



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

September 9, 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. Letter from Attorney Brian Jorde;
2. Attachment 1 – E-mail Correspondence;
3. Attachment 2 – E-mail Correspondence; and
4. Declaration of Service.

The enclosed Letter and Attachments 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

[steve@bismarck-attorneys.com](mailto:steve@bismarck-attorneys.com)

SJL: rmo

Enclosures

**765 PU-22-391** Filed: 9/9/2024 Pages: 11  
**Response to SCS September 9, 2024 Survey Access  
and Re-Route Update**

Knoll Leibel, LLP, on behalf of the Intervenor

Steven Leibel, Attorney

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**Steven J. Leibel, Partner**

PO Box 858 · 1915 N. Kavaney Drive, Suite 3 · Bismarck, ND 58502-0858  
Phone 701-255-2010 · Fax 701-255-1980 · Email [steve@bismarck-attorneys.com](mailto:steve@bismarck-attorneys.com) · [www.bismarck-attorneys.com](http://www.bismarck-attorneys.com)

September 9, 2024

**VIA U.S. MAIL and FILED in PU-22-391**

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

Mr. Kahl:

1. On September 9, 2024, Mr. Lawerence Bender sent you another incorrect designed to disparage my clients who are hard-working, tax paying, and voting North Dakotans.
2. I am very glad Mr. Bender sent a letter to you as we have been wondering of his whereabouts for many weeks given we have not heard from him or anyone from Summit related to our efforts to resolve differences in North Dakota related to its proposed hazardous pipeline.
3. Contrary to Mr. Bender's claims, you can see Summit is not communicating with us. See **Attachment #1** included here which are true and accurate copies of correspondence and my attempts, without success, to hear from Mr. Bender or anyone affiliated with Summit. Recall, we filed similar evidence in the docket previously after more untrue statements made by Mr. Bender to the PSC relative to their claimed but false efforts to communicate and resolve disputes. As shown and explained in those filings, and as stated in numerous landowner testimony of our efforts to engage going nowhere with Summit for months on end, we have been and still are trying to negotiate a reasonable Easement and Easement Option.
4. You can see that Summit supplied a draft option agreement relative to the Lugert Land Limited Partnership which would become the template for use with others, once agreed to the non-client specific terms.
5. As of this letter I still wait, since July 29<sup>th</sup>, 2024, when I provided Summit our edits to their draft proposed Easement Option / Easement Agreement. I followed up on August 6, 2024, hoping for dialogue with Summit. Nothing. I followed up again on August 13, 2024. Nothing. Hearing nothing I reached out to Mr. Bret

**Trial Practice. Not Just Talk.<sup>SM</sup>**

This document prepared exclusively in the USA

Dublinske on August 16, 2024, for some help locating Summit and Mr. Bender.

Mr. Dublinske was kind enough to respond as to Iowa, but understandably he did not have information as to North Dakota specific inquiries.

6. See also **Attachment #2**, where landowners are wondering what is going on and I can only share my continuing bewilderment as to Summit's deafening silence.
7. Clearly, Summit does not want to talk with landowners about this, because if they did they would.
8. So, as is clear, Summit wants the PSC to think it is operating in good faith, when it is not. The only remedy is to deny Summit's PSC Applications or at the very least deny any portion of the route across my clients whom Summit is willfully failing to negotiate about or even engage in dialogue.
9. Given we have not heard from Mr. Bender in several weeks, I simply do not understand what or who he is alluding to in his self-serving and interestingly timed letter of today other than another failed attempt to try to make my clients look bad.
10. However, if there are landowners who do not want their land invaded by Summit, Summit should perhaps move forward with lawfully obtaining such access rather than complaining to the PSC about Summit's lack of action.

Respectfully,

A handwritten signature in cursive script, appearing to read "Brian E. Jorde".

Brian E. Jorde

**ATTACHMENT #1**

**From:** [Brian Jorde](#)  
**To:** [Micah Rorie](#)  
**Cc:** [Bender, Lawrence](#); [NDCO2](#)  
**Subject:** RE: Lugert Land Limited Partnership  
**Date:** Tuesday, August 13, 2024 11:44:00 AM  
**Attachments:** [image001.png](#)

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Are you back in the black hole?  
What is the status please on this and all others?

Thank you.

Respectfully,  
Brian

[Brian E. Jorde](#)  
Lawyer  
**DOMINALAW Group pc llo**  
[www.dominalaw.com](http://www.dominalaw.com)

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**From:** Brian Jorde  
**Sent:** Tuesday, August 6, 2024 10:17 AM  
**To:** Micah Rorie <[mrorie@summitcarbon.com](mailto:mrorie@summitcarbon.com)>  
**Cc:** Bender, Lawrence <[LBender@fredlaw.com](mailto:LBender@fredlaw.com)>; NDCO2 <[NDCO2@dominalaw.com](mailto:NDCO2@dominalaw.com)>  
**Subject:** RE: Lugert Land Limited Partnership

What is the status here please?

Respectfully,  
Brian

[Brian E. Jorde](#)  
Lawyer  
**DOMINALAW Group pc llo**  
[www.dominalaw.com](http://www.dominalaw.com)

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**From:** Brian Jorde  
**Sent:** Tuesday, July 30, 2024 8:00 AM  
**To:** Micah Rorie <[mrorie@summitcarbon.com](mailto:mrorie@summitcarbon.com)>  
**Cc:** Bender, Lawrence <[LBender@fredlaw.com](mailto:LBender@fredlaw.com)>; NDCO2 <[NDCO2@dominalaw.com](mailto:NDCO2@dominalaw.com)>  
**Subject:** RE: Lugert Land Limited Partnership

Attached are edits to the Option.  
These are sent to you prior to obtaining client approval.

Respectfully,  
Brian

Brian E. Jorde  
Lawyer  
**DOMINALAW Group pc llo**  
[www.dominalaw.com](http://www.dominalaw.com)

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**From:** Brian Jorde  
**Sent:** Monday, July 29, 2024 10:30 PM  
**To:** Micah Rorie <[mrorie@summitcarbon.com](mailto:mrorie@summitcarbon.com)>  
**Cc:** Bender, Lawrence <[LBender@fredlaw.com](mailto:LBender@fredlaw.com)>; NDCO2 <[NDCO2@dominalaw.com](mailto:NDCO2@dominalaw.com)>  
**Subject:** RE: Lugert Land Limited Partnership

Micah:

1. I have reviewed the Memo of Option and my edits are attached. I have not yet received client approval of this document.
2. Below you state the Easement will be executed simultaneously, but that defeats the purpose of the Option. Entering into an Easement Option suggests there is no easement agreement until and unless the option is exercised.
3. I need to be sure we are on the same page as to the mechanics.
4. The way I see an Option working is we agree to the easement language only and then if the Option is exercised final payment is made in exchange for an executed Easement. The upfront partial payment is for the option right only not for an executed easement.
5. In other news, I would like your same drafts for Iowa emailed to me as I do have a least one client there ready to negotiate and I suspect more to follow.

Respectfully,  
Brian

Brian E. Jorde

Lawyer

**DOMINALAW Group pc llo**

[www.dominalaw.com](http://www.dominalaw.com)

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**From:** Micah Rorie <[mrorie@summitcarbon.com](mailto:mrorie@summitcarbon.com)>

**Sent:** Thursday, July 18, 2024 4:21 PM

**To:** Brian Jorde <[BJorde@dominalaw.com](mailto:BJorde@dominalaw.com)>

**Cc:** Bender, Lawrence <[LBender@fredlaw.com](mailto:LBender@fredlaw.com)>

**Subject:** Lugert Land Limited Partnership

Brian,

We've finalized an option form tied to the Lugert Land Limited Partnership parcels in Richland Co. In efforts to accommodate your client's concerns over the proposed route, we've examined a more direct east/west alternative on their easternmost parcel. Of course, I can't guarantee this route as some factors outside of this parcel may come into play, but the results we've seen from our extended assessment efforts have us confident enough to present this change as a possibility.

Attached are the option docs for your review. An exhibit of the alternate route should be available this week. The basics would be a 2 year term with a 20/80 payment arrangement, the easement execution being simultaneous with the option, and the delta being paid upon exercising the option. Given the multiple rounds of redlines to the easement form it seems more efficient to work from your latest set of requested changes (including any new additions). The idea here is to avoid any bottlenecking between previous versions as there has been a history of some mix-ups. Please provide your latest and I'll circle up with Lawrence quickly to provide feedback.

I am open all day tomorrow and can prioritize availability next week should you wish to discuss.

Thank you,

Micah Rorie

**MICAH RORIE | VICE PRESIDENT-LAND & RIGHT OF WAY**

**M:** (713) 859-9532 | [MRORIE@SUMMITCARBON.COM](mailto:MRORIE@SUMMITCARBON.COM)

2321 N. LOOP DR. STE 221, AMES, IA 50010



## ATTACHMENT #2

**From:** Brian Jorde  
**To:** Marvin & Jeanne Lugert  
**Cc:** NDCO2  
**Subject:** RE: Checking In about the Summit Carbon negotiations  
**Date:** Friday, August 23, 2024 5:17:00 PM  
**Attachments:** image001.png

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Summit has gone completely silent for about 2.5 weeks now.

This is how they operate. I will reach out and it takes a long time for them to get back to me, then I will respond and then weeks and in some cases months go by.

It is very bizarre.

In Iowa they just told me they are not acquiring any easements until they officially have the Iowa Permit so they may be holding off in ND for that or other reasons.

It is very frustrating!

Respectfully,  
Brian

Brian E. Jorde  
Lawyer  
**DOMINALAW Group pc llo**  
[www.dominalaw.com](http://www.dominalaw.com)

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**From:** Marvin & Jeanne Lugert @rrt.net>  
**Sent:** Friday, August 23, 2024 3:50 PM  
**To:** Brian Jorde <BJorde@dominalaw.com>  
**Subject:** Checking In about the Summit Carbon negotiations

Hello Brian,

Below (in red) is the email I sent to you on the 3rd of August.

As I haven't heard anything on the negotiations, I just wanted to check in and be sure that you had received that email.

Thanks



**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. Letter from Attorney Brian Jorde;
2. Attachment 1 – E-mail Correspondence;
3. Attachment 2 – E-mail Correspondence; and
4. Declaration of Service.

[2] On September 9, 2024, by sending a true and correct copy thereof by electronic means only to the following email addresses, to wit:

John Maurice Schuh Bar ID 08138  
Special Assistant Attorney General  
North Dakota Public Service Commission  
600 E. Boulevard Ave, Dept. 408  
Bismarck, ND 58505-0480  
[jschuh@nd.gov](mailto:jschuh@nd.gov)

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

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[pat.zomer@lawmoss.com](mailto:pat.zomer@lawmoss.com)

Michael Joyner  
[michael@bismarck-attorneys.com](mailto:michael@bismarck-attorneys.com)

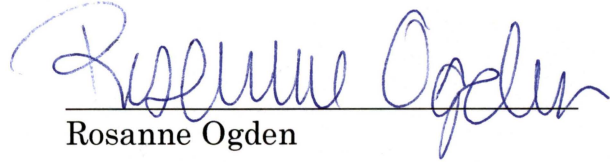
[3] and by sending the originals and seven (7) copies of said documents via U.S. Mail, at Bismarck, North Dakota with postage prepaid, to the following:

Steve Kahl  
Executive Secretary  
North Dakota Public Service Commission  
State Capitol  
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 9th day of September, 2024 at Bismarck, North Dakota.

  
Rosanne Ogden