

July 8, 2024

VIA HAND DELIVERY

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:

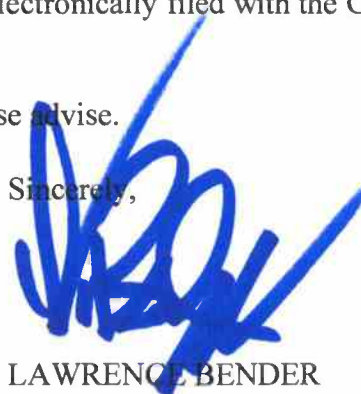
Enclosed herewith, please find the following documents for filing with the North Dakota Public Service Commission ("Commission") in the above-referenced case:

1. Post-Hearing Brief of SCS Carbon Transport LLC (Reconsideration);
2. [Proposed] Amended Findings of Fact, Conclusions of Law, and Order; and
3. 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

#83026038v1

**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

OAH FILE NO. 20230002

**POST-HEARING BRIEF OF SCS CARBON TRANSPORT LLC
(RECONSIDERATION)**

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SCS Carbon Transport LLC (“Summit”), by and through its undersigned counsel, hereby submits to the North Dakota Public Service Commission (the “Commission”) its Post-Hearing Brief.

I. Introduction.

A. Procedural History.

On October 17, 2022, Summit filed its Consolidated Application for a Certificate of Corridor Compatibility and Route Permit (“Application”) concerning the portion of Summit’s proposed Midwest Carbon Express carbon dioxide (CO₂) pipeline project to be located in North Dakota (the “Project”). On February 1, 2023, the Commission deemed Summit’s Application complete and filed a Notice of Filings and Public Hearings in the above-captioned matter (the “First Notice”). *See* (Doc. ID# 35). The Commission set forth the issues to be considered on Summit’s Application in its First Notice. *Id.* Specifically, the issues to be considered are:

1. Will construction, operation, and maintenance of [the Project] at the proposed location produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota?
2. Is [the Project] compatible with environmental preservation and the efficient use of resources?
3. Will construction, operation, and maintenance of [the Project] at the proposed location minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion?

On March 30, 2023, the Commission issued a second Notice of Public Hearings, scheduling an additional hearing for June 2, 2023 (the “Second Notice,” and collectively with the First Notice, the “Notice”). *See* (Doc. ID# 162). The Second Notice sets forth the same issues to be considered in the Application as the First Notice.

The hearings set forth in the Notice were conducted as scheduled. Over the course of the five (5) public hearings, Summit presented testimony from ten (10) different witnesses and responded to over thirty (30) requests from the Commission and its staff for additional information concerning the Project. *See* (Doc. ID#’s 28; 190; 199; 223; 237; 275; 294). Summit’s witnesses were subjected to lengthy, and often irrelevant, cross examination by the Bismarck Area Intervenors¹ and the Landowner Intervenors² at each of the public hearings. The Commission also received testimony and evidence from dozens of witnesses and members of the public. Upon conclusion of the second public hearing in Bismarck on June 2, 2023, an extensive record had been developed for the Commission’s consideration.

On April 21, 2023, Summit filed an Application to Protect Information requesting that the Commission keep confidential certain dispersion model and risk assessment information filed with the Commission (the “Application to Protect Information”). *See* (Doc. ID# 194). On June 1, 2023, Summit filed a Motion to Declare Emmons County and Burleigh County Ordinances Superseded and Preempted (“Preemption Motion”). *See* (Doc. ID# 282). On June 27, 2023, the Commission heard arguments on Summit’s Application to Protect Information. *See* (Doc. ID#’s 339; 346). Summit, the Bismarck Area Intervenors and the Landowner Intervenors each filed post-hearing briefs on July 17, 2023 (Landowner Intervenors) and July 19, 2023 (Summit and Bismarck Area Intervenors). *See* (Doc. ID#’s 356; 357; 358). On August 4, 2023, the Commission held a special meeting to consider proposed orders on Summit’s Application and Application to Protect Information.

¹ Intervenors represented by Mr. Randall Bakke.

² Intervenors represented by Mr. Brian Jorde, Steven Leibel and David Knoll.

B. August 4, 2023 Orders of the Commission.

On August 4, 2023, the Commission issued Findings of Fact, Conclusions of Law and Order (“Order”) denying Summit’s Application. *See* (Doc. ID# 375). The Order identified several issues for which the Commission determined Summit had met its burden of proof, including, without limitation:

1. Impacts on drain tile;
2. Liability insurance requirements;
3. Effects on agriculture and livestock;
4. Exclusion Areas;
5. Avoidance Areas (except Game Management Areas and geologically unstable areas); and
6. The Criteria listed in N.D.A.C. § 69-06-08-02(3)(b):
 - a. Sound-sensitive land uses;
 - b. The visual effect on the adjacent area;
 - c. Extractive and storage resources;
 - d. Wetlands, woodlands, and wooded areas;
 - e. Radio and television reception, and other communication or electronic control facilities;
 - f. Human health and safety;
 - g. Animal health and safety; and
 - h. Plant life.

See (Doc. ID# 375).

But the Commission also determined that Summit did not meet its burden of proof with respect to certain other issues. Specifically, the Commission found that:

1. The cultural resource impacts have not been appropriately addressed because the State Historic Preservation Office (“SHPO”) of the State Historical Society of North Dakota advised that the Class III cultural resources inventory report did not meet SHPO’s standards and Summit did not submit a revised report to SHPO or address SHPO’s concerns during the proceedings. *See* Order, Findings of Fact ¶ 11 (Doc. ID# 375).
2. The effects of the Project on future property values and development have not been adequately minimized for the welfare of the people and the environment of the state. *Id.*, at ¶ 17.
3. The impacts on Game Management Areas in North Dakota are not at an acceptable minimum. *Id.*, at ¶ 27.
4. Summit has not properly addressed the areas of potential geological instability identified in the March 3, 2023 letter from the North Dakota Geological Survey (“NDGS”). *Id.*, at ¶ 28.
5. The Project’s impact upon agriculture and livestock will be at an acceptable minimum. However, Summit has not taken the steps to address legitimate impacts expressed by landowners during the public comment or demonstrated why a reroute is not feasible. *Id.*, at ¶ 32.

6. Summit did not adequately address the Commissioners' requests, or failed to tender a witness to answer the Commissioners' questions as required by N.D.A.C. § 69-02-05-02, regarding:

- a. rerouting of the Project on Vculek's, Doolittle's, Barnhardt's [sic], and Dotzenrod's properties;
- b. confirmation on the number of 500-foot setback waivers required and obtained;
- c. plume modeling;³
- d. follow-up with the NDGS;
- e. BNI coal permit status;
- f. SHPO concurrence status; and
- g. an analysis of an alternative route south of the city of Bismarck.

Id., at ¶ 42.

In addition to the Order on Summit's Application, the Commission also issued an order granting Summit's Application to Protect Information. As set forth in the Order, the Commission declined to rule on Summit's Preemption Motion, determining the issue was moot based on the denial of Summit's Application.

C. Petition for Reconsideration.

On August 18, 2023, Summit filed with the Commission a Petition for Reconsideration, Notice of Route Adjustment and Request for Limited Hearing ("Petition

³ At the special meeting of the Commission on August 4, 2023, the Order was amended to remove the words "plume modeling" from paragraph 42 of the Findings of Fact, however, the Order was issued without said amendment.

for Reconsideration”) pursuant to N.D.A.C. § 69-02-06-02 and N.D.C.C. § 28-32-40. *See* (Doc. ID# 371). In its Petition for Reconsideration, Summit provided evidence of how it addressed, or planned to address, each of the matters where the Commission determined Summit had not met its burden of proof. Most notably, Summit submitted its proposed re-route around the City of Bismarck, moving the Project approximately nine miles north of Bismarck’s city limits and over four and one-half miles north of Bismarck’s 2045 future land use plan. *Id.*

Burleigh County, Landowner Intervenor, Emmons County and Bismarck Area Intervenor filed separate responses in opposition to Summit’s Petition for Reconsideration. *See* (Doc. ID#’s 378; 379; 380; 382). Intervenor LiUNA filed a response in support of Summit’s Petition for Reconsideration. *See* (Doc. ID# 381).

On September 15, 2023, the Commission granted Summit’s Petition for Reconsideration so that Summit may “present relevant evidence at a hearing or hearings to demonstrate on the record that it has addressed, or will address, the deficiencies noted in the Commission’s August 4, 2023, Order,” and on the basis that it will promote the “. . . just, speedy, and inexpensive determination of the issues presented.” *See* (Doc. ID# 396) (citing N.D.A.C. § 69-02-01-10).

D. Supplemental Filing and Data Requests.

On October 17, 2023, the Commission submitted a Request for Supplemental Filing and Data Request 3. *See* (Doc. ID# 409). Summit timely filed its response to the Commission’s Data Requests on October 31, 2023. *See* (Doc. ID# 411). Summit filed its response to the Commission’s Supplemental Filing Request 3.1.5 (Southern Route Analysis) on January 24, 2024. *See* (Doc. ID# 432). Summit filed its response to the

Commission's Supplemental Filing Request 3.1.1 (Maps, Surveys & Studies for Proposed Reroutes), 3.1.2 (Updated Agency Correspondence) and 3.1.4 (Demonstration that No Landslide Prone Areas are Within the Project Corridor) on January 30, 2024. *See* (Doc. ID#'s 435; 437). Summit filed its response to the Commission's Supplemental Filing Request 3.1.3 (Measures to Address Landowner Concerns) on March 4, 2014. *See* (Doc. ID# 452). In total, Summit submitted over 1,800 pages of supplemental information in response to the Commission's Request for Supplemental Filing and Data Request 3.

Having determined that Summit had sufficiently responded to the Supplemental Filing and Data Requests, the Commission issued a Notice of Public Hearing ("Notice of Public Hearing") on March 21, 2024 setting three separate public hearings on Summit's Petition for Reconsideration. *See* (Doc. ID# 465).

E. Notice of Public and Technical Hearings.

As set forth above, the Commission set three separate public hearings on Summit's Petition for Reconsideration. *See* (Doc. ID# 465). The primary focus of each hearing was to focus on the route adjustments made in the applicable North Dakota counties and to address "the supplemental filings and deficiencies noted in the Commission's August 18[sic], 2023, Order," and include the following questions:

1. Will construction, operation, and maintenance of the facility at the proposed location produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota?
2. Is the proposed facility compatible with the environmental preservation and efficient use of resources?
3. Will construction, operation, and maintenance of the facility at the proposed location minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion?"

Id.

The Commission indicated in its work sessions and special meetings that Summit and the intervenors were expected to call all of their witnesses at the first, multi-day public hearing in Mandan, North Dakota.⁴ However, due to conflicts claimed by counsel for Burleigh County and the Landowner Intervenors, the Commission was forced to schedule four additional days of technical hearings to allow these particular intervenors the opportunity to cross-examine Summit's witnesses and to call their own witnesses. *See* (Doc. ID# 542) (Notice of Technical Hearings).

All of the public and technical hearings were conducted as scheduled in the Notice of Public Hearing (Doc. ID# 465) and in the Notice of Technical Hearings (Doc. ID# 542).

F. Intervenor Withdrawals.

As detailed herein, Summit heard the concerns raised by the Commission, landowners and other stakeholders regarding the Project route as proposed in Summit's initial Application and made significant effort to re-route the Project in order to minimize adverse impacts on the welfare of the citizens of North Dakota. On March 8, 2024, the Bismarck Area Intervenors, John Warford, Sr., Chad Wachter and Chad Moldenhauer, each withdrew as an intervenor in this case. *See* (Doc. ID# 458). On March 28, 2024, the following Landowner Intervenors withdrew as intervenors in this case:

1. Dean Twardowski;
2. Hoge Farm LP;
3. Tim Hoge;
4. Tony Hoge;

⁴ *See, e.g.*, Commissioner Christmann's comments at the March 18, 2024 Special Meeting of the Commission ("I do want to emphasize though . . . the main hearing will start out in Burleigh County, and the other locations will really be to hear specifically from people residing in those areas . . ." and ". . . if you intend to bring a witness . . . witnesses for your case, have them ready when we have the Burleigh County one, that is going to be the main hearing, and be prepared to cross-examine [Summit's] witnesses because that is where they will be at . . .")

5. Larry Hoge;
6. Kevin Frederick;
7. David Locken;
8. Linda Gayman;
9. Dwight Kertzman;
10. Brosowske Farms;
11. Verdell Jordheim and Phyllis Jordheim Trust;
12. Dorothy Borondeau;
13. Deborah Mitchelle; and
14. Steven J. Laine and Pamela M. Laine Family Trust.

See (Doc. ID# 479). On April 2, 2024, the following Landowner Intervenor withdrew as intervenors in this case:

1. Mary Kuehn; and
2. 8N2E Properties, LLP; and
3. SPLJ LLP.

See (Doc. ID# 489).

Presumably, the foregoing Intervenor, or most of them, withdrew as a result of the various re-routes implemented by Summit in response to the Commission's August 4, 2023 Order, *i.e.*, re-routing the Project further north of the City of Bismarck or re-routing the Project off or further away from the Intervenor's property.

II. Summit has met its burden regarding the matters set forth in the Commission's August 4, 2023, Order.

The Commission received testimony regarding various concerns about the Project at the public hearings in this matter as reflected in its Order denying Summit's application. Summit worked diligently to address each of these concerns. The following subsections of this brief will summarize the concerns set forth in the Commission's August 4, 2023 Order and explain the steps Summit has taken to address said concerns.

A. Route Adjustments.

1. City of Bismarck.

The Commission, Intervenors and members of the public expressed concerns at the public hearings in this matter regarding the proximity of the Project to the City of Bismarck. In order to further address these concerns and satisfy the Commission's evaluation of the initial route as set out in the Order, Summit re-routed its pipeline so that it is even further from City limits and the City's 2045 growth plans. As testified to by Wade Boeshans (Summit's Executive Vice President):

[Summit has] evaluated alternatives to route the pipeline further east and north of Bismarck; contacted landowners on potential route alternatives north of Bismarck and worked with landowners to educate them on Summit's project, thereby gaining input on an acceptable route and obtaining landowner permission to survey their properties. After receiving landowner input on acceptable routes and receiving permission to survey from landowners on the route, [Summit] surveyed the proposed route. ... Through this process [Summit] identified an alternate route that crosses ND Highway 83 approximately nine (9) miles north of the Bismarck city limits, completed engineering design of the pipeline system on the route, began purchasing options for easements from landowners on the route, and filed an updated route with the Commission.

(Doc. ID# 529) at p. 9-10. In addition:

[The proposed route's] closest location to [the] city limits [of Bismarck] is just over 7 miles on the west side ... [The proposed route] cross[es] Highway 83 approximately 9 miles north of 1804 commonly known as 71st Ave NE. ...

[The] current route is over 4½ miles north of 110th Ave. NW which is the northern most extent of the Bismarck 2045 Future Land Use Plan. The location where [the route] cross[es] highway 1804 is also over 4½ miles north of the Bismarck 2045 Future Land Use Plan.

Id. at p. 13.⁵

⁵ At the technical hearings, under examination from his former counsel now on behalf of Burleigh County, Mr. Chad Wachter testified that, based on maps produced by Burleigh County, the re-route to the east of the City had allegedly moved closer to the City and was only 2 miles away from Mr. Wachter's Silver Ranch development. *See* (Doc. ID# 627). As explained in Mr. Boeshans' written testimony, the mapping was generic and did not reflect the facts accurately; to be clear, the route east of Bismarck did not move closer to the City. *See* (Doc. ID# 598). Mr. Boeshans also provided written

Though opposition to the route around the City of Bismarck was reduced by the re-route, some resistance persisted. The remaining opposition focuses on a release in Sartaria, Mississippi, and misconstrues data around that release, to justify relatively arbitrary buffer distances around the City of Bismarck. For example, Burleigh County Commissioner Brian Bitner testified that the Project should be routed at least 14 miles from the City of Bismarck. *See* (Doc. ID# 626). And Mr. Wachter testified that he believes the Project should be routed at least 20 miles from the City of Bismarck. *See* (Doc. ID# 627). Both Mr. Wachter and Commissioner Bitner, however, explained that their distances were based on their interpretation of the release in Sartaria, Mississippi and the PHMSA incident report in response thereto. *See* (Doc. ID#’s 626; 627).

However, Mr. Alex Lange, the Director of Engineering for Summit, testified that the incident report is inherently unreliable because it only identified the *direction* the plume was moving, and cannot be used to determine the concentration of CO₂ at specific locations. *See* (Doc. ID# 529). Mr. Lange further testified that there is a note in the chart which states “[t]he NWS approved inclusion of the chart within this report and clarified that ‘Not for Public Dissemination’ pertains to real-time emergency response utilization, due to inherent uncertainties with several variables.” *Id.* The correct interpretation of the data does not support the arbitrary distances advanced by Commissioner Bitner or others.

Finally, it should be noted that the Commission received testimony from only one (1) landowner, Mr. Larry Wall, located on the approximately 25-mile re-route around Bismarck. *See* (Doc. ID# 629). Although Mr. Wall expressed general opposition to the

testimony that the actual distance from the route to Mr. Wachter’s Silver Ranch development is approximately 4 miles. *See* (Doc. ID# 598).

location of the Project on his property, Mr. Wall testified that Mr. Boeshans of Summit was “up-front and honest” in their interactions. *Id.*

In summary, there is no distance within Burleigh County which is far enough away from the City of Bismarck to alleviate the overstated concerns of certain objectors. When questioned by Commissioner Christmann, Burleigh County Commissioner Brian Bitner, on behalf of himself and the Burleigh County Commission, admitted that there is no acceptable route through Burleigh County and that he preferred that the Project avoid North Dakota in its entirety. *See* (Doc. ID# 626).

2. *Landowners.*

The Commission expressed the following concerns in its Order regarding the portions of Summit’s pipeline crossing properties owned by Vculek, Doolittle, Barnhardt, and Dotzenrod:

Commissioners requested responses from [Summit] ... regarding rerouting the Project on Vculek’s, Doolittle’s, Barnhardt’s, and Dotzenrod’s properties ... [Summit] either did not adequately address these requests or did not tender a witness to answer questions ...

(Doc. ID# 375) ¶ 42.

Since the Commission issued its Order, Summit has taken several steps to address the Commission’s concerns. As testified to by James Powell (Summit’s Chief Operating Officer):

Summit has re-routed the project such that it no longer crosses the properties owned by Doolittle, Bernhardt, Dotzenrod, and the Vculeks. Maps of the re-routes around these properties were filed with the Commission in response to the Commission’s data requests and each of these landowners have been notified that the pipeline no longer crosses their property.

(Doc. ID# 530) at p. 3. In addition to the landowners that were specifically named in the Commission's Order, Summit has also taken steps to address the concerns of all other landowners. As testified to by Mr. Powell:

In response to supplemental filing 3.1.3, Summit summarized the concerns raised by landowners at the public hearings and identified the measures taken to address all landowners who testified regarding concerns at the hearing. As noted in [Summit's] response, the primary measures taken to address these concerns was to implement route adjustments both on and off certain landowners' properties. Summit also mailed the letter ... to each landowner who testified at the public hearings ... Summit also notified each affected landowner that the proposed pipeline was no longer on their respective property. ... In addition, Summit continues to address landowners' concerns during its safety tour meetings, discussions with county emergency managers, first responders, county commissioners, and landowners along the pipeline route.

*Id.*⁶

Ben and Rose Dotzenrod provided additional testimony at the May 24, 2024 public hearing in Wahpeton regarding a drainage easement they viewed as potentially impacted by Summit's pipeline. *See* (Doc. ID# 607). In response, Summit has further reviewed the Dotzenrods' concern and committed to boring underneath the Dotzenrod's drainage easement area (absent any unforeseen constructability issues). Summit has also presented an agreement to the Dotzenrods in which Summit agrees that it will repair, or pay to repair, any damage to its drain pipe and related facilities as a result of Summit exercising its rights under its pipeline easement. *See* (Doc. ID# 598). Summit will also indemnify the Dotzenrods from and against any claims or losses arising out of Summit's repair of such facilities. *Id.*

⁶ A more thorough discussion of the steps that Summit has taken to address the concerns of landowners can be found in Summit's response to the Commission's Supplemental Filing Request 3.1.3. *See* (Doc. ID# 452).

The Kertzman Farm Trust; Valera Hayen; Loren and Diane Staroba; Jeanne and Marvin Lugert; APH Farms; James and Lianne Rockstad; Harry L. Malloy Trust No. 2; and Randall, Karla and Shirley Waloch, each a Landowner Intervenor, provided testimony that each had offered potential re-route options to Summit. *See* (Doc. ID#’s 607; 626; 627; 628; 629). This testimony was based upon misleading letters that counsel for these Landowner Intervenors, Mr. Jorde, submitted to Summit’s legal counsel beginning in late March and April of 2024. *See* (Doc. ID# 623). Specifically, these letters allege that each of these Landowner Intervenors had made prior attempts to engage Summit regarding possible re-routes on their respective properties. *Id.*

This is simply not true. As set forth in Summit’s response to each of these letters, this was in fact the first time that Mr. Jorde or any of these Landowner Intervenors had indicated a willingness to work with Summit regarding potential re-routes. *See* (Doc. ID# 623). It is not a coincidence that such willingness first appeared on the eve of the public hearings on Summit’s Petition for Reconsideration and after months, if not years, of attempts by Summit to communicate with these landowners. *Id.*

In contrast to the tactics employed by Mr. Jorde, Mr. Loren Staroba testified at the public hearing in Wahpeton that he had retained separate counsel, Mr. David Piper, who had engaged with Summit and was successful in implementing a re-route off of a portion of his land. *See* (Doc. ID# 607). Furthermore, Summit indicated at the hearings and in its response letters that Summit would need to survey the areas along the proposed re-routes to determine the existence of Exclusion and Avoidance Areas and other potential areas of cultural or historical significance. *Id.* Mr. Jorde claimed at the hearings that Summit was able to set the route without surveying these areas, but the Commission is well aware that

this is not the case and that no reasonable operator would sign easement agreements prior to conducting such surveys. *See, e.g.*, (Doc. ID#’s 607, 629). To date, Mr. Jorde has not responded to Summit’s specific request (and prerequisite to engaging in certain re-route negotiations) to survey his clients’ properties.

Nonetheless, Summit has worked on and continues to work on addressing these landowners’ concerns. Mr. Wade Boeshans provided written testimony at the technical hearings that he (Mr. Boeshans) is personally committed to working with each of these landowners to adopt the requested re-routes and that Summit is committed to updating the Commission if and once the re-routes are formalized through a signed easement agreement. *See* (Doc. ID# 598). Since the last public hearing on June 4, 2024, Mr. Boeshans has made contact with most of the Landowner Intervenors who offered re-routes at the public hearings. Several Landowner Intervenors, however, continue to deny survey access and insist that all communications be directed to their counsel, Mr. Jorde. Nevertheless, Mr. Boeshans and Summit will continue their efforts to accommodate these Landowner Intervenors and all other landowners who request re-routes on or off of their property.

B. Game Management Areas.

The Commission expressed the following concerns in its Order regarding game management areas:

Game Management Areas are designated avoidance areas ... [Summit’s] studies and surveys indicated that six waterfowl production areas are within the proposed corridor. ... [Summit] did not demonstrate that there is no reasonable alternative to a route through the avoidance areas.

(Doc. ID# 375) at ¶ 27.

Since the Commission issued its Order, Jon Schmidt (Vice President of Environmental & Regulatory Services for EXP Energy Services Inc. (“EXP”)) testified in this matter and explained how the Project will have no impact on game management areas:

[Summit’s previous studies and surveys] mistakenly classified [waterfowl production areas (“WPAs”)] as Game Management Areas. After consulting with the [United States Fish and Wildlife Service (“USFWL”)] regarding restrictions to surface impacts on the WPAs, it was confirmed that only the ‘protected’ wetlands designated by the USFWS within the easement/parcel were required to be avoided as wildlife areas (duck habitat); not the entire easement/parcel. To minimize any additional confusion, however, Summit has committed to either avoiding all WPAs along the route or crossing them via [Horizontal Directional Drill] to drill under the easement/parcel. No surface impacts to WPAs are proposed. ...

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

(Doc. ID# 531) at p. 5.

C. Areas of Geologic Instability.

The Commission expressed the following concerns in its Order regarding geologic instability:

In a letter dated March 3, 2023, the North Dakota Geological Survey (NDGS) noted 14 areas of potential geologic instability within the Project corridor. ... [Summit] has not submitted information to the Commission demonstrating how it has addressed the concerns raised by the NDGS regarding the potentially geologic unstable areas.

(Doc. ID# 375) at ¶ 28.

Since the Commission issued its Order, Summit has filed a *Phase I Geohazards Assessment* with the Commission. Table A-4 of this assessment details Summit’s mitigation strategy for each area of potential geologic instability identified by the NDGS. See (Doc. ID# 437.70) at p. 260-262.

Summit has also met with representatives of the NDGS on multiple occasions to discuss these areas of potential geologic instability. As a result of these discussions, Edward Murphy (State Geologist) filed a letter with the Commission. The letter reads in pertinent part:

On March 3, 2023, I sent you a letter that included a listing of 14 possible landslides that we had identified that appeared to intercept the Summit Carbon Solutions' pipeline corridor in North Dakota, along with three landslides that were adjacent to it. ...

Over the past 12 months, we have met with representatives of Summit Carbon Solutions on several occasions to go over their plans to address those 17 localities. Additionally, we have reviewed three drafts of their Phase I geohazards assessment report. Between the meetings, reports, and pipeline route maps, Summit Carbon Solutions has demonstrated to us that they have investigated those potential problem sites and have taken steps to address them, including rerouting the pipeline to avoid some of those areas.

(Doc. ID# 457).

Despite the State Geologist's letter reflecting satisfaction with the efforts Summit took regarding these concerns, Ms. Baily Elkins provided public testimony at the April 22, 2024 public hearing in Mandan and later testified on behalf of Burleigh County expressing concerns regarding geohazards and landslide areas. *See* (Doc. ID#'s 535; 638). Ms. Elkins suggested that the entire route should be field surveyed for geohazard and landslide areas. *Id.* Ms. Elkins, without having reviewed Summit's entire application, opined that she had concerns about Summit's plans to implement slope and revegetation mitigation measures. *Id.* Mr. Schmidt of EXP testified that in his 25 plus years of experience, he has never seen an entire route field surveyed for geohazards. *Id.* Mr. Schmidt further testified that field inspections were completed at specific areas identified in the geohazards assessment performed by Summit and identified by the NDGS. *Id.* Summit has also submitted an Environmental Construction Plan (Appendix 3) that addresses the mitigation measures

Summit will implement during construction of the Project, including, without limitation, temporary stabilization, slope breakers, permanent stabilization and reclamation and revegetation. *See* (Doc. ID# 1).

Finally, Mr. Powell testified to the following:

Summit is committed to working directly with the NDGS throughout the entirety of the project and will submit to the NDGS and the Commission any new information pertaining to areas of geologic instability along the project route.

(Doc. ID# 530) at p. 7.

D. Cultural Resource Surveys and SHPO.

The Commission expressed the following concerns in its Order regarding cultural resource impacts:

[Summit] conducted a Class III cultural resources inventory across a portion of the Survey Area. The Class III report was submitted to the State Historical Society of North Dakota (SHPO). In a response dated March 1, 2023, SHPO advised that the report does not meet the standards and they have not yet received a revised report addressing their concerns. SHPO concurrence is commonly required by the Commission for the issuance of a site certificate or route permit. [Summit] did not address SHPO's concerns further during the proceedings. The Commission finds that cultural resource impacts have not been appropriately addressed.

(Doc. ID# 375) at ¶ 12.

Since the Commission issued its Order, Summit addressed comments received from SHPO regarding Summit's initial Class III cultural resources inventory and has submitted three separate volumes of its Class III report to SHPO. *See* (Doc. ID# 531) at p. 7-9. At the technical hearing, Mr. Schmidt of EXP testified that SHPO had accepted Volume I of Summit's Class III report and that he expected SHPO will accept Volumes II and III in the near future because Summit had addressed the matters set forth in SHPO's March 1, 2023 letter. *See* (Doc. ID#'s 531; 535); *see also* (Doc. ID# 626).

In addition, Summit has completed archeological and cultural resource surveys along 94% of the project route. *Id.* at p. 8. As for the remaining 6% of the project route, Summit has not been able to survey these portions of the route due to landowners denying survey access. However, Summit expects to have the remaining 6% of the project route surveyed soon given that the North Dakota Supreme Court recently issued an opinion confirming Summit's right to survey. *See SCS Carbon Transp. LLC v. Malloy*, 2024 ND 109.

Finally, Summit notes that it "is agreeable to the Commission, as it many times does, issuing an order conditioned upon Summit completing all required Class III surveys and receiving concurrence from SHPO." *Id.* at 9.

E. Future Development and Property Values.

The Commission expressed the following concerns in its Order regarding the impact of the Project on future development and property values:

Commenters and intervenors asserted that the Project will cause significant adverse effects on the value of their property and residential development projects. ...

While some of the intervenors and developers stretch the plausibility of the adverse impacts on future property values and development, based upon the record, the Commission finds that the effects have not been adequately minimized for the welfare of the people and the environment of the state.

(Doc. ID# 375) ¶¶ 16-17.

Wade Becker (Owner and President of Boulder Appraisal, LLC) previously performed market research of the impact of pipelines on residential properties. Mr. Becker filed the findings of his research with the Commission. *See.* According to Mr. Becker:

Comprehensive analysis of the market data collectively indicates that potential buyers of residential property exhibit little to no preference in choosing between lots encumbered and non-

encumbered by the noted pipelines. Furthermore, it underscores that careful subdivision planning and factors such as lot size, expanded yard and/or adjoining greenspace, price, and developable area play a more influential role in guiding their decision-making process thereby rendering pipeline encumbrances less impactful.

(Doc. ID# 293) at p. 2.

In addition, Jeff Olson (Senior Appraiser with LandVest) testified in this matter that he agreed with Mr. Becker's conclusion that market data indicates that potential buyers of residential property exhibit little to no preference in choosing between lots encumbered and non-encumbered by pipelines. (Doc. ID# 578) at p. 4. Mr. Olson also testified that he conducted his own independent research, which resulted in the following conclusions:

[T]here is no market evidence uncovered that suggests that pipelines impact market value of residential properties. ...

[Further,] paired sales analysis indicates selling prices of agricultural properties are not significantly impacted by utility easements.

Id. at p. 5.

Mr. Olson's research also uncovered a recent sale of agricultural property that was encumbered by a CO₂ pipeline. *See* (Doc. ID# 634). Mr. Olson compared this sale to the sales of two similar agricultural properties that were not encumbered by a CO₂ pipeline. *Id.* Whereas the encumbered property sold for \$1,264 per acre, the unencumbered properties sold for \$1,275 per acre. "Based on this comparison, the CO₂ pipeline encumbered property sold for approximately one (1) percent less than the unencumbered sales," indicating that the "selling price of agricultural properties is not significantly impacted by the presence of a CO₂ pipeline." *Id.*

Mr. Chad Wachter testified at the technical hearing that he had purchased land encumbered by gas or hazardous liquid transmission pipelines for residential developments

in Bismarck. *See* (Doc. ID# 627). In response to questions from Commissioner Christmann, Mr. Wachter explained that about 50% the Promontory Point lots encumbered by pipeline easements remain unsold, and that about 20% or more of the unencumbered lots within the development remain unsold. *Id.* Mr. Wachter further testified that sellers do not always discount properties that cannot be fully developed and that encumbered lots are never discounted unless it is requested as part of the purchase negotiations. *Id.* Mr. Wachter's learned experience is consistent with Mr. Olson's testimony and Mr. Becker's submission as well—the purchasing decision of some potential buyers may be changed by the presence of a pipeline, however, the demand for the property from other potential buyers more than makes up for it and the sales prices often reflect no diminution in value at all. What is clear from Mr. Wachter's testimony is that developers are willing to develop near, on, and over gas and hazardous liquid transmission pipelines, and that the presence of such pipelines has not prevented development in the City of Bismarck.

Finally, the Commission received testimony from Mr. Howard Malloy regarding future plans for possible developments near or in the vicinity of the proposed route. *See* (Doc. ID# 626). However, on cross-examination, Mr. Malloy admitted that he surveyed his property for the development for the first time in 2022 in direct response to Summit's proposed pipeline and that he (Mr. Malloy) had not taken any active steps in furtherance of the development since completing the survey plat in 2022. *Id.* Accordingly, Mr. Malloy's proposed development cannot be considered "existing plans" for a development as contemplated by N.D.C.C. § 49-22.1-09(8).

F. Setback Waivers.

The Commission expressed the following concerns in its Order regarding setback waivers:

Commissioners requested responses from [Summit] ... regarding ... confirmation on the number of 500-foot setback waivers required and obtained ... [Summit] either did not adequately address these requests or did not tender a witness to answer questions ...

(Doc. ID# 375) ¶ 42.

Since the Commission issued its Order, Summit has clarified the number of 500-foot setback waivers required in its May 10, 2024 response to the Commission's request for additional information. *See* (Doc. ID# 562). Specifically, Mr. Powell stated in an affidavit that a total of six waivers have been obtained and that of those six, only two qualify as occupied or inhabited structures identified as Avoidance Areas. *Id.* The remaining four waivers were obtained out of an abundance of caution and in response to concerns raised by Commissioner Christmann regarding barns that may be occupied. *Id.* Mr. Powell also clarified that the language in Summit's 500-foot setback waivers regarding the use of "pipelines" (plural) is an error and that Summit is restricted by its easement agreements, all of which only allow for the construction of a single pipeline. *Id.* Mr. Powell was made available at the April 22, 2024 public hearing and at the technical hearing for questions and cross-examination on this issue.

Summit commits that it will not commence construction on any portion of the Project located within five hundred feet of an inhabited rural residence, school, or business without obtaining a waiver as required by N.D.C.C. § 49-22.1-03 and N.D.A.C. § 69-06-08-02(2)(e), or, if a waiver is not attainable, Summit will adjust the route and submit to the Commission the required certifications under N.D.C.C. § 49-22.1-15.

G. BNI Coal Permit.

The Commission expressed the following concerns in its Order regarding the status of a coal permit held by BNI:

Commissioners requested responses from [Summit] ... regarding ... BNI coal permit status ... [Summit] either did not adequately address these requests or did not tender a witness to answer questions ...

(Doc. ID# 375) ¶ 42.

Since the Commission issued its Order, Summit has filed a letter from Mike Heger (BNI's General Manager) with the Commission in which Mr. Heger states:

[T]he location of the proposed Summit Carbon Solutions NDL-328 line to the Milton R. Young Station has virtually no impact on our current or future mining activities. Approximately 3000' of the proposed route crosses a remote corner of permit BNCR-1101 in an area with no proposed disturbance. All other portions of the route are outside of our existing mining permit boundaries in areas which do not contain minable coal or would otherwise be needed in support of nearby mining activities.

(Doc. ID# 371) Ex. E.

Summit has also filed an email from Guy Welch of the Office of Surface Mining Reclamation and Enforcement ("OSMRE") in which Mr. Welch states:

[OSMRE] is not involved with third party entities installing pipelines on lands permitted for surface coal mining activities. This looks to me like a non-issue.

Mining companies would need to update the permit to show where pipeline easements of record have been ascertained and take measures to avoid adverse impacts to pipelines.

(Doc. ID# 371) Ex. F.

Finally, Mr. Boeshans testified to the following:

Summit's pipeline does not cross any minable coal and is located in an area where no disturbance or supporting activities are necessary or anticipated. Nevertheless, Summit is committed to working with

BNI through construction and operation of the project to ensure surface mining activities do not interfere with either party's operations or result in damage to Summit's pipeline.

(Doc. ID# 529) at p. 15.

H. Southern Route Analysis.

The Commission expressed the following concerns in its Order regarding an analysis of an alternative route to the south of Bismarck:

Commissioners requested responses from [Summit] ... regarding ... an analysis of the south Bismarck alternate route ... [Summit] either did not adequately address these requests or did not tender a witness to answer questions as required by NDAC Section 69-02-05-02.

(Doc. ID# 375) ¶ 42.

Summit has filed a detailed analysis of the feasibility of a proposed route to the south of Bismarck. *See* (Doc. ID# 432). The results of this analysis show that a route to the south of Bismarck “includes significant risks which, in total, would be more impactful than Summit's preferred route on the north side of the City of Bismarck.” *Id.* at p. 20.

These risks include potential impacts to resources that cannot be mitigated, including the impact to Tribal lands in the area south of Bismarck.

The detailed comparison of the Preferred Route and the Southern Alternative shows that the Southern Alternative will directly cross the Bismarck ETA boundary which is in direct conflict with the concerns expressed by the Commission, Intervenors, and landowners during the public hearings for the Project. The Southern Alternative is in close proximity to a higher number of Commission-defined Avoidance Areas, such as residences, places of business, and schools, when compared to the Preferred Route. As referenced previously, Summit would be required to secure approximately 26 waivers for the Southern Alternative. The siting of the route within 500 feet of these Avoidance Areas would affect new landowners whose impact would be directly attributable to a mandated change in location of the pipeline.

... [A] southern route presents additional and unnecessary integrity and safety risks that do not exist in the Preferred Route north of

Bismarck. Requiring Summit to relocate the proposed pipeline south of Bismarck at this stage of project development would add unnecessary cost and delay associated with identifying risks via field survey, field reconnaissance, etc., and developing plans to either eliminate or mitigate identified risks. This work has largely been completed along the Preferred Route, and identified risks and mitigation plans either have been vetted (e.g., geohazards) or are in an ongoing vetting process (e.g., State Historical Society of North Dakota). These efforts are nearly complete, and many impact mitigation measures have been implemented, as shown in Exhibit B. Summit strongly believes this analysis of a multitude of factors supports the position that Summit has chosen the safest, most prudent route for the Project.

*Id.*⁷

Mr. James Powell was made available at the April 22, 2024 hearing and at the technical hearing to answer questions from the Commission and Commission staff regarding the Southern Route Analysis and for cross-examination by the Intervenors.

I. Corridor Width.

Finally, during the multiple public hearings held in 2023, the Commission expressed concerns regarding Summit's proposed 300-foot-wide corridor. "In response to said concerns, Summit reviewed the project route, the extensive field survey work completed to date, and the details regarding constructability, and Summit has determined that a 200-foot-wide corridor is feasible." (Doc. ID# 530) at p. 5.

⁷ Mr. Powell also testified at a public hearing in this matter regarding the risks associated with a potential route to the south of Bismarck. *See* (Doc. ID# 530) at p. 7-8.

III. Summit has sufficiently addressed each of the valid concerns raised at the hearings on Summit's Petition for Reconsideration.

A. Emergency Response Coordination.

The Commission has previously requested additional information regarding emergency response coordination with local emergency managers and responders. Since the start of the Project, Summit has been meeting with local emergency managers and responders from Burleigh, Dickey, Emmons, Mercer, Morton, Oliver, Richland, Logan, McIntosh, Cass and Sargent Counties, as well as the City of Bismarck. (Doc. ID# 530). These meetings were primarily attended by Sheriffs, Sheriff Deputies and members of the Sheriffs' departments, Police Chiefs and members of the police departments, Fire Chiefs and members of city and rural fire departments, Emergency managers, and representatives of city and county ambulance services. *Id.*

At these meetings, Summit shared its dispersion modeling methodology, generic model outputs, PHMSA requirements, relative toxicity, potential CO₂ release scenarios, shelter in-place studies, and emergency response plan guidelines. *Id.* at 9. In addition, Summit discussed specific training and equipment needs and invited emergency managers to CO₂ emergency responder training at Texas A&M University. *Id.*

The amount of outreach that Summit has conducted to date exceeds that of other pipeline projects at similar stages of project development, and there will continue to be additional outreach and engagement with more than two years before operation. (Doc. ID# 600) at p. 4.

Summit has inquired about local emergency responders' need for equipment and explained that Summit will provide funding for specific equipment needs. *Id.* Summit will provide a grant to each county that will be crossed by the Project. *Id.* at 5. Summit will

work with emergency managers and first responders along the route to allocate these funds based on their individual needs. These funds will be in addition to CO₂ monitors, which will be provided to every county through which the Project passes. *Id.*

B. Power Loss, Energy Consumption and Benefit to Co-Ops.

Intervenor witnesses and members of the public provided testimony that a loss of power to the pipeline will result in unsafe conditions and possibly a surge that will result in a pipeline rupture. Mr. Alex Lange provided written rebuttal testimony indicating that Summit has completed a surge analysis to ensure compliance with 49 CFR 195.406(b), which requires system pressures to not exceed 110% of the system's maximum operating pressure during transient or abnormal activities. *See* (Doc. ID# 599). Mr. Lange testified that loss of power to the mainline pumps may result in pipeline surge, but that Summit's surge analysis indicates that surge pressures would be less than 100% of the maximum operating pressure and that PHMSA regulations anticipate a system engineered to perform safely in power loss conditions. *Id.* Accordingly, the record clearly supports that power loss will not create unsafe conditions.

On a related matter, the Commission requested additional information regarding power studies relative to each of Summit's pump stations in North Dakota. Summit has consulted with the North Dakota co-ops that will be supplying power to Summit's pump stations. *See* (Doc. ID# 562) Ex. B. These co-ops have reviewed Summit's incremental load requirements and have determined that they have ample capacity to serve Summit's load requirements and/or that such load requirements do not warrant a full, system-wide study. *Id.* In other words, there is no credible concern that Summit's load requirements adversely impact the reliability of existing service from the co-ops.

Moreover, not only will the co-ops be able to supply a steady, reliable load of power to Summit's pipeline facilities, but there are additional economic benefits that are generated from supplying said load. Specifically, Mr. Wade Boeshans provided written testimony that:

Summit's [Project] provides significant new electrical load to electric co-ops and utilities across the project footprint. Summit's proposed project includes three (3) mainline pump stations and one (1) trunkline pump station. We also have three sequestration site injection locations. We have completed a preliminary study of the anticipated power to be utilized for the project.

See (Doc. ID# 529). Based on a \$0.75/kW hour estimated cost to Summit, Mr. Boeshans testified that Summit anticipates annual revenues (reflected as "costs" to Summit in the below table) for electric cooperatives as follows:

| Facility | Utility Company | Estimated Running Load | Annual Estimated Running Load (kWh) | Estimated Annual Utility Costs |
|----------|---------------------|------------------------|-------------------------------------|--------------------------------|
| MPS-08 | KEM | 5.1 MW | 44,819,533 | \$ 3,361,465 |
| MPS-09 | Capital Electric | 5.7 MW | 49,899,443 | \$ 3,742,458 |
| MPS-10 | Roughrider Electric | 4.9 MW | 43,197,373 | \$ 3,239,803 |
| TPS-04 | Dakota Valley | 0.4 MW | 3,558,750 | \$ 266,906 |
| SS-01 | Roughrider Electric | 2.3 MW | 19,606,632 | \$ 1,470,497 |
| SS-02 | Roughrider Electric | 1.9 MW | 16,207,095 | \$ 1,215,532 |
| SS-03 | Roughrider Electric | 1.9 MW | 16,207,095 | \$ 1,215,532 |

Mr. Boeshans testified further that:

The electrical load acquired from these CO₂ operations will supply income for the co-ops for continued maintenance and improvements to their facilities and infrastructure.

Id.

C. Property Tax Benefits.

The Commission has previously requested additional information regarding property tax benefits by county. Each county is projected to receive between \$17,879 and

\$1,274,079 in additional taxes due to the Project as shown by Exhibit C of (Doc. ID# 562). In total, the 11 counties that the Project crosses are projected to receive \$5,122,800 in additional taxes as a result of the Project being constructed. *Id.*

D. Survey Completion.

The Commission has previously requested additional information regarding survey completion percentages. Summit has completed approximately 94% of the total surveys required along the current project route as shown by Exhibit E of (Doc. ID# 562). Summit has not been able to survey the remaining 6% of the project route due at least in large part to landowners prohibiting Summit from entering their property and related cases that were working their way through the courts. Recently, the North Dakota Supreme Court confirmed that Summit has the right to survey, so Summit expects to obtain agreements with the remaining 6% to be surveyed or, alternatively, Summit will exercise its statutory rights to complete the necessary survey work. *See SCS Carbon Transp. LLC v. Malloy*, 2024 ND 109.

E. Easement Acquisition.

The Commission has previously requested additional information regarding easement acquisition percentages. As set forth on Exhibit A attached hereto, Summit has acquired easements for approximately 81.13% of the current project route as of July 7, 2024. Summit will continue to update the Commission regarding its easement acquisition progress, including any easements secured for the re-routes proposed by certain Landowner Intervenor at the public hearings.

F. Brittle Fracture.

Mr. Jeff Steinbronn testified on behalf of Burleigh County that the windchills in North Dakota will cause the above-ground valves to become brittle between 0 and negative 20 degrees Fahrenheit. *See* (Doc. ID# 627). Mr. Steinbronn testified that he does not have any experience or expertise in transmission pipeline construction or operation, plume modeling, or PHMSA regulations. *Id.* Based on Mr. Steinbronn's internet research, which he stated was focused on pipelines operating in foreign countries, Mr. Steinbronn is of the opinion that Summit's carbon steel pipeline is susceptible to brittle fracture and thus a release is possible, if not probable. *Id.* Mr. Steinbronn's testimony was, on its face, neither well supported nor credible.

Further, the credible testimony and other evidence undercuts Mr. Steinbronn's testimony. Steel pipelines have successfully operated in North Dakota (and other cold locations) for decades. This is not by luck or chance, but by design. Several Part 195 regulations specifically address carbon dioxide pipelines and brittle fracture.⁸ For example, at the May 9, 2023 public hearing in Linton, North Dakota, Mr. John Godfrey of DNV GL USA, testified that all modern pipeline steels are designed with "enough toughness to resist fracture propagation," and that Summit will construct its pipeline in accordance with API specification 5L PSL2, as required by federal regulations for carbon dioxide pipelines. *See* (Doc. ID# 212). Going further, 49 CFR § 195.3 prescribes standards incorporated by reference into federal regulations with the approval of the Director of the Federal Register. API Specification 5L, "Specification for Line Pipe", 45th edition as well as ANSI/API

⁸ *See, e.g.*, 49 C.F.R. §§ 195.102(b) (requiring components of carbon dioxide pipelines to be made of materials suitable for low temperatures when subject to such temperatures during normal operations); 195.111 (requiring carbon dioxide pipelines to be designed to mitigate effects of fracture propagation).

Specification 6D, “Specification for Pipeline Valves”, 23rd edition are two of the specifications incorporated and have the full force of law.

Both of these specifications contemplate designing pipelines and valves to avoid brittle fractures through material impact testing. A combination of sufficient shear-fracture area and sufficient Charpy V-notch absorbed energy is an essential material property to ensure the avoidance of brittle fracture propagation. Both of these specifications dictate the requirements that need to be met to have successful impact testing to avoid brittle fractures, and it is up to Summit to make the determination on the temperature at which these tests are conducted, often referenced as the Minimum Design Temperature (“MDT”). Based on geographic location as well as industry best practices, Summit utilized a MDT of -50 degrees Fahrenheit for above-ground facilities. This is a conservative MDT as the carbon dioxide flowing through the pipeline under worst-case winter conditions would be around 30 degrees Fahrenheit. These requirements for material specifications and subsequent impact testing to avoid brittle fractures have been around for decades and are in large part a reason for the safe operation of pipelines throughout North Dakota today.

G. Preemption of Local Ordinances.

The Commission has already held in a previous order that “the approval of a route permit for a gas or liquid transmission facility automatically supersedes and preempts local land use or zoning regulations, except for road use agreements.” (Doc. ID# 440) at p. 3. Therefore, if and when the Commission issues a route permit in the current case, the ordinances filed by Burleigh County and Emmons County in this case, *see* (Doc. ID# 49); (Doc. ID# 161), will be preempted.

Summit agrees with the Commission's holding, but Summit also believes that the ordinances are preempted for additional reasons. Summit requests that the Commission incorporate these reasons in its final order.

First, the hazardous liquid pipeline ordinances adopted by Emmons and Burleigh Counties in direct response to Summit's Project contain setback provisions that are unreasonably restrictive on their face. *See* N.D.C.C. § 49-22.1-13(2)(c). Commissioners of the Burleigh County Commission and the Emmons County Commission testified that the setbacks were determined based on input from the general public and not based on science or other data-driven analyses. *See* (Doc. ID#'s 78; 212; 629). These setbacks provide for a framework where future development of linear pipeline projects will depend on waivers and variances granted by individual landowners and the county, effectively usurping the Commission's jurisdiction to site hazardous liquid pipelines.

Second, N.D.C.C. § 49-22.1-13(2)(c) states that a route "permit may supersede and preempt the requirements of a political subdivision if the applicant shows by a preponderance of the evidence the regulations or ordinances ... are in direct conflict with state or federal laws or rules." Here, the Burleigh County and Emmons County Ordinances are clearly in direct conflict with federal law, namely, 49 U.S.C.A. § 60104(c). That statute states that a "State authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation." *Id.*⁹

⁹ Federal courts interpreting this statute have described the statute as "a sweeping exercise of express preemption." *Couser v. Shelby Cnty. Iowa*, 681 F. Supp. 3d 920, 935 (S.D. Iowa 2023). The statute "leaves no regulatory room for the state to either establish its own safety standards or supplement the federal safety standards." *Id.*

Local ordinances requiring setbacks and emergency plans are “safety standards” that 49 U.S.C.A. § 60104(c) prohibits a state authority from adopting. *See Couser v. Story Cnty., Iowa*, No. 4-22-CV-00383-SMR/SBJ, 2023 WL 8366208, at *14 (S.D. Iowa Dec. 4, 2023) (holding that “setback and emergency plan provisions” of a local ordinance in Iowa were “safety standards” that a state authority is prohibited from adopting). And the Burleigh County and Emmons County Ordinances consist of setback and emergency plan requirements. Accordingly, the Ordinances are in direct conflict with federal law.

IV. The Intervenor and members of the public have not refuted Summit’s evidence and have raised the same issues, arguments and concerns raised at prior hearings.

A. Same and/or Irrelevant Arguments.

As detailed herein, Summit has addressed each of the deficiencies identified in the Commission’s August 4, 2023 Order. Neither the Intervenor nor any members of the public provided creditable testimony to refute this fact. This is because the Intervenor, landowners and members of the public mostly focused on the same, irrelevant issues, concerns and arguments made prior to the Commission’s August 4, 2023 Order, namely (1) safety/plume modeling, (2) private easement negotiations, (3) broad policy concerns (*i.e.*, Green New Deal, climate change, etc.), (4) investor information/foreign ownership, (5) CO₂ sequestration, and (6) eminent domain.

As the Commission explained in its August 4, 2023 Order, “the issues of eminent domain, safety compliance with The U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration (PHMSA) construction and operation, and permanent sequestration and storage of CO₂ were outside the jurisdiction and consideration of the Commission.” (Doc. ID# 375) at ¶ 13. Furthermore, there was continued focus by the Intervenor and members of the public on matters the Commission determined Summit

had already met its burden, *i.e.*, 500-foot setback law, drain tile, liability insurance, and effects on agriculture and livestock. Finally, Burleigh County and Emmons County continued to argue against the Commission's February 7, 2024 Order regarding preemption of county ordinances.

Not only did the Commission hear the same issues and argument, but it heard from many of the same people who testified in the prior hearings on Summit's Application. Table 4A, below, shows every person who provided public testimony more than once at the public hearings on Summit's Application and Petition for Reconsideration. This is further evidence that opposition to Summit's Project is not as universal as the Intervenor would have the Commission believe. Nor is the opposition even fairly characterized as widespread. Rather, the opposition consists of a small, but organized and vocal, group of individuals fueled, in large part, by less than a full and fair picture of the Project.

In summary, the Intervenor failed to demonstrate that Summit did not meet its burden with respect to the deficiencies set forth in the Commission's August 4, 2023 Order. Furthermore, Summit has addressed each of the new, relevant issues raised at the hearings on Summit's Petition for Reconsideration.

| Table 4A | | | | | | | | |
|---------------------|------------------|------------------|------------------|-----------------|-----------------|------------------|------------------|-----------------|
| Name | 3/14/2023 | 3/28/2023 | 4/11/2023 | 5/9/2023 | 6/2/2023 | 4/22/2024 | 5/24/2024 | 6/4/2024 |
| Karl Rokow | X | | | | X | X | | |
| Jon Schmidt | X | | | | | X | | |
| Jeff Magrum | X | | | X | X | | | X |
| Brian Bitner | X | | | | X | | | |
| Gaylen Dewing | X | | | | | X | | |
| Ken Huber | X | | | | | X | | |
| Gaylynn Becker | X | | | | | X | | |
| Benjamin Dotzenrod | | X | X | | | | X | |
| Randall Waloch | | X | | | | | X | |
| Evan Whiteford | | X | | X | | | | |
| Steve Ackerman | | X | X | | | | | |
| Linda Gayman | | X | | X | | | | |
| Rose Dotzenrod | | | X | | | | X | |
| James Tiegs | | | X | | | | X | |
| Valera Hayen | | | X | | | | X | |
| Loren Staroba | | | X | | | | X | |
| Robert Schaefer | | | X | | | | | X |
| Troy Mahler | | | X | | | | X | |
| Julia Stramer | | | | X | | | | X |
| Julie Smith | | | | X | | | | X |
| Frances Robinson | | | | X | | | | X |
| Stephanie Doolittle | | | | X | | | | X |
| Lyle Kenner | | | | X | | | | X |
| Erin Magrum | | | | X | | | | X |
| Lianne Rockstad | | | | | X | | X | |
| Linda Hagen Mathern | | | | | X | | | X |
| Clint Feland | | | | | X | X | | |
| SuAnn Olson | | | | | X | X | | |
| Chad Moldenhauer | | | | | X | X | | |

B. New Matters for Consideration.

Despite intentional, intense focus on irrelevant and already decided issues, the Intervenor and members of the public raised several valid concerns relating to the Project which were not previously addressed in the Commission's August 4, 2023 Order. Specifically, there were concerns raised regarding energy consumption, power loss, brittle fracture, and the specific concerns of Ben and Rose Dotzenrod regarding their drainage easement. As detailed above, Summit has provided testimony and evidence to show that any potential impacts associated with these concerns have been adequately minimized such that the Project will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.

V. Conclusion.

A. Summit has met all the requirements of the Siting Act.

As set forth below, the evidence presented in this case establishes that Summit has met its burden under the Siting Act (N.D.C.C. § 49-22.1-01, et seq.) by demonstrating that the Project (1) will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota; (2) is compatible with environmental preservation and the efficient use of resources; and (3) will minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion. In addition, a vast majority of the 11 factors listed in N.D.C.C. § 49-22.1-09 weigh in favor of the Commission approving Summit's Application.

1. *The Project will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.*

Summit has made great efforts to route and re-route the Project in such a manner that will produce minimal adverse effects upon the welfare of the citizens of North Dakota. The result is a proposed route that has significant support from directly affected landowners and that otherwise embodies an extremely conservative approach from a view of avoiding impacts to landowners and communities throughout North Dakota. Furthermore, Summit will supply proper signage and warnings at road and highway crossings, railroad crossings, navigable rivers, and other locations to alert the public to the presence of underground lines and will provide information, contact numbers, and emergency data as well. The Project will be maintained and operated in accordance with applicable safety rules and laws. Summit is committed to working with local and county emergency management to develop procedures for response to emergencies, natural hazards, hazardous materials incidents, manmade problems, and potential incidents concerning Project construction and operation. Summit will also maintain a current list of local emergency response providers and methods of contact/communication in all construction and operations vehicles. Designated construction and operations personnel will also be trained in first aid.¹⁰

As for effects on the environment, Summit has drafted an Environmental Construction Plan (“ECP”). The ECP will implement generally recognized best

¹⁰ A more thorough discussion on why the Project will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota can be found in Sections 5, 7.1, 7.3, 7.7, 7.8, 7.9, 8.1, 8.2, 8.3, 9.1, 10.4, and Appendices 3, 11, 12, and 13 of Summit’s Application. *See* (Doc. ID# 1).

management practices (“BMPs”) to minimize and mitigate impacts to wetlands, waterbodies, and agricultural areas. The ECP also contains countless mitigation measures, including measures for identification of avoidance areas, undesirable species management, topsoil management, permanent stabilization, dust control, noise control, and cultural resources. In addition to the ECP, Summit will continue working with landowners and agencies to further refine and limit potential environmental impacts through reasonable and feasible facility and/or route variations and modifications.

2. *The Project is compatible with environmental preservation and the efficient use of resources.*

Summit’s environmental studies found that there will be no significant impacts to the environment or wildlife and that any impacts will be temporary in nature. *See* (Doc. ID# 435)(T&E Report, Wetland Report). Similar to the tens of thousands of miles of underground pipelines currently operating in the State of North Dakota, once constructed, the Project will have little impact on the efficient use of resources. Farmers and ranchers will be able to grow crops and graze over the pipeline. Developers will be able to develop around the pipeline’s permanent easement area (50 feet wide). And the Project will not adversely impact the development of other resources, such as coal, oil, or gas.

3. *The Project will minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion.*

The evidence presented in this case also demonstrates that the construction, operation, and maintenance of the Project at the proposed location will minimize adverse human and environmental impact while ensuring continuing system

reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion. As for minimizing adverse human and environmental impact, subsections 1 and 2 above explain why the construction, operation, and maintenance of the Project at the proposed location will minimize adverse human and environmental impact.

As for ensuring continuing system reliability and integrity, the Project will utilize the most reliable system currently available for transporting carbon dioxide, *i.e.*, pipelines. Compared to rail and truck transportation, pipelines are the safest, most efficient, and most reliable means to transport liquids and gases according to statistics compiled by the United States Department of Transportation. By using a pipeline to transport carbon dioxide, the Project will ensure continuing system reliability and integrity.

As for ensuring that energy needs are met and fulfilled in an orderly and timely fashion, Summit has long-term offtake agreements in place with 57 participating ethanol plants. Utilizing the Project enables these ethanol plants to reduce their carbon footprint and carbon intensity scores. Doing so mitigates these plants' environmental impacts and improves their ability to compete in low carbon fuel markets, which have increasingly stringent carbon reduction goals. Improving these plants' ability to compete in low carbon fuel markets will ensure that consumers' ethanol needs are better met and fulfilled in an orderly and timely fashion.¹¹

¹¹ A more thorough discussion on why the Project will minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are

4. *All of the factors listed in N.D.C.C. § 49-22.1-09 that are applicable to the Project weigh in favor of the Commission approving Summit's Application.*

Several of the factors listed in N.D.C.C. § 49-22.1-09 weigh in favor of the Commission approving Summit's Application.¹² For example, the first factor—*i.e.*, available research and investigations relating to the effects of the location, construction, and operation of the proposed facility on public health and welfare, natural resources, and the environment—weighs in favor of the Commission approving Summit's Application. Summit and/or its agents have already conducted several environmental studies in connection with the Project. These studies show that the Project will have little (if any) effect on public health and welfare, natural resources, and the environment.

The second factor—*i.e.*, the effects of new gas or liquid energy conversion and gas or liquid transmission technologies and systems designed to minimize adverse environmental effects—also weighs in favor of the Commission approving Summit's Application. The Project design is consistent with current pipeline technology. Various measures will be used to avoid, minimize, or mitigate impacts to sensitive resources, including implementing trenchless construction (HDD, bores), narrowing right-of-way widths, re-routing and route deviations, and timing/scheduling considerations. Best management practices as identified in Summit's ECP will be implemented to minimize impacts from clearing, trenching, and reclamation of the construction right-of-way. Potential impacts to

met and fulfilled in an orderly and timely fashion can be found in Sections 5, 7.1, 7.3, 7.8, 9.1, 9.2, 10.4, 10.10, and 10.11 of Summit's Application. *See* Docket No. 1.

¹² Some of the factors the Commission may consider are not applicable to the Project. *See, e.g.*, N.D.C.C. § 49-22.1-09(3) (applicable to conversion facilities).

environmentally sensitive areas and cultural resources will be avoided by re-routing or HDD/bore or by delineating and protecting sites during construction.

The fourth factor—*i.e.*, adverse direct and indirect environmental effects that cannot be avoided should the proposed site or route be designated—also weighs in favor of the Commission approving Summit’s Application. Unavoidable adverse direct and indirect environmental effects for construction of the Project are minimal and were described throughout Summit’s Application. Impacts to agricultural operations are anticipated to be minimal and impacts to transportation are anticipated to be short-term. Impacts on vegetation and wildlife will also be minimal. Vegetation will be removed from the right-of-way prior to construction, and the area will be restored and re-seeded following construction. Wildlife may temporarily avoid the right-of-way during construction, but no long-term impacts are anticipated. Noise level increases are associated only with construction.

The fifth factor—*i.e.*, alternatives to the proposed site, corridor, or route that are developed during the hearing process and which minimize adverse effects—also weighs in favor of the Commission approving Summit’s Application. As the Commission is well aware, Summit’s Petition for Reconsideration is based, in large part, on the re-route moving the Project further to the north of the City of Bismarck and other route adjustments made to minimize adverse effects upon the welfare of the citizens of North Dakota.

The sixth factor—*i.e.*, irreversible and irretrievable commitments of natural resources should the proposed site, corridor, or route be designated—also weighs in favor of the Commission approving Summit’s Application. There are few

commitments of natural resources associated with the Project that are irreversible and irretrievable. Natural resources such as steel, concrete, aggregate, water, and hydrocarbon fuels are committed to the construction and operational phases of the Project. But none of these resources are in short supply, and their use for the Project would not have an adverse effect on the availability of these resources.

The seventh factor—*i.e.*, the direct and indirect economic impacts of the proposed facility—also weigh in favor of the Commission approving Summit’s Application. Mr. Dan Pickering testified that the Project is likely to spurn other carbon/low carbon market industry in the state. *See* (Doc. ID#’s 528; 535). As detailed above, Mr. Wade Boeshans testified that the Project’s electrical load requirements will benefit local co-ops. *See* (Doc. ID#’s 529; 535). The Project is estimated to have a \$8 billion capital investment with an estimated \$1.3 billion investment in North Dakota. Construction outputs in North Dakota resulting from the Project will include employment, labor income, and support services spending. In addition, North Dakota has sales and use tax, gross receipts and lodging tax, and income tax. Thus, the Project will contribute directly and indirectly to tax bases at the state and local level.

The eighth factor—*i.e.*, existing plans of the state, local government, and private entities for other developments at or in the vicinity of the proposed corridor or route—also weighs in favor of the Commission approving Summit’s Application. As detailed above, the Commission received testimony from Mr. Malloy regarding a “planned” development near the proposed route. Mr. Malloy’s testimony regarding his planned residential development was the only testimony

received by the Commission that could potentially qualify as an “existing plan” under N.D.C.C. § 49-22.1-09(8). However, Mr. Malloy admitted that he began planning the development in direct response to Summit’s proposed project and that he has not taken any active steps in furtherance of developing his residential development since surveying the property in 2022. Accordingly, Mr. Malloy’s planned development is not an “existing plan” as contemplated by the Siting Act, and the Commission did not receive testimony regarding other existing development plans at or in the vicinity of the Project route.

The ninth factor—*i.e.*, the effect of the proposed site or route on existing scenic areas, historic sites and structures, and paleontological or archaeological sites—also weighs in favor of the Commission approving Summit’s Application. As testified to by Mr. Jon Schmidt, the Project is not anticipated to impact or cause any adverse impacts to scenic areas or historic sites, or paleontological or archaeological resources or sites.

The tenth factor—*i.e.*, the effect of the proposed site or route on areas that are unique because of biological wealth or because the site or route is a habitat for rare and endangered species—also weighs in favor of the Commission approving Summit’s Application. Based on field surveys and review of available sources, it has been determined that the Project will either have no effect or is not likely to adversely affect any federally listed endangered or threatened species.

Finally, the eleventh factor—*i.e.*, problems raised by federal agencies, other state agencies, and local entities—also weighs in favor of the Commission approving Summit’s Application. To date, no federal or state agencies have raised

any concerns related to the Project that have not already been addressed by Summit (e.g., SHPO Class III report and NDGS geohazard concerns). In addition, most local governments of the cities and counties that the Project will pass through have not raised any problems. Indeed, the Board of County Commissioners for Burleigh and Emmons Counties are effectively the only local government entities that have voiced objections to the Project.

B. Request for Relief.

Based on the foregoing, Summit has met its burden under the Siting Act and respectfully requests that the Commission:

1. Grant Summit's Application for Waiver or Reduction of Procedures and Time Schedules;
2. Amend the August 4, 2023 Order with findings of fact and conclusions of law consistent with the evidence presented in Summit's responses to the Commission's data requests and requests for supplemental filings and the testimony received at the public and technical hearings on Summit's Petition for Reconsideration;
3. Amend the August 4, 2023 Order to grant Summit a certificate of corridor compatibility and route permit for the route set forth in the updated Mapbook (Appendix 1) (Doc. ID#345) and as identified precisely by the associated GIS data provided to the Commission (Doc. ID# 504);
4. Amend the August 4, 2023 Order to require that:
 - a. Summit complete all field surveys for the un-surveyed areas within the 200-foot-wide Project corridor;

- b. Summit complete its Class III cultural resource surveys for un-surveyed areas within the 200-foot-wide Project corridor; and
 - c. Summit not begin construction on any portion of the Project for which it has not received concurrence from SHPO.
5. Amend the August 4, 2023 Order to indicate that, in accordance with the Commission's February 7, 2024 Order, the issued route permit for the Project supersedes and preempts all local land use and zoning ordinances and requirements applicable to the Project except for road use agreements.

DATED this 8th day of July, 2024.

FREDRIKSON & BYRON, P.A.

By: 

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EXHIBIT A

| SCS ROW Progress as of July 7th, 2024 | | | | | | |
|---------------------------------------|---------|-----------|--------------------|----------------------|------------------|--------------------|
| North Dakota | Parcels | ROW Miles | ROW Miles Executed | ROW Miles Executed % | Parcels Executed | Parcels Executed % |
| Burleigh | 143 | 50.53 | 32.89 | 65.09% | 83 | 58.04% |
| Cass | 63 | 22.41 | 19.91 | 88.86% | 56 | 88.89% |
| Dickey | 96 | 37.21 | 29.86 | 80.23% | 73 | 76.04% |
| Emmons | 102 | 38.46 | 30.95 | 80.47% | 76 | 74.51% |
| Logan | 5 | 1.83 | 1.83 | 100.00% | 5 | 71.43% |
| McIntosh | 110 | 34.48 | 32.43 | 94.06% | 100 | 90.91% |
| Morton | 56 | 23.55 | 21.31 | 90.45% | 50 | 89.29% |
| Oliver | 51 | 18.39 | 16.96 | 92.26% | 47 | 92.16% |
| Richland | 173 | 65.80 | 51.14 | 77.72% | 133 | 76.88% |
| Sargent | 97 | 39.69 | 32.37 | 81.55% | 74 | 76.29% |
| Grand Total | 896 | 332.36 | 269.65 | 81.13% | 697 | 77.79% |

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

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

Case No. PU-22-391

AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

_____, 2024

Appearances

Commissioners Sheri Haugen-Hoffart, Randy Christmann, and Substitute Decisionmaker Timothy J. Dawson.

Lawrence Bender, Bret Dublinske, Patrick Mahlberg, Tyler Gludt, Fredrikson & Byron, P.A., and James Curry, Babst Calland, on behalf of Applicant, SCS Carbon Transport LLC.

Randall J. Bakke, Bakke Grinolds Wiederholt, on behalf of Intervenors John H. Warford, Jr. Revocable Trust, Chad Wachter and Chad Moldenhauer.

Julie Lawyer, Burleigh County State's Attorney, Randall J. Bakke and David Phillips, Bakke Grinolds Wiederholt, on behalf of Intervenor Burleigh County.

Steven J. Liebel, Knoll Leibel, and Brian Jorde, Domina Law Group, on behalf of Intervenors Dean Twardoski, et al.

Derrick Braaten, Braaten Law Firm, on behalf of Intervenor Emmons County.

Patrick Zomer, Moss & Barnett, on behalf of Intervenor City of Bismarck.

Kevin Pranis on behalf of Intervenor Laborers District Council of Minnesota and North Dakota (LIUNA).

Preliminary Statement

On October 17, 2022, SCS Carbon Transport LLC (SCS) filed a consolidated application for a certificate of corridor compatibility and for a route permit concerning approximately 332 miles of carbon dioxide pipeline ranging from 4.5 to 24-inch diameter and associated facilities in Burleigh, Cass, Dickey, Emmons, Logan, McIntosh, Morton, Oliver, Richland and Sargent Counties, North Dakota (Application).

Also on October 17, 2022, SCS filed an application for waivers of procedures and time schedules established under North Dakota Century Code (NDCC) Sections 49-22.105, 49-22.1-08 and 49-22.1-10, and North Dakota Administrative Code (NDAC) Sections 69-06-01-02 and Chapter 69-06-06, requiring separate filings, time schedules, notices, hearings, and requirements on such applications.

On December 30, 2022, the North Dakota Public Service Commission (Commission) provided notification of the Application to the townships with retained zoning authority, cities, and counties in which any part of the proposed pipeline corridor is located.

On February 1, 2023, the Commission deemed the Application complete and issued a Notice of Filings and Public Hearings (Notice) scheduling four separate public hearings as follows:

1. March 14, 2023, at 8:30 a.m. Central Time, at the ND Heritage Center & State Museum, Russell Reid Auditorium, 612 E. Boulevard Avenue, Bismarck, ND 58505. This hearing will focus primarily on portions of the project in Oliver, Morton, and Burleigh Counties.
2. March 28, 2023, at 9:00 a.m. Central Time, at the North Sargent School Activity Center, 16 1st Street SW, Gwinner, ND 58040. This hearing will focus primarily on portions of the project in Dickey and Sargent Counties.
3. April 11, 2023, at 9:00 a.m. Central Time, at the Harry Stern and Ella Stern Cultural Center, ND State College of Science, 820 6th Street Oval, Wahpeton, ND 58075. This hearing will focus primarily on portions of the project in Cass and Richland Counties.
4. May 9, 2023, at 9:00 a.m. Central Time, at Emmons County Courthouse Auditorium, 100 4th Street NW, Linton, ND 58552. This hearing will focus primarily on portions of the project in Emmons, Logan, and McIntosh Counties.

The Notice identified the following issues to be considered in the application for waiver of procedures and time schedules:

1. Are the proposed facilities of such length, design, location, or purpose that they will produce minimal adverse effects and that adherence to applicable procedures, requirements, and time schedules may be waived?
2. Is it appropriate for the Commission to waive any procedures, requirements, and time schedules as requested in the application?

The issues to be considered in the Application for a certificate of corridor compatibility and a route permit are:

1. Will construction, operation, and maintenance of the facility at the proposed location produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota?
2. Is the proposed facility compatible with environmental preservation and the efficient use of resources?
3. Will construction, operation, and maintenance of the facility at the proposed location minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion?

On March 14, 2023, the public hearing was held as scheduled in Bismarck, North Dakota.

On March 20, 2023, the Commission issued a Notice of Public Hearings, scheduling an additional hearing for June 2, 2023, at 8:30 a.m. Central Time, at the ND Heritage Center & State Museum, Russell Reid Auditorium, 612 E. Boulevard Avenue, Bismarck, ND 58505. This hearing will focus primarily on portions of the project in Oliver, Morton, and Burleigh Counties.

On March 28, 2023, the public hearing was held as scheduled in Gwinner, North Dakota.

On April 11, 2023, the public hearing was held as scheduled in Wahpeton, North Dakota.

On May 9, 2023, the public hearing was held as scheduled in Linton, North Dakota.

On June 1, 2023, SCS filed a motion and brief in support of the motion to declare Emmons County and Burleigh County ordinances superseded and preempted.

On June 2, 2023, the public hearing was held as scheduled in Bismarck, North Dakota.

On August 4, 2023, the Commission issued Findings of Fact, Conclusions of Law and Order denying SCS's Application for a certificate of corridor compatibility and route permit.

As provided in the August 4, 2023 Order, the Commission found that SCS failed to (1) address concerns raised by the State Historic Preservation Office (SHPO) regarding SCS's cultural resources inventory report, (ii) minimize impacts on future property values and development, (3) minimize impacts on Game Management Areas, (4) address areas of potential geological instability as identified by the North Dakota Geological Survey (NDGS), (5) address legitimate impacts expressed by landowners or demonstrate why a reroute is not feasible, and (6) address Commission requests regarding (a) rerouting the Project on Vculek's, Doolittle's, Bernhardt's, and Dotzenrod's properties, (b) confirmation on the number of 500-foot setback waivers required and obtained, (c) follow-up with the

NDGS, (c) BNI coal permit status, (d) SHPO concurrence status, and (e) an analysis of an alternative route to the south of the City of Bismarck.

As provided in the August 4, 2023 Order, the Commission found that SCS had met its burden with respect to (1) impacts on drain tile, (2) liability insurance requirements, (3) effects on agriculture and livestock, (4) Exclusion Areas, (5) Avoidance Areas (except Game Management Areas and areas of geologic instability), and (6) the criteria listed in NDAC Section 69-06-08-02(3)(b), including (a) sound-sensitive land uses, (b) the visual effect on the adjacent area, (c) extractive and storage resources, (d) wetlands, woodlands, and wooded areas, (e) radio and television reception, and other communication or electronic control facilities, (f) human health and safety, (g) animal health and safety, and (h) plant life.

On August 18, 2023, SCS timely filed a Petition for Reconsideration setting forth SCS's plans to address the deficiencies identified in the Commission's August 4, 2023 Order and requesting a rehearing on such matters.

All Intervenors were provided an opportunity to respond to SCS's Petition for Reconsideration.

On September 15, 2023, the Commission granted SCS's Petition for Reconsideration finding that a "...just, speedy, and inexpensive determination of the issues presented" necessitates granting the Petition for Reconsideration.

On September 29, 2023, SCS renewed its motion to declare Emmons County and Burleigh County ordinances superseded and preempted.

All Intervenors were provided an opportunity to respond to SCS's motion to supersede and preempt Emmons and Burleigh County ordinances.

On October 17, 2023, the Commission submitted a request for filing and data requests to SCS.

On October 31, 2023, SCS timely responded to the data requests set forth in the Commission's October 17, 2023 request for filing and data requests.

SCS submitted responses to the Commission's October 17, 2023 filing requests on January 24, January 30, and March 4, 2024.

On December 21, 2023, the Commission heard oral arguments on SCS's motion to supersede and preempt Emmons and Burleigh County ordinances.

All Intervenors were provided an opportunity to argue their respective positions at the December 21, 2023 oral arguments.

On February 7, 2024, the Commission issued an Order finding that 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.

On February 27, 2024, Intervenor Burleigh County filed a Petition for Reconsideration requesting that the Commission reconsider its February 7, 2024 preemption Order.

SCS and all Intervenor were provided an opportunity to respond to Burleigh County's Petition for Reconsideration.

On March 18, 2024, the Commission denied Burleigh County's Petition for Reconsideration on the grounds that neither Burleigh County nor the other Intervenor set forth new arguments for the Commission to consider.

On March 21, 2024, the Commission deemed SCS's supplemental filings complete and issued a Notice of Public Hearing (Reconsideration Notice) scheduling three separate public hearings as follows:

1. April 22, 2024, at 9:00 a.m. Central Time, at the Baymont Inn & Suites Mandan, 2611 Old Red Trail NW, Mandan, ND 58554. This hearing will focus primarily on portions of the project in Burleigh, Morton, and Oliver Counties, and may extend multiple days.
2. May 24, 2024, at 9:00 a.m. Central Time, at the Harry Stern and Ella Stern Cultural Center, ND State College of Science, 820 6th Street Oval, Wahpeton, ND 58075. This hearing will focus primarily on adjustments in Dickey, Sargent, Cass, and Richland Counties.
3. June 4, 2024, at 9:00 a.m. Central Time, at the Our Club, 120 Cedar Avenue East, Linton, ND 58554. This hearing will focus primarily on the adjustments in Emmons, Logan, and McIntosh Counties.

The issues to be considered in the hearing on SCS's Petition for Reconsideration will be to address the proposed route adjustments and supplemental filings and deficiencies noted in the Commission's August 4, 2023 Order and include the following questions:

1. Will construction, operation, and maintenance of the facility at the proposed location produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota?
2. Is the proposed facility compatible with environmental preservation and the efficient use of resources?
3. Will construction, operation, and maintenance of the facility at the proposed location minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion?

On March 27, 2024, Intervenor Burleigh County filed a motion to continue the April 22, 2024 public hearing.

continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion?

On May 24, 2024, the public hearing was held as scheduled in Wahpeton, North Dakota.

The technical hearings were held as scheduled at the State Capitol in Bismarck, North Dakota.

On June 4, 2024, the public hearing was held as scheduled in Linton, North Dakota.

Having allowed all interested persons an opportunity to be heard, and having heard, reviewed, and considered all testimony and evidence presented, the Commission makes the following:

Findings of Fact

1. Applicant, SCS Carbon Transport LLC, is a Delaware limited liability company authorized to do business in the State of North Dakota.

Size, Type and Preferred Location of Facilities

2. SCS proposes to construct approximately 332 miles of Carbon Dioxide (CO₂) pipeline and associated facilities in Burleigh, Cass, Dickey, Emmons, Logan, McIntosh, Morton, Oliver, Richland and Sargent Counties, North Dakota (Project). The CO₂ is compressed into a supercritical or dense phase state and transported through an interstate pipeline network that terminates northwest of Bismarck in Oliver and Mercer Counties where the CO₂ will be injected in pore space for permanent sequestration.

3. The Project will range in size from 4.5 to 24 inch outside diameter of carbon steel pipe with a wall thickness ranging from 0.189 inches to 0.750 inches. Pipe wall thickness categories will be calculated utilizing Title 49 Code of Federal Regulations (CFR) Part 195.106. The maximum operating pressure will be 2,183 pounds per square inch gauge. The maximum operating temperature will be 120 degrees Fahrenheit.

4. The pipeline and associated facilities will be designed, constructed, inspected, tested, and operated in accordance with applicable requirements and regulations, including, without limitation, the U.S. Department of Transportation (USDOT) regulations in 49 CFR Part 195, Transportation of Hazardous Liquids by Pipeline, American Society of Mechanical Engineers (ASME) Standard B 31.4, and American Petroleum Institute (API) Standard 1104 Welding of Pipelines and Related Facilities. The pipeline will be constructed of high-strength carbon steel pipe, exceeding the API 5L Pipe Specification. API 5L is the industry standard specification for seamless and welded steel line pipes used in pipeline transportation systems, including the energy industry.

5. The Project will have a flow rate capacity of up to 936 million standard cubic feet per day. The valve spacing will have a maximum spacing of 20 miles. The valve spacing

will be spaced no more than every 15 miles in high-consequence areas consistent with rules set forth by the Pipeline and Hazardous Materials Safety Administration.

6. Approximately thirty-eight (38) permanent above-ground facilities will be associated with the Project, including pump stations and mainline valves.

7. The proposed Project corridor is generally 200 feet in width as depicted as the “200-foot Siting Corridor” in the updated Appendix 1 — ND PSC Aerial Mapbook filed with the Commission on January 30, 2024 (Docket No. 435) and identified precisely by the associated GIS map data.

8. The estimated the cost of the Project at \$8.0 billion. The North Dakota portion of the Project is estimated at \$1.3 billion.

Study of Preferred Location

9. Prior to and after adjusting the route of the Project, SCS initiated correspondence seeking comments from the following federal, state, and local agencies regarding the Project:

- a. Federal: (1) Federal Aviation Administration; (2) U.S. Fish and Wildlife Service; (3) U.S. Army Corps of Engineers; (4) U.S. Department of Defense; (5) Federal Bureau of Land Management; (6) Grand Forks Air Force Base; (7) Minot Air Force Base; (8) Military Aviation and Installation Assurance Siting Clearinghouse; (9) Natural Resource Conservation Service; (10) Twentieth Air Force Ninety-first Missile Wing.
- b. State: (1) ND Attorney General; (2) ND Department of Agriculture; (3) ND Department of Career and Technical Education; (4) ND Department of Commerce; (5) ND Department of Environmental Quality; (6) ND Aeronautics Commission; (7) ND Department of Human Services; (8) ND Department of Labor and Human Rights; (9) ND Department of Transportation; (10) ND Department of Trust Lands; (11) ND Energy Infrastructure and Impact Office; (12) ND Game and Fish Department; (13) ND Office of the Governor; (14) ND Indian Affairs Commission; (15) ND Industrial Commission; (16) Job Service of North Dakota; (17) ND Forest Service; (18) ND Geological Survey; (19) ND Pipeline Authority; (20) ND Transmission Authority; (21) ND Parks and Recreation Department; (22) ND Department of Health; (23) ND State Historical Society; (24) ND Department of Water Resources.
- c. Local: (1) Burleigh County Commission; (2) Cass County Commission; (3) Dickey County Commission; (4) Emmons County Commission; (5) Logan County Commission; (6) McIntosh County Commission; (7) Morton County Commission; (8) Oliver County Commission; (9) Richland County Commission; (10) Sargent County Commission.

10. SCS conducted a Class I cultural literature review and a desktop analysis for wetlands, waterbodies, and other sensitive environmental resources, across a one-mile-wide area centered on the Project route (Study Area).

11. SCS conducted several surveys across a generally 300-foot-wide area centered on the Project route as approximated as the “Facility Boundary” in Appendix 1 — ND PSC Aerial Mapbook (Docket No. 1) and the “200-foot Siting Corridor” in the updated Appendix 1 — ND PSC Aerial Mapbook filed with the Commission on January 30, 2024 (Docket No. 435) and identified precisely by the associated GIS map data (Survey Area). SCS conducted surveys for threatened and endangered species, critical habitats, wetlands, waterbodies, and trees/saplings/shrubs.

12. SCS conducted a Class III cultural resources inventory across a majority of the Survey Area. Three separate volumes of a Class III report were submitted to SHPO. SCS testified that Volume 1 of the Class III report has been accepted by SHPO. SHPO concurrence is commonly required by the Commission prior to the construction of the Project.

Preemption of Local Land Use and Zoning Regulations

13. On February 7, 2024, the Commission issued an Order finding that 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.

14. Even if North Dakota Century Code Section 49-22.1-13 did not automatically supersede and preempt local land use or zoning regulations, the plain language of the ordinances, specifically the setbacks, enacted by Burleigh and Emmons Counties in direct response to SCS’s Project are unreasonably restrictive and would make the siting of all hazardous liquid pipelines dependent on variances and waivers which is not conducive to the siting of linear transmission line projects which fall under the exclusive jurisdiction of the Commission.

15. The Commission received testimony from Burleigh County that it preferred that SCS’s Project would be rerouted to avoid Burleigh County entirely. The Commission also received testimony from both Burleigh County and Emmons County suggesting that the setbacks set forth in their respective hazardous liquid pipeline ordinances were not based on science or other data-driven analyses. The Burleigh County and Emmons County ordinances appear to have been implemented in response to purported safety issues, and beyond lacking factual support for those issues, to the extent those ordinances attempt to regulate matters within The U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration (PHMSA)’s jurisdiction and, as a result, they would conflict with federal law.

Issues Raised by Intervenors and Public Comment

16. The Commission received extensive public comment during the public hearings. The public comments expressed broad concerns regarding eminent domain, safety, the

policy of permanent CO2 sequestration and storage, setback distances, irreparable harm to underground drain tile systems, impacts on property values, and the ability to obtain liability insurance due to the Project.

17. Having considered the public comments, the issues of eminent domain, safety compliance with PHMSA regulations for construction and operation, and permanent sequestration and storage of CO2, were outside the jurisdiction and consideration of the Commission.

18. Commenters asserted that greater setback distances and topography should be considered for a CO2 pipeline. NDCC Section 49-22.1-03 specifies that areas within 500 feet of an inhabited rural residence must be an avoidance area unless waived by the owner of the inhabited rural residence. No testimony was presented that provided a sufficient basis to depart from the avoidance requirements set forth in the statute. SCS testified that it met this requirement by either avoiding the location or obtaining a waiver.

19. Several commenters expressed that the Project will cause irreparable harm to their underground drain tile systems. Additionally, the commenters expressed concerns that if repairs were not performed properly, it would result in sediment buildup and ultimately failure of the drain tile systems. Jeremy Ellingson with Ellingson Drainage testified that his company has been hired by SCS to repair or replace any drain tile systems damaged or modified because of the Project. Dr. Thomas F. Scherer, an Associate Professor in the Department of Agriculture and Biosystems Engineering at North Dakota State University, testified that drain tile repairs such as those described by Mr. Ellingson can be done successfully if completed using proper procedures for both topsoil and subsoil segregation and tile repair procedures. The Commission finds that proper drain tile system repair and/or replacement by SCS will produce minimal adverse effects to drain tile systems.

20. Commenters and intervenors asserted that the Project will cause significant adverse effects on the value of their property and residential development projects. In response, SCS filed a letter from Boulder Appraisal. The letter summarizes the effect of existing natural gas and hazardous liquids pipelines upon the development and sale of current residential properties in Bismarck, North Dakota and concludes that existing transmission pipelines have not hindered development, nor have they significantly reduced property values. Jeff Olson, a certified North Dakota appraiser, testified that empirical evidence indicates that property values, both residential and agricultural, are not significantly impacted by the presence of pipeline easements. There was no similarly authoritative evidence to the contrary. Mr. Wachter, a real estate developer in Bismarck, North Dakota, testified that he has developed residential properties in the areas of existing gas and hazardous liquid pipelines. Mr. Wachter testified that some lots encumbered by gas and hazardous liquid pipeline easements remain unsold, but that he has been able to develop at least 50% of the lots directly encumbered by such easements, and 80% or more of the lots not encumbered by such easements. Mr. Wachter's testimony largely aligned with the opinions offered by SCS's witnesses; developers are willing to purchase and develop properties through which gas and hazardous liquid transmission pipelines traverse and sellers are not willing to discount the lands to a material degree, the

developers' desires notwithstanding. Moreover, the current route of the Project is not located in the areas of any existing or actively planned developments and, particularly in light of SCS's move of segments further away from Bismarck, these potential impacts were further minimized. Based on the foregoing, the Commission finds that impacts on future development and property values is at an acceptable minimum.

21. A number of commenters provided that the Project will make them unable to purchase liability insurance to cover the risk of a release. In the pre-filed testimony of Micah Rorie on June 1, 2023, SCS testified that it would hold the liability for a rupture of or release from the Project unless the rupture was caused by a third-party line strike. Based upon this testimony, the Commission finds that no additional requirements are needed to ensure the Project will have minimal adverse impacts on the liability insurance requirements of the landowners.

22. LIUNA intervened in this proceeding and submitted testimony relating to the benefits of hiring a local labor force for transmission projects and the safety record of the contractors SCS intends to use to construct the Project. SCS's Application indicated approximately 1,934 equivalent annual personnel, both skilled and unskilled, would be required for project construction and up to 34 full-time workers will be required during operations. Consistent with Commission precedent, the Commission finds that LIUNA's assertions in relation to SCS's plans for the construction of the Project are not applicable to the Commission's jurisdiction in siting transmission projects.

Siting Criteria

23. The Commission has established criteria pursuant to NDCC Section 49-22.1-03 to guide the site, corridor, and route suitability evaluation and designation process. The criteria, as set forth in NDAC Section 69-06-08-02, are classified as Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria. Exclusion and avoidance areas may be located within a corridor, but at no given point may such an area or areas encompass more than fifty percent of the corridor width unless there is no reasonable alternative. SCS provided an evaluation of the Project for Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria in its Application.

24. An Exclusion Area is a geographic area that must be excluded in the consideration of a route for a transmission facility. A transmission facility route must not be sited within an Exclusion Area.

25. Areas critical to the life stages of threatened or endangered animal or plant species are designated as Exclusion Areas under NDAC Section 69-06-08-02(1)(d). SCS's studies and surveys identified that the Project crosses piping plover critical habitat at the Missouri River crossing. The Project will cross the Missouri River using Horizontal Directional Drilling (HDD). As the piping plover habitat is not beneath the Missouri River, a reasonable buffer zone exists for the protection of the piping plover's habitat, and there is no evidence of an adverse impact.

26. SCS studies and surveys did not record any other Exclusion Areas within the Survey Area. No other exclusion areas were presented by an intervenor, the public, or Commission staff during the pendency of the proceeding.

27. An Avoidance Area is a geographic area that may not be considered in the routing of a transmission facility unless the applicant shows that, under the circumstances, there is no reasonable alternative. In determining whether an Avoidance Area should be designated for a transmission facility, the Commission may consider, among other things, the proposed management of adverse impacts, the orderly siting of facilities, system reliability and integrity, the efficient use of resources, and alternative routes. Economic considerations alone will not justify the approval of Avoidance Areas.

28. National Wildlife Refuges are designated Avoidance Areas under NDAC Section 69-06-08-02(2)(a). SCS's studies and surveys identified the Dakota Lake National Wildlife Refuge (DLNWR) in Dickey County, North Dakota is within the proposed corridor. The DLNWR does not encompass more than fifty percent of the corridor width and will not be crossed by the route. The Commission finds that the impact to the DLNWR is at an acceptable minimum.

29. Game Management Areas are designated Avoidance Areas under NDAC Section 69-06-08-02(2)(b). SCS's studies and surveys indicated that six waterfowl production areas are within the proposed corridor. The Richland County Waterfowl Production Area is directly crossed by the proposed corridor and route and encompasses greater than fifty percent of the corridor width in Section 16, Township 136N, Range 51W. The Sargent County Waterfowl Production Area is directly crossed by the proposed corridor and route and encompasses greater than fifty percent of the corridor width in Section 7, Township 131N, Range 55W; it is also within the proposed corridor but does not encompass more than fifty percent of the corridor width and will not be crossed by the route in Section 8, Township 131N, Range 54W. The Dickey County Waterfowl Production Area is directly crossed by the proposed corridor and route and encompasses greater than fifty percent of the corridor width in Section 14, Township 129N, Range 61W, Section 28, Township 129N, Range 63W and Section 29, Township 129N, Range 62W. The McIntosh County Waterfowl Production Area is within the proposed corridor, but does not encompass greater than fifty percent of the corridor width in Section 7, Township 129N, Range 70W. The Emmons County Waterfowl Production Area is directly crossed by the proposed corridor and route and encompasses greater than fifty percent of the corridor width in Section 16, Township 133N, Range 74W. The Burleigh County Waterfowl Production Area is within the proposed corridor, but does not encompass greater than fifty percent of the corridor width in Section 30, Township 138N, Range 78W, Section 19, Township 138N, Range 78W, and Section 7, Township 138N, Range 78W. SCS testified that it has either rerouted the pipeline or will utilize HDD techniques to avoid these areas. Therefore, the Commission finds that the impacts on Game Management Areas in North Dakota are at an acceptable minimum.

30. Areas that are geologically unstable are Avoidance Areas under NDAC Section 69-06-08-02(2)(d). SCS's studies and surveys noted that the US Geological Survey and Natural Resources Conservation Service soil data and topographical information were

reviewed to identify areas of potential geologic instability. In a letter dated March 3, 2023, the NDGS noted 14 areas of potential geologic instability within the Project corridor and 3 landslides adjacent to the corridor that should be evaluated. In a letter dated March 7, 2024, the NDGS indicated that it had reviewed the Phase I geohazards assessment report and that between the meetings with SCS, reports, and pipeline route maps, SCS has demonstrated to the NDGS that they have investigated the potential problem sites and have taken steps to address them, including rerouting the pipeline to avoid some of those areas. Accordingly, the Commission finds that SCS has properly addressed areas that are geologically unstable.

31. Areas within 500 feet of a residence, school or place of business are Avoidance Areas under NDAC Section 69-06-08-02(2)(e). This Avoidance Area may be waived by the owner. SCS's studies and surveys identified three residential structures and three barns which may qualify as a place of business within 500-feet of the Project. SCS has provided a waiver for all six of these structures. SCS testified that it will not construct within 500 feet of any residence, school or business without obtaining and filing with the Commission signed waivers from the owner(s) of those structures.

32. SCS's studies and surveys did not record any other Avoidance Areas within the Survey Area. No other Avoidance Areas were presented by an intervenor, the public, or Commission staff during the pendency of the proceeding.

33. In accordance with the Commission's Selection Criteria set forth in NDAC Section 69-06-08-02(3), a transmission facility corridor or route shall be approved only if it is determined that any significant adverse effects that will result from the location, construction, and maintenance of the transmission facility will be at an acceptable minimum, or that those effects will be managed and maintained at an acceptable minimum. SCS provided an analysis of the impacts of the Project in relation to all relevant Selection Criteria.

34. The Commission finds that the Project's impact upon agriculture and livestock will be at an acceptable minimum.

35. The Commission finds that SCS has made significant efforts to implement reroutes to avoid properties, or portions thereof, of certain landowners who expressed concerns about the Project or an unwillingness to locate the Project on their property. SCS testified, and the Commission acknowledges, that it is not always practical or possible to reroute the Project around every unwilling landowner.

36. The Commission finds that the Project's impact upon the criteria listed in NDAC Section 69-06-08-02(3)(b) will be at an acceptable minimum.

37. SCS analyzed the relevant Policy Criteria set forth in NDAC Section 69-06-0802(4). There is no need for the Commission to give preference to the applicant in this proceeding.

Additional Measures to Minimize Impact

38. SCS has agreed to a number of steps to mitigate the impact of the Project, as indicated by the executed Certification Relating to Order Provisions – Transmission Facility Siting, with accompanying Tree and Shrub Mitigation Specifications.

39. SCS has developed a Control Center Management and Leak Detection Plan, Unanticipated Discovery Plan, Environmental Construction Plan, Emergency Response Plan, HDD Inadvertent Return Plan, Noxious Weed Management Plan and a Dust Control Plan, which are included with the Application.

40. SCS will follow a written manual of procedures for conducting normal operations and maintenance activities and for handling abnormal operations and emergencies in accordance with 49 CFR Part 195.

41. The Project will be designed, constructed and operated to meet or exceed PHMSA regulations and utilizing industry standards.

42. SCS testified that 100% of field welds will be tested and x-rayed.

43. SCS testified that pumps will be located at pump terminals within enclosed and insulated buildings to minimize noise.

44. SCS will participate in the North Dakota One-Call notification system.

45. SCS testified that it will contract with a third-party inspection firm to ensure regulatory and environmental compliance.

46. SCS testified that the Missouri River will be crossed utilizing HDD at a depth of 49 feet beneath the river bed.

47. SCS is committed to protecting the integrity of wetlands and waterbodies crossed by the route by using best management practices in order to minimize erosion and to prevent sediment discharge, which will include minimizing the footprint of environmental disturbance by reducing the workspace; maintaining vegetative barriers, and installing sediment barriers, trench plugs, and slope breakers as necessary.

48. SCS testified that it will have an operations control center in Ames, Iowa, that will be monitored 24 hours per day. The Project will include a supervisory control and data acquisition (SCADA) system that will communicate with all field sites and provide real-time information of the systems operations. The operations control center will have the capability to remotely shut down pump stations and isolate pipeline segments in the event abnormal operating conditions are observed. SCS modeled a valve closure time of 2 minutes, although the timing of the closure is capable of closure much quicker than 2 minutes.

49. SCS noted in its Application and testimony that meetings have occurred with the emergency management directors of all counties crossed by the Project. The emergency

management directors were asked to provide a list of equipment needs in order to respond to potential incidents. The Commission also received testimony that SCS has provided grants to county emergency management departments for the purchase of additional response equipment. The Commission further received testimony that in addition to the meetings and information already provided to local emergency management, SCS will continue to meet with and conduct training with emergency management and emergency responders in each county prior to operation of the Project.

50. SCS requested a 300-foot corridor width in its original Application. In its Petition for Reconsideration, SCS requested a corridor width of 200 feet.

51. SCS testified that if winter construction were necessary, that it would follow the Interstate Natural Gas Association of America Foundation guidelines for pipeline construction during frozen conditions.

52. SCS will comply with all applicable safety laws and standards.

Commission Requests for Supplemental Information

53. Commissioners requested responses from SCS on a number of issues. Some of the specific requests were regarding rerouting the Project on Vculek's, Doolittle's, Barnhardt's, and Dotzenrod's properties; confirmation on the number of 500-foot setback waivers required and obtained; follow-up with the NDGS; BNI coal permit status; SHPO concurrence status; game management areas; an analysis of the south Bismarck alternate route; energy consumption and power supply studies; property taxes; survey completion; easement acquisition; engagements with emergency management and first responders; and local and federal permit status. SCS adequately addressed these requests in its responses to the Commission's supplemental filing and data requests and/or presented witnesses at the hearings to answer questions as required by NDAC Section 69-02-05-02. Based on the foregoing, the Commission finds that SCS has provided sufficient evidence to demonstrate that the location, construction, operation and maintenance of the Project will produce minimum adverse impacts upon the welfare of the citizens of North Dakota.

From the foregoing Findings of Fact, the Commission now makes its:

Conclusions of Law

1. The Commission has jurisdiction over the applicant, SCS Carbon Transport LLC, and the subject matter of the Application under NDCC Chapter 49-22.1.

2. SCS is a utility as defined in NDCC Section 49-22.1-01(13).

3. The Project is a gas or liquid transmission facility as defined in NDCC Section 49-22.1-01(7).

4. In accordance with NDCC Section 28-32-40(4), the August 4, 2023 Order (Docket No. 375) of the Commission is amended as set forth herein.

5. Based on the above findings of fact, the Commission concludes that the proposed facilities are of such length, design, location, or purpose that they will produce minimal adverse effects and that adherence to applicable procedures, requirements, and time schedules should be waived.

6. Based on the above findings of fact, the Commission concludes that it is appropriate for the Commission to waive procedures, requirements, and time schedules as requested in the application.

7. Based on the above findings of fact, the Commission concludes SCS has met its burden of proof to show the location, construction, operation, and maintenance of the Project will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.

8. Based on the above findings of fact, the Commission concludes SCS has met its burden of proof to show the Project will minimize adverse human and environmental impact, while ensuring continuing system reliability and integrity, and ensuring that energy needs are met and fulfilled in an orderly and timely fashion.

9. Based on the above findings of fact, the Commission concludes SCS has met its burden of proof to show the location, construction, and operation of the Project are compatible with environmental preservation and efficient use of resources.

From the foregoing Findings of Fact and Conclusions of Law, the Commission now makes the following:

Order

The Commission Orders:

1. SCS's application for a waiver of procedures and time schedules is granted.
2. SCS shall construct, operate, and maintain the pipeline in accordance with the Commission's Findings of Fact.
3. Certificate of Corridor Compatibility No. ____ is issued to SCS Carbon Transport LLC designating a corridor for the construction, operation, and maintenance of approximately 332 miles of 4.5 to 24-inch diameter carbon dioxide pipeline and associated facilities in Burleigh, Cass, Dickey, Emmons, Logan, McIntosh, Morton, Oliver, Richland and Sargent Counties, North Dakota, as identified in the updated Appendix 1 (Docket No. 435) and identified precisely by the associated GIS map data.
4. Route Permit No. ____ is issued to SCS Carbon Transport LLC designating a route for the construction, operation, and maintenance of approximately 332 miles of 4.5 to 24-inch diameter carbon dioxide pipeline and associated facilities in Burleigh, Cass, Dickey, Emmons, Logan, McIntosh, Morton, Oliver, Richland and Sargent Counties, North Dakota, as identified in the updated Appendix 1 (Docket No. 435) and identified precisely by the associated GIS map data. The designated route includes a route construction

buffer of 25 feet on each side of the designated route, contingent upon not impacting an avoidance area unless SCS receives written authorization from the Commission before conducting any associated construction activities. Construction activities must not impact an exclusion area.

5. The Certification Relating to Order Provisions – Transmission Facility Siting (Certification), with accompanying Tree and Shrub Mitigation Specifications, executed _____, 2024 is incorporated by reference and attached to this Order.

6. To the extent there are any conflicts or inconsistencies between SCS's Application and the Certification, the Certification provisions control.

7. In accordance with the February 7, 2024 Order of the Commission, Route Permit No. _____ supersedes and preempts all local land use and zoning ordinances and requirements applicable to the Project except for road use agreements.

8. SCS shall complete field surveys for all un-surveyed areas within the designated corridor and shall file copies of all environmental field surveys with the Commission prior to beginning construction in those areas.

9. SCS shall complete a Class III Cultural Resource Survey for un-surveyed areas within the Project corridor and shall submit its cultural resources findings to SHPO for review and file a copy of SHPO's concurrence with the Commission prior to beginning construction in those areas.

10. SCS shall not begin construction on any portion of the Project for which it has not received concurrence from SHPO. SCS shall update the Commission with respect to any concurrence or non-concurrence provided by SHPO.

11. SCS shall either reroute the Project or obtain waivers from the owners of an inhabited rural residence, school or place of business which is located within 500 feet of the Project's centerline. SCS shall submit copies of all 500-foot setback waivers obtained for the Project to the Commission.

12. SCS shall obtain all other necessary licenses and permits prior to commencing construction on such portion of the Project for which the license and/or permit is required and shall provide copies of such licenses and permits to the Commission prior to construction.

13. SCS is required to comply with all applicable laws, rules, and/or regulations in the event it desires to construct another or a different transmission facility than was specified in the Application within the corridor designated in this proceeding.

PUBLIC SERVICE COMMISSION

**Sheri Haugen-Hoffart
Commissioner**

**Randy Christmann
Chair**

**Timothy Dawson
Substitute Decision
Maker**

#83029447v1

**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;
2. Post-Hearing Brief of SCS Carbon Transport LLC (Reconsideration); and
3. [Proposed] Amended Findings of Fact, Conclusions of Law, and Order.

were, on July 8, 2024, filed with the North Dakota Public Service Commission and served electronically to the following:

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Dated this 8th day of July, 2024.

FREDRIKSON & BYRON, P.A.

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