

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE APPLICATION
BY SCS CARBON TRANSPORT, LLC FOR
A PERMIT TO CONSTRUCT A CARBON
DIOXIDE TRANSMISSION PIPELINE

DOCKET HP 22-001
MOTION TO RETURN APPLICATION

COMES NOW, Intervening Landowners by and through their counsel of record, Brian Jorde, Domina Law Group, pc llo, and Ryan Cwach, Birmingham & Cwach Law Offices, PLLC, and respectfully move the Commission to return the application of SCS, LLC (hereinafter “Applicant”) for deliberate misstatements of material fact in the Application or in accompanying statements or studies required by the Applicant. In support of this motion, movant states the following:

1. According to the Application, the purpose of the proposed pipeline is to capture carbon emissions from ethanol facilities in Iowa, Minnesota, South Dakota, and North Dakota to three carbon sequestration sites located in central North Dakota.
2. An application is a “continuing application” requiring Applicant to “immediately notify the commission of any changes of facts or applicable law materially affecting the application. This duty continues up to and includes the date on which the permit is issued or denied.” S.D. Admin. R. 20:10:22:04(5).
3. There has been a change of fact materially affecting the Application. Specifically, on August 04, 2023, the North Dakota Public Service Commission (“ND PSC”) denied Applicant’s application for a permit to construct the portion of the carbon pipeline in North Dakota. A copy of the Order is attached hereto as Exhibit A. The ND PSC specifically found:
 - a. The adverse impacts on future property values and development “have not been adequately minimized for the welfare of the people and the environment of the state.” Ex. A ¶ 17.
 - b. The Applicant has not property addressed areas that are geologically unstable. Ex. A ¶ 28.

- c. The Applicant “has not taken the steps to address outstanding legitimate impacts expressed by landowners during the public comment or demonstrated why a reroute is not feasible,” including rerouting the Project on “Vculek’s, Doolittle’s Barnhardt’s, and Dotzendrod’s properties,” and “an analysis of the south Bismarck alternate route.” Ex. A ¶ 32.
 - d. The Applicant “has not provided sufficient evidence to demonstrated that the location, construction, operation, and maintenance of the Project will produce minimum adverse impacts upon the welfare of the citizens of North Dakota within the existing record.” Ex. A ¶ 42.
 - e. Based upon the above findings, conclusions, and order, the North Dakota PSC denied the Company’s applications for a waiver of procedures and time schedules, application for a certificate of corridor compatibility, and application for a route permit.
4. Based upon the above findings, conclusions, and order, the Applicant will have to re-route the pipeline in North Dakota. Applicant has indicated that Applicant will re-apply for a ND PSC permit at a later date. Joey Harris and David Velazquez, NORTH DAKOTA REGULATORS REJECT PERMIT FOR SUMMIT CO2 PIPELINE; SUMMIT INTENDS TO REAPPLY, BISMARCK TRIBUNE, August 04, 2023 (available at: <http://tiny.cc/nox9vz>; last visited August 15, 2023). At time of filing this motion, Applicant has no pending application in North Dakota. As part of its case before the ND PSC, Summit represented that it would take two years for them to develop a reroute through or around Burleigh County (Bismarck). SCS CARBON TRANSPORT, LLC, BISMARCK ROUTE ANALYSIS, EXHIBIT B, SCHEDULE IMPACT, 15 (courtesy copy attached as Exhibit B). Summit’s initial, and now rejected routing selection, was heavily contested in the North Dakota proceedings. The ND PSC’s order makes clear such a rerouting is necessary – presuming Summit is still pursuing this project. *See* Ex. A. Therefore, Summit is at least two and a half years away from potentially securing a route in North Dakota, and therefore potential access to any permanent sequestration and storage locations.
5. Without a route permit in North Dakota and with no application in North Dakota pending, Applicant has no present ability to deliver captured carbon to an appropriate sequestration site, which is a necessary purpose of the Project.

6. As a result of the denial, the Applicant's application contains the following misstatements of material fact:
- a. "The Applicant proposes to build a carbon capture and sequestration Project that will initially move up to 12 million metric tons per annum (MMTPA) of carbon dioxide (CO₂), with the potential for further expansion, from participating industrial facilities in South Dakota, as well as CO₂ from facilities in Minnesota, North Dakota, Iowa, and Nebraska to a sequestration site in North Dakota, where the CO₂ will be safely and permanently stored." SCS Carbon Transport, LLC, Application to the South Dakota Public Utilities Commission for a Permit for the SCS Carbon Transport LLC (SCS) Pipeline Under the Energy Conversion and Transmission Facility Act ("Application"), ¶ 1.1, 1 (February 7, 2022).
 - b. "The Project greatly benefits South Dakota's critical ethanol and agriculture industries, enhancing their long-term economic and environmental sustainability." Application, ¶ 1.1, 1 (February 7, 2022).
 - c. "The Project provides a CO₂ transportation solution, which otherwise would not exist, and without which South Dakota's ethanol plants would be at a significant long-term disadvantage to ethanol plants in states like North Dakota and Illinois, which contain proven subsurface geologic storage formations." Application, ¶ 1.1, 1 (February 7, 2022).
 - d. "The Applicant has offered, and will continue to offer, carbon transportation and storage services to a variety of industrial facility owners in South Dakota and surrounding states, which for the first time gives them a viable opportunity to reduce their carbon emissions." Application, ¶ 1.1, 1 (February 7, 2022).
 - e. "The Project greatly benefits South Dakota's critical ethanol and agriculture industries, enhancing their long-term economic and environmental sustainability." Application, ¶ 1.1, 1 (February 7, 2022).
 - f. "The Project will play an important role in reducing greenhouse gas emissions." Application, ¶ 1.1, 2 (February 7, 2022).
 - g. "The complete Project as proposed includes approximately 2,000 miles of pipelines for the transportation of CO₂ from more than 30 ethanol plants across five state to underground injection control facilities in North Dakota for safe and

permanently sequestration (see Figure 1).” Application, ¶ 1.2, 2 (February 7, 2022).

- h. “Initially, the Project pipeline will be capable of moving up to 12 MMTPA of CO₂ for safe and permanent storage, which is the equivalent of removing approximately 2.6 million cars from our roads on an annual basis.” Application, ¶ 1.1, 2 (February 7, 2022).
- i. “The pipeline component of the Project receives CO₂ from ethanol plants and delivers the CO₂ to the sequestration facilities proposed in North Dakota via a series of laterals, trunklines, and mainlines (see Figure 2). Main lines are pipelines that carry CO₂ from trunk lines to the sequestration facility.” Application, ¶ 2.2.1, 13 (February 7, 2022).
- j. Figure showing the “Midwest Carbon Express” with the proposed pipeline crossing the South Dakota border in McPherson county into North Dakota in two locations, and the pipeline continuing to a sequestration site in North Dakota. Application, Midwest Carbon Express Figure, 15 (February 7, 2022).
- k. “The Applicant proposes to commence construction of the Project pipeline in South Dakota in the first quarter of 2023 and to complete construction in the second quarter of 2024. Construction will require all or portions of five spreads in South Dakota (i.e., overall Project construction spreads 2, 4, 5, 6 and 7). A drawing illustrating the construction spreads in South Dakota is provided in Appendix 1. The Applicant proposes to place its pipeline in service by 2024. This timing is consistent with the requirements of the shippers making the contractual commitments that underpin the Project.” Application, ¶ 1.4, 5 (February 7, 2022).
- l. “The pipeline component of the Project receives CO₂ from ethanol plants and delivers the CO₂ to the sequestration facilities proposed in North Dakota via a series of laterals, trunklines, and mainlines (see Figure 2).” Application, ¶ 2.2.1, 13 (February 7, 2022).
- m. “Utilizing the Project to capture and permanently store their CO₂ emissions enables participating ethanol plants to reduce their carbon footprint by as much as fifty percent (50%), putting them on the path towards producing a net-zero carbon fuel.” Application, ¶ 3.0, 19 (February 7, 2022).

- n. “The Project is capable of moving up to 12 MMTPA of CO2 for safe and permanent storage, which is the equivalent of removing approximately 2.6 million cars from our roads on an annual basis.” Application, ¶ 3.0, 20 (February 7, 2022).
 - o. “The purpose of the Project in South Dakota is to capture CO2 from ethanol facilities and transport it via pipeline efficiently and safely to locations where it can be sequestered in North Dakota.” Application, 4.0, Pg. 20 (February 7, 2022).
 - p. “As the Project crosses into South Dakota from North Dakota the route crosses a portion of the Spring Creek Aquifer with an approximate well depth of 20-200 feet.” Application, ¶ 5.2.2, 43 (February 7, 2022).
7. The fundamental, underlying assumption of the application is that Applicant has a viable present plan to move carbon dioxide to an appropriate sequestration site. Applicant’s current application is a pipeline to nowhere with no viable route in North Dakota to actually sequester any carbon dioxide captured at facilities in South Dakota.
8. The Application should be returned for failure to meet the requirements of SDCL § 49-41B-13(1).

Dated this 18th of August 2023.

/s/ Brian E. Jorde

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing objection was served via email, or via mail, if so identified, on August 18, 2023 upon the persons identified on Exhibit A:

/s/ Ryan D. Cwach

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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

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

August 4, 2023

Appearances

Commissioners Sheri Haugen-Hoffart, Randy Christmann, and Substitute decisionmaker Timothy J. Dawson

Lawrence Bender, Fredrikson & Byron, P.A. on behalf of Applicant, SCS Carbon Transport LLC.

Randall J. Bakke, Bakke Grinolds Wiederholt on behalf of Intervenor John H. Warford, Jr. Revocable Trust, Chad Wachter and Chad Moldenhauer.

Steven J. Liebel, Knoll Leibel and Brian Jorde, Domina Law Group on behalf of Intervenor Dean Twardoski, et al.

Kevin Pranis on behalf of Intervenor Laborers District Council of Minnesota and North Dakota (LIUNA).

Preliminary Statement

On October 17, 2022, SCS Carbon Transport LLC (SCS) filed applications for a certificate of corridor compatibility and for a route permit concerning approximately 320 miles of carbon dioxide pipeline ranging from 4.5 to 24-inch diameter and associated facilities in Burleigh, Cass, Dickey, Emmons, Logan, McIntosh, Morton, Oliver, Richland and Sargent Counties, North Dakota (Application).

Also on October 17, 2022, SCS filed an application for waivers of procedures and time schedules established under North Dakota Century Code (NDCC) Sections 49-22.1-05, 49-22.1-08 and 49-22.1-10, and North Dakota Administrative Code (NDAC) Sections 69-06-01-02 and Chapter 69-06-06, requiring separate filings, time schedules, notices, hearings, and requirements on such applications.



On December 30, 2022, the Public Service Commission (Commission) provided notification of the Application to the townships with retained zoning authority, cities, and counties in which any part of the proposed pipeline corridor is located.

On February 1, 2023, the Commission deemed the Applications complete and issued a Notice of Filings and Public Hearings (Notice) scheduling four separate public hearings as follows:

1. March 14, 2023, at 8:30 a.m. Central Time, at the ND Heritage Center & State Museum, Russell Reid Auditorium, 612 E. Boulevard Avenue, Bismarck, ND 58505. This hearing will focus primarily on portions of the project in Oliver, Morton, and Burleigh Counties.
2. March 28, 2023, at 9:00 a.m. Central Time, at the North Sargent School Activity Center, 16 1st Street SW, Gwinner, ND 58040. This hearing will focus primarily on portions of the project in Dickey and Sargent Counties.
3. April 11, 2023, at 9:00 a.m. Central Time, at the Harry Stern and Ella Stern Cultural Center, ND State College of Science, 820 6th Street Oval, Wahpeton, ND 58075. This hearing will focus primarily on portions of the project in Cass and Richland Counties.
4. May 9, 2023, at 9:00 a.m. Central Time, at Emmons County Courthouse Auditorium, 100 4th Street NW, Linton, ND 58552. This hearing will focus primarily on portions of the project in Emmons, Logan, and McIntosh Counties.

The Notice identified the following issues to be considered in the application for waiver of procedures and time schedules:

1. Are the proposed facilities of such length, design, location, or purpose that they will produce minimal adverse effects and that adherence to applicable procedures, requirements, and time schedules may be waived?
2. Is it appropriate for the Commission to waive any procedures, requirements, and time schedules as requested in the application?

The issues to be considered in the applications for a certificate of corridor compatibility and a route permit are:

1. Will construction, operation, and maintenance of the facility at the proposed location produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota?
2. Is the proposed facility compatible with environmental preservation and the efficient use of resources?
3. Will construction, operation, and maintenance of the facility at the proposed location minimize adverse human and environmental impact while ensuring

continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion?

On March 14, 2023, the public hearing was held as scheduled in Bismarck, North Dakota.

On March 20, 2023, the Commission issued a Notice of Public Hearings, scheduling an additional hearing for June 2, 2023, at 8:30 a.m. Central Time, at the ND Heritage Center & State Museum, Russell Reid Auditorium, 612 E. Boulevard Avenue, Bismarck, ND 58505. This hearing will focus primarily on portions of the project in Oliver, Morton, and Burleigh Counties.

On March 28, 2023, the public hearing was held as scheduled in Gwinner, North Dakota.

On April 11, 2023, the public hearing was held as scheduled in Wahpeton, North Dakota.

On May 9, 2023, the public hearing was held as scheduled in Linton, North Dakota.

On May 30, 2023, SCS filed a Bismarck Route Analysis.

On June 1, 2023, SCS filed a motion and brief in support of the motion to declare Emmons County and Burleigh County ordinances superseded and preempted.

On June 1, 2023, Randall Bakke filed a petition to reopen the proceedings and schedule an additional public hearing.

On June 1, 2023, SCS filed pre-filed direct testimony of M. Rorie, J. Skaare, J. Powell and R. Dillon. It also filed a Market Research letter from Boulder Appraisal.

On June 2, 2023, the public hearing was held as scheduled in Bismarck, North Dakota.

On June 12, 2023, SCS filed a response to the petition to reopen the proceedings and schedule an additional public hearing recommending the Commission deny Randall Bakke's petition.

On July 17, 2023, Knoll Leibel filed a post hearing brief.

On July 19, 2023, Randall Bakke filed a post hearing brief.

On July 19, 2023, SCS filed a post hearing brief.

Having allowed all interested persons an opportunity to be heard, and having heard, reviewed, and considered all testimony and evidence presented, the Commission makes the following:

Findings of Fact

1. Applicant, SCS Carbon Transport LLC, is a Delaware limited liability company authorized to do business in the State of North Dakota.

Size, Type and Preferred Location of Facilities

2. SCS proposes to construct approximately 320 miles of Carbon Dioxide (CO₂) pipeline and associated facilities in Burleigh, Cass, Dickey, Emmons, Logan, McIntosh, Morton, Oliver, Richland and Sargent Counties, North Dakota (Project). The CO₂ is compressed into a supercritical or dense phase state and transported through an interstate pipeline network that terminates northwest of Bismarck in Oliver and Mercer Counties where the CO₂ will be injected in pore space for permanent sequestration.

3. The Project will range in size from 4.5 to 24 inch outside diameter of carbon steel pipe with a wall thickness ranging from 0.189 inches to 0.750 inches. Pipe wall thickness categories will be calculated utilizing 49 CFR Part 195.106. The maximum operating pressure will be 2,183 pounds per square inch gauge. The maximum operating temperature will be 120 degrees Fahrenheit.

4. The Project will have a flow rate capacity of up to 936 million standard cubic feet per day. The valve spacing will have a maximum spacing of 20 miles. The valve spacing will be spaced no more than every 15 miles in high-consequence areas consistent with rules set forth by the Pipeline and Hazardous Materials Safety Administration.

5. Thirty-four (34) aboveground facilities will be associated with the Project as specified and detailed on page 5 of the Application.

6. The proposed Project corridor is generally 300 feet in width as depicted as the "Facility Boundary" in Appendix 1 – ND PSC Aerial Mapbook and identified precisely by the associated GIS map data.

7. The Application estimated the cost of the Project at \$4.5 billion. During the public hearing, James Powel testified that the estimated cost of the Project is \$5.5 billion. The North Dakota portion of the Project is estimated at \$898 million.

Study of Preferred Location

8. SCS initiated correspondence seeking comments from the following federal, state, and local agencies regarding the project:

- a. Federal: (1) Federal Aviation Administration; (2) U.S. Fish and Wildlife Service; (3) U.S. Army Corps of Engineers; (4) U.S. Department of Defense; (5) Federal Bureau of Land Management; (6) Grand Forks Air Force Base; (7) Minot Air Force Base; (8) Military Aviation and Installation Assurance Siting Clearinghouse; (9) Natural Resource Conservation Service; (10) Twentieth Air Force Ninety-first Missile Wing.
- b. State: (1) ND Attorney General; (2) ND Department of Agriculture; (3) ND Department of Career and Technical Education; (4) ND Department of Commerce; (5) ND Department of Environmental Quality; (6) ND Aeronautics Commission; (7) ND Department of Human Services; (8) ND Department of Labor and Human Rights; (9) ND Department of Transportation; (10) ND Department of Trust Lands; (11) ND Energy Infrastructure and Impact Office; (12) ND Game and Fish Department; (13) ND Office of the Governor; (14) ND Indian Affairs Commission; (15) ND Industrial Commission; (16) Job Service of North Dakota; (17) ND Forest Service; (18) ND Geological Survey; (19) ND Pipeline Authority; (20) ND Transmission Authority; (21) ND Parks and Recreation Department; (22) ND Department of Health; (23) ND State Historical Society; (24) ND Department of Water Resources.
- c. Local: (1) Burleigh County Commission; (2) Cass County Commission; (3) Dickey County Commission; (4) Emmons County Commission; (5) Logan County Commission; (6) McIntosh County Commission; (7) Morton County Commission; (8) Oliver County Commission; (9) Richland County Commission; (10) Sargent County Commission.

9. SCS conducted a Class I cultural literature review and a desktop analysis for wetlands, waterbodies, and other sensitive environmental resources, across a one-mile-wide area centered on the Project route (Study Area).

10. SCS conducted several surveys across a generally 300-foot-wide area centered on the Project route as approximated as the "Facility Boundary" in Appendix 1 – ND PSC Aerial Mapbook and identified precisely by the associated GIS map data (Survey Area). SCS conducted surveys for threatened and endangered species, critical habitats, wetlands, waterbodies, and trees/saplings/shrubs.

11. SCS conducted a Class III cultural resources inventory across a portion of the Survey Area. The Class III report was submitted to the State Historical Society of North Dakota (SHPO). In a response dated March 1, 2023, SHPO advised that the report does not meet the standards and they have not yet received a revised report addressing their concerns. SHPO concurrence is commonly required by the Commission for the issuance of a site certificate or route permit. SCS did not address SHPO's concerns further during the proceedings. The Commission finds that cultural resource impacts have not been appropriately addressed.

Issues Raised by Intervenors and Public Comment

12. The Commission received extensive public comment during the public hearings. The public comments expressed broad concerns regarding eminent domain, safety, the policy of permanent CO₂ sequestration and storage, setback distances, irreparable harm to underground drain tile systems, impacts on property values, and the ability to obtain liability insurance due to the Project.

13. Having considered the public comments, the issues of eminent domain, safety compliance with The U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration (PHMSA) construction and operation, and permanent sequestration and storage of CO₂ were outside the jurisdiction and consideration of the Commission.

14. Commenters asserted that greater setback distances and topography should be considered for a CO₂ pipeline. NDCC Section 49-22.1-03 specifies that areas within 500 feet of an inhabited rural residence must be an avoidance area unless waived by the owner of the inhabited rural residence. No testimony was presented that provided a sufficient basis to depart from the avoidance requirements set forth in the statute. The company testified that it met this requirement by either avoiding the location or obtaining a waiver.

15. Several commenters expressed that the Project will cause irreparable harm to their underground drain tile systems. Additionally, the commenters expressed concerns that if repairs were not performed properly, it would result in sediment buildup and ultimately failure of the drain tile systems. Jeremy Ellingson with Ellingson Drainage testified that his company has been hired by SCS to repair or replace any drain tile systems damaged or modified because of the Project. Dr. Thomas F. Scherer an Associate Professor in the Department of Agriculture and Biosystems Engineering at North Dakota State University testified that drain tile repairs such as those described by Mr. Ellingson can be done successfully if completed using proper procedures for both topsoil and subsoil segregation and tile repair procedures. The Commission finds that proper drain tile system repair and/or replacement by SCS will produce minimal adverse effects to drain tile systems.

16. 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 in response to the assertions. The letter summarizes the effect of existing natural gas and hazardous liquids pipelines upon the development and sale of current residential properties in Bismarck, North Dakota. However, the filing was not tendered during a hearing and the parties and Commission were not afforded an opportunity to question the document or witness provided by SCS as required by NDAC Section 69-02-05-02. This limits the weight that the Commission is willing to provide to the document.

17. The weight of the assertions given by the Commission largely depends on proximity to the project and the timeline of residential development. It also converges with concerns regarding expansive setback requirements. While some of the intervenors and developers stretch the plausibility of the adverse impacts on future property values and development, based upon the record, the Commission finds that the effects have not been adequately minimized for the welfare of the people and the environment of the state.

18. A number of commenters provided that the Project will make them unable to purchase liability insurance due to the risk of a release. In the pre-filed testimony of Micah Rorie on June 1, 2023, 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 this testimony, the Commission finds that no additional requirements are needed to ensure the Project will have minimal adverse impacts on the liability insurance requirements of the landowners.

19. SCS has requested the Commission to supersede and preempt the ordinances of both Emmons and Burleigh Counties, North Dakota. SCS has not filed an application with either county for a variance or waiver to their ordinances.

20. LIUNA 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 the contractors SCS intends to use to construct the Project. SCS's application indicated approximately 1,934 equivalent annual personnel, both skilled and unskilled, would be required for project construction and up to 34 full-time workers will be required during operations. Consistent with Commission precedent, the Commission finds that LIUNA's assertions in relation to SCS's plans for the construction of the Project are not applicable to the Commission's jurisdiction in siting transmission projects.

Siting Criteria

21. The Commission has established criteria pursuant to NDCC Section 49-22.1-03 to guide the site, corridor, and route suitability evaluation and designation process. The criteria, as set forth in NDAC Section 69-06-08-02, are classified as Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria. Exclusion and avoidance areas may be located within a corridor, but at no given point may such an area or areas encompass more than fifty percent of the corridor width unless there is no reasonable alternative. SCS provided an evaluation of the Project for Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria in its application.

22. An Exclusion Area is a geographic area that must be excluded in the consideration of a route for a transmission facility. A transmission facility route must not be sited within an exclusion area.

23. Areas critical to the life stages of threatened or endangered animal or plant species are designated as exclusion areas under NDAC Section 69-06-08-02(1)(d). SCS's studies

and surveys identified that the Project crosses piping plover critical habitat at the Missouri River crossing. The Project will cross the Missouri River using Horizontal Directional Drilling (HDD). As the piping plover habitat is not beneath the Missouri River, a reasonable buffer zone exists for the protection of the piping plover's habitat, and there is no evidence of an adverse impact.

24. SCS 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 Commission staff during the pendency of the proceeding.

25. An Avoidance Area is a geographic area 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. In determining whether an avoidance area should be designated for a transmission facility, the Commission may consider, among other things, the proposed management of adverse impacts, the orderly siting of facilities, system reliability and integrity, the efficient use of resources, and alternative routes. Economic considerations alone will not justify the approval of avoidance areas.

26. National Wildlife Refuges are designated avoidance areas under NDAC Section 69-06-08-02(2)(a). SCS's studies and surveys identified the Dakota Lake National Wildlife Refuge (DLNWR) in Dickey County, North Dakota is within the proposed corridor. The DLNWR does not encompass more than fifty percent of the corridor width and will not be crossed by the route. The Commission finds that the impact to the DLNWR is at an acceptable minimum.

27. Game Management Areas are designated avoidance areas under NDAC Section 69-06-08-02(2)(b). SCS's studies and surveys indicated that six waterfowl production areas are within the proposed corridor. The Richland County Waterfowl Production Area is directly crossed by the proposed corridor and route and encompasses greater than fifty percent of the corridor width in Section 16, Township 136N, Range 51W. The Sargent County Waterfowl Production Area is directly crossed by the proposed corridor and route and encompasses greater than fifty percent of the corridor width in Section 7, Township 131N, Range 55W, it is also within the proposed corridor but does not encompass more than fifty percent of the corridor width and will not be crossed by the route in Section 8, Township 131N, Range 54W. The Dickey County Waterfowl Production Area is directly crossed by the proposed corridor and route and encompasses greater than fifty percent of the corridor width in Section 14, Township 129N, Range 61W, Section 28, Township 129N, Range 63W and Section 29, Township 129N, Range 62W. The McIntosh County Waterfowl Production Area is within the proposed corridor, but does not encompass greater than fifty percent of the corridor width in Section 7, Township 129N, Range 70W. The Emmons County Waterfowl Production Area is directly crossed by the proposed corridor and route and encompasses greater than fifty percent of the corridor width in Section 16, Township 133N, Range 74W. The Burleigh County Waterfowl Production Area is within the proposed corridor, but does not encompass greater than fifty percent of the corridor width in Section 30, Township 138N, Range 78W, Section 19, Township

138N, Range 78W, and Section 7, Township 138N, Range 78W. SCS did not demonstrate that there is no reasonable alternative to a route through the avoidance areas. Therefore, the Commission finds that the impacts on Game Management Areas in North Dakota are not at an acceptable minimum.

28. Areas that are geologically unstable are avoidance areas under NDAC Section 69-06-08-02(2)(d). SCS's studies and surveys noted that the US Geological Survey and Natural Resources Conservation Service soil data and topographical information were reviewed to identify areas of potential geologic instability. In a letter dated March 3, 2023, the North Dakota Geological Survey (NDGS) noted 14 areas of potential geologic instability within the Project corridor. On April 3, 2023, SCS submitted a letter to the Commission that was sent from SCS to the NDGS on March 31, 2023. SCS has not submitted information to the Commission demonstrating how it has addressed the concerns raised by the NDGS regarding the potentially geologic unstable areas. The Commission finds that SCS has not properly addressed areas that are geologically unstable.

29. Areas within 500-feet of a residence, school or place of business are avoidance areas under NDAC Section 69-06-08-02(2)(e). This avoidance area may be waived by the owner. SCS's studies and surveys identified eight residential structures and one business within 500-feet of the Project. SCS has provided a waiver for one of the residences. SCS submitted that it will not construct within 500-feet of the remaining residences or business without obtaining and filing with the Commission signed waivers from the owner(s) of those structures.

30. 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 Commission staff during the pendency of the proceeding.

31. In accordance with the Commission's Selection Criteria set forth in NDAC Section 69-06-08-02(3), a transmission facility corridor or route shall be approved only if it is determined that any significant adverse effects that will result from the location, construction, and maintenance of the transmission facility will be at an acceptable minimum, or that those effects will be managed and maintained at an acceptable minimum. SCS provided an analysis of the impacts of the Project in relation to all relevant Selection Criteria.

32. The Commission finds that the Project's impact upon agriculture and livestock will be at an acceptable minimum. However, the Company has not taken the steps to address outstanding legitimate impacts expressed by landowners during the public comment or demonstrated why a reroute is not feasible.

33. The Commission finds that the Project's impact upon the criteria listed in NDAC Section 69-06-08-02(3)(b) will be at an acceptable minimum.

34. SCS analyzed the relevant Policy Criteria set forth in NDAC Section 69-06-08-02(4). There is no need for the Commission to give preference to the applicant in this proceeding.

Additional Measures to Minimize Impact

35. SCS has agreed to a number of steps to mitigate the impact of the Project, as indicated by the executed Certification Relating to Order Provisions – Transmission Facility Siting, with accompanying Tree and Shrub Mitigation Specifications.

36. SCS has developed an Unanticipated Discovery Plan, an Emergency Response Plan, a Noxious Weed Management Plan and a Dust Control Plan, which are included with the Application.

37. The Project will be designed, constructed and operated in accordance with PHMSA regulations utilizing industry standards.

38. 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 modeled a valve closure time of 2 minutes, although the timing of the closure is capable of closure much quicker than 2 minutes.

39. 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.

40. SCS requested a 300-foot corridor width in its Application. During the hearing, SCS testified that SCS would not object to the PSC issuing a narrower corridor designation of 200 feet in width.

41. SCS testified that if winter construction were necessary, that it would follow the Interstate Natural Gas Association of America Foundation guidelines for pipeline construction during frozen conditions.

42. Commissioners requested responses from SCS on a number of issues. Some of the specific requests were regarding rerouting the Project on Vculek's, Doolittle's, Barnhardt's, and Dotzenrod's properties; confirmation on the number of 500-foot setback waivers required and obtained; plume modeling; follow-up with the ND Geological Survey; BNI coal permit status; SHPO concurrence status; and an analysis of the south Bismarck alternate route. SCS either did not adequately address these requests or did not tender

a witness to answer questions as required by NDAC Section 69-02-05-02. The basis for SCS's recommended denial of Mr. Bakke's June 1, 2023, petition to reopen the proceeding and hold an additional public hearing was an assertion that it provided a full and complete record in this proceeding. The Commission finds that 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.

From the foregoing Findings of Fact, the Commission now makes its:

Conclusions of Law

1. The Commission has jurisdiction over the applicant, SCS Carbon Transport LLC, and the subject matter of the Application under NDCC Chapter 49-22.1.
2. SCS is a utility as defined in NDCC Section 49-22.1-01(13).
3. The Project is a gas or liquid transmission facility as defined in NDCC Section 49-22.1-01(7).
4. Due to this Application being denied, the issue of whether the county ordinances are automatically superseded and preempted is moot.
5. Based on the above findings of fact, the Commission concludes that the proposed facilities are not of such length, design, location, or purpose that they will produce minimal adverse effects and that adherence to applicable procedures, requirements, and time schedules should not be waived.
6. Based on the above findings of fact, the Commission concludes that it is not appropriate for the Commission to waive any procedures, requirements, and time schedules as requested in the application.
7. Based on the above findings of fact, the Commission concludes 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.
8. Based on the above findings of fact, the Commission concludes SCS failed to meet its burden of proof to show the Project will minimize adverse human and environmental impact, while ensuring continuing system reliability and integrity, and ensuring that energy needs are met and fulfilled in an orderly and timely fashion.

9. Based on the above findings of fact, the Commission concludes 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.

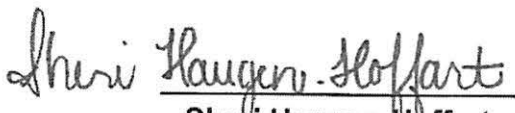
From the foregoing Findings of Fact and Conclusions of Law, the Commission now makes the following:

Order

The Commission Orders:

1. SCS Carbon Transport LLC's Application for a waiver of procedures and time schedules is denied.
2. SCS Carbon Transport LLC's Application for a Certificate of Corridor Compatibility is denied.
3. SCS Carbon Transport LLC's Application for a Route Permit is denied.
4. The June 1, 2023, petition to reopen the proceedings and schedule an additional public hearing is denied, and any outstanding procedural motions are denied.


PUBLIC SERVICE COMMISSION



Sheri Haugen-Hoffart
Commissioner



Randy Christmann
Chair



Timothy J. Dawson
Substitute decisionmaker



SUMMIT
CARBON
SOLUTIONS

Bismarck Route Analysis

5/30/2023



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1 Introduction

In connection with the Consolidated Application for a Certificate of Corridor Compatibility and Route Permit (Application) submitted by SCS Carbon Transport (Summit) in Case No. PU-22-391 before the North Dakota Public Service Commission (Commission), Summit has prepared this analysis to detail for the Commission the route selection process for Summit's proposed Midwest Carbon Express Project (Project). Specifically, the Commission has requested an analysis of routing the Project to the south of the City of Bismarck.

At Project initiation, Summit identified multiple potential routes across the Project footprint in North Dakota, including the areas to the north and south of Bismarck. Regarding a potential route to the south of Bismarck, Summit reviewed a study area from the University of Mary south to the Dakota Access Pipeline crossing of the Missouri River (Southern Route Study Area). Although many factors contributed to the decision to route the Project to the north of Bismarck, the exclusion of a southern route was primarily based upon the risks, constraints, impacts, and other matters set forth herein. It should be noted the order of the discussion that follows is not presented as a hierarchy of importance in Summit's route decision-making process.

2 Geohazard Risks

Lateral migration and scour are both potential geohazard issues in the Southern Route Study Area and should be considered, like what has been done at the current crossing. The level of risk will depend on exactly where within the Southern Route Study Area the crossing of the river will occur. In general, this area of the Missouri River has a wider meander belt and floodplain compared to the currently proposed crossing, which may lead to extended lengths of recommended deeper pipeline burial or longer horizontal directional drills (HDDs) to avoid these risks. The current Missouri River crossing traverses 1.29 miles of floodplain. A route within the Southern Route Study Area would traverse the Missouri River where the floodplain can be as wide as 4.28 miles.¹ The current Missouri River crossing location and design gives the Project a negligible risk for adverse effects from river migration and scour.

There is also evidence of recent flood events within the Southern Route Study Area which have been captured by aerial imagery. See **Figure 1** and **Figure 2**. Flooding events have the potential to make construction of the Project significantly more difficult and unconventional depending on the extent of flooding and location of the Missouri River crossing.

¹ North Dakota Risk Assessment MapService (NDRAM). <https://ndram.dwr.nd.gov>.



Figure 1: Google Earth Imagery from 2021



Figure 2: Google Earth Imagery from 2011

Furthermore, the west side approach to the Southern Route Study Area has a more abrupt topography change descending down into the floodplain compared to the currently proposed Missouri River crossing location. The Southern Route Study Area has a higher density of unstable slope and landslides as identified by Google Earth imagery as well as North Dakota Mineral Resources 24K Landslide maps.² These areas would need to be avoided or site-specific engineering measures would need to be designed and implemented to mitigate those risks.

Finally, there would be added river crossings with the Southern Route Study Area compared to the current route, creating additional environmental impact risks as well as integrity risks from scour and lateral migration of the rivers, all of which would need to be mitigated.

3 Environmental Constraints

The Southern Route Study Area has numerous sensitive and historic lands that run the length of the Missouri River from the University of Mary south to the Dakota Access Pipeline crossing of the Missouri River. These lands include federal lands, shown in **Figure 3**, recreation management lands, conservation areas, wildlife management areas, Fort Abraham Lincoln State Park, North Dakota Veterans Cemetery, Huff Indian Village, and Fort Rice. The filed Project route to the north of Bismarck traverses mostly agricultural lands and less of these sensitive areas as shown in **Table 1**. Because of the presence of less environmental constraints along the currently proposed route, there are fewer potential impacts and mitigation is straightforward.

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² North Dakota Geological Survey. <https://www.dmr.nd.gov/ndgs/landslides/>.

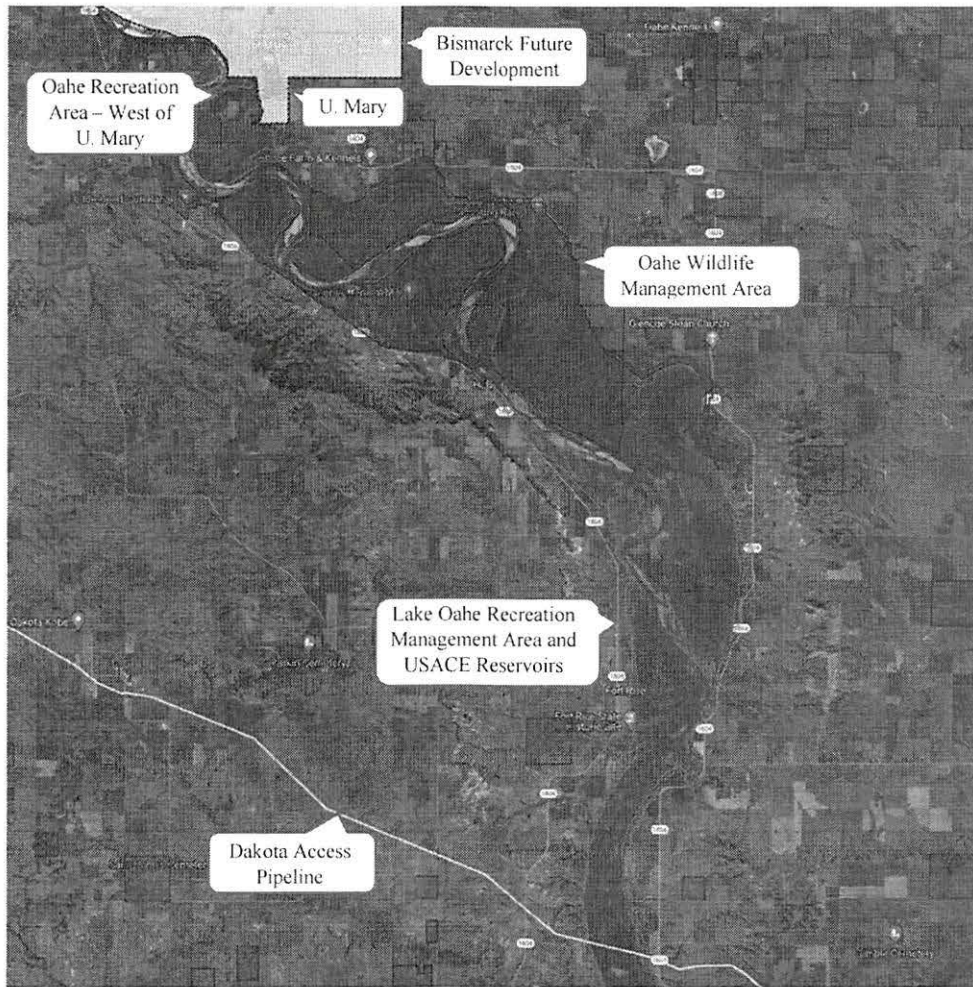


Figure 3: Lake Oahe Federal Lands

	Filed Pipeline Route	Southern Route Study Area
Recreation Management Area, Lake Oahe	Not Impacted	Will be Impacted
Lake Oahe - USACE Reservoirs	Not Impacted	Will be Impacted
Oahe Wildlife Management Area (Mandates for Protection)	Not Impacted	Likely Impacted
University of Mary	Not Impacted	Potentially Impacted
Oahe Recreation Area – West of University of Mary	Not Impacted	Potentially Impacted

Table 1: Environmental Crossing Table

4 Tribal Impacts

Relocating the Project would raise major concerns for area Tribes and their supporters regionally and nationally. The crux of this concern is the Dakota Access Pipeline, a pipeline whose final route was similarly shifted from north to south of Bismarck in response to non-Tribal related objections, which was seen by the affected Tribes' as disrespect for their continuing interests in their former treaty lands.

Damming the Missouri River nearly six decades ago to fill the Lake Oahe reservoir, which now serves as the eastern boundary of the Tribes' reservations, flooded more than 200,000 acres of Tribal lands. These were the most economically prosperous areas of both Tribes' reservations, as well as the center of the community and traditional life for most of the Tribes' citizens. The inundated area of their reservations had been reserved as Indian Country in 1851 by the original Treaty of Fort Laramie. Congress reneged on the Treaty by enacting the Pick-Sloan Flood Control Act in 1944 and imposing the Missouri Basin Program on the Tribes.³ When the U.S. Army Corps of Engineers (USACE) initiated eminent domain proceedings in 1958 to take Standing Rock Sioux Tribal lands for the Lake Oahe site, the Tribe convinced a judge to block the USACE's condemnation, only to have Congress pass legislation overturning the court's decision.⁴ Today Lake Oahe is the fourth-largest reservoir in the country by volume. It destroyed communities, farms, and wooded bottomlands for which the Tribes have been seeking compensation from Congress ever since without much success.

From the perspective of Tribal members, Dakota Access Pipeline was not just a pipeline, it was a reminder of what Native people lost when Congress dammed the Missouri – of broken promises from the federal government to which other tribes could easily relate. The Chairman of the Standing Rock Sioux Tribe, Dave Archambault II, drew this historical connection:

“When the Army Corps of Engineers dammed the Missouri River in 1958, it took our riverfront forests, fruit orchards and most fertile farmland to create Lake Oahe. Now the Corps is taking our clean water and sacred places by approving this river crossing. Whether it's gold from the Black Hills or hydropower from the Missouri or oil pipelines that threaten our ancestral inheritance, the tribes have always paid the price for America's prosperity.”⁵

Moving the pipeline route to the south of Bismarck and moving a pipeline project away from non-Tribal interests and lands and would likely cause significant controversy due to further impacts to this historically sensitive area.

5 Permitting

If the pipeline was routed across Lake Oahe, the following approvals would be required: (1) a Section 408 permit from the USACE under the Rivers and Harbors Act, 33 U.S.C. § 408

³ Flood Control Act of 1944, ch. 665, 5 Stat. 887.

⁴ United States v. 2,005 Acres of Land, 160 F. Supp. 193, 202 (D.S.D. 1958), vacated as moot sub nom. United States v. Sioux Indians of Standing Rock Reservation, 259 F.2d 271 (8th Cir. 1958); see Act of Sept. 2, 1958, Pub. L. No. 85-915, 72 Stat. 1762

⁵ David Archambault II, “Taking a Stand at Standing Rock,” N.Y. Times (Aug. 24, 2016).

(2012); and (2) an easement across USACE -administered lands along Lake Oahe pursuant to the Mineral Leasing Act, 30 U.S.C. § 185 (2012).

Based on the lessons learned from the Dakota Access Pipeline, Summit anticipates receipt of this easement to be improbable. Despite Energy Transfer Partners' (owner of the Dakota Access Pipeline) repeated victories in federal court, the Tribes quickly gained traction in the political arena. On September 9, 2016, Judge Boasberg issued an order denying the Standing Rock Tribe's motion for a preliminary injunction to stop the Dakota Access Pipeline construction until the USACE engaged in additional consultation with the Tribe under the National Historic Preservation Act. Later the same day, the USACE, along with the U.S. Departments of Justice and the Interior, issued a joint statement temporarily halting the project on federal land bordering and under Lake Oahe and requesting "that the pipeline company voluntarily pause all construction activity within 20 miles east or west of Lake Oahe."⁶

President Obama soon announced that he had asked the USACE to consider rerouting the Dakota Access Pipeline. "We are monitoring this closely," President Obama said. "I think as a general rule, my view is that there is a way for us to accommodate sacred lands of Native Americans. I think that right now the Army Corps is examining whether there are ways to reroute this pipeline."⁷ On November 14, 2016, the USACE issued a statement saying it had not yet determined whether to grant an easement on the USACE -administered lands at Lake Oahe "at the proposed location" and invited the Standing Rock Sioux Tribe to engage in additional consultation.⁸ Three weeks later, the USACE rejected the easement.

As 2016 drew to a close, national politics were changing. Just four days after taking office, President Donald Trump issued a memorandum declaring the Dakota Access Pipeline to be in the national interest and directing federal agencies to review and approve it "in an expedited manner, to the extent permitted by law and as warranted."⁹ The USACE formally notified Congress and Judge Boasberg on February 7, 2017, of its intention to grant the easement at Lake Oahe. The Dakota Access Pipeline was finally completed and entered service in June of that year.

Notwithstanding President Trump's decision to expedite the Dakota Access Pipeline, the pipeline continued to generate federal court litigation years after it went into service. The District Court found that the USACE violated the National Environmental Policy Act (NEPA) in its issuance of an easement to the Dakota Access Pipeline across Lake Oahe. In 2020, the District Court ordered the USACE to prepare an Environmental Impact Statement (EIS) and vacated the easement. To this day, the USACE has yet to issue the draft EIS and the NEPA process is still ongoing without any defined schedule or known outcome to whether an easement will ever be granted. Beyond litigation risk, reopening the Tribes' concerns about

⁶ 5 Press Release, Office of Pub. Affairs, Dep't of Justice, Joint Statement from the Dep't of Justice, the Dep't of the Army & the Dep't of the Interior Regarding Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs (Sept. 9, 2016).

⁷ Quoted in Christine Hauser, "Obama Says Alternative Routes Are Being Reviewed for Dakota Pipeline," N.Y. Times (Nov. 2, 2016).

⁸ Press Release, U.S. Army Corps of Eng'rs, Statement Regarding the Dakota Access Pipeline (Nov. 14, 2016).

⁹ Memorandum of January 24, 2017, 82 Fed. Reg. 11,129 (Feb. 17, 2017).

their former treaty lands, including those inundated by Lake Oahe, raises significant political dangers given the solicitude with which Summit has always shown Native American nations since the Project's inception.

6 Conclusion

In summary, a southern route presents significant unknowns and risks – including potential impacts to resources for which there may not be viable mitigation options, including the historically negative impact to Tribal lands in the area south of Bismarck. Summit understands that concerns about safety and future development are the driving forces behind the Commission's request for this analysis. Additional information concerning safety and future development can be found on Exhibit A attached hereto; however, as detailed above, a southern route presents additional and unnecessary integrity and safety risks that are not presented in the current route north of Bismarck. Summit strongly believes that it has chosen the safest, most prudent route for the Project based on a multitude of factors and to re-route the Project to the south of Bismarck at this stage of development would add unnecessary cost, schedule delay, and offset many of the impact mitigation measures that have been implemented, as shown in Exhibit B.

EXHIBIT A

1 Safety

As discussed at length during the public hearings for the Project, transportation of a commodity like carbon dioxide (CO₂) via pipeline is the safest mode of transportation when compared to truck and rail¹⁰. The safety record of pipelines in the United States as well as North Dakota is exceptional and existing pipelines transporting CO₂ are statistically the safest. There are two CO₂ pipelines in operation in North Dakota and to date, there have been no recordable injuries or significant releases. As a matter of perspective, there have been (4) fatalities in the home building industry in the Bismarck area in the last (5) years compared to (0) injuries and (0) fatalities associated with pipeline operations.

Summit has provided the Commission with a dispersion and risk analysis which indicates that in the unlikely event of a guillotine rupture, the city of Bismarck would not be a “could affect” area.¹¹ In other words, a worse-case release scenario associated with the pipeline along the current route presents minimal risk to the city of Bismarck and its residents.

Regarding the adequacy of Pipeline and Hazardous Materials Safety Administration (PHMSA) regulations, Summit strongly believes the requirements set forth in Title 49 of the Code of Federal Regulations, Part 195 (49 CFR 195) regarding design, construction, and operation of a CO₂ pipeline in dense phase service are more than adequate. In addition, Summit has provided testimony to the Commission regarding the numerous PHMSA requirements that will be exceeded with respect to the Project as part of Summit’s ongoing efforts to further mitigate the risk associated with an already safe mode of transportation.

The presence of pipelines and the risk of operation has not deterred development, especially on the north side of Bismarck, where homes have been constructed in close proximity (many within 500 feet) to existing PHMSA regulated transmission pipelines that have been in operation for decades.

2 Economic Development

The current pipeline route at its nearest location is 1.17 miles away from the Bismarck Future Development Boundary. The Southern Route Study Area could traverse the Bismarck Future Development Boundary for as much as 0.62 miles.

There is little evidence that pipelines hinder the future development of tracts that they traverse. One methodology for evaluating impact of development in Burleigh County is density of structures around existing pipelines vs. the proposed Project, as shown in **Table 2**.¹² Based

¹⁰ <https://www.bts.gov/sites/bts.dot.gov/files/2021-12/NTS-50th-complete-11-30-2021.pdf>;
<https://www7.phmsa.dot.gov/sites/phmsa.dot.gov/files/does/news/70826/report-congress-shipping-crude-oil-truck-rail-and-pipeline-32019.pdf>

¹¹ Summit has submitted the dispersion modeling and risk analysis to the Commission with an Application to Protect Information. The Commission has not yet ruled on the Application to Protect Information and the inclusion of this information is not intended to waive the confidentiality sought by the Application to Protect Information or otherwise subject the dispersion modeling and risk analysis to review by anyone other than the Commission and its staff.

¹² Burleigh County, North Dakota. <https://burleighco.com/maps/>.

on the existing NuStar Pipeline and WBI Pipeline, homeowners in Bismarck have not shown a tendency to avoid living or developing adjacent to existing pipelines, as shown when comparing **Figure 4** and **Figure 5**.

Of the eleven (11) structures identified within 500 feet of the filed route, only two (2) meet the definition of exclusion and avoidance areas under Chapter 49-22.1 of the North Dakota Century Code. Both tracts were signed voluntarily and are anticipated to receive waivers.

	Proposed Pipeline Route	NuStar Pipeline	WBI Pipeline
Structures within 500 feet	11	940	646
Structures within 1 mile	273	8,423	7,924

Table 2: Structures in Burleigh County



Figure 4: Existing Pipelines in Bismarck 1960s



Figure 5: Existing Pipelines in Bismarck 2022

Another consideration is the growth rate of Bismarck. From 2015 to 2023, approximately 4,114 acres were subdivided and developed into residential neighborhoods.¹³¹⁴ Of which, roughly half of the developments occurred in close proximity to the existing NuStar and WBI pipelines in Burleigh County, as depicted with purple polygons in **Figure 6**. There are roughly 95,235 acres of undeveloped land between the existing Bismarck residential neighborhoods and the current proposed Project route. Based on current Bismarck development rates of roughly 515 acres per year, it would take 185 years to fully develop all land between the existing suburbs and the pipeline.

[Remainder of page intentionally left blank.]

¹³ City of Bismarck. <https://www.bismarcknd.gov/20/GIS-Maps>.

¹⁴ Burleigh County, North Dakota. <https://burleighco.com/maps/>.

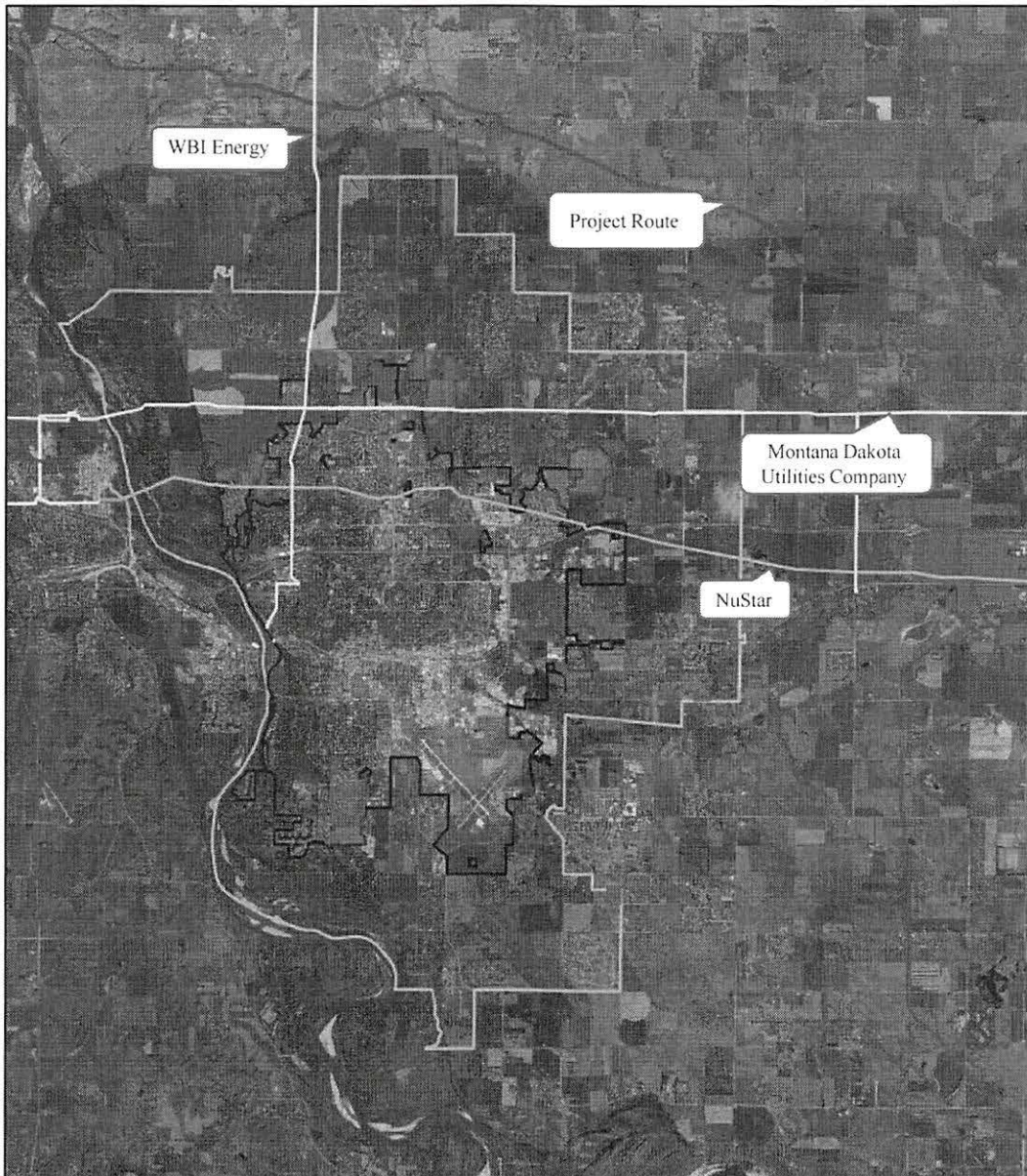


Figure 6: Bismarck 2015-2023 Development

EXHIBIT B

1 Current Project Status

Prior to easement acquisition, Summit completes exhaustive field investigations and surveys to confirm a route and/or provide information to adjust a route. These surveys include biological, threatened & endangered species, cultural, and civil. Summit has committed to mitigating any impacts to culturally sensitive areas, in which the Missouri River is rich in cultural sites. Summit has completed Class III cultural survey for 100% of tracts within 5 miles of the currently proposed Missouri River crossing and has made micro-adjustments to the route to avoid impacts to culturally sensitive areas. **Figure 7** illustrates the extent of cultural survey completed on the west side of the Missouri River. Over the span of multiple months, 2,031 acres were surveyed to identify an acceptable route. The level of effort required to avoid impacts to culturally sensitive areas can be reflected by the magnitude of surveys required which can be measured by the cost for the completion of the surveys. The survey effort on the west side of the Missouri River cost five times more than the project average, this equates to a survey cost of \$50,585.92 per mile on the west side of the Missouri River versus around \$9,000 per mile for the Midwest Carbon Express Project (Project).

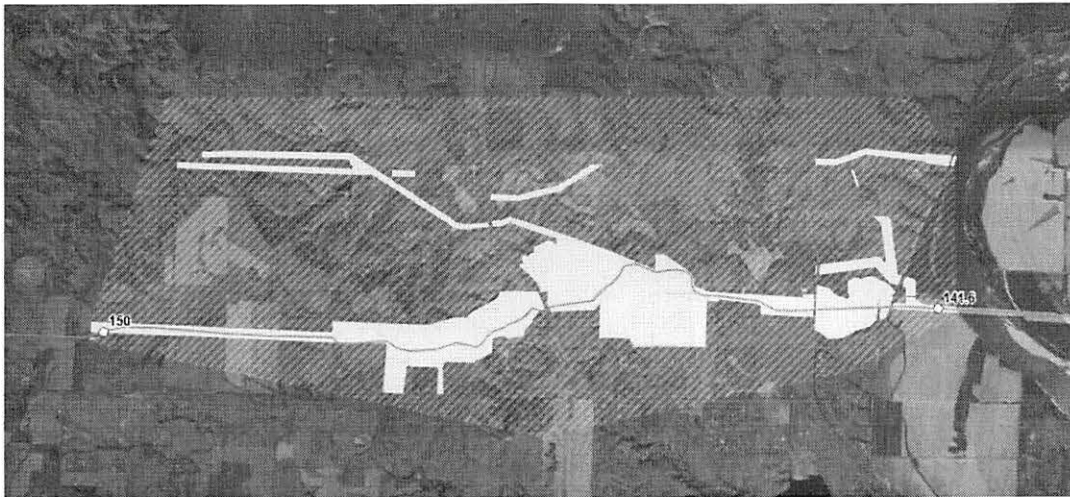


Figure 7: Cultural Survey Boundary

A proposed reroute around the south side of Bismarck would be sited on new tracts throughout Emmons, Burleigh, and Morton County. None of the potentially impacted landowners south of Bismarck have been approached or contacted to determine whether they would be amenable to having a pipeline cross their property.

Summit's currently proposed route through these counties and around the north side of Bismarck crosses two hundred and eighty-one (281) tracts accounting for one hundred and two (102) miles of right-of-way. Of these, one hundred and eighty-seven (187) or 67% have executed easements. These acquired easements encompass seventy-two (72) miles of right-of-way or 71% of the current proposed route.

In addition to progress on the overall route, Summit has acquired easements for 88% of tracts within 3 miles of the existing Missouri River crossing as well as the federally mandated mainline valve sites on both sides of the Missouri River.

2 Schedule Impact

Summit has dedicated significant resources to developing, refining, permitting, and acquiring the proposed pipeline route as it exists today. A change to the proposed pipeline route would create a significant delay to the Project, potentially up to two years. It would also not guarantee a different outcome, but possibly a worse outcome with respect to survey permissions and easement acquisition. Summit would need to work through the process of selecting a preliminary route, working through right-of-way (ROW) notifications and receipt of survey permissions. Once major progress is made on notifying landowners, civil, environmental, and cultural survey crews could be deployed to begin field reconnaissance. The process from route selection to construction takes a significant amount of time to ensure all safety, environmental, and regulatory requirements are met. To illustrate the duration of this process, the schedule for the Project is shown in **Table 3**.

	Date
Preliminary Route Selected	June 2021
Start of Field Survey	August 2021
Start of ROW Acquisition	January 2022
U.S. Army Corps of Engineers Section 401 Permit Application Submitted	October 2022
Application for a Certificate of Corridor Compatibility and Route Permit Submitted to ND PSC	October 2022
Anticipated Receipt of USACE Section 404 and ND PSC Route Permit	December 2023

Table 3: Current Project Schedule

From the selection of the preliminary route to receiving the necessary permits to start construction is anticipated to be a thirty (30) month duration. It can be reasonably assumed that a greater than fifty (50) mile reroute will take at least twenty four (24) months to develop and permit.

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