



**KNOLL LEIBEL** <sup>LLP</sup>  
ATTORNEYS AT LAW

July 8, 2024

**VIA U.S. MAIL & E-MAIL ONLY:** [ndpsc@nd.gov](mailto:ndpsc@nd.gov)

Steve Kahl  
Executive Secretary  
North Dakota Public Service Commission  
State Capitol  
600 E Boulevard Ave, Dept 408  
Bismarck, ND 58505-0480

RE: In the Matter of the Application of SCS Carbon Transport LLC for  
Certificate of Corridor Compatibility and Route Permit for the Midwest Carbon  
Express  
Case No.: PU-22-391

Dear Mr. Kahl:

Enclosed for filing please find the following documents:

1. Landowners' Post-Rehearing Closing Brief;
2. Findings of Fact, Conclusions of Law, and Order (proposed); and
3. Declaration of Service.

The enclosed Brief and proposed Findings Fact, Conclusions of Law, and Order are being filed with the North Dakota Public Service Commission (hereinafter "NDPSC") on behalf of the Intervenor represented by Knoll Leibel LLP. These Intervenor have a direct and substantial interest in these proceedings, as well as legal property rights which may be substantially affected by NDPSC's findings and conclusions.

Sincerely,

KNOLL LEIBEL LLP

Steven J. Leibel

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Enclosures

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Landowners' Post-Rehearing Closing Brief and Findings of Fact, Conclusions of Law, and Order (Proposed)  
Knoll Leibel, LLP, on behalf of the Intervenor  
Steven Leibel, Attorney

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

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

**LANDOWNERS'  
POST-REHEARING  
OPENING BRIEF**

Landowner Intervenors, herein “Landowners” represented by the undersigned counsel respectfully submit their Post-Rehearing Opening Brief.

1. Summit’s executives have repeatedly emphasized its dedication to problem-solving and its commitment to providing public assurance. However, its actions contradict its words. Landowner Intervenors are not foreign venture capitalists in the hunt to earn a windfall from taxpayers by taking property from North Dakota landowners. They are local farmers and ranchers, and the sons and daughters of farmers and ranchers, concerned about things like crop yields and the safety of livestock located near the pipeline and whether their children can still build a house on the family farm without the worry of sudden asphyxiation by carbon dioxide. For these reasons, when Summit moved its toxic pipeline off the property of an intervenor—which it has done only when the PSC has required it—these intervenors almost uniformly have withdrawn their objections to the pipeline and dropped out. If Summit had moved the pipeline off the land of the remaining

Landowner Intervenor, it could have avoided objections. This is the type of common-sense solution Summit might understand if it bothered to acknowledge the men and women who travelled to various PSC hearings across the state with coolers of ham sandwiches and coffee for the sole purpose of standing up for their farms, their families, and their neighbors. Even though Summit did not offer a shred of evidence why it could not avoid the property of any of the Landowner Intervenor, it will never do so unless the PSC requires it. This Commission should not allow Summit to leapfrog its obligations.

## **BACKGROUND**

2. Not all hazardous pipelines are created equal. Applicant SCS Carbon Transport, LLC (herein “SCS” or “Summit”), proposes the first ever supercritical hazardous carbon dioxide capture for permanent storage pipeline across more than 350 miles<sup>1</sup> of valuable North Dakota land. Summit proposes to transport waste in the form of CO<sub>2</sub> that currently vents from ethanol plants safely into the atmosphere. SCS has requested approval of two applications, (1) an application for certificate of corridor compatibility and (2) an application for route permit. Under Summit’s proposal, waste CO<sub>2</sub> from five states is destined for “permanent” storage, not use, in Oliver and Mercer County North Dakota.

3. There is no evidence in the record of (1) a single market for permanently stored CO<sub>2</sub> or (2) a single person or entity that is contracted to “use” this waste CO<sub>2</sub>. But even if this evidence did exist, Summit’s claimed purpose for the pipeline—to

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<sup>1</sup> Landowner (“LO”) Ex. 28, Summit Route Maps (Doc. 575)

permanently reduce carbon dioxide in the atmosphere—would fail. Summit’s business model is one never seen before by the PSC and its proposal does not fit into the elements required for PSC approval.

4. North Dakotans are generally skeptical of the effectiveness of carbon capture and it lacks support state wide according to 2024 polling, see LO Ex. 16 (Doc. 574). In fact, only 8% of Republicans believe capturing and storing carbon dioxide underground will reduce the impact of climate change. *Id.* In nearly a year since the PSC first denied SCS’s applications, the stated purpose for this hazardous pipeline has not changed, the alleged benefits have not changed, the resistance and evidence of adverse citizen impact has not subsided, the risk profile of this particular CO2 high pressure line has not improved, and not a single new North Dakota customer/supplier has emerged. This is an unnecessary proposal by an inexperienced company without widespread support who has obtained “voluntary” easements through threats and strong-arm tactics. The PSC should deny SCS’s applications again.

#### **RELEVANT LAW AND LEGAL STANDARDS**

5. N.D.A.C. § 69-06-08-02(3)(b)(6-7) requires the PSC not designate a corridor or a route for SCS’s proposed hazardous pipeline unless SCS has demonstrated that no significant adverse effects will result, including effects upon human health and safety and animal health and safety. N.D.C.C. 49-22.1-02 provides the PSC must ensure SCS’s proposed hazardous pipeline’s location, construction, and operation, if any, will produce minimal adverse effects on the environment and welfare of the citizens of North Dakota. N.D.C.C. § 49-22.1-02 requires the routing

of transmission facilities, if any, must occur in a manner compatible with the environmental preservation and efficient use of resources.

6. N.D.A.C. § 69-06-08-02(2)(d) states the PSC shall not designate a corridor or a route for SCS's proposed hazardous pipeline in areas which are geologically unstable. N.D.C.C. § 49-22.1-02 provides sites and routes for transmission facilities must minimize adverse human and environmental impacts while also ensuring continuing system reliability and integrity and fulfilling the energy needs in an orderly and timely fashion. (emphasis added).

### QUESTIONS PRESENTED

1. Given SCS failed to do so previously, did SCS prove during the 2024 rehearing process that no significant adverse effects will result, including effects upon human health and safety and animal health and safety, such that the PSC is justified in approving both SCS's application for certificate of corridor compatibility and route permit?
2. Given SCS failed to do so previously, did SCS during the 2024 rehearing process designate a corridor or a route for its proposed hazardous pipeline in areas which are not geologically unstable, such that the PSC is justified in approving both SCS's application for certificate of corridor compatibility and route permit?
3. Given SCS failed to do so previously, did SCS during the 2024 rehearing process prove its proposed hazardous pipeline's location, construction, and operation, if any, will produce minimal adverse effects on the environment and welfare of the citizens of North Dakota such that the PSC is justified in approving both SCS's application for certificate of corridor compatibility and route permit?
4. Given SCS failed to do so previously, did SCS during the 2024 rehearing process prove its proposed hazardous pipeline's location, construction, and operation, will be in a manner compatible with the environmental preservation and efficient use of resources such that the PSC is justified in approving both SCS's application for certificate of corridor compatibility and route permit?

5. Given SCS failed to do so previously, did SCS during the 2024 rehearing process prove its proposed hazardous pipeline's location, construction, and operation, will minimize adverse human and environmental impacts while also ensuring continuing system reliability and integrity and fulfilling the energy needs in an orderly and timely fashion such that the PSC is justified in approving both SCS's application for certificate of corridor compatibility and route permit?

## ARGUMENT

7. If approved, Summit's pipeline will jeopardize and infringe upon a historic and unprecedented number of landowners' property rights in North Dakota infusing uncertain, risk, and negative economic impacts. Given this reality, North Dakota law requires companies like Summit successfully clear several hurdles before corridor and permitting approval is granted. In this case, Summit's application fails critical requirements imposed under North Dakota law, and its certificate for corridor compatibility and its route permit should therefore be denied.

A. No evidence of net economic benefits.

8. Nowhere in the legal factors or questions presented does North Dakota law allow the PSC to give a nod towards an Applicant because of claimed or proved economic benefits. Likewise, the concept of "market forces" or "market demand" have absolutely nothing to do with the question presented surrounding whether SCS has satisfied its burden of proof. Market or industry demand for CO<sub>2</sub> storage is not something that should factor into any PSC consideration as to the applications pending. The entire concept of economic benefits as justification for corridor and route approval is an industry fallacy. Despite this, SCS again spent significant time touting claimed benefits.

9. Summit's new witness for this purpose, Dan Pickering, was offered to prove SCS's alleged economic benefits to North Dakota. This approach did not work. Pickering's statements were based upon an Ernst & Young April 2022 report. Pickering's testimony was little more than summarizing this "report" – see page 3 of Pickering's pre-filed testimony. The reliability of Summit's "economic contributions" claims regurgitated by Pickering can be summed up by simply reading the limitations and restrictions and disclaimers within Ex. LO 40, page 2, of the Ernst & Young ("EY") report (Doc. \_\_\_\_):

Limitations and restrictions

The services performed by Ernst & Young LLP (EY US) in preparing this report for the Summit Carbon Solutions were advisory in nature. Neither the report nor any of our work constitutes a legal opinion or advice. No representation is made relating to matters of a legal nature. **Our scope of work was determined by Summit** and agreed to by EY US pursuant to the terms of our engagement agreement. Certain analyses **and findings in this report are based on estimates and/or assumptions about the cost of construction and operation of the Summit Carbon Solution's pipeline project.** The findings and analyses contained in the report are based on data and information made available to EY US through the date hereof. Should additional relevant data or information become available after the date of the report, such data or information may have a material impact on the findings in the report. EY US has no future obligation to update the report.

The report is intended solely for use by Summit Carbon Solutions. While we believe the work performed is responsive to Summit's request pursuant to the scope of work in the SOW, **we make no representation as to the sufficiency of the report and our work for any other purposes. Any third parties reading the report should be aware that the report is subject to limitations, and the scope of the report was not designed for use or reliance by third parties for investment purposes or any other purpose.** We assume no duty, obligation, or responsibility whatsoever to any third parties that may obtain access to the report. (emphasis added).

10. Summit's economic contribution "evidence" on its face warns the PSC, as a third party, to not rely on the report findings and conclusions for any purpose!

To make matters worse for Summit, EY describes further limitations on the reliability and veracity of its report as found on page 3 of Ex. LO 40 (Doc. \_\_\_\_:

"In interpreting the results, the reader should note the following:

All of the results presented in this report are based to some degree on **data provided by Summit, which has not been independently audited or validated** by EY. As such, EY offers no opinion on the validity of the data provided by Summit..." (emphasis added).

**"The economic impact does not consider the counterfactual. Total employment figures presented in this report are not necessarily net new jobs,** but rather gross new jobs supported in the five pipeline states and the rest of the United States. Some of the jobs may be supported as workers shift between industries in the labor market, meaning the **net change in employment will likely be smaller than the gross employment impacts shown in this report.**" (emphasis added).

11. The fact Summit's self-serving "guess-ta-ment" of economic impacts fails to consider the counterfactual is devastating to their case. Summit asks the PSC to conclude that if any labor is utilized for its project or it expends any money on a good or service in advancement of its project, then SCS has checked the box of economic benefit. The reality is that none of the burdens of proof suggest the PSC can or should consider any alleged economic benefits—there is no economic benefit box in the analysis. However, even if PSC considers economic claims, the PSC cannot rely on witnesses and data that doesn't consider the other side of the ledger – the counterfactual. The cost and negative impacts of the "project" were not analyzed or calculated. Over \$18 billion in subsidies via tax credits and further county tax subsidies are costs, not benefits, of the "project" that SCS conveniently fails to

acknowledge. Landowners contend that *if* the PSC is going to consider irrelevant SCS arguments, it should engage in logical analysis of net overall benefits, if any, and more factually the net costs of the proposed project.

12. The primary beneficiary of this hazardous pipeline is Summit and its wealthy venture capitalists. This project exists because of the 45Q Tax Credit boondoggle. While the 45Q issues are not the PSC's problem, the practical reality of those credits and the effects are inextricably linked to SCS's argument. Summit seeks authority to construct a pipeline with capacity, as proposed, to move 18 million metric tons of CO<sub>2</sub> per year. The 45Q Tax Credits would be revenue to Summit of \$85/metric ton of CO<sub>2</sub> captured.<sup>2</sup> \$85/metric ton x 18,000,000 metric tons = \$1,530,000,000 per year. Presently the tax credits are available at this rate the 12-year period beginning on the date the equipment was originally placed in service<sup>3</sup>. 12 years x \$1,530,000,000 per year = \$18,360,000,000 paid to Summit. Not too bad when Summit's business model requires the use of eminent domain to take the land of North Dakotans over their objections.

13. Not only does this \$18+ billion go to Summit—instead of the State of North Dakota or the public—because it is in the form of tax credits, the public gets to pay for this by making up the tax revenue deficit. Obviously, it takes tax revenue to operate the United States and when tax credits are offered one is reducing the tax receipts of the Country. As Summit does not pay tax on the tax credit sums received

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<sup>2</sup> 26 U.S. Code § 45Q

<sup>3</sup> 26 U.S. Code § 45Q(a)(4)(A)

like a typical business would pay tax on its net income, the public will make up the tax revenue shortfall.

14. Thus, the foundation of any honest analysis is that SCS starts in a \$18,360,000,000 hole and they failed to prove how the public even gets back to baseline \$0. Summit hasn't done so because it can't do so. Based on the record, it is impossible for this pipeline as proposed to ever be a net benefit to anyone but Summit. If it is not a net benefit to the citizens then by definition approval of such pipeline would have a negative impact upon the citizens.

15. If the PSC approves these applications, Summit's temporary out-of-state third-party contractors and their subcontractors will infiltrate North Dakota for a year or two. The wages paid will largely be spent out-of-state in the resident state of those pipeline workers, and North Dakota won't see even a temporary bump in state income tax receipts. The personal property tax and very minimal real property tax Summit is required by law to pay on its pipeline and related appurtenances is a rounding error when compared to the billions Summit will take from federal tax revenues. There is no urgency to approve the applications because as long as the construction of the qualified facility begins before January 1, 2033, it can be eligible for the 45Q tax credits.<sup>4</sup> There is time to get this right and there are simply too many problems with the current applications that they must be denied.

16. These tax credits – are a cost to the public and not a benefit of the project – the public would not be the primary beneficiary of the pipeline. The primary

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<sup>4</sup> 26 U.S. Code § 45Q(d)(1)

beneficiary is Summit's secret group of investors. In no universe could the public ever benefit more than Summit's shareholders. Summit's business plan doesn't allow it. This is not a utility providing any sort of energy delivery or energy transportation to further the public need or use.

17. Furthermore, Pickering's testimony was purely speculative and does not aide in evaluating the questions before the PSC. "North Dakota could become a central player in the US CCUS industry" although "[I]t is hard to predict exactly how this could manifest..." (Pickering pg. 4 ln 7-8 and 9 (Doc. 528)). All of Pickering's claimed possible "additional revenue" theories are speculative and unreliable. Pickering talks about "Summit's project" meaning the capture equipment that connects to the pipeline, the pipeline, the equipment that offloads the CO2 from the pipeline to permanent storage sites and those sites themselves. The PSC, however, has made it clear that only the proposed pipeline is in its jurisdiction and the PSC therefore cannot consider any claims about Summit's "project" or "system" because neither of those things are before the PSC.

18. As to the unsupported allegation of increased corn prices, it is not the PSC's job to promote inflation and increased consumer costs – both of which are direct negatives to the citizens of North Dakota. It is laughable to suggest global corn prices<sup>5</sup> will be affected upward by the existence of the SCS hazardous pipeline but even if they would – there is no promise or contract or obligation to pass along any higher price to a single North Dakota farmer that would haul its corn to a single

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<sup>5</sup> See LO Ex. 1 – Historical Corn Price Chart (Doc. 574)

participating ethanol plant. This is indicative of the actual “winners” should the PSC approve the applications – the corporate maximalists and the politicians they love – not the people.

19. As to the claim CO<sub>2</sub> transported on the proposed hazardous pipeline “can support Enhanced Oil Recovery projects (EOR)”<sup>6</sup>, SCS specifically states, as has been reiterated in sworn SCS testimony by its executives, that the CO<sub>2</sub> SCS would transport is for permanent sequestration and storage – period. There is no evidence of any Summit transported CO<sub>2</sub> being used for EOR, but if there was, that would eliminate any claimed environmental benefits and would eliminate reduction in any alleged indirect Carbon Intensity (“CI”) benefit of a single ethanol plant. SCS can’t have it both ways and advance both arguments. If reduction of CI scores is the driving force for over 2,000 miles of intrusive risky pipeline, perhaps first it would make sense to consider all the ways to reduce CI scores that do not consist of hundreds and thousands of miles of unwanted infrastructure such as the many solutions found in LO Ex. 41 (Doc. 589):

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<sup>6</sup> See Pickering Pre-filed testimony at pg. 6 (Doc. 528)

**Table 1.** Principal Options for GHG Reductions at Corn Ethanol Plants

Scenario	kg CO <sub>2</sub> /MMBtu	Description	Assumption/ Calculation Basis <sup>b</sup>
Baseline	55.5	U.S. Average dry mill ethanol.	22,480 Btu/gal, 0.61 kWh/gal, 2.86 gal/Btu
<b>CI Reduction<sup>a</sup></b>		<b>Low CI Production Technologies</b>	
CCS	-33.8	Store CO <sub>2</sub> underground	Capture 90% of fermentation CO <sub>2</sub>
Renewable Power	-3.8	REC for electricity as well as on-site wind or solar power	0 g CO <sub>2</sub> e/kWh, per GREET
Biomass Heat and Power	-20 to -25	Power and heat generated at corn ethanol plant.	Eliminates natural gas and electric power emissions. Calculate GHG emissions from biomass use in GREET.
RNG	-21	40% of natural gas from RNG	- 100 g CO <sub>2</sub> /MJ dairy, swine, or steer manure. Calculate GHG emissions based on RNG use and CI of RNG.
<b>Farming GHG Reductions</b>			
Green NH <sub>3</sub>	-6.1	Green Ammonia for Fertilizer	FD-CIC Green Ammonia
Low CI NH <sub>3</sub>	-2 to -5	Ammonia with CO <sub>2</sub> capture	Calculate GHG emissions based on ammonia production process.
No Till	-3.4 to -6.5	Switch Reduced to No Till farming	FD-CIC Reduced Till to No Till depending upon region.
Fertilizer	-2.4	Nitrogen efficiency	FD-CIC Enhanced Efficiency Fertilizer
	-5.2	Precision application	FD-CIC (4R) Right time, place, form, rate
	-1 to -3	Bio-based fertilizer	Calculate based on farming inputs
Manure Application	-5.5 to -28	Mix of dairy, swine, cattle, poultry manure	FD-CIC Manure Application
Cover Crop	-20.4 to -39.1	Grow winter cover crop	FD-CIC Cover Crop

20. None of the Pickering assertions were made to a reasonable degree of professional certainty and all Pickering's claims relying upon EY claims were all disclaimed as noted above. The "report" and its "findings" that Pickering relied upon are unreliable and should not be considered. Hence, the PSC has no reliable evidence related to economic benefits of the pipeline, but even if it had been presented such evidence, such evidence does not satisfy SCS's burdens of proof.

21. In sum, SCS's attempt at expert economic testimony falls flat. Pickering simply dresses up and regurgitates the client's, SCS, rosy unverified and unvetted one-sided self-serving projections and then relies upon a "report" that warns that no

third party should rely on the report or its conclusions which are based on unaudited and unvalidated data and whose alleged economic impact conclusions do not consider the counterfactual. PSC, please do not pass go, do not enable Summit's collect \$18.5 billion in federal taxpayer subsidized credits, and instead proceed directly to denial of the SCS applications.

B. There is still no evidence SCS is the savior of ethanol.

22. After all this time and opportunity for SCS to prove its wild claims that placing this proposed pipeline in the ground will save the ethanol industry there has been no proof to support this claim. Not a single workpaper or reliable calculation are in evidence. In fact, two North Dakota ethanol plants have been sequestering CO2 for years and, not surprisingly, no other North Dakota plant or other has gone out of business because of this. In other words, ethanol plants not sequestering CO2 have not gone out of business nor was there any evidence they would, simply because other existing ethanol plants are sequestering CO2 they emit. North Dakota is the case study that proves those that sequester CO2 and those that do not can live in economic harmony and both prosper.

C. This is still a 12-year pipeline.

23. It would be irresponsible for the PSC to approve a 12-year pipeline, particularly when balancing all the negative implications to North Dakota and its landowners and citizens. Landowners offered Summit the opportunity to prove its proposed hazardous pipeline has an operations life cycle greater than the 12-year 45Q tax payment scheme. Summit willfully failed to produce any such evidence and in

fact failed to provide any substantive response, because they cannot. SCS continued to discuss “low carbon fuel markets” but failed to explain exactly how any North Dakota ethanol was going to physically get to those markets, how long the markets would be available, and the direct alleged benefit of those markets on the public at large. Summit failed to meet its burdens of proof.

D. There is still no evidence of net carbon emissions reduction.

24. This time, Summit directly claims climate benefits via reduced carbon emissions as a purpose of its proposal; however, it provided no evidence of any of the following such that the PSC cannot determine any net permanent reduction on carbon emissions.

- How much carbon will be released during construction of the pipe itself?
- How much carbon will be released during transportation of the pipe to across the state?
- How much carbon will be released during mobilization and transportation of every person and piece of equipment used for pre-construction, construction, post-construction, and remediation related to the pipeline?
- How much carbon will be released during construction of the pipeline?
- How much carbon will be released during the disturbance of land that otherwise was no-till or low-till farm ground?
- How much carbon will be released during construction of the capture facilities?

- How much carbon will be released during the lifetime maintenance of the capture facilities?
- How much carbon will be released during the lifetime maintenance of the pipeline?
- How much carbon will be released during the lifetime operation of the capture facilities?
- How much carbon will be released during the lifetime operation of the pipeline?
- How much carbon will be released during decommissioning of the pipeline?

25. These questions should have been answered by Summit before the PSC can ascertain Summit's claims or perform its analysis. Given only Summit has the burden of proof and there was none offered as to these questions, it is impossible for the PSC to find that Summit has offered sufficient proof that there would be any net reduction of carbon emissions in the world's atmosphere simply if this project were to be approved. Summit has the burden of proof and it failed.

E. Liability insurance negative impacts not cured by Summit's promises.

26. The PSC previously relied upon pre-filed testimony of Micah Rorie of June 1, 2023 (Doc. 289), in concluding "no additional requirements are needed to ensure the Project will have minimal adverse impacts on the liability insurance requirements of the landowners." See Filing 375 para 18. The PSC relied on the testimony that SCS would hold liability for a rupture unless the rupture or release

was caused by a third-party line strike. As established in the testimony, this indemnity provision only applies to those landowners who signed a contract with SCS. Second, SCS officials testified the most frequent pipeline damage is due to third-party line strikes. Assuming this testimony is accurate, SCS fails to disclose that its insurer could still sue a landowner claiming that landowner or their invitee caused or contributed to a release after that insurer paid out on Summit's insurance policy post release. Summit does not indemnify or hold harmless landowners from such a lawsuit, financial damages, stress, and risks. Further, in the instance of a third-party line strike, if unintentionally caused by landowner or their tenant or contractor or invite, there is no prohibition against Summit suing landowner leaving it to the Courts to sort out fault. In short, the mere presence of a hazardous CO2 pipeline is a constant risk for every landowner. Significant testimony described the concern, stress, and sleepless nights of landowners confronted with such risks, and inability to insure and protect themselves and their life's work. Summit has not presented evidence to minimize such substantial negative impacts.

27. The point is, regardless of if this pipeline becomes obsolete when the 45Q tax credits run out or if it is operating long into the future, the landowner is always at risk that a clever insurance defense attorney or pipeline attorney will develop a theory that could bankrupt any landowner unfortunate enough to own property upon which this pipeline is placed. And, even if they were lucky enough to escape liability, the cost and stress to defend themselves from a lawsuit can never be

recouped. These are real risks and real costs to North Dakotans. These undue impacts to the farming and business operations of the landowners are too significant to ignore.

F. CO2 is still toxic.

28. The PSC previously concluded safety compliance with PHMSA construction and operation minimum standards were outside the jurisdiction of the PSC. (See Aug order para 13 - Doc. 575). However, the PSC should not approve a pipeline that could cause any significant adverse effect upon human health and safety and animal health and safety. N.D.A.C. § 69-06-08-02(3)(b)(6-7). Additionally, all aspects of safety related to the siting determination and the ultimate location of a hazardous CO2 pipeline is solely within the purview and charge of the PSC given no federal agency or rules pertain to where such infrastructure may be located within North Dakota. Because safety in these regards is the explicit job of the PSC to carefully consider, the PSC cannot conclude Summit has proven the requisite human health and safety parameters given the dispersion modeling, plume modeling, and risk modeling in evidence relevant to CO2 pipelines. Summit consistently refused to produce reliable risk analysis and plume modeling data.

29. Summit did not and cannot defend itself against the significant evidence detailing the omnipresent risks this project poses to North Dakotans. Unlike crude oil or its derivatives currently moving across through states, compressed supercritical CO2 is an asphyxiant and a toxicant and heavier than air. Rather than sinking and staying on the ground like crude oil would, released CO2 displaces oxygen and can

travel at concentrated levels. The direction of travel is variable given the effects of weather, topography, and many other factors.

30. Because analysis of potential effects upon human health and safety is one of the key factors for PSC consideration, the PSC must rely upon dispersion, plume, and risk related data before concluding if either the corridor or route are proposed in intelligent locations. Respectfully, Landowners are prejudiced by being unable to see Summit's dispersion modeling. Without this evidence, Landowner's do not have the ability to test the credibility of the modeling, examine witnesses regarding the modeling, and to argue this matter to the PSC. Thankfully, Landowners provided the PSC industry data as to risk of plume travel and dispersion and the ability for a toxic CO<sub>2</sub> plume to travel at dangerous concentration levels in exhibits LO 45 and LO 46 (Doc. 635), which is data relied upon by both the South Dakota Public Utilities Commission and the Illinois Commerce Commission in review of the Navigator Heartland Greenway pipeline ("Navigator") as well as the Minnesota Public Service Commission in Summit's proceedings, respectively.

31. Navigator is Summit's prior competitor, who to its credit, publicly released most of its risk modeling in both South Dakota and Illinois. One can safely assume that Navigator's data and conclusions, LO exhibit 45 (Doc. 635), are conservative given it intended the results to be used to help it get its project approved in multiple states before giving up realizing pursuing these CO<sub>2</sub> pipeline projects is hopeless. LO Ex. 45 (Doc. 635) is the Navigator CO<sub>2</sub> Air Dispersion Guidance as released in the Illinois Commerce Commission hearing and received in evidence in

the South Dakota PUC hearing. “This Document is intended to outline Navigator CO2 Ventures’ (“NCO2V”) Heartland Greenway System (“HGS”) guidance and philosophy for carbon dioxide (“CO2”) air dispersion modeling, as a tool for risk analysis.”<sup>7</sup> In developing this data, the highest level of risk was established to mimic the Potential Impact Radius (“PIR”) calculation and method found at 49 CFR 192 (192.903).<sup>8</sup> “The worst-case release scenario is defined as a guillotine rupture (e.g., failure of a girth weld) which has caused the pipe to separate and discharge the pipeline contents into the atmosphere.”<sup>9</sup>

32. Navigator’s modeling for its proposed supercritical CO2 pipeline, the most similar of any to SCS’s, determined a 105,000 ppm CO2 concentration exposure to be Hazard Level 4, and **40,000 ppm CO2 concentration level is Hazard Level 2** with Hazard Level 1 equating to 30,000 ppm CO2 concentration exposure. **The National Institute for Occupational Safety and Health (NIOSH) defines IDLH as “the atmospheric concentration of any toxic, corrosive, or asphyxiant substance that poses an immediate threat to life, could cause irreversible or delayed adverse health effects, or could interfere with an individual’s ability to escape from a dangerous atmosphere.”** <sup>10</sup> Human exposure to 40,000 ppm of CO2 is “immediately dangerous to life or health (IDLH).”<sup>11</sup> (emphasis added)

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<sup>7</sup> LO Ex. 45 pg. 3 (Doc. 635)

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at pg. 7

<sup>10</sup> LO Ex 42 pg. 1 (Doc. 589)

<sup>11</sup> *Id.*

33. The PSC has these publicly released hazard distance findings for consideration<sup>12</sup>:

Nominal Pipe Diameter	Hazard Level 4	Hazard Level 3	Hazard Level 2	Hazard Level 1
6"	321'	████	1,240'	1,971'
8"	417'	████	1,855'	2,753'
12"	████	████	████	3,291'
16"	████	████	████	3,644'
20"	1,029'	████	2,920'	4,250'

The input categories and values leading to each of these Hazard Level distances can be found at Ex. LO 45 pg. 14-18 (Doc. 635).

34. Summit failed to produce a similar document for consideration and failed to provide their risk analysis inputs. Without Summit's counter evidence, the PSC only has the evidence described herein on which to resolve the question of intelligent location for hazardous infrastructure, known as siting and routing CO2 pipelines, in terms of impacts upon human health and safety, animal health and safety, as well as considering adverse effects on the environment and welfare of the citizens of North Dakota.

35. For North Dakota, Summit proposes 8" diameter pipe up to 24" diameter pipe. See Ex. LO 28, pgs. 2 and 3 (Doc. 575). As is obvious from the Navigator Hazard Chart above, the hazard distance in feet increases as the diameter of the pipe increases because more volume of toxic CO2 is being transported. Taking a trip back to high school geometry, it is basic math that the formula to calculate the volume of

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<sup>12</sup> LO Ex. 45. at pg. 10 (Doc. 635)

any cylinder is proportional to the radius squared times the length. Therefore, it takes more than fifteen (15) 8" diameter pipelines to carry the same volume of one 24" pipeline. A twenty (20) mile long segment of 24" pipeline, if full of CO<sub>2</sub>, could fill 1,880 Olympic size swimming pools.

36. Based upon simple mathematics, the hazard distance for Summit's 24" diameter pipeline is significantly larger than the distances for a 20" pipeline across all Hazard Levels, but the known 2,920-foot hazard distance for a much smaller 20" pipeline should be frightening enough. Using the volume calculation, we know that a 24" diameter pipeline will hold 44% more volume of CO<sub>2</sub> than a 20" diameter pipeline. If we were to apply 44% more volume to the 2,920-foot hazard zone that would be 4,204.8 feet. Summit has not produced any evidence to counter Landowners' evidence.

37. Additionally, arguably independent analysis of the proposed Summit pipeline in Minnesota, Ex. LO 46 pg. 4 (Doc. 635), shows a mere 4" diameter CO<sub>2</sub> pipeline can lead to a toxic impact of CO<sub>2</sub> at the immediately dangerous to life and human safety level of 40,000 ppm concentration out to 617.5 feet from the pipeline rupture or release location. Interestingly, Summit's data provided to the Minnesota PSC on this exact same proposed project, underreported the 4" hazard distance by 21.2%, given Summit reported a 509.6-foot hazard distance while the independent analysis in LO 46 (Doc. 635) reported a 617.5-foot hazard distance. Again, this analysis was done on a 4" diameter pipeline and the smallest requested pipeline diameter before the PSC is 8 inches. If any data should inform a state regulatory body charged with deciding whether or not segments of a proposed hazardous pipeline are

intelligently located or not, the dispersion risk analysis and data is exactly that. There is no better science or mathematical predictor than reliable dispersion risk analysis – without this the PSC cannot conclude SCS satisfies its burdens of proof.

38. It is not appropriate to approve a location or route of this pipeline anywhere that an occupied structure, such as a residence, business, school, nursing home, place of worship, or similar presently exists within at least 1,855 feet of an 8” diameter CO2 pipeline, 2,920 feet along any portion of a proposed 20-inch diameter CO2 pipeline, and at greater distance for locations of a 24-inch diameter pipeline. Note that Ex. LO 10 (Doc. 574) discusses one of the more recent CO2 pipeline failures, this time at a pump station in Sulphur, Louisiana on April 3, 2024. Calls to Exxon went unanswered when landowners reported dense white gas gushing out vertically and horizontally from the pump station. A shelter-in-place order was issued for residents within a 0.25 mile, or 1,320-foot, radius of the pump station leak.<sup>13</sup>

39. Computer plume analysis prepared immediately after the Sataria Mississippi explosion modeled hazardous CO2 traveling nearly 40 kilometers (24.855 miles) from the rupture and that concentrations above 30,000 ppm travelled up to 10 km or 6.2 miles<sup>14</sup>:

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<sup>13</sup> See LO Ex. 10, pg. 5 (Doc. 574)

<sup>14</sup> JW Exhibit W155, pg. 12, PHMSA Failure Investigation Report – Satartia, MS (Doc. 152)

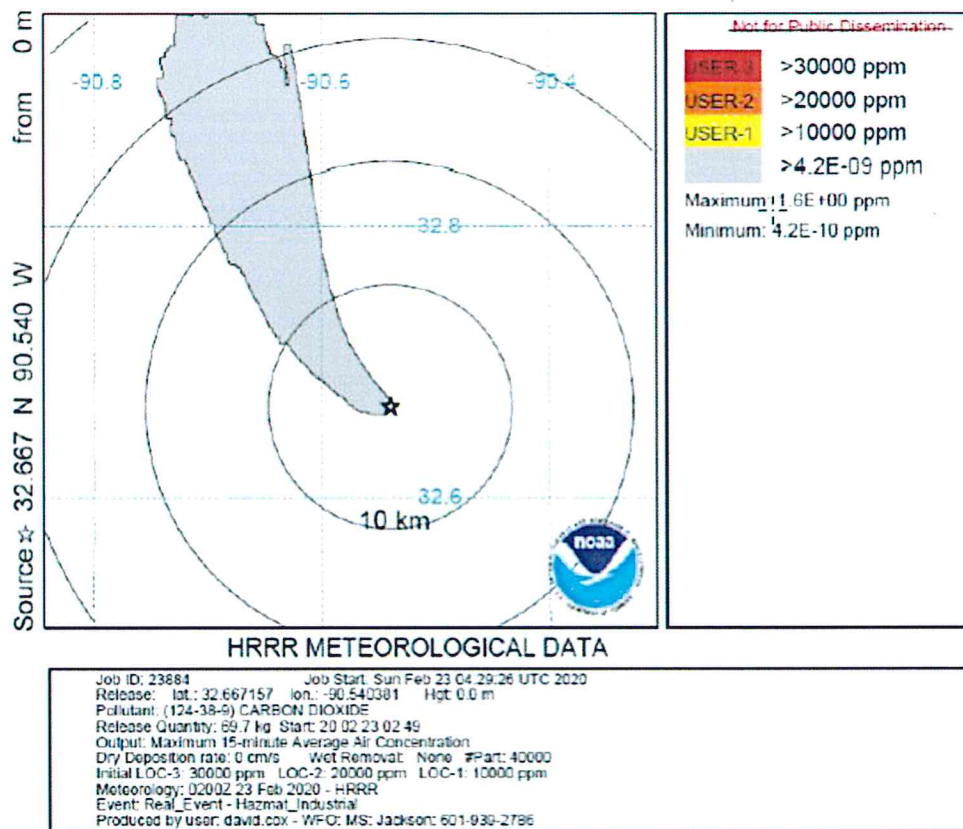


Figure 5: This Chart Shows the Plume Model Data Generated by the National Weather Service/NOAA - The Model Indicates the direction a Plume or Cloud of CO<sub>2</sub> Would Have Followed from Ground Level While Dissipating, According to Atmospheric Data at the Time of the Release - Each Ring is 10 Kilometers (Satartia is Less Than Two Kilometers Northwest of Release Site, Indicated by the Star)\*

It is important to note the above model is arguably conservative in that the wind speed input was 6 miles per hour. The more wind, the more assistance to disperse and decrease the concentration levels. Had this been modeled at a lower wind speed the results could have been worse.

40. Landowners argue that in places near towns, cities, or areas with development potential, it would be inappropriate to approve any route now that would act as a chilling effect on future economic development and growth of those communities. Ex. LO 42 (Doc. 589), an aerial depiction of CO<sub>2</sub> hazard distance from an 8" diameter pipeline, is an exemplar of the kind of evidence that the PSC should

have required Summit produce and that the PSC should have reviewed related to the North Dakota specific proposed route, but it did not. To make matters worse, PHMSA does not require Summit's CO2 plume modeling be kept confidential and PHMSA does not instruct companies, like Summit, on what they can and cannot share with the public. See Ex. LO 32 (Doc. 589).

41. Below is compiled data directly from Summit's discovery admissions to Landowners at LO Ex. 22 (Doc. 574) that provides perspective for the PSC as to structures located with the corresponding hazard distances:

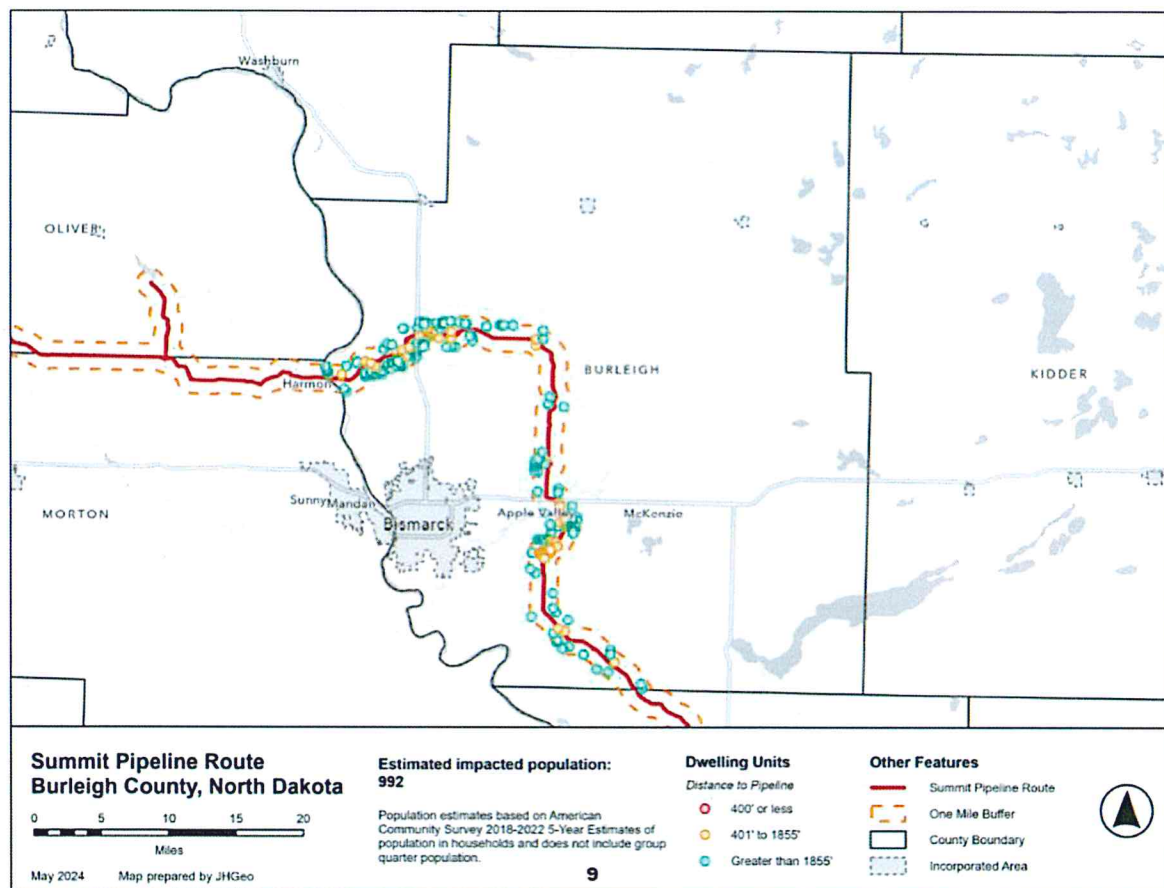
Structure Use Type	0-100 Feet	101-250 Feet	251-500 Feet	501-750 Feet	751-1000 Feet	1001-1500 Feet	1501-2000 Feet	2001-2500 Feet	2501-3000 Feet	3001-3500 Feet	3501-4000 Feet
House, trailer, house that may be business	0	1	2	36	36	69	55	98	98	78	75
Business, barn that may be a business	0	0	3	2	2	5	2	0	1	1	3
School	0	0	0	0	0	0	1	0	0	0	0
Animal feeding operation	0	0	0	1	5	0	9	4	8	3	4
Church	0	0	0	0	0	0	0	1	0	0	1
Uninhabited barn, garage, or shed	1	4	22	109	124	195	198	258	319	218	219
<b>TOTAL:</b>	<b>1</b>	<b>5</b>	<b>27</b>	<b>148</b>	<b>167</b>	<b>269</b>	<b>265</b>	<b>361</b>	<b>426</b>	<b>300</b>	<b>302</b>

42. SCS will likely point to N.D.A.C. § 69-06-08-02(2)(e), the 500' waiver rule, and argue that is the only limitation in state law on the distance a hazardous pipeline can be in relation to a residence. But the fact this law exists is completely irrelevant to the job of the PSC which is to independently and intelligently route or decide not to route certain infrastructure. The 500' rule is also completely arbitrary for a CO2 pipeline, as admitted by Mr. Powell during the first set of hearings. Simply because a law exists that allows for possible location of hazardous infrastructure less than 500 feet from a residence does not therefore mean it is wise or safe to in fact enter an order granting such a route to a carbon dioxide pipeline. The 500-foot statute makes no accommodation for the varying sizes, thus the varying risk profiles, of

hazardous pipelines. The PSC may consider the arbitrary 500-foot statute but that statute in no way is an invitation for the PSC to simply conclude anything greater than a 500-foot separation distance from a home or other inhabited or frequently visited or used structure is therefore a safe or an intelligent location for a hazardous CO2 pipeline. It is the PSC's job – and no one else – to utilize the legal factors to determine safe location and nowhere in those factors does it say the PSC must conclude 500 feet is the magic dividing distance. Furthermore, a waiver is simply a signature of one person on a piece of paper and that signature does not change physics or mathematics or geometry or risk factors related to a hazardous CO2 pipeline nor does that signature protect any other person or future inhabitant or even the waiver grantor for that matter. Should a rupture or unintended release event occur, does the waiver grantor also waive the right to call first responders, to expect aid and assistance, to expect they would be safely evacuated? The reality is—waiver or no waiver--such persons are in harm's way and will trigger publicly funded resources to address their worries, risks, and needs in that moment of distress.

43. Throughout the 2024 rehearings, the Commission asked witnesses what they believed a safe distance would be. Landowners suggest science and math be the PSC's guide. If that approach is accepted, then the current route must be denied, as it would be far too close to homes, places of business, and certain communities as shown above. In this case, SCS failed to prepare a visual depiction of its proposed hazardous pipeline in relation to various structures so Landowners were forced to prepare this data. See LO Ex. 47 and pages 9-18 prepared by GIS expert Jason

Howard (Doc. 590). An example below is page 9 depicting dwelling units within 401 feet to 1855 feet, which is a very conservative range given an 1,855-foot hazard distance corresponds to an 8" diameter pipeline but the Bismarck route proposed below is for a significantly larger 24" diameter pipeline. Regardless, in the very conservative analysis, 992 people would be negatively impacted.



44. LO Ex. 47 pages 19-22 (Doc. 590) show areas of geohazard concern and specifically landslide areas. Recall, a landslide contributed to the Satartia, Mississippi disaster. Example below:



#### G. Keep Sataria in Mississippi

45. Landowners also contend that Satartia Mississippi foreshadows North Dakota's fate in many ways. Denbury Gulf Coast LLC, the owner of the exploded Satartia pipeline and affiliate of a well-established and publicly traded multi-billion-dollar company, Denbury, Inc.—not a start-up like Summit—filed for bankruptcy on July 30, 2020, less than six months from when the CO<sub>2</sub> rupture and release occurred on February 22, 2020. However, even before the Sataria disaster, this CO<sub>2</sub> pipeline had other troubles. “On November 9, 2018, the Delhi Pipeline experienced a girth weld rupture at a valve location during pipeline reloading activities, and not

attributed to natural force damage, which means despite following minimum federal standards in construction, this pipeline still failed.<sup>15</sup> in this incident the pipe failed to perform as intended “due to chilling from the CO2, causing the girth weld connecting the pipeline to the valve body to rupture.”<sup>16</sup>

46. JW Ex. W155 (Doc. 152) is the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) Failure Investigation Report for the Denbury Gulf Coast Pipelines, LLC pipeline rupture, also known as the Satartia, Yazoo County, Mississippi rupture of February 2020. The failed Denbury CO2 pipeline, like 100% of Summit’s Exhibit H requests, was 24-inches in diameter.<sup>17</sup> The maximum operating pressure (MOP) of the Denbury pipeline was 2,160 pounds per square inch (psig) but at the time of the rupture was only operating at approximately 1,400 psig.<sup>18</sup> There were approximately 9.55 miles of pipe between the two existing remotely operated main line block valves.<sup>19</sup> This means that all of the negative effects of the Denbury rupture were from carbon dioxide within a 9.55 mile by 24-inch diameter pipeline operating at 64.8% of MOP.

47. The soil at the failure site in Satartia was “silty and clayey” soil which indicates the soil is prone to absorb water and can collapse or slump under the right

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<sup>15</sup> JW Ex. W155, pg. 5 (Doc. 152)

<sup>16</sup> *Id.*

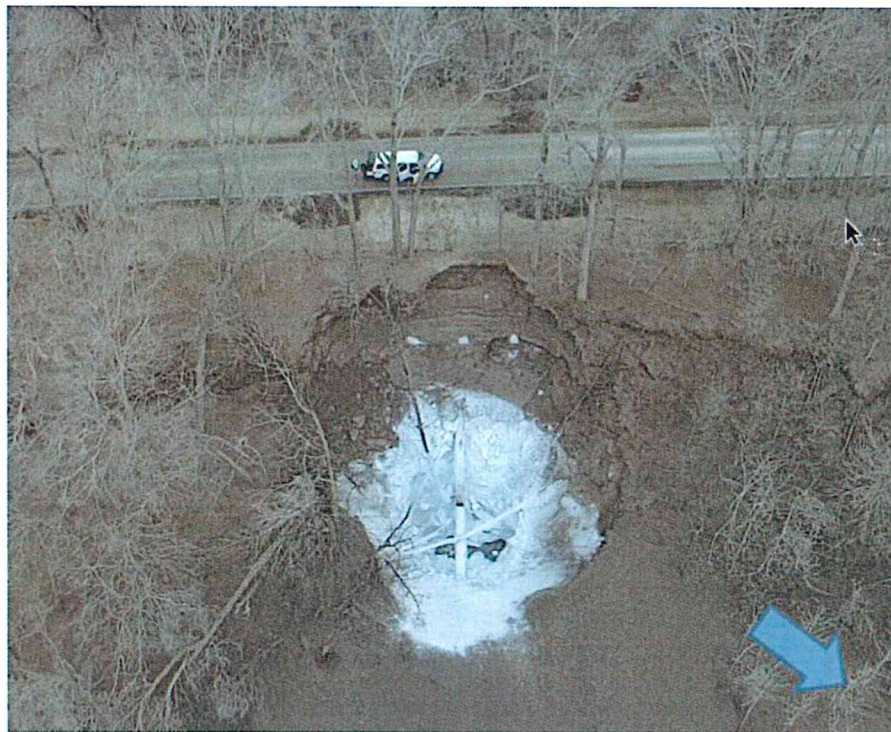
<sup>17</sup> *Id.*, pg. 3

<sup>18</sup> *Id.*, pg. 4

<sup>19</sup> *Id.*, pg. 4

conditions.<sup>20</sup> “Loess soil has a relatively high porosity (typically around 50-55%) ...”<sup>21</sup> Similar soils are present along the proposed North Dakota route.

48. Like Summit, Denbury identified some geohazards but lacked specific and substantive geohazard identification across the entire proposed route such that approval of Summit’s route without this information could prove fatal.<sup>22</sup> Summit has not conducted necessary Phase II geohazard analysis in North Dakota. Despite the 24-inch hazardous CO<sub>2</sub> pipeline being tunneled 30-feet under the highway, the explosion was so violent that it created a 40-foot crater exposing the pipeline as depicted below:<sup>23</sup>



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<sup>20</sup> *Id.*, pg. 13

<sup>21</sup> See Footnote 10 at JW Ex. 155, pg. 13 (Doc. 152)

<sup>22</sup> JW Ex. W155, pg. 14 (Doc. 152)

<sup>23</sup> JW Ex. W155, pg. 9 (Doc. 152)

49. The failed 24-inch CO<sub>2</sub> pipeline ruptured at 7:06 p.m. but it was not until 7:43 p.m. that Incident Command (IC) was able to confirm the pipeline had in fact ruptured; however, no one could get close to the release site due to the ongoing release of CO<sub>2</sub>.<sup>24</sup> At least 21,873 barrels of liquid CO<sub>2</sub> had been released from the pipeline rupture.<sup>25</sup> For reference, there are 42 gallons in one barrel so the CO<sub>2</sub> released was equivalent to 918,666 gallons of CO<sub>2</sub>.

50. Although the pipeline was shut down by 7:15 pm, and the main line block valves at both ends were closed, the remaining contents of the pipe continued to vent to the atmosphere for several hours.<sup>26</sup> Because CO<sub>2</sub> vapor is 1.53 times heavier than air, and displaces oxygen, it can act as an asphyxiant to humans and animals.<sup>27</sup> In Satartia, the CO<sub>2</sub> followed a path downhill and as the discharged volume increased the CO<sub>2</sub> plume moved over the crest of a hill and then into a valley reaching Satartia and its citizens.<sup>28</sup> Hazardous CO<sub>2</sub> continued out of the crater one mile over a hill and into the town, although pre-construction modeling showed Satartia would not be affected.<sup>29</sup>

H. SCS's proposed route is not justifiable.

51. Of SCS's over 350 miles of proposed hazardous pipeline in North Dakota, there are two distinct routes as shown below. Route one has entry into North Dakota

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<sup>24</sup> JW Ex. 155, pg. 6 (Doc. 152)

<sup>25</sup> JW Ex. 155, pg. 7 (Doc. 152)

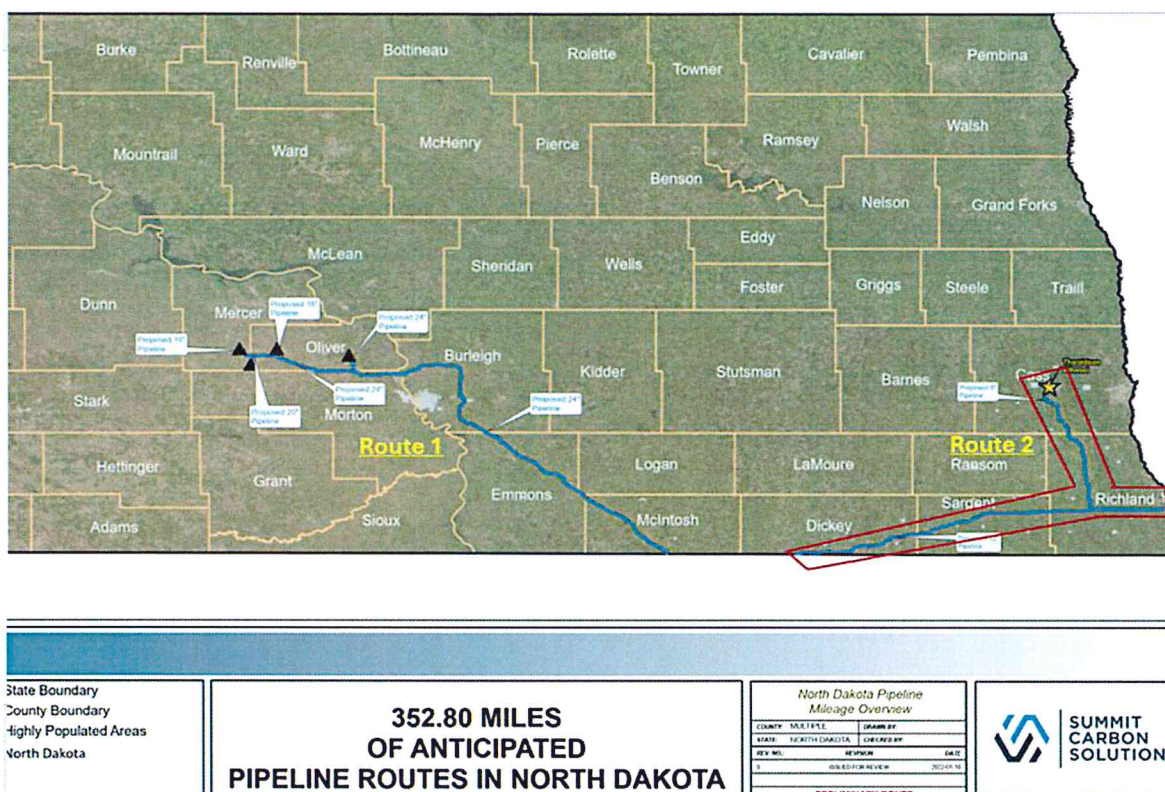
<sup>26</sup> JW Ex. 155, pg. 11 (Doc. 152)

<sup>27</sup> *Id.*, pg. 3

<sup>28</sup> *Id.*, pg. 11

<sup>29</sup> *Id.* pg. 8

in McIntosh County and terminates in Mercer County. Route two negatively affects Cass, Richland, Sargent, and Dickey counties. Route two is outlined below in red. Based upon the evidence received, there is no justifiable way to grant this specific portion of SCS's proposed route.



52. The fact a single North Dakota private business is contracted to this project and that this has not changed date of application filing in October 2022, is significant. Approximately half of the entire North Dakota proposed route and the upheaval, landowner inconvenience, property use and development restrictions, and unnecessary costs and risks to all person, animals, and communities along the Cass to Dickey should not be found in Summit's favor. Furthermore, Summit has failed to offer any evidence on its compliance with local ordinances and zoning requirements—

or how it will be inspected and the standards it will be held to. This decision by the PSC is currently under review by the Supreme Court and the PSC should hold off on any decision here until the Supreme Court concludes whether local control still exists in North Dakota, or if as the PSC determined, it is a relic of the past.

53. In the same vein, the McIntosh to Mercer route, can only be justified by weighing potential benefits to private businesses, namely ethanol plants, in other states – states that compete with North Dakota and out-of-state businesses that compete with North Dakota businesses. Given the law constrains the PSC to view approval or disapproval from the standpoint of the citizens of North Dakota, then this route portion must also be denied. Presuming, for argument's sake, the benefits to ethanol plants in other states is the reason and justification the PSC is considering approval of SCS's applications, ask why would the North Dakota PSC approve a project that arguably benefits a single North Dakota business? The pipeline would not transport energy and never will.

I. Adverse economic impacts affecting Landowner Intervenor and the public remains unaddressed.

54. SCS has known of Landowners' specific concerns for nearly two years and certainly since the spring of 2023. The only addressing of Landowner concerns SCS bothered considering were the specifically named Landowners as identified by the PSC in its first denial order. Unless the PSC specifically calls out Landowners by name and conditions future approval and makes that approval contingent upon successfully addressing the specific Landowners concerns presented, no meaningful accommodation efforts will occur. For example, the PSC requested in Supplemental

Filing Request 3.1.3 that Summit identify “[m]easures taken to address all landowners who testified regarding concerns with the pipeline on their property.” Summit responded with a March 4, 2024, supplement that suggests an exhaustive response. (Doc. 452). This was misleading, as there were 6 Landowner Intervenor’s who previously testified and were not listed in Summit’s response, at least 2 Landowner Intervenor’s who submitted written testimony and were not identified in Summit’s response, 2 members of the public who testified and were not listed on Summit’s response, and another 13 Landowner Intervenor’s who have opposed this pipeline. (Doc. 463). Most of these individuals subsequently testified upon reconsideration, as discussed below. However, it is frustrating that the only way a landowner can get Summit’s attention is if the PSC requires it. These Landowner Intervenor’s who oppose Summit’s toxic pipeline on their property include:

- Karla Waloch testified at the May 24, 2024, hearing in Wahpeton about her family’s land located in Sargent County, North Dakota and the impact the proposed pipeline will have on their land. She testified that the current pipeline route is within 100 feet of their calving pasture and is within one-half mile of their home. Karla is concerned about the safety of her family, land, and livestock. Karla testified that their cattle are worth approximately \$600,000 and the pipeline is very close. On March 28, 2024, Karla and Randall Waloch with their mother Shirley Waloch submitted a joint reroute letter to Summit (LO Ex. # - Doc. 574). Three days prior to Karla’s testimony Summit sent them a letter in response (Doc. 576). Karla testified she is willing to discuss a reroute with Summit and that approval of the permit be conditioned on the pipeline being moved off their property. See [Docs. 574 and 576]. However, nothing has been resolved.
- Randall Waloch testified at the May 24, 2024, hearing in Wahpeton about his family land located in Sargent County, North Dakota. Randall testified that on March 28, 2024, he and his family submitted a joint reroute letter to Summit. See [LO Ex. #5 - Doc. 574]. He testified about the location of the pipeline. He provided a reroute onto property of landowners that have already signed an easement with Summit and that would move the property completely

off their land, including his mother's property. This route would keep the pipeline away from his cattle and he knows this route would be better option for the conditions. He also testified that proposed pipeline is 100 feet from his cattle yard. Randall has not been provided a waiver for their cattle business because it is closer than 500 feet. He is concerned about safety of this pipeline. He is also concerned that a rupture of the pipeline would affect his land and that he would lose out on \$600,000 because his insurance will not provide him with coverage. He testified the only contact he had with Summit was with Summit's agent in 2022. His proposed re-route is upon landowners have already signed easements with Summit. He testified that his land is used for crop and cattle. However, nothing has been resolved.

- Loren Staroba testified at the May 24, 2024, hearing in Wahpeton about his family's land located in Richland County, North Dakota and the impact the proposed pipeline will have on their land. He testified that he was not contacted by Summit to offer solutions, reroutes, or other options. Loren testified that through his attorney, Brian Jorde, he sent a reroute proposal letter on April 23, 2024 (LO Ex. #3 - Doc. No. 574). Loren testified that he received nothing from Summit regarding any proposed reroute. He prepared a list and timeline of his years of unsuccessful contact with Summit, through Mr. Jorde and through a third-party attorney, David Piper. In April 23, 2024, Starobas submitted a letter through counsel stating concerns regarding the pipeline and we have not received a response until on May 21, 2024, when Summit provided a vague letter that they will work with the Starobas but with no indication of how or when (Doc. 576). Loren testified that Summit has not proposed a reroute and that the PSC order says Summit is required to do so. Loren testified that his other attorney David Piper has not received any reroutes from Summit either. They have been trying to work with Summit for over a year with no results. Loren testified Summit should be providing something because the application was initially denied due to Summit not working with landowners. Loren testified that landowners around him have signed easements and that should give Summit options. Loren prefers the pipeline to stay off their property, but he is willing to consider alternatives. Loren testified that his land is "scarred" by a 45-year-old Dome LP pipeline and a 25-year-old Alliance NG pipeline. A third pipeline by Summit would only create another hazardous corridor across their same piece of land.
- Jeanne Lugert with the Lugert Land Limited Partnership testified at the May 24, 2024, hearing in Wahpeton about her family's land located in Richland County, North Dakota and the impact the proposed pipeline will have on their land. Jeanne's husband, Marvin Lugert, previously testified last year. Jeanne testified that Summit had not taken any actions to provide any reroutes over the last year. On April 23, 2024, the Lugerts sent a reroute letter to Summit (LO Ex. #4 - Doc. No. 574). Jeanne and Marvin are asking that the pipeline

move further away from neighboring landowners and be more centered, so that it would be farther away from their neighbors. Jeanne testified to her concerns about a leak and the effects it would have on their neighbors. She testified about the Mississippi leak and their worries about neighbors if a leak would occur. She provided this route to Summit's agents back in 2022 and they did not respond. The Lugerts decided to stop talking with Summit because their concerns were not being addressed by Summit. This is when they hired legal representation. At that time, Summit would no longer talk with them. Jeanne testified she would prefer the pipeline not be located on their property at all, however, if the pipeline is approved they want their reroute proposal to be taken into consideration. Summit has known for over a year that any route around them would be accepted. She received Summit's May 21, 2024, letter (Doc. No. 576) and it did not address their reroute proposal. Jeannie Lugert testified she was a first responder and that she learned about the effects of CO<sub>2</sub>. She knows what CO<sub>2</sub> does, and it is not a good thing. A few months ago, she checked with her local fire department they had not heard about any additional training for the CO<sub>2</sub> pipeline. She testified that she is concerned that the value of her land would go down. Lugerts already have a Dome pipeline and Alliance pipeline on their property, and the scars of the Dome pipeline is still visible after 45-50 years. She testified that they would lose \$10,000 in profits from their cropland during just the construction of the pipeline alone.

- Diane Zajac testified at the May 24, 2024, hearing in Wahpeton about her land located in Richland County, North Dakota and the impact the proposed pipeline will have on their land. She testified that she opposes the CO<sub>2</sub> pipeline. She testified regarding her concerns about safety of the CO<sub>2</sub> pipeline. Diane testified that they have not been in contact with her about the proposed pipeline. She is concerned about safety in the event of CO<sub>2</sub> pipeline leak. She has land renters that told her the frost line went lower than four feet. Diane testified that she wants the pipeline at least 500 yards off her property line.
- Valera Hayen testified at the May 24, 2024, hearing in Wahpeton about her land located in Sargent County, North Dakota and the impact the proposed pipeline will have on their land. Valera Hayen testified a year ago in Wahpeton about her concerns and she said Summit provided her with another offer but it did not address her concerns. On April 16, 2024, Valera Hayen sent a (LO Ex. 6 - Doc. No. 574), reroute letter sent with no response. On May 17, 2024, Valera Hayen tried again by sending a second reroute letter (LO Ex. 6 – Doc. No. 574). Valera is still concerned about pasture and crops and forever destroying virgin prairie grass as well as all the rocks that will need to be hauled out. There is significant concern about how Summit proposes to access the pipeline easement area given there are no viable access roads to the location and the terrain is difficult and the topography varies greatly. The way

the pipeline proposes to cross her property diagonally does not provide her access to water for cattle and she is concerned she will not get anyone to rent the land. She testified that no one has talked to her or neighbors in two years. She got one text message to bring her neighbor Paul to talk. She said Summit contacted her kids. She said no one has contacted her since the first day the land agent came. Valera tried to come up with another route through her land and could not come up with one. She provided a route that would follow the Jackson Township Zoning and not be on her property. She testified that there are no access roads to her property and that Valera's house is about 500 feet from the route. She has not been provided a waiver. She does not know how Summit measured the distance from her home. Valera has brownout issues with their electricity, and she does not agree with the pipeline using more electricity. She is also concerned that renters may not want to rent from her. She is concerned about her renter's cattle in the event of rupture. She is concerned about her liability if something happens to the cattle. She is requesting the Summit reroute around her property. She wants their township ordinances followed as to ½ mile away from any home, etc. See Hayen Reroute Map ( LO Ex. 54 - Doc. 643) where two viable re-routes are provided for the PSC's consideration.

- Kari Curran testified at the June 4, 2024, in Linton regarding her mother, Valera Hayen, whose property is located in Sargent County, North Dakota in which she owns a life estate. She testified that she does not agree with the CO2 pipeline. She is worried about her mother's welfare because she is recently widowed. Her mother has been very worried about keeping her renters, a rupture, and about how the construction will affect the cattle. She is worried that she cannot rent land during construction and lose that income. Kari testified that this land is rocky, has native prairie grass, flowers, and old Native American burial sites. This pipeline only runs 500 feet from her mother's bedroom. Kari is aware that her mother has submitted a proposed reroute. See (LO Ex. 54 - Doc. 643)
- Ben Dotzenrod testified at the May 24, 2024, hearing in Wahpeton about his mother's land located in Richland County, North Dakota. Ben Dotzenrod offered a map admitted as (LO Ex. 30 - Doc. No. 621) showing a drainage easement that his mother has on property owned by Ulvens. He testified that Summit did move the pipeline route off his mother's land and that Summit was aware of the easement. Ben testified that the current proposed pipeline is across this drainage easement on the Ulven's property. Ben addressed his concerns about the drain tile that is buried on Ulven's property. Ben provided a copy of the Easement Agreement between his mother and the Ulvens admitted as (LO Ex. 31 - Doc. No. 622). He testified that the pipeline would interfere with the drain tile because the soil is unstable. He is concerned about third party strikes. He is concerned that he or another may strike the pipeline

while digging to maintain the drain tile. He testified that soils in this area are very unstable and easy to make a mistake while making drainage repairs. Ben is concerned that they would not have insurance coverage because they cannot get private insurance and they do not have an agreement with Summit so Summit's insurance would not cover it either. Ben has the right to dig next to the pipeline under the Easement Agreement.

- Rose Dotzenrod testified regarding their drainage easement with the neighboring property. She was never contacted by Summit regarding crossing her drainage easement. She testified that the drain tile system operates by gravity and that it was not easy to find an outlet for water drain on her property. The landowner to the Southwest of her property did not want the water from their quarter of property and that through a second tile application that the landowner to the north did not want the water from their property either. Finally, the landowner directly to the east signed an easement to place a solid drain tile on their property allowing the water to be go to the legal drain. The drain tile was very expensive. The easement exists solely to bring the water from their property to the legal drain. She testified that they dug the drain tile deep enough not to affect her neighbors farming operations. She testified about being concerned about third party strikes because they would have to dig to make repairs to the drain which would be next to the pipeline. She is concerned about their liability if the pipeline would be struck. She testified that Summit knew about the drain tile and that their alternate routes were rejected by Summit. She testified that Ben and Rose had provided alternate routes early on and that Summit disregarded their suggestions. Rose would incur significant initial and ongoing costs should she have responsibility for a lift pump installation and maintenance.
- James Tiegs testified at the May 24, 2024, hearing in Wahpeton about his land located in Dickey County, North Dakota. James testified last year. They were contacted about 2 ½ years ago. They decided they did not want the CO2 pipeline and told Summit's agent the same. They kept pushing and they decided to hire an attorney. James had not had any communication from Summit about a reroute off his property. They told them they cannot survey. Summit unlawfully surveyed his property. He testified that they may move from their land if the CO2 pipeline is placed across their property. They are concerned about a CO2 pipeline breach and if first responders would be able to reach their property. He is concerned about the power grid and power consumption. He asked the Commission to deny Summit's application. He asked that they reroute his property and they said no. He has another attorney that has been working with Summit and they asked for a reroute and they said no.

- Howard Malloy testified at the May 29, 202, hearing in Bismarck about his land located in Morton County, North Dakota. Howard lives in Bismarck and owns land in Morton County. Howard described his property and provided pictures. *See* (LO Ex. 49 - Doc. 638). Howard testified that his insurance company had denied coverage for a CO2 pipeline, and he provided a response letter that his policy will not cover the pollutants. *See* (LO Ex. 44 - Doc. 589) Howard testified that he has been involved in developing residential properties. Howard testified regarding the unique location and characteristics of his property and that the pipeline would cause his property to lose considerable value. Howard testified that he spoke with Mr. Powell about his prime development property and that he requires compensation for the loss of the use of this property. Howard also talked with Rob Sattler about his development plans and Rob did some math and produced the profits Howard would gain from the development of his property, which was approximately \$5,000,000. Mr. Powell said he would take it into consideration and get back to him. Howard did not receive a response. Howard provided a reroute proposal to Summit on April 30, 2024. *See* (LO Ex. 36 - Doc.589). This was a “least worst” option to Summit that would run the pipeline along the south border of his property. He testified that there would still be setback from this border which would cause him not to be able to develop residential lots on the property. He has reservations about selling lots to people near a CO2 pipeline. He is not sure if he would even develop the property if a CO2 pipeline were running through his property.
- Janel Olson with APH Farms testified at the June 3, 2024, hearing about their property located in Morton County, North Dakota. Janel has not testified previously. Janel is deeply concerned about the safety of this pipeline. She provided a picture of her three girls and her daughter and granddaughter. She testified that she hoped her daughters would build on their land too. Janel expressed concerns about the temperatures in ND affecting the integrity of the CO2 pipeline. *See* (LO Ex. 57 - Doc. 645). Janel works in the health care industry. She testified that she is concerned about a mass casualty event if a rupture would occur. Janel testified that Summit has never called, texted, e-mail, or provided a letter to her. All communications have been indirect. She was upset that Summit would meet with Chad Wachter, a developer in Bismarck, but could not even pick up the phone to call her. She is begging the PSC to deny Summits request. *See* (LO Ex. 57 - Doc. 645). Janel no longer believes that her daughter should continue on the family farm because of this pipeline. She testified that her neighbors had very unpleasant contact with Summit. She has not had direct contact with anyone from Summit and she feels that they could have certainly reached out to her and have failed to do so.
- Jon Hagerott with APH Farms testified at the June 3, 2024, hearing about their property located in Morton County, North Dakota. Jon Hagerott provided

a blue folder with photographs and other documentation relating to his communications with Summit. *See* (LO Ex. 55 - Doc. 644). Jon Hagerott testified about three high voltage power lines, an oil pipeline, and a rural water pipeline that runs across his land. He expressed that these pipelines all cause problems. Mr. Hagerott has had issues with the utility companies leaving flag markers on his property, which he has to watch for and clean up because if they get mixed in with his hay his cattle could eat it. He has experienced issues with the current oil pipeline on his property as well. The current oil pipeline dug a massive hole in his alfalfa field and exposed the pipe and took no precautions to reseed. He is concerned about future impacts to his land with a CO2 pipeline located on his property. He has seen firsthand how he is encumbered by the current pipeline on his property. Mr. Hagerott provided photos of where the existing pipeline native grass has never been the same. The powerlines have sent heavy construction crews in to raise the power lines and damaged their property in the process. He showed several pictures of these damages. *See* (LO Ex. 55 - Doc. 644) Mr. Hagerott is concerned that Summit will not treat his land any better than any of these other utility companies. Mr. Hagerott provided a stack of letters from Summit and testified that they have never called or met with him in person. He said other family members have not received any of the letters. He believes maybe his dad received two letters. He discussed a letter from Farmers Union and that they will not insure them. On two separate occasions Summit's agents came to survey his property and he told them did not have access to their property because they do not have a court order. Mr. Hagerott testified that Summit's agents rolled down their window and flipped him off. *See* (LO Exs. 55 and 56 - Doc. 603). He testified that the cost has been substantial and has taken a toll on their mental health. He testified that his mother died of heart failure, and he believes it is because of the stress this pipeline was causing her. He prays that the PSC finds enough evidence in their hearings to deny Summit's permit. *See* (LO Ex. 37 - Doc. 589)

- Jim Rockstad did not testify at the hearings but did provide a pre-filed Hearing Exhibit that was admitted at the June 3, 2023, in Bismarck. Mr. Rockstad submitted this letter to Summit as his "least worst" option and still does not want the pipeline on his property. *See* (LO Ex. 2 - Doc. 574).
- Julie Stramer with the Kertzman Farm Trust testified at the June 4, 2024, in Linton regarding their property located in Emmons County, North Dakota. She testified that the first easement contract provided by Summit says: "Landowner acknowledges and agrees that it releases and forever discharges company for all damages and claims related to the pipeline". The latest easement contract says that "company shall pay indemnify and hold landowner harmless of any loss, damage, claim action resulting from companies use of the easement". Julie read directly from a letter from Jimmy Powell regarding

insurance that stated, "Summit Carbon Solutions is responsible for liability with the pipeline construction and operation". She reads this as there is no protection for landowner. She states several concerns about pipeline safety and pointed out "this pipeline is only four feet deep. We bury people deeper than that". This pipeline is only 1.8 miles from Hazelton. Julie testified that there is no data showing that property values will not be impacted. If a rupture happens, her property will have zero value. Julie testified that she requested a reroute over a year ago and heard nothing. She has not "received an offer for a big check." Julie testified that she has requested a reroute repeatedly. These requests were sent by her attorney, by e-mail, and by certified mail. They have not received any communication from Summit. Julie says they have had no communication besides letters and easements mailed to them. Julie Stramer asked that PSC denied Summits permits because they have not met the requirements of denial Order. *See* (PT 7 - Doc. 633). Julie testified that her land is used for small grains and cropland. She said Summit provided a proposed reroute to Attorney Jorde but it does not change anything for her and does not address the concerns. Lastly, Ms. Stramer is concerned about cultural resources and does not believe Summit has adequately addressed those concerns. *See* (PT 7, Doc. 633)

- Mitch Kertzman with Kertzman Farm Trust testified at the June 4, 2024, hearing in Linton regarding their property located in Emmons County, North Dakota. Mitch Kertzman testified that he provided a reroute letter on April 23, 2024, through his attorney. (LO Ex. 58 - Doc. 617) This is Mitch Kurtzman's "least worst" option. Mitch testified that in Summit's response letter they said they tried to contact him eleven times. *See* Summit Response Letter (Doc. 576) Mitch testified that he never received a phone call from Summit and only mailings. On June 2, 2024, Summit provided a reroute proposal and Mitch responded. (LO Ex. 53 - Doc. 602). Mitch testified that Summit provided a route that would still be on his property. Mitch Kertzman had absolutely no interest in having the pipeline on their property due to liability issues. Mitch wants the pipeline off their property. Mitch's proposal moves the pipeline completely off his property. Summit did not explain to Mitch why they cannot move the pipeline off their property. Mitch testified that other utilities are buried at 6 feet v. 4 feet. Mitch explained that he is a retired civil engineer. He would not purchase property with a CO2 pipeline located on it. Mitch testified that generations of his family will have to deal with the effects of this pipeline on his property. Mitch testified that while farming with several tons of equipment farmers are going to get stuck and the pipe will get hit. He is concerned that they would be responsible and sued for something like this. Mitch asked if the Commission approves this pipeline to stipulate to six feet below the surface. Mitch asked the Commission to stipulate six feet underground for Ag land. Until emergency response training and equipment

is approved the pipeline should not be approved. Mitch testified the \$50,000 for first responders in each county is not enough due to the duration of the pipeline's operation. \$50,000 doesn't even buy a pick-up let alone contribute in a meaningful way to risks present every second of every day for 99 years. \$500,000 for disaster response per smaller counties would be more acceptable and a larger sum for the more populated counties. Mitch has never been provided a plume modeling and dispersion modeling. Mitch believes this CO2 pipeline will have negative effects. Mitch Kertzman testified that it only takes 10% CO2 saturation to cause convulsions, comma, and death. See LO #59 (LO Ex. 59 - Doc. 647).

55. Summit has failed to offer any evidence at any time from any person why Summit is unable to accommodate these specific Landowner Intervenor who object to Summit's toxic pipeline on their land. This should be conclusive.

J. Summit has failed to make a showing regarding satisfaction of issues raised by Burleigh County and Emmons County.

56. Pursuant to N.D.C.C. § 49-22.1-09(11), the Commission's decision on a route is to be guided by "[p]roblems raised by...local entities" in the evaluating and designation of sites, corridors, and routes. As the Commission is aware, numerous local entities in Burleigh County and Emmons County vehemently oppose the proposed routes in their counties because the company has no track record, the risks presented are hidden, and the local ordinances and local objections are being flaunted by Summit. Respectfully, the PSC's decision to supersede local ordinances, local regulations, and local officials is plain error and these intervenors intend to appeal this ruling. See Response to Motion to Declare Emmons County and Burleigh County Ordinances Superseded and Preempted, (Doc. 345), and Response to Burleigh County's Petition for Reconsideration, (Doc. 455), incorporated by reference herein. However, even if it was not error, the PSC cannot also refuse to be "guided" by

“[p]roblems raised by...local entities” as mandated by § 49-22.1-09(11) unless the PSC is going to supersede the Century Code too. Summit has provided no evidence regarding any efforts to comply with the requirements of Burleigh County or Emmons County, and for the PSC to choose to simply ignore the mandate of § 49-22.1-09(11) would be another plain error.

## CONCLUSION

56. According to the Bismarck Tribune, “[P]ublic hearings eventually appear like shams when public concerns go unaddressed.”<sup>30</sup> There are too many concerns of the public, Landowner Intervenors included, that are unaddressed or insufficiently addressed. It is not the PSC’s fault SCS’s business model precludes itself from the possibility of approval. SCS has failed to successfully answer the questions posed and failed its burden of proof. NDCC 49-22.1-02 requires routes for transmission facilities must ensure “continuing system reliability and integrity” and fulfill “the energy needs in an orderly and timely fashion.” This is the law. Given the proposed pipeline cannot continue the reliability and integrity of a system that does not exist and given the pipeline does not fulfill the energy needs at all, let alone in an orderly and timely fashion, it is legally impossible to approve SCS’s applications.

57. The PSC previously determined SCS did not provide 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. This is still true. For these reasons, Landowners respectfully request

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<sup>30</sup> LO Ex. 16, pg. 3 (Doc. 574)

both of SCS's applications be denied by a vote of 3-0. For the integrity of the legal process and the reverence of the PSC itself, only a 3-0 denial will confirm that not even the marriage of wealth and political might can force an ill-advised project with a 12-year future upon North Dakota citizens.

Respectfully submitted this 8th day of July 2024.

/s/ Steven Leibel  
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**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

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

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
ORDER**

**Appearances**

Commissioners Sheri Haugen-Hoffert, Randy Christmann and Substitute decision maker Timothy J. Dawson

Lawrence Bender, Fredrikson & Byron, P.A. on behalf of Applicant, SCS Carbon Transport, LLC.

Randall Bakke, Bakke Grinolds Wiederhold on behalf of Burleigh County.

Steven J. Leibel, Knoll Leibel LLP and Brian Jorde, Domina Law Group on behalf of Landowner Intervenor, et. al.

Kevin Pranis (did not appear)

**Preliminary Statement**

On October 17, 2022, SCS Carbon Transport LLC (“SCS”) filed a Consolidated Application for Certificate of Corridor Compatibility and Route Permit (“Application”) for construction of approximately 320 miles carbon dioxide pipeline and associated facilities in

Burleigh, Cass, Dickey, Emmons, Logan, McIntosh, Morton, Oliver, Richland, and Sargent Counties, North Dakota.

On October 17, 2020, SCS file and application for waiver of procedures and time schedules under North Dakota Century Code (N.D.C.C.) Sections 49-22.1-05, 49-22.108, 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, hearing sand requirements on such applications.

On December 30, 2022, the 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 Applications complete and issued a Notic of Filings and Public Hearings (“Notice”) schedule four separate public hearings on March 14, 2023, for Oliver, Morton, and Burleigh Counties, March 28, 2023 for Dickey and Sargent Counties, April 11, 2023 for Cass and Richland Counties, and May 9, 2023 for Emmons, Logan, and McIntosh Counties. On March 20, 2023, the Commission issued another Notice of Public Hearings for an additional hearing on June 2, 2023, for Oliver, Morton and Burleigh Counties.

On June 1, 2023, after these hearings were held and the Commission reviewed and considered the testimony, evidence, and the post hearing briefing, the Commission issued its Order (Doc. No. 375) denying SCS Carbon Transport LLC’s Application for Waiver of procedures and times schedules, Application for a Certificate of Corridor Compatibility, and their Application for a Route Permit. The Commission concluded that the proposed facilities are not 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 not be waived and that it is not appropriate for the Commission to waive any procedures, requirements, and time schedules as SCS requested in its application. The Commission further concluded that SCS failed to meet its burden of proof to show the location, construction, operation, and maintenance of the Project will produce Minimal effects on the environment and upon the welfare of the citizens of North Dakota. The Commission concluded SCS failed to meet its burden of proof to show that Project will minimize adverse human and environmental impact, while ensuring continuing system reliability and integrity, and ensuring the energy needs are met and fulfilled in an orderly and timely fashion.

On August 18, 2023, SCS filed its Petition for Reconsideration, Notice of Route Adjustment and Request for Limited Rehearing (Doc. 371). On September 5, 2023, the Commission entered its Order on Petition for Reconsideration (Doc. 396) granting SCS Carbon Transport's Petition for Reconsideration and the Commission would determine a procedural schedule.

On September 29, 2024, SCS filed its Renewal of Motion to Declare Burleigh and Emmons County Ordinances Superseded and Preempted (Doc. 401). Landowner Intervenor's requested a hearing on October 5, 2024 (Doc. 403). On November 28, 2023, The Commission issued its Notice of Hearing on this Motion. A Motion Hearing was held on December 21, 2024 (Doc. 427) and on February 7, 2024, the Commission entered its Order that N.D.C.C. 49-22.1-13 automatically supersedes and preempts any local and use or zoning regulations for gas and liquid transmission facility route permit (Doc. 440).

On March 21, 2024, the Commission issued a Notice of Public Hearings to be held April 22, 2024, May 24, 2024, and June 4, 2024 (Doc. 465). Burleigh County filed its Motion

for Continuance of these hearings with Landowner Intervenors joining Burleigh County's Motion. On March 18, 2024, the Commission discussed scheduling hearings arguments similar to Landowner Intervenors. After the Commission's discussions on March 27, 2024, the Commission entered its Order on Motion for Continuance denying the Motion for Continuance and allowing Burleigh County and Landowner Intervenors to timely file a request for technical hearing if they do not attend the April 22, 2024, public hearings (Doc. 507). Burleigh County and Landowner Intervenors requested a technical evidentiary hearing (Doc. 506 and 509). On April 25, 2024, the Commission issued its Notice of Technical Hearings (Doc. 542) for May 28, 2024, May 29, 2024, May 30, 2024, and June 3, 2024.

### **FINDINGS OF FACT**

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

SCS has failed to demonstrate that the project will not impose unreasonable liability obligations upon North Dakota landowners. Language contained in voluntary easements signed by landowners is not applicable to any person(s) who did not sign the easement. Furthermore, language contained in voluntary easements signed by landowners does not cover 3<sup>rd</sup> party strikes, does not prohibit SCS's insurer from filing suit and making claims against Landowners, and does not prevent Landowners from risk of liability and damages by suits and claims made by other third parties.

SCS has failed to demonstrate that the project will not traverse areas of geological instability.

SCS has not offered any evidence to address legitimate impacts expressed by Landowner Intervenors and others who testified during the public comment nor has SCS demonstrated why individual reroutes suggested were not feasible.

SCS failed to adequately justify either of its two proposed route segments within North Dakota.

SCS failed to prove that its specific pipeline was necessary in any way for the citizens of the State of North Dakota.

SCS failed to prove that its specific pipeline would have any net positive impact on climate change, global warming, or any environmental benefits at all.

Given the PSC can only consider the pipeline route, and that it has no jurisdiction or purview over reclamation spaces or process and no jurisdiction over the act of carbon capture or the carbon capture facilities, SCS did not prove the pipeline itself would have any net benefits for the citizens of North Dakota.

SCS's proposed pipeline, if approved, would transport hazardous CO<sub>2</sub> waste from a single business in North Dakota and traverse over 350 miles within North Dakota to do so.

SCS's proposed pipeline, if approved, would transport hazardous CO<sub>2</sub> waste to North Dakota from multiple private businesses in other states that do not want that CO<sub>2</sub> in their respective states.

According to SCS, every single CO<sub>2</sub> molecule contracted to be transported upon the SCS proposed hazardous pipeline will be permanently and forever sequestered.

Not a single CO<sub>2</sub> molecule contracted to be transported upon the SCS proposed hazardous pipeline will be used for a single beneficial purpose.

SCS failed to prove that no significant adverse effects will result from construction, operation, and maintenance of its proposed hazardous pipeline upon human health and safety and animal health and safety.

SCS failed to prove that it designated a corridor and a route for its proposed hazardous pipeline in areas which are not geologically unstable.

SCS failed to prove its proposed hazardous pipeline's location, construction, and operation, if any, will produce minimal adverse effects on the environment and welfare of the citizens of North Dakota.

SCS failed to prove its proposed hazardous pipeline's location, construction, and operation, will be in a manner compatible with the environmental preservation and efficient use of resources.

SCS failed to prove its proposed hazardous pipeline's location, construction, and operation, will minimize adverse human and environmental impacts while also ensuring continuing system reliability and integrity.

SCS failed to prove its proposed hazardous pipeline's location, construction, and operation, will fulfill the energy needs in an orderly and timely fashion.

SCS failed to prove through any objective scientific or mathematical evidence that its proposed hazardous pipeline's location, construction, and operation would be in areas of North Dakota such that risk to North Dakota citizens and businesses is minimized.

SCS failed to prove through any objective scientific or mathematical evidence that its proposed hazardous pipeline's location, construction, and operation would be in areas of North Dakota in compliance with county and local ordinances and requirements.

For each County that established ordinances and or conditional use procedures or similar that were previously superseded by PSC order, the PSC finds SCS failed to prove that any such ordinances were “unreasonably restrictive” pursuant to N.D.C.C. § 49-22.1-13(2)(c).

### **CONCLUSIONS OF LAW**

The Commission having jurisdiction over the applicant, SCS Carbon Transport LLC, and the subject matter of the Application under N.D.C.C. Chapter 49-22.1.

1. SCS is a utility as defined in N.D.C.C. Section 49-22-.1.01(13).
2. The Project is a gas or liquid transmission facility as defined in N.D.C.C. Section 49-22.1-01(7).
3. Based on the above findings of fact and Conclusions of Law the Commission concludes that SCS failed to prove that any County ordinances that were superseded by prior PSC order were “unreasonably restrictive” pursuant to N.D.C.C. § 49-22.1-13(2)(c) and, therefore, the PSC hereby reconsiders and reverses its prior order superseding County ordinances related to the proposed hazardous CO2 pipeline.
4. Based on the above findings of fact and Conclusions of Law the Commission concludes that SCS failed to meet its burden of proof that the proposed facilities will not produce a significant adverse effect upon human health and safety and animal health and safety.
5. Based on the above findings of fact and Conclusions of Law the Commission concludes that SCS failed to meet its burden of proof that the proposed facilities would be located in geologically stable areas.

6. Based on the above findings of fact and Conclusions of Law the Commission concludes that SCS failed to meet its burden of proof 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 not be waived.
  7. Based on the above findings of fact and conclusions of law, the Commission concludes SCS has failed to meet 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 and Conclusions of Law the Commission concludes that SCS failed to meet its burden of proof that the proposed facilities location, construction, and operation, will be in a manner compatible with the environmental preservation and efficient use of resources.
  9. Based on the above findings of fact and Conclusions of Law the Commission concludes that SCS failed to meet its burden of proof that the proposed facilities location, construction, and operation, will minimize adverse human and environmental impacts.
  10. Based on the above findings of fact and Conclusions of Law the Commission concludes that SCS failed to meet its burden of proof that the proposed facilities location, construction, and operation, will ensure continuing system reliability and integrity.
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11. Based on the above findings of fact and Conclusions of Law the Commission concludes that SCS failed to meet its burden of proof that the proposed facilities location, construction, and operation, will fulfill the energy needs in an orderly and timely fashion.

**THE COMMISSION ORDERS:**

1. SCS Carbon Transport LLC's Application for a Certificate of Corridor Compatibility is denied.
2. SCS Carbon Transport LLC's Application for Route Permit is denied.
3. The Commission reconsiders its prior determinations and hereby denies Summit's requests to preempt County ordinances.

State of North Dakota  
Public Service Commission

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Sheri Haugen-Hoffart  
Commissioner

---

Randy Christmann  
Chair

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Timothy Dawson  
Substitute Decisionmaker

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

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

**DECLARATION OF SERVICE**

[1] Rosanne Ogden declares that I am of legal age and not a party to this action, and that I served the following document(s):

1. Landowners' Post-Rehearing Closing Brief;
2. Findings of Fact, Conclusions of Law, and Order (proposed); and
3. Declaration of Service.

[2] On July 8, 2024, by sending a true and correct copy thereof by electronic means only to the following email addresses, to wit:

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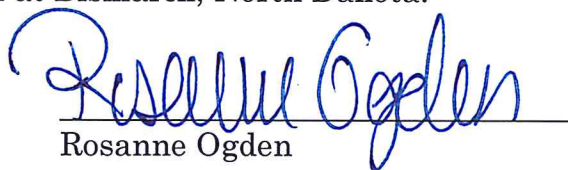
[3] and by sending the originals and seven (7) copies of said documents via U.S. Mail, at Bismarck, North Dakota with postage prepaid, to the following:

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600 E Boulevard Ave, Dept 408  
Bismarck, ND 58505-0480

[5] The addresses of each party served are the last reasonably ascertainable e-mail address and post office address of such party.

[6] I declare, under penalty of perjury under the law of North Dakota, that the foregoing is true and correct.

Signed on the 8th day of July, 2024 at Bismarck, North Dakota.

  
Rosanne Ogden