STATE OF NORTH DAKOTA **IN DISTRICT COURT**

COUNTY OF BURLEIGH **SOUTH CENTRAL JUDICIAL DISTRICT**

Burleigh County,

Appellant,

v.

North Dakota Public Service Commission, SCS Carbon Transport LLC, et. al.,

Appellees.

Case No. 08-2024-CV-3614

ORDER ON MOTION TO DISMISS

INTRODUCTION

[¶1] This matter is before the Court on a *Motion to Dismiss* by Appellee SCS Carbon Transport, LLC ("Summit"). (R:15-18). Summit seeks to dismiss the Appellants appeal of a determination by the North Dakota Public Service Commission ("PSC"). (R:17). Emmons County (R:33), the PSC (R:38), Burleigh County (R:22-29), and APH Farms, Arden Hagerott, Jonathan Hagerott, Janel Olson, Valera Hayen, Kari Curran, Scott Irmen, Mary Jo Irmen, Leon Mallberg, Staroba Revocable Living Trust, Loren Staroba, Dianne Staroba, James Tiegs (collectively "Landowner Appellants") filed responses to the *Motion*. (R:35-36). The Court held a hearing via the Zoom platform on March 24, 2025.

LAW AND DECISION

[¶2] The district courts have "such appellate jurisdiction as may be provided by law or by rule of the supreme court." N.D. Const. art. VI, § 8. Appeals of administrative decisions to the district court "are statutory in nature and are not matters of original jurisdiction for the district courts but rather involve exercise of appellate jurisdiction of the district courts conferred by statute." *State by & through Workforce Safety & Ins. v. Jones*, 2025 ND 74, ¶ 4 (quoting *Decker v. Workforce Safety & Ins.*, 2021 ND 117, ¶ 15, 962 N.W.2d 388).

[¶3] The Administrative Agencies Practice Act, N.D.C.C. ch. 28-32 provides general

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rules governing administrative proceedings. Under N.D.C.C. § 28-32-44:

> Within thirty days, or a longer time as the court by order may direct, after an appeal has been taken to the district court as provided in this chapter, *and after payment by the appellant of the estimated cost of preparation and filing of the entire record* of the proceedings before the agency, the administrative agency concerned shall prepare and file in the office of the clerk of the district court in which the appeal is pending the original or a certified copy of the entire record of proceedings before the agency, or an abstract of the record as may be agreed upon and stipulated by the parties.

N.D.C.C. § 28-32-44(2) (emphasis added). The cost of preparing and filing of the record can be waived "upon application by the appellant, showing that the appellant is a low-income person unable to afford these costs." N.D.C.C. § 28-32-44(4).

[¶4] No record of the administrative proceeding has been filed in this case, including no filing of the agency's findings and conclusions of law. The Court could not proceed without a record of the proceeding at the agency level. Additionally, the Appellants having made no waiver of the cost of preparation of the record by the agency.

[¶5] **IT IS HEREBY ORDERED** The appellants must, within 14 days, pay the PSC for the preparation of the record as required under statute. Failure to comply with this order will result in the appeal being dismissed.

Dated this 6th day of June 2025.

BY THE COURT

David E. Reich, District Judge
South Central Judicial District