

STATE OF NORTH DAKOTA

DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

Emmons County,

Case No. 08-2024-CV-00624

Appellant,

vs.

**NOTICE OF APPEAL AND
SPECIFICATIONS OF ERROR**

North Dakota Public Service Commission
and SCS Carbon Transport LLC,

Appellees.

TO: NORTH DAKOTA PUBLIC SERVICE COMMISSION, NORTH DAKOTA ATTORNEY GENERAL DREW WRIGLEY, AND SCS CARBON TRANSPORT LLC:

[¶ 1] PLEASE TAKE NOTICE that Appellant Emmons County, pursuant to N.D.C.C. § 28-32-42, hereby give notice of its appeal from the February 7, 2024 Order by the North Dakota Public Service Commission (“PSC” or “Commission”) in PSC Docket PU-22-391 (OAH File No. 20230002). A copy of the order is attached hereto as Exhibit A.

[¶ 2] Pursuant to the challenged order, the PSC ordered “North Dakota Century Code Section 49-22.1-13 automatically supersedes and preempts any local land use or zoning regulations for a gas or liquid transmission facility route permit.” PSC Docket Number 440.

[¶ 3] SCS Carbon Transport LLC (“Summit”) filed an Application for Certificate of Corridor Compatibility and Route Permit and Waiver on October 17, 2022. PSC Docket Number 1. Emmons County filed a Petition to Intervene and Response in Opposition to Superseded and Preempted Motion on June 30, 2023. PSC Docket Number 350. An Order Granting Emmons County’s Petition for Intervention was entered on July 11, 2023. PSC Docket Number 354.

[¶ 4] The PSC issued an Order on August 4, 2023 denying Summit’s application for waiver of procedures and time schedules, application for a certificate of corridor compatibility and application for a route permit. PSC Docket Number 366.

[¶ 5] On August 18, 2023, Summit filed a Petition for Reconsideration, Notice of Route Adjustment and Request for Limited Rehearing. PSC Docket Number 371. The PSC issued an Order on Petition for Reconsideration dated September 15, 2023 granting Summit’s petition for reconsideration and granting a rehearing. PSC Docket Number 396. On December 21, 2023 a formal hearing was held regarding the application of N.D.C.C. § 49-22.1-13 to local land use or zoning regulations. PSC Docket Number 427. The PSC issued an order on February 7, 2024 that N.D.C.C. § 49-22.1-13 that preemption is automatic and it need not make any factual findings. PSC Docket Number 440.

[¶ 6] Venue lies with this court pursuant to N.D.C.C. § 28-32-42(3)(a), which provides that the appeal of an agency determination “may be taken to the district court designated by law, and if none is designated, then to the district court of the county in which the hearing or a part thereof was held.” No other district court is designated by law for this appeal, and the hearing on the order challenged was held in the Pioneer Room at the State Capitol in Bismarck, Burleigh County, North Dakota. Therefore this appeal is appropriately venued in Burleigh County.

[¶ 7] Emmons County appeals the Order dated February 7, 2024 as the PSC erred as a matter of law by interpreting N.D.C.C. § 49-22.1-13 and applying it as it did in its Order. The Order is not in accordance with the law and does not comply with the requirements of N.D.C.C. § 49-22.1-13, and the rules by which the PSC applied that statute did not afford Emmons County a fair hearing. The PSC failed to make factual findings that support its conclusions of law and there is no factual support for any findings of fact that would support the PSC’s legal conclusions.

[¶ 8] WHEREFORE, Emmons County requests that this Court enter an order reversing the decision below and remanding to the Public Service Commission for further proceedings consistent with this Court's order, awarding costs and attorneys' fees to Emmons County pursuant to N.D.C.C. § 28-32-50, and granting any and all other relief to which Emmons County may be entitled.

DATED this 7th day of March, 2024.

BRAATEN LAW FIRM

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