

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 28, 2023

APPEARANCES

TYLER GLUDT, Fredrikson & Byron, P.A., on behalf
of Applicant SCS Carbon Transport LLC

JESS VILSACK, General Counsel, Summit Carbon
Solutions

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

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

RANDALL J. BAKKE, Bakke Grinolds Wiederholt, on
behalf of Intervenor John H. Warford as Trustee of the
John H. Warford, Jr. Revocable Trust

LUCAS FRANCO, on behalf of Intervenor Laborers
District Council of Minnesota and North Dakota (LIUNA)

ZACHARY PELHAM, Special Assistant Attorney General
Advisory Counsel to the Public Service Commission

1 ALJ HOGAN: All right. It is 1:32 p.m. on
2 April 28th, 2023. This is the time and date scheduled
3 for a prehearing conference in Public Service Commission
4 Case No. PU-22-391. This is also OAH File No.
5 2023-0002.

6 Appearing for our prehearing conference this
7 afternoon are the following: On behalf of Summit is
8 Tyler Gludt and Jess Vilsack; on behalf of the Public
9 Service Commission is Zach Pelham; on behalf of a group
10 of intervenors are Attorneys Jorde and Mr. Leibel; on
11 behalf of the intervenor John Warford is Attorney Bakke;
12 on behalf of the Laborers Union is Lucas Franco. And
13 then also I have PSC staff member Victor Schock on the
14 line as well.

15 I scheduled this prehearing conference to
16 discuss procedures and any preliminary issues regarding
17 the upcoming Linton hearing on May 9th, 2023. This will
18 be the fourth hearing scheduled for Summit's siting
19 application for the Midwest Carbon Express CO2 pipeline
20 project.

21 So I think where I want to start is I just want
22 to kind of go around and just get an idea of what the
23 parties anticipate or are planning to present as far as
24 witnesses or additional evidence at this hearing.

25 So on behalf of Summit, Mr. Gludt, would that be

1 directed towards you?

2 MR. GLUDT: Yes, Your Honor.

3 ALJ HOGAN: Okay. If you want to go ahead. And
4 I don't know if Summit's planning to call any additional
5 witnesses or have other witnesses available or other
6 evidence it plans to cover at this next hearing?

7 MR. GLUDT: Thank you, Your Honor.

8 As you mentioned, this is the fourth hearing. I
9 think the details of the project are known.
10 Accordingly, Summit does not intend to present any
11 witnesses at this hearing. However, should the
12 Commission like to have any followup or ask questions of
13 a company representative, Summit would be willing to
14 make that representative available under the provision
15 that the company witness would no longer be subject to
16 any further cross-examination by any of the intervenor
17 counsels.

18 As you may recall, I think Mr. Bender made the
19 argument at the Wahpeton prehearing conference that the
20 intervenors have had their chance to conduct their
21 cross-examination, both Mr. Leibel and Mr. Jorde and Mr.
22 Bakke. Accordingly, we think it's inappropriate to
23 allow further cross-examination of our witnesses. And,
24 you know, essentially this equivocates to, even though
25 Summit hasn't made this request, I'm sure that if it did

1 it would be denied, but requiring every single one of
2 the intervenor witnesses to appear at each one of
3 these -- travel and appear at each one of these
4 hearings. So it's just -- I think further
5 cross-examination is inappropriate.

6 The company's willing to bring a representative
7 to answer Commission questions or Commission staff
8 questions, but that would be our intention for the
9 Linton hearing.

10 ALJ HOGAN: Okay. Mr. Gludt, just so I'm
11 hearing Summit's position on this, you know, it's my
12 understanding each of these hearings were set up --
13 well, excluding the fifth hearing because that's kind of
14 a different situation, but these first four were set up
15 to talk about certain segments of the pipeline.

16 And maybe it's not applicable, but if there's
17 issues relevant to just this portion of the pipeline, is
18 Summit's position the same as far as intervenors'
19 questions for Summit representatives?

20 MR. GLUDT: Yeah. Summit is more than willing
21 to give another broad overview of the project and
22 identify any specific issues relative to the counties at
23 issue in Linton, but that would be only if there was an
24 order from you, Judge, that no further cross-examination
25 could be conducted by the intervenors.

1 ALJ HOGAN: And do you know, are there any
2 issues specific to this portion of the pipeline, in
3 Summit's opinion, that haven't been addressed already at
4 the other hearings?

5 MR. GLUDT: I do not know that right now, Your
6 Honor. I can certainly follow up with Summit to see if
7 there are any specific issues, but I'm not aware of any
8 at this time.

9 ALJ HOGAN: Okay. All right. Thank you.

10 Mr. Pelham, does the PSC plan on calling any
11 witnesses for the Linton hearing?

12 MR. PELHAM: Good afternoon, Judge. No, the PSC
13 does not anticipate calling any witnesses.

14 I would just comment briefly on Mr. Gludt's
15 statements. You know, from the Commission's
16 perspective, the Commission would ask that the company
17 present a witness to outline the project generally and
18 specific as to Emmons County -- there's one other
19 county, which escapes me right now which I should know
20 but -- as specific as to this particular hearing, and
21 the Commission would feel that's appropriate to do.

22 I'll withhold the comments on the request of Mr.
23 Gludt on behalf of his client, the cross-examination
24 aspect, other than to say that I would -- I would think
25 that, for purposes of testimony specific to the counties

1 in which this hearing is specified for, that that would
2 be appropriate questioning as to -- as to intervenors
3 asking questions on what would effectively be new
4 information, new testimony, new evidence being presented
5 as specific as to the counties in which we are focusing
6 in on on this particular hearing.

7 Thank you.

8 ALJ HOGAN: And I'll just note --

9 MR. GLUDT: And, Your Honor, may I --

10 ALJ HOGAN: I just want to note, Mr. Gludt -- I
11 think that was you, Mr. Gludt, before you respond --
12 that I have in my notice that this hearing is for the
13 portion of the pipeline in Emmons, Logan, and McIntosh
14 County.

15 And just to clarify, Mr. Pelham, as far as what
16 the Commission is requesting, what Summit has done in
17 the last two hearings as far as, you know, a brief
18 summary and addressing any section-specific issues, do
19 you think something similar at this hearing is
20 appropriate or is that what you're requesting that they
21 do?

22 MR. PELHAM: Judge, you summed it up a lot
23 better than I did. That's what we would be requesting.
24 Thank you.

25 ALJ HOGAN: Okay. And was that you, Mr. Gludt?

1 Did you want to respond?

2 MR. GLUDT: Yes. And I just wanted to note
3 that, Judge, that if we're going to head down this path
4 and we only identify issues specific to this -- to the
5 county -- and I'm just going to throw an example. Let's
6 say there was a pump station located in one of these
7 counties and we testified to the details of that pump
8 station, that that would not open the door to this wide
9 and extensive cross-examination that we received at
10 Wahpeton and Bismarck at least.

11 ALJ HOGAN: Okay. All right. And I think, Mr.
12 Gludt, it's my understanding that, you know, while I
13 agree, I don't think it's a good use of time to continue
14 to go over the same material over and over, I know that,
15 you know, these hearings were designed to be somewhat
16 independent. So I think the Commission is going to want
17 a summary for the members of the public that come. So I
18 -- yeah, it's, for sure, a tricky line to walk at this
19 point. Anyways, those are my thoughts.

20 Okay. I think I'll go to -- Mr. Jorde or Mr.
21 Leibel, on behalf of your clients, do you anticipate
22 calling any witnesses, and if so, if you could give me
23 an idea of how many?

24 MR. JORDE: Yes. This is Brian Jorde.

25 So, Your Honor, I guess first of all to respond

1 to Mr. Gludt, we obviously object to any suggestion or
2 certainly any order that may enter allowing Summit to
3 not have to come to defend their application. They're
4 the movant. They have the burden of proof. Landowners,
5 intervenors do not. And I guess if they think they've
6 already met that burden, they don't want to bring
7 anyone, then I guess that's up to them, but it certainly
8 seems appropriate that they need to have somebody there
9 to defend the very topic of what we're all talking
10 about, which is their application, and to be there for
11 questioning. Obviously, if the exact questions have
12 been asked and answered, that's an appropriate
13 objection, and I don't think anyone wants to go over
14 that again, but that's my comment on that piece.

15 As to the upcoming hearing, it would be similar
16 to Wahpeton, I mean a handful, maybe four or so, five
17 possibly, so nothing -- nothing major. Probably a
18 little less time than what it took with the landowners
19 on direct at Wahpeton would be my guess, Your Honor.

20 ALJ HOGAN: Okay. And as far as your first
21 comment, Mr. Jorde, I just -- you know, these hearings
22 are long enough the way they are. I don't think it --
23 like I said, I don't think it's an efficient use of time
24 to repeat the same type of examination -- of Summit's
25 witnesses, I guess is what I'm referring to -- to repeat

1 the same type of questions that we've gone over in the
2 last two hearings.

3 And I just want to make it clear, this is what I
4 understood you to say, that that's -- you agree with
5 that and that's not the intent on behalf of your
6 clients, but if there's new questions to ask, that you
7 have the latitude to ask those?

8 MR. JORDE: Well, I mean, like any trial, you
9 don't want to ask the same question over and over again.
10 Once you get an answer, it's time to move on. And, I
11 mean, I -- you know, I think any lawyer participating,
12 whether they've been present at a prior hearing,
13 probably needs to avail themselves to at least the
14 subject matter so we're not just doing the same thing.
15 You know, I don't think anyone wants to do that.

16 I'm simply saying that as to the suggestion that
17 they didn't intend to have anyone there, I don't think
18 that's at all appropriate. And it doesn't sound like
19 Your Honor or the PSC staff are interested in that,
20 which is good. I'm simply saying I think they need to
21 have somebody that can be cross-examined on the
22 application insofar as it's not road we've already
23 traveled down. That's all I'm saying.

24 ALJ HOGAN: Okay. Yeah, and I -- I don't want
25 to put words in Mr. Gludt's mouth, but it was my

1 understanding that they will have people there that are
2 able to answer questions so that's -- that's what I
3 understood.

4 MR. GLUDT: Your Honor, this is Mr. Gludt again.
5 I just received word that the only new information that
6 Summit would have to present in Linton would be a right
7 of way progress, the same information, county by county.
8 And that would be it. And if that's the information, we
9 would request -- I'll renew my thoughts -- that
10 cross-examination should be limited to right of way
11 status.

12 ALJ HOGAN: Okay.

13 MR. JORDE: Well, Your Honor, then I have to
14 respond to that.

15 Again, they are the applicant. And the way this
16 has been set up, that it's essentially a new hearing
17 each time. Now, those aren't my rules. Apparently,
18 that's how the PSC admin rules work. And so those have
19 been the rules of the road, the rules of the game here.
20 And they don't get to just show up on what they want to
21 talk about. This is an opportunity for intervenors to
22 ask them questions on the pleading, which is the entire
23 thousand-page application.

24 So, again, I just, for the record, reiterate our
25 request that they have someone there that can speak to

1 their pleading in this case. Thank you.

2 MR. GLUDT: And, Your Honor, I'll just quickly
3 respond to that. Mr. Jorde, Mr. Leibel, Mr. Bakke have
4 all had that opportunity. What they're getting now is a
5 few weeks in between each hearing to go back and
6 collectively think about what they've missed and what
7 they're going to do next. And I think out of the pure
8 fairness standpoint, these hearings weren't set up to do
9 that and to allow intervenors, you know, to -- this
10 extra time and come back and keep rehashing the issues,
11 whether or not it's the exact question or not. You
12 know, this is exactly what's going on here.

13 And obviously I've told you Summit is willing to
14 get a -- present a broad overview, give a right of way
15 update, but I do not think that should open this up to
16 this extensive cross-examination. I wish I could take
17 Mr. Jorde's word for it, but I -- we've gone through two
18 of these now and I think we can expect that public
19 testimony is not going to occur until late in the day
20 again.

21 MR. JORDE: Your Honor, I'm sorry, I have to
22 respond to that.

23 Whether it occurs late in the day or not, I
24 mean, let's all do our jobs. And, you know, the fact
25 that Mr. Leibel or I have appeared for other people has

1 nothing to do with the intervenors that are going to
2 appear in Linton. They've their own case. This isn't a
3 class action. They have their own case. They can ask
4 their own questions through the counsel that they've
5 hired.

6 So, again, this suggestion that basically they
7 want to hide and only put out information they want when
8 they're the applicants, they should be subject to
9 cross-examination, we got to test the application, and
10 that's all fair game. And they knew that when they got
11 started in this process.

12 MR. GLUDT: I would object that we're hiding
13 anything, Your Honor. That's an unfair characterization
14 of what we're trying to accomplish here. We're trying
15 to make this hearing as efficient as possible so that
16 public testimony can occur at a reasonable time in the
17 day and the public is not sitting at this hearing for
18 hours on end, waiting to appear.

19 Because, in reality, Summit filed this
20 application last fall. It's been public knowledge since
21 then. We've made our case several times now. We are
22 not hiding anything.

23 And, you know, at this point, you know, I think
24 a comment was made prior by Mr. Jorde that this is the
25 Public Service Commission and the point is to run an

1 efficient hearing, get the public up so the Commission
2 can hear the public's concern and so Summit can hear the
3 public's concern and respond appropriately.

4 ALJ HOGAN: Well, okay. So this is my
5 understanding. I think when the PSC determined that it
6 was going to hold four separate hearings for this
7 application, which is something it's done on other
8 projects of similar scale, when they decided those
9 parameters, we didn't have intervenors at the time so,
10 you know, I don't know that -- I think it became more
11 complicated once we had intervenor parties, especially
12 with like Mr. Jorde's and Mr. Leibel's group because
13 they represent so many landowners along, you know,
14 different counties within this project.

15 So I think from my standpoint, I agree that -- I
16 don't think it's a sufficient or good use of time to
17 continue to go over the same issues that we've had
18 questioning and we've heard testimony on in Bismarck and
19 Gwinner and Wahpeton. Whether or not there's new stuff
20 -- and sometimes it's hard to talk about this stuff in
21 abstract because, you know, we're talking about new
22 testimony that we've heard versus new, well, you know,
23 what is that? I don't know.

24 So I think there is a line there and so I would
25 just ask all the parties to, if we've gone through it,

1 if we heard testimony on these issues, we need to move
2 on. Because I think at this point the most important
3 information for the PSC is to hear from the landowners
4 and the public on this project. So that's kind of where
5 I'm at and I guess the direction I can give at this
6 point.

7 Mr. Bakke, can you tell me how many -- I know
8 you're planning to appear, and I think you mentioned in
9 your email that you had at least one witness or one
10 client that was -- witness, I think, because you only
11 have one client, that was planning to testify in Linton,
12 but can you tell me -- give me more information on where
13 you're at?

14 MR. BAKKE: Yes, thank you, Your Honor. Yes, I
15 will have at least one witness, perhaps two.

16 And just kind of responding to the issues that
17 have been raised so far, I'm kind of looking at this
18 globally in regards to the entire PSC process, which I
19 understand is -- you know, it's the burden of Summit to
20 establish that this pipeline is a benefit to the
21 citizens of North Dakota, that there aren't public
22 health issues of significant concern so the PSC can
23 analyze those issues, not in a vacuum based on a single
24 hearing but on all four hearings. And I think it goes
25 without saying that these are all very important

1 hearings.

2 It's not my intention to rehash areas of
3 evidence that have been presented before. However, this
4 process is a process where in advance we don't get to
5 see what the evidence is from Summit, we don't get a
6 chance to take depositions of their witnesses, and there
7 are certain areas of testimony and evidence presented by
8 Summit that since the initial hearing in Bismarck where
9 they said they didn't have information, where we have
10 subsequently learned about other information that seems
11 to contradict what they've presented to the PSC.
12 Similarly, there are other areas where some of the
13 testimony provided we believe to be inaccurate and we
14 would intend to present that.

15 You know, they say, well, we shouldn't be
16 allowed to cross-examine. That would be patently unfair
17 because our witnesses are going to go last. Our
18 witnesses are not going to be heard until, at least one,
19 during this hearing in Linton, you know.

20 The Court will recall we didn't get a chance,
21 due to time constraints -- and I'm not blaming anyone.
22 I mean, I know my cross-examination was -- of Summit's
23 witnesses was extensive and so I'm not blaming Summit.
24 I took my time as I felt was necessary to question their
25 witnesses. However, I didn't get to present any of my

1 witnesses.

2 So what Mr. Gludt is requesting is to have the
3 advantage of going through all of these hearings and
4 waiting until our witnesses are presented in Bismarck
5 and one or two in Linton, and then he gets full
6 opportunity to cross-examine them on the same issues
7 that have arisen perhaps in a number of these hearings,
8 but yet we don't get a level playing field. That's not
9 right. If he's going to get a chance to cross-examine
10 our witnesses in Bismarck and Linton, we should have
11 full opportunity to cross-examine Summit witnesses.

12 And the other thing I'll say is it sounds to me
13 like Summit has -- essentially is telling the Court
14 they're throwing in the towel at least as to the
15 propriety of the Summit route in Logan and Emmons County
16 at the Linton hearing and are not going to try to
17 establish it's an appropriate route. That's their
18 burden of proof to establish, as well as on the other
19 issues in those counties, at the Linton hearing. But it
20 sounds to me they are just giving up on that and don't
21 intend to present evidence to the PSC as to why their
22 route is appropriate, how it's safe, how it's to the
23 benefit of the citizens in those counties, and these
24 other issues that are very much at play in this case.
25 But I think Mr. Jorde is correct on that, they're going

1 to fail in their burden of proof.

2 I know these hearings are long. They're
3 important issues. They're important issues to the
4 public. So I think everything has to be, you know, fair
5 game for the PSC to consider all of the evidence on the
6 issues where they have the burden of proof.

7 But like I say, I don't intend to rehash the
8 same things I did before, but to the extent there's
9 additional information that's become available or
10 contradictory information from what Summit testified to
11 or the evidence they presented or areas as the Court
12 will recall where they said, "Well, we don't have an
13 answer to those questions," if we now have information
14 that provides the answers to those questions, we should
15 have full opportunity to present that evidence to the
16 PSC for their consideration.

17 ALJ HOGAN: Mr. Bakke, can you give me more
18 information about the witnesses you intend to call?
19 Like who are the witnesses -- I don't -- I just need
20 like the nature of the type of witnesses. Because it's
21 my understanding you only have one client; correct?

22 MR. BAKKE: I have one client, yeah. It's going
23 to deal with the safety issues in relation to the
24 pipeline.

25 MR. PELHAM: This is Zach here.

1 We'd like to know who the witnesses are going to
2 be so that everyone can be prepared. We know who the
3 company witness is going to be, Mr. Powell. We know the
4 intervenor witnesses are going to be those people
5 indicated from Emmons and Logan and McIntosh County. I
6 do think that the purpose of this meeting here is to
7 know who the witnesses are so I would ask that Mr. Bakke
8 answer your question.

9 ALJ HOGAN: Can you tell us who your witnesses
10 are, Mr. Bakke?

11 MR. BAKKE: Yeah, I don't have a problem so long
12 as Summit discloses that as well, because I understood
13 them to say they're calling someone that we don't know
14 who this is.

15 ALJ HOGAN: Yeah, that's fine. I can ask Mr.
16 Gludt that too, but let's finish with yours first.

17 MR. BAKKE: Sure. Yeah. I intend to call Jerry
18 Briggs.

19 ALJ HOGAN: And who is Mr. Briggs? Is he an
20 expert witness or -- I mean --

21 MR. BAKKE: A fact and expert, yeah.

22 ALJ HOGAN: Okay. Do you have a second one?
23 You said one or two.

24 MR. BAKKE: Yeah. I mean, I -- it was kind of
25 going to depend on which witnesses they presented. I

1 mean, right now I know the one for sure, but it's hard
2 for me to say depending on what they present. But
3 that's --

4 ALJ HOGAN: Okay.

5 MR. BAKKE: -- call for sure.

6 ALJ HOGAN: All right. Mr. Gludt, is Summit
7 going to call Mr. Powell again to go through the right
8 of way and summarize the project?

9 MR. GLUDT: Yes, that is our intent, Your Honor.

10 ALJ HOGAN: Okay. All right. Okay. With that
11 -- again, I know this is an unusual format, but I'll
12 just reiterate that, in the interest of time -- and,
13 again, we don't know how many members of the public are
14 going to be there that want to testify. So once we get
15 there and I have a better idea of that, you know, we can
16 estimate how long public testimony is going to be, but
17 every -- well, I guess other than Gwinner, every single
18 one of these we've used -- it's been long days and we've
19 used a lot of time.

20 So like I said before, and I just want to
21 reiterate, I think, from the Public Service Commission's
22 perspective, at this point testimony from the landowners
23 and the public is what's going to be most beneficial for
24 the Public Service Commission, and rehashing -- you
25 know, I get what the intervenors are saying, and I know

1 you have to build your records too and this is all a
2 balancing act, but I would really ask that you limit
3 questioning on issues that have been addressed at other
4 hearings that apply to this pipeline globally.

5 And I guess I'm not really sure how much more we
6 can do other than, you know, we have an idea of who is
7 going to be testifying as far as the parties to this
8 case and getting some general idea of what's going to be
9 allowable for testimony. I think that's -- that's about
10 all we can decide at this point.

11 I'll just go around and ask if there's other
12 issues we need to discuss today.

13 Mr. Gludt, do you have any?

14 MR. GLUDT: Yes, Your Honor. I don't know if it
15 would be appropriate at this time, but it may be,
16 considering what Summit is going to have in mind for the
17 final hearing in Bismarck. It's our understanding that
18 Mr. Bakke has four or five witnesses that he'll be
19 calling, Summit probably has about the same number of
20 witnesses it would intend to call on a rebuttal case.
21 With direct and cross-examination of each of those
22 witnesses and trying to squeeze in additional public
23 testimony, Summit doesn't believe that it is possible to
24 get through that hearing in one day.

25 So, accordingly, we would request that the

1 Commission consider the concept of submitting each
2 party, i.e., intervenors submitting written direct
3 testimony and Summit submitting written direct testimony
4 of its rebuttal witnesses. Those written -- those
5 written items will both be due on the same day. Each
6 party gets an opportunity to review and submit written
7 responses. And the Commission will have time to review
8 those. All witnesses that submitted direct testimony
9 will be available at the hearing for questions by
10 Commission and Commission staff but there will be --
11 that will be the extent of the witness questioning at
12 Bismarck.

13 I think this process will allow -- it's really
14 the only feasible way of getting through the last
15 Bismarck hearing and allowing time for public testimony.

16 ALJ HOGAN: Okay. Yeah, and I do plan on
17 holding a prehearing conference before that hearing as
18 well because I think that one, as far as what needs to
19 happen on that day and time constraints, etcetera, is
20 going to be the most challenging, and, hopefully, we can
21 do that sooner rather than later so that there's time to
22 plan for that last day.

23 But continuing on, Mr. Pelham, thoughts on
24 prefiled testimony and setting deadlines for that and
25 any other issues you want to address this afternoon?

1 MR. PELHAM: Thank you, Judge.

2 As far as prefiled testimony, it's been done by
3 the Commission in the past to lead to more efficiency.
4 In terms of -- in terms of witnesses, I think, from my
5 perspective as counsel for the Commission, we need to be
6 sure that we can accomplish the hearing in Bismarck --
7 specifically I know we're talking about Linton here, but
8 it was brought up -- in Bismarck within the time frame
9 that we have. And I think that is a practical
10 consideration.

11 And perhaps what we can do after this call is
12 perhaps the attorneys for all involved here can get
13 together and try to develop some type of plan in advance
14 of Bismarck that hopefully we can all agree on, you
15 know, whether it's some prefiled testimony, as the plan
16 that Mr. Gludt has explained, or some variation of that.
17 I think it's going to have to be something. And I think
18 it would be appropriate for the parties to do that.

19 As far as the information, the testimony, the
20 evidence being presented, it was noted by Mr. Bakke that
21 there's no opportunity for depositions and discovery.
22 There's opportunity for intervenors to conduct discovery
23 under the rules. I just want to be clear on the record
24 that intervenors have the opportunity to conduct
25 discovery, but it's their choice to ask for it. And it

1 hasn't been done in this case. So there has been
2 discovery on cases in the past. It's not been done
3 here. So this is not a unique situation or hearing in
4 which discovery does not take place or it takes place.
5 It just hasn't been done here.

6 So I just want to be clear on the record from
7 the Commission's rules, the Administrative Code and the
8 Administrative Agencies Practices Act both allow
9 discovery, as everyone knows on this call. It's just
10 simply not been done.

11 So in terms of this hearing, it appears that
12 we're ready to go and have the witnesses and just look
13 forward to having a good hearing.

14 But in terms of the Bismarck hearing, I do think
15 that it would be appropriate for the attorneys to get on
16 a call or exchange some emails as far as thoughts on how
17 best to efficiently present what needs to be presented
18 so that the Commission, the three commissioners -- I
19 guess one non-commissioner who's a substitute
20 decisionmaker -- can make a decision.

21 I'd also remind everyone too that we have
22 post-hearing briefing on these cases and everyone's
23 going to -- there's no page limit on post-hearing
24 briefing. There's no limitation on what exhibits can be
25 cited to. And all of that can be presented after the

1 last hearing.

2 And you, ALJ Hogan, know that you're going to
3 set a time for the company to present and likely
4 intervenors to respond, perhaps even some rebuttal, as
5 to those post-hearing briefs. So thank you.

6 ALJ HOGAN: Okay. Mr. Jorde.

7 MR. JORDE: Yes, thank you.

8 I make a motion on behalf of all intervenors
9 that we be allowed to conduct discovery, both written
10 and depositions. I'd like to take the deposition of Jim
11 Pirolli and Mr. Blank for Summit. So if we could get a
12 ruling on that ASAP, I'd appreciate it.

13 In terms of Fargo -- pardon me, Bismarck, you
14 know, I think we've got a real problem there because
15 Summit just highlighted that they don't think there's
16 going to be enough time. So then if there's not enough
17 time and there's not an opportunity to extend this into
18 a second day, then who are the winners and losers? You
19 know, Mr. Bakke has a case he wants to put on, and
20 that's fair for him to do that. There are his four
21 or five witnesses. Then Summit's rebuttal. Is that
22 going to squeeze out the time? Because we've got people
23 that are intervenors that have just as much right to
24 come and testify. So are we picking winners and losers
25 in terms of who can give testimony?

1 As to the written testimony comment, sure,
2 that's a concept, but we have the due process right to
3 be heard orally via question and answer. And so we
4 don't have to stipulate or consent to that process. And
5 so I think there's a real problem.

6 I also make a motion that the hearing be
7 continued or set aside a second day so that everyone can
8 be heard in terms of all intervenors. If you're going
9 to cut off the public and they chose not to intervene, I
10 guess that's one thing, but in terms of not having
11 enough time for the intervenors to testify, I just don't
12 see possibly how that works. And I think that brings up
13 some significant appeal issues that could be
14 catastrophic to Summit.

15 So those are my thoughts there, Your Honor.

16 ALJ HOGAN: In response to some of that,
17 Mr. Jorde, your motions, if you could file something in
18 writing for me, I'd appreciate that. I think it's --
19 since this is just a prehearing conference, I think
20 having something for the record, I think, would be good.

21 As far as I know, the Commission is not in favor
22 of scheduling more time for this hearing so I think we
23 have what we have. I can tell you I haven't decided
24 anything yet, but in thinking about -- from what I've
25 heard from everybody and thinking about that Bismarck

1 hearing, I have similar concerns about the amount of
2 time all the parties are going to want and the amount of
3 time that we're going to have.

4 So when -- I like Mr. Pelham's idea about the
5 parties getting together and trying to figure out some
6 of that and potentially filing pre- -- prefiled
7 testimony is something the Commission normally and
8 regularly does, especially in cases like this that they
9 know are going to be lengthy so that's a common practice
10 with the Commission. And I think it helps. It makes
11 the testimony or information we need to get through with
12 testimony less.

13 As far as the Bismarck hearing, I think that
14 we're going to have to set some guardrails and time
15 limits on how much time every party is going to get to
16 present its testimony or cases that day. I just don't
17 think going into that hearing without a plan or without
18 time limits for the various parties is a good idea
19 because it's just going to create a mess. And if we
20 know that that's the amount of time we have, it makes
21 sense to think about it in that way.

22 So, you know, I'm open to other ideas, but
23 that's something I'd like the parties to discuss and
24 talk about when you, hopefully, get together and discuss
25 some of these issues.

1 And, with that, Mr. Bakke, any thoughts or
2 anything you want to put on the record?

3 MR. BAKKE: Sure. Just very quickly, Your
4 Honor, I will be filing an objection, I think on Monday
5 or Tuesday, Summit's application to protect information.
6 And so I'll get that to the Court, like I said, Monday
7 or Tuesday at the latest.

8 In relation to Mr. Pelham's comments about
9 discovery, and this is my fault for not always keeping
10 him in the loop, I have been trying to obtain discovery
11 directly through Mr. Bender, one of the attorneys for
12 Summit, and have been wholly unsuccessful in that regard
13 despite assurances they'd consider our requests. So I
14 don't disagree with Mr. Jorde's request for depositions,
15 but I did try to accomplish that through Mr. Bender and
16 was unsuccessful.

17 In regards to prefiled testimony, written
18 testimony, I understand that has been used in the past.
19 I mean, on behalf of my client, we would strenuously
20 request -- or object to that, the biggest part of the
21 reason being that the PSC needs to assess the
22 credibility of these witnesses, may have questions
23 themselves for the witnesses, which is best done in an
24 oral format.

25 And a big factor as well is the cost issue. Of

1 course we know Summit has \$5.5 billion so they have tons
2 of money to fight the intervenors here. I represent one
3 individual, and this is a significant financial
4 commitment and cost to him. And if he were to have to
5 have us do prefiled testimony, that would be
6 tremendously expensive and inefficient and I just don't
7 think that would be fair to the intervenors to approach
8 it that way.

9 We are bringing in the one witness in Linton.
10 That should, I hope, expedite things. I don't disagree
11 that we'd probably need a second day, but I keep getting
12 back to how important this case is to the citizens of
13 North Dakota. I mean, I know there's been other bigger
14 issues and projects presented to the PSC before, but
15 this has to rank right up there. And so if it means,
16 you know, the PSC has to consider another day of
17 hearing, I know it's difficult on everyone's schedule,
18 but I think it's just that important. So that's my two
19 cents' worth.

20 ALJ HOGAN: Thank you.

21 And I didn't mean to ignore you, Mr. Franco. I
22 just kind of assumed in my head that the labor union had
23 presented its witnesses and weren't going to present any
24 further witnesses, but maybe I should ask or have you
25 confirm one way or the other if I was right about that.

1 MR. FRANCO: Well, thank you, Your Honor. Not a
2 problem. Our intention was to call a single witness for
3 a relatively limited amount of time, 15 to 20 minutes at
4 most. So that was our -- that was our plan, and that's
5 what, ideally, we would like to pursue. And that
6 witness would be Evan Whiteford.

7 ALJ HOGAN: And that's for the Linton hearing;
8 correct?

9 MR. FRANCO: That's correct.

10 ALJ HOGAN: Okay. Okay. All right. Thank you.

11 MR. FRANCO: And just to --

12 ALJ HOGAN: Go ahead.

13 MR. FRANCO: Sorry to interrupt.

14 Just to a second point. We would be comfortable
15 and have done this many times before with the prefiled
16 testimony.

17 ALJ HOGAN: Okay. Yeah, and just, you know, for
18 our intervenors, I don't know how familiar you guys are
19 with the Commission process and hearing process, but
20 almost every hearing I do for the Commission we have
21 prefiled testimony. And those witnesses are then
22 available for cross-examination.

23 But the whole purpose of that prefiled testimony
24 is to address the issue we have here. We've got a
25 limited amount of time for hearing and lots of

1 information to get through. So that's the whole purpose
2 of prefiling it so that the commissioners can read --
3 everybody can read through that testimony and that we
4 don't have to go through everything the day of the
5 hearing.

6 So, again, I'll just emphasize that that's
7 something that's routinely done, the Commission is
8 comfortable with that format, and that the whole purpose
9 of that is to address time issues at the hearing.

10 Mr. Schock, I just wanted to confirm that the
11 Commission is not planning on scheduling a sixth hearing
12 day; correct?

13 MR. SCHOCK: Yes, Judge, that is correct.

14 ALJ HOGAN: Okay. So with that in mind, we have
15 what we have. So I know the intervenors want more time,
16 they want another day. Ideally, that would be great,
17 but this is where we're at. We have two hearing dates
18 left and we have to find a way to make it work.

19 So I hope and strongly suggest the parties get
20 together and talk about -- I'm talking more for Bismarck
21 than Linton, but I hope you guys get together and try to
22 come up with a plan of how to manage that day. If it's
23 prefiled testimony, if we're setting time limits for the
24 parties, whatever, because like I said before, I think a
25 game plan is needed for that hearing day.

1 Okay. One other thing I wanted to ask about
2 since I have everybody on the phone, I think, Mr. Jorde
3 or Mr. Leibel, I think I saw this morning another
4 petition to intervene was filed this morning. I don't
5 have it right in front of me but it's another landowner.
6 Is that correct?

7 MR. JORDE: Correct.

8 ALJ HOGAN: Okay. And I'll just ask if there's
9 any objection to that petition to intervene. If there
10 isn't any, I'll just go ahead and get an order out
11 granting that.

12 All right. Hearing none, then I will --

13 MR. GLUDT: Your Honor --

14 ALJ HOGAN: Go ahead.

15 MR. GLUDT: Your Honor, this is Mr. Gludt.

16 I mean, I haven't seen the petition to intervene
17 either but I mean we -- it's difficult to know. If it's
18 just another landowner, I suspect we won't have any
19 objections, but is there a way to get that posted so we
20 can at least see the petition?

21 ALJ HOGAN: Oh, sure. Yep, yep. I will -- I
22 don't know if I'll get it done this afternoon. Maybe --
23 I'm heading out of the office after this, but maybe I
24 can get an email out -- well, let's do this.

25 Mr. Gludt, would close-of-business Monday be a

1 sufficient deadline to file any objections?

2 MR. GLUDT: That's more than enough time
3 assuming that we have an opportunity sometime before
4 then to see the petition. Like I said, if it's a
5 landowner, I don't suspect any objections, but I can't
6 just waive any right to object without having seen it.
7 So Monday, close-of-business Monday, will be more than
8 sufficient time and we appreciate it, Your Honor.

9 ALJ HOGAN: Sure. Yep, that's understandable.
10 I didn't know you hadn't seen it yet.

11 So, okay, I'll set a deadline of
12 close-of-business May 1st. If anybody does object,
13 please file something by that time.

14 And I'll just note anything that's filed,
15 especially these things that are more time-sensitive,
16 you know, it needs to be filed with the Commission so it
17 gets on the docket, but if you could include me on those
18 as well, because while the Commission's normally pretty
19 good about getting stuff to me, you know, especially
20 when we have these short time periods to address some of
21 this stuff, it's easier if it's sent directly to me so I
22 can see it right away.

23 All right. Anything else we need to address
24 this afternoon?

25 MR. GLUDT: Nothing further from Summit, Your

1 Honor.

2 ALJ HOGAN: All right. Well, hearing nothing
3 else, I'll note for the record that it's 2:18 p.m.

4 That will conclude our prehearing conference for
5 this afternoon. Thank you all for calling in and I hope
6 everybody has a nice weekend.

7 UNIDENTIFIED SPEAKER: You as well. Thank you.

8 UNIDENTIFIED SPEAKER: Thank you.

9 ALJ HOGAN: Thanks. Bye-bye.

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