

**BEFORE THE PUBLIC SERVICE COMMISSION
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

DIRECT TESTIMONY OF JON SCHMIDT

ON BEHALF OF

SCS CARBON TRANSPORT LLC

April 22, 2024

1 **Q. Please state your name, present position and business address for the record.**

2 A. My name is Jon Schmidt. I am the Vice President of Environmental & Regulatory Services
3 for EXP Energy Services Inc. (“EXP”). My business address is 2510 Miccosukee Road,
4 Suite 200, Tallahassee, Florida 32308

5 **Q. Have you testified in this matter previously?**

6 A. Yes.

7 **Q. Have you described for the North Dakota Public Service Commission**
8 **(“Commission”) your educational background and work experience?**

9 A. Yes.

10 **Q. Have you described your duties with respect to this project for the Commission?**

11 A. Yes.

12 **Q. What did your prior testimony before the Commission concern?**

13 A. My prior testimony covered the environmental, historical and cultural surveys, studies and
14 reports prepared in connection with the original application filed by SCS Carbon Transport
15 LLC (“Summit”). I also addressed the impacts of the project in relation to the
16 Commission’s siting criteria and the measures Summit has taken to mitigate any such
17 impacts.

18 **Q. What is the purpose of your additional testimony?**

19 A. The purpose of my additional testimony is to provide the Commission with information
20 concerning the updated natural resource surveys, studies and reports Summit has
21 undertaken to account for the impact of the route in relation to the Commission’s siting
22 criteria, and the measures Summit has or will implement to mitigate such impacts. I will
23 also provide a detailed update concerning Summit’s Class III cultural resource inventory

1 and coordination with the State Historic Preservation Office of the State Historical Society
2 of North Dakota (“SHPO”) regarding the same.

3 **Q. Is your testimony focused on the areas where the project route was adjusted outside**
4 **of the originally proposed 300-foot corridor?**

5 A. Yes. Summit’s prior studies, surveys and reports remain accurate about that part of the
6 project not adjusted outside of said 300-foot corridor.

7 **Q. Are you aware that Summit has agreed to a request of the Commission to reduce the**
8 **width of its corridor from 300 feet to 200 hundred feet?**

9 A. Yes, that is my understanding, and the updated natural resource studies, surveys and reports
10 were conducted and prepared utilizing a 200-foot-wide survey corridor.

11 **Q. What was the study area for the route adjustments?**

12 A. The study area consists of a 1-mile wide corridor along the pipeline route.

13 **Q. Which reports required updates based on the route adjustments implemented by**
14 **Summit?**

15 A. Updates were made to the Threatened and Endangered Species Assessment Report
16 (Appendix 7 to Summit’s Application), Wetland Delineation Report (Appendix 7 to
17 Summit’s Application), the Noxious Weed Management Plan (Appendix 10), and the HDD
18 Plan (Appendix 11) were also updated.

19 **Q. Please explain what updates were necessary for each of these reports based on the**
20 **route adjustments.**

21 A. The Wetland Delineation Report has been updated to account for both the reduction in the
22 width of the corridor from 300 feet to 200 feet and adjustments made to the route in several
23 locations. Additionally, the Wetland Delineation Report was updated to incorporate field
24 survey efforts conducted since Summit’s initial application filing in October 2022. The
25 Threatened and Endangered Species Report was updated to focus on the 2023 survey
26 methodologies and survey results for the Dakota skipper (*Hesperia dacotae*), and the

1 results of a desktop habitat assessment conducted for the northern long-eared bat (*Myotis*
2 *septentrionalis*) in North Dakota.

3 **Q. Are there any expected impacts to wetlands or threatened or endangered species?**

4 A. No. The route will not have any long-term impacts to wetlands or threatened or endangered
5 species with the implementation of the best management practices discussed in the
6 previous hearing and the mitigation measures outlined in the filing.

7 **Q. Are you familiar with the Exclusion Areas, Avoidance Areas, Selection Criteria, and**
8 **Policy Criteria identified in Section 69-06-08-02 of the North Dakota Administrative**
9 **Code?**

10 A. Yes.

11 **Q. Are any Exclusion Areas located within the 200-foot-wide corridor of the adjusted**
12 **route and, if so, are they crossed by the adjusted route?**

13 A. An Exclusion Area is located within and crossed by the existing corridor and route at the
14 Missouri River Crossing. This has not changed from the original filing. The U.S. Fish and
15 Wildlife Service Designated Critical Habitat for the piping plover will be avoided by the
16 implementation of a Horizontal Directional Drill (“HDD”) crossing of the Missouri River,
17 avoiding surface impacts to the Exclusion Area.

18 **Q. Are any Avoidance Areas located within the 200-foot-wide corridor of the adjusted**
19 **route and, if so, are they crossed by the adjusted route?**

20 A. There are Waterfowl Production Areas (“WPAs”), which are easements between the U.S.
21 Fish and Wildlife Service (“USFWS”) and the landowner, that are crossed by the route.
22 However, all of these have been avoided or crossed by using an HDD to drill under the
23 entire property. This is acceptable to the USFWS to avoid impacts to these easements.
24 Landslide features crossed by the corridor will be avoided by HDD or Class A landslides
25 would be mitigated by partially or wholly avoiding the feature within the corridor with
26 standard construction practices.

1 **Q. Are you familiar with the project’s impact on Game Management Areas?**

2 A. Yes.

3 **Q. Is it your understanding that there may have been confusion in Summit’s original**
4 **application regarding the project’s effect on Game Management Areas?**

5 A. Yes. The previous filing mistakenly classified WPAs as Game Management Areas. After
6 consulting with the USFWS regarding restrictions to surface impacts on the WPAs, it was
7 confirmed that only the “protected” wetlands designated by the USFWS within the
8 easement/parcel were required to be avoided as wildlife areas (duck habitat); not the entire
9 easement/parcel. To minimize any additional confusion, however, Summit has committed
10 to either avoiding all WPAs along the route or crossing them via HDD to drill under the
11 easement/parcel. No surface impacts to WPAs are proposed.

12 **Q. What are the project’s impacts on Game Management Areas?**

13 A. No impacts to Game Management Areas are expected for the route. No Game Management
14 Areas are crossed by the route’s centerline, within 200 feet of the siting corridor, or present
15 within one mile of the route’s centerline.

16 **Q. Has Summit evaluated the route for residences, schools and places of business located**
17 **within 500 feet of the pipeline?**

18 A. Yes. Additional detailed analyses have been conducted along the new project route by
19 reviewing aerial imagery to identify all such structures near or in the vicinity of the
20 proposed route. In addition, Summit personnel have driven the entire re-route around the
21 city of Bismarck to identify constructability risks, confirm structures, and confirm
22 feasibility.

- 1 **Q. Is the project route located within 500 feet of any of these structures?**
- 2 A. Yes. Summit has identified six structures located within 500 feet of the new project route.
- 3 Five of the six structures are located along re-routes as the original route had a single
- 4 structure located within 500 feet of the pipeline.
- 5 **Q. Has Summit obtained a waiver from the owners of said structures in accordance with**
6 **§ 49-22.1-03 of the North Dakota Century Code and § 69-06-08-02(2)(e) of the North**
7 **Dakota Administrative Code?**
- 8 A. Yes, waivers have been obtained for all six locations. Copies of the waivers are attached
- 9 hereto as **Exhibit A.**
- 10 **Q. Will there be any significant adverse effects resulting from the location, construction,**
11 **and operation of the adjusted project route as they relate to the Selection Criteria set**
12 **forth in the Commission’s rules and regulations?**
- 13 A. No. All impacts will be temporary and short-term in nature and no significant adverse
- 14 effects are anticipated.
- 15 **Q. Has, or will, Summit update its tree and shrub inventory for the adjusted route?**
- 16 A. As mandated by the Commission, Summit will complete a tree and shrub inventory prior
- 17 to the commencement of construction after the right-of -way and workspace has been
- 18 finalized. The inventory will document the location, number and species of all trees one
- 19 inch or greater in diameter at breast height (DBH), as well as all shrubs and coniferous
- 20 trees of any diameter.
- 21 **Q. Did Summit send updated agency correspondence regarding the route adjustments**
22 **to the local, state and federal agencies and governmental entities identified in Section**
23 **69-06-01-05 of the North Dakota Administrative Code?**
- 24 A. Yes. Updated correspondence regarding the route was sent in January 2024.

1 **Q. Are you aware of any specific concerns or objections raised by any of these agencies**
2 **with respect to the adjusted route?**

3 A. I am not aware of any concerns or objections raised by any local, state, or federal agencies
4 in regard to the route.

5 **Q. Are you familiar with the March 1, 2023 letter sent by SHPO to the Commission?**

6 A. Yes. This letter communicated concerns SHPO had related to Summit's archeological
7 survey report and the route of Summit's pipeline.

8 **Q. What were the specific concerns SHPO had?**

9 A. SHPO stated that Summit's archeological survey report did not meet SHPO standards and
10 that SHPO had not yet received a revised report addressing its concerns. The letter also
11 stated that SHPO had been advised that Summit's proposed route differs from the route
12 which was provided to SHPO for review.

13 **Q. What actions has Summit taken to address SHPO's concerns?**

14 A. To address SHPO's concerns, Summit has completed the following:

15 First, Summit addressed comments received from SHPO regarding the *Class III Cultural*
16 *Resources Inventory of the Midwest Carbon Express Project: Burleigh, Cass, Dickey,*
17 *Emmons, Logan, McIntosh, Mercer, Morton, Oliver, Richland, and Sargent Counties,*
18 *North Dakota – Volume 1* and resubmitted the revised version of the report to the SHPO
19 on March 15, 2024. The report covers survey results from field work conducted from
20 September 28, 2021, through November 5, 2022 and is currently being reviewed by the
21 SHPO. This report was originally submitted in May 2022, and resubmitted in October
22 2022 to address SHPO's initial comments. The report was then resubmitted April 2023 to
23 address additional comments. In June 2023, SHPO requested that the April 2023 report
24 version incorporate the forthcoming Addendum 1 report to create a single volume for the

1 field work completed through November 5, 2022. SHPO also requested that resources
2 identified during the 2021 and 2022 field seasons that required subsurface testing be tested
3 during the 2023 field season and included in the Volume 1 report. That comprehensive
4 draft was submitted in December 2023.

5 Second, Summit addressed initial comments received from SHPO regarding the *Class III*
6 *Cultural Resources Inventory of the Midwest Carbon Express Project: Burleigh, Cass,*
7 *Dickey, Emmons, Logan, McIntosh, Mercer, Morton, Oliver, Richland, and Sargent*
8 *Counties, North Dakota – Volume 2* and resubmitted the report to the SHPO on April 12,
9 2024. Volume 2 report includes the survey results from field work conducted from May
10 5, 2023, through October 24, 2023. The route presented to the SHPO in Volume 2 is
11 matches the route that was submitted as part of the reconsideration process. Volume 2 is
12 currently being reviewed by the SHPO.

13 **Q. Did these submittals specifically address the concerns set forth in the March 1, 2023**
14 **submitted by SHPO?**

15 A. Yes, the Volume 1 and Volume 2 reports identified above addressed SHPO's concerns
16 regarding Summit's archeological survey report and the route being reviewed by the SHPO
17 did not match the route being evaluated by the Commission.

18 **Q. For what percentage of the route has Summit completed cultural resource surveys?**

19 A. In North Dakota, as of April 7, 2024, Summit has completed archeological and cultural
20 resource surveys along 94% of the project route. Across the project, 36 Tribal Cultural
21 Specialists (TCSs) from nine Tribes participated in cultural surveys. In North Dakota,
22 members of the Rosebud Sioux (5), Northern Cheyenne (1), Turtle Mountain Band of
23 Chippewa (1), Mandan, Hidatsa and Arikara- Three Affiliated Tribes (4), Fort Peck
24 Assiniboine and Sioux (3), Little Shell Chippewa (6), Sisseton, Wahpeton, Oyate (7), and

1 Yankton Sioux Tribes (2) participated in surveys, including the identification of cultural
2 heritage sites along the project route. Summit is committed to avoidance of all Tribally
3 sensitive areas identified by Tribal monitors during field surveys.

4 **Q. Does this percentage include all reroutes for the project?**

5 A. Yes, this percentage includes all of the reroutes that have been implemented into the current
6 project route that is being reviewed by the Commission through the reconsideration
7 process.

8 **Q. What is preventing Summit from completing surveys on the remainder of the route?**

9 A. Surveys have not been completed on 6% of the project route due to either survey access
10 being denied by the landowner, or because the route was modified after the end of the 2023
11 field work effort (October 24, 2023). Summit is committed to surveying 100% of the
12 project footprint and to avoiding all impacts to eligible cultural resources that would be
13 impacted by the construction footprint. Summit will complete pedestrian surveys along all
14 non-surveyed portions of the project route as well as any additional required sampling
15 effort (e.g., shovel testing or deep testing) that is required prior to construction. Section 3.3
16 of the Volume 2 report specifically identifies what work is outstanding and Summit's
17 proposed methodology to complete any outstanding field work to meet the project's
18 permitting obligations. As for those portions of the project that have not been surveyed or
19 where additional evaluation is required, Summit will provide the results of these survey
20 efforts to SHPO once the work has been completed.

21 **Q. Is Summit agreeable to the Commission, as it many times does, issuing an order**
22 **conditioned upon Summit completing all required Class III surveys and receiving**
23 **concurrence from SHPO?**

24 A. Yes.

1 **Q. Based on the surveys, studies and reports conducted with respect to the project route,**
2 **as adjusted, and the mitigation measures Summit has in place:**

3 1. Is it your opinion that the construction, operation, and maintenance of
4 the project at the proposed location will produce minimal adverse
5 effects on the environment and upon the welfare of the citizens of North
6 Dakota?

7 A. Yes.

8 2. Is it your opinion that the project is compatible with environmental
9 preservation and the efficient use of resources?

10 A. Yes.

11 3. Is it your opinion that the construction, operation, and maintenance of
12 the project at the proposed location will minimize adverse human and
13 environmental impact?

14 A. Yes.

15 **Q. Does this conclude your testimony?**

16 A. Yes.

17
18 **Dated this 17th day of April 2024.**
19

20
21 
22 **Jon Schmidt**

EXHIBIT A

Tract # ND-BU-0984.103

SETBACK WAIVER

Summit Carbon Solutions, LLC, an Iowa limited liability company, is proposing to install a pipeline in an area where the pipeline falls within five hundred (500) feet of an inhabited residence located on your property, described below:

Burleigh County, North Dakota
Township 138 North, Range 79 West, 5th P.M.
Section 13: SE1/4NE1/4

(the "Property").

Under North Dakota law (North Dakota Century Code § 49-22.1-05 and North Dakota Administrative Code § 69-06-08-02), certain geographical areas are designated as "avoidance areas" that shall not be considered in the routing of a transmission facility unless there is no reasonable alternative. One such geographical avoidance area is the area within five hundred (500) feet of a residence.

By signing this Waiver Agreement, you, as owner of the inhabited residence on the Property, acknowledge that you do not object to the placement of one or both of Summit Carbon Solutions, LLC's pipelines within five hundred (500) feet of said inhabited residence.

Dated this 26 day of May, 2023.

LANDOWNER:



SHANE T. ASBURY
2650 132nd Street NE
Menoken, ND 58558

Date: 5-26-23



BRITTNY ASBURY
2650 132nd Street NE
Menoken, ND 58558

Date: 5-26-23

SETBACK WAIVER

Summit Carbon Solutions, LLC, an Iowa limited liability company, is proposing to install a pipeline in an area where the pipeline falls within five hundred (500) feet of an inhabited residence located on your property, described below:

Burleigh County, North Dakota
Township 138 North, Range 79 West, of the 5th P.M.
Section 13: NE1/4NE1/4

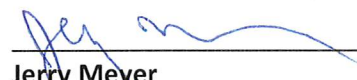
(the "Property").

Under North Dakota law (North Dakota Century Code § 49-22.1-05 and North Dakota Administrative Code § 69-06-08-02), certain geographical areas are designated as "avoidance areas" that shall not be considered in the routing of a transmission facility unless there is no reasonable alternative. One such geographical avoidance area is the area within five hundred (500) feet of a residence.

By signing this Waiver Agreement, you, as owner of the inhabited residence on the Property, acknowledge that you do not object to the placement of one or both of Summit Carbon Solutions, LLC's pipelines within five hundred (500) feet of said inhabited residence.

Dated this 20th day of April, 2023.

LANDOWNER:



Jerry Meyer
2256 132nd Street SE
Menoken, ND 58558

Date: 4-20-2023



Susan D. Meyer
2256 132nd Street SE
Menoken, ND 58558

Date: 4-20-2023

SETBACK WAIVER

Summit Carbon Solutions, LLC, an Iowa limited liability company, is proposing to install a pipeline in an area where the pipeline falls within five hundred (500) feet of an inhabited residence located on your property, described below:

PROPERTY DESCRIPTION

Burleigh County, North Dakota
Township 141 North, Range 80 West, 5th P.M.
Section 24: SW1/4SW1/4

Under North Dakota law (North Dakota Century Code § 49-22.1-05 and North Dakota Administrative Code § 69-06-08-02), certain geographical areas are designated as “avoidance areas” that shall not be considered in the routing of a transmission facility unless there is no reasonable alternative. One such geographical avoidance area is the area within five hundred (500) feet of a residence.

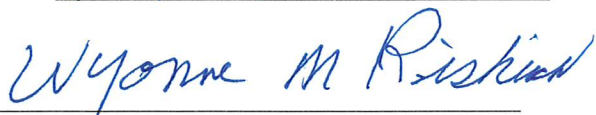
By signing this Waiver Agreement, you, as owner of the inhabited residence on the Property, acknowledge that you do not object to the placement of one or both of Summit Carbon Solutions, LLC’s pipelines within five hundred (500) feet of said inhabited residence.

Dated this 15 day of November, 2023.

LANDOWNER:


MARVIN D. RISKEVICH a/k/a MARVIN RISKEVICH
1350 188th Avenue NE
Baldwin, ND 58521

Date: 11-15-23


WYONNE M. RISKEVICH a/k/a WYONNE RISKEVICH
1350 188th Avenue NE
Baldwin, ND 58521

Date: 11-15-23

SETBACK WAIVER

Summit Carbon Solutions, LLC, an Iowa limited liability company, is proposing to install a pipeline in an area where the pipeline falls within five hundred (500) feet of an inhabited residence located on your property, described below:

PROPERTY DESCRIPTION

Dickey County, North Dakota
Township 129 North, Range 63 West, 5th P.M.
Section 26: N1/2SE1/4

Under North Dakota law (North Dakota Century Code § 49-22.1-05 and North Dakota Administrative Code § 69-06-08-02), certain geographical areas are designated as "avoidance areas" that shall not be considered in the routing of a transmission facility unless there is no reasonable alternative. One such geographical avoidance area is the area within five hundred (500) feet of a residence.

By signing this Waiver Agreement, you, as owner of the inhabited residence on the Property, acknowledge that you do not object to the placement of one or both of Summit Carbon Solutions, LLC's pipelines within five hundred (500) feet of said inhabited residence.

Dated this 9th day of January, 2024.

LANDOWNER:

**THE KENNETH AND BETTY KOSEL
REVOCABLE LIVING TRUST**



TODD KOSEL, AS TRUSTEE

PO Box 263
Edgeley, ND 58433

Date: 1-9-24



RUSSELL KOSEL, AS TRUSTEE

PO Box ~~263~~ 616 RSK
~~Edgeley, ND 58433~~

Ellendale 58436

Date: 1-9-24

SETBACK WAIVER

Summit Carbon Solutions, LLC, an Iowa limited liability company, is proposing to install a pipeline in an area where the pipeline falls within five hundred (500) feet of an inhabited residence located on your property, described below:

Richland County, North Dakota

Township 131 North, Range 52 West of the 5th P.M.

Section 3: The NW1/4 of Section 3, LESS AND EXCEPT: Beginning at the Northwest corner of the N½ of Section 3 (also known as the Northwest corner of Government Lot 4 of Section 3); thence southerly on and along the West line of said Section 3 a distance of 64 rods to the point of beginning; thence easterly parallel to the North line of Section 3 a distance of 66½ rods; thence southerly parallel to the West line of said Section 3 a distance of 48 rods; thence westerly parallel to the North line of said Section 3 a distance of 66½ rods, more or less to the West line of said Section 3 a distance of 48 rods, more or less to the point of beginning.

(the "Property").

Under North Dakota law (North Dakota Century Code § 49-22.1-05 and North Dakota Administrative Code § 69-06-08-02), certain geographical areas are designated as "avoidance areas" that shall not be considered in the routing of a transmission facility unless there is no reasonable alternative. One such geographical avoidance area is the area within five hundred (500) feet of a residence.

By signing this Waiver Agreement, you, as owner of the inhabited residence on the Property, acknowledge that you do not object to the placement of one or both of Summit Carbon Solutions, LLC's pipelines within five hundred (500) feet of said inhabited residence.

Dated this 23rd day of June, 2023.

LANDOWNER:

Mildred Stregge
MILDRED STREGGE
8430 County Road 17
Lidgerwood, ND 58053

Date: 6-23-2023

SETBACK WAIVER

Summit Carbon Solutions, LLC, an Iowa limited liability company, is proposing to install a pipeline in an area where the pipeline falls within five hundred (500) feet of an inhabited residence located on your property, described below:

Sargent County, North Dakota
Township 131 North, Range 54 West of the 5th P.M.
Section 5: SE4

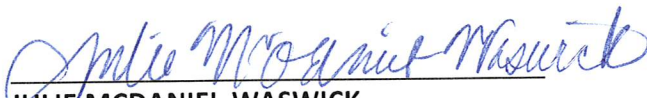
(the "Property").

Under North Dakota law (North Dakota Century Code § 49-22.1-05 and North Dakota Administrative Code § 69-06-08-02), certain geographical areas are designated as "avoidance areas" that shall not be considered in the routing of a transmission facility unless there is no reasonable alternative. One such geographical avoidance area is the area within five hundred (500) feet of a residence.


By signing this Waiver Agreement, you, as owner of the inhabited residence on the Property, acknowledge that you do not object to the placement of one of Summit Carbon Solutions, LLC's pipelines within five hundred (500) feet of said inhabited residence.

Dated this 26 day of July, 2022.

LANDOWNER:


JULIE MCDANIEL-WASWICK
P.O. Box 486
Gwinner, ND 58040

Date: 7-26-2022


OLIVIA WASWICK
P.O. Box 486
Gwinner, ND 58040

Date: 7-26-2022

~~Name: _____
P.O. Box 486
Gwinner, ND 58040~~

Date: _____

Geneva Waswick

GENEVA WASWICK
216 South Main Street
Gwinner, ND 58040

Date: 7-26-22

Cheryl E. Waswick

CHERYL E. WASWICK
3522 44th Avenue South
Fargo, ND 58104

Date: 7-26-2022

~~Name: _____
3522 44th Avenue South
Fargo, ND 58104~~

Date: _____

Gerald M. Waswick

GERALD M. WASWICK
P.O. Box 147
Gwinner, ND 58040

Date: 7-26-2022

Theresa Waswick
Theresa Waswick

Name: Theresa Waswick
P.O. Box 147
Gwinner, ND 58040

Date: 7/27/2022

James H. Waswick
JAMES H. WASWICK
8290 Leonard Street
Coopersville, MI 49404

Date: 7-26-2022
James H. Waswick

Robin Waswick
Name: Robin Waswick
8290 Leonard Street
Coopersville, MI 49404

Date: 7-26-2022