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NORTH DAKOTA
PUBLIC SERVICE COMMISSION

August 31, 2023

Via Hand-Delivery

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

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

Dear Mr. Kahl:

Enclosed for filing in Case No. PU-22-391, please find the following documents:

1. *Bismarck Area Intervenors' Response in Opposition to Summit's Petition for Reconsideration, Notice of Route Adjustment and Request for Limited Rehearing;*
2. *Exhibit 1 – Transcribed Audio of PSC's Special Meeting on August 4, 2023;*
and
3. *Certificate of Service*, with seven copies of same.

Please do not hesitate to contact the undersigned if you have any questions about this filing.

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Very Truly Yours,
/s/ Randall J. Bakke
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Encl.
BNW:sam
PSC.13

382 PU-22-391 Filed: 8/31/2023 Pages: 37
**Response in Opposition to Petition for
Reconsideration, Notice of Route Adjustment &
Request for Limited Rehearing, Ex 1-Transcribed**
Bismarck Area Intervenors

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STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

SCS Carbon Transport LLC
Midwest Carbon Express CO2 Pipeline Project
Siting Application

Case No: PU-22-391
OAH File No: 20230002

**BISMARCK AREA INTERVENORS' RESPONSE IN OPPOSITION TO
SUMMIT'S PETITION FOR RECONSIDERATION, NOTICE OF ROUTE
ADJUSTMENT AND REQUEST FOR LIMITED REHEARING**

The Commission should deny Summit's petition for reconsideration¹ because the Commission did not make a mistake of law, did not misconstrue or misapprehend the evidence and facts provided (or not provided) at the hearings, did not rely on fraudulent or mistaken evidence or testimony, and because Summit had a full and fair opportunity to present its case during the evidentiary proceedings. Summit has not shown the kind of extraordinary circumstances that would allow for the drastic relief requested. Rather, it asks the Commission to change its mind, which is an insufficient rationale for reconsideration under the controlling legal standard.

Seeking to reopen the evidentiary proceedings in order to have a "second bite at the apple" and to conduct a "re-do" of its evidentiary case should not be allowed, especially when Summit's conduct during the proceedings is considered. Summit alone is to blame for squandering its opportunities during the evidentiary phase of this matter. Summit disregarded requests and failed to provide the Commission, the Intervenor, and the public, relevant and probative evidence throughout the proceedings. It should not be rewarded with a "do-over" that will severely and

¹ Bismarck Area Intervenor, by and through their attorneys, object to and oppose SCS Carbon Transport LLC's ("Summit") *Petition for Reconsideration, Notice of Route Adjustment, and Request for Limited Hearing* (doc. 371) ("Petition for Reconsideration" or "Petition") requesting the Commission to essentially overrule its *Findings of Fact, Conclusions of Law, and Order* (doc. 375) ("the Order").

unduly prejudice all of the Intervenors who already incurred substantial personal cost in opposing Summit's application, as well as severely and unduly prejudice members of the public who showed up for public hearings and waited sometimes for hours to voice their opposition to Summit's application. Ironically, when the Bismarck Area Intervenors requested² the Commission to re-open the evidentiary proceedings in order to cross-examine Summit's witnesses and evidence at an additional hearing (essentially identical to Summit's current request), Summit strenuously objected to and opposed the request, arguing, "neither a change in the conditions of fact or law nor the public interest requires the proceedings in this case to be reopened." (doc. 336).

The very same legal standard Summit used to oppose the Bismarck Area Intervenors' petition to re-open the proceedings should be applied against Summit's current request. Summit has not identified a change in the conditions of fact or law or any public interest that would require these proceedings to be reopened. As such, the petition should be denied. Bismarck Area Intervenors request oral argument to further address the issues raised in Summit's petition.

I. LEGAL STANDARD

Summit's petition seeks "reconsideration" of the Commission's Order pursuant to N.D.A.C. § 69-02-06-02, which states as follows:

1. Time for filing. A petition for reconsideration must be filed within fifteen days after notice of the decision has been given under North Dakota Century Code section 28-32-13.
2. Content. The petition must state the specific grounds upon which the petition rests or a statement of any further showing to be made. The petition must also state if a rehearing or oral argument is requested.
3. Service. A petition must be served by the petitioner upon all parties and a certificate to that effect must be attached to and filed with the commission at the time the petition is filed. The original and seven copies must be filed with the commission.

² *Bismarck Area Intervenors' Petition to Reopen The Proceedings to Schedule Additional Public Hearing Date* (doc. 283).

4. Responses. Within ten days after the service of the petition, any party to the proceeding may file with the commission an original and seven copies of the party's response. Failure is a waiver of any objection to the granting of the petition.

N.D. Admin. Code 69-02-06-02. This rule does not set forth the standard on which the Commission is to consider the requested reconsideration. Summit also relies on a petition for reconsideration statute contained in the Administrative Agencies Practices Act, which provides for essentially equivalent response deadlines and procedures, but also does not provide the legal standard the agency should apply in granting or refusing to grant reconsideration. N.D.C.C. § 28-32-40.³

The legal standard courts routinely apply to motions for reconsideration was previously provided by Summit in response to a motion by the Bismarck Area Intervenors seeking additional discovery from Summit. In its previous briefing, Summit stated:

I. Warford is simply asking the ALJ change her mind, which is not a legally sufficient reason to reconsider a previous decision.

Courts have explained that "[a]n agency ... may reconsider an action previously taken and come to a different conclusion upon a showing that the original action was the product of fraud, surprise, mistake, or inadvertence, or that some new or different factual situation exists that justifies the different conclusion." *Calvert Cnty. Planning Comm'n v. Howlin Realty Mgmt., Inc.*, 772 A.2d 1209, 1223 (Md. 2001). However, "[w]hat is not permitted is a 'mere change of mind' on the part of the agency." *Id.*; see also *Maryland v. Exxon Mobil Corp.*, 569 F. Supp. 3d 273, 284 (D. Md. 2021) (explaining that an agency "may not revisit or reverse its prior determinations without good cause or justification").

SCS Carbon Transport LLCs Response to Intervenor Warford's Petition for Reconsideration [] (doc. 335). Bismarck Area Intervenors agree with the legal standard Summit provided in its prior briefing and ask the Commission to apply this very standard to deny Summit's request that the Commission "change its mind".

³ Summit further relies on a Siting Act statute, N.D.C.C. § 49-22.1-18, which generally provides that a "rehearing by the commission" may be requested by an "aggrieved" party.

Additionally, the North Dakota Supreme Court’s legal standard applicable to motions for reconsideration is largely in agreement with the legal standard Summit provided. The North Dakota Supreme Court has said such motions are to be treated like “motions to alter or amend judgments” under North Dakota Rules 59 or 60, and that such motions seek “extraordinary relief” that should not be granted unless the moving party shows “exceptional circumstances” utilizing “clear and convincing evidence” showing “fraud, misrepresentation, or misconduct [or that] the conduct complained of must be such as to prevent the losing party from fully and fairly presenting its case.” *Dvorak v. Dvorak*, 2001 ND 178, ¶ 10, 635 N.W.2d 135, 138 (internal citations omitted). As shown below, Summit does not even argue, nor has it met its burden by clear and convincing evidence of fraud, misrepresentation or misconduct, or established that it was unable to fully and fairly present its case to the Commission, and therefore the petition should be denied.

II. DISCUSSION

A. Summit’s Petition Should be Summarily Denied

Summit’s request for reconsideration and a limited one day re-hearing can and should be denied summarily by the Commission simply by applying the above legal standard to the petition. The petition, on its face, is a request for the Commission to change its mind. This fails to meet the legal standard applicable to requests for reconsideration, which requires not only extraordinary circumstances but also clear and convincing evidence. Not only does Summit fail to justify the Commission reconsidering its Order under the applicable legal standard, but it also falsely mischaracterizes the Order as raising only minor problems that are easily cured. In reality, the Order is a wholesale rejection of Summit’s application and a wholesale rejection of Summit’s weak or missing evidence on several of the statutory factors on which it had the burden of proof. The Commission was clear in its comments on August 4, 2023 that Summit failed in its burden of proof

and that failure was not just in relation to a handful of minor details and oversights. The following comments by the Commission illustrate this:

[] Adherence to applicable procedures, requirements, and time schedules should not be waived. To waive any procedures, requirements, and time schedules as requested is inappropriate. SCS failed to meet its burden of proof to show the location, construction, operation and maintenance of the project will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota. SCS failed to meet its burden of proof to show the project will minimize adverse human and environmental impact, and SCS failed to meet its burden of proof to show the location, construction, and operation of the project to be compatible with environmental preservation and efficient use of resources. If some of those sounded repetitive, those are kind of responses to the things that we noticed publicly that we were looking for answers to in our notice of public hearings. So, if you all agree with me on this, to kind of just encapsulate if this is approved, the commission would order SCS's application for a waiver of procedures and time schedules is denied. Their application for certificate of Court or compatibility is denied, their application for a route permit is denied, . .

Transcribed Audio of PSC's Special Meeting, August 4, 2023 at pages 9-10. Because of Summit's outright failure to meet its burden of proof, and because its evidentiary failings are widespread and systemic, Summit should be required to re-apply as suggested by the Commission during the August 4, 2023 special meeting.

Summary denial of the petition is entirely appropriate, especially when Summit's conduct during these proceedings is considered. For example, Summit failed to counter the substantial testimony by the Intervenors concerning the adverse impacts that the pipeline route would create. The Intervenors' countervailing evidence was appropriately determined to be true by the Commission. More egregious, Summit itself on numerous occasions failed or refused to provide requested evidence and further failed or refused to elicit credible testimony from witnesses to support its application. Summit continuously presented witnesses who did not really know any specific details about the application or about the effects of the route on North Dakota's citizens

and landowners. For example, Summit's CO2 expert John Godfrey did not even know where the route was located near Bismarck:

Bakke: "Let me ask you this, Mr. Godfrey. Is it your testimony that you don't even know where this proposed route is to go north and east of Bismarck by Summit?"

John Godfrey: "I have the general idea where it is from the exhibits that have been put before this commission and the exhibits that I've looked at, but have I studied it in sufficient detail to offer an opinion on a air dispersion model? No."

Linton Hearing, May 9, 2023 (Docket # 212:2) at timestamps 3:55 – 4:23.

And Summit continued to be evasive throughout the proceedings. Therefore, Summit has only itself to blame for the widespread evidentiary defects and shortcomings pointed out in the Commission's Order. Summit certainly had the resources to provide knowledgeable and helpful witnesses, and Summit certainly had the resources to meet its evidentiary burden prior to the issuance of the Order, but it chose to cut corners and chose to push the limits. This strategy of pushing the limits was true not only with its route in close proximity to Bismarck and its population centers, but was also reflected in its apparent unwillingness to be attentive to the needs and questions of the Commission. In the final analysis, it was Summit that decided the record was complete and it was Summit that felt (wrongly) it had proved its case. The Commission discussed this dynamic during its August 4th comments in relation to Summit opposing the Bismarck Area Intervenors' request to re-open the proceedings to gather additional evidence, stating:

The basis for SCS's recommended denial of Mr. Bakke's June 1st petition to reopen the proceeding and hold an additional public hearing was an assertion by SCS that it has provided a full and complete record in this proceeding.

See Transcribed Audio of PSC's Special Meeting, August 4, 2023, at page 9. Summit and Summit alone made the decision to close the evidentiary phase of the case, and Summit should be required to live with its decision.

While the Commission can and should deny the petition summarily on the basis of Summit's failure to provide extraordinary circumstances that would justify disturbing the Order and because the petition simply reflects a wish the Commission change its mind, Summit's past conduct before the Commission further mandates denial. Additionally, a review of the specific sub-issues addressed in Summit's briefing further illustrates why there is no compelling reason for the Commission to revisit its Order.

B. Burleigh County Route Adjustments & Future Development and Property Values

In briefing, Summit argues it is seeking to "adjust" its route in response to concerns raised during the proceedings by Bismarck Area Intervenors, allegedly moving the route "to the east and north of Bismarck as set forth in Figure 1, below." Summit argues that "the issues raised by the Bismarck Area Intervenors are moot now that Summit's new proposed route is not located in the vicinity of any existing or planned developments or subdivisions." Despite the false claim of mootness about addressing those many concerns (addressed further below), Summit fails to provide the actual re-route but rather requests to provide the Commission with a more detailed re-route at some undermined time in the future, and further requests a rehearing on this issue before the PSC during a single-day evidentiary hearing.

Summit states Exhibit A [doc. 371-40], its Map Book, should replace the Map Book in the PSC's docket. Yet, a review of the new Map Book shows the adjusted route to the north of Bismarck is missing. In other words, the pages one would expect to find containing this new re-route are not included in the Map Book at all. Burleigh County's Building Official-Director Mitch Flanagan has reviewed the petition and the Map Book, and states under oath he cannot determine

Summit's new re-route to the north of Bismarck. *See* Flanagan Affidavit [doc. ____]⁴. Flanagan further states under oath there has been no contact by Summit with the County about the re-route at all. *Id.* This is another example of Summit playing "hide the ball" with the Commission, local officials, the public and the Intervenors. How can landowners who may have land within the unknown re-routed corridor be expected to learn that their land is affected and then have sufficient time to take legal action or plan to be present at a single hearing sometime in the future? Summit takes a "just trust us" approach again stating, "Summit is committed to working with the landowners located along the adjusted route in an effort to inform each of them about the Project and to reach voluntary easement agreements." As shown by the prior testimony, Summit's "trust us" approach is quite the opposite of what landowners experienced in their interactions with Summit.

The same is true for Burleigh County, townships, local officials and emergency responders, and stakeholders who have ownership or other legitimate interests in this new un-identified re-route. How can those entities and individuals determine if the new proposed re-route is too close to existing and planned population areas, developments, and schools, or if infrastructure and emergency response capabilities are adequate? How can it be determined if the new route runs afoul of Burleigh County's zoning ordinance that Summit seeks to supersede? Depending on the precise location of the new route to the north, potentially many dozens of unknown landowners will be affected. It seems highly unlikely a single day rehearing on the re-route would be adequate, and it certainly would not be adequate when coupled with all of the other issues Summits seeks to present evidence on at this single-day's rehearing. Summit is playing fast and loose with local

⁴ Recent filings by the Burleigh County State's Attorney Julie Lawyer, including the Flanagan Affidavit, are not yet located on the PSC's docket as of the time of filing the instant response brief.

governments' and landowners' Due Process rights where it fails to identify in its publicly filed materials the precise route it requests the PSC to approve and to hold hearings on sometime in the near future.

Setting aside the fact that Summit has not given any reasonable assurance those unknown landowners, township officials and stakeholders would be given appropriate notice and opportunity to respond to the re-route, the pipeline route and re-route issue⁵ is not an issue for which Summit contends there was any fraud, misrepresentation, or misconduct. Summit does not argue anything of the sort occurred. Nor has it asserted and there is no evidence of an inability by Summit to obtain a full and fair hearing on the route issue. To the contrary, Summit had ample opportunity to present witnesses on this very issue, and did so during at least three (3) of the PSC's hearings (twice in Bismarck, and once at the Linton hearing), and it elected to present witnesses with very little knowledge of Bismarck and Burleigh County. Summit's witnesses were cross examined at length by Intervenors about such matters, and several of those witnesses were either ignorant of or feigned ignorance of the local geographical features, topography, growth and development plans, taxation, emergency and first responder needs and capabilities, infrastructure, schools, residential developments, population centers and other local dynamics, all of which greatly impact the proposed pipeline route and alternatives thereto. In fact, each of Summit's witnesses presented on such issues made it abundantly clear there had either been no outreach at

⁵ The routing concern issue in Burleigh County implicates at least three of the factors the Commission is statutorily obligated to consider in its siting determination under N.D.C.C. § 44-22.1-09, including: Factor 7: the direct and indirect economic impacts of the proposed route; Factor 8: Existing plans of the [] local government, and private entities for other developments at or in the vicinity of the proposed site, corridor, or route; and Factor 9. Problems raised by [] local entities). Summit has not shown extraordinary circumstances that would justify the Commission changing its mind on its findings concerning these factors.

all with local leaders and stakeholders, or the outreach had been merely pro forma and nothing of substance communicated.

Summit had ample opportunity at PSC hearings to rehabilitate those witnesses or augment the testimony with additional witnesses who could have more clearly answered route questions and addressed local concerns, and who potentially could have alleviated at least some of those concerns. Summit elected not to do so. Another example of Summit squandering its opportunities in this regard is that it elected to present only a written report by Boulder Appraisals but declined to present a live witness such that the Commissioners and Intervenors would have been able to evaluate those opinions. Summit now wants a second bite at the apple and states the Boulder Appraisals report should have been considered and should be considered during the requested re-hearing. This should not be allowed under the reconsideration legal standard. Certainly, fraud, misrepresentation and misconduct had nothing to do with Summit's hearing strategy on this issue and Commission was correct to call out Summit's failure on this issue and correct to provide little evidentiary weight to the Boulder report.⁶

In addition to the failures in its own evidence on the Burleigh County route impact issues, Summit had full opportunity to cross-examine all of the Bismarck Area Intervenors' witnesses who testified to such matters, and that testimony was absolutely unrebutted by Summit. That very testimony shows the falsity of Summit's statement that its route adjustment moots the concerns

⁶ See Transcribed Audio of PSC's Special Meeting, August 4, 2023 (*Exhibit 1* hereto), at pages 5-6. The Commission stated:

SCS filed a letter from Boulder Appraisal summarizing the effect of existing natural gas and hazardous liquid pipelines upon the development and sale of current residential properties in Bismarck. The filing was not tendered during the hearing and the parties and commission were not afforded an opportunity to question the document or witness as required by North Dakota administrative code. This limits the weight that the commission is willing to provide to that document.

raised during the evidentiary proceedings. Summit's alleged adjusted route does not respond to the significant testimony by various individuals and officials (e.g., Chad Wachter, Chad Moldenhauer, former Mayor Dr. Warford, Commissioner Brian Bitner, Curtis Jundt, Bismarck School Board President Jon Lee, Bismarck-Mandan Homebuilders Association President Joe Hillerson, and others) that a pipeline constructed straight east of Bismarck (not only to the north) will impede growth, will negatively affect property values, will negatively affect existing and planned developments, and will negatively affect the tax base, will adversely impact Silver Ranch School and residents at Silver Ranch, to name just a few of the direct and indirect impacts and adverse effects that were testified about during public hearings.

Summit's petition shows it remains unwilling to consider moving the current route farther to the east of Bismarck despite the substantial evidence provided during the evidentiary proceedings that such a route will impede Bismarck's and Burleigh County's residential and commercial growth to the east, will negatively impact property values, will negatively impact the tax base, will negatively impact first responders, will simply be too close to existing schools (e.g., Silver Ranch School) and existing developments, and will essentially shut down future planned developments directly to the east (e.g., ongoing phases of Silver Ranch). Summit's insistence on keeping the pipeline in its current location near Bismarck's ETA straight east approximately 3 miles from of Bismarck's ETA will result in adverse direct and indirect impacts to the County, to Bismarck, to developers, landowners, the public, developers, and other stakeholders.

The point of discussing the abundant and highly credible evidence against the pipeline route in close proximity to Bismarck is that the Commission has already appropriately determined Summit failed to meet its burden on these issues, the Commission heard and gave appropriate weight to the substantial evidence against Summit's application on these issues, and it is clear

Summit simply seeks to persuade the Commission to change its mind. Attempting after-the-fact changes to its evidentiary case – despite the many and significant deficiencies raised by the Commission’s Order – is not an appropriate use of a request for reconsideration. The Commission should not allow Summit to misuse the PSC’s and the Intervenors’ resources in this way by forcing all involved to essentially re-litigate the same issues all over again, especially when the Commission’s decision was correct the first time. This would be a waste of party and PSC resources, and should not be allowed under the “extraordinary circumstances” legal standard applicable to requests for reconsideration.

C. The Southern Route Analysis

Summit argues the Southern Route Analysis issue has been mooted by its route adjustment to the north of Bismarck, and even if it is not moot, it “is prepared to tender a witness at the limited rehearing.” Not only is its mootness argument blatantly false as the proposed pipeline re-route obviously travels north of Bismarck and not south (how could a northern re-route moot a southern route?), but also and more importantly, Summit has failed to identify any fraud, misrepresentation, misconduct or lack of adequate hearing opportunity concerning an alternative route that raises extraordinary circumstances. The Commission’s determination that Summit did not adequately address its questions about a southern route cannot be challenged and is not seriously challenged in Summit’s petition.

Alternative routes to minimize adverse impacts is one of the statutory factors the Commission was required to analyze. N.D.C.C. § 49-22.1-09 (“the commission is guided by . . . the following considerations . . . to aid the evaluation of [. . .] routes: 5. Alternatives to the proposed site, corridor, or route that are developed during the hearing process and which minimize adverse effects.”). During the evidentiary phase of these proceedings, Summit squandered its

opportunity to provide any proof that would tend to show a southern route is actually not feasible.⁷ Why should the Commission reconsider this issue now when Summit already had a full and fair hearing? Summer offers no explanation at all other than to promise a witness will be provided. This is another issue on which Summit seeks to persuade the Commission to change its mind, and which falls far short of providing extraordinary circumstances to disturb the Commission's Order.

D. Burleigh and Emmons County Ordinances.

In its petition, Summit doubles down on its request the Burleigh County and Emmons County Ordinances be superseded. Although the Commission determined the request for pre-emption was moot because it had already decided to deny the application due to Summit's failure to meet its evidentiary burden on the statutory factors, Summit insists the Commission simply change its mind. It should be pointed out that Summit does not provide *any reason at all* for the request that the Commission revisit this purely legal issue. The Petition simply requests it in the

⁷ As set forth at length in the *Closing Brief* of Bismarck area Intervenors [doc. 358], Summit's Southern Route Analysis did not address any of the considerations Summit's witnesses told the Commission such an analysis would contain. For example, James Powell testified at the May 9th Linton hearing about the Commission's request for alternatives to the route, and he indicated that the counties affected by the southern route would be "very clear":

James Powell: "At the request of the commissioners we're analyzing a route south of Bismarck."

Bakke: "So my question is in relation to the 72% of the easement. Which counties would this affect? The southern crossing."

JP: "I'd rather not get into that here. When we submit the analysis it will be very clear what's impacted."

Linton Hearing, May 9, 2023 (Docket # 212:1) at 1:15:00 – 1:15:29. Summit's other witness that testified about the Southern Route Analysis, Erik Schovanec, testified about numerous factors that had allegedly been analyzed by Summit, but he deferred to an expert witness that never materialized as part of Summit's evidentiary case. As pointed out by the Commission's Order and as reflected in its Bismarck Route Analysis [doc. 275], it is clear Summit never truly analyzed any other route but the one to the north of Bismarck, and never analyzed the factors Shovanec said had been analyzed concerning a southern route. The Bismarck Route Analysis was written not by engineers, surveyors, or other experts but rather was written by Summit's lawyers. Summit's offer now to bring in another expert at the re-hearing is a promise that rings hollow.

opening and closing paragraphs of Summit's briefing. This explanation for the Commission to reconsider itself on this issue is far less than the clear and convincing evidence standard that applies here. Like the previous issues, this issue too does not raise any extraordinary circumstances sufficient to disturb the Commission's Order.

E. Other Issues Raised by Summit's Petition Are Unavailing.

Summit raises numerous other sub-issues on which it attempts to provide additional after-the-fact evidence, and also makes promises to provide additional evidence and witnesses at a single day re-hearing. All of this is too little too late for Summit's application and none of it raises extraordinary circumstances that would justify reopening and reconsidering the application. The following bullet pointed discussion illustrates why each of the sub-issues raised by Summit are insufficient reasons for the Commission to reconsider its Order:

- **Landowner Route Adjustments:** Summit contends it has addressed the concerns raised by certain landowners during the evidentiary proceedings, including by no longer crossing those landowners' properties. It further contends it is "engaged in discussions" with a landowner and has "implemented an additional 570 minor reroutes" but has not given any specific information about those alleged "minor reroutes". None of this raises extraordinary circumstances. It does however raise the sufficiency of a single day to address all of these issues, as well as identifying and providing notice to the landowners where route changes have allegedly been made. This further illustrates that Summit must re-apply so all of these landowners will have fair notice and opportunity for Due Process.
- **Game Management Route Adjustments:** Summit raises what it contends may be a mistake by the Commission in confusing State game management areas and refuges

with federal game management and refuges. Summit goes on to state that it obtained the agreement of the USFWS to cross its easements, but no such “agreement” is provided. This is another area for which Summit failed in its evidentiary case to be transparent and to provide the Commission with complete information. It does not raise any extraordinary circumstances.

- **Certification, Studies, Surveys and Landowners / Width of Corridor and Route Deviation Buffer / Areas Within 500 Feet of an Inhabited Residence:** Summit feigns good faith by stating it will comply with a North Dakota Statute, N.D.C.C. § 49-22.1-15, in adjusting routes within its newly declared 200 foot wide corridor and will honor the 500-foot setback and avoidance areas set forth in North Dakota law. This is ironic when one considers Summit’s earlier argument the Commission and North Dakota law need not be respected by Summit with respect to pipeline siting setbacks, avoidance areas, and related statutes. In briefing Summit previously argued:

Despite the intervenors’ contentions to the contrary, SCS has never "conceded" that the Commission's setbacks are valid. In fact, it is SCS's position that the Commission's setbacks-as applied to interstate pipelines-are likely preempted by the PSA. After all, that statute prohibits state authorities from adopting "safety standards" and the Department of Transportation has adopted a setback requirement as a safety standard. See 49 C.F.R. § 195 .21 O(b).

But the Commission need not decide whether its setbacks are preempted because SCS is not challenging those setbacks. In SCS's view, the Commission's setbacks are reasonable, and SCS does not object to voluntarily complying with them.

SCS Carbon Transport LLC's Reply in Support of its Motion to Declare Burleigh and Emmons County Ordinances Superseded and Preempted [doc. 359] at page 14.

Summit’s current argument that it will “voluntarily” comply with North Dakota’s “reasonable” statutes should not be trusted. This is another issue that illustrates Summit’s duplicity and lack of respect for North Dakota law, lack of respect for these

proceedings, and lack of respect for North Dakota's citizens. Nor is it an issue that provides extraordinary circumstances to disturb the Commission's Order.

- **Areas of Geologic Instability and NDGS:** Summit raises a meeting with the North Dakota Department of Mineral Resources, Geological Survey (NDGS) at which Summit contends it addressed the issues raised in the NDGS letter dated March 3, 2023 about Summit using North Dakota's landslide specific data for 14 possible problem areas. Although there was no follow up letter by the NDGS, Summit states there was no need to do anything further to address the NDGS letter. It also stated it hired an out-of-State consultant Geosyntec to "conduct non-invasive ground reconnaissance" concerning the problem areas identified by NDGS. And now, after-the-fact, nearly 6 months after the NDGS letter, Summit finally gets around to providing a discussion about what Geosyntec allegedly did, finally provides the Geosyntec "Phase II Landslide Assessment" (Exhibit C [doc. 371-060]), and commits to essentially working collaboratively in the future with "engineers from Terracon and Geosyntec to identify, assess, and mitigate other geologic and hydrotechnical areas of concern along the proposed pipeline." No explanation is provided for why Summit failed to hire Geosyntec or Terracon many months ago, and no reason why Summit has not already shared the 6 additional reports with the NDGS or with the Commission that it references in its brief. All of this illustrates the magnitude of Summit's evidentiary deficiencies in relation to the geological issues, and shows none of it rises to the level of extraordinary circumstances that would allow reconsideration.
- **Cultural Resource Surveys and SHPO:** Summit also brings up the problems raised with Summit's cultural impact report by the State Historic Preservation Office (SHPO)

and attempts to persuade the Commission SHPO's concerns are either taken care of or are minimal. In support of this argument, Summit provides the Affidavit of Jason Zoller (Exhibit D [doc.371-70]). Again, there is no explanation from Summit why all of this information could not have been or was not provided to the Commission during the evidentiary phase. Summit allegedly worked diligently on and completed its Class III Report just 3 days after the Commission's decision was rendered on August 4th, but Summit and Summit alone knew it was working on the Class III Report since SHPO requested it in June of 2023 yet Summit said nothing to the Commission about this issue. Nor did Summit seeks to keep open the evidentiary phase of the case so that the Class III Report could be evaluated along with Summit's other evidence. Rather than provide an explanation for these questions, Summit relies on how it has been done on other cases in the past before the PSC, and also plays the "victim card" in bringing up its alleged inability to survey properties because it has been denied that opportunity by landowners. This kind of "victim" argument rings hollow when it is considered that Summit entered and surveyed former Mayor Warford's land on the very day he was testifying in Bismarck at the 5th public hearing. Certainly, Summit did not request his permission to enter on his land. Also, in its petition, Summit touts its 16 court cases in which it has been granted authority to enter North Dakota private properties for the purpose of surveying. Summit's excuse for not completing the work required by SHPO is not a compelling one. Nor is the SHPO issue the kind of extraordinary circumstance for which reconsideration would be appropriate.

- **BNI Coal Permit Status:** Like several of the previous issues, Summit provides essentially new evidence never before seen during the evidentiary phase of these

proceedings (Exhibits E [doc.371-080] and F [doc.371-090]), and then makes promises about actions it will take in the future in relation to Summit's pipeline crossing mining easements apparently owned by BNI Coal. Although Summit promises that it "is committed to working with BNI through construction and operation of the Project to ensure surface mining activities do not interfere with or damage the pipeline", it fails to offer an explanation for why it was not committed to gathering this information and working with BNI prior to the close of the evidentiary phase of these proceedings. The letters from BNI Coal and the email from Guy Welch do not raise any fraud, misrepresentation or misconduct, which would be evidence of extraordinary circumstances sufficient to justify disturbing the Commission's Order.

III. CONCLUSION

Summit's petition seeking reconsideration is not supported by any clear and convincing evidence that raises extraordinary circumstances justifying the Commission reconsidering its Order. The petition is at its essence a request for the Commission to change its mind, which the North Dakota Supreme Court has consistently held is insufficient to support such a motion. For these reasons, the petition should be denied. Bismarck Area Intervenors request oral argument to further address the issues raised in Summit's petition.

Dated this 31st day of August, 2023.

BAKKE GRINOLDS WIEDERHOLT

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PSC's Special Meeting on August 4, 2023

Commissioner Christmann (“CC”): “Good morning, everyone. I call this special meeting of the North Dakota Public Service Commission to order. It is 10:01 on Friday, August 4th, 2023. I’m the Commission Chairman, Randy Christmann, joined by fellow Commissioner, Sheri Haugen-Hoffart, and our alternate decision-maker in this case, Mr. Tim Dawson. So, we have a quorum. So, we’ve had this case going on since last fall when it was applied and in the beginning of February when we deemed the application complete. Earlier this week I was in the process of planning a work session in this case, and for those of you who don’t follow us, that would be a more informal thing where the decision makers and our staff kind of discuss concepts and stuff to prepare an order to vote on. And, as I was working on that, the outcome seemed, I guess, so obvious to me that I just decided to work with staff on a draft order to see how it would look. And after working on it with them, it seemed even more obvious to me what the end case of this was. So, I believe staff ultimately sent it to each of you, a draft to review, so you had an opportunity to think about it, prepare amendment proposals, or you can reject my motions and we’ll work on scheduling work sessions, but I will say the getting together is a little tougher in a case with an alternate decision maker because you’re not in the office with us. And when we do, that does add costs to us for handling the case, which ultimately goes back to the applicant, because of a filing fee that we use for our costs in the case. So that’s another reason, as I said, I thought the ultimate decision was obvious enough, why don’t we just move forward and see if, in fact, we’re all on the same page.

We have really two main issues to decide in this case. The protection of information decision, and then the case itself and the findings of facts, conclusion of law, and the final order. So, with that, I guess I didn’t ask if there are any opening comments?”

Commissioner Haugen-Hoffart (“CHH”): “No, I have no opening comments.”

Tim Dawson (“TD”): “No opening comments for me.”

CC: “Okay. So, to address the protection of information first, I move the commission to adopt the order on protection of information in SCS Carbon Transport, LLC, Midwest Carbon Express CO2 Pipeline Project Siting Application Case Number PU-22-391.”

CHH: “Second.”

CC: “On April 21st, SCS filed an application for protection of information. On May 1st, John H. Warford, Jr. filed an objection and also a request for hearing on that topic. On June 27th, we held a hearing. The information for which SCS seeks protection is related to dispersion modelling in the event of a release of carbon dioxide from the pipeline. Given the sensitive nature of information, SCS stated that it will request that PHMSA protect these materials from public release and is requesting the Public Service Commission protect the information, too. During the hearing, SCS argued that under state law and federal laws the information should be protected. It argued that PHMSA has previously determined similar information such as spill modelling information should be protected to prevent its use by bad actors. SCS also stated that the determination has been affirmed by the Courts. SCS provided examples demonstrating that the risk of the use of this information by bad actors is not hypothetical. Counsel for the intervenors both acknowledged that some information likely should be subject to protection but argued that all information being protected cannot be correct. Both intervenors disputed the federal protection cited as it relates to the information. They also provided that past cited projects with this agency provided similar information without protection.

The purpose of the hearing was to determine whether the application to protect the information from public disclosure should be granted. Refrigerated CO2 is defined by PHMSA as a hazardous material. SCS pipeline meets the definition of critical infrastructure under North Dakota Century Code. The disclosure of plume modelling could provide information on where damaging or vandalizing the pipeline by a bad actor

would have a debilitating impact on security and state public health and safety. So, prevention of receipt of this information by bad actors necessitates the PSC limiting access to the information. The argument that other entities previously filed similar information without requesting protection is unpersuasive. Therefore, there has been growing vigilance for the protection of data and information related to the operations and locations of critical infrastructure. This is also reflective in legislative history. So, the conclusions of law on this would read that the Commission concludes that the information is a security system plan for critical infrastructure that may be exempt from public disclosure and concludes that SCS's application satisfies the requirements of North Dakota Century Code for protection of information, and so the order would read the Commission orders the April 21, 2023 application of SCS Carbon Transport, LLC for protection of information is granted."

(Unknown PSC Staff Member): "We have a motion and a second. Is there any discussion? I'm sensing none. I will move to roll call vote. Chair Christmann?"

CC: "Aye."

(Unknown PSC Staff Member): "Commissioner Haugen-Hoffart?"

CHH: "Aye."

(Unknown PSC Staff Member): "Substitute decision-maker Dawson?"

TD: "Aye."

(Unknown PSC Staff Member): "Motion is approved."

CC: "Well that seemed noncontroversial. Moving to the next topic. I move the Commission to adopt the findings of fact, conclusions of law and order in SCS Carbon Transport, LLC, Midwest Carbon Express CO2 Pipeline Project Siting Application Case Number PU-22-391."

CHH: "Second."

CC: “So, a preliminary statement on some things that the public should be aware of and I’ll highlight. On October 17th of 2022, SCS Carbon Transport filed applications for certificate of quarter compatibility and for a route permit concerning approximately 320 miles of carbon dioxide pipeline. For the public, because these terms are used so much, very generally the corridor is kind of a working area. They applied for 300 ft; 200 ft is kind of a common one. The route is really where the pipeline would be within the corridor. This would be in ten North Dakota counties. Also on October 17th, SCS filed an application for waivers of procedures and time schedules. That is a very common practice in these cases. On February 1st of this year, the Commission deemed the applications complete and issued a notice scheduling four separate public hearings. March 14th at Bismarck, March 28th at Gwinner, April 11th at Wahpeton, and May 9th at Linton. So, you can see we spread them out for the public’s convenience. Due to the length of the March 14th hearing, on March 20th the Commission scheduled an additional hearing for June 2nd at Bismarck. But the day before that on June 1st, SCS filed a motion to declare Emmons County and Burleigh County ordinances superseded and preempted. Also, on June 1st Randall Bakke filed a petition to reopen the proceedings and schedule an additional public hearing. Also, on June 1st, busy day, SCS filed a pre-filed direct testimony of four witnesses and a market research letter from Boulder Appraisal. The next day, on June 2nd, a public hearing was held as scheduled here in Bismarck.

I’m going to go through some findings of fact. There’s pages of these, but some highlights that I think should be taken note of. One of the requirements SCS initiated correspondence seeking comments from federal, state, and local agencies regarding the project. There are 44 of them altogether that they saw information from. If we approve this, they’re listed on the top of page 5 of the order at least in this draft. SCS conducted a class 1 cultural literature review and a desktop analysis for wetlands, waterbodies, and other sensitive environmental resources. They conducted surveys for threatened and endangered species, critical

habitats, wetlands, waterbodies, and trees and shrubs, and they conducted a class 3 cultural resource inventory across a portion of the survey area. The class 3 report was submitted to the State's Historical Preservation Office, and then a response dated March 1st SHPO advised that the report does not meet the standards and they have not received a revised report addressing their concerns. SHPO concurrence is commonly required by the Commission for the issuance of the site certificate of route permit. SCS did not address SHPO's concerns further during the proceedings. Cultural resource impacts have not been properly addressed.

The Commission received extensive broad concerns regarding eminent domain, safety, the policy of permanent CO₂ sequestration and storage, setback distances, irreparable harm done to underground drain tile systems, impacts on property values, and the ability to obtain liability insurance due to this project. Having considered the public comments, the issues of eminent domain, safety compliance with PHMSA construction and operations, and permanent sequestration and storage of CO₂ are outside the jurisdiction and consideration of this Commission. Commenters asserted that greater setback distances should be considered for CO₂ pipelines, but North Dakota Century Code specifies that areas within 500 ft of an inhabited rural residence must be an avoidance area unless waived by the owner. No testimony was presented that provided sufficient basis to depart from the avoidance requirements as set forth in State Statute. Several commenters expressed that the project will cause irreparable harm to their underground drain tile systems. Proper drain tile system repair and/or replacement will produce minimal adverse effects. Commenters and intervenors asserted that the project will cause significant adverse effects on the value of their property and residential development projects. SCS filed a letter from Boulder Appraisal summarizing the effect of existing natural gas and hazardous liquid pipelines upon the development and sale of current residential properties in Bismarck. The filing was not tendered during the hearing and the parties and Commission were not afforded an opportunity to question the

document or witness, as required by North Dakota Administrative Code. This limits the weight that the Commission is willing to provide to that document. While some witnesses stretched the plausibility of the adverse impacts on future property values and development, based upon the record, the effects have not been adequately minimized for the welfare of the people and the environment of the State.

A number of commenters provided that the project will make them unable to purchase liability insurance due to the risk of a release. SCS testified that it would hold the liability for a rupture of the project, unless the rupture was caused by a third-party line strike. Based upon the testimony, no additional requirements are needed to ensure the project will have minimal adverse impacts on the liability insurance of the landowners. SCS requested the Commission to supersede and preempt the ordinances of both Emmons and Burleigh counties. North Dakota Century Code supersedes and preempts any local land use or zoning regulations from the regulations, ordinances, and plans, except the ordinances related to road use agreements. Therefore, the question of whether the ordinances are unreasonably restrictive is moot because Century Code supersedes that. LIUNA, the Labors International Union, intervened in this proceeding and submitted testimony relating to the benefits of hiring a local labor force for transmission projects and the safety record of contractors SCS intends to use to construct the project. LIUNA's assertions in relation to SCS's plans for the construction of the project are not applicable to our jurisdiction in this case, but I really appreciate their coming forth with the information they provided, especially regarding benefits of hiring local.

I want to discuss a little bit the siting criteria that we work with under law. We establish criteria pursuant to North Dakota Century Code to guide the site, order, and route suitability evaluation and designation process. The criteria are classified in four categories. We have exclusion areas,

avoidance areas, selection criteria, and policy criteria. And I'll discuss those.

An exclusion area is the geographic area that must be excluded in consideration of a route. Areas critical to the life stages of threatened or endangered animal or plant species are designated as exclusion areas. This project will cross the Missouri River, but it's using horizontal directional drilling. The piping plover habitat is not beneath the Missouri River, so a reasonable buffer zone exists for the protection of the piping plover's habitat and there is no evidence of an adverse impact there. SCS's studies and surveys did not record any other exclusion areas within the survey area. No other exclusion areas were presented by an intervenor, the public, or our Commission staff.

Moving to avoidance areas. These are geographic areas that may not be considered in the routing of a transmission facility, unless the applicant shows that under the circumstances there is no reasonable alternative. Economic considerations alone will not justify the approval of avoidance areas. National wildlife refuges are designated avoidance areas. SCS's studies and surveys identified the Dakota Lake National Wildlife Refuge, which is in Dickey County, and it is within the proposed corridor. The refuge does not encompass more than 50% of the corridor width and it will not be crossed by the route, so the impact to the refuge is at an acceptable minimum. Game management areas are also designated avoidance areas and SCS's studies and surveys indicated that six waterfowl production areas are within the proposed corridor. In four instances, they encompass greater than 50% of the corridor width. SCS did not demonstrate that there is no reasonable alternative to a route through the avoidance areas. Therefore the impacts on game management areas in North Dakota are not at an acceptable minimum. Areas that are geologically unstable are avoidance areas. In a letter dated March 3rd, the North Dakota Geological Survey noted 14 areas of potential geologic instability within the project corridor. SCS has not submitted information

to the Commission demonstrating how it has addressed the concerns raised by the Geological Survey. SCS has not properly addressed areas that are geologically unsuitable/unstable. Areas within 500 feet of a residence, school, or place of business are avoidance areas. These avoidance areas may be waived by the owner. SCS's studies and surveys identify eight residential structures and one business within 500 feet of the project. SCS has provided a waiver for one of the residences, but SCS submitted that it will not construct within 500 feet of the remaining residences or businesses without obtaining and filing with the Commission signed waivers from the owners of these structures. SCS's studies and surveys did not record any other avoidance areas within the survey area. No other avoidance areas were presented by an intervenor, the public, or our staff.

Moving to selection criteria in accordance with the Commission. Selection criteria, corridor, or route shall be approved only if it is determined that any significant adverse effects will be at an acceptable minimum. The project's impact upon agriculture and livestock will be at an acceptable minimum. However, the company has not taken steps to address some outstanding legitimate impacts expressed by some individual landowners during public comment or demonstrated why a re-route is not feasible in those instances. I want to point out some additional measures to minimize impact. SCS testified that it will have an operations control center in Ames, Iowa that will be monitored 24 hours per day. The project will include a supervisory control and data acquisition system that will communicate with all field sites and provide real-time information of the systems operations. The operations control center will have the capability to remotely shut down pump stations and isolate pipeline segments in the event abnormal operating conditions are observed. SCS noted in its application that meetings have occurred with the emergency management directors of all counties crossed by the project. The emergency management directors were asked to provide a list of equipment needs in order to respond to potential incidents. SCS requested

a 300 ft corridor width in its application. That is finding fact number 6 back on page 3. That is wider than what this Commission has normally granted. During the hearing, SCS testified that they would not object to the PSC issuing a narrower corridor designation of 200 ft. Commissioners also requested response from SCS on a number of other issues. Some of the requests were regarding re-routing the project on specific agricultural properties, confirmation on the number of 500 ft. setback waivers required and obtained, follow up with the North Dakota Geological Survey, SHPO concurrent status, and an analysis of a south Bismarck alternate route. SCS either did not adequately address these requests or did not tender a witness to answer questions, as I mentioned before is required under North Dakota Administrative Code. The basis for SCS's recommended denial of Mr. Bakke's June 1st petition to reopen the proceeding and hold an additional public hearing was an assertion by SCS that it has provided a full and complete record in this proceeding. SCS has not provided sufficient evidence to demonstrate that the location, construction, operation, and maintenance of the project will produce minimum adverse impacts upon the welfare of the citizens of North Dakota with the existing record. So, to highlight some of the conclusions of law here, based on findings of fact, North Dakota Century Code supersedes and preempts any local land use or zoning regulations aside from regulations, ordinances, and plans related to road use agreements. Therefore, the question of whether the ordinances are unreasonably restrictive is moot. Adherence to applicable procedures, requirements, and time schedules should not be waived. To waive any procedures, requirements, and time schedules as requested is inappropriate. SCS failed to meet its burden of proof to show the location, construction, operation, and maintenance of the project will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota. SCS failed to meet its burden of proof to show the project will minimize adverse human and environmental impact, and SCS failed to meet its burden of proof to show the location, construction, and operation of the project are compatible with

environmental preservation and efficient use of resources. If some of those sounded repetitive, those are kind of responses to the things that we noticed publicly that we were looking for answers to in our notice of public hearings. So, if you all agree with me on this, to kind of just encapsulate if this is approved, the Commission would order SCS's application for a waiver of procedures and time schedules is denied. Their application for certificate of corridor compatibility is denied. Their application for a route permit is denied. Their motion to declare Emmons County and Burleigh County ordinances superseded and preempted is moot. The [garbled] petition to reopen the proceedings and schedule an additional public hearing is denied, and any outstanding procedural motions are denied. With that, before I turn it over to whoever wants to go first. We spent a lot of time working on something that I thought was quite clear and so I'm hopeful that you will agree with. And near the end I realized something in there that I'm not comfortable with, and so I want to propose an amendment to what's in front of you. If you would go to page 11, number 42 in the fourth line. Our first bullet will be on this amendment, then we'll get back to the either order as presented or as amended. I move that in the fourth line, the words 'plume modelling' be removed."

(Unknown PSC Staff Member): "We have a motion for amendment. We'll take a roll call vote."

CHH: "Second."

(Unknown PSC Staff Member): "We now have a motion in the second upon the amendment. Commissioner Christmann?"

CC: "Aye."

(Unknown PSC Staff Member): "Commissioner Haugen-Hoffart?"

CHH: "Aye."

(Unknown PSC Staff Member): "Substitute decision maker Dawson?"

TD: "Aye."

(Unknown PSC Staff Member): "The amendment is adopted. Were there any further discussion on the original motion?"

CHH: "I apologize. In reference to page 19, I believe, of the order. Sorry, number 19. But I think it was clarified in conclusion of law where it states, 'this has to do with the Emmons and Burleigh County ordinance.' I just want to say that public safety was a very extensive point to this pipeline en route, and I acknowledge Emmons and Burleigh County for bringing forth and working so diligently on the safety for the community. And because we're denying this route, I think for us to take that up is moot and we shouldn't have to take that up because we're denying it, and I don't want to see it. I believe, Mr. Christmann, in your order brought forth, you're saying that in the order, that the motion to declare Emmons County and Burleigh County ordinance is moot, I want to be clear on that, or are we saying that we are superseding that and accepting overruling that?"

CC: "It's moot. My opinion is that the law is clear."

CHH: "Okay. I don't think that's been properly vetted. Not saying that if it comes up before that I wouldn't agree with it, but because, again I'm going to emphasize that that hasn't been vetted and public safety is an issue, I'm going to move the Commission amend the finding of facts, conclusion of law, and order as follows: finding of facts paragraph 19 is amended to: SCS has requested the Commission to supersede and preempt the ordinance of both Emmons and Burleigh Counties, North Dakota. SCS has not filed an application with either county for a variance or waiver of their ordinance. The conclusion of law, paragraph 4 is amended, to: Due to the application being denied, the issue of whether the county ordinances are automatically superseded and exempted is moot. And the removal of ordering paragraph 4, number 4. That is my motion."

(Unknown PSC Staff Member): "Is there a second?"

CC: "I'll second it for the purpose of discussion."

(Unknown PSC Staff Member): “We have a motion and a second. Is there any discussion?”

CC: “Yes. I just handed out new sheets here with language from Century Code. You’ll notice on one of them where it says page 7 on the bottom, that’s from Chapter 49-22.1-13, which has to do with gas and liquid conversion and transmission facilities like we’re talking about here. The other one that shows page 9 on the bottom, that is from Chapter 49-22-16. That has to do with electric energy conversion, not transmission facilities. If you look at number two in the electrics, the law makes it clear that our decision may not supersede or preempt local land use on a conversion facility, a powerplant say, but, on a transmission facility, our decision does supersede the locals, but there is a clause again upon a finding that the rule, regulation, or ordinance is unreasonably restrictive. The legislature addressed that for electric projects. But then looking at Chapter 49-22.1 dealing with pipelines, gas and liquid facilities, again for the plants, the energy conversion facilities may not supersede or preempt any local land use, zoning, or building rules, regulations, or ordinances. But when it gets to gas or liquid transmission facility, a pipeline within a designated corridor supersedes and preempts any local land use or zoning regulations, period. However, the next section does point out that their road use agreements can supersede ours. So, people can ask their legislators why they did electric different than pipelines, but they did, and I’m going by what is written and I think a very clear law.”

CHH: “Mr. Christmann, I understand what the law said, but pertaining to this, carbon capture has not filed an application within either county for a variance or waiver of their ordinance, and we have not vetted this. We are proposing that the route be denied, therefore it kind of ends there. But to say we’ve concluded that, I’m not comfortable with, so like I said, I bring forward my motion.”

(Unknown PSC Staff Member): “Is there any further discussion?”

TD: “Well I’m caught between a rock and a hard place. I agree with Mr. Christmann’s interpretation of the law and that it is moot for that purpose, but it’s also maybe moot is a procedural matter as Commissioner Haugen-Hoffart is talking about. If it came to us, let’s say, as a motion, and we have that motion before us, we can say that it’s moot and we can decide without deciding the motion, or we can decide the motion. So, there’s two kinds of mootness here, and both of them have some validity. With that, I’m still thinking about my answer to this. I’ll come up with one in a few seconds.”

(Unknown PSC Staff Member): “I will move to a role call vote if we are ready.”

CC: “This is on the motion to amend proposed by Commissioner Haugen-Hoffart?”

(Unknown PSC Staff Member): “Correct. Commissioner Christmann?”

CC: “Nay.”

(Unknown PSC Staff Member): “Commissioner Haugen-Hoffart?”

CHH: “Aye.”

(Unknown PSC Staff Member): “Substitute decision-maker Dawson?”

TD: “Aye.”

(Unknown PSC Staff Member): “The amendment is approved, and we will move back to the motion on the order as amended.”

CC: “I know I followed you as you went, so the amendments were on sections 19, correct?”

CHH: “I’m going to hand you my motion.”

CC: “The change was in section 19 and then order number...”

CHH: “Conclusions of law number 4.”

CC: “Conclusions of law number 4.19 and 4. That’s it, right?”

CHH: "Correct. And then the removal of order ordering paragraph 4."

CC: "Okay."

(Unknown PSC Staff Member): "Is there any further discussion on the order, the motion of the order as amended? I'm sensing none. I will move to role call vote. Chairman Christmann?"

CC: "Aye."

(Unknown PSC Staff Member): "Commissioner Haugen-Hoffart?"

CHH: "Aye."

(Unknown PSC Staff Member): "Substitute decision-maker Dawson?"

TD: "Aye."

(Unknown PSC Staff Member): "Motion is approved."

CC: "Well, with a couple of little changes I think it turns out I was right that we're generally on the same page on the direction of this, um, case, so I do want to say that, for those of you who aren't familiar with this, it's a long standing tradition of the commission that we open up for questions from the press after our meetings. We've always thrived on being transparent. I want to say, though, before we get into that, that my decision on this case is not indicative of my opinions regarding CO2 sequestration or importation of CO2 via pipeline at all. This is only about this project in this location under these circumstances. I also want to say that from my part I'm going to leave most questions to our attorney in this case, Mr. Zach Pelham, and the reason is that if the company chooses to start over and reapply, I don't want any answers that I give here off the cuff to be taken as a comprehensive to-do list for building a new application. And then well you didn't mention - it's not that. And if the applicant chooses to appeal this decision to the Courts, I think it's just best to let the official hearing records, the findings of fact, conclusions of law, and the orders stand for themselves. Do either of you have any comments before we open up for the press?"

CHH: “No, I agree with you, Chairman Christmann, that we don’t know where this case is going to go, so I too would refer questions to our counsel, Zach Pelham, but I do want to say one thing. I am very thankful for everyone who was very involved in this case. To see the interest equals, to me, educating ourselves on what the PSC does, our laws, and what it all means, so I want to thank people for being engaged, professional, and being here today, and I continue to believe that ag and energy both have a place in this State and that we can work collaboratively together. So, with that, I just want to say thank you to all of you for being so involved and professional in these hearings.”

CC: “Okay, with that we will stick around outside of the official meeting and take questions if there are questions. And for you, Mr. Pelham, I would ask that you grab a microphone for that. But with that this meeting is adjourned.”

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

SCS Carbon Transport LLC
Midwest Carbon Express CO2 Pipeline Project
Siting Application

Case No: PU-22-391
OAH File No: 20230002

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the following documents:

1. *Filing Letter to Steve Kahl from Randall Bakke dated August 31, 2023;*
2. *Bismarck Area Intervenors' Response in Opposition to Summit's Petition for Reconsideration, Notice of Route Adjustment and Request for Limited Rehearing;* and
3. *Exhibit 1 – Transcribed Audio of PSC's Special Meeting on August 4, 2023.*

were on August 31, 2023, filed with the North Dakota Public Service Commission and served electronically to the following:

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Dated this 31st day of August, 2023.

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