

October 2, 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. Letter to Mr. Randall Bakke; 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
#84042532v1

cc: SCS Carbon Transport LLC

October 2, 2024

VIA E-MAIL

Mr. Randall Bakke
rbakke@bgwattorneys.com

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

Dear Randy:

I am in receipt of your e-mail dated October 1, 2024, in which you, on behalf of Burleigh County, request a copy of the \$100,000,000.00 general liability insurance policy that SCS Carbon Transport LLC ("Summit") is required to have in place prior to commencement of construction of its pipeline project ("Project"). You also allege in your e-mail that Summit has changed its position with respect to the indemnity provided to landowners under Summit's easement agreement. Mr. Jorde, on behalf of the Landowner Intervenor, joined in your request.

First, you have intentionally misinterpreted the letters I have submitted to the North Dakota Public Service Commission ("Commission") regarding the information the Commission has requested concerning general liability insurance. Both letters clearly indicate that Summit "will have not less than \$100,000,000.00 in place prior to commencing construction of the Project." See Docket Nos. 767 and 771 (emphasis added). Until Summit obtains a permit from the Commission, it will not purchase general liability insurance for the Project. It appears that even Mr. Jorde understood that Summit was not representing it had acquired a policy in his September 16, 2024 response (Docket No. 769), so I presume that his joining in your request is merely perfunctory.

Second, the Commission has already ruled that "no additional requirements are needed to ensure the Project will have minimal adverse impacts on the liability insurance requirements of the landowners." See Docket No. 375. Consistent with that ruling, the Administrative Law Judge sustained the objections of Summit to questions from the Intervenor regarding liability insurance during the hearings. Nevertheless, Mr. James Powell did address this issue at the April 22, 2024 hearing on Summit's Petition for Reconsideration. In response to a question posed by one of the Commissioners, Mr. Powell testified that:

. . . anything that's -- that's caused by the pipeline or construction or operation of it is totally our responsibility, and . . . in the easement agreement, we very clearly say, at least I think it's very clear, that we're indemnifying the landowner of everything except a willful egregious act, so they have to dig the pipeline up and

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intentionally damage it. Anything aside -- they can-- if they accidentally hit it in a farming practice or something like that . . . that's still our responsibility.

See Docket No. 535. It is possible that neither you nor Mr. Jorde are able to recall this testimony because neither of you attended this hearing due to alleged conflicts. Regardless, the statement in my September 30, 2024 letter regarding indemnity was offered in the context of the necessity for Summit to obtain additional liability insurance and not to amend or alter any language contained in Summit's easement agreements. You and Mr. Jorde are both acutely aware that Summit will be obligated to indemnify landowners pursuant to the provisions of each easement agreement regardless of whether Summit obtains separate general liability insurance coverage.

In the future, I would hope that if you are legitimately confused by information Summit provides for the record at the Commission's request, that you first contact me without burdening the Commission with unnecessary filings. However, I understand that this approach runs contrary to the Intervenor's' continued efforts to mislead the Commission in an attempt to delay these proceedings.

Should you have any questions, please advise.

Sincerely,

A handwritten signature in blue ink, appearing to read 'L. Bender', with a long, sweeping horizontal stroke extending to the right.

LAWRENCE BENDER

LB/tjg
#84034454v1

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. Letter to Mr. Randall Bakke.

were, on October 2, 2024, filed with the North Dakota Public Service Commission and served electronically to the following:

Hope L. Hogan
hlhogan@nd.gov

John Schuh
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Zachary Pelham
zep@pearce-durick.com

Randall J. Bakke
rbakke@bgwattorneys.com

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Julie Lawyer
bc08@nd.gov

Patrick Zomer
Pat.Zomer@lawmoss.com

Dated this 2nd day of October, 2024.

FREDRIKSON & BYRON, P.A.



By: _____

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#84042514v1