

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

May 12, 2023, Prehearing conference

ND Public Service Commission

<p style="text-align: center;">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;">TRANSCRIPT OF TELEPHONIC PREHEARING CONFERENCE May 12, 2023</p> <p style="text-align: center;">APPEARANCES</p> <p>LAWRENCE BENDER, Fredrikson & Byron, P.A., and JESS VILSACK, General Counsel, on behalf of Applicant SCS Carbon Transport LLC</p> <p>RANDALL J. BAKKE, Bakke Grinolds Wiederholt, on behalf of Intervenor John H. Warford as Trustee of the John H. Warford, Jr. Revocable Trust</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 MR. JORDE: Yes. Brian Jorde, Your Honor.</p> <p>2 Sorry for being tardy.</p> <p>3 ALJ HOGAN: Oh, no problem. Good morning,</p> <p>4 Mr. Jorde.</p> <p>5 So I'll also note that SCS Carbon Transport</p> <p>6 filed a motion yesterday to set time limits for</p> <p>7 testimony for the Bismarck hearing. In our last</p> <p>8 prehearing conference that we had in this matter to</p> <p>9 discuss the Linton hearing, we spent some time talking</p> <p>10 about the Bismarck hearing, and I know that was one of</p> <p>11 the ideas discussed at that prehearing as well.</p> <p>12 So now that Linton's behind us and we can focus</p> <p>13 on Bismarck, with that framework in mind, I just want to</p> <p>14 go around and ask all the parties how many witnesses</p> <p>15 they plan to have and thoughts on the motion as far as</p> <p>16 limiting testimony or -- I think the motion or</p> <p>17 Mr. Bender's idea was to set a time limit for each</p> <p>18 witness. So if there's other ideas on how we set time</p> <p>19 at that hearing, I'm willing to hear those as well.</p> <p>20 So I'm going to start with you, Mr. Bender. I</p> <p>21 can't remember, I read your motion yesterday, but did</p> <p>22 you put in there or can you tell me how many witnesses</p> <p>23 Summit plans to offer at the Bismarck hearing?</p> <p>24 MR. BENDER: Yes, Your Honor. We're thinking</p> <p>25 two witnesses in Bismarck.</p> <p style="text-align: right;">PAGE 3</p>
<p>1 ADMINISTRATIVE LAW JUDGE HOGAN: All right. It</p> <p>2 is 10:01 a.m. on May 12, 2023. This is the time and</p> <p>3 date scheduled for a prehearing conference in Public</p> <p>4 Service Commission Case PU-22-391. This is also OAH</p> <p>5 File No. 2023-0002. And this case concerns SCS Carbon</p> <p>6 Transport LLC's siting application.</p> <p>7 Present -- or on the line for our prehearing</p> <p>8 conference this morning is Victor Schock, PSC staff</p> <p>9 member; Lawrence Bender and Jess Vilsack on behalf of</p> <p>10 the Applicant, Summit; Attorney Randy Bakke who is</p> <p>11 representing intervenor John Warford; Steve Leibel is --</p> <p>12 Attorney Steve Leibel is on the line representing a</p> <p>13 group of intervenors; and then, finally, Attorney Zach</p> <p>14 Pelham who is special assistant attorney general</p> <p>15 designated to represent the PSC in this matter.</p> <p>16 So this prehearing conference was scheduled to</p> <p>17 discuss the final scheduled hearing in this matter which</p> <p>18 has been set for June 2nd, 2023, at the Bismarck</p> <p>19 Heritage Center.</p> <p>20 And just to recap, our first hearing in this</p> <p>21 matter was held in Bismarck, and because of the number</p> <p>22 of witnesses scheduled for that day we did not get to</p> <p>23 the intervenors' witnesses so the PSC decided to</p> <p>24 schedule a second hearing date for Bismarck.</p> <p>25 Can I ask who just joined?</p> <p style="text-align: right;">PAGE 2</p>	<p>1 ALJ HOGAN: Okay. Mr. Pelham, is the PSC</p> <p>2 planning to offer any witnesses and do you have any</p> <p>3 thoughts on the motion or time limits for the Bismarck</p> <p>4 hearing?</p> <p>5 MR. PELHAM: The Commission does not plan to</p> <p>6 offer any witnesses.</p> <p>7 As to my thoughts on potential time limitations,</p> <p>8 I'd like to hear how many witnesses we're realistically</p> <p>9 talking. I just heard Mr. Bender indicate there's two.</p> <p>10 I understand Mr. Bakke, just generally, I think, has</p> <p>11 three. And Mr. Jorde is going to have some as well.</p> <p>12 I think we covered a lot of ground in Linton. I</p> <p>13 think that we can complete what we need to complete so</p> <p>14 long as everyone is efficient in the manner in which</p> <p>15 they conduct their examinations. I would prefer not to</p> <p>16 have hard, set time limitations in place. I think if we</p> <p>17 get, you know, to a point where someone is taking an</p> <p>18 inordinate amount of time on examination and pressing us</p> <p>19 for time, I think that steps can be taken at that time</p> <p>20 to try to move things along and to increase efficiency.</p> <p>21 So that's my general thought on it. And I have</p> <p>22 discussed this with Mr. Schock and that would be the</p> <p>23 staff's position on the motion.</p> <p>24 Thank you.</p> <p>25 ALJ HOGAN: Mr. Pelham, can you confirm the PSC</p> <p style="text-align: right;">PAGE 4</p>

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<p>1 is planning to allow further public testimony for</p> <p>2 Bismarck? Correct?</p> <p>3 MR. PELHAM: Yes. It's a public hearing. It's</p> <p>4 going to be open to public testimony. So certainly I</p> <p>5 think -- you know, honestly, I think that if someone</p> <p>6 comes up and wants to read a six-page, seven-page</p> <p>7 single-spaced document, I think that they should not be</p> <p>8 allowed to do that. I think that we should summarize</p> <p>9 that and be given the option to present that as sort of</p> <p>10 an exhibit so as to save time on that and to allow other</p> <p>11 members of the public to testify.</p> <p>12 I think that public testimony can be curtailed</p> <p>13 in that respect so as it's still allowed and people</p> <p>14 still have the opportunity to say what they want to say,</p> <p>15 but to have someone read a newspaper editorial article,</p> <p>16 and take ten minutes to do that, I don't think is going</p> <p>17 to be efficient.</p> <p>18 ALJ HOGAN: And, Mr. Pelham, is the Commission</p> <p>19 again requesting that public testimony be interspersed</p> <p>20 throughout the day? Or maybe you haven't talked about</p> <p>21 that yet.</p> <p>22 MR. PELHAM: We're not requesting that.</p> <p>23 ALJ HOGAN: Okay.</p> <p>24 MR. PELHAM: We're not requesting that, Your</p> <p>25 Honor. And as I understand it, the intervenors would</p> <p>PAGE 5</p>	<p>1 Bismarck hearing.</p> <p>2 MR. BENDER: The procedure that Mr. Pelham</p> <p>3 outlined was the procedure that I thought would be</p> <p>4 appropriate and that I was going to recommend to my</p> <p>5 client that we follow.</p> <p>6 ALJ HOGAN: Okay. So the two witnesses you have</p> <p>7 planned would be rebuttal witnesses?</p> <p>8 MR. BENDER: That's correct, Your Honor.</p> <p>9 ALJ HOGAN: Okay. All right.</p> <p>10 Next I'll just ask Mr. Bakke how many witnesses</p> <p>11 you have planned and thoughts on the motion.</p> <p>12 MR. BAKKE: Well, four witnesses for sure and</p> <p>13 possibly five. If there's the fifth witness, and I</p> <p>14 mentioned this in Linton, it would be former mayor Steve</p> <p>15 Bakken and he would be quite brief.</p> <p>16 In relation to the motion that, of course, was</p> <p>17 received yesterday, I was in a deposition all day past</p> <p>18 5 p.m. so really haven't had much of a chance to look at</p> <p>19 it, but I mean I can tell you that we're opposed to it.</p> <p>20 I don't know if you want -- I intend to file a formal</p> <p>21 response, but I don't know whether you want me to kind</p> <p>22 of briefly outline my preliminary thinking on that or</p> <p>23 not.</p> <p>24 ALJ HOGAN: Yeah, if you just want to give us</p> <p>25 some brief thoughts and then, yeah, if you file a formal</p> <p>PAGE 7</p>
<p>1 present their case first.</p> <p>2 I don't believe -- and Mr. Bender can correct me</p> <p>3 if I'm wrong, but I would suspect that he's not going to</p> <p>4 offer any introductory witness. I don't think that</p> <p>5 would be appropriate, quite frankly, because this is</p> <p>6 sort of a continuation of the initial Bismarck hearing.</p> <p>7 We've heard the introductory remarks of Mr. Powell</p> <p>8 several times now. No offense to him at all, I'm not</p> <p>9 discounting what he's had to say, but I just don't think</p> <p>10 it's necessary to do that.</p> <p>11 I think -- my thought is to allow the</p> <p>12 intervenors to present their case and then allow for</p> <p>13 rebuttal from the company and then followed by public</p> <p>14 testimony after the completion of rebuttal testimony</p> <p>15 from the company.</p> <p>16 ALJ HOGAN: Did I have somebody else join?</p> <p>17 MR. PRANIS: Kevin Pranis. I apologize. I had</p> <p>18 difficulty finding the notice. I'm here.</p> <p>19 ALJ HOGAN: All right. I apologize I started</p> <p>20 without you, Mr. Pranis.</p> <p>21 MR. PRANIS: No, no, no. I was late.</p> <p>22 ALJ HOGAN: Mr. Bender, I just want to confirm</p> <p>23 if Mr. Pelham's statement was right. You're not</p> <p>24 planning on presenting Mr. Powell to provide a summary</p> <p>25 since this is kind of a continuation of the first</p> <p>PAGE 6</p>	<p>1 response, you can be more detailed in that.</p> <p>2 MR. BAKKE: Yeah. So I guess we went back and</p> <p>3 looked at the record, and there's been ten witnesses</p> <p>4 presented by Summit so far. Mr. Powell, of course, was</p> <p>5 presented multiple times, but they've presented seven</p> <p>6 separate witnesses already.</p> <p>7 And, you know, in terms of the time that has</p> <p>8 been used, my client chose not to appear in Wahpeton or</p> <p>9 Gwinner. My understanding is the Wahpeton hearing went</p> <p>10 until about 7:30 p.m., the Gwinner one was only until</p> <p>11 1 in the afternoon or so. But in the overall scheme of</p> <p>12 things, we've only presented two witnesses so far.</p> <p>13 I agree with Mr. Pelham that it worked well to</p> <p>14 present some of these additional witnesses for all the</p> <p>15 parties in Linton. And so for a number of reasons,</p> <p>16 including that, we should get our opportunity to present</p> <p>17 our witnesses, which will be less time overall than</p> <p>18 Powell when you consider all the five hearings that are</p> <p>19 being held or five hearing days. But that's kind of our</p> <p>20 thinking at this point.</p> <p>21 ALJ HOGAN: And I know you can't control</p> <p>22 cross-examination or Commission questions of your</p> <p>23 witnesses, Mr. Bakke, but the four to five, do you have</p> <p>24 any thoughts or have you thought about how long you</p> <p>25 anticipate testimony from them?</p> <p>PAGE 8</p>

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<p>1 MR. BAKKE: Yes. I -- the reason I'm hesitating</p> <p>2 a little bit is one of them is Brian Bitner, the county</p> <p>3 chairman for Burleigh County, and I don't know -- you</p> <p>4 know, because that's kind of an evolutionary process in</p> <p>5 terms of what Burleigh County has done in response to</p> <p>6 the proposed pipeline. So that's the one I'm not so</p> <p>7 sure about how long he'll take. But I don't expect any</p> <p>8 of them to be any longer than, say, Mr. Briggs or</p> <p>9 Mr. Jundt in Linton who -- I didn't put a time clock on</p> <p>10 it, but I didn't think they were extremely lengthy</p> <p>11 witnesses.</p> <p>12 ALJ HOGAN: Okay. Mr. Leibel or Mr. Jorde, I</p> <p>13 don't know who wants to speak, but similar, you know, if</p> <p>14 you could give me how many witnesses and thoughts on the</p> <p>15 motion, amount of time you're going to need to present</p> <p>16 your witnesses, and then also if you're planning to file</p> <p>17 a formal response to the motion.</p> <p>18 MR. JORDE: Well, I'll take it in reverse order.</p> <p>19 This is Brian Jorde.</p> <p>20 If the Court wants a formal response, then I</p> <p>21 think it's pretty obvious that should be denied. We</p> <p>22 obviously object. I don't think there can be much</p> <p>23 criticism of any of the witnesses that Mr. Leibel and I</p> <p>24 have put forward, and I'd like to think people are</p> <p>25 seeing we get to the point. We tell the story and we're</p> <p>PAGE 9</p>	<p>1 thoughts there.</p> <p>2 In terms of witnesses that we will be</p> <p>3 presenting, right now we're probably at about six, you</p> <p>4 know, similar to the last hearing there in Linton. As</p> <p>5 we get closer, you know, a landowner or two may want to</p> <p>6 say, "You know what? I need to say my piece." Great,</p> <p>7 maybe they will. I'm not expecting a large amount.</p> <p>8 We're considering if we need any other</p> <p>9 non-landowner witnesses, but that decision hasn't been</p> <p>10 made yet. But, again, probably similar presentation</p> <p>11 time, maybe a bit longer than what we just did in the</p> <p>12 Linton matter if you look at our total direct testimony</p> <p>13 time.</p> <p>14 Let me think. In terms of order, again, we have</p> <p>15 no burden of proof. If Summit thinks they've told you</p> <p>16 everything they need to tell you, that's up to them.</p> <p>17 They certainly can waive putting on any direct testimony</p> <p>18 and wait for rebuttal. That's their strategic decision.</p> <p>19 I don't really care.</p> <p>20 In terms of how we proceed, I would request that</p> <p>21 our witnesses go first. We got the most intervenors.</p> <p>22 And no disrespect to Mr. Bakke, he does have one client</p> <p>23 and certainly their case is important, but I'd like to</p> <p>24 get our folks rolling first. And then Mr. Bakke and</p> <p>25 Steve and I can talk if we want to agree on some order,</p> <p>PAGE 11</p>
<p>1 moving on.</p> <p>2 So insofar as limitation, if there is any</p> <p>3 limitation to be considered, I would think it's an</p> <p>4 announcement at the outset that the public commenters</p> <p>5 get five, six minutes, pick a number, much like public</p> <p>6 commenters at a county commission proceeding or other</p> <p>7 proceedings where there's limitations.</p> <p>8 The intervenors have gone through the time and</p> <p>9 expense and frustration to be formal parties in this and</p> <p>10 I don't think it's appropriate to limit their testimony.</p> <p>11 Obviously if you've got parties that are droning on and</p> <p>12 on, that's probably just hurting their case and isn't</p> <p>13 very effective, and that's not my style or Mr. Leibel's</p> <p>14 style.</p> <p>15 So with that, we certainly object to the motion.</p> <p>16 If you want to consider putting some type of guardrails</p> <p>17 on public testimony and announce that at the outset so</p> <p>18 people kind of are, you know, throughout the day getting</p> <p>19 their thoughts together, I'm totally for that. But not</p> <p>20 -- not as to the intervenors or, frankly, to Summit as</p> <p>21 the applicant with the burden of proof, I don't think</p> <p>22 restrictions are appropriate.</p> <p>23 We're going to get it done, right? I mean, this</p> <p>24 is going to be the last grand finale. It's going to</p> <p>25 happen. It's going to get done. So those are my</p> <p>PAGE 10</p>	<p>1 but I'd like to have our people be able to go first.</p> <p>2 So I think I touched on all the things Your</p> <p>3 Honor mentioned there, but remind me, please, if I</p> <p>4 missed something.</p> <p>5 ALJ HOGAN: No, I think you hit them all.</p> <p>6 And just to confirm, Victor, are we going to</p> <p>7 have the same limitations at the Heritage Center again,</p> <p>8 11:00 end time, do you know?</p> <p>9 MR. SCHOCK: Yes. We will have the same time</p> <p>10 limitations.</p> <p>11 I'm not in favor of limiting any public</p> <p>12 testimony time, public input. I'm not sure with whom</p> <p>13 they're associated, but there was a Facebook post before</p> <p>14 our Linton hearing that accused the Public Service</p> <p>15 Commission of talking about limiting that. And with</p> <p>16 that in mind, we're not interested in limiting public</p> <p>17 input. I don't know where the commissioners are sitting</p> <p>18 individually on the topic.</p> <p>19 I know early on you had asked Zach if we were</p> <p>20 planning another similar multiple rounds of it. I</p> <p>21 wouldn't be surprised if the Commission were interested</p> <p>22 in doing that again, particularly since the -- one of</p> <p>23 the main reasons we're holding another Bismarck hearing</p> <p>24 is because the public felt they were not given ample</p> <p>25 opportunity to comment.</p> <p>PAGE 12</p>

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<p>1 ALJ HOGAN: And just to clarify, you said that</p> <p>2 the Commission wouldn't be in favor of limiting public</p> <p>3 testimony. Do you mean the amount of people that can</p> <p>4 talk or the amount of time each person can talk?</p> <p>5 Because I think in Bismarck, the previous Bismarck one,</p> <p>6 I did try to limit people to five to ten minutes.</p> <p>7 MR. SCHOCK: Yep, yep. I think that's</p> <p>8 reasonable. I don't have an issue with that. I just</p> <p>9 don't -- I just want to make sure we're not trying to</p> <p>10 limit how many people talk.</p> <p>11 ALJ HOGAN: Yeah. Okay.</p> <p>12 MR. SCHOCK: Yeah. So how you handle that has</p> <p>13 been perfect, in my opinion, so far so...</p> <p>14 ALJ HOGAN: All right.</p> <p>15 MR. PRANIS: Judge Hogan?</p> <p>16 ALJ HOGAN: Yep. Go ahead.</p> <p>17 MR. PRANIS: Just if I can comment on these.</p> <p>18 So we had also just -- just grappling with this</p> <p>19 sort of motion, but I would agree with Mr. Jorde. I</p> <p>20 think there's -- first of all, I think a -- I feel like</p> <p>21 five minutes -- I mean, so typically a lot of the</p> <p>22 hearings we've done in Minnesota where there's</p> <p>23 substantial public interest, it's a two-minute limit.</p> <p>24 ALJ HOGAN: Oh, boy.</p> <p>25 MR. PRANIS: That's pretty much what</p> <p>PAGE 13</p>	<p>1 I don't know if everyone's done yet but...</p> <p>2 ALJ HOGAN: Okay. Did somebody else chime in?</p> <p>3 MR. BAKKE: Yes, Randy Bakke, Your Honor.</p> <p>4 In relation to a formal response to the motion,</p> <p>5 you know, you can tell me how you want to approach that</p> <p>6 issue, but I would only be inclined to provide a formal</p> <p>7 written response if you were to tell me that you want</p> <p>8 that or if you could allow me to submit a formal written</p> <p>9 response if you do, in fact, decide to grant the request</p> <p>10 of Mr. Bender, even though it appears all the other</p> <p>11 parties are opposed to those time limitations.</p> <p>12 ALJ HOGAN: Well, I guess it's not really up to</p> <p>13 me. I mean, if you want to file a written response, you</p> <p>14 can do that and I'll wait to issue anything on the</p> <p>15 motion until you file that. I think I know what your</p> <p>16 position is on it, but if you want to formalize that in</p> <p>17 writing for the record, I don't have a problem with</p> <p>18 that.</p> <p>19 MR. BAKKE: Okay. Well, I didn't want to delay</p> <p>20 the Court either in its decision so -- but I'll let the</p> <p>21 Court know on that. I need to think about it a little</p> <p>22 bit. Like I said, I haven't even had a chance to fully</p> <p>23 review the brief that Mr. Bender submitted yesterday.</p> <p>24 ALJ HOGAN: Okay. Okay. Anybody else?</p> <p>25 Mr. Bender, do you want to -- you said you</p> <p>PAGE 15</p>
<p>1 (indiscernible) can say most of what (indiscernible)</p> <p>2 from the general public. But a five-minute limit is a</p> <p>3 lot of time. And there is a procedure often for</p> <p>4 allowing people to speak for five minutes, and then if</p> <p>5 there's time later on, to be able to circle back if they</p> <p>6 have more to say, which I think is -- tends to be fairer</p> <p>7 for the greater number of members of the public. It's</p> <p>8 something worth considering. It's not critical to us.</p> <p>9 It's just in terms of witnesses, we expect to</p> <p>10 have one, maybe 20 or 30 minutes. We try to be really</p> <p>11 accommodating in the order and, you know, got -- got</p> <p>12 played last at the last one. We would ask to go early</p> <p>13 on this one. I've got a witness that has young children</p> <p>14 and does not necessarily need to be around for the whole</p> <p>15 thing. So that would be our only ask. We've taken</p> <p>16 pretty little of people's time. So, hopefully, that's</p> <p>17 okay.</p> <p>18 ALJ HOGAN: Okay.</p> <p>19 UNIDENTIFIED SPEAKER: Kevin, how many witnesses</p> <p>20 does LIUNA plan to call at the Bismarck hearing?</p> <p>21 MR. PRANIS: One.</p> <p>22 ALJ HOGAN: All right. Anybody else want to be</p> <p>23 heard on this issue or schedule?</p> <p>24 MR. BENDER: Your Honor, I would like just a</p> <p>25 brief opportunity to respond after everybody's finished.</p> <p>PAGE 14</p>	<p>1 wanted to respond?</p> <p>2 MR. BENDER: Yes, very, very briefly, Your</p> <p>3 Honor. I don't want to spend a lot of time on this</p> <p>4 issue, but I think it's appropriate for me to respond</p> <p>5 with respect to Mr. Bakke's suggestion that the reason</p> <p>6 these hearings have gone on so long is because Summit</p> <p>7 has called 13 witnesses.</p> <p>8 I'm sure the Court is well aware of the fact</p> <p>9 that the reason the Bismarck hearing took so long was</p> <p>10 the lengthy, lengthy cross-examination of Mr. Powell on</p> <p>11 subjects -- on a lot of subjects that were totally</p> <p>12 irrelevant to the hearing. And we had the same</p> <p>13 cross-examination of other witnesses that was very</p> <p>14 lengthy and on matters that weren't pertinent to the</p> <p>15 decisions that are going to be made.</p> <p>16 With respect to Wahpeton, we had the same sort</p> <p>17 of thing with testimony -- or cross-examination, excuse</p> <p>18 me, by Mr. Jorde once again of Mr. Powell where he went</p> <p>19 through the application page by page asking questions.</p> <p>20 He had the application for months and months. He could</p> <p>21 have asked a lot of those questions in Bismarck. He</p> <p>22 chose not to ask those questions in Bismarck. He could</p> <p>23 have asked those questions in Gwinner. He chose not to</p> <p>24 ask those questions in Gwinner.</p> <p>25 So for anyone to suggest that the delay in these</p> <p>PAGE 16</p>

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<p>1 hearings or the length of these hearings is because of</p> <p>2 Summit is just totally inappropriate in my view. And</p> <p>3 what I was looking for with my motion to have specific</p> <p>4 time frames was to prevent that sort of thing from</p> <p>5 happening again.</p> <p>6 I'm still very concerned, Your Honor, that even</p> <p>7 though we talk about -- Mr. Bakke talking about not</p> <p>8 spending a lot of time with each witness, we haven't</p> <p>9 heard anything in terms of whether we're going to have</p> <p>10 hours and hours of cross-examination of the two</p> <p>11 witnesses that we call. And if that happens, I mean, we</p> <p>12 very well could have a situation where the public does</p> <p>13 not have an opportunity to testify or Summit doesn't</p> <p>14 have an opportunity to put on its witnesses so -- its</p> <p>15 rebuttal witnesses.</p> <p>16 So those are my concerns, Your Honor. I fully</p> <p>17 understand the Commission's concern about putting time</p> <p>18 limitations, but it just, frankly, hasn't worked very</p> <p>19 well so far and that was the reason for the filing of</p> <p>20 the motion. Thank you, Your Honor.</p> <p>21 ALJ HOGAN: So I can tell you what my thoughts</p> <p>22 are. I don't like setting time limits either because I</p> <p>23 tend to think administrative hearings, we've got broad</p> <p>24 latitude in the information that comes in and the</p> <p>25 evidence that's received. So generally I'm not in favor</p> <p>PAGE 17</p>	<p>1 with doing that by the end of next week, so that would</p> <p>2 be May 19th.</p> <p>3 MR. BENDER: Your Honor, this is Lawrence</p> <p>4 Bender. I don't have any objection to doing that for</p> <p>5 the Summit witnesses.</p> <p>6 ALJ HOGAN: Mr. Bakke, can you commit to doing</p> <p>7 that?</p> <p>8 MR. BAKKE: Yeah, I don't have a problem with</p> <p>9 that, Your Honor.</p> <p>10 ALJ HOGAN: And, Mr. Jorde.</p> <p>11 MR. JORDE: Yeah, we can do that as to the</p> <p>12 people at that time. I mean, I don't want to be limited</p> <p>13 if an intervenor says "I'd like to testify as well" and</p> <p>14 we have to add one. But, I mean, as far as the people</p> <p>15 that have committed, we certainly can provide that</p> <p>16 information.</p> <p>17 ALJ HOGAN: Okay. And even, Mr. Jorde, if you</p> <p>18 can say "Yes, I definitely have --" what did you tell me</p> <p>19 this morning? "-- six and I have two more possibly," I</p> <p>20 think that would be helpful.</p> <p>21 MR. JORDE: Yeah. We can do a will call/may</p> <p>22 call designation like that.</p> <p>23 ALJ HOGAN: Okay. And, Mr. Pranis, I don't</p> <p>24 know, maybe you can just send me something so I have it</p> <p>25 in writing although you've told me one witness, 20 to --</p> <p>PAGE 19</p>
<p>1 in that -- favor of that, but I have significant</p> <p>2 concerns about this last hearing.</p> <p>3 And I know the Commission wants to hear from the</p> <p>4 public. And if we get squeezed on time and public</p> <p>5 comments are at the end, that's what's going to be</p> <p>6 squeezed, and I know that's not a situation that the</p> <p>7 Commission is going to like very much.</p> <p>8 So I think there needs to be some guardrails on</p> <p>9 time usage just because we only have a certain amount of</p> <p>10 time to get through what appears to be a lot of</p> <p>11 witnesses and just, I think, every hearing we've had</p> <p>12 other than Gwinner, I mean, some of these witnesses,</p> <p>13 it's taken quite a while to present them. So I very</p> <p>14 much have concerns about time usage for this last</p> <p>15 hearing.</p> <p>16 So I think, in considering this, it would be</p> <p>17 really helpful for me if the parties could commit to</p> <p>18 submitting to me the number of witnesses and anticipated</p> <p>19 amount of time they need to present those witnesses</p> <p>20 probably by the end of next week. I mean, the sooner --</p> <p>21 or the better picture I have of how many witnesses and</p> <p>22 how long we're thinking those witnesses are going to</p> <p>23 testify would be helpful in deciding whether or not</p> <p>24 limits are appropriate for this hearing.</p> <p>25 So I guess I'll just ask if anybody has an issue</p> <p>PAGE 18</p>	<p>1 MR. PRANIS: Yes.</p> <p>2 ALJ HOGAN: -- 30 minutes, but if you just want</p> <p>3 to put it in writing, that might be good to have it for</p> <p>4 the record.</p> <p>5 MR. PRANIS: Yes, Your Honor.</p> <p>6 ALJ HOGAN: All right. Okay. Are there other</p> <p>7 issues we need to discuss this morning?</p> <p>8 MR. PELHAM: Judge, Zach Pelham here.</p> <p>9 ALJ HOGAN: Yes, go ahead, Mr. Pelham.</p> <p>10 MR. PELHAM: I was just going to comment more on</p> <p>11 the plan for Bismarck and to -- I know that the parties</p> <p>12 -- and we had a phone call a couple weeks ago before</p> <p>13 Linton and there was discussion of prefilled testimony.</p> <p>14 I'm not suggesting that that be done in full</p> <p>15 force, but I do think that there would be some time</p> <p>16 savings if the parties did submit certainly introductory</p> <p>17 type of qualifications, who the witness is -- and not to</p> <p>18 single Mr. Bakke out, but I think it's probably most</p> <p>19 applicable to his witnesses because he's got Chad</p> <p>20 Moldenhauer, Chad Wachter, Brian Bitner, and his client,</p> <p>21 Mr. Warford -- just to do a summation of their</p> <p>22 background, their expertise, their education. That's</p> <p>23 going to save, you know, five to ten minutes and it's</p> <p>24 something that doesn't need to be testified to.</p> <p>25 The other thing I would note is, is as to</p> <p>PAGE 20</p>

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<p>1 Mr. Moldenhauer and Mr. Wachter, I see their testimony 2 as very similar in nature as both being developers. I 3 anticipate -- and I don't mean to put any words in 4 Mr. Bakke's mouth, but I anticipate both of them are 5 going to be speaking as to the development aspects of 6 the area of the proposed line north of Bismarck and how 7 it impacts potential future development in those areas. 8 I think that they're very similar witnesses. 9 And I think that there should be an avoidance of 10 duplication of that testimony. I don't think that the 11 Commission needs to hear that over and over and over. 12 The Commission's very aware of the points that have been 13 made at prior hearings and in prior testimony. I think 14 that there's some similarity as to what Mr. Bitner, 15 Commissioner Bitner, is going to say as to the 16 anticipated further development of that area of Burleigh 17 County. 18 So to the extent that that can be limited and 19 condensed so as each witness is coordinated and what it 20 is that they're going to say so there's an avoidance of 21 repetition, I do think that a lot of time can be saved 22 as to that. 23 So prefiled testimony, one, as to the 24 introductory, educational, experience, whatever else 25 wants to be added by a party, and then, two, just a</p> <p>PAGE 21</p>	<p>1 Commission at the hearing. 2 MR. BAKKE: Your Honor, this is Randy Bakke. 3 ALJ HOGAN: Yep. 4 MR. BAKKE: It would not be my intention to get 5 into the educational background on any of these 6 witnesses other than perhaps "Did you go to -- where did 7 you go to university at?" One question. In regards to 8 their background, I don't intend to spend much time on 9 that either. 10 In regards to Mr. Wachter and Mr. Moldenhauer 11 being duplicative, I don't think they are because 12 they're landowners who are affected in completely 13 different ways and there's different issues they're 14 addressing, both monetarily and otherwise as to how 15 they're affected. It's true they're both developers, 16 but they're at totally different points on where the 17 proposed pipeline is supposed to be installed. 18 And, of course, the other intervenor landowners, 19 multiple of them -- and I'm not complaining about this 20 in any way, they have a right to be heard, but there's 21 been a lot of duplicative testimony by landowners on how 22 they're affected. So I don't think there's really going 23 to be any duplication between Mr. Wachter or 24 Mr. Moldenhauer. 25 ALJ HOGAN: The other thing --</p> <p>PAGE 23</p>
<p>1 coordination so that there's a lack of -- there's a 2 lessening of duplication as to the issues of development 3 in and around the proposed area in north of Bismarck. 4 Thank you. 5 ALJ HOGAN: I'm glad you brought up the prefiled 6 testimony, Mr. Pelham. And I think I said this at the 7 last prehearing conference and I'm going to say it 8 again. That's a practice that the Commission has used 9 multiple, multiple times, especially in cases where they 10 anticipate lengthy hearings. The whole purpose of doing 11 it is to save time presenting that information through 12 testimony at the hearing and allow more time for 13 questions and to hear from more people. 14 So it very much is a practice the commissioners 15 are familiar with. It's something they do on multiple 16 hearings and I think it has worked well. I know they 17 read that testimony prior to the hearing. And it does 18 save time at the hearing so that, like Mr. Pelham said, 19 we don't have to go through all the qualifications and 20 experience type of stuff. And in other hearings it's 21 been more than that. It's basically their whole 22 testimony. So it does save time. 23 So, again, I would encourage the parties to 24 think about doing that because it allows more time to 25 get to the issues that are really relevant to the</p> <p>PAGE 22</p>	<p>1 MR. PELHAM: (Indiscernible) Mr. Bakke but -- 2 ALJ HOGAN: Oh. Let me just say this real 3 quick, Mr. Pelham. 4 MR. PELHAM: Sorry, Judge. 5 ALJ HOGAN: No, you're fine. You know, if -- 6 MR. PELHAM: I was going to point out that -- 7 ALJ HOGAN: Go ahead. 8 MR. PELHAM: Sorry. I was just going to point 9 out that the intervenors are represented. Your client, 10 Mr. Bakke, is Mr. Warford. Your clients are not Mr. 11 Moldenhauer or Mr. Wachter or Mr. Bitner. So, 12 presumably, those witnesses are testifying in support of 13 your client's position on this. So to the extent that 14 they have individual interest in that, I'm not -- you 15 know, the testimony of a witness for someone called by a 16 party is in support of that party's case. So, 17 presumably, that's going to be the focus. I hope I 18 didn't hear it differently. 19 MR. BAKKE: Well, I think this is relevant to 20 the issues the PSC is addressing. You know, the same is 21 true for Mr. Bitner. I don't think they have to be a 22 named intervenor, but if you want me to ask Mr. Wachter 23 and Mr. Moldenhauer if they want to intervene, I can 24 certainly address that well prior to June 2nd. 25 MR. PELHAM: I mean, I -- Judge, I don't know --</p> <p>PAGE 24</p>

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1 I don't mean to expand the discussion here, but I -- the
2 procedure has to be followed here. And there's a party
3 and it's the intervenor.
4 So, I mean, my point is only that the witnesses
5 called by an intervenor's attorney should be talking
6 about the intervenor's position. That's it.
7 ALJ HOGAN: The other comment I was going to
8 make about the prefiled testimony for anybody that's not
9 familiar how that's normally done, you know, those are
10 part of the docket so I would encourage you to look up
11 another PSC case where that's been done so you can see
12 what the Commission normally gets as far as prefiled
13 testimony for an idea of what that looks like, if
14 anybody's interested in doing that. And, again, I
15 highly encourage the parties to think about doing that.
16 All right. Other issues we need to discuss this
17 morning?
18 MR. BAKKE: Your Honor, this is Randy Bakke.
19 Just briefly. Is the start time on June 2nd at 8 a.m.?
20 ALJ HOGAN: I think it's 8:30.
21 Mr. Schock, do you know off the top of your
22 head?
23 UNIDENTIFIED SPEAKER: It's 8:30, Judge.
24 MR. SCHOCK: We're checking right now.
25 ALJ HOGAN: 8:30, Mr. Pelham?

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1 you just want to send me an email as well, that would be
2 acceptable. And, again, if you could do that by next
3 Friday, which is May 19th, I would appreciate that. And
4 then once I get that information, I will issue a formal
5 decision on Summit's motion.
6 All right. I will note then for the record it's
7 10:38 a.m. and that will conclude our prehearing
8 conference for this morning. Thank you all for calling
9 in and I hope everybody has a nice day today.
10 UNIDENTIFIED SPEAKER: Thank you as well.
11 ALJ HOGAN: Thanks. Bye-bye.
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1 MR. BAKKE: Okay. Thank you.
2 And then the other issue, Judge, you'll recall
3 at the Linton hearing I indicated I was going to file
4 the direct testimony of John Godfrey on behalf of Summit
5 in South Dakota. And I was just going to submit that as
6 a filing now unless you tell me you want me to wait
7 until the Bismarck hearing to add that as an exhibit.
8 ALJ HOGAN: I don't have a preference. Does
9 anybody have any objection to it being filed now?
10 All right. Hearing no objection --
11 MR. PELHAM: This is Zach. I do not.
12 ALJ HOGAN: Okay. Mr. Bender?
13 MR. BENDER: No objection.
14 ALJ HOGAN: And Mr. Leibel or Mr. Jorde.
15 MR. JORDE: No objection.
16 ALJ HOGAN: Okay. So, yeah, if you want to
17 label it as an exhibit and just file it now, that would
18 be helpful and I'll just update the exhibit list
19 accordingly.
20 MR. BAKKE: Okay. Thank you.
21 ALJ HOGAN: All right. Any other issues to
22 discuss?
23 Okay. Hearing none, then if everybody -- if you
24 want to do a formal letter or pleading with the witness
25 and length of testimony information, you can. But if

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