

STATE OF NORTH DAKOTA

DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

Emmons County,

Case No. 08-2024-CV-03610

Appellant,

vs.

**NOTICE OF APPEAL AND
SPECIFICATIONS OF ERROR**

North Dakota Public Service Commission
and SCS Carbon Transport LLC,

Appellees.

TO: NORTH DAKOTA PUBLIC SERVICE COMMISSION, NORTH DAKOTA ATTORNEY GENERAL DREW WRIGLEY, AND SCS CARBON TRANSPORT LLC:

[¶ 1] PLEASE TAKE NOTICE that Appellant Emmons County, pursuant to N.D.C.C. § 28-32-42, hereby give notice of its appeal from the November 15, 2024 Findings of Fact, Conclusions of Law, and Order by the North Dakota Public Service Commission (“PSC” or “Commission”) in PSC Docket PU-22-391 (OAH File No. 20230002). A copy of the order is attached hereto as Exhibit A.

[¶ 2] Pursuant to the Findings of Fact, Conclusions of Law, and Order, the PSC ordered “NDCC Section 49-22.1-13 automatically supersedes and preempts any local land use or zoning regulations for a gas or liquid transmission facility route permit except for road use agreements. The Commission further concludes that the Ordinances of Burleigh County and Emmons County are unreasonably restrictive on their face under NDCC Section 49-22.1-13(2)(c).” PSC Docket Number 778.

[¶ 3] SCS Carbon Transport LLC (“Summit”) filed an Application for Certificate of Corridor Compatibility and Route Permit and Waiver on October 17, 2022. PSC Docket Number 1.

Emmons County filed a Petition to Intervene and Response in Opposition to Superseded and Preempted Motion on June 30, 2023. PSC Docket Number 350. An Order Granting Emmons County's Petition for Intervention was entered on July 11, 2023. PSC Docket Number 354.

[¶ 4] The PSC issued an Order on August 4, 2023 denying Summit's application for waiver of procedures and time schedules, application for a certificate of corridor compatibility and application for a route permit. PSC Docket Number 366.

[¶ 5] On August 18, 2023, Summit filed a Petition for Reconsideration, Notice of Route Adjustment and Request for Limited Rehearing. PSC Docket Number 371. The PSC issued an Order on Petition for Reconsideration dated September 15, 2023 granting Summit's petition for reconsideration and granting a rehearing. PSC Docket Number 396. On December 21, 2023 a formal hearing was held regarding the application of N.D.C.C. § 49-22.1-13 to local land use or zoning regulations. PSC Docket Number 427. The PSC issued an order on February 7, 2024 that N.D.C.C. § 49-22.1-13 that preemption is automatic and it need not make any factual findings. PSC Docket Number 440.

[¶ 6] On March 8, 2024, Emmons County filed a Notice of Appeal and Specification of Errors from the order on February 7, 2024. *See* Case No. 08-2024-CV-00624, Index ##1-5. A Stipulation and Request for Stay was filed on March 28, 2024 requesting that the Court stay the matter. *Id.*, Index #9. The Court entered a stay on April 2, 2024. *Id.*, Index #12.

[¶ 7] On June 4, 2024, the PSC conducted a technical hearing at the Our Club in Linton, Emmons County, North Dakota.

[¶ 8] On November 15, 2024, the PSC issued its Findings of Fact, Conclusions of Law, and Order. PSC Docket Number 778 and attached hereto as Exhibit A.

[¶ 9] This appeal is appropriately venued in Burleigh County.

[¶ 10] Emmons County appeals the Findings of Fact, Conclusions of Law, and Order dated November 15, 2024 as the PSC erred as a matter of law by interpreting N.D.C.C. § 49-22.1-13 and applying it as it did in its Order and its Findings of Fact, Conclusions of Law, and Order. The orders issued by the PSC are not in accordance with the law and do not comply with the requirements of N.D.C.C. § 49-22.1-13, and the rules by which the PSC applied that statute did not afford Emmons County a fair hearing. The PSC failed to make factual findings that support its conclusions of law and there is no factual support for any findings of fact that would support the PSC's legal conclusions.

[¶ 11] WHEREFORE, Emmons County requests that this Court enter an order reversing the decision below and remanding to the Public Service Commission for further proceedings consistent with this Court's order, awarding costs and attorneys' fees to Emmons County pursuant to N.D.C.C. § 28-32-50, and granting any and all other relief to which Emmons County may be entitled.

DATED this 10th day of December, 2024.

BRAATEN LAW FIRM

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