

September 9, 2024

VIA U.S. MAIL

Mr. Steve Kahl
Executive Secretary Director
North Dakota Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480

**RE: Case No. PU-22-391
SCS Carbon Transport LLC
Midwest Carbon Express Project**

Dear Mr. Kahl:

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

1. Survey Access and Re-route Update; and
2. Certificate of Service.

An original and seven (7) copies of this letter and the above-referenced documents are enclosed herewith. This letter and the above-described documents have been electronically filed with the Commission by e-mailing copies of the same to ndpsc@nd.gov.

Should you have any questions, please advise.

Sincerely,



LAWRENCE BENDER

LB/tjg
#83714259v1

cc: SCS Carbon Transport LLC

September 9, 2024

VIA U.S. MAIL

Mr. Steve Kahl
Executive Secretary Director
North Dakota Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480

**RE: Case No. PU-22-391
SCS Carbon Transport LLC
Midwest Carbon Express Project**

Dear Mr. Kahl:

At the public and technical hearings on the Petition for Reconsideration (Docket No. 371) filed by SCS Carbon Transport LLC (“Summit”) in the above-referenced case, certain intervenors represented by Mr. Brian Jorde offered alternative routes across or around their respective properties (the “Proposed Re-Routes”). Towards the conclusion of said hearings, Summit committed to updating the North Dakota Public Service Commission (“Commission”) if and when Summit had secured easement agreements for any of the Proposed Re-Routes. This letter is submitted to update the Commission on Summit’s progress in securing easement agreements for the Proposed Re-Routes.

As the Commission may recall, Summit testified that many of the Proposed Re-Routes appeared to be feasible, but that surveys must be completed in order to determine the existence of any Exclusion or Avoidance Areas and whether such properties are otherwise conducive to construction of Summit’s pipeline. It is true, in theory, that the North Dakota Supreme Court’s decision in *SCS Carbon Transport LLC v. Malloy* (2014 ND 109) conclusively grants Summit the right to enter upon any property for the purposes of conducting surveys for its pipeline. However, many landowners, some at the specific direction of Mr. Jorde, continue to deny Summit access to their property for surveys. Furthermore, in at least one particular instance, Summit was denied access by a County Sheriff because the landowner at issue was not specifically named in the caption of the Supreme Court’s opinion.

As a result of this continued resistance, which is in direct contradiction to the decision in *Malloy*, Summit has effectively been relegated back to a position of negotiating access for surveys. Right or wrong, Summit believes this approach ensures the safety of Summit’s employees and agents, and fosters and encourages follow-on easement negotiations which may take place after survey access has been granted and the surveys have been completed.

Mr. Steve Kahl
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Notwithstanding the foregoing, Summit has been granted survey access by three (3) of Mr. Jorde's clients. These particular landowner intervenors have agreed to communicate directly with Mr. Boeshans rather than demanding that all communications be directed through Mr. Jorde. Under these circumstances, Summit has completed its surveys and continues to communicate with said landowners regarding easements agreements for their Proposed Re-Routes. Summit understands that a time may come when it must, with the assistance of the courts and law enforcement, enforce its rights under the *Malloy* decision. However, Summit continues to take a more light-handed approach.

On a related matter, Summit has drafted and presented an agreement to Ben and Rose Dotzenrod in which Summit agrees to bore under the drainage easement discussed at the hearings. The agreement also provides that Summit must repair, or pay to repair, any damage to Dotzenrod's drain tile facilities located in such easement as a result of Summit crossing the same. To date, Summit has not received any feedback on the agreement from the Dotzenrod's or their counsel, Mr. Jorde.

Last, Summit has completed 96% of its cultural resource pedestrian surveys on the current project route in North Dakota. The remaining 4% consists of approximately 52 tracts and Summit has obtained voluntary survey permission for 23 of said tracts. Subject to weather and farming operations, Summit anticipates that it will be able to complete pedestrian surveys on all tracts where Summit is granted voluntary access in November of this year.

Should you have any questions, please advise.

Sincerely,



LAWRENCE BENDER

LB/tjg
#83603736v1

cc: SCS Carbon Transport LLC

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**SCS Carbon Transport LLC
Midwest Carbon Express CO2 Project
Sitting Application**

CASE NO. PU-22-391

CERTIFICATE OF SERVICE

I, the undersigned, being of legal age, hereby certify that a true and correct copy of the following:

1. Letter to S. Kahl forwarding documents for filing; and
2. Survey Access and Re-route Update.

were, on September 9, 2024, filed with the North Dakota Public Service Commission and served electronically to the following:

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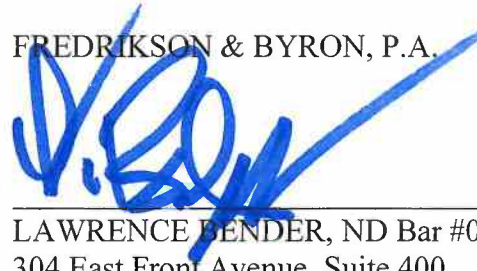
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Dated this 9th day of September, 2024.

FREDRIKSON & BYRON, P.A.



By: _____

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#83714294v1