw.com

James Curry
Babst, Calland, Clements and Zomnir P.C.
jcurry@babstcalland.com

Derick Braaten
derrick@brattenlawfirm.com

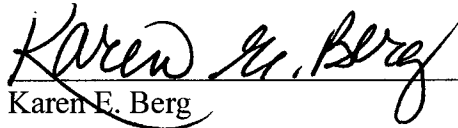
Julie Lawyer
Burleigh County State's Attorney
bc08@nd.gov

Brant Leonard
Fredrickson & Byron, P.A.
bleonard@fredlaw.com

3. The addresses of each party served are the last reasonably ascertainable e-mail address and post office address of such party.

4. I declare, under penalty of perjury under the law of North Dakota, that the foregoing is true and correct.

Signed on the 15th day of November, 2023, at Minneapolis, Minnesota.


Karen E. Berg