

STATE OF NORTH DAKOTA

DISTRICT COURT

COUNTY OF MORTON

SOUTH CENTRAL JUDICIAL DISTRICT

ENERGY TRANSFER LP, <i>et al.</i> ,)	Case No.: 30-2019-CV-00180
)	
Plaintiffs,)	
)	
v.)	NOTICE OF GREENPEACE
)	DEFENDANTS' MOTION TO PERMIT
)	LIVESTREAMING OF PROCEEDINGS
GREENPEACE INTERNATIONAL, <i>et al.</i> ,)	
)	
Defendants.)	
)	

[¶1] PLEASE TAKE NOTICE that Defendants Greenpeace International, Greenpeace, Inc., and Greenpeace Fund, Inc. (together, “Greenpeace Defendants”) have filed a Motion to Permit Livestreaming of Proceedings, seeking permission from the Court for live coverage of the trial and pre-trial proceedings. This motion is submitted pursuant to Rule 3.2 of the North Dakota Rules of Court and oral argument is requested.

Dated: October 23, 2024.

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SOUTH CENTRAL JUDICIAL DISTRICT

ENERGY TRANSFER LP, *et al.*,

Plaintiffs,

V.

GREENPEACE INTERNATIONAL, *et al.*,

Defendants.

Case No.: 30-2019-CV-00180

GREENPEACE DEFENDANTS' MOTION TO PERMIT LIVESTREAM OF PROCEEDINGS

¶1 Defendants Greenpeace, Inc., Greenpeace International, and Greenpeace Fund, Inc. (“Greenpeace Defendants”), through their undersigned counsel, respectfully request that the Court allow livestream access to the trial and all future pretrial hearings in this matter, subject to the same limitations that apply to news media recording of proceedings under Administrative Rule 21 § 4(d).

¶2] Specifically, Greenpeace Defendants request that the Court either use existing courtroom camera technology, or permit Greenpeace Defendants directly or through a contractor to provide such technology, to facilitate the streaming and recording of the proceedings on the Court's YouTube channel or another publicly accessible website, such that the proceedings can be observed by individuals who are not able to be physically present in the courtroom.

¶3] As further explained in the Brief in Support, livestreaming the proceedings will reduce logistical burdens on the Court, courthouse staff, counsel, and the parties. It also will further the public interest in transparency and in accommodating members of the press and public who are following this case.

[¶4] Greenpeace Defendants have conferred with Plaintiffs, who have not consented to the relief requested.

[¶5] For the reasons set forth in their Brief in Support, the Greenpeace Defendants respectfully request that the Court grant their motion and permit live coverage of the trial and pretrial proceedings through a livestream platform.

Dated: October 23, 2024

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GREENPEACE INTERNATIONAL, *et al.*,

Defendants.

Case No.: 30-2019-CV-00180

**BRIEF IN SUPPORT OF
GREENPEACE DEFENDANTS’
MOTION TO PERMIT
LIVESTREAMING OF PROCEEDINGS**

I. RELIEF REQUESTED

[¶1] Defendants Greenpeace, Inc., Greenpeace International, and Greenpeace Fund, Inc. (collectively, the “Greenpeace Defendants”), through their undersigned counsel, respectfully request that the Court allow livestream access to the upcoming trial and all future pretrial hearings, subject to the same photography limitations that apply when news media recording is permitted under Administrative Rule 21. *See* AR 21 § 4(d). Livestreaming the proceedings will reduce logistical burdens on the Court, courthouse staff, counsel, and the parties. It also will further the public interest in transparency and in accommodating members of the press and public who are following this case.

¶2] Specifically, Greenpeace Defendants request that the Court either use existing courtroom camera technology, or permit Greenpeace Defendants directly or through a contractor to provide such technology, to facilitate the streaming and recording of the proceedings on the Court's YouTube channel or another publicly accessible website, such that the proceedings can be observed by individuals who are not able to be physically present in the courtroom.

II. LIVESTREAMING WILL BE CONVENIENT FOR THE COURT AND WILL SERVE THE INTERESTS OF ITS STAFF, THE PARTIES AND THE PUBLIC

[¶3] This Court has the technical capability to facilitate live coverage of trials and proceedings. This district, like other North Dakota courts, maintains a YouTube channel, such that it is possible to record court proceedings with existing technology without unduly burdening the Court. Alternatively, Greenpeace Defendants are willing to work with Court personnel to provide the necessary technology and resources to enable livestreaming.

[¶4] In either case, any livestreaming permitted by the Court should be subject to the same sensible limitations that apply to press courtroom photography: no recording should be permitted of “[p]roceedings held in chambers, proceedings closed to the public, and jury selection,” of “[c]onferences between an attorney and client, witness or aide, between attorneys, or between counsel and the court at the bench,” nor close-up photography of jurors. *See* AR 21 § 4(d).

[¶5] Administrative Rule 21, though applicable only to media entities, presumes that live broadcasts of court proceedings are permitted upon request with notice. *See* AR 21 § 5(b) (requester “must set forth which type of coverage is sought, including whether live coverage is sought”). The Court must grant the request unless an objection is raised and the Court finds “good cause” to grant it, articulated on the record or in written findings. *See id.* § 4(b)(2) & § 6.

[¶6] Greenpeace Defendants’ request for live coverage would serve substantial interests of the Court, courtroom personnel, counsel, the parties and the public.

[¶7] *First*, with respect to pretrial proceedings, permitting interested participants to view remote proceedings via livestream rather than by Zoom would eliminate the logistical issues the Court noted in its September 27, 2024, letter to the parties. There, the Court stated that at a previous hearing, “a number of participants enter[ed] the Zoom hearing, leaving, and re-

entering a number of times,” likely “overload[ing] the Zoom platform” and causing technical issues for the Court. Dkt. 4101, at 1. Permitting livestreaming as a way for observers to view the proceedings, rather than via the Zoom link used by counsel and parties, would assure the proceedings would not be interrupted by remote participants leaving and re-entering.

[¶8] Similarly, with respect to in-person hearings, livestreaming would relieve Court personnel of the logistical difficulties that would otherwise arise from multiple in-person attendees. In its September 27 letter, the Court noted that at in-person hearings it “does not appreciate the constant entry and exit of people,” and late arrivals are excluded if there is no room in the gallery. Dkt. 4101, at 1-2. A livestream would obviate this concern.

[¶9] These issues will be particularly acute during the trial, which is likely to generate heavy interest among the press and public. Absent livestreaming, there may be more attendees and observers than the courtroom can physically accommodate, particularly given the size of the parties’ anticipated trial teams. Even absent overflow crowds, a well-attended trial will also tax law enforcement and other court personnel, who must screen each attendee entering the courthouse. Livestreaming would prevent this inconvenience and the accompanying delays in accessing the courtroom that heavy attendance likely would cause.

[¶10] *Second*, live coverage would facilitate access for the parties. The three Plaintiffs and three Defendants are all based outside of North Dakota, with employees and key representatives located out-of-state. The North Dakota Constitution provides: “All courts shall be open[.]” N.D. Const. art. I, § 9. This provision “stands for the proposition that officers of the courts, along with jurors, witnesses, litigants, and the general public have the right of admission to court proceedings.” *KFGO Radio, Inc. v. Rothe*, 298 N.W.2d 505, 511 (N.D. 1980).

[¶11] Greenpeace Defendants and Plaintiffs, as parties to this action, thus have a right to follow court proceedings in real time. No Greenpeace Defendant employees or board members live in North Dakota, making livestreaming a more convenient option for them. In-person attendance would be even more burdensome for Greenpeace International, which is located in the Netherlands and has many employees residing in overseas. Given the size of damages claimed by Plaintiffs, the Greenpeace Defendants' board members, officers, and employees have a compelling interest in seeing firsthand what is happening in a case that threatens their organizations' very existence. And again, permitting live coverage would be convenient for both the Court and the parties, because it avoids the issue of fitting many people into the courtroom.

[¶12] Moreover, the lead law firms representing both Plaintiffs and the Greenpeace Defendants are out-of-state. Many attorneys and staff who are working on the case will be unable to attend in person given the size of the courtroom, and may be assisting in the trial remotely. Livestream access to the proceedings is essential for counsel to provide their best representation.

[¶13] *Third*, live coverage would facilitate access for all interested persons, including the public and the press. The press and the public have a presumptive constitutional right of access to judicial records and proceedings, stemming from the First Amendment's protection of newsgathering. *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 576-77 (1980) ("The explicit, guaranteed rights to speak and to publish concerning what takes place at a trial would lose much meaning if access to observe the trial could . . . be foreclosed arbitrarily."); *Branzburg v. Hayes*, 408 U.S. 665, 681 (1972) ("[N]ews gathering does . . . qualify for First Amendment protection; without some protection for seeking out the news, freedom of the press could be eviscerated."). There are also many North Dakotans who are interested in the outcome of this

matter, who may not be able to travel to the courthouse given their daily obligations. In light of the widespread interest in this case, in-person attendance by all interested persons would be impracticable, and livestreaming would be the easiest way to assure the press's and the public's ability to observe these proceedings on matters of public significance.

[¶14] The Greenpeace Defendants have conferred with Plaintiffs, who have not consented to the relief requested.

III. CONCLUSION

[¶15] For the foregoing reasons, the Greenpeace Defendants respectfully request that the Court grant their motion and permit live coverage of the trial and further pretrial proceedings through a livestream platform, subject to the limitations on photography set out in AR 21 § 4(d).

Dated: October 23, 2024

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ENERGY TRANSFER LP, <i>et al.</i> ,)	
)	Case No.: 30-2019-CV-00180
)	
Plaintiffs,)	
)	
v.)	[PROPOSED] ORDER GRANTING
)	GREENPEACE DEFENDANTS'
)	MOTION TO PERMIT
GREENPEACE INTERNATIONAL, <i>et al.</i> ,)	LIVESTREAMING OF PROCEEDINGS
)	
Defendants.)	
)	

Before the Court is a Motion to Permit Livestreaming of Proceedings, filed by Defendants Greenpeace International, Greenpeace, Inc., and Greenpeace Fund, Inc. The Motion seeks permission to allow livestream access to the trial and remaining pretrial hearings and made available on the Court's YouTube channel or another publicly accessible website, such that the proceedings can be observed by individuals who are not able to be physically present in the courtroom. The recording and livestreaming would be subject to the same limitations that apply to news media recording of proceedings set out in Administrative Rule 21§ 4(d).

After considering the records and files herein, and being fully advised of the matters, the Court **HEREBY ORDERS** as follows:

The Motion is **GRANTED**.

IT IS SO ORDERED.

Dated this ____ day of _____, 2024.

Honorable James D. Gion