

# SCS Carbon Transport LLC, Case No. PU-22-391

April 4, 2023 Prehearing conference

## ND PUBLIC SERVICE COMMISSION

<p style="text-align: right;">1</p> <p style="text-align: center;">STATE OF NORTH DAKOTA PUBLIC SERVICE COMMISSION</p> <p>SCS Carbon Transport LLC Midwest Carbon Express CO2 Pipeline Project Siting Application</p> <p style="text-align: right;">Case No. PU-22-391</p> <p style="text-align: center;"><b>TRANSCRIPT OF TELEPHONIC PREHEARING CONFERENCE</b> <b>April 4, 2023</b></p> <p style="text-align: center;">APPEARANCES</p> <p>LAWRENCE BENDER, Fredrikson &amp; Byron, P.A., on behalf of Applicant SCS Carbon Transport LLC</p> <p>BRIAN E. JORDE, Domina Law Group, on behalf of Intervenors/Landowners</p> <p>STEVE J. LEIBEL, Knoll Leibel LLP, on behalf of Intervenors/Landowners</p> <p>KEVIN PRANIS, on behalf of Intervenor Laborers District Council of Minnesota and North Dakota (LIUNA)</p> <p>ZACHARY PELHAM, Special Assistant Attorney General Advisory Counsel to the Public Service Commission</p>	<p>1           So I'll maybe start with you, Mr. Bender. I</p> <p>2           just assume that you are maybe going to handle the</p> <p>3           Wahpeton hearing similar to what you did in Gwinner in</p> <p>4           that presenting limited testimony as just a brief</p> <p>5           overview of the project and then allowing questioning?</p> <p>6           MR. BENDER: That's correct, Your Honor.</p> <p>7           ALJ HOGAN: Okay. And, Mr. Pelham, I assume you</p> <p>8           won't be offering any evidence or witnesses at this</p> <p>9           hearing either?</p> <p>10          MR. PELHAM: Morning, Judge. Actually, the</p> <p>11          Commission is planning on calling a witness to talk</p> <p>12          about drain tile. His name is Dr. Thomas Scherer,</p> <p>13          S-C-H-E-R-E-R. He's a professor at NDSU.</p> <p>14          ALJ HOGAN: Okay.</p> <p>15          MR. PELHAM: I don't anticipate, you know, his</p> <p>16          testimony lasting very long, but the Commission does</p> <p>17          want to get on the record some information regarding</p> <p>18          drain tile and the impact the line would essentially</p> <p>19          have on drain tile.</p> <p>20          ALJ HOGAN: Okay. Mr. Pranis, I know you</p> <p>21          presented testimony and presented a witness at the</p> <p>22          Gwinner hearing. Were you planning to offer any further</p> <p>23          testimony at the next hearing?</p> <p>24          MR. PRANIS: No, Your Honor. I have to be out</p> <p>25          of town for that hearing so I won't be able to be</p> <p style="text-align: right;">PAGE 3</p>
<p>1           ADMINISTRATIVE LAW JUDGE HOGAN: It is</p> <p>2           April 4th, at 8:03 a.m. This is the time and date</p> <p>3           scheduled for a prehearing conference in the PSC file --</p> <p>4           or Case Number PU-22-391. This is a siting application</p> <p>5           of SCS Carbon Transport LLC.</p> <p>6           I scheduled this prehearing conference to</p> <p>7           discuss our upcoming hearing in this matter on</p> <p>8           April 11th, 2023, in Wahpeton, North Dakota, which is a</p> <p>9           hearing set to discuss portions of the project located</p> <p>10          in Cass and Richland counties.</p> <p>11          Appearing for our prehearing this morning on</p> <p>12          behalf of the Applicant is Attorney Lawrence Bender.</p> <p>13          Representing the Public Service Commission is Attorney</p> <p>14          Zachary Pelham. On behalf of a number of intervenors</p> <p>15          are Attorneys Steven Leibel and Brian Jorde. Kevin</p> <p>16          Pranis is appearing on behalf of LIUNA, intervenor. And</p> <p>17          then, finally, Victor Schock who is part of the Public</p> <p>18          Service Commission staff.</p> <p>19          So we had a prehearing conference before the</p> <p>20          last hearing in Gwinner, North Dakota, and that seemed</p> <p>21          to work well to kind of know where everybody was at</p> <p>22          about witnesses and who was going to testify at the</p> <p>23          hearing so I thought we'd do that again just so that</p> <p>24          we're all on the same page going into the Wahpeton</p> <p>25          hearing.</p> <p style="text-align: right;">PAGE 2</p>	<p>1           present. And, you know, so if any of our members</p> <p>2           attend, they would just participate as members of the</p> <p>3           general public.</p> <p>4           ALJ HOGAN: All right.</p> <p>5           MR. PRANIS: No plans for witnesses.</p> <p>6           ALJ HOGAN: All right. And then I saved</p> <p>7           intervenors for last. I don't know who wants to speak,</p> <p>8           Mr. Leibel or Mr. Jorde?</p> <p>9           MR. JORDE: Brian Jorde here.</p> <p>10          We plan to have a handful of folks, Your Honor.</p> <p>11          I don't know the exact number but, you know, five or so.</p> <p>12          ALJ HOGAN: And were you planning to be there,</p> <p>13          Mr. Jorde? Are you planning to handle the hearing</p> <p>14          similar to Gwinner? Or what were you thinking?</p> <p>15          MR. JORDE: Well, that's -- it's kind of up in</p> <p>16          the air right now, but either Mr. Leibel or myself would</p> <p>17          be there so one of us would physically be there to walk</p> <p>18          them through. So, you know, more of the Q and A as</p> <p>19          opposed to just testimony.</p> <p>20          ALJ HOGAN: Okay. That sounds good.</p> <p>21          MR. BENDER: Your Honor?</p> <p>22          ALJ HOGAN: Yes. Go ahead.</p> <p>23          MR. BENDER: This is Lawrence Bender.</p> <p>24          I received an email yesterday from Mr. Jorde,</p> <p>25          and if I understood the email correctly, he was planning</p> <p style="text-align: right;">PAGE 4</p>

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<p>1 on calling as witnesses some of the individuals who</p> <p>2 offered testimony in Gwinner. And I told him that I</p> <p>3 would talk with my client to see if we were going to</p> <p>4 have any questions for those witnesses. And if he calls</p> <p>5 the witnesses that presented evidence in Gwinner, my</p> <p>6 client has decided that we will not have any questions</p> <p>7 for those witnesses.</p> <p>8 So I don't think -- if Mr. Jorde is planning on</p> <p>9 calling those individuals and I don't have any</p> <p>10 questions, I think it's inappropriate that they have an</p> <p>11 opportunity to speak twice.</p> <p>12 ALJ HOGAN: Okay. And was that your intent, Mr.</p> <p>13 Jorde, to recall witnesses that appeared in Gwinner?</p> <p>14 MR. JORDE: Perhaps one on this drain tile</p> <p>15 issue. And, actually, it makes more sense now, given</p> <p>16 that the PSC is going to have an individual speaking on</p> <p>17 that topic, so, you know, we'll have -- we're going to</p> <p>18 have Mr. Dotzenrod, the gentleman who spoke about it the</p> <p>19 last time, there and available and may have a few short</p> <p>20 words from him.</p> <p>21 ALJ HOGAN: Mr. Bender, if Mr. Dotzenrod limits</p> <p>22 his testimony as, for lack of a better description, but</p> <p>23 as like rebuttal to what the Commission's witness is</p> <p>24 going to testify about regarding the drain tile, do you</p> <p>25 have any objection to that?</p> <p>PAGE 5</p>	<p>1 even the one extra day or I guess the one additional</p> <p>2 hearing day that we're planning to have, it's -- I don't</p> <p>3 think it's appropriate to, frankly, have a concern about</p> <p>4 how many people are interested in exercising their due</p> <p>5 process rights. I think what we should be talking about</p> <p>6 is looking at additional days to make sure people fit it</p> <p>7 in as opposed to already inconveniencing those folks</p> <p>8 more and having them travel elsewhere.</p> <p>9 That's what I'd like to get on the record, Your</p> <p>10 Honor.</p> <p>11 ALJ HOGAN: Sure. Yep, and I --</p> <p>12 MR. BENDER: Your Honor, if I may just quickly</p> <p>13 respond.</p> <p>14 ALJ HOGAN: Sure.</p> <p>15 MR. BENDER: I mean, Mr. Jorde had an</p> <p>16 opportunity to bring witnesses. I know we didn't get to</p> <p>17 that. I don't know if he had them there or not. He had</p> <p>18 an opportunity to present witnesses in Gwinner, which he</p> <p>19 did. He's now going to have another opportunity to</p> <p>20 present witnesses in Wahpeton. You know, it seems to me</p> <p>21 that that is sufficient, that we don't have to provide</p> <p>22 him with another opportunity in Linton or to try to</p> <p>23 reset our schedule in Bismarck to accommodate him having</p> <p>24 the opportunity to present three or four times.</p> <p>25 ALJ HOGAN: Okay.</p> <p>PAGE 7</p>
<p>1 MR. BENDER: No, I don't have any objection to</p> <p>2 that, Your Honor.</p> <p>3 ALJ HOGAN: Okay. All right. Well, that sounds</p> <p>4 good.</p> <p>5 Mr. Jorde, since I have you on the line, I just</p> <p>6 wanted to let you know that -- because I know you have a</p> <p>7 lot of intervenors that have filed -- or you're</p> <p>8 representing a lot of intervenors in this case. And I</p> <p>9 can tell you that the commissioners have expressed to me</p> <p>10 concern already about the length of the hearing, that</p> <p>11 second hearing date for Bismarck. And I think they're</p> <p>12 willing -- if you're willing to bring some of them to</p> <p>13 perhaps the Linton hearing to try to take some of the</p> <p>14 load off of that Bismarck day, I think that would be a</p> <p>15 good idea.</p> <p>16 And I'm not making you commit to anything today,</p> <p>17 but I just want to let you know that that was kind of</p> <p>18 the feeling I got from the commissioners.</p> <p>19 MR. JORDE: Yes. My response to that would be,</p> <p>20 you know, to the extent that folks are willing and able</p> <p>21 to travel away from where they're located and do that, I</p> <p>22 think that makes sense.</p> <p>23 I would say, for the record, I think it's</p> <p>24 problematic when there's a predefined limit timewise on</p> <p>25 an issue that's so important. And so, you know, I think</p> <p>PAGE 6</p>	<p>1 MR. JORDE: So my response to that is this has</p> <p>2 nothing to do about my opportunity. I'm just a tool and</p> <p>3 a mouthpiece for people that are directly affected,</p> <p>4 their property and constitutional rights being directly</p> <p>5 affected, and this is a process for the people. It's</p> <p>6 the Public Service Commission, not the pipeline service</p> <p>7 commission.</p> <p>8 And the dates that were set were set prior to</p> <p>9 any intervention deadline and prior to all of our</p> <p>10 intervenors coming into the matter. And so the schedule</p> <p>11 was set when I think there were maybe two parties to the</p> <p>12 case and not 50 or however many there are now.</p> <p>13 So with all due respect to Mr. Bender, if it's</p> <p>14 going to be a process for the public, it certainly would</p> <p>15 be appropriate to at least consider extending the time</p> <p>16 for an additional hearing perhaps in the Bismarck area.</p> <p>17 ALJ HOGAN: All right. Yeah, it's my</p> <p>18 understanding that the Commission has determined that</p> <p>19 those are the amount of days that they're willing to set</p> <p>20 aside for the hearing. I really have no control over</p> <p>21 that other than to allow Mr. Jorde, on behalf of your</p> <p>22 clients, to put your objection and your thoughts on the</p> <p>23 record and build your record for that. And, likewise,</p> <p>24 Mr. Bender has his opportunity to put his response in</p> <p>25 the record.</p> <p>PAGE 8</p>

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<p>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</p> <p>PAGE 9</p>	<p>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.</p> <p>PAGE 11</p>
<p>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</p> <p>PAGE 10</p>	<p>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</p> <p>PAGE 12</p>

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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

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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,

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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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