

Trial Monitoring Committee's Statement #2: Findings on First Day of Trial in *Energy Transfer LP v. Greenpeace*

February 24th, 2025

The independent Monitoring Committee overseeing *Energy Transfer LP v. Greenpeace* expresses grave concern over Judge James D. Gion's ruling on the eve of trial to severely restrict public access. Just one business day before the start of jury selection, the judge – at the request of plaintiff Energy Transfer, which has taken consistent positions to limit public and media scrutiny of the trial -- issued an order prohibiting many customary forms of media coverage, including livestreaming, recording, photography, and video. This leaves in-person attendance and note-taking (cell phones are not allowed in court) as the sole option for observing proceedings. These measures are concerning. They also are not consistent with the practices in other jury trials in North Dakota. They also appear to violate well-established international, federal, and state legal standards for public trials and run counter to the principles of transparency and accountability. Restrictions on media access also exacerbate other problems with level of access to the trial, including a failure of the court to post legal filings on its website where they can be accessed electronically in a timely way. Further, transcripts of the proceedings will not be available until several days after each court session.

All of these restrictions, taken in their totality, combine to create what appears to be an unprecedented level of secrecy.

A. Historic SLAPP Suit Hidden from Public Scrutiny

The claims against Greenpeace relate to what many legal scholars believe is one of the largest SLAPP lawsuits ever filed against a nonprofit in U.S. history. Among other allegations, Energy Transfer asserts that Greenpeace “defamed” the company by issuing certain public statements in support of Indigenous-led protests of the company's Dakota Access Pipeline (DAPL) in 2016 and 2017; Greenpeace says the statements are factually accurate and protected by the First Amendment, and that the case is designed as an illegitimate attempt to harass the group and distract it from its core mission. Rather than doing all it can to ensure transparency for a case of great legal significance that has attracted national and international attention, the court instead imposed restrictions that will hinder public access and oversight. To cover the trial in a timely way, one will have to rely solely on handwritten notes—an archaic requirement wholly out of step with modern trial norms.

The court's refusal to accede to reasonable requests for public access -- despite repeated motions from Greenpeace, the Water Protector Legal Collective, independent journalists and this monitoring committee -- is particularly egregious given that North Dakota's courts regularly permit livestreaming and maintain a dedicated public webpage for court livestreams. To help illustrate the point, Court TV was granted access to broadcast two high-profile murder trials in this very jurisdiction—proceedings that inherently carried far greater risks to jurors and witnesses than this civil case. The Monitoring Committee condemns this inconsistency in public and media access. It also expresses concern over the court's failure to provide an overflow room to accommodate those excluded from the primary courtroom, which contains only 65 seats.

B. Violations of U.S. and International Legal Standards

Our preliminary finding is that the restrictions on public and media access imposed in *Energy Transfer LP v. Greenpeace* constitute clear violations of the public trial rights guaranteed under multiple legal frameworks, including:

- **The U.S. Constitution (Sixth and First Amendments)**, which affirms the right to a public trial and freedom of the press;
- **The North Dakota Constitution (Article I, Section 9)**, which mirrors these protections and upholds public access to court proceedings;
- **The International Covenant on Civil and Political Rights (ICCPR, Article 14)**, to which the United States is a signatory, mandating that all persons are entitled to a fair and public hearing;
- **The American Convention on Human Rights (Article 8)**, which establishes public trial standards adhered to across the Americas.

The court's failure to adhere to requirements of transparency in this trial not only violates these fundamental legal principles, but sets a dangerous precedent for shielding powerful corporate actors from public accountability. In fact, the judge in this case appears to have complied with virtually all requests from Energy Transfer that access to the trial be subject to severe restrictions.

C. Monitoring Committee Calls for Immediate Correction or Trial Suspension

Given the extent of these alarming restrictions, the Monitoring Committee asserts that the trial already has failed to meet minimum U.S. and international public trial standards. We call for the immediate reversal of these restrictions and request that Judge Gion reinstate public access measures, including:

- Full livestreaming access for the public and for monitoring purposes;

- A designated overflow room for additional observers;
- Media access to the livestream, consistent with the court's customary practices.

The court cannot claim lack of resources as a justification for these restrictions when it already has made a private livestream available to the parties. One would only have to flip a switch to enable the public, the media, and the monitoring committee to gain access.

D. Writ to North Dakota Supreme Court

In response to these violations, the Monitoring Committee plans to file an **emergency writ to the North Dakota Supreme Court** seeking an order mandating livestream access for the public, the media, and the trial monitors. This action will reinforce the fundamental principle that public access to judicial proceedings is not discretionary—it is a core tenet of democracy and the rule of law.

E. The Monitoring Committee Remains Undeterred

Despite the restrictions, the Monitoring Committee remains resolute in its mission. We will continue to do all we can to report on these proceedings from inside the courtroom, ensuring that the world knows what transpires even if the court itself seeks to restrict public scrutiny.

Signed by the Energy Transfer v. Greenpeace Monitoring Committee Members:

Marty Garbus | Natali Segovia | Jeanne Mirer | Terry Collingsworth | Steven Donziger | Nadia Ahmad | Scott Wilson Badenoch, Jr. | Paul Paz y Miño | Ayisha Siddiqi | Wade McMullen | Kip Hale | Simon Taylor | Jacqueline C.A. Dugard | Aaron Marr Page

For further inquiries, please contact:

Scott Wilson Badenoch, Jr., Esq., MDR
info@trialmonitors.org
202-930-2668