

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

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

Case No. PU-22-391
OAH FILE No. 20230002

DIRECT TESTIMONY OF ERIN MAGRUM ON BEHALF OF EMMONS COUNTY

June 4, 2024

Q. Please state your name and position with Emmons County.

A. My name is Erin Magrum. I am the commissioner for District 2 and the chair of the Emmons County Commission.

Q. Are you familiar with the Emmons County Zoning Ordinance?

A. Yes.

Q. What is contained in the attached Exhibit EC-1?

A. This is an accurate copy of the Emmons County Zoning Ordinance.

Q. Are you familiar with the provisions related to liquid transmission pipelines, and the amendments to those provisions?

A. Yes.

Q. When were the provisions for transmission pipelines amended?

A. In February of 2023.

Q. Where in the Emmons County Zoning Ordinance does the relevant provision appear?

A. In Article VI we address a number of conditional uses, and the requirements for obtaining a conditional use permit for these uses. They include commercial recreational parks, liquid transmission pipelines, salvage and junkyards, and subsurface mining and surface extraction.

Q. And how does Emmons County generally define a conditional use in its land use ordinance?

A. As stated in Article VI, "Conditional uses are uses which may be permitted in a district, but because of their specific needs or because there may be a potential for conflict with other permitted uses, special requirements may need to be met to alleviate any concerns that the specific conditional use will not conflict with the intent of the district."

1 **Q. Prior to Summit’s proposed project, had anyone ever proposed locating a pipeline for**
2 **transmission of carbon dioxide across Emmons County, to your knowledge?**

3 A. I have never heard of a proposal for a carbon dioxide pipeline to be routed across Emmons
4 County until we heard about the Summit project.

5 **Q. Did the Emmons County Zoning Ordinance address CO2 pipelines prior to recent**
6 **amendments in 2023?**

7 A. The intent of our ordinance was to address all electric transmission facilities and
8 transmission pipelines, but previously we believed that “water, gas, oil, or coal slurry”
9 covered all of the possible substances that might be transported via pipeline. While we
10 believe that our prior ordinance language would have covered transmission pipelines for
11 carbon dioxide as well, we felt it was important to be specific and to provide certainty and
12 clarity in our land use ordinance. We also adopted new language to include only non-
13 potable water lines, added CO2 lines, and added “any other substance deemed to be
14 hazardous by PHMSA” so that we do not need to address each new substance that is
15 transported by transmission pipelines.

16 **Q. Are the provisions filed at Docket No. 49 the amendments to the zoning ordinance**
17 **adopted in February of 2023?**

18 A. Yes, a copy of the relevant provisions are included with the filing at docket number 49, and
19 is also attached as exhibit EC-2.

20 **Q. Did the amendments in February of 2023 address anything other than adding CO2**
21 **and other substances to the list of substances covered for transmission pipelines?**

1 A. Yes, we updated the setback distances, and also provided a variance process to allow
2 pipeline developers the ability to negotiate with our landowners for variances to locate the
3 pipeline within those setbacks if it chooses.

4 **Q. Do these amendments apply to all transmission pipelines, or just to CO2 pipelines?**

5 A. These amendments apply to all transmission pipelines.

6 **Q. Was the amended version of the Emmons County Zoning Ordinance applicable to the**
7 **Summit project submitted to the ND Public Service Commission?**

8 A. Yes, Emmons County submitted its ordinance on February 17, 2023, and the applicable
9 provisions appear at Docket No. 49.

10 **Q. At some point did Emmons County learn that Summit was attempting to preempt**
11 **and supersede the Emmons County ordinance?**

12 A. Yes, but we did not receive a copy of the motion that was filed by Summit and they did not
13 tell us about it, but other parties who are involved in these proceedings alerted Emmons
14 County to the motion that had been filed by Summit to supersede and preempt our
15 ordinance.

16 **Q. And after you learned from third parties that Summit was attacking the Emmons**
17 **County laws without even providing a courtesy notice, how did Emmons County**
18 **respond?**

19 A. We sought out legal counsel and we have tried to defend local law and local control,
20 especially as it relates to our right to regulate local land uses as we have in our ordinance.

21 **Q. Has Emmons County had its local laws attacked by other pipeline companies?**

22 A. No, we have not.

23 **Q. Have you had other pipeline companies route pipelines across the county?**

1 A. Yes, Dakota Access constructed its pipeline in Emmons County.

2 **Q. Did Dakota Access obtain a conditional use permit under the Emmons County Zoning**
3 **Ordinance when it built its pipeline?**

4 A. Yes, a copy of the Application from Mr. Bender on behalf of Dakota Access, and our
5 approval of the conditional use permit for that pipeline is attached as Exhibit EC-3.

6 **Q. Did Dakota Access require any other approvals from Emmons County for its**
7 **pipeline?**

8 A. Yes, attached as Exhibit EC-4 is another conditional use permit application and approval
9 for a crude oil pumping station.

10 **Q. Did Dakota Access run into any issues working with Emmons County landowners on**
11 **its project?**

12 A. There were some concerns expressed by a landowner with respect to potential noise from
13 the pump station. Dakota Access met with the landowner and I believe they brought him
14 to tour another pump station they had in South Dakota. I talked to him later and he said
15 that they had addressed his concerns.

16 **Q. Other than the setbacks that were the subject of Summit's motion at Docket No. 282,**
17 **are there other requirements for locating a pipeline in Emmons County?**

18 A. Yes, the setbacks are contained in the section of the Ordinance for conditional use permits,
19 so as with Dakota Access, Summit is required to obtain a conditional use permit and pay
20 the fee for that permit regardless of setback distances, and must also coordinate with the
21 County on road crossings.

22 **Q. Has Summit submitted any applications to Emmons County for any type of zoning**
23 **approvals or land use approvals?**

1 A. No, it has not.