

May 11, 2023

HAND DELIVERED

Mr. Steve Kahl
Executive Secretary Director
North Dakota Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480

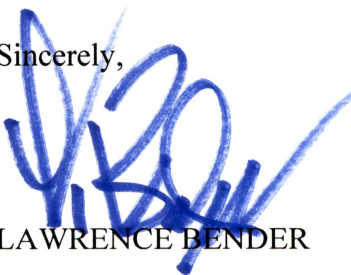
**RE: SCS Carbon Transport LLC
Midwest Carbon Express Project
Case No. PU-22-391**

Dear Mr. Kahl:

Enclosed herewith for the consideration of the North Dakota Public Service Commission ("Commission"), please find an original and five (5) copies of the Motion of SCS Carbon Transport LLC to Set Time Limits on Testimony ("Motion"). For the reasons set forth in the Motion, Summit is requesting that Commissioner Christmann, Commissioner Haugen-Hoffart and Mr. Dawson set time limits on witness testimony at the June 2, 2023 public hearing in the above-referenced matter. Also enclosed herewith, please find a Compact Disc (CD) containing this letter, the above-referenced Motion and a Certificate of Service in PDF format.

Should you have any questions, please advise.

Sincerely,



LAWRENCE BENDER

LB/tjg
Enclosures
79106106 v1

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF NORTH DAKOTA**

IN THE MATTER OF THE APPLICATION
OF SCS CARBON TRANSPORT LLC FOR
A CERTIFICATE OF CORRIDOR
COMPATIBILITY AND ROUTE PERMIT
FOR THE MIDWEST CARBON EXPRESS
PROJECT IN BURLEIGH, CASS, DICKEY,
EMMONS, LOGAN, MCINTOSH,
MORTON, OLIVER, RICHLAND AND
SARGENT COUNTIES, NORTH DAKOTA

CASE NO. PU-22-391

OAH FILE NO. 20230002

Motion of SCS Carbon Transport LLC to Set Time Limits on Testimony

Pursuant to § 69-02-02-08 of the North Dakota Administrative Code, SCS Carbon Transport LLC (“Summit”), by and through its undersigned attorney, hereby respectfully moves the North Dakota Public Service Commission (“Commission”) for an order limiting the length of time for direct and cross examination of each witness appearing at the June 2, 2023 public hearing in Bismarck, North Dakota in the above-captioned matter. The grounds for this motion are as follows:

1. On October 17, 2022, Summit filed its Consolidated Application for a Certificate of Corridor Compatibility and Route Permit (“Application”) concerning that portion of Summit’s proposed Midwest Carbon Express carbon dioxide pipeline project located in North Dakota (the “Project”).
2. On February 1, 2023, the Commission filed a Notice of Filings and Public Hearings in the above-captioned matter which set four (4) separate public hearings on Summit’s Application and proposed Project.

3. On March 14, 2023, the Commission held its first public hearing in Bismarck, North Dakota to address that portion of the Project located in Oliver, Morton and Burleigh Counties, North Dakota.

4. At the March 14, 2023 hearing, Summit called five (5) witnesses to present testimony regarding the Application and proposed Project.

5. Due to lengthy cross-examination of Summit's witnesses by counsel for Intervenor John H. Warford, Jr., as Trustee of the John H. Warford, Jr. Revocable Trust ("Warford") and the Intervenor's represented by Brian E. Jorde, Steven Leibel and David Knoll (collectively, the "Landowner Intervenor's"), the first Bismarck hearing concluded at 10:22 p.m after the presentation of Summit's witnesses and testimony from approximately twenty-two (22) members of the public. Intervenor Warford and the Landowner Intervenor's did not present any witnesses at the March 14, 2023 hearing.

6. At the conclusion of the March 14, 2023 hearing, the Administrative Law Judge continued the hearing to a date and time to be determined and agreed to amongst the Commission and the other parties to this proceeding. Counsel for Intervenor Warford and the Landowner Intervenor's requested that each be able to present their witnesses at a fifth hearing to be held in Bismarck.

7. On March 28, 2023, the Commission held its second public hearing in Gwinner, North Dakota to address that portion of the Project located in Dickey and Sargent Counties, North Dakota.

8. At the Gwinner hearing, Summit presented one (1) witness to give an overview of the Project with respect to that portion of the Project located in Dickey and Sargent Counties. The direct testimony for Summit's witness took less than twenty (20) minutes. Counsel for Intervenor

Warford and the Landowner Intervenor were not present at the Gwinner hearing; however, several Landowner Intervenor read and submitted testimony under the stipulation that counsel for Summit would not conduct cross-examination of such witnesses. After testimony by a witness presented by Intervenor LiUNA and testimony from the public, the Gwinner hearing concluded at approximately 1:00 p.m.

9. On March 30, 2023, the Commission filed a second Notice of Public Hearings in the above-captioned matter which set an additional, fifth public hearing to be held on June 2, 2023 in Bismarck, North Dakota.

10. On April 11, 2023, the Commission held its third public hearing in Wahpeton, North Dakota to address that portion of the Project located in Cass and Richland Counties, North Dakota.

11. At the Wahpeton hearing, Summit presented a witness to give an overview of the Project with respect to that portion of the Project located in Cass and Richland Counties. Summit also presented a witness to discuss drain tiling repairs. The direct testimony for Summit's witnesses took less than one (1) hour, combined. Counsel for Intervenor Warford was not present at the Wahpeton hearing; however, counsel for Landowner Intervenor spent several hours cross-examining Summit's witnesses. Several Landowner Intervenor also provided testimony which included a lengthy demonstration. After hearing testimony from the public, the Wahpeton hearing concluded at approximately 7:30 p.m.

12. On May 9, 2023, the Commission held its fourth public hearing in Linton, North Dakota to address that portion of the Project located in Emmons, Logan and McIntosh Counties, North Dakota.

13. At the Linton hearing, Summit presented one (1) witness to give an overview of the Project with respect to that portion of the Project located in Dickey and Sargent Counties. The direct testimony for Summit's witness took less than ten (10) minutes. Counsel for Intervenor Warford called two (2) of its three (3) expected witnesses at the Linton hearing. Counsel for Landowner Intervenor called five (5) of its six (6) expected witnesses. Intervenor LiUNA called one (1) witness. Summit called two (2) rebuttal witnesses at the Linton hearing. After approximately three (3) hours of public testimony interspersed throughout the day's proceedings, the Linton hearing concluded at approximately 10:45 p.m.

14. Upon information and belief, Intervenor Warford intends to call at least three (3) witnesses at the June 2, 2023 hearing in Bismarck.

15. Upon information and belief, Landowner Intervenor intend to call at least three (3) witnesses at the June 2, 2023 hearing in Bismarck.

16. Upon information and belief, Summit intends to call at least two (2) rebuttal witnesses at the June 2, 2023 hearing in Bismarck.

17. It is unknown if Intervenor LiUNA will call any witnesses at the June 2, 2023 hearing in Bismarck.

18. Upon information and belief, the Commission intends to allow for additional public testimony at the June 2, 2023 hearing in Bismarck.

19. Based on the foregoing, and to ensure that each party has an opportunity to call each of its intended witnesses while leaving time for additional public testimony, Summit hereby moves the Commission to implement specific time limits on the duration of direct and cross-examination that will be allowed for each such witnesses.

20. It has become abundantly clear that, despite the efforts of the Administrative Law Judge (“ALJ”) to limit counsel for Intervenor Warford and counsel for Landowner Intervenors from conducting lengthy and duplicative cross-examination, counsel for each of the intervening parties will nevertheless proceed in the same manner as they did at the Bismarck, Wahpeton and Linton hearings.

21. In order to facilitate a timely and efficient hearing, Summit has proposed (at the last two pre-hearing conferences) that each of the parties prepare and file written testimony prior to the June 2, 2023 hearing; however, Intervenor Warford and the Landowner Intervenors strongly objected to this proposal.

22. Therefore, Summit proposes that each witness be limited to twenty (20) minutes of direct testimony and twenty (20) minutes of cross-examination. The Commission, Commission staff and counsel for the Commission will also be afforded twenty (20) minutes to ask questions of each witness. Assuming there are approximately eight (8) witnesses in total, this will result in eight (8) hours of witnesses testimony. Adhering to this schedule will allow sufficient time for additional public testimony as well as appropriate breaks throughout the day’s proceedings.

23. Without time limits in place, and given the propensity of the Commission to allow public testimony earlier and throughout the day’s proceeding, Summit may not have the opportunity to call any rebuttal witnesses. Given the controversial nature of Summit’s Project, especially in Burleigh County, not having the opportunity to call rebuttal witnesses at the final Bismarck hearing will severely prejudice Summit.

Dated this 11th day of May, 2023.

FREDRIKSON & BYRON, P.A.

By: 

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**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**SCS Carbon Transport LLC
Midwest Carbon Express CO2 Project
Sitting Application**

CASE NO. PU-22-391

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the following:

1. Letter to S. Kahl forwarding documents for filing; and
2. Motion of SCS Carbon Transport LLC to Set Time Limits on Testimony.

were, on May 11, 2023, filed with the North Dakota Public Service Commission and served electronically to the following:

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Dated this 11th day of May, 2023.

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By: 

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