

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

May 16, 2024

APPEARANCES

BRET DUBLINSKE and TYLER GLUDT, Fredrikson & Byron, PA, JESS VILSACK, General Counsel, and LEE BLANK on behalf of Applicant SCS Carbon Transport LLC

RANDALL J. BAKKE, Bakke Grinolds Wiederholt, on behalf of Burleigh County

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

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

PATRICK T. ZOMER, Moss & Barnett, on behalf of the City of Bismarck

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Advisory Counsel to the Public Service Commission

1 ALJ HOGAN: It is 2:04 p.m. on May 16, 2024.
2 This is the time and date scheduled for a prehearing
3 conference in Public Service Commission Case No.
4 PU-22-391, OAH File No. 20230002. This prehearing
5 conference was scheduled on my behalf to discuss the
6 upcoming technical hearing to commence on May 28th,
7 2024.

8 I think we will start by having everybody state
9 their appearance for the record and who they are
10 representing. And I'll maybe start with you -- should I
11 direct it to you, Mr. Dublinske?

12 MR. DUBLINSKE: Sure, Your Honor, that's fine.
13 Bret Dublinske of Fredrikson & Byron on behalf of SCS
14 Carbon Transport.

15 ALJ HOGAN: And you're appearing this afternoon
16 along with Tyler Gludt; correct?

17 MR. DUBLINSKE: Correct. Tyler Gludt is also
18 appearing for SCS Carbon Transport.

19 ALJ HOGAN: And on behalf of Summit we also have
20 Jess Vilsack and Lee Blank that have joined our
21 conference this afternoon.

22 Mr. Pelham, did you want to state your
23 appearance for the record?

24 MR. PELHAM: Thank you, Your Honor. Good
25 afternoon. Zachary Pelham on behalf of the Public

1 Service Commission. Also on the call is Public
2 Utilities Director Victor Schock.

3 ALJ HOGAN: And you guys can tell me but,
4 Mr. Jorde or Mr. Leibel, who would you like me to direct
5 it to?

6 MR. JORDE: Your Honor, Brian Jorde and Steve
7 Leibel here for intervening landowners.

8 ALJ HOGAN: All right. And Mr. Bakke.

9 MR. BAKKE: Good afternoon, Your Honor. Randy
10 Bakke on behalf of Burleigh County.

11 ALJ HOGAN: And Mr. Zomer.

12 MR. ZOMER: Good afternoon, Your Honor. Pat
13 Zomer on behalf of the City of Bismarck.

14 ALJ HOGAN: All right. Well, thank you all. I
15 will note that I know for certain Mr. Pranis wasn't able
16 to make this prehearing conference, but he did not
17 anticipate -- I'm not sure if he's going to appear or
18 not at the technical hearing, but he did not anticipate
19 offering any further witnesses.

20 And I know our office had contact with
21 Mr. Braaten, and it's my understanding he does not
22 anticipate offering any further witnesses at the
23 technical hearing as well so I assume he chose not to
24 attend today's prehearing.

25 Before we talk about the technical hearing,

1 since I have everybody on the line, I'm just going to
2 ask -- just ask shortly about the next upcoming hearing,
3 which is May 28th in Wahpeton.

4 Mr. Jorde, I know I received a motion for you in
5 that. It's my understanding you plan on attending. And
6 do you anticipate presenting any witnesses at that
7 hearing?

8 MR. JORDE: Yes. Landowner witnesses, Your
9 Honor.

10 ALJ HOGAN: Do you know how many you're going to
11 have?

12 MR. JORDE: You know, I can tell you in probably
13 a moment but close to ten, I would say, but it would be
14 all landowner witnesses, no experts, no non-landowner
15 supporting witnesses.

16 ALJ HOGAN: All right. Thank you.

17 And, Mr. Dublinske, do you -- does Summit
18 anticipate offering any witnesses at the Wahpeton
19 hearing?

20 MR. DUBLINSKE: I don't believe so, Your Honor.
21 Just to clarify, you said the 28th. That's actually the
22 24th; correct?

23 ALJ HOGAN: Yes, I apologize. The 24th, yep,
24 the Wahpeton hearing is.

25 And I'll just ask if any of the other parties

1 anticipate offering witnesses for Wahpeton.

2 All right. And then one other matter I want to
3 address before we talk about the technical hearing so
4 that I don't forget is I received a motion earlier this
5 week from Mr. Zomer about admitting into evidence
6 Summit's response to interrogatories. And I'll just go
7 around and ask if there's any objection to that motion.

8 Mr. Dublinske, did you have any objection?

9 MR. DUBLINSKE: No, Your Honor.

10 ALJ HOGAN: And, let's see, Mr. Pelham.

11 MR. PELHAM: No objection.

12 ALJ HOGAN: Mr. Jorde.

13 MR. JORDE: No, Your Honor.

14 ALJ HOGAN: Mr. Bakke.

15 MR. BAKKE: No, Your Honor.

16 ALJ HOGAN: All right. So I will admit that as
17 an exhibit. I might just add it to the exhibit list
18 after the Wahpeton hearing to avoid doing it twice, and
19 I'll just include it in there as an admitted exhibit
20 along with any other exhibits that are accepted at that
21 hearing.

22 All right. And then moving on to the technical
23 hearing, just some thoughts from me before we kind of
24 get into a discussion about that hearing. And I have
25 received and reviewed all the letters that were filed

1 this week.

2 And the Commission has set aside four days for
3 this hearing so they anticipate finishing in four days
4 so I think that is the primary goal. I would -- you
5 know, they set aside four days so that we could avoid
6 having a day that goes super late into the evening. So
7 my thought and my plan is that each day we will try to
8 end around 5, 6:00 or somewhere in that neighborhood.
9 So I think the parties should plan on not going late
10 into the evening. That's not the Commission's intent
11 for this hearing.

12 I know there was some concerns about the scope
13 of the hearing or scope of admissible evidence. And
14 obviously the Commission issued a notice of hearing that
15 stated the issues as specified, but I have received from
16 the Commission that its intent for evidence to be
17 limited to any deficiencies noted in the original order
18 and, secondly, to any -- to the issue of siting related
19 to the supplemental reroute filings. So I hope that
20 addressed the concerns about scope of hearing or
21 admissibility of evidence. And I know that's not
22 sometimes a bright line type of thing, but that's the
23 guidance I can give on that at this time.

24 With that in mind -- and I thank you all for
25 those that refiled witness lists with the anticipated

1 time for those witnesses. I know that's sometimes hard
2 to do especially at this stage so I appreciate the
3 effort that was put into those.

4 Is there anybody else looking to call witnesses
5 at the technical hearing that didn't file a list with
6 me?

7 All right. So with that in mind, I think it
8 makes sense and I do anticipate issuing something that
9 kind of puts some guidelines for allocating time for
10 this hearing. Four days is a lot of time, but given
11 what has been prefiled, I think we're still exceeding
12 the available time. So I do want to put something out
13 there that helps the parties or guides them in prepping
14 what they plan to present at that hearing.

15 And as far as order, I'll maybe say this before
16 I kind of get input from all the parties. My thought --
17 and you guys can tell me if you have other thoughts that
18 might work better than what I'm thinking, but I think we
19 would start with -- I know Summit has one more witness
20 it wants to present. So I think it makes sense to start
21 with Summit's witness and cross-examination of Summit's
22 witnesses, and then we would move to intervenor
23 witnesses and go from there.

24 So that's kind of the order that I had in my
25 mind, but I would like to hear some thoughts from the

1 parties on the order and then also any ideas on how to
2 allocate time.

3 So I'll maybe start with you, Mr. Dublinske, if
4 you want to go first.

5 MR. DUBLINSKE: Thank you, Your Honor. And what
6 you said you envision is largely what we anticipated as
7 well. Obviously, we will have the witnesses that were
8 presented at the -- at the hearing available for
9 cross-examination. We will, as you noted, have one
10 additional witness. And, again, the rest of them are
11 just cross and will largely be determined by the amount
12 of time that the other parties want to take with those.

13 I will say that there have been some requests,
14 some that are more specific than others, about
15 particular Summit witnesses. One of them, without
16 getting into right at the moment the appropriateness of
17 those additional witnesses, but Alex Lange, in any
18 event, is out of the country and off work and
19 unavailable during the technical hearing. The first
20 scheduled event that he would be back for and available
21 would be June 4th at Linton.

22 So I'll -- in terms of our case, our intent is
23 to put up the one witness that was not available at the
24 hearing and have the rest of the folks that were at the
25 hearing available for cross.

1 ALJ HOGAN: And I think I -- I'm not sure if it
2 was stated outright, Mr. Dublinske, in your letter, but
3 it's my understanding Summit would like the opportunity
4 to potentially provide rebuttal witnesses after
5 intervenors present their witnesses.

6 MR. DUBLINSKE: That is correct, Your Honor.
7 We've talked a little bit about the technical hearing
8 and about at Wahpeton. We haven't talked at all about
9 Linton and whether or not other parties intend to put
10 witnesses on in Linton, but we would like the
11 opportunity and believe it would be appropriate for
12 Summit to have the opportunity to put on a rebuttal case
13 if it so chooses at the conclusion; save a little time
14 at the end of Linton for us to be able to do that.

15 ALJ HOGAN: Are you requesting rebuttal time as
16 part of technical hearing too or are you saving that for
17 Linton, just so I'm clear on what you're telling me?

18 MR. DUBLINSKE: No, no, that -- we believe that
19 would make more sense after the conclusion of all of the
20 opposing testimony. And my understanding is there will
21 -- per as Mr. Jorde said earlier, there will at least be
22 some at Wahpeton, I don't know if there will be any at
23 Linton, but just to ensure that the rebuttal case is, in
24 fact, rebutting all of the available evidence and
25 commentary, we would request that that be at the end of

1 the day and in Linton.

2 ALJ HOGAN: Okay. And it's my understanding,
3 and I can't tell you where but I know this, if it was at
4 the last prehearing or something Mr. Braaten said to me
5 in the hearing in Mandan, but I believe Mr. Braaten
6 intends to call witnesses at the Linton hearing. I
7 don't know who they are or how many, but that's my
8 understanding.

9 MR. DUBLINSKE: It was my understanding as well,
10 Your Honor.

11 ALJ HOGAN: Okay. All right. Maybe next I'll
12 go to you, Mr. Jorde.

13 MR. JORDE: Sure. So I guess I would say, Your
14 Honor, that any new Summit witness, and I think it's
15 Mr. Olson, that testifies at the technical hearing, none
16 of that time should count against Mr. Bakke or
17 Mr. Leibel or myself, in my opinion, because the
18 technical hearing was set aside not for an extension of
19 Summit's case in chief but, instead, for
20 cross-examination of the Summit witnesses that
21 previously testified.

22 So I have no problem with him testifying, that's
23 fine. I think he should be the first witness, get
24 through cross with him, then put up the witnesses that
25 have previously testified and get through cross of them,

1 and then go on to landowner intervenors.

2 Also, Mr. Bakke and I, I think, can work
3 together to streamline as best we can our -- both cross
4 -- you know, things can come up so we can't, like,
5 perfectly plan for that, but our cross and our
6 presentation. We're going to have to work with each
7 other's schedule and the schedule of witnesses. So
8 we'll do that to be streamlined.

9 And then I'd also like to bring up -- you know,
10 I've got Mr. Dublinske's May 15th letter to you here
11 where he's concerned about the timeline. And I would
12 note that Mr. Dublinske and I worked, I think, well
13 together during the much larger docket in Iowa.

14 I previously offered to Mr. Bender that
15 landowners could present some of their witnesses via
16 prefiled testimony and then the option that that -- that
17 live cross could be waived in order to save time.
18 Mr. Dublinske and I were able to reach stipulation on a
19 large number of witnesses in Iowa and save probably a
20 couple of days at the time. I didn't get a response
21 back from Summit on that. I tried a second time.
22 Didn't get a response back. So I assume they're not
23 interested in that.

24 But with Mr. Dublinske taking a more active
25 role, I would like to put that to him if that process is

1 something we could do, because there's a handful of
2 witnesses I would be fine, you know -- I always like to
3 have them live because there's other things that may
4 come out but -- you know, prefiled, they're constrained
5 to that, but I'd be willing, in the interest of time,
6 Your Honor, to work with Mr. Dublinske if they're
7 willing to admit -- prefiled testimony would be
8 admitted, waive objection, and just have that stand.
9 Obviously, they can rebut that testimony if they so
10 choose in their rebuttal.

11 So, with that, I don't know if it's appropriate
12 for Mr. Dublinske to respond, but, again, I'm happy to
13 try to shave some time off this if we can.

14 ALJ HOGAN: And I was going to ask you about
15 this because I think it was in your prefiling,
16 Mr. Jorde, but your thought is prefile the testimony,
17 and then if there's any requests on behalf of Summit to
18 have those witnesses actually come in and testify, that
19 you would make them available, is the way I understood
20 it.

21 MR. JORDE: That would be fine. I mean, I'd
22 have to know very soon because -- I mean, if we're going
23 to go this route to save time, we -- I mean, I'm not --
24 I'm going to send -- I'll email Mr. Dublinske, like,
25 "This is the testimony, here's a signed affidavit, this

1 is it," and then he can say, "No, I disagree, I'm not
2 having to do it in the blind." But I have, like I said,
3 a few that we could probably cut out just like we did in
4 Iowa. But if he were to say, "No, I don't agree," then
5 I'm going to bring them live, we're going to go through
6 the whole rigamarole. I'm not confined to the prefiled
7 testimony that I sent to Mr. Dublinske. It could go way
8 beyond that because now I'm bringing them live. And
9 then they can cross, of course.

10 ALJ HOGAN: Mr. Dublinske, thoughts on that
11 issue?

12 MR. DUBLINSKE: Sure, Your Honor. Happy to
13 respond to that.

14 The Iowa process is significantly different.
15 You know, we had another full round of written prefiled
16 testimony to rebut the prefiled testimony of Mr. Jorde's
17 witnesses and others. So I think that's a significant
18 difference. And here with the relative compression of
19 the rest of the timeline, I think it would be
20 challenging to add another round of prefiled written
21 testimony to address the lengthy list of folks that
22 Mr. Jorde submitted. And that's a significant concern
23 for us in terms of doing something similar to what we
24 did in Iowa.

25 The other one is just a matter of the relevance

1 of some of those witnesses to begin with. A good
2 example, for example, are their witnesses on Mr. Jorde's
3 list that talk about broad, general issues about carbon
4 dioxide or about Satartia, for example. There is
5 nothing unique to the issues on reconsideration that are
6 strictly about the addressing of deficiencies that, for
7 example, Satartia has anything new to offer. There was
8 Satartia evidence, Satartia testimony in the original
9 set of hearings, which is obviously still part of this
10 record.

11 So at this time, between broader concerns about
12 relevance and about the lack of an ability meaningfully
13 without a significant burden on Summit to prepare
14 written rebuttal, we would not be willing to make the
15 same deal that we made in Iowa.

16 ALJ HOGAN: All right. Well, I appreciate the
17 idea as well. We are maybe a little too far down the
18 road to do that, but certainly if you -- either one of
19 you thinks of another way to handle that that would be
20 expedient, always open ears.

21 Mr. Jorde.

22 MR. JORDE: If I could just add, we wouldn't be
23 asking them to waive -- I mean a relevance objection;
24 right? I mean, if they think "Yeah, this testimony, I
25 don't need to cross this person, we'll let it in, but

1 we're maintaining an objection," and then obviously all
2 of this goes to the weight. We don't have a jury here.
3 I mean, I'm fine with that. I'm not saying to say it
4 comes in and they have no -- they can't maintain any
5 type of an objection to the content. I'm just trying to
6 streamline the process.

7 But I'm happy to use all four days, there's no
8 problem there so... But I just put the offer out there.

9 MR. PELHAM: Judge, if I may just --

10 ALJ HOGAN: Go ahead.

11 MR. PELHAM: -- comment on this topic.

12 You know, the concept of prefiled testimony is
13 not new with the Commission. It's often done. In fact,
14 it's already been done in this case. Summit has done a
15 good job of using prefiled testimony to speed up the
16 process. The process in which has been explained that
17 -- that apparently occurred in Iowa may -- may work in
18 Iowa, but I -- I, quite frankly, see no reason why some
19 of the testimony could be filed as prefiled and then
20 have the witness testify live for a more limited period
21 of time to make everything more efficient and allow
22 cross-examination. That is commonly done.

23 And it's been discussed in prior prehearing
24 conferences as to whether or not we're going to do it or
25 not, whether or not the ALJ, whether or not you would

1 order that to be done for certain witnesses.

2 So I do think that prefiled is a viable option
3 here and should be seriously considered for efficiency
4 sake. It may be the lesser of two evils of potentially
5 limiting the amount of time for each particular party,
6 whether or not intervenor or otherwise, in the
7 proceeding. Thank you.

8 ALJ HOGAN: And I'll maybe -- I agree with what
9 Mr. Pelham said and I feel like, after going through the
10 first round of hearings, especially with the landowner
11 parties, they have similar concerns. So I don't think
12 it's maybe the most productive use of time if we have 15
13 landowners that get up and say nearly similar
14 complaints. I think if we could handle some of that
15 with prefiled testimony, that would be great and I think
16 that would be efficient.

17 And the commissioners read the prefiled
18 testimony. And, in fact, I think they like that, if
19 they can read it and get a better idea of what the
20 testimony is prior to the hearing, I think they find
21 that very helpful. So I'll just put that out there.

22 Maybe, Mr. Jorde and Mr. Dublinske, you guys can
23 talk some more about potentially doing something like
24 that to alleviate some of the time we spend in the
25 actual hearing. I think that would be appreciated by

1 the Commission and myself. So maybe we can just leave
2 it at that and move forward.

3 Let's see. Next, Mr. Bakke, thoughts on order
4 for the hearing and any potential -- or how to structure
5 potential limitations for time allocation.

6 MR. BAKKE: Thank you, Your Honor. I agree with
7 Mr. Jorde in terms of Summit witnesses and in relation
8 to our cross-examination.

9 On the issue of rebuttal, I'm not going to be in
10 Linton on June 4. I'm not available June 4. I have
11 another -- I have depositions scheduled that day out of
12 state so I cannot attend. But any rebuttal to our
13 witnesses or witnesses during the technical hearing in
14 Bismarck should come during the available dates that
15 have been set aside here.

16 In terms of the order of the witnesses, I agree
17 with Mr. Jorde that he and I can work that out to,
18 hopefully, be as streamlined as possible.

19 One clarification I would request in relation to
20 the issues to be addressed at the technical hearing, you
21 know, looking at the portions of the April 22nd, 2024,
22 in terms of Summit witnesses, you know, they went well
23 beyond the issues identified by the PSC as issues to be
24 addressed at this hearing. For instance, they talked
25 about carbon sequestration, corn production and prices,

1 enhanced oil recovery, and then they -- Mr. Dublinske
2 just raised Satartia. Satartia could very well be a
3 line of questioning based on the testimony that was
4 offered by Summit's witnesses at April 22nd, 2024.

5 So I'm assuming we get full opportunity to
6 cross-examine their witnesses. I understand
7 Mr. Dublinske wants to apparently restrict that or -- or
8 present our own witnesses on the topics that were
9 addressed. Obviously, our witnesses are not going to
10 offer the same testimony as Summit's witnesses did in
11 this. As part of our response to that, they will be
12 talking about concerns with a CO2 leak and all those
13 other issues that they were addressing on April 22nd.

14 So to the extent that testimony was allowed,
15 which it was, we should be allowed to fully
16 cross-examine those witnesses. And I just want to make
17 sure that -- you know, from Mr. Dublinske that
18 Mr. Dillon and Mr. Daum, D-A-U-M, will be available at
19 the hearing, the technical hearing, starting on
20 April 28th.

21 ALJ HOGAN: Mr. Dublinske, were -- well, maybe
22 I'll ask this in two parts. Those specific individuals,
23 are they going to be at the hearing? And, secondly, do
24 you know, are the witnesses from the last hearing, are
25 they going to be in person or by video conference?

1 MR. DUBLINSKE: So let me start with the second
2 of those questions. Our understanding of the technical
3 hearing, that it was not meant to be a re-creation of a
4 full normal hearing and would be hybrid. We are not
5 planning on bringing all the witnesses back up to North
6 Dakota. They are in a variety of places. Many of them
7 will be participating remotely.

8 ALJ HOGAN: Okay.

9 MR. DUBLINSKE: Mr. Daum and Mr. Dillon, I do
10 not know. I know that Mr. Lange is unavailable. I do
11 not know for sure Mr. Daum or Mr. Dillon. I will
12 confirm that and can let everybody on the distribution
13 list know as soon as possible on both of those.

14 Let me just back up, however, a little bit on
15 the issue of the scope here. Again, we have a limited
16 amount of time. I understand that certainly our
17 witnesses are subject to being crossed on anything that
18 they said, but there was no prior objection to that
19 testimony coming in and, you know, we were trying to be
20 narrowly responsive to the issues that the Commission
21 itself had raised. That doesn't re-open the entire
22 hearing and the breadth of everything that was discussed
23 in the original hearing.

24 The other thing I would say about Linton and our
25 ability to put on a rebuttal case, you know, we have

1 made accommodations for purported conflicts. We have
2 our own conflicts. Mr. Bender is not going to be
3 available for the technical hearing. We're going to go
4 ahead, nonetheless. But Mr. Bakke had not previously
5 raised an unavailability in Linton. I think it just
6 makes sense that rebuttal goes last. That's generally
7 what rebuttal is. But unless one of the other Summit
8 folks (indiscernible) someone knows for sure, I'll get
9 back to this group as soon as possible on Daum and
10 Dillon.

11 ALJ HOGAN: All right. Thank you.

12 Mr. Zomer, I understand you're not planning to
13 offer any witnesses at the technical hearing. Are you
14 looking to cross-examine any of Summit's witnesses that
15 testified at the prior hearing?

16 MR. ZOMER: No, Judge Hogan, we are not going to
17 participate in any of the live hearings for
18 cross-examination or offering our own witnesses.

19 ALJ HOGAN: Okay. Thank you.

20 All right. And, Mr. Pelham, on behalf of the
21 Commission, thoughts on order of the hearing and
22 potential time allocation.

23 MR. PELHAM: The order, I think, is pretty well
24 set out. I mean, I think it makes sense what's been
25 discussed. As far as the time limitations, I mean in

1 some ways I hesitate to set them, but, I mean, we've got
2 practical considerations.

3 And I'm not going to repeat what I said about
4 prefiled testimony but, quite frankly, that's going to
5 speed things up. There's a lot of testimony that can be
6 covered. It can be written out in question form and
7 answered. The Commission does read it. I know staff
8 reads it. It is preferred. And it would significantly
9 cut down on the amount of direct testimony and would
10 allow for a better crafted, more efficient cross from
11 both sides, which, in this instance, it's an interesting
12 situation because the cross is -- can be very well
13 tailored in the sense that the testimony has already
14 been received and will have some time to tailor that.
15 So I really think and would stress the importance and
16 really the request for prefiled testimony to speed
17 things up.

18 As far as the evidentiary issues, I think that's
19 going to be for you, Judge, at the time of the hearing
20 and to hear certain objections. There's been motions in
21 limine that have been filed and they haven't been ruled
22 on so I'm not sure that now is the time to talk about
23 evidentiary issues.

24 Thank you.

25 ALJ HOGAN: Yeah, regarding the evidentiary

1 issues, it's really hard to kind of make those
2 statements in abstract or without having the testimony
3 right in front of you. I can't really say this is
4 allowed, this isn't allowed when I don't know what the
5 testimony is going to be.

6 And, you know, I agree that there's concerns of
7 limiting this to what the matter was re-opened for.
8 That said, administrative hearings are designed to be
9 maybe more loose with the relevance issues than maybe a
10 court proceeding or something. So I guess my thought is
11 always, if it's questionable whether or not it's
12 relevant or it should come in, it generally comes in.

13 But, again, I have concerns about going down
14 roads that the Commission doesn't have jurisdiction over
15 or that the case was not re-opened to address. So I
16 just encourage everybody to read the order again and to
17 have a good understanding of the issues the Commission
18 has already said this matter was re-opened to address.
19 And that's about as good of guidance as I can give at
20 this point and we're just going to have to address that
21 when it comes up at the hearing.

22 As far as time allocation, like I said before, I
23 have concerns. We've got four days, which is a lot of
24 time, but after seeing the prefiled witness list,
25 there's anticipated more time for testimony than we're

1 going to have.

2 I've had hearings before where I've assigned
3 hours to parties. I don't think that works in this case
4 because we're obviously going to have questions from the
5 commissioners and Commission staff and stuff like that.

6 So I envision something more general, that each
7 party is going to get a day or a day and a half to
8 present their case and then you're going to have to make
9 arrangements to fit within that time so that we finish
10 within four days. So that's kind of what I'm thinking
11 as far as that goes. And I will, hopefully, get
12 something out early next week for that.

13 So, with that said, I'll just go around the room
14 and see if there's any other issues that we need to
15 discuss before we conclude this afternoon.

16 Mr. Dublinske, did you have anything else you
17 wanted to discuss this afternoon?

18 MR. DUBLINSKE: I don't think so, Your Honor.
19 Just one point relevant to sort of division of time.
20 Mr. Jorde made the point that it's his view that any new
21 direct examination that we do of the one remaining
22 witness doesn't count against their time, which
23 obviously is only relevant if we end up dividing up
24 time, but just as you think through it, Your Honor, for
25 the record, that additional direction will be quite

1 brief. In the grand scheme of the four days, that will
2 not amount to much. So this is largely for the
3 presentation that -- and the cross-examination that the
4 other parties were not available to make at the original
5 hearing, but there won't be much of that new direct
6 examination to factor into the time calculus.

7 ALJ HOGAN: And, Mr. Dublinske, refresh my
8 memory. For Mr. Olson, you -- Summit already prefiled
9 his testimony; correct?

10 MR. DUBLINSKE: Correct.

11 ALJ HOGAN: Okay.

12 MR. DUBLINSKE: I think.

13 Ty, is that right?

14 MR. GLUDT: Your Honor, this is Tyler Gludt.
15 That is incorrect.

16 MR. DUBLINSKE: Incorrect.

17 MR. GLUDT: We have not prefiled testimony from
18 Mr. Olson, but it is certainly something that we'll
19 explore leading up to the 28th here. And we'll try to
20 get that in as soon as possible.

21 ALJ HOGAN: All right. Thank you.

22 Mr. Jorde, any other issues you wanted to
23 discuss this afternoon?

24 MR. JORDE: Well, I guess point of clarification
25 or food for thought on this dividing up days. I mean,

1 it looks like it's just Burleigh County and the
2 landowners so I -- there's four days. I think Mr. Bakke
3 and myself and Mr. Leibel can figure out how to get our
4 case presented.

5 I don't really like the idea of dividing up a
6 day because we're going to be presenting -- I mean,
7 Mr. Bakke might have a witness, then I might have a
8 witness based on all the schedules we're juggling. And
9 so I -- I mean, there's four days. I mean, I think the
10 order is we're done at whatever; 6 p.m. on the fourth
11 day we're done. Doesn't matter if you have 20 more
12 witnesses, you're out.

13 And I guess what I'm saying is I don't think
14 trying to tighten it up to something that's a little
15 more artificial makes sense. I think it's just "You two
16 guys figure it out. And if one of you guys didn't get
17 your witnesses presented, too bad, so sad."

18 Does that make sense? Because if you say,
19 "Well, you have Tuesday" or "You have Wednesday," it's,
20 like, okay, half my witnesses aren't available on
21 Wednesday. I mean, it just gets a little cumbersome. I
22 mean, we're all professionals here. I think we can get
23 this done in time.

24 ALJ HOGAN: And, Mr. Jorde, I appreciate that
25 and I concur that it gives you less flexibility in

1 making those arrangements. I just feel that, in prior
2 hearings, the amount of time set aside for the hearings,
3 I don't know that that's worked terribly well. And so I
4 just -- I just don't want to walk into this hearing with
5 no guidelines. And I'm going to set some framework. If
6 you guys want to work out something else among that,
7 that's fine, but I think we need some general time
8 frames on how time is going to work for this hearing.
9 That's just my thought.

10 Okay. Mr. Bakke, any other issues you wanted to
11 discuss this afternoon?

12 MR. BAKKE: Well, in relation to the last
13 comments about some time frames, I agree with Mr. Jorde.
14 It wouldn't be feasible to just have an assigned day,
15 for example, for Burleigh County and an assigned day for
16 intervenor landowners, because I know we already had
17 some conflicts by witnesses if it was to be a single
18 day, but I think Mr. Jorde and I can work that out.

19 I understand perhaps time frames by a number of
20 hours or something like that total over the course of
21 the four days. But Mr. Jorde and I have been working
22 together before this prehearing conference to set up a
23 schedule between us and it's going to work just the way
24 he said, that he'll have one witness, I may have one, he
25 may have two in a row. It's all about the scheduling of

1 these witnesses and their availability.

2 And then I would just note for the record in
3 relation to Mr. Lange, you know, I did indicate I wanted
4 to call him as a witness because of his involvement in
5 the issue of emergency preparedness and response to a
6 CO2 leak. He was the person from Summit on that issue.

7 And in relation to Mr. Dublinske's comment about
8 Linton, I've always indicated to Your Honor and to
9 everyone else that I would not be participating this
10 time in Linton. So it's not like I was disclosing that
11 for the first time today.

12 And I guess the final area is in terms of
13 exhibit lists. Is it the Court's request that we simply
14 submit those and the exhibits on the morning of the
15 hearing like has been done in the past and have copies
16 available for the commissioners and for Your Honor and
17 for the attorneys?

18 ALJ HOGAN: That's fine with me. I can tell
19 you, if you prefile them, I think the commissioners
20 generally review anything that's prefiled. So, you
21 know, if it's something you think should be reviewed by
22 them prior to the hearing, I can't guarantee they will,
23 but in my experience they do review the prefiled
24 materials before the hearing. So if that's something
25 you'd like them to review, I suggest prefiling it.

1 MR. BAKKE: Okay.

2 ALJ HOGAN: But I would request one hard copy,
3 and you can bring that to the hearing, that's fine, for
4 me.

5 MR. BAKKE: And for the commissioners as well?

6 ALJ HOGAN: Yes.

7 MR. PELHAM: If you want them to look at it.

8 Judge, I will say that it is a hybrid hearing so
9 it really should be filed -- prefiled --

10 ALJ HOGAN: Yeah.

11 MR. PELHAM: -- in advance. Because there may
12 be -- I know that there's at least one commissioner on
13 one day, that they are going to be appearing remotely.
14 I know one day I will be appearing remotely. So I think
15 your -- I would request that your order require that
16 they be filed within so many days of the technical
17 hearing.

18 ALJ HOGAN: That's a good --

19 MR. DUBLINSKE: Your Honor --

20 ALJ HOGAN: Thanks.

21 MR. DUBLINSKE: Your Honor, if I could just
22 respond to an issue that Mr. Jorde and Mr. Bakke raised.
23 You know, I would ask Your Honor to consider -- we don't
24 have any objection if Mr. Jorde and Mr. Bakke want to
25 sort of shift back and forth on whose witness is up. I

1 understand that we're trying to facilitate schedules and
2 squeeze in. I would say that if they can provide us
3 with some amount of notice what order they think they
4 will have for each of the given days, that will allow us
5 to move more efficiently through cross-examination and
6 to prepare for the right witnesses that are up at the
7 right times. And to a point Mr. Pelham was making
8 earlier, there's just a lot of these little things that
9 will help make everything move more efficiently.

10 So I guess my request, whether it's to them or
11 it's to you, is that if they end up doing sort of mix
12 and match and sort of a random order, if we can know
13 that in advance, that would be helpful.

14 ALJ HOGAN: All right. Thank you.

15 MR. JORDE: Your Honor, can I say something on
16 that?

17 ALJ HOGAN: Sure. Go ahead.

18 MR. JORDE: So first the exhibits. Since it's
19 -- I know there's a rule that says -- I can't even
20 remember how many copies, is it seven or nine or
21 whatever but of hard copies, but for the technical
22 hearing can we file them electronically, or even though
23 everyone's remote, we still have to deliver them
24 somewhere even though they're not going to get to the
25 people? What are your thoughts on that?

1 ALJ HOGAN: And I actually wasn't aware that one
2 of the commissioners wasn't going to be there at the
3 actual hearing for one of the days. So for sure they
4 need to be prefiled. And I'm -- you should still bring
5 hard copies to the hearing, I would think, especially if
6 we're talking like maps and those types of things.

7 MR. JORDE: And maybe that was a poor question.
8 For the technical hearing only I intend to be remote and
9 certainly a handful of witnesses will be if not the
10 majority. So I was kind of tailoring my comment just to
11 the virtual nature of those hearings.

12 ALJ HOGAN: Okay. Repeat your question then.

13 MR. JORDE: Yeah. Like when we show up in
14 person and everyone's sitting there, you know, all the
15 commissioners, everyone, you know, you hand out the hard
16 copy, okay, that's all fine and good. But for the
17 virtual setting, I mean I'm not going to be able to --
18 "Mr. Pelham, here's your hard copy" type of deal.

19 So I'm just thinking that filing them digitally
20 and everyone have access to them right there, that the
21 hard copy -- multiple hard copy procedure is maybe
22 redundant and ineffective and unnecessary. I'm just
23 putting that out there.

24 ALJ HOGAN: And I don't know. That's maybe a
25 better question for Mr. Pelham or Mr. Schock.

1 MR. PELHAM: Victor.

2 MR. SCHOCK: Go ahead, Zach.

3 MR. PELHAM: Maybe you got a better answer than
4 I do.

5 I mean, in my mind, if it's prefiled in advance
6 and available, then bringing copies to the hearing would
7 be appropriate. It's just this last hearing we had with
8 Summit's witnesses, my recollection was they were --
9 exhibits were already part of the record so there
10 weren't additional documents physically provided. So I
11 don't think that anyone's hand is going to get slapped
12 if there's not seven copies, is my thought on it.

13 Victor, I don't know if you have any thoughts on
14 that.

15 MR. SCHOCK: I would agree to the point that we
16 do the prefiled testimony, if we're filing that
17 testimony ahead of time, we're getting those hard copies
18 beforehand, then I agree, I don't see a necessity to
19 bring additional hard copies to a hearing for that kind
20 of example.

21 But I would say, if we do not do prefiled
22 testimony, anything you bring would be a concern. I
23 mean, I know some of those commissioners prefer to work
24 off of paper versus looking at some electronic copy on a
25 laptop or a tablet or something. So I would just

1 caution against only relying upon electronic.

2 ALJ HOGAN: So to clarify, Mr. Schock, if you
3 prefile, you got to send some hard copies in?

4 MR. SCHOCK: Correct. Original plus seven hard
5 copies.

6 ALJ HOGAN: Okay. So it doesn't have to come at
7 the hearing, but the hard copies need to come either
8 before or at the hearing, one of the two?

9 MR. SCHOCK: Yes.

10 ALJ HOGAN: Okay. Does that help, Mr. Jorde?

11 MR. JORDE: I think so. We're killing trees.
12 Either way, it's just a matter of what day we're killing
13 them on. But, yeah, I get it. Thank you.

14 ALJ HOGAN: We're old fashioned up here in
15 Bismarck. We like our paper. But if you prefile the
16 hard copies, then you scan and put them into the docket.
17 So I think that helps with the remote nature of this
18 hearing, is that they would be accessible on the docket
19 for people to pull them up on their computer if they're
20 not at the actual hearing.

21 MR. LEIBEL: Judge, one thing I wanted to bring
22 to your attention before we break is we did file today a
23 motion for, at the Wahpeton hearing, that Mr. Jorde
24 could appear without local counsel, and I just wanted to
25 -- that hearing is next week Friday so obviously there

1 won't be a -- I don't know if anyone is going to object,
2 but I just wanted to bring that to your attention.

3 ALJ HOGAN: Yep, I saw it. I have an order
4 drafted. It's going to be granted. It will probably
5 not go out until next week because I'm out of the office
6 tomorrow, but, yes, you're all good. I saw it and it's
7 -- it will be approved. So I think that's what we did
8 last time in Wahpeton anyway so...

9 MR. LEIBEL: Thank you.

10 ALJ HOGAN: All right. Mr. Zomer, any other
11 issues you wanted to discuss this afternoon?

12 MR. ZOMER: No, Your Honor.

13 ALJ HOGAN: And, Mr. Pelham, anything else we
14 need to discuss?

15 MR. PELHAM: No, Your Honor. Thank you.

16 ALJ HOGAN: All right. Well, thank you all for
17 joining this afternoon --

18 MR. BAKKE: Your Honor.

19 ALJ HOGAN: Go ahead.

20 MR. BAKKE: Your Honor, I'm sorry. This is
21 Randy Bakke. I didn't want to jump in between the
22 different parties --

23 ALJ HOGAN: Sure.

24 MR. BAKKE: -- discussing things, but I had sent
25 an email -- there was a response filed by Mr. Bender

1 earlier this week providing part of Chad Moldenhauer's
2 testimony at the April 22nd, 2024, hearing, and I had
3 written to Mr. Bender asking for a copy of just that
4 portion of the transcript which contained
5 Mr. Moldenhauer's testimony and I never heard back. And
6 perhaps Mr. Dublinske can confirm that they'll provide
7 that to us.

8 What I'm trying to assess is -- and it's going
9 to depend on Mr. Boeshans' testimony, whether I need to
10 call Mr. Moldenhauer as a rebuttal witness, but kind of
11 the starting point is to be able to see just his
12 testimony. And I think the PSC should be able to -- in
13 assessing that response that Mr. Bender filed, should be
14 able to see the complete Moldenhauer testimony. I
15 understand it wasn't very long, but I would request that
16 Mr. Dublinske provide that to us.

17 And then the second item is I just want to make
18 sure there's no duplication of exhibits. You know, I
19 wasn't at the April 22nd hearing, but were there
20 Exhibits 1 through 6 marked at that hearing which would
21 be using the same numbers as 1 through 6 earlier in this
22 matter so that we'd have duplicate 1 through 6?

23 ALJ HOGAN: I have made -- I'd used one exhibit
24 list as we've gone on and I just add to it after every
25 hearing. So if you go on the PSC docket, the most

1 recent exhibit list that's filed with the PSC is going
2 to have the exhibits that were accepted at the last
3 hearing. And it did not duplicate exhibit numbers. I
4 don't recall off the top of my head what I used for
5 numbers, but I believe it was something different.

6 MR. BAKKE: Okay. Great.

7 ALJ HOGAN: And then as far as Mr. Bender's
8 filing and Mr. Boeshans' testimony and Moldenhauer's
9 testimony, as far as I know, a transcript has not been
10 filed. The audio's available on the docket, I believe,
11 but I'm assuming this is something that Summit had
12 transcribed or did themselves.

13 But, Mr. Dublinske, did you want to address that
14 at all?

15 MR. DUBLINSKE: Sure, Your Honor. So first of
16 all, my understanding is that Mr. Bender did respond to
17 Mr. Bakke this morning, but I think our position on that
18 is that if Mr. Bakke does not believe or questions the
19 reduction to writing that we had in our filing, the best
20 source of this is already available to him and to the
21 Commission and is public, and that is the original
22 recording from the hearing. That is publicly available
23 through the Commission. That was our source of
24 material. And, again, that is available, has been
25 available to Mr. Bakke. And we would suggest that if

1 there are any questions about what was said or what we
2 represented was said, that folks go back to that
3 original audio source.

4 ALJ HOGAN: Yeah. And, again, I believe the
5 audio is available on the docket. I haven't looked
6 recently, but they're usually posted right to the docket
7 and you can click on them and listen to them. So that
8 would be the source of that. And as far as I know, a
9 transcript has not been made or become part of the
10 docket.

11 So any other issues we need to discuss?

12 MR. SCHOCK: If I may, Your Honor.

13 ALJ HOGAN: Go ahead.

14 MR. SCHOCK: This is just a couple of
15 organizational questions. So I think I caught in there
16 that the City of Bismarck doesn't intend to attend any
17 of the hearings in person. Is there any other party who
18 doesn't intend on attending either Wahpeton or Linton?
19 Okay.

20 MR. BAKKE: I won't -- this is Randy Bakke. I
21 won't be at Linton or at Wahpeton.

22 MR. SCHOCK: Okay. That's helpful.

23 MR. ZOMER: (Indiscernible) from the city won't
24 be -- the city is not going to attend any of the
25 hearings.

1 MR. SCHOCK: Okay. Appreciate that.

2 And then as far as -- so for the technical
3 hearings, we have provisions arranged for remote
4 participation for witnesses and attorneys and
5 commissioners. However, for Linton and Wahpeton, is
6 there any need for a similar setup for remote witnesses
7 or remote participation?

8 MR. JORDE: Well, I would chime in. If that's
9 an option and if it looks like it's just going to be
10 Steve and/or I at those hearings, other than Summit,
11 then that would potentially alleviate any crunch on the
12 four days. Because I'm trying to cram in all our
13 witnesses really on the technical hearing.

14 So that's a long way of saying, if that option
15 is available, then that could, I mean, really alleviate,
16 I think, any pressure on the technical hearing,
17 especially specifically as to the June -- opening that
18 up for June 4th.

19 MR. SCHOCK: So we can make those arrangements.
20 It's -- I mean, depending on the venue, it's a little
21 more challenging. I mean, Wahpeton's pretty decent.
22 There's a good size area there where we can set the
23 screens. Linton, we're using a different venue that I'm
24 not familiar with so I can't speak to how simple that
25 setup is going to be.

1 And part of the complication is I'm using an
2 outside vendor that's providing the sound and video for
3 these things so I don't have perfect clarity of how
4 simple that is. I mean, witnesses, we do that on a
5 regular basis and it's not a major issue, but when we
6 have participation from attorneys, it's a little more
7 challenging because there's a little -- a little bit
8 more speaking going on.

9 So I guess I can't give you certainty if that's
10 going to work well or not.

11 MR. JORDE: So should we make a motion or give
12 notice if we're requesting that? I just want to be
13 clear what you're looking for in terms of an answer
14 there.

15 MR. SCHOCK: Yeah. I guess -- I don't know that
16 it's something that we've historically specifically
17 allowed or disallowed so I'm not going to speak to
18 whether it's permitted or not. Maybe the judge wants to
19 speak on that piece of it. I just need to know if we
20 need to -- if I need to have my sound contractor make
21 preparations for it or not.

22 So I guess I'll turn it back to you, Judge, if
23 you want to discuss about the -- if it's going to be
24 permitted.

25 ALJ HOGAN: Well, you know, the hearing's in a

1 week so that leaves us a ton of time to figure this out.

2 So, Mr. Jorde, could you maybe just send a
3 letter in requesting -- maybe just start with Wahpeton
4 since that's probably the most imminent. If you could
5 maybe just send a letter giving us an idea of how many
6 potential parties or witnesses you could or would call
7 by video conference if that was available and asking if
8 that's available. And then maybe that can be passed
9 along to the Commission and, I'm sure, to Mr. Schock and
10 he can do some investigation to see if we can facilitate
11 that.

12 MR. JORDE: I can. In my mind, I was thinking,
13 again, because it's so soon, it might be hard to
14 coordinate, but I was thinking more as a possibility for
15 the June 4th hearing. And I don't know if that would be
16 something Summit would like, if they're going to put on
17 rebuttal.

18 But in any event, if -- how about this? If we
19 intend to do that for Wahpeton, I'll get something to
20 you right away. If not, we'll look towards Linton, if
21 that's okay.

22 ALJ HOGAN: Sure. I think --

23 I assume, Victor, we're at -- are we at the
24 College of Science again in Wahpeton?

25 MR. SCHOCK: Yes. Same place as last time.

1 ALJ HOGAN: I would be shocked if they couldn't
2 facilitate that at that venue given where it's at.

3 And, yeah, I mean if that's a possibility,
4 Mr. Jorde, I -- I guess I'd have to run it by the
5 Commission too, but I think that's a good idea if we
6 could have some of your witnesses testify there. And if
7 that alleviates time issues for the 22nd, that is great
8 too.

9 MR. DUBLINSKE: Respectfully, Your Honor, I
10 think we should have some concern of using Wahpeton and
11 Linton as part of a relief valve from the technical
12 hearing. You know, the Commission had expressed four
13 days. That was not really what Wahpeton and Linton were
14 intended to be for, is to sort of circumvent the time
15 that was set for the technical hearing. So for what
16 it's worth, I think we would have some concerns about
17 that.

18 ALJ HOGAN: Okay. Well, that's noted. I think
19 the Commission will probably have to discuss it and see
20 if that's something they want to allow or not.

21 MR. JORDE: Yeah, I was just going to respond to
22 that. There is no order saying these are the people you
23 have to or you're excluded from bringing at any hearing.
24 So the people that we may bring to the technical hearing
25 are ones we may or may not bring elsewhere, right. So,

1 again, if it adds flexibility, I think it should be
2 considered.

3 ALJ HOGAN: I agree. It wasn't stated
4 specifically. I think the Commission did express their
5 intent that a bulk of the hearing, or most of it, was
6 supposed to happen at that first Bismarck or Mandan
7 hearing, and then those remote hearings were supposed to
8 be more for landowners within the -- affected landowners
9 in that geologic area and public comment. I think
10 that's kind of what they had envisioned. But, obviously
11 things have changed since the notice of hearing was
12 first issued.

13 So I think, at the end of the day, their number
14 one priority is going to try to get -- going to be to
15 try to allow everybody ample opportunity to present its
16 case. So that's as much as I can say without further
17 consultation with them on what they're going to allow
18 with those other hearings. All right.

19 MR. SCHOCK: I would agree with your
20 characterization of that, Judge, I mean just based on
21 their previous work sessions, that the remote hearings
22 at Wahpeton and Linton were primarily intended for
23 affected landowners in those areas. The Mandan hearings
24 were really for the -- to get out all the technical
25 details and now the technical hearings were intended for

1 that purpose.

2 Now, again, similar to you, I can't speak for
3 where their thoughts may lie on this, but I would
4 assume, based on earlier discussions, they wouldn't be
5 terribly interested in spending a great deal of time in
6 those locations on other more technical matters.

7 ALJ HOGAN: All right. Any other issues we need
8 to discuss?

9 Well, thank you to everybody for joining in
10 today. And I will note for the record it's 3:04 p.m.
11 and that will conclude our prehearing conference.

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LISA A. HULM, CET-783

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