

March 1, 2024

**VIA U.S. MAIL**

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:

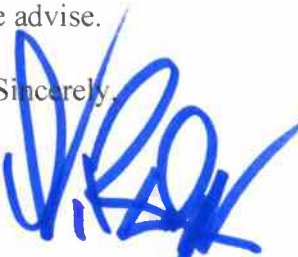
Enclosed herewith, please find the following documents for filing with the North Dakota Public Service Commission ("Commission") in the above-referenced case:

1. SCS Carbon Transport LLC's Response to Burleigh County's Petition for Reconsideration; and
2. Certificate of Service.

An original and seven (7) copies of the foregoing are enclosed herewith. This letter and the above-described documents have been electronically filed with the Commission by e-mailing copies of the same to [ndpsc@nd.gov](mailto:ndpsc@nd.gov).

Should you have any questions, please advise.

Sincerely,



LAWRENCE BENDER

LB/tjg  
Enclosures  
#81739880v1

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

CASE NO. PU-22-391

---

**SCS Carbon Transport LLC's Response to Burleigh County's Petition for Reconsideration**

---

SCS Carbon Transport LLC ("SCS"), by and through its attorneys of record, hereby submits this response to Burleigh County's Petition for Reconsideration (Docket No. 449) filed with the North Dakota Public Service Commission ("Commission") in the above-referenced matter. The intervenors represented by Brian Jorde, Steven Leibel and David Knoll ("Landowner Intervenors") joined in Burleigh County's Petition for Reconsideration and requested oral arguments on said petition. *See* Docket No. 448.

In its Petition for Reconsideration, Burleigh County does not critique the Commission's reasoning in its February 7, 2024 Order (Docket No. 440) regarding preemption. Instead, Burleigh County misreads that Order and then attacks the strawman. The Commission can and should summarily deny Burleigh County's Petition for Reconsideration and proceed with any hearings necessary for SCS's Petition for Reconsideration (Docket No. 371).

In its Petition for Reconsideration, Burleigh County states that "[i]t appears the Commission believes it does not have to consider the provisions of N.D.C.C. § 49-22.1-13(2)(c), (d), and (e) which govern corridor compatibility." That is not what the Commission's Order says;

it is also a misstatement of what subsection (c) does. In other words, Burleigh County appears to be confused.

There are two preemption provisions in N.D.C.C. § 49-22-13(2)—subsection (b) and subsection (c). Burleigh County states that preemptive statements in subsection (c) “govern corridor compatibility and, therefore, the Commission” must first decide whether any ordinance is unreasonably restrictive. That is wrong. Subsection (c) does not refer to corridor compatibility; like subsection (b), it refers to the permit. So the distinction between subsections (b) and (c) is not about the preemptive effect of a permit versus corridor compatibility; it is about the distinction between (1) “local land use or zoning regulations,” which are automatically preempted with the issuance of a permit under subsection (b), and (2) road-use agreements, which are only preempted by the issuance of a permit under subsection (c) *if* the Commission finds that those requirements are unreasonably restrictive.

In its February 7, 2024 Order, the Commission noted that “SCS’s Application is a consolidated application for a certificate of corridor compatibility and for a route permit,” but that comment was not related to the interpretation of N.D.C.C. § 49-22.1-13(2)(b); it was simply a response to Burleigh County’s incorrect claim “that a permit to construct is not in front of the Commission.” *See* Order (Docket No. 440) at 2 (summarizing Burleigh County’s position).

Burleigh County’s entire argument is based on a misreading or misunderstanding of N.D.C.C. § 49-22.1-13 and the Commission’s Order. Furthermore, Burleigh County is simply repeating the same arguments it made at oral arguments on December 21, 2023. *See* Docket No. 427. Presumably, the Commission heard and understood Burleigh County’s arguments on December 21 and issued its Order in spite of the same. Accordingly, reconsideration is not

appropriate and no additional hearings or oral arguments before the Commission are necessary on this issue.

Based on the foregoing, SCS respectfully requests that the Commission:

- (1) summarily deny Burleigh County's Petition for Reconsideration;
- (2) to the extent a request for rehearing or oral argument may be implied into Burleigh County's Petition for Reconsideration, deny such request;
- (3) deny Landowner Intervenor's request for oral argument; and
- (4) proceed with the hearings necessary for SCS's Petition for Reconsideration.

Dated this 1st day of March, 2024.

FREDRIKSON & BYRON, P.A.

By: 

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

*Attorneys for SCS Carbon Transport LLC*

#81719758v1

**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. SCS Carbon Transport LLC's Response to Burleigh County's Petition for Reconsideration.

was, on March 1, 2024, filed with the North Dakota Public Service Commission and served electronically to the following:

Hope L. Hogan  
hlhogan@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

Patrick Zomer  
Pat.Zomer@lawmoss.com

Dated this 1st day of March, 2024.

FREDRIKSON & BYRON, P.A.

By: 

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

#81739933v1