

June 6, 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:

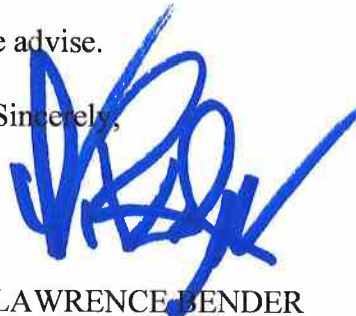
Enclosed herewith, please find the following documents for filing with the North Dakota Public Service Commission ("Commission") in the above-referenced case:

1. SCS Carbon Transport LLC's Response to Landowner Intervenor's Motion to Strike Testimony of Dan Pickering; 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.

Should you have any questions, please advise.

Sincerely,



LAWRENCE BENDER

LB/tjg
Enclosures

#82714293v1

**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 Landowner Intervenor's Motion to Strike
Testimony of Dan Pickering**

SCS Carbon Transport LLC ("SCS") submitted pre-filed testimony of Dan Pickering with the North Dakota Public Commission (the "Commission") on April 18, 2024. (Doc. ID# 528). Mr. Pickering's testimony related to the indirect economic impacts of SCS's proposed pipeline. *Id.*

At the hearing in Wahpeton on May 24, 2024, Landowner Intervenor's counsel attempted to counteract Mr. Pickering's testimony by introducing irrelevant and duplicative evidence. SCS objected to the introduction of this irrelevant and duplicative evidence and Administrative Law Judge Hope Hogan (the "ALJ") sustained SCS's objection.¹ Landowner Intervenor's counsel then threatened to move to strike Mr. Pickering's testimony in response to the ALJ's decision.

Landowner Intervenor's counsel has now followed up on his threat by filing a motion asking the ALJ to strike any pre-filed testimony of Mr. Pickering "related to any economic projections, assumptions, and opinions arising from [SCS's] proposed carbon dioxide pipeline,

¹ Despite the ALJ excluding the evidence that Landowner Intervenor's counsel attempted to introduce to counteract Mr. Pickering's testimony, that does not mean Landowner Intervenor's counsel did not receive an opportunity to counteract Mr. Pickering's testimony. Landowner Intervenor's counsel had a full opportunity to counteract Mr. Pickering's testimony by cross-examining him at the May 28, 2024, technical hearing.

[SCS's] carbon dioxide capture scheme, and [SCS's] proposed carbon dioxide sequestration or storage." (Doc. ID# 585). For the reasons explained below, the ALJ should deny Landowner Intervenor's motion.

ARGUMENT

First, counsel for Burleigh County and the Landowner Intervenor cross-examined Mr. Pickering at the May 28, 2024 technical hearing. Accordingly, in the event Landowner Intervenor's motion to strike Mr. Pickering's testimony is granted, so should all testimony provided by Mr. Pickering on cross-examination.

Second, Landowner Intervenor's motion is untimely. As stated above, the direct written testimony of Mr. Pickering was filed with the Commission on April 18, 2024 and served upon all parties of record that same day. No motion to strike or other attempts were made to preclude or exclude Mr. Pickering's direct testimony until May 24, 2024 when counsel for Landowner Intervenor became upset with a properly sustained objection. Accordingly, Landowner Intervenor's motion to strike should be denied for this reason.

Third, Landowner Intervenor's arguments for why they believe the ALJ should strike Mr. Pickering's testimony do not have merit. Landowner Intervenor argue that the ALJ should strike Mr. Pickering's testimony because "the Commission has no jurisdiction over any carbon dioxide capture scheme or process, nor does it have any jurisdiction over proposed carbon dioxide sequestration or storage." (Doc. ID# 585). This is true, but Mr. Pickering made clear in his testimony that his analysis covers the economic impacts of Summit's project as a whole – including the pipeline that the Commission *does* have jurisdiction over.

Contrary to Landowner Intervenor's assertions, the Commission may consider any indirect economic impacts of SCS's proposed pipeline when evaluating SCS's application. *See* N.D.C.C.

§ 49-22.1-09(7). SCS's proposed pipeline will enable a CCUS project. This CCUS project will have several economic impacts on North Dakota. For example, the project should

generate 30-50 full time North Dakota jobs, with 2x-3x full time North Dakota jobs coming from suppliers/vendors and their associated impact (or 60-150 additional jobs). Thus, the total North Dakota jobs impact will be 90-200, most likely at above average income generation. Ernst & Young estimates ~\$50 million of economic impact or roughly \$100,000-\$200,000 per person employed, which, from prior experience, is consistent with other energy projects across the country.

(Doc. ID# 528).

All these economic impacts of the CCUS project that SCS's pipeline will enable are indirect economic impacts of SCS's pipeline. Thus, it is entirely proper for the Commission to consider these economic impacts even though it does not have jurisdiction over CCUS projects more broadly.

Landowner Intervenor next argue that the ALJ should strike Mr. Pickering's testimony because "[a]t the May 24, 2024, Wahpeton hearing Landowner [I]ntervenor attempted to develop evidence to contradict Mr. Pickering's claims and such attempts were object to by [SCS] and said objections were sustained by the [ALJ]." (Doc. ID# 585). SCS simply fails to see why the ALJ correctly excluding duplicative and irrelevant evidence Landowner Intervenor attempted to develop is a reason for the ALJ strike Mr. Pickering's non-duplicative and relevant testimony from the record.

Finally, Landowner Intervenor argue that the ALJ should strike Mr. Pickering's testimony because, according to Landowner Intervenor, "no alleged economic benefits of the 'project' are relevant to these proceedings." (Doc. ID# 585). However, the various intervenors in this case, including Landowner Intervenor, have repeatedly alleged that SCS's project only benefits the Tharaldson Ethanol plant and that a carbon dioxide pipeline does not serve the energy needs of

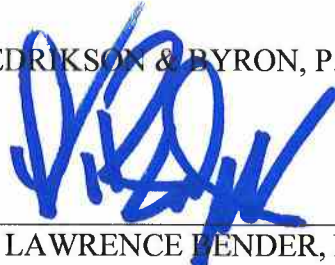
North Dakota. Regardless, “[t]he direct and indirect economic impacts of the proposed facility” is one of many factors that the North Dakota Legislature has set forth for the Commission to consider when evaluating SCS’s application. N.D.C.C. § 49-22.1-09(7).

CONCLUSION

Based on the foregoing, the arguments put forth by Landowner Intervenor are meritless and the ALJ should deny Landowner Intervenor’s motion to strike.

Dated this 6th day of June, 2024.

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 Response to Landowner Intervenor's Motion to Strike Testimony of Dan Pickering.

were, on June 6, 2024, filed with the North Dakota Public Service Commission and served electronically to the following:

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Dated this 6th day of June, 2024.

FREDRIKSON & BYRON, P.A.



By: _____

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