

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

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

Case No.
PU-22-391

TRANSCRIPT OF TELEPHONIC PREHEARING CONFERENCE

April 4, 2023

APPEARANCES

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behalf of Applicant SCS Carbon Transport LLC

BRIAN E. JORDE, Domina Law Group, on behalf of
Intervenors/Landowners

STEVE J. LEIBEL, Knoll Leibel LLP, on behalf of
Intervenors/Landowners

KEVIN PRANIS, on behalf of Intervenor Laborers
District Council of Minnesota and North Dakota (LIUNA)

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Advisory Counsel to the Public Service Commission

1 ADMINISTRATIVE LAW JUDGE HOGAN: It is
2 April 4th, at 8:03 a.m. This is the time and date
3 scheduled for a prehearing conference in the PSC file --
4 or Case Number PU-22-391. This is a siting application
5 of SCS Carbon Transport LLC.

6 I scheduled this prehearing conference to
7 discuss our upcoming hearing in this matter on
8 April 11th, 2023, in Wahpeton, North Dakota, which is a
9 hearing set to discuss portions of the project located
10 in Cass and Richland counties.

11 Appearing for our prehearing this morning on
12 behalf of the Applicant is Attorney Lawrence Bender.
13 Representing the Public Service Commission is Attorney
14 Zachary Pelham. On behalf of a number of intervenors
15 are Attorneys Steven Leibel and Brian Jorde. Kevin
16 Pranis is appearing on behalf of LIUNA, intervenor. And
17 then, finally, Victor Schock who is part of the Public
18 Service Commission staff.

19 So we had a prehearing conference before the
20 last hearing in Gwinner, North Dakota, and that seemed
21 to work well to kind of know where everybody was at
22 about witnesses and who was going to testify at the
23 hearing so I thought we'd do that again just so that
24 we're all on the same page going into the Wahpeton
25 hearing.

1 So I'll maybe start with you, Mr. Bender. I
2 just assume that you are maybe going to handle the
3 Wahpeton hearing similar to what you did in Gwinner in
4 that presenting limited testimony as just a brief
5 overview of the project and then allowing questioning?

6 MR. BENDER: That's correct, Your Honor.

7 ALJ HOGAN: Okay. And, Mr. Pelham, I assume you
8 won't be offering any evidence or witnesses at this
9 hearing either?

10 MR. PELHAM: Morning, Judge. Actually, the
11 Commission is planning on calling a witness to talk
12 about drain tile. His name is Dr. Thomas Scherer,
13 S-C-H-E-R-E-R. He's a professor at NDSU.

14 ALJ HOGAN: Okay.

15 MR. PELHAM: I don't anticipate, you know, his
16 testimony lasting very long, but the Commission does
17 want to get on the record some information regarding
18 drain tile and the impact the line would essentially
19 have on drain tile.

20 ALJ HOGAN: Okay. Mr. Pranis, I know you
21 presented testimony and presented a witness at the
22 Gwinner hearing. Were you planning to offer any further
23 testimony at the next hearing?

24 MR. PRANIS: No, Your Honor. I have to be out
25 of town for that hearing so I won't be able to be

1 present. And, you know, so if any of our members
2 attend, they would just participate as members of the
3 general public.

4 ALJ HOGAN: All right.

5 MR. PRANIS: No plans for witnesses.

6 ALJ HOGAN: All right. And then I saved
7 intervenors for last. I don't know who wants to speak,
8 Mr. Leibel or Mr. Jorde?

9 MR. JORDE: Brian Jorde here.

10 We plan to have a handful of folks, Your Honor.
11 I don't know the exact number but, you know, five or so.

12 ALJ HOGAN: And were you planning to be there,
13 Mr. Jorde? Are you planning to handle the hearing
14 similar to Gwinner? Or what were you thinking?

15 MR. JORDE: Well, that's -- it's kind of up in
16 the air right now, but either Mr. Leibel or myself would
17 be there so one of us would physically be there to walk
18 them through. So, you know, more of the Q and A as
19 opposed to just testimony.

20 ALJ HOGAN: Okay. That sounds good.

21 MR. BENDER: Your Honor?

22 ALJ HOGAN: Yes. Go ahead.

23 MR. BENDER: This is Lawrence Bender.

24 I received an email yesterday from Mr. Jorde,
25 and if I understood the email correctly, he was planning

1 on calling as witnesses some of the individuals who
2 offered testimony in Gwinner. And I told him that I
3 would talk with my client to see if we were going to
4 have any questions for those witnesses. And if he calls
5 the witnesses that presented evidence in Gwinner, my
6 client has decided that we will not have any questions
7 for those witnesses.

8 So I don't think -- if Mr. Jorde is planning on
9 calling those individuals and I don't have any
10 questions, I think it's inappropriate that they have an
11 opportunity to speak twice.

12 ALJ HOGAN: Okay. And was that your intent, Mr.
13 Jorde, to recall witnesses that appeared in Gwinner?

14 MR. JORDE: Perhaps one on this drain tile
15 issue. And, actually, it makes more sense now, given
16 that the PSC is going to have an individual speaking on
17 that topic, so, you know, we'll have -- we're going to
18 have Mr. Dotzenrod, the gentleman who spoke about it the
19 last time, there and available and may have a few short
20 words from him.

21 ALJ HOGAN: Mr. Bender, if Mr. Dotzenrod limits
22 his testimony as, for lack of a better description, but
23 as like rebuttal to what the Commission's witness is
24 going to testify about regarding the drain tile, do you
25 have any objection to that?

1 MR. BENDER: No, I don't have any objection to
2 that, Your Honor.

3 ALJ HOGAN: Okay. All right. Well, that sounds
4 good.

5 Mr. Jorde, since I have you on the line, I just
6 wanted to let you know that -- because I know you have a
7 lot of intervenors that have filed -- or you're
8 representing a lot of intervenors in this case. And I
9 can tell you that the commissioners have expressed to me
10 concern already about the length of the hearing, that
11 second hearing date for Bismarck. And I think they're
12 willing -- if you're willing to bring some of them to
13 perhaps the Linton hearing to try to take some of the
14 load off of that Bismarck day, I think that would be a
15 good idea.

16 And I'm not making you commit to anything today,
17 but I just want to let you know that that was kind of
18 the feeling I got from the commissioners.

19 MR. JORDE: Yes. My response to that would be,
20 you know, to the extent that folks are willing and able
21 to travel away from where they're located and do that, I
22 think that makes sense.

23 I would say, for the record, I think it's
24 problematic when there's a predefined limit timewise on
25 an issue that's so important. And so, you know, I think

1 even the one extra day or I guess the one additional
2 hearing day that we're planning to have, it's -- I don't
3 think it's appropriate to, frankly, have a concern about
4 how many people are interested in exercising their due
5 process rights. I think what we should be talking about
6 is looking at additional days to make sure people fit it
7 in as opposed to already inconveniencing those folks
8 more and having them travel elsewhere.

9 That's what I'd like to get on the record, Your
10 Honor.

11 ALJ HOGAN: Sure. Yep, and I --

12 MR. BENDER: Your Honor, if I may just quickly
13 respond.

14 ALJ HOGAN: Sure.

15 MR. BENDER: I mean, Mr. Jorde had an
16 opportunity to bring witnesses. I know we didn't get to
17 that. I don't know if he had them there or not. He had
18 an opportunity to present witnesses in Gwinner, which he
19 did. He's now going to have another opportunity to
20 present witnesses in Wahpeton. You know, it seems to me
21 that that is sufficient, that we don't have to provide
22 him with another opportunity in Linton or to try to
23 reset our schedule in Bismarck to accommodate him having
24 the opportunity to present three or four times.

25 ALJ HOGAN: Okay.

1 MR. JORDE: So my response to that is this has
2 nothing to do about my opportunity. I'm just a tool and
3 a mouthpiece for people that are directly affected,
4 their property and constitutional rights being directly
5 affected, and this is a process for the people. It's
6 the Public Service Commission, not the pipeline service
7 commission.

8 And the dates that were set were set prior to
9 any intervention deadline and prior to all of our
10 intervenors coming into the matter. And so the schedule
11 was set when I think there were maybe two parties to the
12 case and not 50 or however many there are now.

13 So with all due respect to Mr. Bender, if it's
14 going to be a process for the public, it certainly would
15 be appropriate to at least consider extending the time
16 for an additional hearing perhaps in the Bismarck area.

17 ALJ HOGAN: All right. Yeah, it's my
18 understanding that the Commission has determined that
19 those are the amount of days that they're willing to set
20 aside for the hearing. I really have no control over
21 that other than to allow Mr. Jorde, on behalf of your
22 clients, to put your objection and your thoughts on the
23 record and build your record for that. And, likewise,
24 Mr. Bender has his opportunity to put his response in
25 the record.

1 But my understanding at this point, the -- oh,
2 yeah, I don't know who spoke but --

3 MR. PELHAM: I didn't mean to interrupt you.

4 ALJ HOGAN: No. Go ahead.

5 MR. PELHAM: If I could just briefly respond on
6 behalf of the Commission.

7 The Commission sets hearing dates based upon the
8 application as to when it's received. The application
9 was received and it was publicly available for quite
10 some time before the hearings were set. And the
11 Administrative Code, as well as the Century Code,
12 provide for the rules of procedure as to any member of
13 the public to intervene.

14 So for purposes of the hearings that have been
15 set, I would note that we're going to be having five
16 hearings for this pipeline spread across North Dakota,
17 giving citizens the ability to communicate, to testify,
18 to retain attorneys if they should like. The Commission
19 is -- it is absolutely providing these hearings for the
20 public.

21 And I just want to make it clear that there's no
22 objection, there's no motions on the record objecting to
23 anything that has been set. And barring that, these are
24 the hearings that have been set.

25 The Commission wants to hear from everyone, but

1 at the same time there -- there are, you know,
2 procedural rules in place that have to be followed.
3 And, also, everyone is entitled to have those procedural
4 rules applied equally so it's not advantaging one or the
5 other. So I just want to make that clear from the
6 Commission standpoint.

7 The Dakota Access Pipeline didn't have five
8 hearings. It had three. This particular line is going
9 to have five hearings across the state of North Dakota.
10 Due process is preserved undoubtedly.

11 And if any party wishes to object, the rules
12 provide for a process to do that. I don't think today
13 is the time to be objecting.

14 And, quite frankly, if there is a motion, then
15 the Commission will take a look at that. But for
16 purposes of the hearings that have been set by the
17 Commission, they have all been in compliance with
18 procedural rules, the Administrative Code, and the
19 Century Code.

20 Thank you.

21 MR. JORDE: Your Honor, I have to respond to
22 that. And I don't know if Mr. Pelham misinterpreted my
23 comments.

24 We have no problem with the process as it
25 currently has occurred. I'm simply saying, in response

1 to the notion that because of the individuals who
2 weren't able to speak in Bismarck, may not still be able
3 to on the one day that has been set aside in June, my
4 simple response is, if there's more people standing in
5 the queue, I don't think we can artificially cut them
6 off, and I think it may be wise to consider having an
7 additional overflow date just in case. That's simply
8 what I'm saying.

9 ALJ HOGAN: All right.

10 MR. PELHAM: Thank you, Mr. Jorde. I appreciate
11 that. And I didn't take it as far as maybe I seemed. I
12 just wanted to make it clear. And certainly we -- the
13 Commission wants -- absolutely wants everyone to be able
14 to testify and to provide evidence and documents on this
15 line. But at the same time there certainly are
16 realities, and those realities are time constraints. So
17 I think having these prehearing conferences are helpful.

18 You know, if it -- there's certain aspects that
19 the Commission just simply doesn't have control over but
20 at the same time does have to have a process in place to
21 allow for the hearing to proceed and for the applicant
22 to present its case and also for the intervenors to
23 present its case. And I believe that's going to be
24 completed. I do believe that that will be fulfilled.
25 But appreciate your point on that.

1 ALJ HOGAN: I haven't seen the Commission's
2 travel schedules yet or travel arrangements for next
3 week's hearing.

4 Mr. Schock, are we going to have a hard 9:00 end
5 date again, do you know? I assume so.

6 MR. SCHOCK: Yeah. We'll have the same flight
7 restrictions where our pilot is limited so we'll have to
8 shut down at a similar --

9 ALJ HOGAN: Okay.

10 MR. SCHOCK: -- sometime between 8 and 8:30.

11 ALJ HOGAN: Okay.

12 MR. SCHOCK: Yeah.

13 ALJ HOGAN: Okay. So, yeah, we'll -- that's
14 kind of what we have, 9:00 in the morning to 8, 8:30 at
15 night. But I think the commissioners are willing to
16 stay there until the last minute if they need to. So
17 just encourage specifically the intervenors to use that
18 time if they can.

19 Mr. Jorde or Mr. Leibel, refresh my memory. Did
20 you file another motion to intervene for another client
21 last week Friday?

22 MR. JORDE: Steve, do you want to take that? I
23 think that's right.

24 MR. LEIBEL: I believe that's right. This is
25 Steve. I'm just checking. I think there was one more

1 person, a Mr. Tiegs, James Tiegs. I am just looking.
2 Yes, there was one.

3 ALJ HOGAN: Okay. And I'll just ask if there's
4 any -- rather than setting a time frame to respond to
5 that, is there any objection to the motion to intervene,
6 Mr. Bender?

7 MR. BENDER: No objection.

8 ALJ HOGAN: Mr. Pelham.

9 MR. PELHAM: No objection.

10 ALJ HOGAN: Okay. Then I'll get an order out
11 granting that one as well. It likely will not be today,
12 and with the weather we're short-staffed so it might be
13 Friday before I get that out, but I will get that out
14 this week.

15 Are there other issues we need to discuss this
16 morning?

17 MR. BENDER: Your Honor, Mr. Jorde indicated --
18 and I'll try to get the words correctly. He indicated
19 that he'd probably call five or more witnesses possibly.
20 Is there any possibility that we could get a list of
21 those witnesses before the hearing, perhaps later today
22 or tomorrow?

23 MR. JORDE: Well, I don't know exactly who they
24 -- who they're going to be. I mean, I can tell you the
25 ones that -- you know, Mr. Dotzenrod, his mom, Rose, and

1 James Tiegs, the individual we just talked about, and I
2 think there might be a couple more, but I, frankly, have
3 to check and double-check with folks. So those are the
4 only three that I can share with you right now.

5 MR. LEIBEL: And, Lawrence, to address that a
6 little bit more specifically, I believe it's all
7 landowners.

8 MR. BENDER: Okay. Well, Your Honor, if we
9 could get a list as soon as possible, I think that would
10 be appropriate. You've always asked me ahead of time,
11 and today you asked the Commission for a list of their
12 witnesses, and we've always provided you that. I think
13 we should -- you know, the intervenors could provide us
14 the same courtesy.

15 ALJ HOGAN: Yeah. If you're able to do that,
16 Mr. Leibel or Mr. Jorde, it just helps move things along
17 at the hearing if everybody knows who the parties are
18 that are planning to testify.

19 Do you know when the final decision on that is
20 going to be made?

21 MR. JORDE: Well, honestly, the "final" final
22 decision is probably the day before, but I'll have a
23 better idea after talking with Steve later today. And
24 we're each trying to coordinate some folks. So we can
25 certainly give Mr. Bender an updated "may call" list,

1 but it won't be finalized to the "will call" until
2 probably the day before.

3 ALJ HOGAN: Okay. That's fine. Do you want to
4 send your "may call" list to the whole group too?

5 MR. JORDE: Sure, we will certainly do that,
6 Your Honor.

7 ALJ HOGAN: Because I think the commissioners,
8 at least some of them, if they know who's planning to
9 testify, they'll look at the maps pertaining to their --
10 where they own land and things like that. So it's
11 helpful for them too.

12 MR. JORDE: Yep, makes sense.

13 ALJ HOGAN: All right. Any other issues we need
14 to discuss this morning?

15 All right. Hearing none, I will note for the
16 record it is 8:23 a.m. That will conclude our
17 prehearing conference for this morning.

18 Thank you all for calling in, for our productive
19 conversation, and I hope everyone has a nice day today.

20 MR. BENDER: Thank you, Your Honor.

21 ALJ HOGAN: Thanks.

22 MR. JORDE: Thank you.

23 ALJ HOGAN: Bye.

24 -----

25

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Dated this date of August 4, 2025.

*Lisa A. Hulm*_____

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