



**Bakke  
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ATTORNEYS AT LAW

May 18, 2023

**Via Hand-Delivery**

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

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

Dear Mr. Kahl:

Enclosed for filing in Case No. PU-22-391, please find *Intervenor John H. Warford, Jr. as Trustee of the John H. Warford, Jr. Revocable Trust's Response to SCS Carbon Transport LLC's Motion to Set Time Limits on Testimony*, with seven copies of same.

Please do not hesitate to contact the undersigned if you have any questions about this filing.

Very Truly Yours,

/s/ *Randall J. Bakke*

Randall J. Bakke

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Response to Motion to Set Time Limits on Testimony  
Intervenor John H. Warford, Jr., as Trustee of Revocable Trust  
Randall J. Bakke, Attorney

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

SCS Carbon Transport LLC  
Midwest Carbon Express CO2 Pipeline Project  
Siting Application

Case No: PU-22-391  
OAH File No: 20230002

**INTERVENOR JOHN H. WARFORD, JR. AS TRUSTEE OF THE JOHN H.  
WARFORD, JR. REVOCABLE TRUST'S RESPONSE TO SCS CARBON  
TRANSPORT LLC'S MOTION TO SET TIME LIMITS ON TESTIMONY**

Intervenor John H. Warford, Jr. as Trustee of the John H. Warford, Jr. Revocable Trust (hereinafter "Warford"), by and through his attorneys, objects to and opposes the *Motion of SCS Carbon Transport LLC to Set Time Limits on Testimony* dated May 11, 2023. Summit Carbon's motion to severely limit and restrict the Intervenor's rights to present their own witnesses and to cross-examine Summit Carbon's witnesses in these proceedings should be denied, as the motion seeks only to unfairly limit the presentation of evidence and witnesses opposed to Summit Carbon's *Application* (docket #1), which can only have the effect of benefiting Summit Carbon to the detriment of Warford, the other Intervenor, and the public.

To date, Summit Carbon has been unhindered in presenting its own evidence to support its *Application* at public hearings in Bismarck, Gwinner, Wahpeton, and Linton, and it has so far called 7 separate witnesses, one of whom (Jimmy Powell), has been called multiple times at various hearings. As announced at the last prehearing conference call with ALJ Hogan, Summit Carbon announced that it will likely call 2 more rebuttal witnesses. Ostensibly, when the public hearings have closed, Summit Carbon will have been allowed to present 9 total witnesses to support its *Application* and will have been allowed to do so without artificial limits. Conversely, since being allowed to intervene in these proceedings on March 6th, Warford has called a total of only 2 witnesses, both of whom offered testimony just at the Linton hearing. Warford

anticipates calling only four (4) to five (5) additional witnesses at the June 2nd Bismarck hearing, which would make for a total of 6 to 7 witnesses by Warford compared with Summit Carbon's 9 witnesses.

Why should Summit Carbon be free to present its own evidence and witnesses without artificial constraints, whereas Warford and the other Intervenors are suddenly constrained by harsh limits? The answer, Warford would suggest, is because the Intervenors have raised serious questions about the merits of Summit Carbon's *Application*, and therefore Summit Carbon now seeks effectively to silence the opposition by manipulating the hearing process. The result if Summit Carbon's request is granted would be to prejudice Warford's and the other Intervenors' ability to present more evidence to the Commission and the public that demonstrates siting the Carbon Dioxide pipeline in close proximity to Bismarck is imprudent and dangerous. Motives aside, the PSC's public hearing process to date – without any such artificial limits like Summit proposes – has proven itself to be sufficient to the task of allowing the parties to present their evidence and witnesses and conduct cross examination, while still allowing for generous amounts of public comment.

In addition to seeking to limit Intervenors' cases, Summit Carbon also proposes written testimony for additional witnesses in lieu of live testimony. Not only is written testimony much less effective at revealing the truth about a matter, but it is also more expensive for the parties, especially for the Intervenors who are not multi-billion dollar companies like Summit Carbon. It may seem like a "drop in the bucket" to Summit Carbon to pay its own team of attorneys to do things like preparing written testimony, but the same is not true of Warford or of the other landowner Intervenors. Prepared testimony simply costs more than asking a witness questions

under oath and Summit has not provided a compelling reason why the other parties should be treated differently than it has been treated to date.

Summit Carbon's latest motion makes it even clearer that it hopes to conduct as much of these proceedings in secret that it can get away with, all the while claiming in its PR campaign that it is and has been transparent. Summit Carbon also apparently hopes that by narrowing their opportunities to present their cases, Warford and the other Intervenors will be effectively prevented from bringing to light additional evidence that illustrate why Summit's proposed pipeline in close proximity to Bismarck and population centers in Burleigh County should not be allowed by the PSC. The testimony and evidence to date suggests very strongly that Summit Carbon's proposed pipeline route raises serious public health and safety concerns. Warford has considerable additional evidence that suggests there are also significant concerns about the proposed pipeline route artificially limiting the growth of Bismarck and Burleigh County, which will have dire economic consequences to both. Warford's concerns and those of the other Intervenors can only receive a fair hearing if they are allowed to present their own witnesses and to examine Summit Carbon's witnesses without artificial constraints. Summit has had that opportunity; why should the intervenors be treated differently?

For all of these reasons, Warford respectfully requests the Commission deny the *Motion of SCS Carbon Transport LLC to Set Time Limits on Testimony*.

Dated this 18<sup>th</sup> day of May, 2023.

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

SCS Carbon Transport LLC  
Midwest Carbon Express CO2 Pipeline Project  
Siting Application

Case No: PU-22-391  
OAH File No: 20230002

**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the following documents:

1. *Filing Letter to Steve Kahl from Randall Bakke dated May 18, 2023; and*
2. *Intervenor John H. Warford, Jr. as Trustee of the John H. Warford, Jr. Revocable Trust's Response to SCS Carbon Transport LLC's Motion to Set Time Limits on Testimony.*

were on May 18, 2023, filed with the North Dakota Public Service Commission and served electronically to the following:

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Dated this 18<sup>th</sup> day of May, 2023.

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