

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 FORMAL HEARING

April 11, 2023

Wahpeton, North Dakota

APPEARANCES

Commissioners Randy Christmann, Sheri Haugen-Hoffart, and  
Substitute Decisionmaker Timothy J. Dawson

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LLC

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Intervenors/Landowners

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1           ADMINISTRATIVE LAW JUDGE HOGAN: All right. We  
2           are going to get started. Good morning. My name is  
3           Hope Hogan. I'm an administrative law judge designated  
4           upon the request of the Public Service Commission to  
5           serve as the hearing officer for today's hearing.

6           It's April 11th, 2023, at 9:02 a.m. This is the  
7           time, date, and place set by notices of filing and  
8           notices of hearing issued by the North Dakota Public  
9           Service Commission on February 1, 2023, and March 30,  
10          2023, for a hearing in Case Number PU-22-391. Today's  
11          hearing is being held today at the Harry Stern and Ella  
12          Stern Cultural Center at the North Dakota State College  
13          of Science in Wahpeton, North Dakota.

14          As we get started, I'd ask that everybody please  
15          check your cell phone to make sure they're either  
16          silenced or turned off so that we don't have any cell  
17          phone interruptions today.

18          There is an attendance sheet that is -- I  
19          believe it's outside the entrance to our auditorium  
20          today. The Commission would ask that everyone please  
21          sign in so that they have a record of everybody that  
22          attended today's hearing.

23          This is the third of five hearings scheduled  
24          regarding an October 17th, 2022, application of SCS  
25          Carbon Transport LLC for a certificate of corridor

1 compatibility and route permit concerning approximately  
2 320 miles of carbon dioxide pipeline ranging from 4.5 to  
3 24-inch diameter and associated facilities in Burleigh,  
4 Cass, Dickey, Emmons, Logan, McIntosh, Morton, Oliver,  
5 Richland, and Sargent counties, North Dakota. This  
6 hearing today has been scheduled to focus primarily on  
7 the portions of the project in Cass and Richland  
8 counties.

9 The notice of filing and notice of hearing  
10 specified the following issues to be considered  
11 concerning the application for waiver of procedures and  
12 time schedules:

13 First issue: Are the proposed facilities of  
14 such length, design, location, and purpose that they  
15 will produce minimal adverse effects and that adherence  
16 to applicable procedures, requirements, and time  
17 schedules may be waived?

18 And, secondly, is it appropriate for the  
19 Commission to waive any procedures, requirements, and  
20 time schedules as required in the application?

21 Concerning the application for certificate of  
22 corridor compatibility and route permit, the issues to  
23 be considered are:

24 Number one: Will construction, operation, and  
25 maintenance of the facility at the proposed location

1 produce minimal adverse effects on the environment and  
2 upon the welfare of the citizens of North Dakota?

3 Number two: Is the proposed facility compatible  
4 with environmental preservation and the efficient use of  
5 resources?

6 And, finally, will construction, operation, and  
7 maintenance of the facility at the proposed location  
8 minimize adverse human and environmental impact while  
9 ensuring continuing system reliability and integrity and  
10 ensuring that energy needs are met and fulfilled in an  
11 orderly and timely fashion?

12 I will now ask the parties to make their  
13 appearance for the record.

14 Mr. Bender, if you want to state your appearance  
15 for the record and introduce the witnesses you intend to  
16 call to testify today.

17 MR. BENDER: Thank you, Your Honor.

18 My name is Lawrence Bender, PO Box 1855,  
19 Bismarck, North Dakota, appearing in this matter on  
20 behalf of the Applicant.

21 Additionally, with me sitting at counsel table  
22 is Mr. Patrick Mahlberg. He's a lawyer also with  
23 Fredrikson & Byron. He's out of our Minneapolis office.  
24 And he is licensed to practice law in the state of North  
25 Dakota.

1           We're intending to call one, possibly two,  
2           witnesses in this matter. We'll have the same witness  
3           we had in the previous two cases, Jimmy Powell, who may  
4           be testifying. And then we're also going to be calling  
5           Jeremy Ellingson.

6           Just a quick note with respect to Ellingson. As  
7           you know, Your Honor, there were quite a few questions  
8           by the Commission and others at the last hearing and  
9           there was a presentation by a landowner having to do  
10          with drain tile. And Mr. Ellingson is an employee and a  
11          part owner in a drain tile company that's working with  
12          Summit in this project.

13          ALJ HOGAN: All right. Thank you.

14          Mr. Pelham, do you want to state your appearance  
15          for the record and introduce Commission staff that's  
16          appearing today with you?

17          MR. PELHAM: Thank you. Good morning, Your  
18          Honor. Zachary Pelham, special assistant attorney  
19          general on behalf of the Public Service Commission,  
20          attorney at Pearce Durick Law Firm in Bismarck, North  
21          Dakota.

22          To my left is Victor Schock, public utilities  
23          analyst. Mr. Schock may be asking questions. In fact,  
24          he will be asking questions today and we ask that he be  
25          permitted to do so. Thank you.



1           ALJ HOGAN: And it's my understanding the  
2 Commission intends to call one witness today to discuss  
3 drain tile issues?

4           MR. PELHAM: That is correct.

5           ALJ HOGAN: All right. Thank you.

6           Mr. Jorde, do you want to make your appearance  
7 -- or state your appearance for the record and identify  
8 the witnesses you intend to call today?

9           MR. JORDE: Yes, Your Honor. Thank you. Brian  
10 Jorde of Domina Law Group representing a handful of  
11 intervenors, some who are here today.

12           We're likely going to be calling Ben Dotzenrod,  
13 his mother, Rose Dotzenrod, James Tiegs, Valera Hayen,  
14 Marvin and/or Jeanne Lugert, and Loren Staroba. To the  
15 extent that Mr. Bender doesn't call Mr. Jimmy Powell,  
16 we'll be calling Mr. Jimmy Powell.

17           ALJ HOGAN: All right. Thank you.

18           By a show of hands from the audience, if you  
19 could raise your hand if you intend to provide public  
20 comment today or may provide public comment, just so I  
21 have an idea of how many people are interested in doing  
22 that today.

23           All right. Thank you.

24           Testimony from the public will be taken after  
25 the completion of the parties' testimony. That likely

1 is going to be after lunch. I encourage you to take the  
2 opportunity to tell the commissioners what you think is  
3 important about this matter. Depending on the amount of  
4 people today, we'll discuss that when we get there.

5 If you do plan to testify today, if you could  
6 mark that on the attendance sheet for me. That would be  
7 helpful just so I have an idea of how many people want  
8 to testify and to make sure we hear everybody today.

9 The goal is to have a safe and orderly hearing  
10 today so that many voices are given the opportunity to  
11 be heard. Further instructions regarding public  
12 testimony will be given once we get to that portion of  
13 our hearing today. If you have any questions about that  
14 process, please do not hesitate to ask me at one of our  
15 breaks today.

16 We'll now take opening comments from the  
17 commissioners, and we'll start with Commissioner  
18 Christmann.

19 COMMISSIONER CHRISTMANN: Good morning,  
20 everyone.

21 And thank you, Your Honor.

22 So this, I think, was mentioned is our third of  
23 these hearings. So when especially the company witness  
24 comes up, if it seems like as commissioners who are  
25 making a decision that impacts a lot of people on an

1 important case, like we don't have very many questions,  
2 keep in mind that this is the third hearing and the  
3 first one was 14 hours in Bismarck. So a lot of our  
4 questions we've asked already, but it seems like each  
5 time we continue to always have a few more things to add  
6 in. So that's why we probably don't have a lot of  
7 questions for them.

8 I want to re-emphasize what has already been  
9 said, that the public testimony will be after the  
10 company and the intervenors. And the reason for that is  
11 -- and, you know, it always seems like it's an  
12 inconvenience, why don't we just let you talk right  
13 away, but the fact of the matter is it's -- your  
14 testimony is more valuable to us when you've heard what  
15 the company has to say and you can be responding to it  
16 rather than responding to something you may have heard  
17 uptown which may not actually be what's being presented  
18 to us. And so that is why we let the company go first,  
19 because we do value your testimony and input.

20 That's why we're out here. This would be much  
21 more convenient for us and save money if we just had the  
22 hearings in Bismarck, but the fact of the matter is our  
23 goal is not to see that a project gets built or to get  
24 in the way of a project. Our goal is to make a proper  
25 decision based on the testimony and based on the law,

1 and we can make the best decision when we have all the  
2 information possible. That's why we have the multiple  
3 hearings and want to hear from everybody.

4 The last thing I want to emphasize is -- or two  
5 more things. One, if you didn't raise your hand, that  
6 doesn't mean you can't still come up later on. If you  
7 think of something that's being missed that you can add  
8 to our information, again, we want to hear from you.

9 Lastly, we are kind of the judges in the case.  
10 We don't answer for the company. And so oftentimes  
11 we'll get public testimony, they come up and say "This  
12 is my issue. What are you going to do about that?"  
13 Well, we don't answer for the company. And so this  
14 isn't really an opportunity for you to ask questions,  
15 but you can say "My concern is I don't know what is  
16 going to happen," and then lay out your situation and  
17 thereby that concern gets on the table and we can give  
18 it proper consideration. So this isn't really an  
19 opportunity for you to ask questions. It's more for you  
20 to present us your concerns and information.

21 Thank you, Your Honor. I look forward to a good  
22 hearing.

23 ALJ HOGAN: Thank you.

24 Commissioner Haugen-Hoffart.

25 COMMISSIONER HAUGEN-HOFFART: Good morning,

1 everyone. I'm just going to do a sound check. I flew  
2 yesterday and today so I'm having trouble hearing, but I  
3 just want to make sure that everybody else can hear. Is  
4 anybody having problems hearing anything? Okay. It's  
5 just me. No.

6 As Commissioner Christmann said -- he summarized  
7 things up very well -- I want to thank you for your  
8 involvement in being here. Hopefully, it's not a long  
9 day, but it's a very informative day for you. And we  
10 appreciate your input and your concerns or support,  
11 whatever it be, because we value you and your opinion.  
12 Like Commissioner Christmann said, just because you  
13 didn't raise your hand, you're more than welcome to  
14 testify.

15 I hope everyone had a blessed Easter and I'll  
16 move on because we have a lot of ground to cover. And  
17 thanks again for your participation.

18 ALJ HOGAN: Thank you.

19 Mr. Dawson.

20 SUBSTITUTE DECISIONMAKER DAWSON: Good morning,  
21 Judge Hogan. I am Tim Dawson. And you may think "Why  
22 is he sitting up here today?" And I am sitting up here  
23 replacing Commissioner Julie Fedorchak. And she has  
24 recused herself and so the commissioners chose somebody  
25 to fill in and here I am.

1 I am here because -- I think because I sit in  
2 Judge Hogan's position on a regular basis. I've been  
3 through many of these hearings and I've been chosen to  
4 be a substitute decisionmaker. That is my title. As  
5 you can see, it doesn't fit on a nameplate very well so  
6 I don't have a nameplate, but you can call me  
7 "Mr. Dawson." It rolls off the tongue a little better.

8 Thank you for coming today and that's all for  
9 now.

10 ALJ HOGAN: All right. Thank you.

11 I want to discuss exhibits real quick. I am  
12 keeping a master list of the exhibits, and so far we  
13 have the Exhibits 1 through 3 offered by Summit which  
14 have been admitted, a set of exhibits from one of the  
15 intervenors from Burleigh County that has been admitted,  
16 PT1 which was the public testimony handouts from the  
17 May 14th Bismarck hearing, and then in Gwinner I  
18 admitted two exhibits, one labeled BD1 from Intervenor  
19 Dotzenrod, and then L1, which was from LIUNA,  
20 intervenor.

21 Summit's application and exhibits are -- copies  
22 up at the witness stand. I do have a copy of all the  
23 rest of them by me if we need those as we go along  
24 today.

25 Are there any other exhibits that we should

1 address now or --

2 MR. BENDER: Your Honor, I believe at the  
3 Gwinner hearing there was an Exhibit 4 which was a  
4 summary of the easements that had been acquired and it  
5 was broken down by county.

6 ALJ HOGAN: That's correct. Yep, it's on my  
7 exhibit list. It's just not on the notes I was reading  
8 from. So thank you for the correction.

9 Mr. Bender, any additional exhibits today on  
10 behalf of the Applicant that you're aware of?

11 MR. BENDER: Not at this time.

12 ALJ HOGAN: Okay. Mr. Pelham.

13 MR. PELHAM: I don't have any other on my list.  
14 Thank you.

15 ALJ HOGAN: Okay. And Mr. Jorde.

16 MR. JORDE: I mean, we'll be offering exhibits,  
17 but I don't have any that you missed.

18 ALJ HOGAN: Okay. All right. Sounds good.

19 Are there any other preliminary matters we need  
20 to discuss before we get started?

21 MR. BENDER: Yes, Your Honor. I'd note that  
22 Mr. Jorde is appearing here today under North Dakota  
23 Rules of Admission to Practice, and particularly Rule 3.  
24 And what that allows for is a lawyer who's not licensed  
25 to practice in the state of North Dakota to file a

1 motion for pro hac vice and then, as a result of that,  
2 appoint or select an associate lawyer. Mr. Jorde has  
3 done that.

4 But the rule also requires that if Mr. Jorde  
5 appears at a hearing like today, he's required to have  
6 with him the associate or local lawyer. And I don't see  
7 that local lawyer here in the room or with Mr. Jorde so  
8 I would object to Mr. Jorde appearing here without the  
9 associate or local counsel.

10 ALJ HOGAN: Mr. Jorde, did you want to address  
11 that?

12 MR. JORDE: Sure. You know, obviously Mr.  
13 Leibel and my other counsel are not here in person.  
14 They are, you know, virtually listening in. I don't  
15 know if that rule specifies that physically in person or  
16 just that they are monitoring and aware of the  
17 proceedings.

18 So we don't think it applies, but if it does, we  
19 would move for an exception. I believe that we filed  
20 all the prior paperwork properly. If not, then on  
21 behalf of all landowners, we'd request a stay of these  
22 entire proceedings.

23 So I guess that's the -- that's your decision,  
24 Your Honor.

25 MR. BENDER: And let me just respond to that,



1 Your Honor. I spoke with Mr. Jorde prior to the hearing  
2 and he did advise me at that point in time he hasn't  
3 made a decision whether he was just going to have his  
4 clients read statements into the record or whether he  
5 was going to have a question and answer or a direct  
6 examination. I don't have any objection if he wants to  
7 sit at counsel table and if he wants his clients to read  
8 their testimony.

9 But, once again, I do raise my objection. The  
10 rule is clear. He's had -- he's supposed to have an  
11 associate attorney with him. He does not have one here  
12 so I'll object to his participating in the hearing.

13 ALJ HOGAN: Well, I can tell you that I -- if  
14 the associate attorney requests leave to not appear at  
15 hearings, I routinely grant those.

16 Is there any objection to granting it or any  
17 specific objection to granting that in this case,  
18 Mr. Bender?

19 MR. BENDER: Has it been made by local counsel?

20 ALJ HOGAN: I don't believe it was in the  
21 paperwork, but Mr. Jorde can correct me if I'm wrong.

22 MR. JORDE: I, frankly, don't recall. I mean,  
23 if we want to go through the exercise of getting  
24 something on file and going through that, we certainly  
25 can, and I'd request a delay of these proceedings until

1       that occurs if that's how we're going to do it.

2               MR. BENDER: I'm not interested in delaying the  
3 proceedings, Your Honor. If that's something you  
4 typically grant, I'll withdraw my objection.

5               ALJ HOGAN: Okay. Well, I can note it for the  
6 record and I guess I would ask that something formal  
7 probably be filed by Mr. Leibel --

8               MR. JORDE: Yep.

9               ALJ HOGAN: -- so that we can put that in the  
10 record, but I will orally grant that request at this  
11 time.

12              MR. JORDE: Thank you.

13              ALJ HOGAN: Any other preliminary matters,  
14 Mr. Bender?

15              MR. BENDER: No, Your Honor.

16              ALJ HOGAN: Mr. Pelham, any preliminary matters?

17              MR. PELHAM: No, Your Honor.

18              ALJ HOGAN: Mr. Jorde?

19              MR. JORDE: No, Your Honor.

20              ALJ HOGAN: All right. Then, Mr. Bender, you  
21 can call your first witness.

22              MR. BENDER: For the calling of the first  
23 witness, I'm going to turn over to Mr. Mahlberg.

24              MR. MAHLBERG: The Applicant calls Jeremy  
25 Ellingson.

1 JEREMY ELLINGSON: Good morning.

2 ALJ HOGAN: Good morning, Mr. Ellingson. Can  
3 you state your full name for the record and spell your  
4 last name?

5 JEREMY ELLINGSON: Jeremy Ryan Ellingson,  
6 E-L-L-I-N-G-S-O-N.

7 ALJ HOGAN: Mr. Ellingson, before you testify  
8 this morning, I'm required by law to advise you on the  
9 penalties for perjury in the state of North Dakota.

10 Perjury is a Class C felony, punishable by a  
11 maximum fine of \$10,000, a maximum five years'  
12 imprisonment, or both.

13 Do you understand what perjury is?

14 JEREMY ELLINGSON: Yes.

15 ALJ HOGAN: Being advised of the potential  
16 penalties for perjury, do you promise to tell the truth  
17 in this case today?

18 JEREMY ELLINGSON: I do.

19 ALJ HOGAN: All right. Thank you.

20 Go ahead, Mr. Mahlberg.

21 MR. MAHLBERG: Thank you, Your Honor.

22

23

24

25

JEREMY ELLINGSON,

being first duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. MAHLBERG:

Q. Good morning, Mr. Ellingson.

A. Good morning.

Q. Mr. Ellingson, by whom are you employed?

A. Ellingson Drainage, Incorporated.

Q. What's your position with Ellingson Drainage, Incorporated?

A. I'm the chief operating officer.

Q. Can you generally describe the company's business?

A. Ellingson is a 53-year-old construction business. We primarily have been in agriculture for most of our tenure. We also specialize in a lot of different types of horizontal directional drilling utility work. We do a little bit of infrastructure management. But as I said, most of -- most of our focus is in the ag market today.

Q. How many employees does the company have?

A. We have around 400.

Q. And in the agricultural line of business, Mr. Ellingson, is that largely focused on the water

1 management business?

2 A. Yes. I would say 95 percent of our business in  
3 the ag sector is water management.

4 Q. When did you join the company?

5 A. I started in 1994.

6 Q. What was your position back then?

7 A. I was a field laborer.

8 Q. Mr. Ellingson, where are the company offices  
9 located?

10 A. Our corporate office is in a small town called  
11 West Concord, Minnesota, near Rochester. We have a very  
12 large satellite office in Harwood, North Dakota, just to  
13 the north side of Fargo. We also have field offices in  
14 Wahpeton, Grand Forks. And we have an office in  
15 Bellefonte, Pennsylvania.

16 Q. Who are the Ellingson's clients typically in  
17 what we've called the water management business?

18 A. Mostly growers. Sometimes we work for land  
19 managers or investment firms, but I would say 90 percent  
20 is directly with the growers.

21 Q. Would it be fair, Mr. Ellingson, to call the  
22 water management business the drain tile business?

23 A. Sure.

24 Q. Can you estimate the amount of drain tile that  
25 the company installs on an annual basis in the Red River

1 Valley?

2 A. Probably somewhere around 30 million feet a  
3 year.

4 Q. For context, could you estimate the -- what  
5 percentage that 30 million feet per year is of all the  
6 tile installed in the Valley in a year?

7 A. I would say it's probably 50 percent, maybe a  
8 little more.

9 Q. Does the company have clients whose properties  
10 are crossed by the pipeline route?

11 A. Yes.

12 Q. Can you give a general description of what the  
13 water management or drain tile business is? What's the  
14 point of it?

15 A. In simple terms, it's basically the removal of  
16 excess water on any given farm field to increase crop  
17 production.

18 Q. Why is the removal of excess water important?

19 A. The crop health in high water table areas can be  
20 stunted or not producing maximum yield when you don't  
21 have your water properly managed. We artificially, you  
22 know, lower the water table to increase the root of the  
23 crops to ensure that maximum yield can be gained. It  
24 also allows growers to get into their farms earlier in  
25 the season, reduces compaction and erosion and even some

1 fuel costs in certain situations.

2 Q. Can you give a real basic description of how a  
3 drain tile system works, what its components are, and  
4 what they do?

5 A. Sure. Typically, a drain tile system is started  
6 with a topographic survey of the farm to understand the  
7 grade and elevation. It's critical. All drain tile  
8 lines are gravity flow. We then determine an outlet  
9 location, whether it needs to be a free-flowing outlet  
10 or a lift station or a pump. At that point, we engineer  
11 the system for proper materials based on soil types,  
12 spacings, Ksat values in the soil, different engineering  
13 things that go into making sure a drain tile system is  
14 installed properly.

15 We then install it with a large BRON drainage  
16 plow with a crew of guys. We use a -- typically most of  
17 the tile is a 4-inch plastic HDPE material. The mains  
18 are larger than that. They're installed three to  
19 four feet deep on most farms with the exception of mains  
20 being deeper occasionally.

21 And really, in a nutshell, that's how a water  
22 management system is installed.

23 Q. You mentioned the systems are gravity flow. How  
24 do you account for flatter areas and making sure that  
25 the water still moves?

1           A. Just ensure that everything's installed on  
2 proper grade. It's very critical.

3           Q. And how do you -- how do you ensure that  
4 everything is installed on a proper grade?

5           A. All of our crews are equipped with either lasers  
6 or GPS technology to do that.

7           Q. Mr. Ellingson, what's the company's role in  
8 connection with the Summit pipeline project?

9           A. We have partnered with Summit as their  
10 agricultural drain tile mitigation partner. We've been  
11 involved for about 15 months.

12          Q. Has the company served in a similar role on  
13 other pipeline projects?

14          A. Yes.

15          Q. Now, is your engagement with Summit for the past  
16 15 months typical of your past experience with pipeline  
17 projects?

18          A. Not typical. Very few projects. We feel Summit  
19 has went above and beyond with the way they've managed  
20 and approach drain tile in this project.

21          Q. In what ways do you think the company has gone  
22 above and beyond --

23          A. Typically --

24          Q. -- to respect the drain tile?

25          A. Sorry. Typically, on the pipeline projects



1 where we repair drain tile, it's done after -- it's kind  
2 of an afterthought during construction. Sometimes we're  
3 involved. Sometimes the general contractor does it.  
4 There might not always be a lot of expertise.

5 On this project we've been brought in ahead of  
6 time. We're planning and engineering right alongside  
7 Summit's team to ensure that all of the drain tile are  
8 found, repaired, and kept at or better than when it  
9 started.

10 Q. Is Ellingson's relationship with Summit a  
11 subcontract or through a general contract or is it a  
12 direct relationship?

13 A. No. We are working direct for Summit.

14 Q. And is that typical?

15 A. Not typically, no.

16 Q. Do you think that direct contract is a good  
17 thing?

18 A. I think it's a great thing.

19 Q. Why?

20 A. It gives us the flexibility to work directly  
21 with the landowners when any issues arise. We ensure  
22 that lots of different things are taken into  
23 consideration before the pipeline's construction: the  
24 location of drain tile, how many, making sure there's  
25 enough resources or timely to repair them, looking at

1 elevations of major main tile lines to ensure that the  
2 pipeline depth is installed so it doesn't conflict the  
3 running line.

4           You know, as I talked before, grade is so  
5 important on a drain tile job. And documentation is  
6 probably the other big thing. We have a GIS system  
7 in-house that documents the drain tile size. We take  
8 pictures. So it's really easy for a landowner to get  
9 as-builts or understand what happened on his farm even  
10 after the fact.

11           Q. Sure. And we'll get to that, the documentation  
12 of the fixes and such in a little bit here, but you  
13 testified that the company's been on the job for  
14 15 months or so. We're just here now at a permit  
15 hearing.

16           A. Yep.

17           Q. What have you been doing for the last 15 months?

18           A. We've been supporting Summit at landowner  
19 meetings, you know, answering questions. We've been  
20 doing a lot of engineering. We've done tile map  
21 collection from landowners, working with them on any  
22 concerns or questions that they have as it relates to  
23 the drain tile on their farm. We've been working with  
24 local NRCS or public service offices to gather as many  
25 tile maps and drainage information as we can to ensure

1     that everything is captured before construction. And  
2     we're also doing a highly level photo imagery search in  
3     areas that we know there could be possibly tile, but  
4     maybe the landowner doesn't have maps.

5           Q. And in those areas where the landowner doesn't  
6     have maps, how do you find it on the aerial surveys?

7           A. Lots of years' experience. We look for -- we  
8     look for typical imagery that's taken at the right time  
9     of year. And we've got engineers in-house that have  
10    gotten seasoned at recognizing drain tile. It's not a  
11    perfect science, but it's better than nothing.

12          Q. And you're doing that for the entire pipeline  
13    route?

14          A. Yes.

15          Q. And the role is to locate in advance of  
16    construction all tile?

17          A. That's our goal.

18          Q. You think you'll be able to accomplish that?

19          A. We're hoping most of it.

20          Q. Let's talk a little bit about the -- as we go  
21    into the construction phase of the pipeline project,  
22    what will Ellingson company's role be during that phase?

23          A. We'll play three parts. One, we'll be involved  
24    upfront in the planning with the contractors and the  
25    documentation and location of the tiles as the trench is

1 being cut, kind of the preplanning, pre-construction  
2 phase. During construction, we'll be repairing the tile  
3 behind the general contractors, ensuring that they get  
4 put back to better or as they were. And then we'll be  
5 doing documentation in as-built data collection as the  
6 repairs are completed. And then also available after  
7 construction for any issues that may come up.

8 Q. In the beginning phase, how are you going to  
9 locate and mark the lines as the spreads actually move  
10 out for construction?

11 A. We will have field engineer personnel on every  
12 spread that will be available to answer landowner  
13 questions around drain tile. They'll also be working  
14 alongside Summit's surveyors and our GPS team to  
15 document and locate the tiles as they're hit.

16 Q. Will landowners have access to that information  
17 as the process is ongoing?

18 A. Yes. We have a GIS dashboard that, at any time,  
19 we can talk with a landowner about their concerns. With  
20 gathering the tile maps and information ahead of time,  
21 our team will have them at their fingertips to help  
22 address any questions or problems the landowner may  
23 have.

24 Q. And when you say that Ellingson will have  
25 personnel out with every spread, do you mean an actual

1 Ellingson employee?

2 A. Yes.

3 Q. Is it fair to say, Mr. Ellingson, as the  
4 pipeline construction gets underway, that tile is going  
5 to be cut or damaged or broken?

6 A. Yes.

7 Q. When the repairs are done, and we'll describe  
8 them or we'll go through them here in a minute, is that  
9 section of tile that is replaced going to be as strong  
10 as or better than the tile before the project came  
11 along?

12 A. It should be better. We typically use a heavy  
13 highway plastic tile material to repair the crossings  
14 encased in a steel casing to ensure there's no damage or  
15 settling issues that occur.

16 Q. Why don't you take us through a little bit more  
17 of the actual process of making that permanent repair.

18 A. Sure. We locate the repair and we dig back on  
19 each tile into the banks, in the virgin ground, several  
20 feet to ensure that no extra tile has been crushed or  
21 damaged during excavation.

22 Our crews will then replace that tile with a  
23 heavy highway grade agricultural drain tile that's used  
24 along highways. It's a little thicker than your normal  
25 day-to-day agricultural drain pipe to ensure there's

1 extra strength. It will be encased in an upsized steel  
2 culvert. So, for example, a 4-inch tile will be  
3 installed in a 6-inch culvert. That will span the  
4 trench and lay approximately 8 to 10 feet into the  
5 banks. And then we use sandbags on top of the pipeline  
6 to support the pipe in the center just to ensure that  
7 there's no issues with settling during backfill.

8 Q. When you say the sandbags, that's being used to  
9 support the drain tile that sits above --

10 A. Yes.

11 Q. -- above the pipeline?

12 A. Correct.

13 Q. So are there concerns after the permanent repair  
14 is done that the drain tile is going to settle in the  
15 area of the pipeline?

16 A. Not in the way they're being installed here.

17 Q. You talked about lasers earlier. Is that part  
18 of the process of the repair?

19 A. Yes. That's probably the most critical process,  
20 is ensuring that the drain tiles get connected back  
21 together correctly and that they're put on grade.

22 Q. How do you document the repairs that are made?

23 A. Our field engineer staff that works alongside  
24 our crew takes pictures. We document station location  
25 via the pipeline maps. We also GPS and survey in the

1 points of connections so we have them. We also document  
2 size and any other pertinent information, date it was  
3 done, who completed it, and we keep record of all that  
4 digitally.

5 Q. That information is made available to  
6 landowners?

7 A. Yes.

8 Q. After the repairs are completed, will the  
9 landowners know as much about the tile that's been  
10 repaired as any other tile in their field?

11 A. They should.

12 Q. In your experience, Mr. Ellingson, is it common  
13 for a company to get called back on a job like this or  
14 after a job like this to re-repair the repair?

15 A. Not typically. You know, we've been fixing tile  
16 on pipeline projects for probably 30-plus years. And I  
17 remember very few we've been called back on.

18 Q. Now, if we think about the tile that may exist  
19 in this area, pattern tile, right, can you explain what  
20 pattern tile is?

21 A. Pattern tiling is just basically tiling the  
22 entire farm on a set spacing based on the soil and  
23 draining coefficients that are provided and needed to  
24 properly drain that soil. They can be anywhere from 30  
25 to 40 feet up to 80 to a hundred feet depending on when

1 the system was installed.

2 Q. There can be a large number of tile lines in a  
3 field in a pattern system; right?

4 A. Correct.

5 Q. And in the case of a pattern tile system that's  
6 being intersected by the pipeline, that can involve a  
7 number of -- a large number of tile crossings and  
8 repairs?

9 A. Yes.

10 Q. That number of repairs cause you concern for  
11 restoring the functionality of the system?

12 A. Not really, no. We -- we've been doing this for  
13 a long time and we've hit projects with 60 to 80 repairs  
14 in one farm and have been successful repairing them.

15 Q. In terms of a repair, is it a matter of simply  
16 reconnecting the 60 or 80 lines or are there alternative  
17 solutions?

18 A. Yeah. On an occasion, if it makes sense, we're  
19 offering some of the landowners or the growers the  
20 option to install header systems if they would like.

21 Q. What's a header system?

22 A. A header system is just basically the process of  
23 rerouting the drain tile ahead of pipeline construction,  
24 intercepting, you know, the laterals on the upside of  
25 the pipeline, capping them on the downside, and



1 minimizing the number of crossings at construction. So  
2 a farm that would have 40 to 50 laterals might only have  
3 two or three crossings that have to be dealt with during  
4 construction. The rest would have been rerouted.

5 Q. And Ellingson has been working with Summit and  
6 landowners on figuring out those solutions at this stage  
7 of the project?

8 A. Yes.

9 Q. Who makes the decision about whether to go  
10 forward with a particular type of repair or a header  
11 system replacement? Is that the company's decision?

12 A. Landowners.

13 Q. Who pays for the work?

14 A. Summit.

15 Q. Are landowners required to use Ellingson to  
16 complete the work?

17 A. They are not required to use Ellingson to  
18 complete the header system work, but they are required  
19 to work through us and with us to ensure that all of the  
20 integrity documentation, safety, is all in place and  
21 documented correctly and properly.

22 Q. All right. So Summit has you as their point  
23 person to make sure that the pipeline and the drain tile  
24 are compatible?

25 A. Yes.

1           Q.   We look out into the future just a little bit.  
2   Will landowners be able to install tile systems in the  
3   future on properties where the pipeline has been  
4   constructed?

5           A.   Yes.   We install projects every day with  
6   pipelines in them.

7           Q.   Are there particular things that a landowner or  
8   a contractor is well advised to do when they're working  
9   around a pipeline?

10          A.   Yeah.   Typically we try and avoid it as much as  
11   possible when installing a new system in an existing  
12   pipeline property.   We'll header it off, you know,  
13   similar to a header system when we install that and then  
14   cross it probably the least amount of times as possible  
15   to make the system work.

16          Q.   And how about in terms of safely working around  
17   the pipeline, are there typical steps?

18          A.   Yeah.   Most of the time there's a watchdog from  
19   the pipeline representation when we cross pipelines.   We  
20   do a utility one-call on every project to help locate  
21   that.   We've done lots of them.   It's a pretty safe  
22   process.

23          Q.   All right.   Mr. Ellingson, you worked on a lot  
24   of pipeline projects.   Do you have a view overall as to  
25   Summit's approach on drain tile issues?

1           MR. JORDE:  Objection.  Irrelevant.  And  
2 foundation.

3           ALJ HOGAN:  The objection is noted.  I'll allow  
4 him to answer.

5           Q.  (BY MR. MAHLBERG)  Go ahead.

6           A.  I feel Summit has went above and beyond in this  
7 project.  We've done a lot of pipeline projects, tried  
8 to get involved with other owners early on.  We've been  
9 successful with a few of them.  I think they're really  
10 setting precedence on this project the way that they've  
11 approached it as far as drain tile mitigation goes.

12          Q.  Mr. Ellingson, in your opinion, will the drain  
13 tile systems on every piece of land crossed by the  
14 pipeline in North Dakota be put into as good as or  
15 better condition after the pipeline is built?

16          A.  Yes.

17          MR. JORDE:  Objection.  Foundation.

18          ALJ HOGAN:  The objection is noted.  He already  
19 answered so it's on the record.

20          Q.  (BY MR. MAHLBERG)  Do you have any doubts about  
21 that?

22          MR. JORDE:  Objection.  Foundation.

23          ALJ HOGAN:  The objection is noted.  You can  
24 answer.

25          A.  No.

1           MR. MAHLBERG: Thank you. I don't have anything  
2 further for Mr. Ellingson.

3           ALJ HOGAN: All right. Mr. Pelham, any  
4 questions?

5           MR. PELHAM: Yes. Thank you, Your Honor.

6                           CROSS EXAMINATION

7 BY MR. PELHAM:

8           Q. Good morning, Mr. Ellingson. I just want to ask  
9 you some follow-up questions on the examination by Mr.  
10 Mahlberg, just starting in reverse order here in my  
11 notes.

12                   You testified, sir, that landowners aren't  
13 required to use Ellingson to do the work, but they have  
14 to work with Ellingson to a degree. So does that mean  
15 that a competitor of Ellingson's could do the work so  
16 long as Ellingson is a consultant? How would that work?

17           A. Yeah. As long as they meet all the requirements  
18 needed for the pipeline, they could help perform the  
19 work. Yeah, they need to work with us as, as you said,  
20 a consultant to ensure everything is done correctly.

21           Q. All right. Do you know whether or not the  
22 company would pay for that work to be done by someone  
23 other than Ellingson if the landowner chose to use  
24 someone else?

25           A. That would all be managed through us and Summit.

1 Q. Okay. But Summit would pay that?

2 A. Yes.

3 Q. Okay. The header systems, how many landowners  
4 to your knowledge, sir, are using that alternative?

5 A. With this just being the permit stage, we're  
6 pretty early in the process. We've -- we've probably  
7 done a small amount of them at this point, but we're  
8 also still in the data collection phase. We got a ways  
9 to go to get all the tile maps in to produce them.

10 Q. Do you know, sir, how landowners are being  
11 educated as to this as being an option?

12 A. Through the land agents. Summit has also  
13 created, in conjunction with us, a drain tile fact  
14 sheet. And our team is available in any meeting  
15 requested by a landowner to -- to help understand drain  
16 tile better.

17 Q. You were asked by Mr. Mahlberg as far as whether  
18 or not it's typical for sort of re-repair, coming back  
19 after a repair, and I think you testified that it's been  
20 seldom. I'm wondering, for the times that Ellingson has  
21 been called back to fix an issue that had been repaired,  
22 is there any type of common denominator, common theme,  
23 where there's an issue with the drain tile that has to  
24 be repaired for a second or subsequent times?

25 A. Not really.

1           Q.    Could you give us some examples of situations  
2           where Ellingson has been involved in coming back after a  
3           pipeline project, having repaired and then having to  
4           also come back later to repair an issue with the repair?

5           A.    Typically a landowner will have a wet spot near  
6           the pipeline. Our GIS systems allow us to pinpoint  
7           exactly where we did the repair. We typically then work  
8           with the landowner to identify the issue, if it's  
9           something in relation to the pipeline or something else  
10          going on in their farm. We typically have a survey and  
11          repair team that goes out and troubleshoots that. And  
12          if there is a repair that is needed, we make that. You  
13          know, it could be something as simple as a coupler  
14          pulled apart or it could be, you know, abandoned tile  
15          causing problems, something that wasn't caught. There's  
16          several different things. But usually our team does a  
17          pretty good job of making sure them things don't happen.

18          Q.    Fair enough. And I'm just wondering, sir, as  
19          far as the length of time that Ellingson would be  
20          involved in repairing issues after if the line is  
21          constructed. Is there a contractual time limitation  
22          that Ellingson is involved with Summit that you can say?

23          A.    From the way I can understand it, Summit is  
24          offering a lifetime repair guarantee for all the drain  
25          tile. So we would be coming alongside them as long as

1 needed.

2 Q. So if a landowner comes to Ellingson five years  
3 later and said "Hey, there's an issue with this area  
4 that had been repaired," it's your testimony that  
5 Ellingson and the company would honor that repair  
6 obligation to the landowner? Is that your testimony?

7 A. Yes.

8 Q. You were asked about the documentation that is  
9 anticipated to be done. The documentation -- and then  
10 you testified, I believe, that it would be available to  
11 the landowner. Is that by landowner request or is that  
12 something that is just simply handed over to the  
13 landowner?

14 A. The Summit team will be handling, you know, all  
15 the documentation back and forth, through the land  
16 agents, I'm assuming, so it would -- it would probably  
17 be given to them by a Summit representative.

18 Q. When the repairs are made to the -- to the drain  
19 tile systems, is a new map created by Ellingson as part  
20 of that process for their drain tile system?

21 A. We have a -- we document it in our GIS system  
22 and, yes, update the map that, hey, these -- all these  
23 tile have been repaired.

24 Q. So included in the documents that would be  
25 provided to the landowners, would that map be included

1 in those documents?

2 A. Yes.

3 Q. You testified, sir, that you don't have concerns  
4 about settlement around where the tile is repaired and  
5 the line is constructed. I'm just wondering if you  
6 could expound on that or explain a little bit more why  
7 you don't have concerns about settlement.

8 A. Past history. I mean, we've done a lot of  
9 projects this way with -- with really good success. You  
10 know, the engineering, when you look at a steel culvert  
11 spanned across the width of the trench has more than  
12 enough support characteristics to keep it from settling,  
13 and then as an extra precaution, we install sandbags to  
14 support it in the middle just in case there's any  
15 issues, and we're backfilling the pipe, and I trust our  
16 guys. I think they do a good job.

17 Q. As far as determining -- and I don't know if you  
18 have anything to do with this, and probably not, but  
19 I'll ask it anyways. The routing of the line is -- is  
20 not something that Ellingson is doing; correct?

21 A. No.

22 Q. Okay. So the routing of the line isn't being  
23 done by Ellingson. Do you have an opinion, sir, as far  
24 as how the line crosses land with a drain tile system  
25 installed? Is there a better way to cross it? Is it



1 diagonal, is it better? Is it 90-degree angles better?  
2 Do you have an opinion on that?

3 A. Not really. You know, there's all different  
4 considerations that go into laying out and designing a  
5 pipeline that, you know, them decisions are made off of.  
6 I can tell you that a lot of the landowners, as they've  
7 been met with Summit, our team has participated in  
8 conversation about how it's routed across their farm or  
9 how it's going to impact their tile, which, as I said  
10 before, is, you know, going above and beyond, I feel,  
11 for Summit, something that probably has never been done  
12 to this level on a pipeline project.

13 Q. So a line -- pipeline coming across a land  
14 that's diagonal in nature, is there something different  
15 that is done by Ellingson's to repair that tile versus a  
16 line that is coming at a 90-degree angle, say up a right  
17 of way along a county road or something like that?

18 A. Not typically, no.

19 Q. You testified, sir, that you're hoping that  
20 you're going to locate most of the tile. The portion --  
21 let's say, for example, that isn't -- that isn't  
22 realized and that there is some tile that is missed and  
23 isn't located. Is there a plan in place for that tile  
24 that is sort of unexpectedly located during the  
25 construction?

1           A.   Well, let me clarify that answer from before.

2           Q.   Fair enough.

3           A.   We're trying to locate as much tile  
4 pre-construction as we can. During construction, we  
5 should get every tile. Our field engineer is onsite as  
6 the excavators are digging the pipeline. We will be  
7 there documenting them lines as they cut through them.  
8 So I would say with 99 and a half percent, we should get  
9 most of the tilings. If not, it's why Summit's  
10 partnered with us for the lifetime of the project, that  
11 if something is missed, we will come back and fix it for  
12 them.

13           MR. PELHAM: Thank you, sir. I don't have any  
14 other questions for you. Mr. Schock may have some.

15           MR. SCHOCK: Just a couple.

16                           CROSS EXAMINATION

17 BY MR. SCHOCK:

18           Q.   So there was some discussion earlier about you  
19 having some input into the depth of the pipeline,  
20 because you were kind of talking about how the grade is  
21 very important with the drain tile. So will Ellingson  
22 have control over the depth of the actual pipeline  
23 that's being installed?

24           A.   Our job is to notify the general contractors of  
25 where the tile systems are ahead of time so they can

1 plan the depth of their pipeline into that. And any  
2 lines that may cause issue or conflict, we'll make them  
3 aware of that to readjust that in the preplanning  
4 stages.

5 Q. Okay. So is it possible they would install the  
6 pipeline -- you know, I think the company's proposed to  
7 install it at four feet of depth. Would they  
8 potentially go down to six feet or eight feet in some  
9 areas if that would make that portion of the repairs  
10 easier or --

11 A. Yes.

12 Q. Okay. And how close would you -- do you  
13 normally install the drain tile to a pipeline? So let's  
14 say they did in that scenario, that they buried the pipe  
15 down to six feet. Would you be able to go over the  
16 cross -- go across that pipeline with drain tile at a  
17 depth of four feet?

18 A. Typically, there's -- we shoot for 12 inches of  
19 separation between the pipeline and the drain tile.

20 Q. Okay. Is there a limitation of what the minimum  
21 distance between the pipeline and the drain tile is?

22 A. I don't think so. There may be some stuff in  
23 different -- different states that are different, but  
24 here I'm not sure that there's anything.

25 Q. Okay. And you would go over the top of the

1 line, generally speaking, or underneath it?

2 A. Over top of it.

3 Q. The top?

4 A. Yep.

5 Q. Would there be any scenarios where underneath  
6 would make more sense, or --

7 A. No. As we talked before with the drain tile  
8 lines being graded, that's very difficult to do, unless  
9 it's really deep.

10 Q. Okay. That's all the questions I have for now.  
11 Thank you.

12 A. Thank you.

13 ALJ HOGAN: Mr. Jorde, do you have any  
14 questions?

15 MR. JORDE: I do. Thank you.

16 CROSS EXAMINATION

17 BY MR. JORDE:

18 Q. Sir, is your company, was it started by your  
19 father? Grandfather?

20 A. Grandfather.

21 Q. All right. And in your role as COO, what  
22 percentage of your day is in the field?

23 A. Today, probably 5 percent.

24 Q. And you made a lot of claims here today about  
25 what Summit will or won't do. Who told you what Summit

1 would or won't do? Who gave you that information?

2 A. Jimmy Powell, the COO of Summit.

3 Q. All right. Is it fair to say anything you're  
4 repeating that Mr. Powell told you, you have no personal  
5 knowledge if, in fact, that is true or not, you're just  
6 repeating that he told you; correct?

7 A. As it relates to the warranty with the  
8 landowners.

9 Q. All right. Have you seen a copy of this  
10 warranty?

11 A. I have not seen a copy of the warranty.

12 Q. Would you be surprised to learn there is no such  
13 written warranty?

14 A. No.

15 Q. And when you make these claims that there's a  
16 lifetime guarantee, who told you that?

17 A. Summit.

18 Q. And would you be surprised to learn there's no  
19 such lifetime guarantee in the easement contracts  
20 they're offering landowners?

21 A. No.

22 Q. And in terms of any warranty, does the landowner  
23 have a direct contract with your company or is it all  
24 through Summit?

25 A. We're contracted through Summit.

1           Q.   All right.   So the landowner doesn't have a  
2   signed contract with you.   Do you believe a landowner  
3   could sue you for work that was done improperly?

4           MR. MAHLBERG:   Objection.   Relevance.

5           ALJ HOGAN:   Maybe relevance.   I don't know if  
6   he's -- to me, that's a legal conclusion that --

7           MR. JORDE:   Well, I --

8           ALJ HOGAN:   Maybe you can rephrase it.   I don't  
9   know what you're getting at but --

10          MR. JORDE:   Well, what I'm getting at is he's  
11   made all sorts of claims of how wonderful this is,  
12   they've never had a problem and basically nothing for  
13   the PSC to be concerned about, but let's get into who  
14   warranties what.   I mean, there's a lifetime warranty.  
15   Do they stand behind it?   Who's standing behind it?  
16   That's what I want to know.   What can these landowners  
17   in this audience rely upon?

18          Q.   (BY MR. JORDE)   Are you standing behind and  
19   guaranteeing, sir, that your company will pay for and  
20   repair at your cost any damage that you may cause or  
21   your repairs may not be sufficient to a landowner?

22          MR. MAHLBERG:   I'm going to object to the extent  
23   this witness is being asked to make commitments  
24   contractually about all sorts of hypotheticals in a  
25   single statement.   It's an inappropriate question.

1           ALJ HOGAN: I think it was a complex question  
2 but -- and I think you've established that they're  
3 contracted through Summit so...

4           Q. (BY MR. JORDE) Okay. So just to be clear,  
5 sir, Ellingson, you do not have a contract that you sign  
6 with the landowners; correct?

7           A. Not directly, no. We're working for Summit.

8           Q. All right. And in Summit's lifetime -- alleged  
9 lifetime warranty, would you be surprised to learn that  
10 Summit only offers repair features for so long as they  
11 are utilizing the easement?

12          A. No.

13          Q. All right. So if Summit sells this project the  
14 day after it's approved, you understand that Summit then  
15 would have no more responsibility to that landowner?

16          MR. MAHLBERG: Objection. That calls for a  
17 legal conclusion about Summit's responsibilities to  
18 landowners under agreements that the Ellingson companies  
19 are not party to. He's already testified to that.

20          ALJ HOGAN: It's my understanding you plan to  
21 call Mr. Powell. I think those are better questions for  
22 him than this witness.

23          MR. JORDE: And that's totally fine. I just --  
24 this witness has said all the things that Summit are  
25 going to do that came in on direct and now they're

1     trying to prevent him from explaining what Summit is  
2     allegedly going to do. So either you know it or you  
3     don't know it. So I'll continue.

4           Q.    (BY MR. JORDE)    Sir, have you read the  
5     contract, the easement contract, Summit's offering to  
6     North Dakota landowners?

7           A.    I have seen it.

8           Q.    Okay.

9           A.    But I've not read the entire thing.

10          Q.    You've not read it. All right. Very good.

11                Has Summit made any comments to you other than  
12     the blanket "We'll take care of everything" comment, in  
13     terms of what the process is whereby they determine if  
14     the damage that a landowner believes they found was or  
15     was not caused by you or Summit?

16          A.    Can you restate the question? I'm not sure I  
17     understand.

18          Q.    Yes. What is the process of -- say you're out  
19     there and you sever a tile line or you don't do a repair  
20     properly. What's the process? What is your  
21     understanding that now landowner has a problem, what do  
22     they do to be made whole?

23          A.    The landowner would contact the land agent  
24     they've been working for, would in turn contact us to  
25     come out and troubleshoot the issue.



1           Q. All right. And would you agree that only if  
2 Summit decides, yes, this is a problem in their sole  
3 discretion do they have any responsibility to direct you  
4 to repair anything?

5           A. I really don't think that is going to be a  
6 Summit conclusion. They've hired us to do that for  
7 them.

8           Q. Okay. So you believe it's your responsibility  
9 to make the call whether or not your own company failed  
10 to repair something properly?

11          A. Correct.

12          Q. All right.

13          A. Simple warranty we have on every project we do  
14 as Ellingson.

15          Q. Okay. So you're self-policing?

16          A. Of course.

17          Q. All right. So the landowner has to count on you  
18 that you will say, "Yes, we screwed this up" and "Yes,  
19 you, Summit, should pay landowner"?

20          A. Correct.

21          Q. Do you have a written contract with Summit?

22          A. Yes.

23          Q. All right. Did you bring a copy of that today?

24          A. I do not have a copy of it.

25          Q. Is that a copy you can provide the Commission?

1           A.    Sure.

2           Q.    What's your financial arrangement?

3           MR. MAHLBERG:   Objection.

4           MR. JORDE:   Goes to bias of his entire  
5 testimony.

6           MR. MAHLBERG:   If I can make my objection?

7           ALJ HOGAN:   Sure, you can make your objection.

8           MR. MAHLBERG:   The contents of a contract, sure,  
9 a bias question, but the compensation arrangement, the  
10 other contractual arrangements, are not relevant to the  
11 issues being considered by the Commission and they're  
12 confidential and proprietary contract.

13          MR. JORDE:   They're relevant to his testimony.  
14 They've put all this in play.

15          MR. MAHLBERG:   The idea that we put all of this  
16 into play has some guardrails to it. We have direct  
17 testimony. We have the decisions that the Commission  
18 needs to make. Attempting to do discovery on the  
19 contractual underpinnings of this goes, I think, too  
20 far.

21          ALJ HOGAN:   Can you remind me what your question  
22 was? Did you ask what the --

23          MR. JORDE:   I wish I could. It was something --  
24 oh, yes. I want to know the financial -- or the  
25 compensation arrangement for this witness who's paid to

1 be here today in part of his contract. I want to -- I  
2 think it's important that we all know the financial  
3 arrangement here.

4 ALJ HOGAN: Are you talking about financial  
5 arrangement for him testifying today or in general his  
6 company's financial relationship with Summit for this  
7 project?

8 MR. JORDE: Well, both. They're one and the  
9 same. I mean, I want -- I want to understand and make  
10 it clear this witness is biased for the revenue  
11 generation that will occur if, and only if, this project  
12 is approved.

13 ALJ HOGAN: I'm going to note the objection, but  
14 I will let him answer generally. I mean, if it gets  
15 into -- I think generally describing that relationship  
16 isn't necessarily confidential, but if we -- there Mr.  
17 Mahlberg is going to object again and I'll address it  
18 then. So if you want -- maybe start with -- do you want  
19 general financial relationship between his company and  
20 Summit or did you want to talk about today first? If we  
21 can break it up, I think that's going to be easier to  
22 address that way.

23 MR. JORDE: I appreciate that. I'll even start  
24 further back.

25

1           Q.   (BY MR. JORDE)   Who contacted who for your  
2 company to be involved in this potential project?

3           A.   I began working with the Rastetter family and  
4 Jimmy early on in this project to discuss the drain tile  
5 issues on this project as it's a Midwestern job and  
6 everyone understands the impact drain tile has. And  
7 it's part of, I think, Summit going above and beyond and  
8 being proactive in addressing it early on. I've  
9 probably been talking with Summit closer to two years  
10 about how we can make sure that the landowners' needs  
11 are met as it relates to drain tile on this job.

12                   And I guess, you know, you had mentioned  
13 earlier, just -- I'll make a real quick comment.

14           Q.   That's okay. What question do you think you  
15 just answered?

16           A.   You asked me when we were -- basically began  
17 being engaged with Summit.

18           Q.   All right. And you didn't tell me. When were  
19 you engaged?

20                   MR. MAHLBERG: Objection. That's asked and  
21 answered. He described when he was contacted and  
22 started working on the project.

23                   MR. JORDE: The phrase was "early on." I have  
24 no idea what that means.

25           A.   I would have to go back and look exactly. I

1 think it was early spring of '21, if I had to guess.

2 Q. (BY MR. JORDE) Have you done work for the  
3 Rastetter family or conglomerate corporations of Bruce  
4 Rastetter before?

5 A. No.

6 Q. And did he call you?

7 A. No.

8 Q. Who contacted you? How were you hired?

9 A. One of Bruce's hired people and I began  
10 discussions.

11 Q. All right. And have you been paid to date for  
12 any of your work, consulting work, traveling around to  
13 meetings, etcetera?

14 A. Yes.

15 Q. All right. And to date how much have you been  
16 paid for that work?

17 A. I don't know the exact amount without looking.

18 Q. And what are the rates you're going to charge  
19 them to do the locating and all of that kind of initial  
20 front-end pre-construction work?

21 MR. MAHLBERG: I'm going to object on the  
22 specific rates being some trade secret and confidential  
23 data. It's a competitive industry and we're now talking  
24 about specific amounts. If there's a way to keep it  
25 more general. He and the company are going to make

1 money off it. That's clear coming into this.

2 ALJ HOGAN: Can you ask it generally?

3 MR. JORDE: Well, yeah. I don't have any idea  
4 how that's trade secret.

5 Q. (BY MR. JORDE) But what's the -- what's the  
6 length of your contract?

7 A. The duration of the warranty issues.

8 Q. And Summit could fire you at any time; correct?

9 A. Potentially, yes.

10 Q. And if they sell the company, the new owner  
11 could terminate your contract at any time; right?

12 A. I would assume.

13 Q. Yeah. Now, you painted a picture here today,  
14 sir, as if there's never been a problem in laying tile,  
15 there's never been a problem repairing tile, and your  
16 company just does everything wonderful and, if so,  
17 congratulations to you. But tell us, in your entire  
18 life, have you ever experienced a challenging field when  
19 you were laying tile, and talk about some of the  
20 challenges?

21 A. Of course. I think with any construction  
22 projects there's always challenges.

23 Q. Okay. Well, let -- I mean, let the Commission  
24 understand. What are some of the challenges that you in  
25 your experience expect to see in low-lying, wet, swampy

1 North Dakota ground that you are going to be asked to  
2 work on?

3 A. I would say our biggest challenges in North  
4 Dakota obviously are grade. You know, it's a very flat  
5 terrain area. But our high precision GPS systems and  
6 laser systems ensure that that's done properly. We've  
7 got 50 years of field experience installing drain tile  
8 systems all over the Midwest to weigh on. There's some  
9 areas in this project that will have some high water  
10 table sands that we've installed some very difficult  
11 projects in and been successful that we will be, I'm  
12 assuming, dealing with at some -- some point in the  
13 project.

14 Other than that, you know, we've been doing  
15 drain tile for 50 years. My grandpa started the  
16 business. And, you know, earlier you had asked about us  
17 getting paid and compensated and being biased. This  
18 isn't a project that's about Summit and Ellingson. This  
19 is about a carbon pipeline and landowners and how to  
20 help improve that. And we're going to be here -- we've  
21 been here. We've been in the Red River Valley for  
22 20 years. We'll be here for another 20 years. And we  
23 have a reputation to uphold with our current customers  
24 and growers. We're not going to jeopardize that on one  
25 project. I think that should be something that the

1 public utility commission should understand for us as a  
2 company.

3 Q. And, again, that reputation for you to uphold,  
4 you don't have a contract with a single landowner;  
5 correct?

6 A. Correct.

7 Q. All right.

8 A. But we do work for a lot of them.

9 Q. Well, how many -- how many affected by this  
10 pipeline do you work for in North Dakota?

11 A. Several.

12 Q. How many?

13 A. I don't have an exact count.

14 Q. More than 10?

15 A. More than 10.

16 Q. More than 20?

17 A. Probably more than 20.

18 Q. More than 30?

19 A. I would have to look.

20 Q. Okay. So for the other hundreds and hundreds  
21 that you don't work for, again, you won't have a  
22 contract and, in terms of your reputation and your work,  
23 the landowner has to look back to Summit ultimately if  
24 there's any issues; correct?

25 A. Correct.



1           Q.   Now, you talk about locating existing tile lines  
2   using GPS.   Have you ever run into difficulty with  
3   pipelines that are full of murky water or are  
4   particularly lower beneath the surface and difficulties  
5   locating them precisely?

6           A.   I'm not sure I understand your question.   You  
7   were talking about pipelines?

8           Q.   I'm sorry.   Tile lines.

9           A.   Tile lines.   And your question was?

10          Q.   Have you ever had difficulty locating a tile  
11   line?

12          A.   No.

13          Q.   Okay.   Capping lines.   Do you cap lines when  
14   you're doing repairs?

15          A.   If needed.

16          Q.   And is it true that capping lines can risk a  
17   blowout on the other part of the system?

18          A.   No.

19          Q.   It's impossible?

20          A.   No.

21          Q.   Okay.

22          A.   I'm not sure what you're talking about.

23          Q.   Well, if -- I mean, tile lines are designed to  
24   have water drain through them; right?

25          A.   Correct.

1           Q.    Okay.  And so if we've experienced a rainfall,  
2   do you ever cap a line that you're working on so the  
3   water isn't leaking into the area where you're working?

4           A.    No.

5           Q.    All right.  How do you deal with that excess  
6   water?

7           A.    Temporary repair them.

8           Q.    I'm sorry, sir?

9           A.    We temporary repair them.

10          Q.    What does that mean?

11          A.    It means if the water -- if the tile line is  
12   flowing water, we temporary repair it for the week  
13   or two that it will be open to lay the pipeline and then  
14   we put a permanent repair when it's done to ensure that  
15   that water continues to flow.

16          Q.    Would you agree that dirt settles over time?

17          A.    If it's not compacted correctly.

18          Q.    Okay.  And do you put a channel iron under each  
19   tile or how do you support the tile?

20          A.    No.  As stated before, we use a heavy highway  
21   tile encased in a corrugated steel culvert.

22          Q.    In your work in trenching and either repairing  
23   or preparing to lay tile lines, what's the deepest root  
24   system you've seen for corn, for instance?

25          A.    Three to four feet.

1 Q. Have you ever seen it to six feet?

2 A. Probably not personally, no.

3 Q. And is your preference -- is the best practice  
4 to -- if I called you up and I wanted you on my North  
5 Dakota farm to put some new tile lines and there was a  
6 CO2 pipeline already there, is it best practice to go  
7 under or over that existing pipeline?

8 A. Just depends on the design. Every field is  
9 different.

10 Q. Do you believe you'd have to get Summit's  
11 permission to go under or over their pipeline?

12 A. Typically, we call in a utility one-call,  
13 pipeline owner provides a watchdog if required, and we  
14 cross the pipeline. There's no permit, no permission  
15 that I've seen.

16 Q. All right. Are you aware if Summit has a veto  
17 whether or not they would allow a tile line to be placed  
18 under or over if they believed it would interfere in any  
19 way with their pipeline? Do they have a veto so a  
20 landowner could not locate a tile line?

21 MR. MAHLBERG: I'll object to it. The same  
22 question was asked two different ways. The first one  
23 was does he have an understanding, the second one was,  
24 without qualification, do they have a veto. That's  
25 calling for a legal conclusion under documents that this

1 witness has said his company is not party to. Those  
2 questions can be asked of Mr. Powell if he wants to talk  
3 about Summit's position.

4 Q. Well, what's your understanding?

5 ALJ HOGAN: Yeah, I'll allow him to answer as  
6 far as he understands the relationship.

7 A. I have -- I have -- I'm not privy to any of that  
8 information as the attorney had said.

9 Q. What's the minimum grade that you need to  
10 maintain from the start of a -- start of a tile line to  
11 where it outflows or exits the particular property?

12 A. It's all based on the engineering and design of  
13 the system.

14 Q. If you were -- if you were designing a tile  
15 line, would you prefer not to have to deal with a  
16 pipeline?

17 A. I really don't think it impacts it at all.  
18 We've tiled around pipelines for 50 years.

19 Q. Would you agree it would be your preference to  
20 avoid having to deal with a pipeline or other  
21 underground structures like that when laying out a  
22 tiling system?

23 A. No. We deal with underground utilities all the  
24 time, every day.

25 Q. All right. And so my question wasn't what do

1     you do. My question is would it be your preference to  
2     not have to deal with an existing pipeline and to modify  
3     the design of the tile system?

4             A. As I stated before, you know, whether we  
5     engineer a farm with or without a pipeline or utility in  
6     it, we've dealt with them for years.

7             Q. Did Summit ever give you, sir, a handout or  
8     bullet points or any type of literature or information  
9     whereby you believe you've come up to speed on their  
10    project, what they're doing, and to help you interact  
11    with landowners?

12            A. No.

13            Q. That's been all oral?

14            A. Actually, we provided them bullet points with --  
15    for the landowners.

16            Q. All right. So any information that Summit is  
17    providing to landowners relative to how Summit intends  
18    to handle tile lines, either repair or replacement,  
19    would be information that you gave Summit?

20            MR. MAHLBERG: Objection as to foundation.  
21    There's lots of Summit employees having lots of  
22    conversations with landowners and he's asking this  
23    witness to say what all of those conversations consist  
24    of.

25            MR. JORDE: No. I'm asking this witness and his

1 employees.

2 ALJ HOGAN: Yeah, I'm not sure he has a  
3 foundation to answer what Summit employees are telling  
4 landowners.

5 MR. JORDE: Okay. Let's start over.

6 Q. (BY MR. JORDE) Sir, you just said that Summit  
7 didn't give you information relative to talking points  
8 about tile lines, but you, meaning your company, gave  
9 them information; is that correct?

10 A. Correct.

11 Q. All right. And to your understanding, is that  
12 the information, the information you provided to Summit,  
13 are those the statements and representations and  
14 warranties that are being told to landowners at these  
15 various town meetings that you and Summit are putting  
16 on?

17 A. I can't speak for every Summit land agent as we  
18 are not in every meeting and every conference with every  
19 landowner, but when we are involved with the drain tile  
20 issue or a drain tile question, I know our team is  
21 providing the same responses.

22 Q. Well, okay. Well, how do you know that if you  
23 can't speak for what they're saying?

24 A. Because we've put together, you know, several  
25 different drain tile fact documents to ensure that, you

1 know, drain tile mitigation is handled fairly across the  
2 entire project in the same way.

3 Q. All right. And do you have any idea what -- and  
4 maybe no, but do you have any idea what Summit's process  
5 is for evaluating or determining a valid damage claim?

6 A. No.

7 Q. That's not something they've discussed with you?

8 A. On the project, no.

9 Q. Okay. Now, when you said after your work a  
10 farmer's line, tile line, would be as good or better,  
11 what do you rely upon to make the statement that it  
12 would be -- after damaged, your repair would be better  
13 than the pre-damaged working tile line?

14 A. In some cases where there could be older  
15 concrete or clay tile in some of the farms we're going  
16 to be crossing, it would be upgraded to a HDPE plastic  
17 tile. The steel culvert gives it support that's  
18 different than the original installation. So like I  
19 said, we will ensure that the tile is at or better than  
20 it was before it was cut by the pipeline.

21 Q. But just to be clear, when you say "ensure,"  
22 again, you don't have any responsibility directly to  
23 ensure or warranty that work to the landowner, though;  
24 correct?

25 A. For sure in our partnership with Summit.

1           Q.   Okay.  But, again, I just want to be clear.  
2           Ultimately, this all falls on Summit.  Is that your  
3           understanding with your contract with them?

4           A.   Summit and Ellingson.  As I stated before, we  
5           have a reputation in the industry.  We have lots of  
6           customers along this pipeline route and it's in our best  
7           interest, along with Summit's, to ensure that this is  
8           handled correctly with all of the landowners and that a  
9           drain tile expert is involved to ensure that that  
10          happens.

11          Q.   And I certainly understand that it's your  
12          intent.  I just want to be clear.  We all have great  
13          intentions.  I just want to be clear what the -- you  
14          understand the documents to be, and I think you've  
15          already established that you do not have any direct  
16          warranty to any landowner and the landowner's remedy  
17          would be through Summit.  Is that your understanding?

18               MR. MAHLBERG:  I'm going to object.  This is  
19          about the fourth or fifth time we have done this line of  
20          questions.

21               ALJ HOGAN:  I agree.  I think he's addressed  
22          this already and just for time's sake --

23               MR. JORDE:  I agree too.  It's just in his last  
24          response he changed his prior answer so -- but that's  
25          fine if we're going to stand on the prior answers,



1     that's fine.

2             MR. MAHLBERG:   We can keep asking him.   When  
3     witnesses get the same question, they tend to give more  
4     and different information because they think they need  
5     to answer it again and again and again with more and  
6     different.   We just go around and around.

7             MR. JORDE:   Well, I need to establish the  
8     difference between this gentleman's intention and what  
9     he hopes versus what is legally the case from the  
10    contracts that he does or doesn't have.   At the end of  
11    the day, the landowners only care about "Who do I deal  
12    with if there's a problem," not his intention.

13            ALJ HOGAN:   Well, and I think that's -- I think  
14    his answers have been clear on that, that the contract's  
15    with the landowners and Summit and they're contracted  
16    with Summit.

17            MR. JORDE:   Very good.

18            Q.   (BY MR. JORDE)   Sir, what percentage of North  
19    Dakota tile is clay?

20            A.   Very little.

21            Q.   What percentage of the landowners impacted by  
22    this project tile is clay?

23            A.   It's an ambiguous question.   You know, I --

24            Q.   Well, okay.   What part don't you understand?  
25    You understand that there's a published route; correct?

1           A.   You're asking me to answer a question about how  
2 much -- what percentage of the tile across five states  
3 is clay that we're going to be repairing.

4           Q.   Well, let's stick with North Dakota.

5           A.   Very little.

6           Q.   And what do you base that on?

7           A.   Just historical drainage information.

8           Q.   Okay. Have you pulled historical drainage  
9 information on every single potentially affected parcel  
10 on the project in North Dakota?

11          A.   There's no such thing as historical drainage  
12 information on every single parcel.

13          Q.   Okay. So when you say that's what you rely  
14 upon, that's not very helpful.

15          A.   It's generalized information as provided by  
16 universities and different people in the agricultural  
17 industry. It's -- you know, it's -- it's 50 years of  
18 experience.

19          Q.   Okay. But your 50 years of experience doesn't  
20 tell you whether there's clay tile on these particular  
21 affected parcels or not; correct?

22          A.   It does.

23          Q.   Okay. So then if you have that experience, tell  
24 me what percentage of the affected -- potentially  
25 affected parcels by this hazardous pipeline contain clay

1 tile?

2 A. I don't think anyone could tell you that answer.

3 Q. All right. That's how we can speed this along.

4 You don't know; correct?

5 A. Yeah. No.

6 Q. All right. All right.

7 All right. I don't have anything further.

8 Thank you, sir.

9 ALJ HOGAN: All right. Thank you.

10 Commissioner Christmann.

11 COMMISSIONER CHRISTMANN: One of the things that  
12 I want to clarify is what you said the materials are for  
13 that splice. I wrote down a heavier highway plastic  
14 encased in a steel culvert.

15 THE WITNESS: Correct.

16 COMMISSIONER CHRISTMANN: Is that a proper  
17 description?

18 THE WITNESS: Yep.

19 COMMISSIONER CHRISTMANN: So in a previous  
20 hearing it was discussed with the company that there  
21 would be potentially some winter installation with this  
22 project. So imagining this to be, you know, kind of a  
23 year-round situation for a while, when -- as they're  
24 digging, when do you do all these splices?

25 THE WITNESS: We typically do the splices behind

1 the contractor installing the pipeline. So as they're  
2 cut, we document them. As the pipeline is laid in, we  
3 come behind and repair them.

4 COMMISSIONER CHRISTMANN: How far behind? Like  
5 a couple days behind or are you working on the same  
6 ditch and like --

7 THE WITNESS: Very, very close.

8 COMMISSIONER CHRISTMANN: -- a hundred feet  
9 behind them?

10 THE WITNESS: Yeah, yeah. We're -- we're a day  
11 or two behind. Their typical operations are to cut the  
12 ditch, install the pipe, and backfill. And after  
13 they've done temporary backfill, we come in and support  
14 them with fixing all the tile.

15 COMMISSIONER CHRISTMANN: Okay. And then -- so  
16 you do that. And then is the backfill around them,  
17 around these splices? Let's say it's a place where  
18 you're crossing laterally and so every 60 or 80 feet or  
19 something there's another one.

20 THE WITNESS: Yep.

21 COMMISSIONER CHRISTMANN: Is Ellingsons, do you  
22 do the backfilling then and put the topsoil over or does  
23 Summit come back and do that after you're done with the  
24 splicing a day after they put the pipeline in?

25 THE WITNESS: We typically backfill around our

1 repair and then the general contractor typically has a  
2 topsoiling crew that comes behind and puts the topsoil  
3 on when we're done.

4 COMMISSIONER CHRISTMANN: Okay. I think you  
5 said along the way that, ideally, you like to leave  
6 about a foot of clearance between the tiling pipe and  
7 other utilities; is that correct?

8 THE WITNESS: Typically, yes.

9 COMMISSIONER CHRISTMANN: So when you come along  
10 -- when they come along with the pipeline and -- and I  
11 believe this pipeline will be, at its shallowest, about  
12 -- the top of the pipe, about four feet to the -- to the  
13 surface. So if there's a place where the tiling is near  
14 that same amount, is it your understanding that the  
15 company will need to dig the CO2 pipeline in a little  
16 deeper there so you can maintain grade and some distance  
17 between?

18 THE WITNESS: Correct.

19 COMMISSIONER CHRISTMANN: And how much is your  
20 recommendation that that be?

21 THE WITNESS: As I stated before, one foot of  
22 clearance is typically what we shoot for.

23 COMMISSIONER CHRISTMANN: Do you think that  
24 should -- is that a reasonable requirement?

25 THE WITNESS: Yes, I think it is.

1           COMMISSIONER CHRISTMANN: And I'm from the  
2           western part of the state and we don't do much tiling  
3           out there. If the two conflict for elevation, the farm  
4           tiling, you can't have like a trap in it or a hump over  
5           it. It has to maintain grade, correct --

6           THE WITNESS: Correct.

7           COMMISSIONER CHRISTMANN: -- to work?

8           THE WITNESS: Yep.

9           COMMISSIONER CHRISTMANN: So in those instances,  
10          the pipeline is going to have to be deeper in order  
11          to --

12          THE WITNESS: Yes.

13          COMMISSIONER CHRISTMANN: -- to leave room to  
14          make it workable?

15          THE WITNESS: Yep. I think back to my comment  
16          earlier, how Summit's approached this project is going  
17          to eliminate a lot of them issues. We've been on  
18          projects before where that has been an issue and they've  
19          actually had to lower the pipeline to ensure the drain  
20          tile works and they've done that. We've been part of  
21          jobs where they've done that. But with our involvement  
22          early, we're going to, hopefully, make sure that that  
23          doesn't happen.

24          COMMISSIONER CHRISTMANN: Or the option is to  
25          put a header along the whole length of that and have --

1 THE WITNESS: Yes. We can do that too. Yep.

2 COMMISSIONER CHRISTMANN: Okay. So when you get  
3 a little further west and you actually have some little  
4 hills, so you're maintaining a grade that only drops  
5 like a few feet in a half a mile; correct?

6 THE WITNESS: It just depends on each farm. You  
7 know, every farm is different; every farm has different  
8 terrain. And our engineering team designs every tile  
9 project we do with different grades and elevations on  
10 the tile associated with the lay of the land.

11 COMMISSIONER CHRISTMANN: But generally the  
12 laterals are running at a very minimal slope but always  
13 maintaining that slope?

14 THE WITNESS: Yes. Yes. Always have to  
15 maintain grade to get the water --

16 COMMISSIONER CHRISTMANN: And so if it's -- if  
17 it's going along there and there's -- and it's generally  
18 three and a half feet deep, but now you run into a  
19 little hill where there's an elevation of three or four  
20 feet, that tiling lateral will be maybe seven feet deep  
21 at that point; correct?

22 THE WITNESS: Could be, yes. Yep.

23 COMMISSIONER CHRISTMANN: What's the deepest you  
24 ever put in laterals?

25 THE WITNESS: Laterals are typically installed

1 between three and three and a half feet deep. It all  
2 depends on the type of soil and the spacing. Main lines  
3 can potentially be deeper based on the grade and the  
4 outlet and the terrain of the farm.

5 COMMISSIONER CHRISTMANN: But have you run into  
6 small hills where you have laterals 10 or 15 feet deep?

7 THE WITNESS: I wouldn't say that deep. You  
8 know, we have put laterals in where they're a little  
9 deeper in the hill to potentially drain a lower area on  
10 the backside of the hill. Maybe six to seven feet deep.  
11 Mains we've put in 15 feet deep.

12 COMMISSIONER CHRISTMANN: And in those  
13 instances, is it all right for the pipeline, in your  
14 opinion, to be over the top then? Or how do they  
15 navigate this? Or do they still need to go deeper yet  
16 with the -- with the hydrocarbon line?

17 THE WITNESS: I would say in an existing  
18 situation like that, you're probably going to find it  
19 being pretty rare that that would occur. I think that's  
20 a pretty limited anomaly. But we would have to deal  
21 with that on a site-by-site basis on how we would handle  
22 that. A lot of it would depend on what the landowner  
23 wants.

24 COMMISSIONER CHRISTMANN: Okay. Now when you  
25 deal with a future project where someone wants to put in



1 a tiling system and you run into utilities, do you just  
2 choose the right grade that works best and then  
3 determine whether you're going over or under those  
4 utilities?

5 THE WITNESS: Correct.

6 COMMISSIONER CHRISTMANN: And I would presume  
7 that in those cases it's probably under?

8 THE WITNESS: Some cases. You know, just  
9 depends. Some cases it may be. But a lot of cases it's  
10 probably under, especially in existing pipeline.

11 COMMISSIONER CHRISTMANN: All the literature  
12 I've ever seen on tiling just kind of showed the kind of  
13 boot that's -- that it's pulled through. So when you  
14 get to a fiber line or a significant pipeline or  
15 something, I assume you don't do -- you don't cut them  
16 off and then go back and --

17 THE WITNESS: No.

18 COMMISSIONER CHRISTMANN: -- spliced, you  
19 manually dig around them and work and lay the tiling  
20 underneath them?

21 THE WITNESS: Yep. We'll do a manual utility  
22 crossing. We'll spot it, locate it, install the pipe  
23 underneath it.

24 COMMISSIONER CHRISTMANN: And so if there are --  
25 when you run into those situations, does that add to the

1 cost of the project for them because now they need to go  
2 a little deeper than they otherwise would have and that  
3 involves a long distance so that you keep the flow  
4 going? I'm trying to figure out how much additional  
5 cost is involved to tiling when you put a utility across  
6 the land in advance.

7 THE WITNESS: It just depends on the situation.  
8 I mean, it could be as simple as just the cost of  
9 crossing the utility. In certain cases, you know, there  
10 may have to be a little bit of design requirement to  
11 make it work. I don't think it's a huge impact. But,  
12 yes, you're right, there's definitely a small cost  
13 increase.

14 COMMISSIONER CHRISTMANN: Have you done a tiling  
15 job on land where there was an existing hydrocarbon  
16 pipeline before?

17 THE WITNESS: I'm not sure we've done one on a  
18 hydrocarbon pipeline, but we've done it on lots of  
19 pipelines.

20 COMMISSIONER CHRISTMANN: And do regulations or  
21 those -- or those utility owners require that their  
22 personnel be on hand when you're crossing?

23 THE WITNESS: A lot of them, yes. There will be  
24 what's called a watchdog. They send a person out,  
25 verify as we're excavating, help us locate it, work

1 together with us as we cross it to ensure everything  
2 goes right and then --

3 COMMISSIONER CHRISTMANN: So you call in a  
4 locate to 811 and they mark it, you see that they have  
5 something there, and when you get to that time when  
6 you're close to it, you need to contact them and make  
7 sure their personnel are onboard?

8 THE WITNESS: It's usually right on the one-call  
9 ticket. Usually the utility will require a watchdog.  
10 They'll put a contact number and just say "Hey, if  
11 you're going to cross this utility, we need to be  
12 present." And then our teams are trained to call them.

13 COMMISSIONER CHRISTMANN: And do you pay them  
14 for that?

15 THE WITNESS: Pay the utility company?

16 COMMISSIONER CHRISTMANN: Yes.

17 THE WITNESS: No. No.

18 COMMISSIONER CHRISTMANN: They monitor --

19 THE WITNESS: They just do it.

20 COMMISSIONER CHRISTMANN: -- it on their own?

21 THE WITNESS: Yep.

22 COMMISSIONER CHRISTMANN: And so in the case --  
23 if you were on -- if you were doing the tiling where  
24 they're pretty close together -- on a quarter of land,  
25 I'm thinking you could have like a hundred laterals

1 going -- is that --

2 THE WITNESS: Yeah, anywhere from 50 to a  
3 hundred possibly, yeah.

4 COMMISSIONER CHRISTMANN: Okay. And so when you  
5 would be putting those in, the -- and if this pipeline  
6 were here, they would need to be there day after day  
7 while you're putting each one of those in and --

8 THE WITNESS: No, not necessarily. Typically,  
9 we would design the system where we would parallel the  
10 pipeline on both sides and then just cross it in one  
11 or two places as we needed to get a proper outlet.

12 COMMISSIONER CHRISTMANN: Okay. No other  
13 questions. Thank you.

14 ALJ HOGAN: Commissioner Haugen-Hoffart.

15 COMMISSIONER HAUGEN-HOFFART: Thank you.

16 Thank you, Jeremy.

17 THE WITNESS: Thank you.

18 COMMISSIONER HAUGEN-HOFFART: You indicated you  
19 started working at your grandfather's in 1994; correct?

20 THE WITNESS: Correct.

21 COMMISSIONER HAUGEN-HOFFART: So how many years  
22 do you have working directly with installation of drain  
23 tiles?

24 THE WITNESS: 29.

25 COMMISSIONER HAUGEN-HOFFART: You said you only

1 are like 5 percent in the field.

2 THE WITNESS: Today.

3 COMMISSIONER HAUGEN-HOFFART: Today.

4 THE WITNESS: So I spent my career, started as a  
5 laborer in the field. Moved into our surveying and  
6 engineering department. Spent a long time designing and  
7 engineering tile systems. After that I worked with  
8 landowners, did some sales things. But I've ultimately  
9 been responsible for our entire agricultural engineering  
10 and production group for at least the last 20 years.

11 COMMISSIONER HAUGEN-HOFFART: Okay. So you have  
12 experience with installation, maintenance. Let's talk  
13 about, like, a lifetime of a project, like from putting  
14 it in. Have you ever seen, had to replace, or what  
15 would you say your number one reason for maintenance is  
16 on drain tiles?

17 THE WITNESS: Older systems, you know, a lot of  
18 the Midwest is full of old clay and concrete tile put in  
19 in the '50s and '60s and, over time, it will deteriorate  
20 or plug up or collapse, and we end up coming and  
21 repairing that. Or some landowners choose to retile if  
22 it's bad enough. Root intrusion. Your tree lines is  
23 another common repair for drain tile. If there was some  
24 tile put in and a grove has grown up, could potentially  
25 plug up tile.

1           COMMISSIONER HAUGEN-HOFFART:   Okay.   So have you  
2   seen other pipelines come in, affect any drain tiles in  
3   the past?

4           THE WITNESS:   I'm not sure I totally understand  
5   your question.

6           COMMISSIONER HAUGEN-HOFFART:   Like work.  
7   Utility work, natural gas pipeline, anything --

8           THE WITNESS:   Yeah.   I mean, there's utilities  
9   going in every day.   I mean, our company does a lot of  
10   work not only for pipeline, but we do work for -- we  
11   just did a huge project for a major highway construction  
12   in Minnesota that went on that affected a lot of drain  
13   tile.   We rerouted all the drain tile for Minnesota DOT  
14   around a new section of Highway 14 in southern  
15   Minnesota.

16           We also work for several renewable energy  
17   companies.   Solar and wind farms have the same issue  
18   pipelines do.   As they're installing underground cable  
19   to connect the wind farms or the solar farms, we -- we  
20   offer drain tile mitigation services to them.

21           COMMISSIONER HAUGEN-HOFFART:   So what were the  
22   biggest issues when you see projects like this coming in  
23   that affect the drain tiles?

24           THE WITNESS:   I mean, quite frankly, and  
25   probably my -- my biggest concern on all the projects we

1 get involved in is the landowners having trust that  
2 whatever contractor is building the job or whatever  
3 company is developing the property, that they've  
4 partnered with someone in the drain tile industry that  
5 can understand how important drain tile is on their land  
6 and become a partner to ensure that it all gets taken  
7 care of and fixed correctly.

8 And to me, I hear it all the time on projects  
9 that we're not involved in, and it's like our drain tile  
10 maybe wasn't repaired correctly or there was issues.  
11 And that's, to me in the industry, what we hear is the  
12 largest and biggest concern for landowners, is ensuring  
13 that someone who knows what they're doing for drain tile  
14 is on the site helping with it.

15 COMMISSIONER HAUGEN-HOFFART: And you would  
16 agree that that's a very valid concern?

17 THE WITNESS: Of course. We've seen that a lot.

18 COMMISSIONER HAUGEN-HOFFART: Okay. You talked  
19 about you've been working with Summit for 15 months or  
20 now it seems a little bit longer. And how many of your  
21 employees are directly working on this project?

22 THE WITNESS: At this time right now we probably  
23 have, any given week, ten different employees. We have  
24 a GIS team that's digitizing tile maps. We have  
25 surveyors that are uncovering aerial imagery for tile

1 maps. We have two internal project management  
2 consultants that are meeting weekly with the Summit  
3 team, addressing any sort of landowner concerns across  
4 the five states that come up or questions around drain  
5 tile.

6 COMMISSIONER HAUGEN-HOFFART: So you have about  
7 ten employees working full time on this project?

8 THE WITNESS: Yes.

9 COMMISSIONER HAUGEN-HOFFART: Okay. We heard  
10 testimony in Gwinner from some of the landowners that  
11 there has been no communication regarding their concerns  
12 with tiling. So how many landowners have you guys dealt  
13 with in North Dakota in addressing tiling concerns?

14 THE WITNESS: I don't know the exact number.  
15 You know, we have a team of people working on that every  
16 day. But really, at the end of the day, the land agents  
17 that Summit has provided are the ones that work directly  
18 with us to get the landowners' issues taken care of. So  
19 if there's someone in Gwinner that has some concerns or  
20 questions, my recommendation is just to ask their land  
21 agent to get Ellingson involved and we'll be there.

22 COMMISSIONER HAUGEN-HOFFART: Okay. So you're  
23 saying that if a landowner has concerns about the  
24 tiling, they should get ahold of Summit or the land  
25 agent and they'll get ahold of you and then you'll work



1 with them?

2 THE WITNESS: Correct.

3 COMMISSIONER HAUGEN-HOFFART: Okay. You said  
4 you wrote comments and provided them to Summit regarding  
5 tiling to talk about; correct?

6 THE WITNESS: Correct.

7 COMMISSIONER HAUGEN-HOFFART: Can we get a copy  
8 of those comments that have been provided to Summit so  
9 we know what is being said or communicated to the  
10 landowners?

11 THE WITNESS: Yeah. I think every landowner is  
12 given a drain tile fact sheet.

13 MR. MAHLBERG: I guess I don't know exactly what  
14 he's referencing in terms of the notes that were  
15 provided, if it's the drain tile fact sheet or --

16 THE WITNESS: Sorry.

17 MR. MAHLBERG: -- frequently asked --

18 THE WITNESS: I'll clarify. That's what I'm  
19 talking about.

20 MR. MAHLBERG: Okay.

21 THE WITNESS: Yep.

22 MR. MAHLBERG: Yes.

23 COMMISSIONER HAUGEN-HOFFART: Okay. Thank you.  
24 You said several times that Summit goes above  
25 and beyond regarding their efforts with drain tiling.

1 In comparison to what? How can you make that statement?  
2 What are you comparing it to?

3 THE WITNESS: Just past history. I mean, we've  
4 been involved in other pipeline projects or attempted to  
5 get involved early on in other utility projects. And  
6 the typical progression of a project is to do the  
7 engineering, acquire the property, acquire the land, get  
8 all the pipeline or renewable energy line, whatever the  
9 utility may be designed, get a contractor hired, and  
10 then they bring in a drain tile contractor, or sometimes  
11 fix it themselves at the tail end of a project,  
12 sometimes with skilled workforce in agricultural drain  
13 tile, sometimes not. And that, to me, has been atypical  
14 of a project in the past.

15 So when I say Summit has went above and beyond,  
16 they've taken, I feel, a new approach to mitigating  
17 agricultural drain tile by involving a drain tile expert  
18 like us early on in the planning stages and ensuring  
19 that we're contracted directly with them so that we have  
20 control on how the repairs are done and ensuring that  
21 the landowners' issues are answered and taken care of  
22 properly versus, you know, potentially a general  
23 contractor that doesn't have experience in drain tile  
24 mitigation.

25 I don't know if that answered your question.

1           COMMISSIONER HAUGEN-HOFFART: It does, but it  
2 seems to me that if you guys are the experts, you've had  
3 limited contact with landowners regarding their  
4 concerns, that there's a gap there. And if they have to  
5 go to the land person, they're not the experts in  
6 tiling. So I'm just going to say I think there's a gap,  
7 and that's not on you.

8           I have no further questions at this time.

9           ALJ HOGAN: All right. Thank you.

10          Mr. Dawson.

11          SUBSTITUTE DECISIONMAKER DAWSON: Judge Hogan.

12          Mr. Ellingson, I'm from western North Dakota as  
13 well and so I -- closest I come to drain tile is my  
14 downspouts on my house.

15          THE WITNESS: It's still drainage.

16          SUBSTITUTE DECISIONMAKER DAWSON: So these might  
17 be rudimentary questions. But it's corrugated pipe  
18 buried underground; correct?

19          THE WITNESS: Yes. Corrugated plastic pipe.

20          SUBSTITUTE DECISIONMAKER DAWSON: Okay. And how  
21 much would it cost if I had a quarter section that  
22 needed to be drain tiled in the Red River Valley that  
23 was perfectly flat? And I'm just trying to get a scale  
24 of cost. You can say how much it is per foot in  
25 general.

1           THE WITNESS: Sure. On average, it's probably  
2           somewhere between 800 and \$1,200 an acre, just depending  
3           on the outlet and the engineered design of the system.  
4           Every project varies.

5           SUBSTITUTE DECISIONMAKER DAWSON: So when you do  
6           a repair, you know, I'm picturing in my head the steel  
7           culvert, and I'm picturing in my head at right angles,  
8           but it probably doesn't have to be at a right angle. It  
9           could be shifted this way. And so you have this trench  
10          and how -- how wide is the trench? Four feet?

11          THE WITNESS: Typically.

12          SUBSTITUTE DECISIONMAKER DAWSON: And then you  
13          -- what you're going to do is you're going to take a  
14          steel pipe and run your corrugated pipe through it and  
15          you're going to build bases to -- it's going to act as a  
16          bridge?

17          THE WITNESS: Correct.

18          SUBSTITUTE DECISIONMAKER DAWSON: And then  
19          you're going to have bases to your bridge and it's going  
20          to run into the soil on either side?

21          THE WITNESS: Correct.

22          SUBSTITUTE DECISIONMAKER DAWSON: Okay. And how  
23          far is it going to run into each side?

24          THE WITNESS: It just depends on the way the  
25          tile is running, but typically, you know, we're digging

1 back several feet on each side, exposing the tile,  
2 getting it where it's good and clean, and then  
3 reconnecting. Most of the time we're using somewhere  
4 between a 10- and 20-foot culvert based on the pipeline  
5 size.

6 SUBSTITUTE DECISIONMAKER DAWSON: Okay. And  
7 you're doing the digging back and refilling --

8 THE WITNESS: Yes.

9 SUBSTITUTE DECISIONMAKER DAWSON: -- on those  
10 little bases for the bridge?

11 THE WITNESS: Yes.

12 SUBSTITUTE DECISIONMAKER DAWSON: And not  
13 Summit?

14 THE WITNESS: We are.

15 SUBSTITUTE DECISIONMAKER DAWSON: Okay. And  
16 what's the limit to this bridge? Let's say you start --  
17 instead of cutting it at a right angle, let's say you  
18 cut at an angle, you know, the trench is there and  
19 you're cutting at an angle that's much longer. The span  
20 becomes longer because of the angle. Do you understand  
21 what I'm saying?

22 THE WITNESS: Yeah. We typically don't see a  
23 lot of that, but we do, you know, reroute them a little  
24 bit if that becomes too big of an issue. A header, as  
25 -- as we talked about earlier. Also, we'll provide

1 extra sandbags in them cases if the span gets to be a  
2 little longer.

3 SUBSTITUTE DECISIONMAKER DAWSON: So, in short,  
4 it gets more expensive the more --

5 THE WITNESS: For sure.

6 SUBSTITUTE DECISIONMAKER DAWSON: -- things  
7 don't line up?

8 THE WITNESS: Sure. Yep. That's why the  
9 preplanning is so important.

10 SUBSTITUTE DECISIONMAKER DAWSON: I have no  
11 further questions.

12 THE WITNESS: Thank you.

13 ALJ HOGAN: All right. Mr. Mahlberg, do you  
14 have that fact sheet today or are you going to submit it  
15 after the hearing?

16 MR. MAHLBERG: I'm going to confirm --

17 ALJ HOGAN: You can get back to me.

18 MR. MAHLBERG: I'm going to confirm what we have  
19 and just make sure that what we do give is what he's  
20 talking about so we don't create confusion. So if it's  
21 on a break or later, I'm not sure yet.

22 ALJ HOGAN: Sure. Okay. That's fine. Do you  
23 have any redirect?

24 MR. MAHLBERG: I don't, Your Honor. Thank you.

25 ALJ HOGAN: Mr. Pelham, any further questions?

1 MR. PELHAM: No, Your Honor.

2 ALJ HOGAN: Mr. Schock?

3 Mr. Jorde, any further questions?

4 MR. JORDE: Just one.

5 ALJ HOGAN: Okay.

6 RECROSS EXAMINATION

7 BY MR. JORDE:

8 Q. Sir, have you ever had any -- or experienced any  
9 issues where the plastic is connected up to existing  
10 clay as opposed to having a brand-new, all-plastic tile  
11 system?

12 A. Yes.

13 Q. And tell me about those problems that you've  
14 observed.

15 A. If it's done correctly, we don't have any  
16 problems. We connect into existing clay lines all the  
17 time.

18 Q. Okay. And I appreciate that. I mean, if  
19 anything in life is done correctly, there aren't  
20 problems. But have you ever heard of issues,  
21 circumstances where you're connecting two different  
22 materials of tile line?

23 A. Workmanship is probably the biggest issue. You  
24 know, if the proper coupler connection isn't used from  
25 the clay to the plastic.

1           Q.   And a question was asked about personnel.  I  
2   believe you said you had ten people working now.  What  
3   is your understanding, if this project was approved in  
4   North Dakota, of how much trenching would be happening  
5   simultaneously?  I'm trying to get an understanding of  
6   what you believe the scope of the work in terms of the  
7   personnel you have to handle the work.

8           A.   It's really going to be based on schedule and  
9   weather with the general contractors.  Our understanding  
10   is there's going to be broke into several spreads, which  
11   is pretty typical of a pipeline project.  And we will be  
12   there to support each spread as needed.

13          Q.   Are you the contractor for all states that  
14   Summit proposes to go through?

15          A.   For the drain tile mitigation, yes.

16          Q.   All right.  Are you aware if these -- every  
17   state approves and they get all the approvals, are you  
18   aware if they're planning to start construction  
19   simultaneously in all states or one state first?

20          A.   I think simultaneously in several states.

21          Q.   All right.  And there's no prohibition on you  
22   hiring subcontractors to assist with your work in the  
23   contract; correct?

24          A.   Correct.

25          Q.   All right.  Thank you, sir.



1           A.    Thank you.

2           ALJ HOGAN:   Any other commissioner questions?

3           COMMISSIONER CHRISTMANN:   I do not.

4           ALJ HOGAN:   Commissioner Haugen-Hoffart.

5           COMMISSIONER HAUGEN-HOFFART:   Thank you.

6           When you were out there doing the work and  
7   examining the tile, is the landowner with you?

8           THE WITNESS:   He can be.

9           COMMISSIONER HAUGEN-HOFFART:   Okay.

10          THE WITNESS:   It just depends.   Each parcel is  
11   different.   Some landowners may not live there.   They  
12   may be investors.   But, yeah, they're more than welcome  
13   to ask questions.

14          COMMISSIONER HAUGEN-HOFFART:   Will they be  
15   contacted to say that you're -- they're working in the  
16   area and inspecting it?   Will you guys be reaching out  
17   to them to let them know?

18          THE WITNESS:   Yeah, I'm assuming the Summit team  
19   usually takes care of all the notifications to the  
20   landowners.

21          COMMISSIONER HAUGEN-HOFFART:   So Summit will be  
22   contacting each individual landowner that's affected by  
23   tiling?

24          THE WITNESS:   Yes.

25          COMMISSIONER HAUGEN-HOFFART:   Okay.   Thank you.

1 ALJ HOGAN: Mr. Dawson, any other questions?

2 SUBSTITUTE DECISIONMAKER DAWSON: No, thank you.

3 ALJ HOGAN: All right. Well, thank you,

4 Mr. Ellingson.

5 THE WITNESS: Thank you. I appreciate your  
6 guys' time.

7 ALJ HOGAN: We're going to take our morning  
8 break. We'll shoot for 15 minutes and try to reconvene  
9 about 11:00.

10 (Recess)

11 ALJ HOGAN: All right. We're going to get  
12 started. I don't know who's calling the next witness.

13 Mr. Bender?

14 MR. BENDER: I am. Thank you, Your Honor.

15 JAMES POWELL: I assume that's me.

16 MR. BENDER: What's that?

17 JAMES POWELL: I assume that's me.

18 MR. BENDER: Yes, we're going to call you,  
19 Jimmy.

20 Call James Powell.

21 ALJ HOGAN: All right. Mr. Powell, do you want  
22 to state your full name and spell your last name for the  
23 record?

24 JAMES POWELL: James Ernest Powell, P-O-W-E-L-L.

25 ALJ HOGAN: And, Mr. Powell, did you hear me go

1 through the penalties for perjury before?

2 JAMES POWELL: I did.

3 ALJ HOGAN: And do you understand what perjury  
4 is?

5 JAMES POWELL: I do.

6 ALJ HOGAN: And being advised of the potential  
7 penalties for perjury, do you promise to tell the truth  
8 in this case today?

9 JAMES POWELL: I do.

10 ALJ HOGAN: All right. Thank you.

11 Go ahead, Mr. Bender.

12 MR. BENDER: Thank you.

13 **JAMES POWELL,**

14 being first duly sworn, was examined and testified as  
15 follows:

16 DIRECT EXAMINATION

17 BY MR. BENDER:

18 Q. Jimmy, could you tell us by whom you're  
19 employed?

20 A. Summit Carbon Solutions.

21 Q. In what capacity?

22 A. Chief operating officer.

23 Q. And can you briefly describe for us your role  
24 with respect to this project that's before the  
25 Commission today?

1           A. I'm accountable for the design, construction,  
2           and transition and operation, ultimately the operation,  
3           of the Midwest Carbon Express project.

4           Q. Okay. And in terms of the overview of the  
5           project, you provided a very detailed overview in the  
6           previous two hearings, is that correct, particularly in  
7           Bismarck?

8           A. Correct.

9           Q. And then you provided a more summary overview at  
10          the Gwinner hearing; is that correct?

11          A. Correct.

12          Q. And for the public that's here today, can you  
13          just once again just very briefly overview the project  
14          for us?

15          A. Sure. So, conceptually, the project will gather  
16          or capture CO2 emissions from the fermentation process  
17          of industrial processes. And at this point, industrial  
18          facilities, at this point it's 32 ethanol plants. We'll  
19          take the CO2, we'll compress it into a liquid or --  
20          excuse me -- dense phase or supercritical state. We'll  
21          inject it into a pipeline network that consists of  
22          approximately 2,060 miles, as was said earlier, ranging  
23          in diameter from 4-inch to 24-inch. And then we'll  
24          inject that on the northwest side of Bismarck in North  
25          Dakota for permanent storage and sequestration.

1           Q. Now let's talk a little bit more specifically  
2 about Cass and Richland counties. Can you briefly  
3 describe for the Commission staff how many miles of  
4 pipeline will be in Cass County?

5           A. In Cass County, approximately 22.

6           Q. And how many miles will be in Richland County?

7           A. Approximately 65.

8           Q. Okay. And discuss for us just briefly the size  
9 of the pipeline in those two counties?

10          A. So as the -- as the pipeline leaves the northern  
11 part of the main line in South Dakota, it's a 12-inch  
12 lateral moving northeast. When it gets into Richland,  
13 then there's a branch connection. It goes north. And  
14 that's an 8-inch segment of pipe that -- that eventually  
15 terminates at the Tharaldson Ethanol plant in Casselton.  
16 And then there's a continuation of a 4-inch that goes  
17 into Minnesota and connects to another facility.

18          Q. Okay. And let's talk about pump stations. Are  
19 there any pump stations planned for Cass or Richland  
20 County?

21          A. There is a pump station planned for Richland  
22 County.

23          Q. Do you know where that pump station is going to  
24 be located if this project is approved?

25          A. Yes.

1 Q. Where?

2 A. I've got the coordinate, but essentially it's --  
3 it's south central part of the state where the -- where  
4 the pipeline branch connections are physically located.  
5 So where it branches north and continues east, there's a  
6 diameter change. The pump station would be located at  
7 that intersection.

8 Q. And it's located on one of the maps that were  
9 filed as part of the application; is that correct?

10 A. That's correct.

11 Q. Do you know how far that pump station is from  
12 the nearest occupied residence?

13 A. If I remember correctly, it's about 4,700 feet.  
14 It's significant distance.

15 Q. Okay. And there's going to be some noise  
16 associated with the pump station; is that correct?

17 A. Yes.

18 Q. And has Summit prepared a noise study?

19 A. We have.

20 Q. Is that something that Summit is willing to  
21 submit to the Commission?

22 A. Yes.

23 Q. Is that something you can provide to them in the  
24 next few weeks?

25 A. Yes.

1           Q.   Let's talk a little bit about drain tile.  
2           There's still a little bit left to talk about, I think.  
3           Let's talk about the warranty that was discussed by  
4           Mr. Ellingson. Is it your understanding that Summit is  
5           providing a warranty to landowners with respect to drain  
6           tile?

7           A.   Yes.

8           Q.   And where is that warranty provided?

9           A.   The warranty is provided in the easement  
10          document that is executed with the landowner.

11          Q.   Okay. And more precisely, the easement  
12          document, when there's drain tile involved, will have an  
13          addendum to the easement document. Is that your  
14          understanding?

15          A.   Yes.

16          Q.   Okay. And that's where the language is having  
17          to do with drain tile. Is that your understanding?

18          A.   Yes.

19          Q.   Tell us a little bit about that warranty. How  
20          did it come about and why is it in there, in your view?

21          A.   Well, it's atypical in my experience. And we  
22          went through my experience in the previous two hearings,  
23          but I've installed a lot of pipeline in this country,  
24          and typically the warranty is for a short period of  
25          time.

1           In our case, our parent company is an  
2     agriculture company and they farm ground in several  
3     states, primarily Iowa, and so very familiar with the  
4     dependence on drain tiling and -- or the interdependence  
5     on drain tile and crop yield. And so the CEO of Summit  
6     Ag insisted that we provide a lifetime warranty for  
7     drain tile and terrace repair.

8           Q.   Okay. So there is then a contract. If a  
9     landowner enters into an easement for the installation  
10    of line, there is a contractual warranty for the drain  
11    tile; is that correct?

12          A.   Yes.

13          Q.   Okay. Now, there was some discussion through  
14    Mr. Ellingson about Mr. Ellingson providing some  
15    information to Summit that was going to go into some  
16    sort of handout that was going to go to the landowners.  
17    Are you familiar with that testimony?

18          A.   Yes.

19          Q.   You were in the room when you heard that  
20    testimony?

21          A.   Yes.

22          Q.   Is it your understanding that the information  
23    that Mr. Ellingson provided to Summit that he discussed  
24    in his testimony was included in a document that I  
25    believe is referred to as "Drain tile frequently asked



1 questions"?

2 A. Yes.

3 Q. Okay. Just give us a moment. I'm going to show  
4 you what we'd like to have marked as Exhibit 6 -- or are  
5 we on 5?

6 ALJ HOGAN: 5.

7 MR. BENDER: 5. Excuse me. Thank you, Your  
8 Honor.

9 Q. Show you what's been -- what we'd like to have  
10 marked as Exhibit 5. Is that the document that includes  
11 the information that Mr. Ellingson suggested be included  
12 in a document to be distributed to landowners?

13 A. It is.

14 Q. Okay. And tell me how this document is  
15 distributed to landowners.

16 A. So this document, when the information package  
17 is provided to a landowner, there are several of these  
18 types of communications or fact sheets that are  
19 typically included.

20 Q. Okay. And when your land agents go out and  
21 speak with landowners, do they typically have this sort  
22 of document with them and distribute it to landowners as  
23 well?

24 A. If they're -- if they know that there's drain  
25 tile on the landowner's property, yes.

1 Q. Okay. And can you tell us where on this  
2 document, Exhibit 6, there's a discussion with respect  
3 to warranty?

4 A. It's on the backside of the page near the  
5 bottom.

6 Q. Okay. And can you read that provision for me,  
7 please?

8 A. Yes. The question is "Is there warranty on the  
9 work?"

10 "Summit will hold themselves indefinitely  
11 responsible for any repairs or rework necessary that is  
12 determined to be directly related to pipeline  
13 construction activities. We will handle" -- "we" being  
14 Summit -- "We will handle all design, inspection,  
15 scheduling, and documentation on warranty work. The  
16 warranty of the drain tile will be captured in the  
17 addendum of the easement agreement for all landowners of  
18 the pipeline."

19 Q. So in addition to the written notice that the  
20 warranty is going to be granted, as you indicated  
21 earlier and what's indicated here as well, it will  
22 ultimately be included in the addendum to the easement;  
23 is that correct?

24 A. It is.

25 MR. BENDER: That's all the questions I have for

1 this witness. I offer Exhibit 5.

2 ALJ HOGAN: Any objection, Mr. Pelham?

3 MR. PELHAM: No objection.

4 ALJ HOGAN: Mr. Jorde?

5 MR. JORDE: No objections.

6 ALJ HOGAN: All right. Exhibit 5 is admitted.

7 Mr. Pelham, any questions for Mr. Powell?

8 MR. PELHAM: Yes, I do have some questions.

9 CROSS EXAMINATION

10 BY MR. PELHAM:

11 Q. Good morning, Mr. Powell. You were here for the  
12 testimony of Mr. Ellingson; correct?

13 A. Yes.

14 Q. Any inaccuracies that you heard --  
15 Mr. Ellingson -- in his testimony today?

16 A. It was a lengthy testimony so...

17 Q. Generally --

18 A. I didn't hear anything that -- that concerned me  
19 as being an inaccuracy.

20 Q. Because there were -- specific as to some of the  
21 commitments that -- as to warranty work, as to  
22 workmanship, do you expect Ellingsons to perform in the  
23 manner that was testified to by Mr. Ellingson today?

24 A. I do.

25 Q. And we heard a lot about the warranty and the

1 length of the warranty, and I believe it's answered on  
2 Exhibit 5, and indefinitely responsible. Is another  
3 way, in your opinion, sir, to say "indefinitely  
4 responsible," is it a lifetime?

5 A. It runs -- and, Mr. Pelham, an easement  
6 document, it's worded, I think, more specifically.

7 Q. Okay.

8 A. It runs with the life of the easement document.

9 Q. Is there a form addendum to the easement  
10 pertaining to the warranty that can be provided to the  
11 Commission?

12 A. Yes.

13 Q. And --

14 MR. BENDER: Mr. Pelham, that's something that I  
15 can put together and be happy to provide you with it.

16 MR. PELHAM: Okay. All right. Thank you.

17 Q. (BY MR. PELHAM) Past hearings we've heard a  
18 little bit of an update on the right of way progress.  
19 Do you have any updates as far as the right of way  
20 acquisition progress since the last hearing? I know  
21 it's only been about two weeks but --

22 A. I do. We put together the same table that  
23 you've seen previously. So I'm assuming we can provide  
24 that update county by county. But generally,  
25 Mr. Pelham, we acquired almost five miles in the last

1 two weeks since the hearing at Gwinner, which is  
2 approximately 1 and a half percent of the total pipeline  
3 length in North Dakota.

4 MR. BENDER: Mr. Pelham, because it was somewhat  
5 insignificant, we weren't planning on presenting it,  
6 but, once again, if you'd like, we'd be happy to provide  
7 it.

8 MR. PELHAM: Fair enough. If you have it, we  
9 may as well have it introduced, I think, and I think it  
10 would be Exhibit 6, if you could introduce that.

11 Q. (BY MR. PELHAM) As far as conditional use  
12 permits for Richland County, are you able to testify,  
13 sir, as to what would be needed for conditional use  
14 permits in Richland County?

15 A. I do -- I do know, Mr. Pelham, that we need  
16 about 88 permits totally -- total in Richland. I don't  
17 have committed to memory how many of those are  
18 conditional use.

19 Q. Fair enough. Do you know whether or not  
20 townships in Richland County have zoning authority?

21 A. I do not off the top of my head. I do have that  
22 information, but I know some -- some areas do and some  
23 areas do not.

24 Q. Fair enough. And specific as to Cass County, do  
25 you know whether or not a conditional use permit has

1       been applied for in Cass County by Summit?

2           A.    In Cass County we have about 26 permits to  
3       obtain and we've applied for about half of those, about  
4       13.   Again, I can't -- I can get you the information.  
5       Off the top of my head, I can't tell you which permits  
6       have been applied for and which ones have not.

7           Q.    Fair enough.   So it's fair to say that at this  
8       time you're not able to provide any information as far  
9       as the conditional use permit applications for Richland  
10      County, Cass County; correct?

11          A.    Correct.

12          Q.    There was a letter we talked about the last  
13      couple of hearings from the state geologist.   And I  
14      understand at the last Gwinner hearing there was going  
15      to be a meeting that day or the next day or around  
16      there.   Did that meeting take place with the state  
17      geologist and the company?

18          A.    It did.

19          Q.    Are you able to provide any additional  
20      information to the Commission as far as the results of  
21      that meeting with the state geologist?

22          A.    I have a summary of the output from the meeting,  
23      meeting minutes, and we can provide that.

24               MR. BENDER:   And, Mr. Pelham, excuse me for  
25      continuing to interrupt in your questioning, but I

1 believe that a representative of Summit may have filed  
2 that, but I will check and make sure that, if there was  
3 something along those lines, you get a copy of it.

4 MR. PELHAM: What was filed -- and you're  
5 correct, Mr. Bender, was filed -- it looks like it was  
6 received April 3rd, and it's Docket No. 165 filed with  
7 the Commission, a letter from you, a cover letter, and  
8 then a letter from a Mr. Alex Lange --

9 A. Lange.

10 Q. Lange, engineering manager, sort of summarizing  
11 the meeting. I don't know if he's here and we can ask  
12 him any questions specific or you're able to -- have you  
13 seen this letter from Mr. Lange?

14 A. I have.

15 Q. So as far as the letter goes, it states that  
16 there was some feedback on potential nearby landslides,  
17 identified two of them as potential risk, and then a  
18 general statement that Summit looks forward to future  
19 engagement with the Geological Survey.

20 What future engagement with the Geological  
21 Survey of the State of North Dakota is anticipated by  
22 Summit?

23 A. It's my understanding the state geologist said  
24 there was no follow-up required.

25 Q. Okay.

1           A. We did review the areas that were identified,  
2           and I believe, Mr. Pelham, there was one area that we  
3           had not reviewed that was about -- was offset from the  
4           pipeline right of way and had not demonstrated movement,  
5           at least the information we have, for a period of years,  
6           but the state geologist recommended we take a closer  
7           look, and I believe that work is in progress.

8           Q. Okay. So there is an ongoing process to  
9           determine potential issues with nearby landslides that  
10          Summit is working with the state geologist on; correct?

11          A. Again, we are working on the information they  
12          provided and we're happy to follow up. It's my  
13          understanding they indicated that they weren't going to  
14          provide any approval about the technical work that we're  
15          doing and indicated that it wasn't necessary to resubmit  
16          any follow-up, but we're happy to do that if that's  
17          necessary and happy to follow up with the state  
18          geologist again.

19          Q. Well, if there's one area that's still being  
20          looked at, I think it would be appropriate to follow up  
21          with that -- certainly with that one area.

22          A. Well, they had a discussion about that area  
23          during the meeting.

24          Q. Okay. Well, the letter from Mr. Lange doesn't  
25          include any of that.



1           A.    Okay.

2           Q.    So, I mean, it would be appreciated to have more  
3 specifics as to what was specifically agreed to  
4 apparently with the Geological Survey and Summit on  
5 that.

6           A.    Understood.

7           Q.    As far as the State Historical Preservation  
8 Office, what's the status of a concurrence or potential  
9 concurrence letter as to the proposed project? I  
10 understand there was a meeting that was taking place at  
11 or around the last hearing date.

12          A.    Yes. And we are working with the State  
13 Historical Preservation Office to provide the updated  
14 information so that they can do a final evaluation.

15          Q.    Okay. What's the anticipated time frame for  
16 that to be completed?

17          A.    I don't have a specific date, Mr. Pelham, but  
18 that's weeks, not months.

19          Q.    Okay. Mr. Powell, I don't have any other  
20 questions for you today. Mr. Schock may.

21          A.    Mr. Pelham -- sorry, Mr. Schock. The only thing  
22 I would add is we haven't completed a hundred percent of  
23 the survey yet so we'll get the SHPO up to date and, as  
24 we progress the survey, we'll continue to provide them  
25 with updated information.

1 MR. PELHAM: Thank you.

2 CROSS EXAMINATION

3 BY MR. SCHOCK:

4 Q. So Mr. Ellingson had kind of talked or started  
5 some discussion about installation of the pipeline at a  
6 specific depth to enable the drain tile to function  
7 correctly. So is the company willing to adjust the  
8 depth of the pipeline to ensure continued operation of  
9 the existing drain tile system?

10 A. We are. And in this part of North Dakota, we  
11 have. I heard -- I think you asked the question of a  
12 depth of six to eight feet. We prefer not to go deeper  
13 than six feet because that introduces more safety risk,  
14 it's going to be a larger trench, potentially impacts  
15 the width of the right of way, other safety precautions  
16 that we have to take because the depth, but six feet top  
17 of pipe we would do, we would accommodate, and have done  
18 so for landowners in this part of North Dakota.

19 Q. Okay. And --

20 ALJ HOGAN: Mr. Schock, can you pull your mic  
21 closer?

22 MR. SCHOCK: Sure.

23 ALJ HOGAN: Thank you.

24 Q. (BY MR. SCHOCK) And as far as spacing, so we  
25 talked a little bit about this with Mr. Ellingson, the

1 spacing between the CO2 line and the drain tile, what --  
2 is there a minimum spacing that you're aware of?

3 A. Well, typically we ask for a 24 -- require a  
4 24-inch spacing, but for drain tile we will waive that.  
5 But we would like a minimum of 12.

6 Q. Okay. But you -- in certain cases if there  
7 were -- if there's -- something forced it to be closer  
8 than 12 to maintain that grade that Mr. Ellingson talked  
9 about, would you be amenable to spacing less than 12  
10 inches on a case-by-case basis or --

11 A. We would. We just wouldn't want that corrugated  
12 metal sitting right on top of the pipeline.

13 Q. Certainly.

14 A. But, yes, we would.

15 Q. Okay. That's all my questions. Thank you.

16 ALJ HOGAN: Mr. Jorde.

17 MR. JORDE: Yes, thank you.

18 CROSS EXAMINATION

19 BY MR. JORDE:

20 Q. Exhibit 5, this is not a legal document;  
21 correct?

22 A. Correct.

23 Q. This is promotional materials that you give out  
24 on what you claim and how you claim you will handle  
25 things in the future. Is that fair?

1           A.    It's an informational document, Mr. Jorde.

2           Q.    All right.  So in other words, it's of no  
3   consequence legally what you say in this document,  
4   whether you're going to lifetime or indefinitely be  
5   responsible for repair work unless that language gets  
6   into a signed contract with the landowner; right?

7           A.    Well, unless it gets into the executed easement  
8   document.

9           Q.    Correct.  And you wouldn't be surprised to  
10   learn, would you, that that language is nowhere found  
11   within your easement agreements?

12          A.    That is incorrect.

13          Q.    All right.  Let's -- are you referring to  
14   Exhibit C, Addendum of Special Conditions, paragraph 2  
15   entitled "Drain Tile and Terrace Repair"?

16          A.    Yes.

17          Q.    All right.  Let me read you the first sentence.  
18   Quote, "For so long as company exercises its rights  
19   under the easement agreement," and then it goes on to  
20   say what will happen.

21                So would you agree with me that your duties  
22   extinguish when you no longer exercise rights under the  
23   easement agreement?

24          A.    Do you mean our obligation ends?

25          Q.    Correct.

1           A.   Our obligation ends at that point, but whoever  
2           assumes that easement, and if the pipeline is still in  
3           service, is bound by that same obligation.

4           Q.   All right. But this unknown company isn't here  
5           seeking approval, it's Summit Carbon Transport LLC;  
6           correct?

7           MR. BENDER: Your Honor, I'm going to object  
8           insofar as it calls for a legal conclusion. Now, he can  
9           answer with respect to his experience, but he's not a  
10          lawyer and he didn't draft the contract. And I know he  
11          testified as to the contract and offered some opinions  
12          about it, but, once again, he's not a lawyer. I'm not  
13          going to say he shouldn't answer but keeping that in  
14          mind.

15          MR. JORDE: This is cross-examination based on  
16          essentially wanting to induce the Commission and the  
17          public to believe that if this pamphlet has words on it,  
18          then it's good as gold. And the language, we just  
19          established, is not what they claim it to be in  
20          Exhibit 5. That's my question.

21          ALJ HOGAN: I think he can answer in his  
22          capacity and as a Summit representative. I agree, I  
23          don't think he's got a legal -- he's not a lawyer so he  
24          doesn't have the capacity to make a legal conclusion,  
25          but he definitely can answer and should answer in his

1 capacity as a representative of Summit.

2 A. I mean, I can read the actual paragraph that's  
3 in the --

4 ALJ HOGAN: Well, just --

5 Q. Well --

6 A. And it very specifically says that we warranty  
7 drain tile installation.

8 Q. Well, maybe you're giving different easements to  
9 different people because I have one in my hand and the  
10 word "warranty" is nowhere in there. So if you've  
11 updated it, I personally, and I'm sure the Commission,  
12 would love to see that language.

13 But what we've established, sir, is that your,  
14 as in Summit, SCS Carbon Transport LLC, your  
15 responsibilities end when you sell, transfer, or assign  
16 your rights in this pipeline; correct?

17 MR. BENDER: I'm going to object. Once again,  
18 calls for a legal conclusion. Plus, I think that's a  
19 mischaracterization of the language in the document.

20 ALJ HOGAN: Are you asking him about transfer of  
21 the lease, if it's -- or transfer of the -- can you  
22 clarify your question?

23 MR. JORDE: Sure.

24 Q. (BY MR. JORDE) So the whole purpose of  
25 Exhibit 5 is to make everyone believe that you, Summit,

1 will, for the lifetime of this project, guarantee and  
2 warranty the work. And my question to you, sir, isn't  
3 it correct that as soon as Summit sells or is no longer  
4 a part of this project, your exit strategy, then you,  
5 Summit, no longer has a lifetime responsibility to  
6 warranty that work?

7 MR. BENDER: Same objection.

8 ALJ HOGAN: I'll allow him to answer to his  
9 understanding of what happens should a sale happen.

10 A. Yeah. And even though I'm participating in  
11 several of these, I'm not an attorney obviously. I will  
12 say that it's my understanding when that easement is  
13 recorded at the courthouse, it's a legal document and  
14 the obligations that Summit agrees to in that easement  
15 carry on as an obligation with anyone that -- that --  
16 that acquires the company if we choose to sell it, as  
17 long as the pipeline is in service or in operation.  
18 That's my understanding.

19 Q. All right. Let's continue on in that same  
20 paragraph then. It's true, sir, is it not, that the  
21 company, meaning here Summit, has in its sole discretion  
22 to either, quote, "confirm" the claim of landowner or to  
23 say, "No, we don't think there's any damage here"?

24 MR. BENDER: If you know.

25 A. We do have discretion and that's why we're

1     partnering with Ellingson who will photograph every  
2     single connection or repair that's made, document it.

3             I heard one of the commissioners ask if that  
4     documentation would be provided to the landowner.  
5     Absolutely, if the landowner wants it. We'll maintain a  
6     record. So if there is water retention a hundred yards  
7     away from the right of way and we can determine that  
8     that was because of the construction activity, then yes,  
9     we will repair it.

10            Q. So the determination of whether or not damage is  
11     because of construction activity, again, that analysis  
12     starts with Summit to determine whether or not you  
13     believe your contractor was responsible for damage?

14            A. It starts with Summit and our contractors.

15            Q. All right. And so just hypothetically, a  
16     contractor who did the work, doesn't want to be on the  
17     hook for damage they caused, they say "We didn't do  
18     that," what's the next step for the landowner?

19            A. Well, our position, as Summit, is we're entering  
20     into a long-term partnership or relationship with the  
21     landowner. So we're going to do everything we think is  
22     necessary to make sure that that landowner is treated  
23     fairly. And if our contractor disagrees and we agree  
24     that it's due to construction activity, then we'll honor  
25     our obligation.



1           Q.    Would you agree it would be a reasonable  
2           condition if this Commission were to state that all of  
3           the connection photographs be uploaded to a database and  
4           documented so that there's never any question of missing  
5           photographs or the evidence being buried both literally  
6           and figuratively?

7           MR. PELHAM:   Hold on because I think we're  
8           getting a little bit outside the scope of the  
9           jurisdiction of the Commission.   The Commission's role  
10          here is siting entity and is reviewing the application  
11          of the company.   As far as private easements entered  
12          into between the company and landowners, the Commission  
13          is not involved in that process.

14          So to the extent that we continue on, I'm going  
15          to object as to these lines of questions.   This witness  
16          also is not a lawyer and is being asked questions on  
17          legal meanings of certain things in the easement.

18          So I'm just going to state that objection for  
19          the record.   Thank you.

20          MR. BENDER:   I'll join with the objection.

21          MR. JORDE:    I'll respond to the objection, and  
22          the response is all of this is potentially adverse on  
23          the effects of the welfare of the citizens, which is one  
24          of the burdens and elements of proof in this case,  
25          number one.

1           Number two: there can be no pipeline without  
2           the easements. The easements are the sum and substance  
3           of what we are talking about, whether we're saying it  
4           out loud or not, and what -- the contracts that they can  
5           force upon landowners unwillingly through condemnation  
6           form the basis of the project. So if we're not talking  
7           about that, we're not taking an honest assessment of  
8           what this project is and should it or should it not be  
9           approved and how people are -- real people are affected.  
10          That's the nature of this line of questioning.

11           MR. PELHAM: And that all may be true, but for  
12          purposes of viewing this application, the specifics of  
13          the statute are what the Commission is to be reviewing.  
14          I don't believe there's any issue with calling some of  
15          these issues into question and questioning on it, but  
16          when we're going line by line through the easement and  
17          questioning specifically as to the easement, the  
18          Commission cannot go over line by line and do a veto as  
19          far as what is being done.

20           So I think that the discussion as to the impact  
21          that this line potentially has on landowners is  
22          absolutely appropriate, but we're straying into the  
23          legalities of an easement agreement that is a private  
24          contract between a private company and a private citizen  
25          of the state. Certainly the Commission is going to be

1 reviewing the statutory requirements and this is part of  
2 it, but when we get into the specifics of that, I think  
3 that is where the objection lies.

4 And certainly as to the condemnation aspect, the  
5 Commission has no authority; that is a judicial  
6 determination and the Commission has no authority  
7 whatsoever as to the condemnation process.

8 MR. JORDE: Well, I have to respond to that.  
9 Forget the condemnation part. The fact of the matter  
10 is --

11 MR. PELHAM: But you brought it up, sir.

12 MR. JORDE: Okay. I'll talk about it. I mean,  
13 it's interesting that the PSC of all people is objecting  
14 to letting the truth be known --

15 MR. PELHAM: No, no, no.

16 MR. JORDE: -- about how landowners are  
17 affected --

18 MR. PELHAM: I won't allow you to characterize  
19 it --

20 MR. JORDE: Well, that's what you're doing.

21 MR. PELHAM: It's not --

22 ALJ HOGAN: Okay, okay, hang on.

23 I agree with Mr. Pelham. I think we're getting  
24 too far into questions about the specifics on the lease  
25 agreement.

1           I think generally you're correct, Mr. Jorde, the  
2 statement of the issues allow for some general probing  
3 on these issues, but when we're getting into line by  
4 line on what the easements are providing, that that is  
5 going beyond the jurisdiction of the Commission on those  
6 issues.

7           MR. JORDE: So my question then would be how  
8 possibly can the Commission have an intelligent  
9 discussion of what conditions should be placed to  
10 ensure, quote, "The welfare of the citizens of North  
11 Dakota," end quote, unless you know and unless there's  
12 testimony on how bad the landowners are being treated  
13 vis-a-vis the easement contract?

14           ALJ HOGAN: I'm not sure how you want me to  
15 respond to that. I get the statement of the issue is  
16 pretty broad, but, again, I think there's some validity  
17 to the objection that, you know, you're talking about an  
18 agreement that the landowner is signing with the company  
19 and that's outside of the -- the Commission doesn't have  
20 any jurisdiction over what those documents are -- those  
21 agreements contain.

22           So I totally understand that this is kind of,  
23 you know -- area. I guess my direction to you would be  
24 to try to stay closer to what the Commission has  
25 jurisdiction over and not over those private agreements.

1 I mean, the specifics of what they're agreeing to with  
2 Summit is not -- not something that I think we need to  
3 spend time on here. But generally the concerns of the  
4 landowners and what's -- the warranties being offered, I  
5 think that you can absolutely ask questions about that.

6 MR. JORDE: That's fine. I mean, I can ask all  
7 the same questions. I won't use the word "easement,"  
8 but just know that's where they're all coming from.

9 Q. (BY MR. JORDE) So, sir, you understand that  
10 this Commission has the power to put conditions, any  
11 conditions it deems reasonable, on this project should  
12 they grant you approval?

13 MR. BENDER: If you know.

14 A. I believe they do.

15 Q. All right. Now, let's just shift for a second  
16 here. Who is SCS Carbon Transport LLC? Who owns that?

17 A. That is a company, an entity, of Summit Carbon  
18 Solutions.

19 Q. Okay. And who owns Summit Carbon Solutions?

20 A. It's a privately-held company.

21 Q. Who are the top percentage owners other than  
22 Mr. Rastetter?

23 MR. BENDER: Objection. Relevance.

24 MR. JORDE: Well, I'd like -- I mean, maybe it's  
25 not -- it's only not relevant if the PSC doesn't care

1     who they're giving these powers to. I mean, we have no  
2     idea who this company is. And I think that's relevant  
3     for the inquiry here. They're asking for significant  
4     powers over 320 miles of land in this state forever.

5             MR. BENDER: And I think what Mr. Jorde's  
6     attempting to do, he's going to keep walking down that  
7     line until he tries to get Mr. Powell to respond to who  
8     owns this company, what individual owns this company,  
9     how much percentage of that company does he own, how  
10    much investment is -- I mean, if we're just going to  
11    head down this path, we'll be here for hours.

12            MR. JORDE: Well, the fact they've complicated  
13    their ownership structure is not my problem. Okay? If  
14    that's how they want to play the LLC games, we can do  
15    that. But I think the public deserves to know who the  
16    heck we're even talking about. Who is this company?

17            MR. BENDER: You know what? Now  
18    mischaracterization, "complicated their ownership  
19    structure." Who says it's complicated? He says it's  
20    complicated?

21            MR. JORDE: Well, it wouldn't take five hours to  
22    explain if it wasn't complicated.

23            ALJ HOGAN: Okay, okay. I'll allow you to ask  
24    some general questions about ownership, but, again, I'm  
25    not sure that that's time well spent to spend a lot of

1 time on corporate structure.

2 MR. JORDE: All right.

3 Q. (BY MR. JORDE) Is it true that a South Korean  
4 company owns 10 percent of Summit Carbon Solutions?

5 A. SK is a global company that is an investor. I  
6 can't speak to the percentage of ownership.

7 Q. All right. And what are the actual assets of  
8 SCS Carbon Transport LLC? Does it own anything?

9 MR. BENDER: Objection. Relevance.

10 Q. What are the assets backing it if there's a  
11 problem in this state forever?

12 ALJ HOGAN: I'll allow him to answer.

13 MR. BENDER: If you know.

14 A. I don't fully understand the question. Can you  
15 repeat it, Mr. Jorde?

16 Q. (BY MR. JORDE) Well, sure. I can start an LLC  
17 tomorrow and file an application, copy this, and be just  
18 the same as you. So what are the assets of SCS Carbon  
19 Transport LLC? Does it own anything? Is this the deal  
20 company? What is it?

21 A. Well, it's a private company, but if we're  
22 permitted by the PSC in North Dakota and we install the  
23 pipeline, that will be an asset.

24 Q. So it's your statement here that this entity  
25 would actually take title to the pipeline itself, the

1 actual pipe, the above-ground appurtenances and  
2 equipment?

3 MR. BENDER: Your Honor, two objections. One,  
4 once again, relevance. But, second of all, this is the  
5 third opportunity the intervenors have had an  
6 opportunity to cross-examine this witness. He was  
7 examined -- cross-examined for the better part of three  
8 hours in Bismarck. Mr. Jorde made a decision not to  
9 attend that hearing, but there were a lot of questions  
10 asked. He could have asked these questions there. Now  
11 here we are in the third hearing and, you know, we're  
12 putting Mr. Powell on the witness stand to briefly  
13 summarize for the audience what this hearing is about  
14 and he's using it as an opportunity to conduct an  
15 entirely new area of cross-examination and I'm going to  
16 object.

17 MR. JORDE: Well, yeah, I'm going to  
18 cross-examine him on the application. And this is all  
19 relevant to --

20 MR. BENDER: And you had that opportunity in  
21 Bismarck and you had that opportunity in Gwinner.

22 MR. JORDE: That's right.

23 MR. BENDER: And you passed it up.

24 MR. JORDE: Amen. And there's no requirement I  
25 had to be there, sir.



1           ALJ HOGAN: I understand the objection. It's  
2 noted for the record.

3           I'm going to -- let me ask you this, Mr. Jorde,  
4 just for my own -- because, you know, we've talked about  
5 this, we do have a time schedule to keep today. Do you  
6 have an idea of the scope of questioning you're going to  
7 ask today, like, timewise?

8           MR. JORDE: No. No. I mean, I'm going to ask  
9 if this -- I mean, again, this is a gigantic,  
10 never-done-before project, and I'm going to keep going  
11 until I'm either, you know, cut off or finished. So  
12 that's the plan.

13          ALJ HOGAN: With Mr. Powell, is that --

14          MR. JORDE: Yes.

15          ALJ HOGAN: So okay.

16          MR. JORDE: And I guess if there's less  
17 objections, it will go quite a bit faster.

18          ALJ HOGAN: Well, that answer is not terribly  
19 helpful for me.

20          MR. JORDE: I agree, I agree. I mean -- but no.  
21 I'm sorry if we were supposed to come with, you know,  
22 being on the clock or something, I -- I didn't prepare  
23 that. I've got the application here, I've got my notes,  
24 and I'm marching through it.

25          ALJ HOGAN: Well, and to address your objection,

1 Mr. Bender, it's my understanding that while we're  
2 discussing the same project, that each of these hearings  
3 was to be independent so I think he does -- Mr. Jorde  
4 does have some leeway to ask about the application. And  
5 I -- you know, I think when the hearings were  
6 structured, it maybe wasn't anticipated that we were  
7 going to have one intervenor representing multiple  
8 landowners throughout the pipeline project. And I just  
9 -- I think we're going to have more of this at other  
10 hearings so I am going to allow him -- because we have  
11 the time today to address some of these issues so --  
12 but, again, you know, I think for purposes of the  
13 Commission, I'm not sure that corporate structure is  
14 going to be the number one thing that's relevant for  
15 them and what they're going to be considering and  
16 deciding.

17 So I guess my direction, Mr. Jorde, would be to  
18 try to focus on those issues that are most pertinent for  
19 the Commission in making siting decisions.

20 MR. JORDE: Well, I totally respect that. I  
21 mean, the Applicant is SCS Carbon Transport LLC and --  
22 and no one sitting here other than Mr. Bender can tell  
23 us who that is. And that's who you're being asked to  
24 approve. I mean, I can start Brian Jorde LLC tomorrow  
25 and be in front of you, have no assets, go bankrupt like

1 Denbury did in Satartia.

2 So I'm just trying to figure out from this  
3 gentleman what -- I mean, what is this company that's  
4 being asked to have this project approved? That's it.  
5 I mean, what's the big secret? Who is it?

6 Q. (BY MR. JORDE) That's a question to you, sir.

7 A. Finally. Thank you.

8 THE WITNESS: Judge, I'm not the commercial  
9 representative for Summit Carbon and I'm not -- I don't  
10 have the level of detail necessary to dig into not only  
11 the corporate structure but all the other commercial  
12 aspects of this project.

13 And I do, just for the record, want to clarify,  
14 Mr. Jorde said this project is -- I can't remember your  
15 exact phrase but one never done before. You're all  
16 familiar with Dakota Access, you know, Energy Transfer  
17 built 2015 time frame. And it was a very large project,  
18 similar scale, larger pipe in North Dakota.

19 Q. (BY MR. JORDE) All right. What does that have  
20 to do with supercritical carbon dioxide?

21 A. Well, they're both governed by the same PHMSA  
22 regulation.

23 Q. Okay.

24 A. I'm sure you know that.

25 Q. I'm very aware of that. I'm not sure the

1 relevance, but okay.

2 So I didn't get an answer to my question. Who  
3 is SCS Carbon Transport LLC? Or are you claiming you as  
4 chief operating officer doesn't -- can't answer that  
5 question?

6 A. That's correct.

7 Q. All right. And you're COO also of Summit Carbon  
8 Solutions LLC which you said was what, one of the  
9 owners? Is that right?

10 A. Summit Carbon Solutions is the overarching  
11 company.

12 Q. All right. And does Summit Carbon Removal LLC,  
13 of which you're also the chief operating officer, have  
14 any ownership of SCS Carbon Transport?

15 MR. BENDER: Your Honor, can I just have a  
16 standing objection? I want this to go as quickly as  
17 possible, but I do want to put objections on the record.

18 MR. JORDE: That's fine.

19 MR. BENDER: So just a standing objection --

20 ALJ HOGAN: Yep.

21 MR. BENDER: -- as to relevance?

22 ALJ HOGAN: Yep. Your objection is noted.

23 MR. BENDER: Thank you.

24 A. Again, I'm not -- I'm not responsible for the  
25 commercial structure of the company.

1           Q.   (BY MR. JORDE)   All right.   And when was SCS  
2   Carbon Transport created?   How long has it been in  
3   existence, if you know?

4           A.   I do not.

5           Q.   All right.   And is it true that SCS Carbon  
6   Transport LLC, Applicant here, doesn't own, operate, or  
7   manage a single inch of carbon dioxide pipeline anywhere  
8   in the world?

9           A.   That's correct.

10          Q.   Now, sir, apparently you have exactly one  
11   contract with one ethanol plant in the confines of North  
12   Dakota; is that correct?

13               MR. BENDER:   Your Honor, I think we're starting  
14   into an area and now we're going to be start -- talking  
15   about common carrier.   I'm going to object.   I made that  
16   objection at the Bismarck hearing and I think,  
17   ultimately, as to relevance, that objection was granted,  
18   and we're heading down the same path again.

19               MR. JORDE:   I'm reading right out of their  
20   application so they put all this in play.   How is this  
21   not relevant?   How is this possibly not relevant?

22               MR. BENDER:   It's not relevant as to whether  
23   this entity is a common carrier or not.   You have that  
24   issue right now before a district court matter in North  
25   Dakota, in South Dakota, and possibly other states.

1 It's not for this entity to be making decisions with  
2 respect to common carrier and that's the direction  
3 you're heading with your questioning.

4 MR. JORDE: Well, I guess I would just put  
5 something out there for the record. Is it possible for  
6 this company to even apply for the powers they want to  
7 be granted if they are not a common carrier?

8 MR. BENDER: Absolutely.

9 MR. JORDE: All right. I just want to make sure  
10 that's your position. Okay.

11 Q. (BY MR. JORDE) So, again, my question was: is  
12 it true you have a single contract with the Tharaldson  
13 Ethanol plant in Casselton?

14 MR. BENDER: Same objection, Your Honor.

15 ALJ HOGAN: He can answer that question, but I  
16 agree we did go over this in Bismarck where this -- this  
17 particular Commission does not have any jurisdiction  
18 over the common carrier determination.

19 MR. JORDE: You're not going to hear the word  
20 "common carrier" come out of my mouth, Your Honor.

21 MR. BENDER: Yeah, and we went through that in  
22 Bismarck as well where Mr. Bakke didn't use the word  
23 "common carrier" but was asking the same questions.

24 MR. JORDE: Well, this has nothing to do with  
25 common carrier. It has to do with the fact they want

1 320 miles of people's land for the benefit of one  
2 ethanol plant. That's what this project is about. And  
3 I'd like to talk about that.

4 ALJ HOGAN: Well, okay. So he can answer that  
5 question.

6 MR. JORDE: All right.

7 MR. BENDER: And that's a mischaracterization of  
8 the application as well. We don't need all of the  
9 pipeline in North Dakota just to connect the Tharaldson  
10 plant.

11 MR. JORDE: Do you want me to be sworn in? I'm  
12 trying to ask this gentleman these questions so --

13 MR. BENDER: Well, I'm trying to make sure that  
14 you ask questions that are supported by the facts, and  
15 you aren't.

16 MR. JORDE: Okay. Let me just continue to read  
17 out of your own application.

18 Q. (BY MR. JORDE) Sir, it's true that the only  
19 contract you have is with the Tharaldson Ethanol plant  
20 as stated on page 1 of your application, correct, in  
21 North Dakota?

22 A. As I sit here today, that is the only plant  
23 contracted in North Dakota.

24 Q. All right. So why should North Dakota be the  
25 dumping ground for the CO2 trash of Iowa, Nebraska,

1 Minnesota, and South Dakota?

2 MR. BENDER: Objection. Argumentative. We  
3 don't need that kind of talk about what the product is  
4 and calling it trash and garbage. Very inappropriate,  
5 Your Honor.

6 ALJ HOGAN: I agree. Can you rephrase your  
7 question?

8 MR. JORDE: Sure.

9 Q. (BY MR. JORDE) Is CO<sub>2</sub>, as it comes out of an  
10 ethanol plant, a waste product? Yes or no?

11 A. CO<sub>2</sub> is a commodity and an emission stream.

12 Q. Okay. And you believe that when you put CO<sub>2</sub>  
13 into the ground forever, it's still a commodity sitting  
14 there doing nothing?

15 A. I'm not going to speak to whether it's sitting  
16 there doing nothing, but as you're well aware, CO<sub>2</sub> can  
17 be used for other purposes.

18 Q. Well, sure. But you're not doing that. Your  
19 application, does it not specifically state that the  
20 plan here that you'd like to be approved is to  
21 permanently sequester all the volume of CO<sub>2</sub> that you  
22 intend to transport through your proposed hazardous  
23 pipeline? Correct?

24 A. As contracted today, that's correct.

25 Q. All right. So are you leaving wiggle room that



1     there's something that is not spelled out in this  
2     application that we should be getting ready for in the  
3     future that you're going to unwind your statements in  
4     your application that this is for permanent  
5     sequestration only?

6           A.   No.  As I said, as contracted today.  There  
7     could be other industrial facilities that want to  
8     connect to this pipeline system, want to move CO2 to  
9     another terminus that does not exist today.  So that  
10    option is available.  But today, the volume we have  
11    contracted, you are correct, is intended to be  
12    sequestered -- stored and sequestered subsurface on the  
13    northwest side of Bismarck, North Dakota.

14          Q.   And you would agree that when -- your stated  
15    purpose of this pipeline is allegedly to assist ethanol  
16    plants reduce their carbon intensity score; correct?

17          A.   I don't know what you mean by "allegedly."  It  
18    absolutely reduces their carbon intensity score.

19          Q.   Okay.  And "allegedly" there, sir, was a  
20    qualifier as to that's what you claim the, quote,  
21    "Purpose and Need" in Section 2.21, page -- found on  
22    page 10 is; correct?  To assist ethanol plants in  
23    reducing their carbon index score?

24          A.   Yeah, it does.  It doesn't allegedly do it.  It  
25    does it.

1           Q.   Okay.  Let's -- I'll stipulate to that.  You  
2   would agree that within the confines of North Dakota  
3   here, sitting in front of the North Dakota Public  
4   Service Commission, that it is not in the welfare of  
5   North Dakotans to approve your project of 320 miles when  
6   you are only connected to a single ethanol plant in  
7   North Dakota; correct?

8           A.   Well, I would disagree because I think the  
9   growers that sell their corn to the Tharaldson Ethanol  
10  plant for a premium, that would not be there if it were  
11  not for the ethanol plant.  And those workers that are  
12  employed directly by Tharaldson or indirectly by  
13  Tharaldson, it's a meaningful project.

14          Q.   All right.  And before SCS Carbon Transport LLC  
15  existed, those growers were selling their corn to that  
16  ethanol plant; correct?

17          A.   Correct.

18          Q.   All right.  And so, again, you're asking for  
19  some approval over 320 miles across ground that many  
20  North Dakotans don't want to give you to locate a  
21  hazardous pipeline of which you've never constructed,  
22  operated, or maintained before, all for the benefit of a  
23  single ethanol plant in North Dakota; correct?

24          A.   There are many mischaracterizations there.  Do  
25  you want me to start from the beginning?

1 Q. Go ahead.

2 A. Ask your question one more time, please.

3 Q. All right. I don't personally, for my  
4 questions -- and maybe others disagree and that's  
5 obviously fine -- I don't care about Iowa, I don't care  
6 about Nebraska, South Dakota. We're talking about North  
7 Dakota. And, sir, it's true that within North Dakota  
8 you're asking for approval to trench and dig and locate  
9 a hazardous pipeline over approximately 320 miles of  
10 land; correct?

11 A. Correct. You previously stated that most people  
12 don't want, and I'm sure you're aware we signed  
13 easements with 70 percent of the -- for 70 percent of  
14 the mileage in the state. So I think it's a  
15 mischaracterization to say most people don't want --

16 Q. Do you think there's any such thing as a, quote,  
17 "voluntary easement" when the power of eminent domain is  
18 over the head of a landowner?

19 MR. BENDER: I'm going to object. Calls for a  
20 legal conclusion possibly, but you can answer it with  
21 respect to your own knowledge.

22 A. Absolutely.

23 Q. Okay. And at the Gwinner hearing, remember the  
24 -- that elderly lady who had signed a waiver but still  
25 showed up to the Gwinner hearing to voice her concerns?

1 Do you recall that? Do you believe that was a voluntary  
2 agreement or that she felt she had no choice but to give  
3 in to you?

4 A. I feel it was a voluntary agreement.

5 Q. Okay. All right. So we've established that,  
6 again, there's only one ethanol plant in North Dakota.  
7 And so you're asking this Commission to give you the  
8 right to build 320 miles of hazardous pipeline to  
9 service one ethanol plant and then pull in CO2 from  
10 other states; correct?

11 MR. BENDER: Objection. Asked and answered.

12 MR. JORDE: It was asked but not answered.

13 ALJ HOGAN: He can answer.

14 A. As we sit here today, as I said, we have a  
15 contract with one ethanol plant in North Dakota.

16 Q. (BY MR. JORDE) Okay. And supercritical CO2,  
17 that is not the same as liquified carbon dioxide;  
18 correct?

19 A. Supercritical CO2 is a dense phase CO2.

20 Q. All right. Which is not the same as liquified  
21 carbon dioxide; correct?

22 A. Define liquified carbon dioxide.

23 Q. Well, are you familiar with that term?

24 A. I am.

25 Q. Okay. So then you tell me.

1           A. Well, are you familiar with the term? Define it  
2 for me.

3           Q. Well, unfortunately, sir, I get to ask the  
4 questions.

5           A. Well, I'm just going to tell you if you're --  
6 you're probably familiar with the phase envelope of CO<sub>2</sub>.  
7 And dense phase or critical phase CO<sub>2</sub> does have some  
8 liquid characteristics.

9           Q. Okay. So when you make an application and  
10 statements that, you know, CO<sub>2</sub>, we have it in our soda  
11 pop and things like that, to be clear, supercritical  
12 CO<sub>2</sub>, under 2,500 PSI, 2,100 PSI, is not the same thing  
13 as a CO<sub>2</sub> as we experience in our soda pop; correct?

14          A. I never made a comment about having anything in  
15 a soda pop.

16          Q. All right. Maybe that was your lawyers in South  
17 Dakota, and maybe it was, but would you --

18          A. I'd be surprised if our lawyer said that either  
19 but...

20          Q. Okay. Well, we don't have to get into that.  
21 The question is, would you agree that when there's,  
22 quote, many uses to CO<sub>2</sub> and, my goodness, it's in soda  
23 pop, for goodness sakes, that's not what you're  
24 transporting; correct?

25          A. I did not say that. We're transporting dense

1 phase supercritical CO2 at -- that is under pressure.

2 Q. And the reason why your pipeline is different  
3 than a crude pipeline is because you -- to maintain the  
4 supercritical nature of the CO2, you have to maintain  
5 both a minimum and a maximum pressure threshold;  
6 correct?

7 A. To maintain that. So your analogy to a crude  
8 pipeline, somewhat accurate, but it's similar to a  
9 refined products pipeline.

10 Q. But a crude oil --

11 A. A natural gas liquid pipeline.

12 Q. I'm sorry. Go ahead.

13 A. Or a natural gas liquid pipeline, which is also  
14 -- fall under the same federal regulation.

15 Q. But you reference DAPL. And would you agree,  
16 sir, that if DAPL -- if the pumps shut down and the  
17 product was just sitting in the pipeline, that that  
18 would not be an imminent risk if the crude oil is not  
19 moving in a pipeline?

20 A. I don't understand the question.

21 Q. Well, the question is it's true, is it not, that  
22 the volatile nature of supercritical CO2 is that you  
23 have to maintain both an upper and a lower threshold of  
24 pressure?

25 A. That's just to maintain that state. If the

1 pressure drops below that minimum threshold, then it  
2 just changes the phase, the state of the phase. There's  
3 no imminent danger there.

4 Q. Well, at that point, isn't it true that it's  
5 more likely that the pipe will corrode?

6 A. No.

7 Q. And what do you base that on?

8 A. Well, the only -- the risk of corrosion, at  
9 least internal corrosion, is if it has water in the  
10 product stream. And we're dehydrating the CO2 as it  
11 leaves the capture facility.

12 Q. And, actually, the CO2 that you're transporting  
13 is actually CO2 that you own; correct?

14 MR. BENDER: Objection. I mean, heading down  
15 the path of the issue of common carrier.

16 I'm going to instruct you not to answer the  
17 question.

18 ALJ HOGAN: Can you repeat what your question  
19 was?

20 MR. JORDE: Yes.

21 Q. (BY MR. JORDE) Is it true or is it not that  
22 you -- "you" meaning Summit -- owns the carbon dioxide  
23 that you plan to transport from the Tharaldson plant?

24 MR. BENDER: Same objection.

25 ALJ HOGAN: What's the relevance of whether or

1 not they own it?

2 MR. JORDE: Well, I think it's important to know  
3 who is owning the product that is the volatile product  
4 that then could be potentially catastrophically  
5 dangerous. I mean, what's the big mystery of who owns  
6 it? I don't see why that's a tricky question. I  
7 mean --

8 MR. BENDER: I'm just saying it's not relevant  
9 for this hearing because this Commission does not make a  
10 determination as to who is a common carrier. You have  
11 that issue before the district court in North Dakota and  
12 in South Dakota. There's no reason to present that  
13 here. It's not relevant.

14 MR. JORDE: Who's talking about common carrier?  
15 I just asked him a simple question.

16 MR. BENDER: You're doing the same thing, Mr.  
17 Jorde. The only thing you're not doing is mentioning  
18 common carrier, but that's the way -- that's the reason  
19 you're heading down that path.

20 MR. JORDE: Well, thank you for telling me where  
21 I'm going, I guess. I appreciate it.

22 ALJ HOGAN: Is it -- I mean, is that why you're  
23 asking that, because of the common carrier status?

24 MR. JORDE: No. I could care less about that.  
25 I'm curious who's owning the carbon dioxide that is



1 going to be filling up the holes in western North  
2 Dakota. I mean, who owns the stuff?

3 MR. BENDER: Your Honor, for him to suggest he  
4 could care less is just a total misrepresentation of his  
5 position in this matter. They tried to conduct  
6 discovery in the North Dakota matter that's before the  
7 district court on common carrier. The judge said no.  
8 So he's trying to conduct his discovery in this hearing  
9 so he can get what he could not get in the proceeding  
10 before the district court. I'm going to object and I'm  
11 going to instruct the witness not to answer.

12 MR. JORDE: Well, then I'm going to move for  
13 fees and costs for this entire hearing. So, okay, there  
14 we go. I mean --

15 ALJ HOGAN: Okay.

16 MR. JORDE: What's the mystery? Why don't you  
17 want him to answer that question? What's the problem?

18 MR. BENDER: I responded to your question.

19 MR. JORDE: All right. All right. So I guess  
20 I'm sorry, Your Honor. Is there a ruling on that? I  
21 guess we'll get our motion for fees and costs in.

22 ALJ HOGAN: Mr. Pelham, do you have a position  
23 on behalf of the PSC?

24 MR. PELHAM: Well, I'm not privy to the  
25 knowledge as far as what's going on between parties in a

1 district court action. The question is simply who owns  
2 the CO2. Putting everything else aside, I think that  
3 would be an appropriate question.

4 ALJ HOGAN: Appropriate or inappropriate?

5 MR. PELHAM: Appropriate question. I don't have  
6 any objection to that question. I've not noted any  
7 objection to that question. But I understand what  
8 Mr. Bender is saying. I don't have anything to do with  
9 that, however. For purposes of today, though, only in  
10 this venue, who owns the CO2 seems to be a fairly  
11 innocuous question.

12 ALJ HOGAN: And I'm in the same position. I  
13 don't know what's going on in the district court  
14 actions. I don't know what's going on with discovery  
15 there so it's hard for me to say that that's an improper  
16 means to the question, but I'll allow him to answer.

17 MR. BENDER: And I'm instructing him not to  
18 answer.

19 MR. JORDE: Okay. Well, then I am moving for  
20 costs of this entire proceeding taxed to Summit based on  
21 Mr. Bender completely contravening the judge's order and  
22 direction. I think that's a serious offense and we are  
23 requesting a hundred percent of our cost to be here  
24 today for that purpose if you want to stand on that  
25 objection.

1 MR. BENDER: I do.

2 MR. JORDE: All right.

3 Q. (BY MR. JORDE) Are you willing to answer that  
4 question or is it such a secret that you don't want to  
5 tell us?

6 MR. BENDER: Objection. I mean, these  
7 argumentative statements. I explained why I don't want  
8 him to answer the question. It's not a secret. It's  
9 just -- it's inappropriate for this hearing. It's not  
10 relevant.

11 ALJ HOGAN: Okay. Let's move on. If you're  
12 going to make that motion, you're going to have to file  
13 it in writing. I mean, I've never addressed that on  
14 behalf of this Commission before so --

15 MR. JORDE: Well, I've never had a lawyer, you  
16 know, act like -- to a judge like that either. So I  
17 guess we're all in this boat but...

18 Q. (BY MR. JORDE) Let's move on to page 2.  
19 Installed at a minimum of 48 inches. You understand  
20 that you, sir, as Applicant could install this at  
21 six-foot, seven-foot, eight-foot if you wanted to;  
22 correct?

23 A. Well, I'm sure you -- you know, Mr. Jorde, that  
24 the federal regulation is three-foot, but we consider  
25 construction risk, constructability, and other issues

1     when we're determining the depth of a pipeline.

2           Q.   Are you aware of the phrase "level of  
3     cultivation"?

4           A.   I'm not an agricultural expert.  I've heard the  
5     phrase.

6           Q.   Do you have any knowledge that corn roots can  
7     grow to as deep as six-foot in some types of soil in  
8     some areas?

9           A.   Again, I'm not an agricultural expert.  Our  
10    parent company farms thousands of acres in corn, and  
11    I've never heard them use that term and they don't have  
12    concern.  They individually don't have a concern for the  
13    depth of the pipeline.  And, quite frankly, the  
14    landowners that we sign easements with across the  
15    footprint have never mentioned that either.

16          Q.   So what is the relevance to the fact that the  
17    owners of this project who are going to make billions of  
18    dollars don't have a concern with how deep the pipeline  
19    is?  What's the relevance of that statement?

20          A.   I didn't say they didn't have a concern.

21          Q.   Okay.  So let's just assume hypothetically that  
22    corn, for instance, can grow to six-foot and that being  
23    the level of cultivation, you would agree that it would  
24    be prudent for you to locate any such hazardous pipeline  
25    at a minimum depth of six feet?

1           A. I would tell you what I do know is that there  
2           are thousands of miles of pipeline in this state, and  
3           I've installed some of that pipeline, and in other  
4           states, especially other agricultural states like  
5           Minnesota, like Nebraska, like South Dakota, and like  
6           Iowa, and most of those pipelines are installed at  
7           depths of three-foot and it hasn't affected the corn  
8           suitability rating or the yield on those properties to  
9           my knowledge.

10          Q. Okay. Would you be surprised if someone  
11          testified, a landowner with pipelines that has direct  
12          yield loss years and years after the pipeline was put in  
13          at a depth of three or four feet?

14          A. I may not be surprised by anything, Mr. Jorde,  
15          but I can tell you this as well, that Summit will keep  
16          landowners whole of any yield deficiencies associated  
17          with the construction of this pipeline.

18          Q. Up until the date when you sell the pipeline;  
19          right?

20                 MR. BENDER: Objection. That wasn't his  
21          testimony.

22          Q. So speaking of that, do you have an individual  
23          -- and I might mispronounce his last name, but Erik  
24          Schovanec, a gentleman by that name that works for  
25          Summit, Mr. Powell?

1           A.    There's an Erik Schovanec.

2           Q.    Schovanec.  That's who I'm thinking.  And what's  
3   his role?

4           A.    He is the senior director of pipeline and  
5   facilities.

6           Q.    Would you be surprised if he told one of my  
7   clients that as soon as you get this approved and in the  
8   ground, that the exit strategy is to sell your interest,  
9   sell this company?

10          A.    I would be surprised because I don't believe he  
11   would say that.  But, secondly, he doesn't know that  
12   because that's not the strategy.  The strategy is to  
13   build and operate this pipeline system.

14          Q.    Isn't it true in your private placement  
15   memorandum that the exit strategy is a sale within five  
16   to six years after construction is completed?

17          A.    I don't remember that.

18          Q.    All right.  Now, you've got a map in your  
19   application, and I want to make sure so that if this  
20   Commission was to approve this project, is the map in  
21   the application that's found on about page 3, I'll just  
22   -- is this what you're asking approval of in terms of  
23   the route or, you know, if you get the stamp of  
24   approval, what is the geography, sir, that you believe  
25   is being approved, corridor?  Can you just describe what

1     you believe that is?

2           A.   Well, we submitted an application, a corridor  
3     width on either side of the centerline of the pipeline,  
4     and that's what we're asking approval for.

5           Q.   And so is that the 150-foot on either side of  
6     the centerline or was it 300-foot?   What was the  
7     corridor, please?

8           A.   Corridor, I believe, is 300 feet.

9           Q.   Total?

10          A.   Yes.

11          Q.   All right.   So if the pipeline was dead center  
12     in the corridor you seek, we'd have approximately  
13     150 feet on either side?

14          A.   If it were dead center.   But as you probably  
15     know, there are a lot of features in routing a pipeline  
16     generally, but especially in this state, a lot of  
17     cultural and heritage features that are very restrictive  
18     and so we try to make sure that that pipeline can be  
19     sited in that 300 feet, but directly in the center of  
20     that 300 feet, we have to have discretion there.

21          Q.   And if there had to be a reroute outside of the  
22     corridor of this 300-foot envelope, you would agree  
23     you'd have to reapply for approval of that reroute?

24               MR. BENDER:   Objection insofar as it calls for a  
25     legal conclusion.

1           Go ahead and answer, Jimmy.

2           ALJ HOGAN:   If you know in your capacity.

3           THE WITNESS:   Thank you.

4           A.   Well, we do have -- and we've talked about it  
5   with the commissioners in the previous two hearings.  We  
6   did have three instances where the route could  
7   potentially exceed that mile and a half threshold.  And  
8   so those -- we understand the requirements of that and  
9   we'll follow those requirements.

10          Q.   (BY MR. JORDE)   Okay.  And I apologize, but I  
11   didn't quite understand that.  You're asking for  
12   approval, sir, of a 300-foot corridor; correct?

13          A.   Correct.

14          Q.   All right.  And now you're talking about a mile  
15   -- help me on the mile --

16          A.   My point is, Mr. Jorde, if we -- if we have a  
17   need to move outside of that corridor, there are rules  
18   within -- with the PSC that we have to follow to make  
19   sure that we can get that approved.

20          Q.   Okay.  Given the Burleigh County ordinance or  
21   resolution that's in place stating that the project  
22   needs to be moved several miles, will you be filing a  
23   new application for that reroute?

24          MR. BENDER:   Same objection.  Calls for a legal  
25   conclusion.



1           ALJ HOGAN: Agreed. And, also, the Burleigh  
2 County issues, if we could save that for the Burleigh  
3 County hearing. I mean, I think the issues about  
4 routing around Bismarck and those Bismarck specific  
5 issues, we should save it for that venue or that hearing  
6 rather than this one.

7           MR. JORDE: Okay. And if that was confusing, I  
8 apologize. I'm not talking about, like, the development  
9 issues. I'm talking about the county commission passing  
10 regulations requiring that no carbon dioxide pipelines  
11 can be within, I think it's eight miles of the  
12 geographical area around Bismarck.

13           And I'm simply asking, based on that, that's  
14 getting outside of the 300-foot corridor. Therefore,  
15 are they going to reapply for that route, that new  
16 route?

17           MR. BENDER: Same --

18           ALJ HOGAN: I think you can ask him if they're  
19 going to reapply, but I don't -- but you can't ask him  
20 about a legal conclusion about whether or not they have  
21 to reapply, because he's not an attorney so I don't  
22 think that would be proper.

23           MR. JORDE: That's fair. I'll rephrase it. I  
24 appreciate that.

25           Q. (BY MR. JORDE) Are you planning to reapply

1 based on the actions of the Burleigh County Commission?

2 A. No.

3 Q. All right. Does that mean that you are not  
4 planning to heed and follow the Burleigh County  
5 regulation?

6 MR. BENDER: Objection. Calls for a legal  
7 conclusion. Probably gets into attorney-client  
8 privileged communications. A whole host of objections.

9 ALJ HOGAN: I agree.

10 MR. JORDE: Well, one of the factors is have  
11 they worked with the counties, the opinion of the  
12 counties, rules and regulations and permits that are  
13 required by the counties. We have an example where a  
14 county has made a rule and regulation, and I'm just  
15 simply trying to find if they're going to follow it or  
16 not.

17 ALJ HOGAN: Well, and I think he answered that.  
18 I would prefer if your question was probing how they are  
19 working with local government agencies. And, again, I  
20 prefer we stay away from the Burleigh County issues  
21 because I don't think this is the hearing where we want  
22 to be addressing that.

23 Q. (BY MR. JORDE) All right. So I guess we'll  
24 just leave this with the understanding that it's true,  
25 sir, you're aware, that Burleigh County entered an

1 ordinance, a new regulation zoning-wise, that, according  
2 to it, whether you agree or not, would prevent CO2  
3 pipelines within certain proximity of Bismarck; correct?

4 A. I'm aware that they passed an ordinance,  
5 correct.

6 Q. All right. And then the follow-up answer that  
7 you provided, I believe, was that even though that would  
8 be outside -- that would require a movement or rerouting  
9 outside of the 300-foot and even outside of a mile and a  
10 half, you're not planning to file a new application?

11 A. That's correct.

12 Q. All right. Now, your application here says 18  
13 million metric tons per annum of CO2. Your application  
14 in South Dakota and Iowa is 12 million. Is there any  
15 reason for the discrepancy?

16 A. The permit applications will be amended. 18  
17 million tons is the total capacity of the pipeline  
18 system.

19 Q. Okay. At full capacity every year, 18 million  
20 metric tons; right?

21 A. At full capacity, yes.

22 Q. Okay. And, I'm sorry, you said you'll be  
23 amending Iowa and South Dakota to be consistent with the  
24 18 million?

25 A. They may or may not have been amended. I would

1 have to check. But the system will be designed and if  
2 we receive a permit from those two states will reflect  
3 18 million tons.

4 Q. And have you secured all of the pore space, or  
5 whatever your phraseology is, the secure sequestration  
6 sites to accommodate 18 million metric tons per annum?

7 MR. BENDER: If you know.

8 A. Yes.

9 MR. BENDER: If you know.

10 A. Yes.

11 Q. All right. And for how many years do you  
12 believe have you secured pore space if 18 million -- on  
13 18 million, etcetera?

14 MR. BENDER: Once again, if you know.

15 A. I don't know the specifics, but we've acquired a  
16 significant amount of pore space that will store 18  
17 million tons for a significant period of time.

18 Q. Do you have -- and, again, if this isn't part of  
19 your area, I'm not trying to be difficult on you, but is  
20 there someone at Summit or is there a contractor that  
21 would have that data to give an idea for how many years  
22 the CO2 on this pipeline could move and be accommodated  
23 in the storage space you have?

24 MR. BENDER: Objection. Relevance.

25 Q. Well, how long are you approving this project

1 for? It would be nice to know. I mean, what's the  
2 capacity? Is this a two-year project? A 20-year  
3 project? I'd like to know.

4 ALJ HOGAN: The objection is noted. I'll allow  
5 him to answer if he knows, but I get the impression he  
6 might not know.

7 A. Well, we do have expertise. And it depends on  
8 how many injection wells you permit. That's within the  
9 NDIC jurisdiction. Those permit applications are in  
10 progress so I think it's premature. We do have pore  
11 space that you can conjecture can store x amount of CO2,  
12 but at this point we haven't made a determination how  
13 many applications we're going to file for each  
14 injection, each site, so I think it's premature to  
15 speculate.

16 Q. Okay. But would that information -- I mean,  
17 certainly you would have geologists or folks on staff or  
18 contract that would be able to run that analysis. Is  
19 that fair?

20 A. Yes.

21 Q. All right. Now, on page 10, section 2.2.1,  
22 Purpose and Need, so the purpose and need for your  
23 project contains a little over half a page. Is there  
24 any other portion of your application that specifically  
25 deals with the purpose and need for your proposed

1 project?

2 A. I didn't reread the application before today so  
3 I -- I can't remember if it does or does not.

4 Q. All right. And is it fair, sir, that your pitch  
5 to this Commission as why to this is, quote/unquote,  
6 "needed" is so that the ethanol plants in other states  
7 that don't pay taxes into North Dakota can have a  
8 pipeline to transport their carbon dioxide?

9 A. That's not my pitch.

10 Q. All right. So what -- if you had to summarize  
11 in your own words the need, not your desire, but the  
12 need, the actual need for this project within North  
13 Dakota only, what would that be?

14 A. Well, as we've stated in previous hearings,  
15 there's a global movement to decarbonize, there's a  
16 United States movement to decarbonize. And so for the  
17 ethanol plants, they have concerns about their  
18 longevity. One option for them to ensure that they can  
19 sustain their business for years to come is to reduce  
20 their carbon intensity score so they're on the front end  
21 of that decarbonization effort. And by doing that, that  
22 opens up markets in the low-carbon fuel markets,  
23 opportunities for them in the low-carbon fuel markets,  
24 which then maintains their longevity and, by extension,  
25 creates a market and a demand for corn growers in North

1 Dakota. That not only -- only keeps the prices of corn  
2 elevated, I think it also maintains the land values for  
3 those growers and, as I mentioned earlier, it maintains  
4 a livelihood for direct employees and indirect employees  
5 of that ethanol facility.

6 Q. So do you agree then that the balance here for  
7 whether or not there are any adverse effects upon the  
8 welfare of the citizens of North Dakota is foiled or  
9 balanced against the profits of the single ethanol plant  
10 in North Dakota?

11 A. Would you repeat that, please?

12 Q. Yes. You would -- based on the need that you  
13 just stated, which is to lower carbon index scores of  
14 ethanol plants, and we've already established there's  
15 only one, the Commission's role then is to determine is  
16 it more important to not subject 320 miles of North  
17 Dakota land to this project or is it more important that  
18 the wealthiest man in North Dakota continues to profit  
19 at his ethanol plant?

20 A. I don't understand the question other than I  
21 will add that it's not only Tharaldson. I mean, as we  
22 construct this pipeline, it goes into operation, then  
23 we'll have significant tax burden, that obviously we  
24 understand and are -- fully intend to comply with, and  
25 that doesn't just benefit the growers that support the

1 ethanol, the Tharaldson Ethanol plant, or the employees  
2 of the ethanol plant. Those taxes go to the State of  
3 North Dakota.

4 Q. All right. And, again, so we're talking about  
5 taxes that Tharaldson Ethanol plant is already paying,  
6 workers it's already paying, and that is the big need,  
7 as opposed to whether it be one or a hundred or 200  
8 landowners that don't want this. How do you think the  
9 PSC should pick as between a single ethanol plant or the  
10 landowners who you have heard that oppose this project?

11 A. And, again, I may have been unclear in my  
12 response, Mr. Jorde. Summit will pay those taxes.  
13 Those are in addition to any taxes that Tharaldson will  
14 have to pay. And, again, as I also stated previously,  
15 we've reached agreement with 70 percent of the  
16 landowners or the mileage in North Dakota. So I think  
17 that's a majority. Do we still have an aspiration to  
18 reach agreement with the remainder of the landowners?  
19 Absolutely.

20 Q. All right. So if 30 percent remain, there's  
21 approximately 96 miles of landowners that you at least  
22 haven't been able to convince that this is a good thing  
23 for them, and so we're weighing those 96 miles of  
24 hundreds of landowners again versus the benefits to the  
25 Tharaldson Ethanol plant; correct?



1           A.   That's your conclusion, Mr. Jorde.

2           Q.   All right.   Well, that's -- do you have anything  
3   to add?   Because all you've told me is about Tharaldson  
4   ethanol plants, their employees, and then the taxes  
5   you're going to pay.

6           A.   Well, I think it's a mischaracterization to say  
7   we haven't been able to convince.   We have ongoing  
8   conversations with landowners every day, especially  
9   those landowners that are represented by attorneys that  
10   allow us to have conversations with either the attorneys  
11   themselves or the landowners.

12          Q.   Okay.   I feel like that was a dig towards me,  
13   and maybe it was, maybe it wasn't.   I'm right here.   We  
14   can talk about anything you want.

15                So, again, do you think it's the job of the 96  
16   miles of North Dakotans who don't want this or haven't  
17   signed up to take one for the team, for the ethanol  
18   plants in South Dakota, Nebraska, Iowa, Minnesota?

19          A.   I believe I've answered your question, Mr.  
20   Jorde.

21          Q.   All right.   I think you have too.

22                All right.   Now, the significant tax -- is it  
23   true that personal property in the term of a pipeline is  
24   depreciated on a 7-year schedule?

25          A.   I'm not --

1 MR. BENDER: Objection. Relevance.

2 A. -- a tax professional.

3 Q. All right. Well, as the chief operating  
4 officer, do you keep track --

5 ALJ HOGAN: Hang on, hang on.

6 MR. JORDE: Oh, I didn't hear it. Sorry.

7 MR. BENDER: Objection. Relevance.

8 ALJ HOGAN: Can you address relevance?

9 MR. JORDE: Yeah. He just said the need for the  
10 project is they're going to pay taxes and so now we're  
11 going to get into the taxes.

12 Q. (BY MR. JORDE) So you don't pay real property  
13 tax, sir, on land that you don't own; correct?

14 A. We have taxes associated with ownership of the  
15 asset.

16 Q. All right. I want to divide up real property  
17 and personal property. So a landowner pays real  
18 property tax, bill comes from the county assessor. And  
19 you, your company, would only pay real property tax on  
20 land that it permanently acquires for, for instance, the  
21 valves or something like that; correct?

22 MR. BENDER: If you know.

23 A. Again, I'm not a tax professional.

24 Q. All right. Well, who at your company, other  
25 than the chief operating officer, can tell us about the

1 taxes that you just claimed were the big benefit for  
2 this project?

3 A. I said a benefit. And we have a vice president  
4 of tax.

5 Q. All right. So do you know or would you agree  
6 that a pipeline is depreciated as personal property much  
7 like a combine or other things, but a pipeline schedule  
8 is seven years?

9 A. Again, I'm not a tax professional.

10 Q. All right. So for the taxes that you're  
11 claiming you're going to pay, you're not qualified to  
12 really talk about that; correct?

13 A. I just said I'm not a tax professional. We did  
14 have Ernst & Young, under the guidance of our tax  
15 professional, prepare an economic impact study or  
16 analysis, and those taxes were determined by Ernst &  
17 Young.

18 Q. Is that the same Ernst & Young that was found  
19 that its CPAs were cheating on the entrance exam and --  
20 did you hear those stories? Is that the same Ernst &  
21 Young you're relying on?

22 MR. BENDER: Objection.

23 ALJ HOGAN: Yeah, I agree.

24 MR. BENDER: Argumentative.

25 MR. JORDE: Okay. Well, I'm just -- the

1 validity of the statement, I guess, but okay.

2 ALJ HOGAN: And, Mr. Jorde, it's about 20  
3 after 12. If you've got a good spot to break, if we  
4 could break for lunch.

5 MR. JORDE: Whenever Your Honor wants.

6 ALJ HOGAN: Well, whether your --

7 MR. JORDE: Well, I mean, I can break now.

8 ALJ HOGAN: Okay.

9 MR. JORDE: It really doesn't matter.

10 ALJ HOGAN: All right. Why don't we do that.  
11 We'll take our lunch break and try to reconvene around  
12 1:00.

13 MR. JORDE: Thank you.

14 (Recess)

15 ALJ HOGAN: All right. It's 1:00 so we're going  
16 to get started again.

17 Mr. Jorde, you can continue.

18 MR. JORDE: Thank you, Your Honor.

19 Q. (BY MR. JORDE) Mr. Powell, we took a little  
20 break. Are you ready to go, sir?

21 A. I am.

22 Q. And you understand you're still under oath as  
23 you were before?

24 A. I do.

25 Q. All right. Thank you.

1           I think we left off, we were talking a little  
2     bit about taxes. Are you aware, sir, if there's any  
3     moratorium, like a ten-year moratorium, where you do not  
4     have to pay taxes during construction and then for a  
5     period of ten years on personal property?

6           A. I am not familiar with the specifics of North  
7     Dakota tax law, no.

8           Q. All right. And in terms of the taxes you had  
9     mentioned you were going to pay, were there real  
10    property taxes on land owned that you believe you're  
11    going to be paying?

12          A. Again, Mr. Jorde, I don't -- I'm not the tax  
13    expert.

14          Q. All right. That's fine.

15                 I want to touch on the tiling just a little bit.  
16    Is it true that it would be your preference that the  
17    pipeline would be located in ground that didn't have  
18    tiling?

19          A. No.

20          Q. All right. For a landowner who doesn't have  
21    tiling, and let's say your project is approved, and then  
22    later in the future they want to put tiling in and have  
23    -- and realize now that the cost of that is more  
24    significant because of the work-arounds of the existing  
25    pipeline, is part of Summit's commitment to pay for that

1 increased cost of the landowner?

2 A. I think it's prudent upon the landowner. I  
3 don't think -- it's prudent upon the landowner to work  
4 with us now. And as Mr. Ellingson said, that we are  
5 working with all landowners that want to discuss tile  
6 future plans, current plans, current tile, and we're  
7 open to those conversations to potentially put in  
8 headers around the pipeline that would allow a landowner  
9 to install tile in the future or some type of  
10 accommodation like that. But it would be specific to  
11 each landowner.

12 Q. And I appreciate that answer. I just want to  
13 make sure we're on the same page. Does that mean -- and  
14 tell me if I'm wrong or right, but does that mean if a  
15 landowner, for instance, wouldn't choose to engage in a  
16 conversation now, pipeline gets approved and then  
17 they're, like, "Well, hey, we want -- we'd like to put  
18 in tiling," is Summit committed to paying for the  
19 increase in cost?

20 A. We're not going to penalize a landowner because  
21 they've -- we haven't signed an easement with them or  
22 that may come down the line if it's dependent -- if  
23 their willingness to work with Summit is dependent upon  
24 us receiving a permit to construct from the PSC, we'll  
25 have that same conversation we would with them then that

1 we will now. And, again, we'll take it on a  
2 case-by-case basis with the landowner. But as soon as  
3 they let us know what their plans are, the more quickly  
4 we can accommodate. Because as you can appreciate,  
5 we're -- we have construction contractors under contract  
6 now that we're planning how to execute this project and  
7 any change late in the game makes a difference. I'm not  
8 saying we won't accommodate -- we will or won't  
9 accommodate, but the conversation won't change. It's  
10 just preferential to have it sooner than later.

11 Q. All right. But is that another way of saying  
12 that you're not going to -- the company's not willing to  
13 go on the record and say "Yes, if our pipeline is  
14 located there and that has increased the landowner's  
15 cost of tiling after the fact," are you not willing to  
16 commit to paying that difference due to the location of  
17 your pipeline?

18 A. You're asking me to speculate because I don't  
19 know what their cost is. And as you know, we've  
20 contracted with Ellingson. We know generally what their  
21 costs are. And we've agreed that if there's existing  
22 tile in place, we'll accommodate the repair,  
23 replacement, regardless of cost, but I'd have to take  
24 each future case -- or each future situation on a  
25 case-by-case basis.

1           Q. All right. Moving to page 11, section 2.2.3 of  
2 your application, it's entitled "Capacity," we've  
3 discussed the 18 million metric tons per annum. And  
4 your application states that 0.54 of those million  
5 metric tons per annum will originate from the Tharaldson  
6 plant; is that correct?

7           A. That's based on Tharaldson's current production  
8 profile. That's correct.

9           Q. All right. And if we did the math of dividing  
10 0.54 into the 18 million, would you agree with me  
11 that's, roughly, 3 percent of the capacity would be the  
12 Tharaldson plant?

13          A. You can do that math. I would suggest that  
14 currently we have about 9 million tons under contract  
15 and so that half a million tons per annum prorated.  
16 Tharaldson and other plants, as we reduce the carbon  
17 intensity, help them reduce their carbon intensity  
18 score, they may make expansions to push more production  
19 from their facilities so I can't speculate what their  
20 production would look like in two years, three years,  
21 or five years. Currently, it's a half a million tons,  
22 roughly, per year against the 9 million tons that we  
23 have under contract.

24          Q. When we were talking about, from your  
25 standpoint, what some of the benefits, potential



1     benefits, might be, I think you were making the  
2     statement that you believe the price of corn may -- or  
3     the price that an ethanol plant could pay a farmer for  
4     its corn, its grain could go up if your project is put  
5     in place, were you making that connection, or no?

6           A.    I didn't mean to infer they could go up.  I mean  
7     to infer that it's my understanding -- and, again, I'm  
8     not an agriculture expert, but our parent company has  
9     been farming for three decades.  It's my understanding  
10    that with the inception of ethanol plants, that has  
11    helped buoy -- one factor that's helped buoy the  
12    commodity prices for corn.

13          Q.    Okay.  But I just want to be clear, you're not  
14    inferring to the Commission that, but for this project  
15    -- so if this project doesn't go, then the existing  
16    farmers were going to get a lower corn price.  You're  
17    not trying to make that connection, are you?

18          A.    I am not.

19          Q.    All right.  For the ground that you seek, is the  
20    permanent right of way, is that 50-foot?

21          A.    Yes.

22          Q.    And then for the temporary easement, is that  
23    easement limited to two years or do you have a time  
24    limitation on that?

25          A.    The temporary easement or workspace is limited

1 until the project is complete. That particular tract or  
2 parcel of property has to be reclaimed and to the  
3 satisfaction of the requirements set forth by the PSC,  
4 if we receive a permit, and the landowner.

5 Q. Okay. So in terms of using the word "temporary"  
6 or "temporary workspace," that, to be fair, is kind of a  
7 roving deadline based upon completion, which can be  
8 delayed, acts of God, labor shortages, or other things;  
9 correct?

10 A. It could be. Obviously, we want to get in and  
11 get out as quickly as possible to minimize the  
12 disruption to the landowner.

13 Q. And the access easement, is it true that -- or  
14 do you believe that that allows you to enter the four  
15 corners of a given parcel anywhere that's expedient for  
16 you to access the permanent easement?

17 A. No.

18 Q. Do you believe that the access easement has  
19 limitations and, if so, can you tell me what they are?

20 A. Well, there's temporary access and there's  
21 permanent access, and those are stipulated with each  
22 easement agreement for each parcel of land. And  
23 typically we want to stay on the right of way. So that  
24 includes the permanent and temporary workspace. And  
25 then access to that right of way, whether temporary or

1 permanent, is agreed to with each landowner.

2 Q. Okay. But for the permanent access easement, is  
3 it your understanding that you are not confined to  
4 ingress and egress on the 50-foot permanent easement?  
5 The access easement allows you to access the permanent  
6 easement from whichever direction is most convenient?

7 A. Well, that's clearly stipulated in the easement  
8 agreement. So if it's a road or it's an access through  
9 a gate, that will be clearly stipulated in each easement  
10 agreement. So we have no flexibility there without --  
11 without permission from the landowner.

12 Q. All right. So you believe that a landowner  
13 then, in negotiation or conversation with you, can limit  
14 the portion of their property that is potentially  
15 affected via access?

16 A. The landowner has all the control in this  
17 discussion, but obviously we're not going to -- say  
18 obviously. We would not enter an agreement with a  
19 landowner if we couldn't access the property to  
20 construct. And we'll do that in the most minimally  
21 disruptive fashion, but we have to have access to  
22 construct.

23 Q. And when you say the landowner's in control,  
24 you're of course aware that if you condemn the  
25 landowner, there is no re-negotiation of the easement

1 terms; right?

2 A. I wasn't referring to condemnation.

3 Q. All right. Well, when you say -- when you say,  
4 sir, the landowner's in control, I guess just help me.  
5 What does that mean? Because that's the opposite of my  
6 understanding.

7 A. You were talking about easement agreements. And  
8 we're having a discussion with a landowner at this point  
9 in the project. They can dictate where the access is,  
10 just like, depending on -- on where, they've had an  
11 opportunity to tell us where they prefer to have the  
12 pipeline on their property.

13 Q. Section 2.2.13 on page 16 is entitled "Landowner  
14 Notification, Easement, Acquisition and Compensation."  
15 Why did you believe it was important for you to put some  
16 description about easement and acquisition and  
17 compensation in your application?

18 A. I don't know the relevance of that -- of the way  
19 that sentence is worded. I mean, I think you're aware  
20 of the compensation structure.

21 Q. Now, the project schedule -- this is Section 3  
22 on page 17 -- would you agree the project schedule,  
23 you're not on track to complete right of way acquisition  
24 in October of 2023?

25 A. Well, our current schedule doesn't necessarily

1 dictate we start construction in October of 2023.

2 Q. Okay. And so when it says "The MCE project will  
3 be built in 2023 and 2024," is it fair to say at this  
4 point in the time of year that you will not be starting  
5 construction, if approved, in 2023?

6 A. I think it's to be determined. So if -- you  
7 know, obviously we have to have the ability to construct  
8 in all five states. We prefer to have the ability to  
9 construct in all five states, but we don't necessarily  
10 have to start construction simultaneously in all five  
11 states. So if we choose -- if we have -- if we receive  
12 a permit from the PSC in North Dakota and we have the  
13 land acquired and we choose to -- and we have our  
14 permits, local permits, and we choose to start  
15 construction, we may. And if we don't, we may choose to  
16 defer that until '24.

17 Q. If only North Dakota PSC was to approve your  
18 application, would you still construct the project?

19 A. I don't think that's going to be the case so  
20 that's speculation that I don't feel I should respond  
21 to.

22 Q. Okay. Well, a moment ago you had -- I'm just  
23 following up on your answer -- you had said that you  
24 prefer to have approvals in all five states. So that  
25 leads me to infer that there's a possibility where you

1 would move forward if you didn't have all five states.  
2 Can you clarify that?

3 A. That's an option for the company.

4 Q. That's an option you've considered?

5 A. When we're -- when you're executing a project of  
6 this size and scale, Mr. Jorde, my job is to look at all  
7 contingency scenarios.

8 Q. You've got a section on project alternatives,  
9 and there's a "No Action Alternative," and the no action  
10 alternative is essentially the status quo; correct?

11 A. I don't remember the definition.

12 Q. Okay. Well, I mean no action basically meaning  
13 you don't do this project and we are where we are. Is  
14 that fair?

15 A. There's always a risk that we don't receive a  
16 permit from the PSC in North Dakota.

17 Q. And then you talk about system alternatives and  
18 you tell the Commission that you don't believe -- well,  
19 let me just read this and ask if you agree with this.  
20 It says, quote, "These existing pipelines do not provide  
21 a system that could be utilized for transportation of  
22 CO2 from industrial sources in Iowa, Minnesota,  
23 Nebraska, South Dakota, and North Dakota."

24 Do you agree with that?

25 A. Which pipelines are you referring to?

1           Q.   The existing CO2 pipeline infrastructure in  
2   North Dakota.

3           A.   Correct.

4           Q.   And, again, by you including all the other  
5   states, that is your way of saying that if all states'  
6   CO2 are going to be shipped through and get into North  
7   Dakota, that the existing CO2 pipelines could not handle  
8   that; correct?

9           A.   That's correct.

10          Q.   But the existing CO2 pipelines could handle the  
11   .54 million metric tons per year of the Tharaldson  
12   plant?

13          A.   That's assuming that those project -- those  
14   pipelines -- I'm assuming the one you're referring to is  
15   on the east side of Bismarck, that's assuming that you  
16   could lay a pipeline to interconnect with that and that  
17   company would be willing to then acquire pore space and  
18   accommodate Tharaldson.

19          Q.   But wouldn't you agree that if Tharaldson would  
20   hook up with that pipeline as opposed to coming down  
21   into South Dakota, then back up into North Dakota and  
22   then to the sequestration point, that that would affect  
23   less landowners and be a shorter route?

24          A.   Mr. Jorde, my job is to manage this project.  
25   And we've looked at the most -- what we feel is the most

1 -- is the optimal route in North Dakota to make sure  
2 that we're routing around all constraints that they've  
3 mentioned in the previous two hearings and accommodating  
4 landowners to be able to reach an agreement with them.  
5 We feel this is the optimal route.

6 Q. Would you agree, at 12 million capacity per  
7 metric ton, and I realize you're going to 18, but at 12  
8 million per annum, with the 45Q tax credits, that would  
9 lead to over \$1 billion a year in tax credits to you?

10 A. Again, I'm not going to speak to the commercial  
11 arrangements we have with our ethanol partners.

12 Q. Okay. Well, if we just do the math, sir, on 12  
13 million times an 85-metric-ton tax credit, you wouldn't  
14 disagree that's over \$1 billion a year every year to  
15 you?

16 A. That's the math, but you said to us. That's an  
17 assumption that Summit would reap 100 percent of the  
18 benefit of that tax credit. And I'm just saying that I  
19 don't have -- I'm not as familiar with our commercial  
20 obligations -- our commercial agreements with these  
21 plants.

22 Q. But do you understand -- forget about the  
23 agreements with the plants. Do you understand that it's  
24 the entity that owns the capture equipment that receives  
25 the 45Q tax credits?



1 MR. BENDER: If you know.

2 A. That may be -- that may be one requirement, yes.

3 Q. All right. And Summit, you, Summit, or a  
4 related Summit company, will be owning the capture  
5 equipment; right?

6 A. With the existing plants, that's correct.

7 Q. Now, you have "Transportation Alternatives," and  
8 you say that "CO2 transportation by tanker truck or rail  
9 tankers is technically feasible but is better suited to  
10 the movement of small quantities of gas."

11 Do you stand by that?

12 A. Yes.

13 Q. And so you agree that CO2, to the extent that  
14 anyone decides it should be transported, could be  
15 transported by truck?

16 A. I think if -- if -- if the -- if the State wants  
17 to subject, you know, the public to an exorbitant amount  
18 of tanker trucks on the highway to move 12 million tons  
19 of CO2, it's feasible.

20 Q. And in terms of the benefits, when you talk  
21 about, you know, taxes and economic benefits, you would  
22 agree that if it's trucked and every one of those trucks  
23 is buying fuel within North Dakota, is paying wheel tax  
24 within the state of North Dakota, has a truck driver  
25 that's employed and contracted, that that would generate

1 far more of an economic benefit than your pipeline?

2 A. Well, I don't know that to be true. But I also  
3 think that's an -- that's -- that hypothetical may be  
4 challenged, because I'm sure you understand the truck  
5 shortage in this country at this period of time and  
6 getting that many tanker trucks and deploy them in North  
7 Dakota, I think, would be an extreme challenge.

8 Q. You understand that the 45Q tax credits expire  
9 in 12 years? Is that your understanding?

10 A. It's my understanding.

11 Q. So what would be the plan after you're no longer  
12 able to secure tax credits for this project?

13 A. Well, I think once we've generated enough income  
14 to pay back our debt associated with the initial  
15 construction, we feel comfortable that our cash flow  
16 will sustain the business beyond 12 years without the  
17 tax credit.

18 Q. And so what's the -- what would be the source of  
19 cash flow be but for the tax credit?

20 A. Again, we're getting into the commercial  
21 agreements, arrangements with the plants, and I'm not  
22 the right person to speak to those.

23 Q. Who would be the right person to speak to that?

24 A. Our chief commercial officer.

25 Q. And that person's name is?

1           A.   Jim Pirolli.

2           Q.   You've got a section where you've identified 69  
3 areas, you call them "isolated finds," and it says that  
4 "are resources that do not possess sufficient data  
5 yield."

6                   Is that another way of saying you don't have  
7 enough information to know if those are problem areas?  
8 Or can you explain that?

9           A.   I don't remember that specific section.

10          Q.   All right. In terms of -- you're familiar with  
11 avoidance areas; is that correct?

12          A.   Yes.

13          Q.   And I noticed in your Iowa filings, that  
14 sorghum, where sorghum is planted is an avoidance area.  
15 Do you have any knowledge why that would be?

16          A.   Again, I'm not the expert. I think Mr. Schmidt  
17 testified in Bismarck on our behalf and he's our  
18 environmental expert.

19          Q.   Okay. Do you recollect or in any of your  
20 conversations of why sorghum would be a crop to avoid  
21 for --

22                   MR. PELHAM: I'm going to object.

23                   MR. BENDER: Object. Relevance.

24                   MR. PELHAM: This has to do with Iowa and not  
25 North Dakota.

1 ALJ HOGAN: I agree.

2 MR. JORDE: All right. All right.

3 Q. (BY MR. JORDE) In terms of avoidance areas or  
4 avoidance crops, are there any crops that shouldn't be  
5 planted or you prefer not to be planted in North Dakota  
6 where a CO2 pipeline would be located?

7 A. Not to my knowledge.

8 Q. And in terms of SCS Carbon Transport, you are  
9 contracting out, you know, obviously the tiling work,  
10 the construction, the environmental analysis. You  
11 basically don't have people on staff doing that. You  
12 are relying on third-party contractors to assist with  
13 that investigation and data gathering. Is that fair?

14 A. Well, I think like most major project  
15 organizations, whether you're with a large company like  
16 Energy Transfer or a smaller company like ours, we have  
17 subject matter experts and professionals on staff and we  
18 utilize consultants to support that staff.

19 Q. In terms of -- on page 37, it's "Required  
20 Permits and Approvals," have you, meaning the company,  
21 obtained any approvals that you need from the Federal  
22 Government, either the Army Corps or the U.S. Fish and  
23 Wildlife yet?

24 A. Those are in progress.

25 Q. And then what about North Dakota state-specific

1 permits? Have you obtained any of the North Dakota  
2 state-specific permits that are required for this  
3 project?

4 A. You're referring to the PSC?

5 Q. The PSC, the Department of Environmental  
6 Quality, the State Historic Preservation Office, and  
7 then the Department of Water Resources.

8 A. We have not.

9 Q. And what about from the county flood plain  
10 administrators, those flood plain development permits,  
11 do you have any of those?

12 A. Specifically, I don't remember, Mr. Jorde. As I  
13 mentioned earlier, we are in the process of applying for  
14 the local permits now. Because as you probably know,  
15 they have a shorter timeline.

16 Q. Shorter timeline meaning --

17 A. For approval.

18 Q. -- an expiration date on them or --

19 A. No. For approval.

20 Q. Okay. The faster approval process?

21 A. Correct.

22 Q. Okay. Now, the emergency management, I know  
23 that's been a topic of concern. Has Summit met with all  
24 the voluntary -- volunteer firefighters, those  
25 departments, the permanent departments, and EMS along

1 the proposed route?

2 A. I don't know that it's been a concern. However,  
3 we do have a gentleman on our staff who's been on our  
4 staff for over a year who is an expert in emergency  
5 response, and he's a former firefighter, and he has met  
6 with officials, when available, in all 82 counties,  
7 including 10 counties in North Dakota. And that's at  
8 this point -- typically at this point in the project,  
9 typically emergency planning professionals, as we get  
10 closer to the project, then, yes, we'll meet with first  
11 responders.

12 And then we have an obligation to train those  
13 responders, make sure that we understand what resource  
14 needs they have, what -- specifically to equipment, and  
15 then we'll actually conduct drills before we place the  
16 pipeline in operation so we're compliant with PHMSA  
17 guidelines.

18 Q. And your emergency management plan, it's got a  
19 watermark draft on it, but the one you submitted as part  
20 of your application in the appendix, is that your  
21 current version of that plan?

22 A. Those plans evolve. And so those plans evolve  
23 as we get more information, as we acquire more right of  
24 way, as we understand more clearly the issues along the  
25 pipeline route, and as we have conversations with those

1 first responders and emergency planning professionals.

2 Q. Will you be providing electric vehicles to all  
3 of the local first responders knowing that, if there is  
4 a CO2 rupture, internal combustion engines may not work  
5 properly?

6 A. Well, I think what's important is that we train  
7 first responders that the primary response is  
8 evacuation, is to contain the area, so it's not to drive  
9 a vehicle into the area where a plume may exist. So  
10 electric vehicles I don't think would be of value. But  
11 what would be of value would be CO2 sensors, fresh air  
12 packs, things of that nature, that would protect first  
13 responders in the event -- in the unlikely event that we  
14 had a release.

15 Q. How many permanent employees dedicated to  
16 emergency response will be physically located in the  
17 state of North Dakota should this be approved and  
18 constructed?

19 A. So at this time the preliminary plan -- and I  
20 say "preliminary" because, again, we've got to make sure  
21 that, once we acquire a hundred percent of the right of  
22 way, we understand the full pipeline route and the risk,  
23 we understand the conditions from the PSC. So right now  
24 the preliminary plan is 35 employees, and most of those  
25 employees will be trained in emergency response.

1           Q.   The 35 employees, though, where would they be  
2   located?   I mean, give me an idea, what are these people  
3   doing?

4           A.   Well, they're at various points along the  
5   pipeline.   So along the full pipeline we'll have a  
6   damage prevention group, and they'll patrol the  
7   pipeline.   And so we'll have folks stationed in  
8   Bismarck.   We'll have folks stationed in the  
9   sequestration site.   The pump station won't be manned  
10   24/7, but it will have personnel there periodically.   So  
11   we'll have people that are stationed along the full  
12   route of the pipeline, not permanently but periodically.

13          Q.   Okay.   And of the 35 persons, not every one of  
14   those 35 is exclusively dedicated to any type of  
15   emergency management.   Is that fair?

16          A.   That's fair.

17          Q.   And is it also fair that you rely upon the local  
18   EMS, emergency management response, firefighters,  
19   police, to be the first responders in case of any leak,  
20   rupture, or spill?

21          A.   Well, like -- like many other pipelines in  
22   operation in North Dakota and other states, they  
23   typically are part of the first response, or they are  
24   first responders.   The difference here, Mr. Jorde, is  
25   CO2 is not flammable or combustible, so at least we're



1 not worried about an emission source -- or ignition  
2 source, I'm sorry, an explosion or fire. So the  
3 response is different. We're also not worried about  
4 overland flow like with crude oil, like with refined  
5 product, so the response is different.

6 Q. You're aware, obviously, aren't you, that CO2 is  
7 odorless, colorless, and unlike oil, crude, that we  
8 could see, you may not even know that it's in the  
9 vicinity?

10 A. It is odorless and colorless, but if there is a  
11 release of CO2, you will likely see a plume that is  
12 white in color because that's moisture that's entraining  
13 the CO2.

14 Q. Would you agree to, like natural gas, add an  
15 odorant or an ingredient so that, if there was a  
16 release, it would be immediately obvious to any person?

17 A. Well, I think we think in our investigation to  
18 this point, that adding an odorant may be more risky in  
19 that it -- how it would react with the CO2 and the  
20 condensation of the CO2, even though it's nitrogen and  
21 oxygen, other than the 98 percent or so pure -- of  
22 purity of the CO2 or purity of the CO2, so how does  
23 that impact corrosion, the development of corrosion,  
24 etcetera. So we're still conducting that analysis. But  
25 as you know, there are over 5,000 miles of CO2 pipeline

1 in this country. I don't think any of them are odorized  
2 at this point.

3 And then, secondly, even most natural gas  
4 pipelines, at least transmission lines, are not  
5 odorized. So there may be some residential  
6 interconnects that are odorized but most transmission  
7 lines are not.

8 Q. So my question was would you be willing to add  
9 an odorant which would help with the detection and help  
10 with the safety aspect?

11 A. I would question whether it would help with  
12 detection because, again, in the unlikely event of a  
13 release, the plume would be sudden and it would  
14 dissipate -- depending on environmental conditions,  
15 dissipate very, very quickly. So at this point I would  
16 not add an odorant to the stream.

17 Q. And the person or persons at Summit who are in  
18 charge of giving you the data on that, who would those  
19 persons be?

20 A. They're our chemical engineers.

21 Q. All right. And is that a contracted firm?

22 A. They are.

23 Q. And what's the name of that firm?

24 A. Trimeric.

25 Q. Trimeric?

1           A.   Trimeric.

2           Q.   All right.  Thank you.

3                   In terms of the plume modeling or dispersion  
4 modeling, the Commission, I believe, asked for that at  
5 Gwinner.  Have you turned that over to them yet?

6           A.   Well, we're willing to turn it over.  I  
7 understand there's -- there's a discussion with yourself  
8 about the ability to turn that over.

9           Q.   Okay.  What's the particular reason why you're  
10 not sharing that model publicly?

11                   MR. BENDER:  Objection.  I think it calls for --  
12 I don't know if you'd call it a legal conclusion, but  
13 he's getting into issues that Mr. Jorde and I and  
14 Mr. Bakke and I are discussing, and I don't think it's  
15 appropriate for this witness to be discussing this in an  
16 open forum.  We should be discussing this between one  
17 another in trying to resolve it.

18                   MR. JORDE:  Well, that assumes that there's even  
19 a valid objection to not producing it.  My question is:  
20 why don't they produce it?  Why doesn't the company  
21 produce it?  I mean, what's the reason?

22                   ALJ HOGAN:  I feel like we've gone over this at  
23 both other hearings.  This is protected information by  
24 PHMSA and others and that -- my understanding is Summit  
25 is willing to produce it if they're granted trade secret

1 or confidentiality protection of that information so --  
2 and it's -- I know it's not necessarily come up, and I  
3 think we may discuss it at the end of the hearing, but  
4 there's been discussions about the motion -- filing a  
5 motion for that type of protection, that information.

6 So I think that issue has already been discussed  
7 and I think we can move on.

8 MR. JORDE: Well, I appreciate that. I would  
9 like to just get -- I mean, I'm trying to make a record  
10 here -- from the company, is that the company's  
11 statement that they believe this is protected trade  
12 secret, yes or no, and then I'll move on.

13 MR. BENDER: If you know.

14 A. Well, as PHMSA characterizes pipelines, they're  
15 critical infrastructure and so there are things like  
16 dispersement modeling that should not be shared because  
17 of that security risk.

18 Q. (BY MR. JORDE) Okay. So is it your position  
19 that no one would know that these are risky unless they  
20 saw a dispersion model analysis?

21 A. No.

22 Q. Okay. So where's the big secret? I mean, we  
23 all know these are risky; right?

24 MR. BENDER: Your Honor, he's basically ignoring  
25 your instruction.

1           ALJ HOGAN: Yes. We need to move on. We've  
2 discussed this at the other hearings.

3           MR. JORDE: All right.

4           ALJ HOGAN: And I think we're going to have  
5 further discussions when the motion is filed. So I just  
6 don't think it's a good use of our time today.

7           Q. (BY MR. JORDE) Section 7.4 is entitled "Use of  
8 Citizen Coordinating Committees." And your application,  
9 on page 44, says, quote, "The Applicant does not  
10 anticipate the use of a citizen coordinating committee,"  
11 end quote. Why is that?

12          A. Personally, I'm not familiar with what the --  
13 that committee would do or how it would support the  
14 project.

15          Q. Well, would you be open to having a group of  
16 citizens like the folks here participating in these  
17 hearings having a committee and sharing their concerns  
18 and working with a dedicated person from your firm on a  
19 weekly, monthly basis?

20          A. Well, we have -- we've had numerous public  
21 meetings. We've had numerous meetings with individual  
22 landowners. So it's my position that landowners have  
23 had input into this project for quite some time,  
24 specifically around routing, specifically around the  
25 depth of pipe. So in my opinion, that committee is not

1 necessary because we give every landowner that's willing  
2 to talk with us an opportunity to provide input.

3 Q. And what do you base that on, sir? Because with  
4 all due respect, you're not a land agent, you're not in  
5 the field, and so --

6 A. I am in the field, Mr. Jorde.

7 Q. Okay. When last did you talk to a landowner  
8 that hasn't already signed an easement?

9 A. Two weeks ago.

10 Q. All right. And were those -- why hadn't that  
11 person signed an easement yet?

12 A. They did sign an easement.

13 Q. Okay. And do you think that if the landowners  
14 only want -- if they would just listen to you, then  
15 there would be no opposition?

16 A. I didn't say that. What I'm saying is we have  
17 over 4,200 landowners on this project and so obviously I  
18 can't speak with all of them, but our organization, our  
19 staff, both contract staff and Summit badge staff, have  
20 spent a lot of time meeting with landowners and -- and  
21 welcome the opportunity. Can we meet with all 4,200 on  
22 a regular basis? We cannot. But when we have the  
23 opportunity and when someone's expressed an interest,  
24 then we do that.

25 I would also say that, by and large, we think

1 our agents are qualified to have those general  
2 conversations. And then if there's a question specific  
3 to drain tile or specific to construction practices or  
4 something of that nature, then they bring in a subject  
5 matter expert to talk with the landowner.

6 Q. Earlier when I was asking you about pressures,  
7 you had stated that the lower range of the pressure and  
8 the higher range of the pressure, that if we dropped  
9 below a lower range, there wouldn't be corrosion because  
10 of the dehydration process that the CO2 goes through.  
11 Is that a fair statement?

12 A. Well, I'm assuming -- well, my assumption is  
13 that you think that water may be entrained in the CO2  
14 molecule and that may fall out at lower pressures, when  
15 that's -- the pipeline, other than -- in the unlikely  
16 event of a release is going to stay under the minimum  
17 pressure to keep it in denser supercritical state.

18 Q. But a little bit ago you said that there really  
19 isn't a risk because there will be a white cloud because  
20 of the moisture in the CO2. So is it -- do you  
21 dehydrate and there's no moisture or is there moisture?

22 A. No. I didn't say there wasn't a risk.

23 Q. Okay.

24 A. If there is a release, then the CO2 obviously  
25 loses pressure, changes phase -- the state of its phase,

1 and then you may see the moisture and the cloud.

2 Q. You've got a section about structures,  
3 residences, schools, places of business within 500 foot  
4 of the pipeline. Where did you get that 500-foot as the  
5 amount, the delineating amount of what to report?

6 A. As Commissioner Christmann corrected me a couple  
7 of hearings ago, that's state law.

8 Q. All right. Very good.

9 And the 500 feet, when we're talking about a  
10 300-foot corridor, how have you reported the 500 feet?  
11 Is it 500 feet from the outer limits of the corridor on  
12 each side or is it 500 feet from the ideal main line,  
13 which would be 150 feet from the 300 max corridor?

14 A. It's from the nearest point of the inhabitable  
15 dwelling to the edge of the corridor.

16 Q. Okay. If a landowner has a residence within  
17 that area and does not get a waiver, are you going to be  
18 forced to reroute?

19 A. Yes.

20 Q. In terms of agricultural production, you say  
21 you'll restore construction -- the construction right of  
22 way to its precondition contours to the, quote, "extent  
23 reasonably practical," end quote. And it's true, sir,  
24 that Summit exclusively determines what reasonably  
25 practical is?



1           A. Well, I think that's typical with all pipeline  
2 projects, but, again, as I mentioned earlier, we're  
3 entering into a long-term relationship with landowners  
4 and we're also bound by whatever conditions the Public  
5 Service Commission place on our permit. So we fully  
6 intend to restore the land, again, as I said, as found  
7 or better condition.

8           Q. And I appreciate that's your intent, but at the  
9 end of the day, you, Summit, as the Applicant, has the  
10 power to determine, as reasonably practical, whether  
11 it's possible or not. That's your determination; right?

12          A. Well, I don't think we have the discretion to  
13 determine whether it's practical. It's something we  
14 have to do.

15          Q. But if it gets to a point where you have  
16 satisfied yourself as Summit "that looks good to me" and  
17 landowner doesn't, what's the process now?

18          A. Well, we'll work with the landowner to try to  
19 ensure that they agree that the property has been  
20 returned and the -- the right of way has been returned  
21 to the previous condition or better.

22          Q. And if you can't reach an agreement, what's the  
23 plan?

24          A. Well, as I said, we're going to have a long-term  
25 relationship with landowners, and I don't want an

1 unhappy landowner if we can prevent it. As I said,  
2 we've got over 4,000 landowners so I'm not going to sit  
3 here and say we won't have a landowner that is -- isn't  
4 unhappy at the end of it, but we'll do everything we  
5 can, reasonable and practical, to make sure that they're  
6 satisfied with the property when we leave.

7 Q. Are you familiar with the term "man camps"?

8 A. I am.

9 Q. And what is that?

10 A. That's a temporary housing facility for -- can  
11 be for anything, but in this case, an infrastructure  
12 project, a linear infrastructure project. If there's  
13 not accommodation within a certain area, then there  
14 could be a man camp, an RV park, something like that  
15 established.

16 Q. And would you agree that historically the data  
17 has shown that where man camps are located, the  
18 resources and draw on law enforcement have seen an  
19 uptick as opposed to prior to the man camp being there?

20 A. We have no intention of having man camps on this  
21 project.

22 Q. How do you plan to house all the construction  
23 workers and the associated contractors throughout all  
24 the phases?

25 A. Well, we've done a labor study and we've looked

1 at accommodations in and around hunting season  
2 especially and when those accommodations are available  
3 and worked with the contractors to ensure that they  
4 don't need temporary man camps.

5 Q. In order to make good on that, that would limit  
6 your construction season; correct?

7 A. No.

8 Q. If it's attached to the hunting season, wouldn't  
9 that limit --

10 A. Well, it just -- it depends, Mr. Jorde, on the  
11 size of the spread, the number of spreads, the sequence  
12 of construction activities. There's a lot of factors  
13 involved. But we've been working with our contractors  
14 for several months on an execution plan and they feel  
15 comfortable that they can accommodate their personnel  
16 without man camps. And we agree with their assessment.

17 Q. Did you used to work for British Petroleum?

18 A. I did.

19 Q. And that's not noted on your qualifications and  
20 experience. Why is that?

21 A. I think that's -- my qualification experience is  
22 general, but I spent 15 years with BP.

23 Q. Were you there during the Deepwater Horizon?

24 A. I was.

25 Q. And you're familiar with that, was essentially a

1 vertical pipeline?

2 A. Well, that's not a correct characterization, but  
3 it was -- it was a blowout preventer that failed.

4 Q. Okay. And so part of the time when you were  
5 there --

6 A. On a well, by the way. It's a little different  
7 than a vertical -- than a pipeline, a linear pipeline.

8 Q. Okay. So you were there and you then have  
9 experience, obviously, with manmade pipelines failing,  
10 welds breaking, and catastrophic conditions occurring?

11 MR. BENDER: Objection. Relevance.

12 ALJ HOGAN: Can you address relevance?

13 MR. JORDE: Well, yeah. Do you want to approve  
14 a catastrophically risky project like this? I mean --

15 THE WITNESS: I can answer, Judge.

16 ALJ HOGAN: Go ahead.

17 A. So there are literally thousands of those  
18 vertical pipelines, as you characterize them, Mr. Jorde,  
19 on the western side of this state, and to my knowledge  
20 -- and I've done a lot of work on the western side of  
21 the state, but not in the last six or seven years that  
22 there's been catastrophic failures. And you're probably  
23 aware of the very, very strong safety record of  
24 pipelines being operated in this country.

25 Q. (BY MR. JORDE) Okay. You would agree with me

1     that if you're the person, if you're the family or the  
2     farm where there is a release, an exposure, it doesn't  
3     matter if 99.9 percent of the rest of it worked fine.  
4     You would agree with that; right?

5           A.    I would agree if you're in an area where there  
6     is a catastrophic failure, yes, that would be correct.

7           Q.    And have you looked into the Satartia,  
8     Mississippi, findings of PHMSA and the failures and  
9     getting to the lack of training for the emergency  
10    responders, and have you developed -- you, Summit --  
11    have developed a plan, a best practices, based on those  
12    failures?

13          A.    Yes.   There are five failures that -- that PHMSA  
14    outlined.   And, in fact, I was in Satartia, Mississippi,  
15    last Monday.   So I am very familiar with the report.  
16    We've ensured that, one, if Denbury, the operator, had  
17    followed PHMSA requirements, that failure may have still  
18    happened, but they would have identified that geohazard  
19    and, hopefully, mitigated that risk, and then if they  
20    would have addressed that potential risk in their --  
21    their dispersement modeling and their response and their  
22    preparedness and their notification, that may have had  
23    an impact.

24          Q.    Is it Summit's plan, like Denbury, to declare  
25    bankruptcy if you have a catastrophic spill here in

1 North Dakota?

2 A. I'm not familiar with Denbury's balance sheet,  
3 but we don't plan on having a catastrophic failure.

4 Q. Well, I understand that, and I hope you don't,  
5 but isn't that an option, to declare bankruptcy?

6 A. That's speculation that I'm not going to  
7 address.

8 MR. JORDE: All right. Just give me a moment.  
9 I am winding down, Your Honor.

10 ALJ HOGAN: Okay.

11 (Pause)

12 MR. JORDE: I'm ready to start back up,  
13 gentlemen, whenever you're --

14 Q. (BY MR. JORDE) Sir, is it true that if your  
15 pipeline is located on a particular, say, farmer's land,  
16 that you can withhold certain permissions of how they  
17 use their land or how they interact or develop or not  
18 develop over the easement, permanent easement area?

19 A. We do have restrictions over the 50-foot  
20 permanent easement that are discussed with the landowner  
21 during the easement negotiation process.

22 Q. Will you allow tiling under the pipeline  
23 assuming it gets built?

24 A. We would. And in many instances, and I'll  
25 extend this to every landowner, as Mr. Ellingson

1 mentioned earlier, even if you're digging on your own  
2 land, you should call 811 so that we realize that you're  
3 digging in or around the pipeline. And I even offer to  
4 do that excavation around our pipeline for them to  
5 accommodate installation of their tile.

6 Q. And that offer, that's not found in an easement  
7 or a document or -- when does that offer get made? When  
8 does the landowner --

9 A. We put that in easements. So that's discussion  
10 with the landowner. So we try to be as accommodating as  
11 we can within reason.

12 Q. In terms of indemnification and landowner risk,  
13 is it true that landowners' negligence could still  
14 expose them to risk?

15 MR. BENDER: Objection. Calls for a legal  
16 conclusion.

17 ALJ HOGAN: I agree.

18 Q. (BY MR. JORDE) Okay. Do you have an  
19 understanding of that?

20 A. I have an understanding of what our  
21 indemnification says.

22 Q. Okay. What do you believe it means?

23 MR. BENDER: Same objection. You can answer it  
24 in terms of your experience but not as a legal  
25 conclusion or as that of a lawyer.

1           A.    Okay.  My understanding is unless the landowner  
2           intentionally damages the pipeline, by intentionally,  
3           that's their intent, not if a piece of equipment sinks  
4           and sits on the pipeline and damages it, not if they  
5           accidentally strike the pipeline, even though we implore  
6           them to call 811 or let us -- notify us when they're  
7           digging in and around the pipeline, they are  
8           indemnified.

9           Q.    And just to be clear, that's your understanding?

10          A.    Yes.

11          Q.    All right.  And in terms of crop loss, you've  
12          been offering three years of kind of prepay for crop  
13          loss.  What's the process if there's yield loss beyond  
14          those three years?

15          A.    So, again, if the landowner can demonstrate that  
16          that yield loss is atypical when compared to the yield  
17          on either side of the pipeline right of way, Summit will  
18          compensate the landowner for that yield loss.

19          Q.    Is it true that you can tell or assign or  
20          transfer any or all of your rights in this pipeline at  
21          any time without the State -- without permission by the  
22          PSC?

23                MR. BENDER:  Objection.  Asked and answered.

24                ALJ HOGAN:  He can answer if he knows.  I don't  
25          recall what his answer was, if he did answer it.



1           A. Well, it -- again, you're asking me to  
2 speculate. If it's in CO2 service, we could sell the  
3 pipeline, as you mentioned earlier, but whoever acquires  
4 a pipeline is bound by the same conditions of an  
5 easement specific to each landowner. If it's not in CO2  
6 service, the PSC has to then -- you know, they would  
7 have to -- whoever the potential owner of the pipeline  
8 system would have to go back to the PSC and petition or  
9 apply for a change in service.

10           Q. Why are you seeking a 99-year easement if the  
11 tax credits only go out 12 years?

12           A. Again, we -- we think we're -- we're -- we're  
13 building a pipeline system that's a viable business that  
14 will be in service well beyond the 12-year tax credit.  
15 And as I mentioned earlier, the cash flow forecast  
16 supports the business and the operating expense beyond  
17 the 12-year period and the potential expiration of the  
18 tax credit.

19           Q. Is it true that without the tax credit this  
20 project wouldn't be possible to get started?

21           A. It is true that the tax credit or the value of  
22 the tax credit is part of the economic support for the  
23 project.

24           Q. A significant support?

25           A. It's a part -- it's support for the project.

1 Q. Okay. All right.

2 MR. JORDE: I don't have anything further at  
3 this time, Your Honor.

4 ALJ HOGAN: All right. Commissioner Christmann,  
5 any questions?

6 COMMISSIONER CHRISTMANN: Yes, Your Honor.

7 If a landowner wants to tile their land and the  
8 pipeline is there and you need to send people out to  
9 monitor that process when they're working near, is that  
10 at a cost to the tiling company or to the landowner, or  
11 is that something that Summit would need to do as the  
12 owner of the CO2 line?

13 THE WITNESS: Commissioner Christmann, it's like  
14 any other pipeline or any other potential crossing of  
15 our pipeline. The responsibility is on us to go out and  
16 oversee that. So it would be at no cost to the  
17 landowner.

18 COMMISSIONER CHRISTMANN: Okay. What do you  
19 think is -- I'm trying to determine whether an order  
20 from us should have a minimum amount of distance between  
21 hydrocarbon pipeline and tiling pipelines. It's been  
22 discussed that a foot is optimal but do you have a  
23 minimum in mind?

24 THE WITNESS: Well, in my experience,  
25 Commissioner, I've built pipelines in many different

1 services. 12 inches is the standard. I think it's  
2 different from -- it could be determined to be different  
3 with a tile, for instance, or a tile line, but, again,  
4 we'd have to take into consideration the corrosion  
5 aspect of it and the cathodic protection aspect of it.  
6 But 12 inches, I think, is a minimum. But as I said  
7 before, there may be a situation where we could  
8 entertain something less. We just don't want the tile  
9 itself, even if it's not cased and it's just the poly --  
10 or HDPE material, sitting right on the pipeline.

11 COMMISSIONER CHRISTMANN: Okay. I need you to  
12 go to the map book, that big one on the bottom.

13 THE WITNESS: Is that this one?

14 COMMISSIONER CHRISTMANN: And I don't know how  
15 much you've looked at this lately, but they're in  
16 groups. It's not paged all the way through. So about  
17 at least three-quarters of the way to the back are a  
18 bunch of maps that are down in this area of the state.  
19 And I'm looking at map number 1 of 29. It's by the  
20 Tharaldson plant, if that helps you find it quicker.

21 THE WITNESS: Okay, I think I have it.

22 COMMISSIONER CHRISTMANN: Actually, skip one  
23 page ahead. I think it's better if you go to 2, to the  
24 next page.

25 THE WITNESS: Okay.

1           COMMISSIONER CHRISTMANN: So you see on the  
2 right side of the page, so it would be just to the east  
3 of the pipeline, there's the hashed land that says "Red  
4 Lake Nation treaty lands"?

5           THE WITNESS: I do.

6           COMMISSIONER CHRISTMANN: And there's more off  
7 to the west and some to the north, some to the  
8 southwest. A number of these pages have that. And I'm  
9 not really familiar with that. I don't know what that  
10 is and if it's anything that we need to deal with on  
11 this. So can you describe to me what the Red Lake  
12 Nation's treaty lands are?

13          THE WITNESS: Commissioner, I'll have to get  
14 back to you. I'm not going to give you a very  
15 informative answer, but I can get back to you on it.

16          COMMISSIONER CHRISTMANN: Okay. With a delay on  
17 it, but since they're highlighted on here, I'm trying to  
18 figure out if they're meaningful for us.

19          MR. BENDER: And, Commissioner, if I recall  
20 correctly, and perhaps Mr. Schock could respond as well,  
21 but I think that was a question that was addressed by  
22 the Commission staff and we responded so there should be  
23 something in the file. But I'm happy to look for that  
24 and forward it to Commission counsel and provide you a  
25 copy.

1           COMMISSIONER CHRISTMANN: Now that you say that,  
2 I do agree that has been responded to, but I've  
3 forgotten the answer, but I can find it so...

4           THE WITNESS: Unfortunately, I have too, sir.  
5 Sorry. I forgot the answer too.

6           COMMISSIONER CHRISTMANN: The response has been  
7 provided, I'm sorry, but...

8           I was on this page for a reason, though, so  
9 while you have it open, toward the top to the right. So  
10 we're talking about maybe a little more than a half a  
11 mile from the Tharaldson plant, on the east side of the  
12 proposed pipeline corridor is a long, narrow, looks like  
13 a building that runs north and south, or a lot or  
14 something that looks very close, so it would certainly  
15 look to me like it's less than 500 feet. I don't know  
16 what that is and I don't know if it's an occupied  
17 structure.

18          THE WITNESS: I'll find out, sir. I can't  
19 discern from the picture, but I know our -- our team has  
20 done a fairly thorough analysis of all structures. And  
21 you brought that up in previous hearings, and I know  
22 we've -- we've got all that information, but I'll make a  
23 note of this page.

24          COMMISSIONER CHRISTMANN: We'll need this one  
25 identified, please. And I don't even remember -- oh, I

1 do remember. I marked it here. Way back -- now I'm in  
2 about the middle of the book, page 1 of 3, and it's  
3 where the proposal would start just south of town here a  
4 couple miles. And maybe even the map isn't so important  
5 on this question, but what is the depth -- I assume  
6 you're boring underneath the Red River, not open  
7 trenching; correct?

8 THE WITNESS: Correct.

9 COMMISSIONER CHRISTMANN: And what's the depth  
10 of that bore?

11 THE WITNESS: And I can get the answer to you  
12 specifically, Commissioner, but typically we're 30 to  
13 40 feet below the mud line. You know, it depends on the  
14 extent and high water or the wetland area on either  
15 sides where our entrance and exit is and what our radius  
16 is and what -- we've done scour analysis on all these  
17 waterways so we're looking at, you know, the long-term  
18 risk that potentially could be involved with scour. And  
19 then we go back on either side an adequate distance and  
20 then we're making sure that we're a significant distance  
21 above the mud line, the existing mud line, to mitigate  
22 any risk.

23 I can get you, for this -- if you want, I can  
24 get you the information for all the drills, but I can  
25 get you for that specific one if you're interested.

1           COMMISSIONER CHRISTMANN: I would like that and  
2 I think it's important because I think sometimes the --  
3 like North Dakota, the Geological Survey, I don't know  
4 what Minnesota has for something comparable. Sometimes  
5 -- I've even seen one example where they wanted it  
6 shallower than what our original proposal was because it  
7 was in a better strata.

8           THE WITNESS: Yeah. Depends on if there's silt  
9 and other things where you could --

10          COMMISSIONER CHRISTMANN: So I'd like to know --

11          THE WITNESS: -- potentially you'd lose the hole  
12 in rock and -- sure.

13          COMMISSIONER CHRISTMANN: -- like to know what  
14 the proposed depth is of that bore.

15          THE WITNESS: Okay.

16          COMMISSIONER CHRISTMANN: And, lastly, and the  
17 details of it are something I prefer to get into in  
18 Linton or Bismarck later, but I want to make sure that  
19 this isn't being dropped. At Gwinner I asked you to  
20 prepare an assessment based on some of the concerns that  
21 have been brought out about the route going north of  
22 Bismarck, about looking at going south of Bismarck,  
23 south of the University of Mary somewhere. Are you  
24 working on that?

25          THE WITNESS: Yes, diligently working on that.

1 So we'll work with Mr. Bender to get that information  
2 and what form we provide that information, but, yes,  
3 we're diligently working on that.

4 COMMISSIONER CHRISTMANN: Okay. I have no other  
5 questions.

6 ALJ HOGAN: Commissioner Haugen-Hoffart.

7 COMMISSIONER HAUGEN-HOFFART: Thank you.

8 I'm glad Mr. Christmann brought that up on some  
9 of our requests. It seems like some of our requests are  
10 getting very delayed and we would like some of this  
11 information so when we go to hearings we can have that  
12 and be able to ask questions on that. So I hope that  
13 some of this information can be expedited for our  
14 upcoming hearings. I'm going to -- so thank you for  
15 working on that.

16 I'm going to -- I'm kind of stuck and,  
17 hopefully, I can get this. We're asking to approve a  
18 pipeline. And when we were talking about the liquid  
19 going through the pipeline, the question was asked who  
20 owns that, and no answer was given. Can we get an  
21 answer to that?

22 MR. BENDER: You want me to respond to that?

23 COMMISSIONER HAUGEN-HOFFART: Someone.

24 MR. BENDER: Yeah. I think it goes to an issue  
25 of common carrier status.



1 COMMISSIONER HAUGEN-HOFFART: Okay.

2 MR. BENDER: And that's the reason for not  
3 necessarily disclosing it at this level. The issue of  
4 whether a pipeline is a common carrier pipeline is  
5 really not an issue for the Commission in terms of  
6 making a determination as to whether it should be sited  
7 under the Siting Act in North Dakota. It is an issue  
8 with respect to eminent domain and it is an issue with  
9 respect to determining whether the company has a right  
10 to survey the property.

11 That issue is currently before the district  
12 court in the state of North Dakota. Judge Narum out of  
13 the -- I believe Sargent County, has that matter before  
14 him.

15 And it's also a matter that's before two  
16 district courts in the state of South Dakota. In the  
17 state of South Dakota, there's protective orders that  
18 have been put into place because of some of the  
19 commercial information that was filed in -- or, excuse  
20 me, discovered in that case, and it's very proprietary  
21 and confidential.

22 So our concern is that we have a protective  
23 order in South Dakota, we have a protective order in  
24 North Dakota with respect to that commercial  
25 information, and now we have an intervenor here

1     requesting the information.

2             I can talk with my client, Commissioner, and  
3     perhaps that's something that we can provide to the  
4     Commission if it's put under seal, but I'd have to talk  
5     with my client about that first.

6             COMMISSIONER HAUGEN-HOFFART:   Okay.   And I  
7     respect the answer.   Thank you, Mr. Bender.   My intent  
8     was always to be respectful of confidential information,  
9     but when I look at the liquid going through there, I'm  
10    looking at it from, if approved, maybe some of the  
11    requests that we might have in our order, and I would  
12    definitely work with our counsel and staff on that, some  
13    of the safety measures.   We've talked about emergency  
14    management in response.   So that was my intent in asking  
15    some of this question.   So I would pursue -- I'd work  
16    with Mr. Pelham on getting more of that information to  
17    address some of those concerns to make the decision most  
18    appropriate and a safe decision.

19            MR. BENDER:   Yes.   And thank you, Commissioner.  
20    And if Mr. Pelham can provide me with some of the  
21    information on why that's important in terms of the  
22    order, that will be helpful in me talking with my client  
23    and then making a decision on whether they want to  
24    provide that in a confidential status.

25            COMMISSIONER HAUGEN-HOFFART:   Okay.   And I'll be

1 doing so. Okay. That's all the questions I have.  
2 Thank you.

3 THE WITNESS: Thank you.

4 ALJ HOGAN: Mr. Dawson.

5 SUBSTITUTE DECISIONMAKER DAWSON: Judge Hogan.

6 When you separate the pipeline from the drainage  
7 pipe, do you do that only with dirt or are there other  
8 materials that you could use to separate them?

9 THE WITNESS: Mr. Dawson, there are various  
10 methods. They make plastic-type structures, HDPE-type  
11 structures, that sit on the pipe and provide kind of a  
12 fixed distance. As Mr. Ellingson testified to earlier,  
13 we prefer to use sandbags which allow some flexibility  
14 for the pipe and the drain -- and the drain pipe has to  
15 maintain a gradient, but that way, you know, there's --  
16 it's not so rigid that it would damage the drain pipe,  
17 per se. So there are various methods. So we're relying  
18 on Ellingson, who are the experts in this area, to guide  
19 us in that direction.

20 SUBSTITUTE DECISIONMAKER DAWSON: I was  
21 picturing in my head that someone would shovel on about  
22 12 inches and then just lay the pipe over the top, but  
23 it's more complex than that.

24 THE WITNESS: It is.

25 SUBSTITUTE DECISIONMAKER DAWSON: I had a

1 question about one of the maps. It was number 2 of 29  
2 at the back. It starts with Cass County so it starts  
3 with the ethanol plant. Then the second map after that.

4 THE WITNESS: I believe I have it.

5 SUBSTITUTE DECISIONMAKER DAWSON: Okay. There's  
6 a purple line that goes over a green line, and I was  
7 just trying to understand that, down at the bottom third  
8 of the page. Because it appears to me that a purple  
9 line is an access road and a green is a wetland. Can  
10 you explain that, why they're -- they seem over each  
11 other?

12 THE WITNESS: Yeah. So I think, as Mr. Schmidt  
13 testified in Bismarck, depending on the wetland, we can  
14 construct in and around or on it. So in this case, the  
15 access road is on the wetland. My assumption -- could  
16 be incorrect. My assumption is that's a temporary  
17 access.

18 SUBSTITUTE DECISIONMAKER DAWSON: And then you  
19 don't have to really look at the map, but on number 14  
20 there's Richland County Waterfowl Production Area and  
21 the pipeline crosses that. Are there any special  
22 considerations or permits or anything related to that  
23 waterfowl production area?

24 THE WITNESS: Mr. Dawson, I don't know off the  
25 top of my head but there typically are. We can research

1     that specific area for you but, yeah, there typically  
2     are.

3             SUBSTITUTE DECISIONMAKER DAWSON:   When you look  
4     at the map, it kind of goes out of its way to go through  
5     the production area.  If you're drawing a straight line  
6     and it -- I was just curious.  Kind of like the Red Lake  
7     Nation treaty lands, it's an anomaly.  But I have no  
8     further questions.

9             THE WITNESS:   Thank you.

10            SUBSTITUTE DECISIONMAKER DAWSON:   Thank you.

11            MR. BENDER:   Mr. Dawson, I don't know if this  
12     answers your question, but there is a legend on the map,  
13     and I think the legend suggests that the line you're  
14     referring to is an access road.

15            SUBSTITUTE DECISIONMAKER DAWSON:   The access  
16     road.  There's a little green right below it.  If you  
17     look super close --

18            THE WITNESS:   The access crosses the wetland  
19     area.

20            MR. BENDER:   Oh, I see.

21            SUBSTITUTE DECISIONMAKER DAWSON:   I was --

22            MR. BENDER:   I follow your question now.  I  
23     apologize.

24            ALJ HOGAN:   All right.

25            THE WITNESS:   He has good eyesight.

1 ALJ HOGAN: Mr. Bender, any redirect?

2 MR. BENDER: No redirect.

3 ALJ HOGAN: Mr. Pelham, any other questions?

4 Mr. Jorde.

5 MR. JORDE: Yes.

6 RECROSS EXAMINATION

7 BY MR. JORDE:

8 Q. In terms of your exclusive right, is it true,  
9 sir, that you have the exclusive right to affix or annex  
10 or, essentially, put the pipeline to the ownership of  
11 the landowner?

12 A. I don't understand the question.

13 Q. Okay. So you have the exclusive right if you  
14 want to abandon the pipeline in place and leave it under  
15 the landowner's ground; correct?

16 MR. BENDER: I'm going to object. This is  
17 beyond the scope of the direct examination or the other  
18 examinations that were asked by counsel and the  
19 commissioners.

20 ALJ HOGAN: I agree. I'll allow him to answer,  
21 though, if he knows.

22 A. No.

23 Q. (BY MR. JORDE) No, you don't know, or no,  
24 that's an incorrect statement?

25 A. No.

1 Q. Which one?

2 A. No, I don't know.

3 Q. Okay. Picking up on the commissioner's  
4 question, you know, is it true it's either you, Summit,  
5 or the ethanol plant that owns the CO2 once it gets into  
6 the pipeline? So what's the big mystery as to between  
7 who is it? Why won't you simply answer that as directed  
8 earlier by the hearing officer?

9 MR. BENDER: I mean, I've made my objection on  
10 that and I've explained and I've instructed him not to  
11 answer. And you can do what you're talking about doing  
12 and that's fine, but I'm going to instruct him not to  
13 answer that question either.

14 MR. JORDE: All right. Well, there's been no  
15 showing that this is confidential. There's been no  
16 showing whatsoever that his objection has any basis  
17 other than obstructing this hearing. And it is very  
18 relevant of who's transferring the product and who to  
19 direct conditions to and a whole host of other reasons.  
20 And it doesn't matter if it may also have to do with 20  
21 other things. We're not talking about that.

22 MR. BENDER: And I disagree with you. And you  
23 can continue to ask the question. I'm going to continue  
24 instructing him not to answer.

25 MR. JORDE: Okay.

1           ALJ HOGAN: And I think that there's been  
2 requests from one of the commissioners for that  
3 information. Mr. Bender said he'd talk with his client.  
4 And, I mean, we have two more hearings to address this,  
5 and maybe we can do it through filings as well. So I  
6 think we need to move on. I think it's been addressed.

7           MR. JORDE: Well, I guess just forgive me, it's  
8 just curious that they have the unilateral power to not  
9 give requested information to the PSC and they haven't  
10 made a showing that it's confidential in any way. I  
11 just find that, I mean, dumbfounding.

12           MR. BENDER: Your Honor, he's already indicated  
13 what he's going to do. He should just move forward and  
14 we'll deal with it later.

15           MR. JORDE: Well, okay. I don't know what the  
16 big secret is, but okay. It's unbelievable.

17           Q. (BY MR. JORDE) Is it true that the entity who  
18 owns the CO2 has the right to claim the tax credit?

19           A. I don't know if that's correct or not.

20           Q. Is it true that the ethanol plants can only  
21 claim a 45Z tax credit and they're not available to  
22 claim the 45Q tax credit?

23           MR. BENDER: Objection, Your Honor. Relevance.  
24 I mean, what's this got to do with a siting permit?

25           ALJ HOGAN: Well, and I think Mr. Powell has



1 already said he's not familiar with the tax provisions  
2 and not an accountant so I think we just need to move  
3 on.

4 MR. JORDE: Okay. All right.

5 Q. (BY MR. JORDE) Who at your newly formed  
6 company would have that information?

7 A. As I stated previously, our chief commercial  
8 officer would be -- would have more information specific  
9 to that than I would.

10 Q. Will you make him available at the Bismarck  
11 hearing?

12 A. I mean, I'm going to defer to Mr. Bender.

13 MR. BENDER: Are you asking?

14 MR. JORDE: Yeah. I mean, do I have to send a  
15 subpoena for him? Would you just bring him there?

16 MR. BENDER: I'll talk to my client.

17 MR. JORDE: Okay. All right. I'll send a  
18 subpoena.

19 Okay. Nothing further. Thank you.

20 ALJ HOGAN: Are there any other questions from  
21 the commissioners?

22 All right. Thank you, Mr. Powell.

23 THE WITNESS: Thank you.

24 ALJ HOGAN: All right. I think we're going to  
25 move to the Commission's witness.

1           Mr. Pelham, if you want to call that witness.

2           MR. PELHAM: Yeah. The Commission is going to  
3 call Dr. Thomas Scherer. And Mr. Schock has some  
4 questions for him. We do have an exhibit as well.

5           ALJ HOGAN: Did I catch that correctly? It's  
6 Dr. Scherer?

7           DR. THOMAS SCHERER: (Inaudible).

8           ALJ HOGAN: All right. Is your microphone on?  
9 Is the green light on there?

10          DR. THOMAS SCHERER: Now it's on.

11          ALJ HOGAN: That sounds better.

12          Dr. Scherer, were you in the room this morning  
13 when I went through the penalties for perjury?

14          DR. THOMAS SCHERER: Yes, I was.

15          ALJ HOGAN: And do you understand what perjury  
16 is?

17          DR. THOMAS SCHERER: Yes.

18          ALJ HOGAN: And being advised of the potential  
19 penalties for perjury, do you promise to tell the truth  
20 in this case today?

21          DR. THOMAS SCHERER: I do.

22          ALJ HOGAN: All right. Can I have you start by  
23 stating your full name and spelling your last name for  
24 the record?

25          DR. THOMAS SCHERER: I'm Thomas F. Scherer. My

1 last name is spelled S-C-H-E-R-E-R.

2 ALJ HOGAN: All right. Thank you.

3 And, Mr. Pelham.

4 MR. PELHAM: We offer, as Commission exhibit,  
5 documentation prepared by Mr. Scherer -- or Dr. Scherer,  
6 rather.

7 ALJ HOGAN: Can I label it as, like, PSC1?

8 MR. PELHAM: That would be great.

9 ALJ HOGAN: Okay. Any objection to the exhibit,  
10 Mr. Bender?

11 MR. MAHLBERG: No. No objection, Your Honor.

12 ALJ HOGAN: Sorry.

13 And, Mr. Jorde, any objection?

14 MR. JORDE: No objection.

15 ALJ HOGAN: All right. PSC1 is admitted.

16 And, Mr. Schock, you're asking the questions so  
17 go ahead.

18 MR. SCHOCK: Thank you, Your Honor.

19 **DR. THOMAS SCHERER,**

20 being first duly sworn, was examined and testified as  
21 follows:

22 DIRECT EXAMINATION

23 BY MR. SCHOCK:

24 Q. Mr. Scherer, can you just give us a little kind  
25 of brief background of your education and experience?

1           A. I certainly can. I got my BS, MS, and PhD from  
2 the University of Minnesota. Probably relevant to this  
3 is my senior design project as an undergraduate was a  
4 tile drainage project.

5           But in terms of North Dakota drainage, I've been  
6 here since 1991. And as you all know, our wet season  
7 started -- our wet cycle, I should say, started in 1993.  
8 By about 1995 I started -- at the request of county  
9 agents of crop improvement associations, I started doing  
10 presentations about tile drainage because they were  
11 requesting it.

12           And we are -- I work for NDSU Extension. We are  
13 in education. So if people ask questions and they want  
14 the technical details, we provide it to them. We don't  
15 make the decision for them about whether they put in  
16 tile or not, that's up to them, but if somebody wants  
17 the information, the technical information, I want to  
18 give it to them so they make the right decision.

19           So the questions started increasing a lot so  
20 in 1999 I joined together with my colleagues at the  
21 University of Minnesota and we started doing tile  
22 drainage design workshops. They were two-day workshops.  
23 And I think the first one we did, we had 45 people there  
24 from both Minnesota and North Dakota. And then after  
25 that, it kept increasing, and we've been -- we've done

1     them annually up until a couple of years ago. At that  
2     time there was only one tile contractor in the Red River  
3     Valley and they were located in -- they are located in  
4     Brooks, Minnesota. And I think Ellingsons moved here  
5     in 2000. And then a lot of other contractors started  
6     coming up.

7             So we've been doing these workshops. And we  
8     estimate that over the years we probably trained over  
9     2,500 people in the fundamentals of tile drainage. Most  
10    of our clients have been the public and farmers and  
11    government agency people. We're not trying to make them  
12    installers. What we're trying to do is introduce them  
13    to how you design a tile system so that, when they do  
14    talk to a contractor like Ellingson, they know what  
15    these terms mean. So that's been my background.

16            In addition to the -- teaching some of the  
17    technical details and where to find out information  
18    about how to apply them to individual fields, we've also  
19    given -- my colleague Dr. Hans Kandel and I have given  
20    numerous, many, many, many presentations to different  
21    groups that lasted for an hour or more, to some of the  
22    water resource districts, to the soil conservation  
23    districts, and places like that. We don't get into  
24    design. We get into the fundamentals of tile.

25            So, in addition, I've been involved with several

1 -- quite a few research projects, one of them just ten  
2 miles south of here. We were working with a farmer down  
3 there by Fairmount for over ten years on their field,  
4 some on the Minnesota field. All up and down the  
5 Valley. Primarily what we're looking at is the impact  
6 of tile on salinity, which has not been mentioned here  
7 today.

8 I had a five-year project where we were looking  
9 at the water quality coming out of tile. We had eight  
10 sites stretching from this county all the way up to  
11 Walsh County. We collected samples for four-year -- for  
12 -- for one summer we did a recon and then for four years  
13 we collected whenever the tile were running and analyzed  
14 them, and our State Department of Environmental Quality  
15 did the analysis of the water. We didn't -- we didn't  
16 do that. So we got all that background. We're trying  
17 to look at what are the impacts of salt.

18 And one of the things I would mention here is  
19 that when you remove this soil from the Red River  
20 Valley, as you go deeper, the salts increase  
21 significantly. So the contractors have to be extremely  
22 cognizant that they keep the topsoil separate from the  
23 bottom soil. Because if you put that bottom soil back  
24 on top, it will affect yields. We know that  
25 specifically. And that takes awhile to recover that,

1     that ability to -- to get to full. But I don't have the  
2     data in the Red River Valley, but colleagues out by  
3     Williston have been looking at the impact of the  
4     pipelines in the oil country, and mostly they're looking  
5     at pasture grasses and things like that. And their  
6     estimate is that, after construction, it sometimes takes  
7     four to five years to get back to normal production. So  
8     I would bring that up for the Commission, that consider  
9     that -- I don't know if -- where you would fit that in,  
10    but as a neutral party, that is something that we've  
11    observed.

12           And I don't know if these -- in the pipeline, if  
13    -- I don't know anything about the construction or the  
14    materials they're selecting, but as they put it in,  
15    these are high water table areas where you're going to  
16    find this tile so there's going to -- it's going to be  
17    covered in water periodically. It's been our  
18    observation that the -- we go through seasonal high  
19    water table. This time of year, in the next few weeks  
20    we will see it rise. There's no doubt about it. Our  
21    tile systems run primarily beginning after the melt,  
22    after the frost goes out of the ground, up until about  
23    the middle of June and then it drops. And if we get a  
24    wet fall like in 2019, then we'll see it run again. We  
25    rarely ever see it run in the summertime, in July and

1 August and early September. So that's what happens in  
2 this area. I think any of the tile contractors can  
3 probably tell you the same thing.

4 Q. Okay. So I think it's safe to say you've been  
5 working with drain tile or talking about drain tile  
6 since the early to mid '90s?

7 A. That's correct.

8 Q. And consistently, like, you still do this today?

9 A. Yes, we do.

10 Q. Okay.

11 A. In fact, I've just been on a couple of farm  
12 visits regarding this a little farther west out in Logan  
13 County.

14 Q. Sure. So in that time have you been around  
15 anywhere where they've cut or damaged drain tile and had  
16 to do any repairs to it?

17 A. Yeah. I can give you -- just last summer we  
18 were -- one of our grad students was putting in a  
19 project and managed to go out in the field and punch a  
20 hole on a tile system; 50 feet apart with a 4-inch tile  
21 and they managed to hit it dead center. So we had to go  
22 out there and we dug it up, found it, and repaired it  
23 ourselves.

24 But it's a -- it's a common practice in  
25 installations. Sometimes tile gets stretched or it gets



1 broken and most -- you talk to the contractors, just  
2 like this morning, it's common to repair them, but  
3 usually not over 50, 60, 70, 80 feet. It's usually a  
4 small break that they're repairing.

5 Q. So maybe just like an individual puncture that  
6 you're used to seeing versus a -- because I think what  
7 we're likely to see with a pipeline like this going  
8 through, you know, kind of laterally intersecting it,  
9 you know, 50 to a hundred feet is most likely to just be  
10 sheared off and then, as Ellingson was discussing, you  
11 know, just entirely replaced in that area with a  
12 different type but -- I think they were claiming it  
13 would be compatible?

14 A. Yeah. In the floods of 2009, right out by the  
15 Haroldson -- Tharaldson Ethanol plant, we had a project  
16 out there we were sampling. And the flooding was so bad  
17 it came over the road and it actually exposed a bunch of  
18 the tile. So they -- they basically came in and just  
19 put in new stuff over the top.

20 Q. Sure.

21 A. But, yeah, those kind of problems happen in  
22 various -- there's been cases where we've had, more in  
23 the southern part down towards Oakes, you can have iron  
24 ochre problems, which is an iron bacteria that gets in  
25 and plugs up the tile. And I know that stretches of

1     that have been replaced but it's not like it's -- you're  
2     digging a hole underneath it. What you're doing is just  
3     exposing it, taking out and putting in new pieces. So  
4     you still have that support underneath to hold the tile  
5     properly at the grade and elevation that it needs to be.

6           Q. Sure. So the -- the base underneath the tile is  
7     important to the --

8           A. Absolutely. If you look closely at most tile  
9     plows, they have a rounded bottom so that the rounded  
10    tile sits on that for support.

11          Q. Okay.

12          A. And you don't want a flat bottom, because  
13    depends on how they back -- backfill it, you can start  
14    to squash it.

15                 I've -- several years ago I worked with a farmer  
16    on the Minnesota side where he had one field that had  
17    been installed in December and it was cold. And whoever  
18    put it in didn't backfill properly. So what happens is  
19    he ended up with a bunch of squashed tile from these --  
20    you ever watch them when they plow it in, sometimes you  
21    can get pedons or soil chunks this big around. And if  
22    they're frozen and you push them back into -- into the  
23    trench, it will squash. And the way we know that is I  
24    looked at hundreds of feet of video that they'd run up  
25    there and they were looking at laterals and they were

1 looking -- there's one part there were three submains,  
2 eight inches diameter, all squashed flat. So that tile  
3 system was not working properly.

4 So it has to do -- we always talk about it in  
5 the workshops, 50 percent -- you know, you spend most of  
6 your time planning it and then you install it, but you  
7 got to install it right. And the installation is the  
8 key to making these things last for a hundred to  
9 150 years.

10 Q. Sure. I guess I had assumed they had -- they  
11 would install it with one of the plow type of systems  
12 where they're just kind of burying a plow into the  
13 ground and the -- unspooling the drain tile as  
14 they're --

15 A. Yeah, that --

16 Q. One fatal swoop instead of, you know, digging a  
17 trench, put in the drain tile, and backfilling. I  
18 didn't realize that was one of the ways that it was  
19 installed.

20 A. Most of the crushed laterals is where they came  
21 into the main.

22 Q. Okay.

23 A. And they do have to open up -- depending on the  
24 size of the main, you can plow them in. And some cases  
25 when they're large, you -- they have -- you have what

1 they call single wall tile and you have dual wall.  
2 Sometimes -- at that time, the dual wall is very stiff.  
3 It comes in pieces. Sometimes 10 feet, some 20. So you  
4 got to open up a trench to put them -- install them.  
5 That's where most of the damage took place --

6 Q. Okay. Is --

7 A. -- is in those, not -- not out in the field.  
8 Because a tile plow just cuts a furrow and installs the  
9 tile behind it, as you mentioned.

10 Q. Sure. So moreso like when they were talking  
11 about the headers or the main lines is where you'd see  
12 more of the open trench type of situation?

13 A. Right.

14 Q. Okay. So if a pipeline was to come along where  
15 there's already an existing tile system, would the  
16 repair of that tile system, in your opinion, impact its  
17 performance, the performance of the tile system?

18 A. As long as you bedded it properly and you -- and  
19 you replaced it with a -- and you support it and keep it  
20 on the grade it's -- it's meant to be, it shouldn't  
21 impact its performance.

22 Q. Okay.

23 A. The biggest problem that we have is, contrary to  
24 popular belief, clay is not a problem in tile. It's  
25 fine sand. And that will migrate in with water

1 movement. And if you got any dips in the line, that's  
2 where it will congregate. And it will take time, but  
3 eventually it may plug it up.

4 So I think research done in Ontario and Ohio  
5 indicated that you can't be perfect installing these  
6 things with just plows. So they allow a certain up and  
7 down movement. It's usually equal to about half or a  
8 little more of the diameter of the tile that you can  
9 tolerate this variation.

10 Q. Sure. So how about -- as Mr. Ellingson  
11 described how their plan for repairing the tile along  
12 this project, does that sound like a sufficient way to  
13 ensure that the system continues to function long term?

14 A. As far as I can tell, if you're using a metal  
15 support for the tile as it goes across where they cut, I  
16 don't see any problem. The main concern I had is if you  
17 just replaced it with a similar piece of tile, you would  
18 have to compact that support underneath it wherever  
19 those tile lines went across --

20 Q. Sure.

21 A. -- to about the same bulk density it was before.  
22 And that could be -- that could be a lot of work.

23 Q. Sure.

24 A. So using an external support is a great -- is a  
25 good idea.

1           Q. Like they say, I guess -- I think he talked  
2 about sandbags as a --

3           A. That's -- that's to -- yeah, the support. Well,  
4 think about it, you could have a what? 50-, 60-,  
5 70-foot length of metal pipe. There's going to be some  
6 bend there. So supporting it in the middle is probably  
7 going to -- if they backfill it properly after, if the  
8 soil settles after a couple of years, it will probably  
9 be just fine.

10          Q. Sure. Okay. So I think we started touching on  
11 this with another witness earlier. So if you were to  
12 want to put drain tile in a field that already has a  
13 pipeline installed in it, do you think that would impact  
14 the cost of the system?

15          A. You know, when you -- as we say in the  
16 workshops, there's no one right way to tile a field.  
17 But when you sit down and you work out different  
18 scenarios, you always end up with about the same amount  
19 -- same lineal feet of -- once you've determined the  
20 spacing and so forth, you always end up with about the  
21 same lineal feet of tile no matter which way you design.  
22 So putting a header in there probably might add some  
23 cost to the -- you know, if you had to go around it and  
24 design around a pipeline, but it's not going to --  
25 \$1,200 or thousand dollar an acre, it's not going to add

1     that much more cost to the -- to the system in terms of  
2     the material.  Where a lot of the cost is, is actually  
3     making the connections.

4             Q.  Sure.

5             A.  Because you got to dig -- you got to dig down  
6     and physically make the connections to these headers.  
7     That will add to the cost.  Now, it all depends on the  
8     equipment that the installer has and so forth.

9             Q.  Sure.  So I think it would -- it would likely  
10    impact the cost but maybe not significantly when you  
11    consider with the cost of the whole system?  Is that  
12    what your --

13            A.  Yeah.  If you look at the cost for a quarter  
14    section, it's -- it's going -- it may add to it, these  
15    -- trying to design around them.  If you can go over the  
16    top of them, it may not change it at all.  It all  
17    depends on how deep the pipeline is.

18            Q.  Sure.

19            A.  The one concern, though, that I had was many of  
20    the mains and submains are anywhere from five to  
21    eight feet deep.  And if they have to cross through  
22    there, how are they going to handle that?  I mean, if  
23    you got a 12- or 15-inch main, is that the same depth  
24    that you're trying to put this pipeline, you either go  
25    under or -- I don't know how you handle that.  That's up

1 to the contractors to figure that out.

2 Q. Sure. Okay. I don't think I have any other  
3 questions for you, but thank you for being here today.

4 A. You're welcome.

5 ALJ HOGAN: Mr. Mahlberg, any questions?

6 MR. MAHLBERG: I don't. Thanks, Dr. Scherer.

7 ALJ HOGAN: Mr. Jorde.

8 MR. JORDE: I have a few questions.

9 CROSS EXAMINATION

10 BY MR. JORDE:

11 Q. Doctor, were you here this morning to hear the  
12 testimony of the Ellingson gentleman?

13 A. Yes, I was.

14 Q. And could you hear all of the questions and  
15 answers?

16 A. Yes.

17 Q. And when he was speaking, at least from my  
18 perspective, it made it seem like there really isn't  
19 ever a problem. In your experience, you've talked about  
20 a few concerns. Can you think of any other types of  
21 concerns when repairing tile lines or, you know,  
22 connecting the plastic to clay existing lines, or just  
23 different best practices that the Commission should be  
24 aware of?

25 A. No. Like I said, repair of tile lines is pretty



1 common. As a matter of fact, manufacturers make a  
2 special insert that you put in both sides and then  
3 you've got tile tape that you would tape them for  
4 laterals. And the same with connectors for the other  
5 ones. That's pretty well established in the industry.

6 So making the connections -- I think, as I  
7 pointed out, a bigger concern is -- is that you don't  
8 get these lower soils from the Valley down around three,  
9 four, five feet mixed in with the topsoil.

10 Q. And so you're talking about the importance of  
11 screening the topsoil and avoiding soil mixture because  
12 that would reduce yields?

13 A. It could. It could. But I think standard  
14 practice is to take the topsoil off, put it on one side,  
15 and take the bottom soil off on the bottom. I think the  
16 mining industry does this all the time. And just make  
17 sure you put it back the same way.

18 Q. Sure, sure. And that answer is kind of along  
19 the same of an answer you gave to the question of could  
20 this impact performance, and your answer was,  
21 essentially, if they do everything right, there  
22 shouldn't be a problem. Is that fair?

23 A. That's correct.

24 Q. All right. And you would agree that's pretty  
25 much true of pretty much anything; as long as we do

1 everything a hundred percent right every step of the  
2 way, there shouldn't be an issue?

3 A. Installation of tile is -- is -- if it's -- if  
4 it's performed -- the design is the layout, but the  
5 actual installation is where you make the right  
6 connections at the corners and you keep the right grade  
7 and everything. If the installation is right, then the  
8 system will last for a long, long time. We've got a lot  
9 of documented evidence of that. We also have documented  
10 evidence of poor installations.

11 Q. Certainly. And in terms of if I owned a farm,  
12 say, a 24-inch pipeline were to come through it,  
13 regardless of what it's shipping, and then I wanted to  
14 go ahead and place a tile system across that quarter  
15 section, let's say, are you familiar with the new  
16 difficulties or limitations or increased costs now that  
17 we're trying to work around an existing, say, 24-inch  
18 pipeline?

19 A. I think it would depend on how deep that  
20 pipeline is. A lot of the tile in the Red River Valley  
21 is only three to three and a half feet below surface,  
22 the laterals. Mains, some mains, that -- everything's  
23 got to drain to them so they're always deeper. The  
24 water's got to go somewhere, right, and it's got to go  
25 to an outlet. So I -- I'm not sure if I can give you a

1 definitive answer on that.

2 Q. Would you -- if you were designing it, would you  
3 prefer that the tiling system go above or below the  
4 pipeline, the CO2 pipeline?

5 A. I don't know if there's an answer to that. It  
6 all depends on where -- what part of the field you're  
7 talking about and what -- are you talking about the  
8 mains or are you talking about the laterals?

9 Q. Well, what I'm trying to get at, sir, is just to  
10 give us some education, because you clearly are an  
11 expert on the factors that factor in. I realize no  
12 specific field is identical to the next. But what we  
13 think we're trying to figure out here are the best  
14 practices and the things we need to be concerned about.

15 A. If I knew there was a 24-inch pipeline out  
16 there, I would -- and had it marked by, you know, the  
17 location services, I would try to design around it using  
18 headers and not bother to try to mess around going over  
19 the top.

20 We've had some spectacular -- there was just a  
21 case down in Iowa a few years ago where a tile  
22 contractor hit a natural gas pipeline with the tile plow  
23 and blew it all up and burned it all up, created a  
24 crater over 200 feet long, 50 feet wide when it blew.  
25 So you can't always be certain that the depth they give

1 you is exactly the depth that you're going to find it  
2 at.

3 A colleague of mine in Manitoba told me about a  
4 situation where a farmer went over a similar type of  
5 thing. He missed -- missed that natural gas pipeline by  
6 about that much. He didn't realize until afterwards.

7 So a 24-inch pipeline, I think I would design  
8 around it.

9 Q. Okay. And the tile plow, would you agree that  
10 those can plow to depths of seven foot?

11 A. If you got the power. Most farm plows can't go  
12 that deep unless they're -- that's why they got  
13 600 horsepower engines on those plows. They can go down  
14 to seven feet. And that's what I mean. You can plow in  
15 like an 8-inch main with a tile plow.

16 Q. Okay.

17 A. But when you get above that, then it starts to  
18 get a little more difficult.

19 Q. Right. Okay. Thank you, sir. Appreciate it.

20 ALJ HOGAN: Commissioner Christmann.

21 COMMISSIONER CHRISTMANN: Most of my questions  
22 have already been asked, but were you here this morning  
23 when Mr. Ellingson talked about the very significant  
24 amount of the Red River Valley tiling work that his  
25 company does?

1           THE WITNESS:   Yes.

2           COMMISSIONER CHRISTMANN:   And being so familiar  
3 with the tiling work that's done in the Valley, did that  
4 surprise you?

5           THE WITNESS:   No.   You know, the National Fish  
6 and Wildlife had a database tracking the permits, tile  
7 permits, but at the time they put that together, the  
8 state law was that if you tiled less than 80 acres of  
9 impacted area, you didn't have to get a permit, so none  
10 of them were put in there.   And so it's been an ongoing  
11 big-time activity for quite a while.

12           A lot of farmers have put in their own.   They  
13 got their own plows.   They put in the tile.   And they  
14 may only tile 40 acres at a crack so they -- I think --  
15 you're familiar with the legislature.   They changed the  
16 law here a couple years ago so that -- I think it's  
17 going to be amended this year, but anything over -- if  
18 you tile anything between 15 and 80 acres, you have to  
19 let the local water resources board know.

20           COMMISSIONER CHRISTMANN:   Okay.   But you're very  
21 familiar with the Ellingson company.   They're a  
22 substantial presence in the Valley with its business;  
23 correct?

24           THE WITNESS:   Yes, I am.   Like most contractors  
25 in the Valley, I sometimes help them with some technical

1 problems that they run into off and on.

2 COMMISSIONER CHRISTMANN: And so among the  
3 larger contractors, is there any disproportionate amount  
4 of complaints or anything about Ellingson or do people  
5 generally seem pleased with their work?

6 THE WITNESS: Generally pleased, yeah. But I  
7 don't track -- I don't keep a log of complaints. I've  
8 had people come in and visit with me, comparing two  
9 different designs and asking questions in that regard  
10 but --

11 COMMISSIONER CHRISTMANN: But not aware of any  
12 disproportionate troubles or anything like that?

13 THE WITNESS: Not -- not that I've -- not that I  
14 would say -- every business has some complainers. No  
15 doubt about it. But not disproportionately, no.

16 COMMISSIONER CHRISTMANN: Okay. And then you  
17 had talked about, when you're initially putting in the  
18 tiling, that it's kind of a rounded ditch so that the --  
19 the lateral will set down nicely in that cup. I guess I  
20 had always -- I thought they were V-shaped. But it  
21 doesn't lay on a flat surface; correct?

22 THE WITNESS: Right. Some -- I should have said  
23 some are slightly V-shaped, some are rounded, so to  
24 accommodate the curvature of the tile so it doesn't get  
25 squashed, you know.

1           COMMISSIONER CHRISTMANN: So in this case when  
2 something comes through and disrupts those, they'll  
3 presumably cut it and put the hydrocarbon pipeline in  
4 and do some backfilling to get to the right level and  
5 you're going to be flat. And Mr. Ellingson's  
6 description of that heavier line and that put inside of  
7 the metal culvert, you think that will satisfactorily  
8 support that so that it doesn't sink and cause a dip?

9           THE WITNESS: At first glance I would say yes.  
10 I don't know what the thickness of the metal -- I'd have  
11 to have more specifics about what -- what the metal  
12 corrugated pipeline they're using to insert the tile in.  
13 But that would provide that -- you wouldn't have direct  
14 soil contact through that -- that stretch so you  
15 wouldn't have all that overburden laying on top of it.  
16 So it -- the metal would take care of that problem, if  
17 that's how they go about doing it.

18           COMMISSIONER CHRISTMANN: I don't have any other  
19 questions, but I just do want to say this, Dr. Scherer.  
20 I sure do appreciate you and the Extension Service  
21 making yourself available to us so that we can get some  
22 information from a neutral party that brings such  
23 extensive expertise as you do. Thank you.

24           THE WITNESS: You're welcome.

25           ALJ HOGAN: Commissioner Haugen-Hoffart.

1           COMMISSIONER HAUGEN-HOFFART: Thank you.

2           I thought Randy was going to say his support for  
3 you from being from NDSU.

4                               (Laughter)

5           COMMISSIONER HAUGEN-HOFFART: Just to go off of  
6 what Commissioner Christmann was talking about, you  
7 know, you talked about that dip, and you testified  
8 earlier when Mr. Schock asked you about, you know, you  
9 would support that metal support so you don't have that  
10 dip, have you ever seen like if a pipeline comes in --  
11 and this is just me growing up where I did -- any of the  
12 tile heaving, a heaving motion of the tile versus a  
13 sinking in? And if so, what would cause that?

14          THE WITNESS: That question comes up all the  
15 time, do you get frost heave on tile lines? And as far  
16 as we know, that does not happen. If the tile is doing  
17 its job right, it's removing all the water around it,  
18 the excess water. So you don't get that expansion and  
19 contraction that would cause that heave but you -- if  
20 you -- with almost any -- any time you dig a ditch and  
21 you -- you're going to get some slumping in it. So if  
22 you just put the tile through that, over time it would  
23 -- the soil would settle with rain and so forth.

24          So that's what I was concerned about, is that  
25 when you go across where they dig the pipeline in, that



1 if you don't back -- if you don't compact it to support  
2 the line properly equivalent to what the existing soil  
3 is, then you could have some slumping in the future. So  
4 that metal support is going to -- is going to reduce  
5 that.

6 COMMISSIONER HAUGEN-HOFFART: So for my  
7 understanding, any time you disturb that, your  
8 suggestion is to put in a metal support to help prevent  
9 any of that?

10 THE WITNESS: That was my understanding, is  
11 that's what -- that was the plan that they were going to  
12 use for this -- whenever they crossed a field with tile  
13 line.

14 COMMISSIONER HAUGEN-HOFFART: Okay. That's all  
15 I have. Thank you so much.

16 THE WITNESS: You're welcome.

17 ALJ HOGAN: Mr. Dawson.

18 SUBSTITUTE DECISIONMAKER DAWSON: Judge Hogan.

19 Does the depth of the tile, is that dependent  
20 any way on the high -- highest water table mark? So is  
21 the depth specific to the tile based upon the water  
22 table?

23 THE WITNESS: Absolutely. If the water table  
24 only comes up to five feet from the surface, it doesn't  
25 do any good to put tile in. The only way tile flows is

1 the water table has to come up and intersect it and  
2 flows in. Research has shown that over 70 percent of  
3 the water entering a tile comes in from the lower half.

4 So we've had people put in tile that didn't need  
5 it because their water table never got high enough, but  
6 they joined the bandwagon, you might say, because the  
7 neighbors are doing it. So you definitely have to -- I  
8 keep asking people, do you really have a high water  
9 table problem? And most of my questions are becoming  
10 farther west, over in the Beach ridge and that. And  
11 what looks like a water table problem may not  
12 necessarily be. You have to really have evidence of  
13 that. That's why whenever I get calls from that, I  
14 grill the people pretty heavily, because it doesn't do  
15 any good to put tile in someplace where the water will  
16 never get to it. So the -- the elevation has to be  
17 there for the tile to work.

18 SUBSTITUTE DECISIONMAKER DAWSON: And so the  
19 goal is to dry out the top layer of soil to what level  
20 that's optimum?

21 THE WITNESS: From soil science point of view,  
22 you can -- we'll start with if you take a soil column  
23 that's made up, it's got a lot of pores and minerals and  
24 roots and everything else and it -- but you can saturate  
25 it. In other words, you can fill all the open space

1 with water. When you drain it, depending on the pore  
2 size like clay and all that, you only drain out the  
3 amount that the gravity will pull out of the water. So  
4 what's left is what we call plant available water. So  
5 you're draining out this excess and not the water that  
6 plants use.

7 SUBSTITUTE DECISIONMAKER DAWSON: And that's  
8 dependent on every field? I mean, it's field dependent,  
9 soil dependent? It's not -- there's not -- the best  
10 depth to put in drain tile is ten inches deep, there's  
11 no rule like that or rule of thumb?

12 THE WITNESS: Yes, there is, because the  
13 manufacturers want at least two feet of overburden over  
14 the top of their tile if you're on a farm field because  
15 you're going to drive over with a tractor. So they --  
16 that's usually about the minimum they want overburden.  
17 They would prefer three deep but -- it all has to do  
18 with farming operations with equipment and the  
19 compaction of the soil or the forces of the soil due to  
20 the implements more than anything.

21 SUBSTITUTE DECISIONMAKER DAWSON: Thank you. No  
22 further questions.

23 THE WITNESS: You're welcome.

24 ALJ HOGAN: Mr. Pelham or Mr. Schock, any  
25 redirect?

1           Mr. Mahlberg, any further questions?

2           MR. MAHLBERG: No, thank you.

3           ALJ HOGAN: Mr. Jorde.

4           MR. JORDE: I have one.

5                       RECROSS EXAMINATION

6           BY MR. JORDE:

7           Q. So, Doctor, in terms of ground shifting or  
8           settling after you refill a trench, you do the trench,  
9           you refill it and ground can shift and settle, what  
10          again are the best practices to minimize that other  
11          than, you know, do a good job? I appreciate that, but  
12          the actual practices and to the point of, you know, for  
13          instance, if there were conditions and this was  
14          approved, what should be -- we should be expecting of  
15          the tile contractor?

16          A. You know, I would -- I don't put in pipelines.  
17          I'm not an installer. So I would assume that they have  
18          practices that they use when they put in these pipelines  
19          for bedding -- bedding the pipe and refilling them.

20                 From my perspective, the biggest thing I have,  
21          as mentioned a couple of times, is the salinity and the  
22          poor soils are down below and not mixing them together  
23          at the surface.

24          Q. And then also supporting the tile line itself  
25          with some type of structure?

1 A. That's correct.

2 Q. Okay. And do you have a preference or a best  
3 practice on which should be used?

4 A. I've never had the opportunity to have to do  
5 that so I --

6 Q. Have you had the opportunity to observe what you  
7 believe worked maybe better than other practices?

8 A. No. This is relatively new to me.

9 Q. Okay.

10 A. We haven't run into this before.

11 Q. Okay. Thank you very much. Appreciate it.

12 A. You're welcome.

13 MR. JORDE: Nothing further.

14 ALJ HOGAN: Are there any other commissioner  
15 questions?

16 All right. Thank you, Dr. Scherer.

17 THE WITNESS: You're welcome.

18 ALJ HOGAN: I think we'll take our afternoon  
19 break and we'll shoot for about 15 minutes, maybe 3:10.

20 And, Mr. Jorde, we're going to go to your  
21 witnesses next so if you want to get them ready during  
22 the break, that would be great.

23 MR. JORDE: Will do.

24 (Recess)

25 ALJ HOGAN: All right. Okay. Mr. Jorde, do you

1 want to call your first witness?

2 MR. JORDE: Yes, I do. And I call Mr. Ben  
3 Dotzenrod.

4 ALJ HOGAN: Mr. Dotzenrod, were you in the room  
5 earlier when I went through the penalties for perjury?

6 BENJAMIN DOTZENROD: Yes.

7 ALJ HOGAN: And do you understand what perjury  
8 is?

9 BENJAMIN DOTZENROD: Yes.

10 ALJ HOGAN: And being advised of the potential  
11 penalties for perjury, do you promise to tell the truth  
12 in this case today?

13 BENJAMIN DOTZENROD: Yes.

14 ALJ HOGAN: All right. Thank you. Can you  
15 start by stating your full name and spelling your last  
16 name for the record?

17 BENJAMIN DOTZENROD: Benjamin Dotzenrod,  
18 D-O-T-Z-E-N-R-O-D.

19 ALJ HOGAN: All right. Go ahead, Mr. Jorde.

20 **BEN DOTZENROD,**

21 being first duly sworn, was examined and testified as  
22 follows:

23 DIRECT EXAMINATION

24 BY MR. JORDE:

25 Q. Sir, you were able to give some testimony in

1 Gwinner; is that correct?

2 A. Correct.

3 Q. And then you've been here today when -- and I  
4 should first say much of what you talked about and your  
5 concern was with tiling and the different potential  
6 issues and harms related to repairs and replacement if a  
7 pipeline was put in place?

8 A. Correct.

9 Q. And you were here today, were you not, able to  
10 listen to Mr. Ellingson?

11 A. Correct.

12 Q. All right. And did his testimony satisfy or  
13 take care of the concerns that you have?

14 A. No.

15 Q. All right. Why don't you walk us through the  
16 concerns you have, please?

17 A. Sure. So, first off, I feel like the  
18 instability of the subsoil on this specific field was  
19 discounted and that's why I brought this visual  
20 demonstration, which I'll just get over with right away  
21 here.

22 Q. And just describe what you have in front of you  
23 and what you intend to illustrate demonstratively.

24 MR. MAHLBERG: Your Honor, I'm going to object  
25 potentially as to the foundation. I don't know what

1 we're about to do so I have a tough time figuring out if  
2 I have foundation for this or not -- or if he has  
3 foundation. Excuse me. If this is being offered as  
4 some sort of rebuttal on drain tile issues that require  
5 expertise, I don't have anything out of this witness  
6 that suggests he has expertise with respect to the  
7 installation of drain tile, the relationship of  
8 pipelines to drain tile. And so before we go through  
9 this, I think I'd like to know the foundation for what  
10 this witness is about to demonstrate.

11 ALJ HOGAN: Do you want to have him go through  
12 that? I know you weren't at the last hearing, Mr.  
13 Mahlberg, but I think Mr. Dotzenrod addressed some of  
14 that, but maybe you could just have him go through that.

15 MR. JORDE: Sure.

16 Q. (BY MR. JORDE) I guess let's first explain,  
17 Ben, what's your intent to show in terms of the  
18 demonstrative you have here? Before you do it, just  
19 let's establish first what's the intention? What are  
20 you trying to illustrate?

21 A. I'm intending to demonstrate that when these  
22 drain tile lines break, soil flows through the system  
23 leaving a cavity that can't be seen from the surface.  
24 And I have seen firsthand with my own eyes that you  
25 can't see it from the surface because there's a crust



1 holding the topsoil together when there's an air pocket  
2 down here. And I've seen these collapse after I've  
3 driven over them with a tractor. And I think that's  
4 important.

5 Q. All right. So the demonstration you have here  
6 is based upon your firsthand knowledge on your own field  
7 which is an affected field by this project and this is  
8 in rebuttal to the testimony related to what  
9 Mr. Ellingsworth (sic) said in terms of settling and  
10 soil and, essentially, not having the issues that you  
11 have seen. Is that fair?

12 A. Correct.

13 MR. JORDE: All right. I think based on that  
14 and his own personal experience and he's offering this  
15 as a demonstrative to illustrate problems on his own  
16 field which is affected potentially by this project, I  
17 think he can move forward with the demonstrative.

18 ALJ HOGAN: Any objection that you want to put  
19 on the record?

20 MR. MAHLBERG: We can do it on cross, I guess,  
21 to the extent that we need to talk about the  
22 qualifications.

23 ALJ HOGAN: Okay. Go ahead.

24 Q. (BY MR. JORDE) And just explain each step,  
25 sir, as you go.

1           A.    Okay.    So what --

2                   MR. MAHLBERG:    Sorry, Mr. Dotzenrod, I'm going  
3   to interrupt one more time.    I don't know how dynamic  
4   this is about to be.

5                   THE WITNESS:    It's very short.

6                   MR. MAHLBERG:    Okay.

7                   THE WITNESS:    Very short.

8           A.    Okay.    So what will be happening here is --  
9   well, first I'll explain what everything is.    This  
10   tin foil on top is the topsoil that we walk on.    And this  
11   tub has been filled with rice, and that represents the  
12   subsoil.    And this -- the pipeline would be running this  
13   direction on this field.    And this represents the drain  
14   tile that's on a grade.

15                   And so when this drain tile breaks, the rice, or  
16   the subsoil, will flow through the system and it will  
17   create a cavity or an air pocket underneath the topsoil.  
18   The topsoil doesn't collapse right away.    And so  
19   eventually when you drive over it with a tractor or  
20   something, it can collapse.

21                   And so is it okay to move forward?

22           Q.    Sure.    Go ahead.

23           A.    So let me break the tile, and this rice and  
24   subsoil will flow out of the system.    So as you can see,  
25   this takes time, as Mr. Scherer alluded to.    It's not

1 something that happens overnight.

2 Q. And so walk us through -- I mean obviously we've  
3 got a lot of subsoil there. So walk us through, in your  
4 experience, what you have seen occur and what's this  
5 illustrative of. As the rice here, the subsoil,  
6 continues to essentially drain out, what is created?

7 A. So an air pocket or cavity underneath the  
8 subsoil is created that you cannot see from the surface.  
9 And then that -- eventually, the topsoil, which has a  
10 crust on it, eventually collapses at some point. And we  
11 -- it can't be predicted, but sometimes it coincides  
12 with a pass with a heavy implement.

13 Q. And in your personal experience, what -- were  
14 there any particular conditions such as especially soggy  
15 or any type of weather conditions that affected it, or  
16 is this condition purely based upon what's happening  
17 beneath the surface that we cannot see?

18 A. I don't think there was any special  
19 circumstances. It happens under normal conditions. My  
20 concern is that a tractor or a combine could potentially  
21 fall onto the pipeline.

22 UNIDENTIFIED SPEAKER: Can I interrupt for an  
23 explanatory question for what's going on?

24 ALJ HOGAN: If it's okay with Mr. Jorde.

25 MR. JORDE: That's fine. Go ahead.

1 UNIDENTIFIED SPEAKER: What is the bottomless,  
2 like, pit that's -- the bucket? You have a subsoil that  
3 is pouring out. You've broken the drain and this -- I'm  
4 just trying to understand this while you're doing it.  
5 Where is the subsoil going?

6 THE WITNESS: Sure. So I have it set up this  
7 way kind of for logistical purposes. Obviously it's not  
8 falling into a bottomless pit to the center of the  
9 earth. Normally what would happen is if this tile  
10 connection came apart right here at the bottom where the  
11 rice is coming out, instead of going down, the high  
12 water table would be forcing the subsoil through the  
13 tile line that still exists going this way. So this is  
14 the outlet. And so this is being carried to the outlet  
15 point.

16 UNIDENTIFIED SPEAKER: Sideways --

17 THE WITNESS: It's a mixture of subsoil and  
18 water and it's flowing. And, you know, we do have sand  
19 on this field, and that's another concern is that, as  
20 Dr. Scherer stated, sand has the potential to plug tile  
21 lines. And it's something that does happen.

22 Q. (BY MR. JORDE) And so, Ben, then -- just so  
23 that, in the interest of time because I think your point  
24 is being made, we don't have to wait until the whole --  
25 all the subsoil, you know, is carried away, but

1 essentially what you're saying is there's an opportunity  
2 for the subsoil to essentially drain or travel  
3 somewhere, and then until an unsuspecting person with a  
4 combine or, you know, grain truck or something goes over  
5 it, they may not know of dangers of what happened  
6 beneath the surface. Is that it?

7 A. Correct. So this -- the subsoil leaves the  
8 field. It's no longer in the field. And that's what  
9 creates the cavity.

10 Q. Does the absence of that soil have anything to  
11 do, based on your personal experience, with yields? Is  
12 there any concern about that? Or is that so far below  
13 that it doesn't really affect the yields?

14 A. In that area where that tile connection comes  
15 apart, they're unable to keep -- they're unable to keep  
16 the topsoil separate because it collapses so far down.  
17 So in that -- it's a very small spot, but, yes, there's  
18 yield loss.

19 Q. So when Dr. Scherer was talking about very  
20 important to keep the topsoil and the subsoil from  
21 mixing for yields, is a potential break in the tile  
22 lines another avenue for potential yield loss, in your  
23 opinion?

24 A. Yes.

25 Q. Okay.

1           A.    So now I'm just going to go for a tractor drive  
2           and the topsoil will collapse and the tractor will fall  
3           below ground and possibly onto a compressed carbon  
4           dioxide pipe.

5           Q.    All right.   And in terms of the explanation that  
6           Mr. Ellingson gave of essentially everything is going to  
7           be fine, was the purpose of this to demonstrate all of  
8           the risks that you may not even be able to see after a  
9           contractor thinks they did a good job?

10          A.    Correct.

11               And a steel casing was mentioned.   And -- let's  
12          see.   Does that mean that area -- you know, drain tile  
13          works because there's holes in it.   Steel casing, does  
14          that prevent drainage?   And also, you know, this time of  
15          the year when we are driving on gravel roads or even  
16          paved roads, a lot of times when you go over a culvert  
17          or a steel casing, there's a significant bump.   I mean,  
18          that signifies the movement of ground.   So you might  
19          possibly be making things worse by encasing it in steel.  
20          I'm not sure.

21          Q.    And in terms of what Mr. Ellingson was saying,  
22          we had the discussion about grade and that a lot of the  
23          land is very flat, but obviously the starting point of a  
24          tiling system has to be above grade from the drainage or  
25          the output area.   Did you have any issue with his

1 testimony related to the grade?

2 A. Sure. So in the -- I don't know if it was  
3 submitted today or not, but Dr. Scherer did have a  
4 document that I saw yesterday stating .3 percent grade  
5 is within the --

6 MR. MAHLBERG: I'm going to object at this  
7 point. Before we get into Mr. Dotzenrod testifying, it  
8 appears to be as an expert on rebuttal to the expert  
9 testimony for which a foundation was established. I  
10 think we need to have a foundation established for this  
11 witness as an expert, his background in soil science,  
12 drain tile, pipeline and drain tile. There's none of  
13 that that's been offered, at least at this hearing. And  
14 I apologize if it was established at the last hearing,  
15 but otherwise I don't think, if he's going to read off  
16 and disagree with Dr. Scherer's opinion --

17 THE WITNESS: I'm agreeing with Dr. Scherer.  
18 That's what I'm doing.

19 MR. MAHLBERG: And I don't know what you're  
20 about to do so I'm not trying to --

21 This is a foundation-based objection. If he is  
22 going to read about and opine on what an expert has  
23 said, he needs to be an expert to do that.

24 ALJ HOGAN: Well, maybe -- could you just  
25 clarify if he's being offered in that capacity, or as a

1 landowner, farmer capacity is his testimony being  
2 offered? Maybe some clarification would be helpful.

3 MR. JORDE: Sure. He is the world's expert on  
4 his own field and that's why he is here. And there's no  
5 expert that knows more about the actual effects of land  
6 giving away or drain tile breaking or heaving on his own  
7 field. And he doesn't have to be an expert -- you know,  
8 Abraham Lincoln would have been an expert in the law and  
9 never went to law school. And so he has the  
10 qualifications based on personal observations and that's  
11 what he's testifying to.

12 ALJ HOGAN: And so just so I'm clear in light of  
13 the objection, he's testifying to his field, his land  
14 only, and not in general statements about soil science  
15 or --

16 MR. JORDE: Correct.

17 ALJ HOGAN: Okay.

18 MR. JORDE: He's testifying based on personal  
19 observations and concerns about his land. And, you  
20 know, gravity and grade isn't exactly something that is  
21 an area of expertise. It's a fact. And that's what  
22 he's testifying to.

23 ALJ HOGAN: Okay. Well, with those limitations  
24 in place, I'll allow him to offer his opinions regarding  
25 his property, as the owner and farmer of his property



1     only, and I would direct the Commission to take the  
2     testimony in that regard and not general statements  
3     offered by Dr. Scherer about these issues generally.

4             MR. JORDE:   Okay.   I appreciate all that.

5             Q.   (BY MR. JORDE)    So I think, with that, just  
6     pick up where we left off, Ben.   We were talking about  
7     that grade issue.

8             A.   Sure.   I don't know if it matters or not, but I  
9     did graduate summa cum laude from NDSU in ag economics  
10    and crop science.

11            So in his testimony, he states typical tile  
12    grades are .1 to .3 percent, which means they have a 1-  
13    to 3-foot drop in 1,000 linear feet.   So this field has  
14    half-mile tile runs.   A half mile is 2,640 feet,  
15    multiplied by .003 is 7.92 feet.   7.92 feet of drop in  
16    that one half-mile run.

17            Now, someone stated in earlier testimony that  
18    these lines are only three to four feet deep, which I  
19    guess I think the math speaks for itself, because  
20    there's 7.92 feet of drop, but if you add cover of three  
21    feet, you're actually at 10.92 feet.

22            Q.   And to add some context to that, you're saying  
23    that basically on, let's say, a quarter section like  
24    your ground, a half mile long, tile system starts at one  
25    end, that at the exiting end, you would be anywhere

1 from seven to ten feet. Is that what you're getting at  
2 -- beneath the surface?

3 A. Yeah, just that it -- correct. In that area,  
4 it's just highly variable. And on this particular  
5 field, you know, it runs west to east so, you know, the  
6 tile is shallowest on the west side and deepest on the  
7 east side, which is -- so when we talked about -- it was  
8 also said that six feet to the top of the pipe. Well,  
9 that -- in this situation, that isn't enough considering  
10 where they were wanting to route it and that they were  
11 wanting to cross 33 tile lines on this field.

12 Q. What depth -- based again on your field  
13 specifically, how the tile is set up, the grade that  
14 we've established is needed, what do you believe would  
15 the depth of the pipeline need to be to not disturb all  
16 that, the CO2 pipeline?

17 A. I'm not qualified to answer the specific depth  
18 that the tile in this field is at. I'm just -- I'm just  
19 trying to show that if you like math, it's much deeper  
20 than was stated.

21 Q. All right. Very good. In terms of any other  
22 issues with Mr. Ellingson's testimony, do you have  
23 anything further?

24 A. You know, I think a question was asked about,  
25 you know, in -- in low ground with high water table in

1 North Dakota, are there difficult conditions to work in.  
2 And I feel like those working conditions were  
3 discounted. In this area, it's common practice to have  
4 multiple backhoes working on excavations, you know, one  
5 to dig the hole and then another one to pull out  
6 collapsing sidewall that's sloughing off into the bottom  
7 of the hole. So this field has a high water table and  
8 there's no other working outlets for excess water.

9 Q. And orientate us again, just in case folks have  
10 forgot, of what county you're specifically talking about  
11 and then what portion of the county?

12 A. The legal description is the northwest quarter  
13 of section 26, Viking Township, Richland County. It's  
14 kind of west, north central, sort of.

15 Q. Okay. All right. And any other types of  
16 concerns that you have based on what you heard today?

17 A. I believe something was said about a drain tile  
18 fact sheet. I've never seen a drain tile fact sheet,  
19 and I definitely had conversations with land agents that  
20 knew there was drain tile because I told them you got to  
21 go around the drain tile.

22 Q. And in terms of you notifying Summit land agents  
23 about your concerns about drain tile, what has their  
24 response been to date to you personally?

25 A. You know, I've made lots of different offers,

1 but all of them have been rejected. It's a little  
2 difficult to believe that the landowner is in control,  
3 as was said, because every offer has been rejected by  
4 Summit. I definitely cannot dictate where it goes and I  
5 have not had any input into routing or depth or tile  
6 repair.

7 Q. Have you had the opportunity to talk from Summit  
8 with a gentleman, first name Erik, E-R-I-K, last name  
9 Schovanec?

10 A. Yes, absolutely.

11 Q. And what were the nature of those conversations  
12 related to your land?

13 A. In January of 2022 -- I have an email that I  
14 printed off for everyone.

15 Q. And would you like that to become a part of the  
16 record?

17 A. Yes.

18 Q. All right. Why don't I just circulate this  
19 around, if you don't mind.

20 And while that's being circulated, because I'll  
21 need to offer it first, but just, without getting into  
22 exactly what it is, what do you intend for this to  
23 prove? That a communication had occurred about your  
24 ground and their desire for an easement?

25 A. Yes. So verbally -- verbally I was told that

1 "Absolutely we can reroute this pipeline to the west  
2 side of this field." And that was confirmed by this  
3 email saying "We are working towards adjusting the route  
4 as we discussed on the phone with the route moving west  
5 side of your property near the road."

6 That was never received. And I followed up on  
7 it a couple different times and they just changed the  
8 subject.

9 Q. All right. So is --

10 MR. JORDE: And I guess I'm sorry, Your Honor,  
11 I'm not sure if we're having our own landowner  
12 intervenor exhibit numbers or what this should become.

13 ALJ HOGAN: So Mr. Dotzenrod offered some  
14 exhibits in Gwinner or documents in Gwinner that I  
15 labeled as BD1 so this could be BD2.

16 MR. JORDE: Okay. Thank you, Your Honor.

17 Q. (BY MR. JORDE) Well, with that -- well, first  
18 let me ask you this. Is this a true and accurate copy  
19 of the email between yourself and a representative, this  
20 Mr. Schovanec, of Summit Carbon?

21 A. Yes. And I think there was a Wade B that was --

22 Q. Boeshans?

23 A. -- cc'd on there.

24 Q. Okay. Also of Summit?

25 A. He was a part of that conversation. And I

1 think --

2 Q. Let me just stop you there just because we kind  
3 of have to do things in order here.

4 MR. JORDE: So with that, Your Honor, I would  
5 offer BD2.

6 ALJ HOGAN: Any objection, Mr. Mahlberg?

7 MR. MAHLBERG: No.

8 ALJ HOGAN: Mr. Pelham.

9 MR. PELHAM: No objection.

10 ALJ HOGAN: All right. BD2 is admitted.

11 Q. (BY MR. JORDE) And now that it's admitted,  
12 just to kind of sum up, what is your intent or desire  
13 for the Commission to take away from this email and  
14 those conversations you had with Summit related to your  
15 land?

16 A. I guess that verbal communications have not been  
17 honored and even written communications have not been  
18 honored. I've been waiting for this reroute map and  
19 easement for over a year. I was told repeatedly that  
20 they wanted to negotiate, but every offer I made was  
21 rejected. A few times I offered something, they would  
22 repeat their initial offer with no compromise.

23 I've also been told repeatedly that the easement  
24 offers were the best they could do, only to see prices  
25 explode higher. I have a copy of the latest easement

1 from January of 2023 and -- and the easement referenced  
2 in this email from January of 2022.

3 Q. Why don't we stop there --

4 A. And --

5 Q. Ben, just one second. Why don't we stop there  
6 because the email references an attachment and I want to  
7 go ahead and get this on the record. So I'm going to  
8 mark what I'm going to pass around as BD3 and then I'll  
9 offer it in a moment.

10 And, Ben, while we're doing that, so BD3 as  
11 marked purports to be a January 20th, 2022, letter from  
12 Summit related to an offer to acquire easements; is that  
13 correct?

14 A. I'm sorry, I -- could you repeat?

15 Q. Yeah. And just so you understand, we just have  
16 to lay foundation and just make sure that what we're  
17 talking about is a true and accurate copy. So I simply  
18 want to confirm with you what we've marked as BD3, this  
19 January 20th, 2022, letter is something that you are  
20 testifying came from Summit and related to an offer to  
21 acquire the land in question?

22 A. Correct. In January of '22.

23 Q. All right. And this BD3 would coincide with the  
24 attachment that is noted at the bottom of BD2?

25 A. Correct.

1 Q. All right. And now --

2 MR. JORDE: And I guess I would offer then BD3,  
3 Your Honor.

4 ALJ HOGAN: Any objection to BD3, Mr. Mahlberg?

5 MR. MAHLBERG: I don't have any objection to  
6 this. I will object if we're going to spend a lot of  
7 time going down the path of a history of negotiations  
8 and each easement that comes across and offers that come  
9 across. I think that's outside the province of the  
10 decision to be made.

11 But with this document that was mailed to Mr. --  
12 to Rose Dotzenrod and Dan Dotzenrod, I don't have an  
13 objection.

14 ALJ HOGAN: Mr. Pelham.

15 MR. PELHAM: I don't have any objection. I will  
16 restate again, you know, the Commission doesn't have any  
17 jurisdiction over private negotiations between  
18 landowners and the company as to easements.

19 ALJ HOGAN: All right. BD3 is received.

20 Q. (BY MR. JORDE) And, Ben, to be clear, you were  
21 here and sat through all of Mr. Powell's testimony;  
22 correct?

23 A. Correct.

24 Q. And when he made the comment that landowners are  
25 always in control and they're doing everything they can,



1     you're simply responding and rebutting with your  
2     personal experience with Summit; correct?

3             A.    Correct.

4             Q.    All right.  Is there anything else of importance  
5     for the Commission to know about BD2 or BD3?

6             A.    So the easement, you know, that offer in January  
7     '22 was for \$215 per rod for everything, crop damage and  
8     easement.  Now that -- the latest easement, there's an  
9     offer for \$650 per rod in January of '23.  And the map  
10    route is identical on both of those.  They're slightly  
11    different but identical.

12            Q.    And was it your understanding during attempted  
13    negotiations with Summit that they were going to reroute  
14    or make some modifications that you as the farmer of  
15    this piece of ground requested and then they decided --  
16    they ended up not doing that?

17            A.    Correct.  I was under the impression that they  
18    would move it to the west side of the corridor, and that  
19    -- I never received a map.

20            Q.    And would moving it to the west side of the  
21    corridor not completely eliminate but help to alleviate  
22    some of the challenges and the economic impacts to you  
23    as the farmer and your parents as the landowners as  
24    opposed to if they leave it right now where they're  
25    showing it?

1           A.    Correct.  That -- you know, the tile depth on  
2           the west side is much more uniform.  That would probably  
3           be the biggest advantage.

4           Q.    All right.  And so, again, to tie this back to  
5           what we were talking about today, your attempts to work  
6           with them was to minimize the issue with the tile, the  
7           issue with, you know, the land and soil settling and  
8           causing other problems.  That was your attempt to work  
9           with them; correct?

10          A.    Correct.

11          Q.    All right.  And to date, they have not worked  
12          with you; correct?

13          A.    Correct.

14          Q.    All right.  I know you had a couple other  
15          documents.  I think those might be more appropriate to  
16          add just to some prefiled testimony rather than maybe  
17          going over those today, unless this document here was  
18          something that was directly relevant to the tiling and  
19          the land settling?

20          A.    Yes.  That's --

21          Q.    So let me -- first we'll pass it out.  We'll do  
22          that.

23                   MR. JORDE:  And so I'm now, Your Honor, marking  
24          BD --

25                   ALJ HOGAN:  4.

1 MR. JORDE: -- 4. Yes. Thank you.

2 Q. (BY MR. JORDE) And then while we're passing  
3 this around, Ben, BD4, is this a series of documents  
4 that depict what precisely?

5 A. They depict these -- these cavities underground  
6 after they collapse.

7 Q. And is this designed to be further demonstrative  
8 of the live demonstration that you provided?

9 A. Correct.

10 Q. All right.

11 MR. JORDE: And, again, with the understanding  
12 these are demonstrative to help his explanation, I would  
13 offer BD4.

14 ALJ HOGAN: Any objection?

15 MR. MAHLBERG: Yeah. I mean, he doesn't have  
16 expertise outside his own property. The explanation was  
17 he's only going to testify about his own property. And  
18 now I'm seeing a series of exhibits on city streets with  
19 sewer mains potentially having collapsed and cars  
20 falling into them. And I don't think that's  
21 representative of his area of expertise.

22 MR. JORDE: Well, it's called a demonstrative  
23 and it's demonstrating rather than getting another hour  
24 of oral testimony on, for instance, page 1, precisely  
25 what was illustrated here. And that's the nature of it.

1 I mean, it's a demonstrative exhibit.

2 ALJ HOGAN: Mr. Pelham.

3 MR. PELHAM: I mean for purposes of a  
4 demonstrative exhibit, I mean, these appear to be  
5 sinkholes. What's the cause? Where are they at? I  
6 mean, to me, it's not clear, but maybe Mr. Jorde can  
7 establish that. I mean, this first one appears to be  
8 the only one that is -- well, except for the last one  
9 looks like it's on some agriculture land. You know, do  
10 we know what this is? I mean, it could be a dugout.  
11 And I don't know what it is, and so that's my concern as  
12 to what it is. Demonstrative of what is really my  
13 concern with it.

14 Q. (BY MR. JORDE) So with that, let's just try to  
15 clarify this and then we can move on. With, for  
16 instance, BD4, page 1, I mean obviously that's a farm  
17 field, agriculture land. What was your intent that this  
18 is demonstrative of based on your understanding?

19 A. I was intending to show that my demonstration  
20 with the rice does occur. I -- you know, when we've had  
21 these happen in our fields, I never thought to take a  
22 picture of them so I don't have any firsthand pictures  
23 so I wanted to share -- share that.

24 I was contacted by someone from the Oakes area  
25 after Gwinner who said they did have some pictures.

1 They don't have them now, but they have some repairs  
2 like this that they intend on sharing at later meetings.

3 Q. So then just to button this up, for instance,  
4 page 1 of BD4, is that an exemplar of a sinkhole, and  
5 although not your field, for demonstrative purposes,  
6 substantially similar to the effect that you have  
7 personally experienced on your own ground in the past?

8 A. Correct.

9 Q. All right.

10 MR. JORDE: So I think that serves its purpose  
11 then. If I didn't -- if it didn't get into evidence,  
12 I'm going to reoffer it again for that limited purpose.

13 ALJ HOGAN: Well, I have a couple of questions.  
14 Did you just pull these pictures off the  
15 internet or where did these pictures even come from?

16 THE WITNESS: Correct.

17 ALJ HOGAN: So you don't know the surrounding  
18 circumstances of what caused the sinkholes in any of  
19 these pictures, they're just ones you found online?

20 THE WITNESS: That first one is from the  
21 University of Wisconsin and they, in the article that  
22 that picture was attached to, said that this can happen  
23 with drain tile systems.

24 ALJ HOGAN: That article, did it say this one  
25 was caused -- like is this a drain tile issue or was

1       that what the article was about or sinkholes in general?

2               THE WITNESS: I believe the article was about  
3       sinkholes in general, but the article acknowledged that  
4       this can happen because of drain tile. It did not -- I  
5       don't believe it stated that this specific sinkhole was  
6       from drain tile.

7               Q. (BY MR. JORDE) And we can follow up with that  
8       article. I think -- it's not designed to be a  
9       controversy. It's simply an exemplar of a  
10       similar-looking effect that you have experienced on your  
11       own ground due to sinkholes. Is that the sole intent of  
12       that picture?

13              A. Correct.

14              Q. All right.

15              ALJ HOGAN: I'm willing to maybe admit this  
16       first picture, but I think the other ones are maybe a  
17       little too far off the mark here.

18              MR. JORDE: It's totally fine. It's just  
19       designed to -- he didn't have a camera so --

20              ALJ HOGAN: Okay.

21              THE WITNESS: Can I explain? It's fine. I  
22       mean, I just wanted -- I didn't have any pictures so I  
23       wanted to give a little bit of context on what these  
24       look like. But those sewer mains, you know, a sewer  
25       main sort of can -- the same type of thing can happen.

1 If you have a sewer main crack and then dirt enters, you  
2 know, from the subsoil, that continues to get washed  
3 down the sewer main so you can end up --

4 MR. MAHLBERG: I'm going to --

5 THE WITNESS: -- with the same type of  
6 situation.

7 MR. MAHLBERG: I'm going to object. We now have  
8 a witness who is not an expert in drain tile generally  
9 testifying that sinkholes on sewer mains on city streets  
10 are an analogous thing to what he is saying will happen  
11 on his piece of land. He doesn't have the foundation to  
12 testify like that.

13 ALJ HOGAN: I agree. I think that's maybe -- I  
14 don't know. We don't know if that's similar or not or  
15 -- I think it's beyond what we need to talk about today.  
16 I'm going to note Summit's objection to the photos.

17 I am going to admit the first photo, but the  
18 other ones I will not admit because I just think they're  
19 beyond the scope of even a demonstrative exhibit.

20 MR. JORDE: All right. Appreciate that, Your  
21 Honor. Thank you.

22 Q. (BY MR. JORDE) Ben, again, just kind of  
23 wrapping up here, in terms of trying to confine to  
24 anything in rebuttal as to what -- what -- I'm sorry, I  
25 forgot his name. Help me out.

1 ALJ HOGAN: Ellingson.

2 Q. Ellingson, thank you.

3 -- Mr. Ellingson or Mr. Powell, do you have any  
4 more issues or concerns related to your particular  
5 parcel?

6 A. Just -- I guess just these statements about how  
7 I can dictate where it goes and that I'm in control I  
8 don't feel are accurate in my case. After being  
9 promised things and then not obtaining them, I felt I  
10 could only go off of written offers, which is why I  
11 included these easements.

12 For example, in the January '23 easement, the  
13 latest one, on item two it discusses the location, and  
14 it seems that the pipe can be moved anywhere on the  
15 property, whereas I need it moved definitively on a  
16 route that avoids the tile.

17 Q. Let me just stop you there. Let's just get this  
18 passed out. I'm going to pass out what's been marked as  
19 BD5. And your intent with this exhibit is, again, to  
20 show that in the most recent offer post conversations  
21 about your concerns, that nothing effectively changed?

22 A. Correct.

23 Q. All right. And specifically as to the location  
24 of the pipeline vis-a-vis your concerns about tile and  
25 the specific characteristics of the soil on your land;



1 correct?

2 A. I'm sorry, can you repeat?

3 Q. Yep. The intent of this exhibit is not  
4 necessarily to go through every easement term but  
5 specifically utilizing the map which is substantially  
6 similar, if not identical, i.e., hasn't changed despite  
7 you voicing your concerns about your property?

8 A. Correct.

9 Q. All right.

10 MR. JORDE: With that, I'd offer BD5.

11 ALJ HOGAN: Any objection to BD5, Mr. Mahlberg?

12 MR. MAHLBERG: No.

13 ALJ HOGAN: Mr. Pelham.

14 MR. PELHAM: No objection.

15 ALJ HOGAN: All right. BD5 is admitted.

16 Q. (BY MR. JORDE) Sir, I understand you may have  
17 more things, and I get it at every hearing, we think of  
18 things we wish we would have said or want to add, but  
19 for the sake of keeping this moving, maybe just in  
20 wrapping up, anything else that you think that the  
21 Commission here would benefit from knowing relative to  
22 your experience with Summit or concerns about your field  
23 particularly?

24 A. Sure. So just as part of a final point here,  
25 another thing in the easement was that the company is

1 responsible to fix the drain tile if the claim is  
2 confirmed by the company is a direct result of the  
3 activities of the company. As we've discussed in  
4 Gwinner, we can have problems outside of the easement  
5 area and it can take years for these problems to  
6 develop. So this is a problem. If there's a  
7 disagreement on what caused the damage, what do I do?  
8 What written promises exist? I don't see any.

9 To bring this full circle, conversations were  
10 had, but Summit did not honor what they said would  
11 happen. And, in addition, holding pipeline companies to  
12 verbal conversations has caused landowners problems in  
13 the past. I have this article from Thomson Reuters  
14 from 2017.

15 Q. Okay. We'll pass this around, BD --

16 MR. JORDE: Are we on BD7?

17 ALJ HOGAN: 6.

18 MR. JORDE: 6. Okay.

19 Q. (BY MR. JORDE) I'm going to pass around what's  
20 been marked BD6. And, again, what is the intent of this  
21 exhibit?

22 A. The intent --

23 UNIDENTIFIED SPEAKER: Hold on. I'd like to see  
24 it before we get testimony about the intent of a  
25 document pulled off the internet that apparently talks

1 about other people's problems that this witness found on  
2 the internet before he testifies about what it is.

3 So I will have objections, I guess, when the  
4 attempt is made to offer it, and if the questions are  
5 going to be about what this witness read about lawsuits  
6 with other companies and other projects years before  
7 this one. I don't think that's relevant and I object to  
8 those.

9 MR. JORDE: All right.

10 Q. (BY MR. JORDE) Ben, is your intent here to  
11 illustrate that, based on the testimony of Mr. Powell  
12 and the easements that we now have in evidence that  
13 don't address your concerns and don't specify how a  
14 dispute between landowner and Summit is to be resolved,  
15 is your ultimate concern that that would end up in a  
16 lawsuit?

17 A. Correct. I'm afraid that in order to be treated  
18 as was verbally promised to me, a lawsuit will be  
19 necessary.

20 Q. All right. So, frankly, I don't even think we  
21 need to offer the Reuters article. Essentially, your  
22 testimony, if I understand you, is that you're afraid  
23 the easement does not back up the oral testimony of  
24 Mr. Powell?

25 A. Correct.

1           Q. All right. Anything else, sir, that you'd like  
2 to share?

3           A. No.

4           Q. All right. Thank you.

5           MR. JORDE: Nothing further, Your Honor.

6           ALJ HOGAN: Mr. Mahlberg, any questions?

7           MR. MAHLBERG: Very briefly. Thank you, Your  
8 Honor.

9                                   CROSS EXAMINATION

10          BY MR. MAHLBERG:

11           Q. Mr. Dotzenrod, I'm Pat Mahlberg. Nice to meet  
12 you. Under these circumstances, not always the best.  
13 But just a couple of questions for you. Have you ever  
14 done drain tile installation yourself? That wasn't  
15 clear to me.

16           A. No. I've been present during installation, but  
17 I -- I haven't been in charge.

18           Q. Same thing, you haven't fixed drain tile  
19 yourself?

20           A. Correct.

21           Q. You, therefore, haven't fixed drain tile after a  
22 pipeline project?

23           A. Correct.

24           MR. MAHLBERG: I don't have anything else.  
25 Thank you.

1 ALJ HOGAN: Mr. Pelham, any questions?

2 CROSS EXAMINATION

3 BY MR. PELHAM:

4 Q. Good afternoon, Mr. Dotzenrod. I'm just  
5 wondering if you heard the testimony of Mr. Ellingson  
6 regarding the header systems as a sort of alternative?

7 A. I did.

8 Q. All right. Has the -- has any discussion taken  
9 place between you or your parents and Summit Carbon  
10 Solutions regarding a header system?

11 A. No. I thought I had a note here, if you could  
12 give me a moment.

13 (Pause)

14 A. No. When I -- when I spoke with the landowner,  
15 she wasn't aware of any contact that Ellingson had with  
16 her. And in addition -- where is it?

17 Q. Well, let me just jump in. And the landowner is  
18 your mother and she's going to be testifying next;  
19 correct?

20 A. Correct.

21 Q. Okay. The header system then as described, does  
22 that alleviate any of the concerns that you have as far  
23 as demonstration and the, for lack of a better word,  
24 sinkhole? I'm not sure what else is described other  
25 than sinkhole. Does that alleviate any of your concern?

1           A.   No.  It -- it's not a system I'm familiar with  
2           and it would still be crossing the pipeline multiple  
3           times.

4           Q.   Thank you, sir.  I don't have any other  
5           questions for you.

6           ALJ HOGAN:  Mr. Schock, any questions?  
7           Commissioner Christmann.

8           COMMISSIONER CHRISTMANN:  Did you -- I don't  
9           know if I understood you right.  I was taking various  
10          notes and -- did you say that when you were showing  
11          those contracts earlier, the exhibits, that at one point  
12          the offer was 215 -- like 2-1-5 -- per rod?

13          THE WITNESS:  In January of '22, the offer for  
14          everything, crop damage and easement, was 2-1-5 per rod,  
15          which is 16 and a half feet.  And in January of '23, the  
16          offer was 650, 6-5-0, per rod.

17          COMMISSIONER CHRISTMANN:  Okay.  And I was  
18          regretting that I didn't clarify this in Gwinner, but  
19          now you're back so I get a second chance.  You said that  
20          your land that you're concerned about is -- I believe  
21          you said the northwest quarter of section 26, but then  
22          you reference the township.  That means nothing to me.  
23          I mean, the township means something to me.  I don't  
24          know where it is.  Is it 135 north, range 51 west?

25          THE WITNESS:  135 north, 51 west.

1           COMMISSIONER CHRISTMANN:   Okay.   And so the  
2   proposal is to come from the north, and in the section  
3   to the north of you, it looks like it's running  
4   approximately in the middle of the west quarter and it  
5   would enter yours like that, but then it would angle  
6   easterly and come out not quite all the way but fairly  
7   close to the eastern edge of your corridor; is that  
8   correct?

9           THE WITNESS:   Correct.

10          COMMISSIONER CHRISTMANN:   Is this the only land  
11   that you and your family have that this proposes to  
12   cross?

13          THE WITNESS:   Correct.

14          COMMISSIONER CHRISTMANN:   And do you have other  
15   property that is tiled?

16          THE WITNESS:   Correct.

17          COMMISSIONER CHRISTMANN:   Okay.   So can -- you  
18   know, I kind of explained this is coming in the middle  
19   of the corridor and angling down and exiting toward the  
20   eastern edge.   Can you give me a similar brief  
21   description of where you suggested that it cross this  
22   quarter?

23          THE WITNESS:   On the very west edge, very close  
24   -- basically adjacent to County Road 29.

25          COMMISSIONER CHRISTMANN:   So what would be

1 better about that than the very -- I mean, they're  
2 coming in the middle of the corridor coming down,  
3 exiting on the east, and you're saying, well, go way  
4 over to the west, which is quite a jog. But if you were  
5 looking for an alternative, what would be better about  
6 the western side of your corridor than the eastern side,  
7 and at least that would get them to exiting where they  
8 want to be?

9 THE WITNESS: Well, the western side, the drain  
10 tile depth is much more uniform. You would have a lot  
11 better degree of certainty on how deep it is.

12 I believe you were -- you were asking some  
13 questions about how, if you have to go through a hill or  
14 something like that, that -- okay, so you're three feet  
15 deep. If you go through a three-foot hill, then you're  
16 six feet deep. Since the water drains from west to  
17 east, the drain tile is a lot more uniform depth on the  
18 west side so you have a lot better chance of being in  
19 that 3- to 4-foot range on the west side, whereas if you  
20 go where they propose, it -- it's going to be highly  
21 variable. You could have some lines that are eight feet  
22 deep. You could have some lines that are five feet  
23 deep. It's just so variable the further east you go.

24 You know, when this drain tile was installed, as  
25 you get to the east side, there are areas they had to do



1 something called overcut where they take an excavator  
2 and they peel off the topsoil so that they can drive  
3 their tile plow in this mini trench so they can get down  
4 deep enough. That does not exist -- that was not  
5 necessary next to the county road.

6 COMMISSIONER CHRISTMANN: And the entire  
7 quarter, the tiling runs parallel and all goes to the  
8 east?

9 THE WITNESS: All of the lateral lines run from  
10 west to east.

11 COMMISSIONER CHRISTMANN: Okay.

12 THE WITNESS: And the water flows to the east.

13 COMMISSIONER CHRISTMANN: Then you have a main  
14 on the east side that goes north and south; correct?

15 THE WITNESS: Correct.

16 COMMISSIONER CHRISTMANN: And does that main  
17 flow north or south? Like where is your discharge  
18 point?

19 THE WITNESS: So within the field it runs  
20 north-south. When it gets to the north side -- so the  
21 water runs to the north. When it gets to the north  
22 side, there's a buried solid tile line. It makes a  
23 90-degree turn and goes east. After a half mile there's  
24 a legal drain, which is a very deep, deep ditch, and  
25 that's where it exits.

1           COMMISSIONER CHRISTMANN: If the company chose  
2 to go on the east side, wouldn't they be able to just  
3 put a lateral then right on the west side of their pipe  
4 and run it the same way and all you'd really be lacking  
5 is just the very east few acres of your field?

6           THE WITNESS: My --

7           COMMISSIONER CHRISTMANN: I'm not saying that's  
8 an offer from them. I'm just asking to understand how  
9 this all works.

10          THE WITNESS: So you -- can I ask you a question  
11 just to clarify?

12          COMMISSIONER CHRISTMANN: Clarify my question.

13          THE WITNESS: So you were wondering if they put  
14 it on the east side of this property, if that would  
15 affect me.

16          COMMISSIONER CHRISTMANN: Well, I know it would  
17 affect you, but would it dramatically lessen the effect?

18          THE WITNESS: I see that as the worst possible  
19 location because that's where the main line is. That's  
20 where the most variable depth is. We've got -- you  
21 know, on the south side it's shallower. On the north  
22 side it's deeper. It's just all over the place.

23          And they also wanted to stay away from the trees  
24 so there's -- on the east quarter line there's a tree  
25 belt. They said they can't do anything next to trees.

1 So they would be still cutting every single tile line if  
2 they go on the east side. So I see that as the worst  
3 possible option for me.

4 COMMISSIONER CHRISTMANN: No other questions,  
5 but thank you, Ben.

6 ALJ HOGAN: Commissioner Haugen-Hoffart.

7 COMMISSIONER HAUGEN-HOFFART: Thank you.

8 Nice to see you again, Ben. I'm going to go to  
9 the exhibits just for clarification. On the one we  
10 allowed, BD3 has a cover letter on it and dated  
11 January 20th. And then BD5, we just got the easement.  
12 I know you've referenced a date, but there's no date.  
13 Did you get a cover letter with this easement or how did  
14 you get this?

15 THE WITNESS: This -- the one without the cover  
16 letter was sent directly to Rose, the landowner, my  
17 mother.

18 COMMISSIONER HAUGEN-HOFFART: And what was the  
19 date on that? Was there a cover letter with it?

20 THE WITNESS: I did not see it. She told me it  
21 was January of 2023 that she received it.

22 COMMISSIONER HAUGEN-HOFFART: So a year later?

23 THE WITNESS: Correct. That's one year after  
24 number 3, Exhibit 3.

25 COMMISSIONER HAUGEN-HOFFART: Okay. Okay. On

1 March 28th you testified in Gwinner, and you said at  
2 that time you discussed reroutes with the company and  
3 they rejected them. Have you had any personal contact  
4 with anyone from Summit since -- after March 28th?

5 THE WITNESS: March 28th of this year?

6 COMMISSIONER HAUGEN-HOFFART: Yes.

7 THE WITNESS: No, I have not --

8 COMMISSIONER HAUGEN-HOFFART: Okay. No further  
9 -- go ahead.

10 THE WITNESS: For my part, I feel like they know  
11 what they need to do. I don't know how I can be more  
12 clear. They're just not doing it.

13 COMMISSIONER HAUGEN-HOFFART: Okay. No further  
14 questions. Thank you.

15 ALJ HOGAN: Mr. Dawson.

16 SUBSTITUTE DECISIONMAKER DAWSON: Judge Hogan.  
17 Thank you for coming today. I have no  
18 questions.

19 ALJ HOGAN: Any redirect, Mr. Jorde?

20 MR. JORDE: No. Thank you, Your Honor.

21 ALJ HOGAN: Mr. Mahlberg, any questions?

22 MR. MAHLBERG: One.

23 RECROSS EXAMINATION

24 BY MR. MAHLBERG:

25 Q. Mr. Dotzenrod, are you aware that your counsel

1 has sent correspondence to our counsel saying do not  
2 have direct contact, that stuff needs to go through  
3 lawyers? Are you aware of that?

4 MR. JORDE: Objection. Form and foundation.

5 ALJ HOGAN: The objection is noted. He can  
6 answer if he knows.

7 A. Can you rephrase that? I don't know if I  
8 understand.

9 Q. (BY MR. MAHLBERG) Are you aware that -- well,  
10 let me back up. You're represented by Mr. Jorde; right?

11 A. Correct.

12 Q. And you're aware that Mr. Jorde has sent  
13 correspondence to Summit's lawyers saying to not have  
14 direct contact with you but to go through counsel. Do  
15 you have an understanding as to that?

16 MR. JORDE: Form and foundation.

17 Go ahead, you can answer if you know.

18 A. I'm sorry, I got confused.

19 MR. JORDE: Go ahead. I'll withdraw the  
20 objection. And the question one more time.

21 MR. MAHLBERG: Okay.

22 Q. (BY MR. MAHLBERG) Mr. Dotzenrod, do you know  
23 whether your lawyer has sent a lawyer -- excuse me.  
24 Wow. Do you know whether your lawyer has sent a letter  
25 to Summit's lawyers saying don't contact his clients

1 directly?

2 A. No, I was not aware of that.

3 Q. Okay.

4 MR. JORDE: Now I have a follow-up to that.

5 ALJ HOGAN: Okay. Go ahead.

6 REDIRECT EXAMINATION

7 BY MR. JORDE:

8 Q. Have you received from me or otherwise any new  
9 communication from Summit related to any of these issues  
10 or have any maps where they have now, all of a sudden,  
11 changed the route back to what they said they would do  
12 originally?

13 A. I have not received any offers from Summit  
14 through you.

15 Q. All right. Would you be surprised to learn  
16 they've sent me nothing related to you?

17 A. I would be surprised, yes, if they -- I'm sorry.  
18 Can you --

19 Q. Okay. I mean, they haven't sent us anything,  
20 they haven't sent you anything, and nothing's changed on  
21 this issue; correct?

22 A. Nothing has changed.

23 Q. All right.

24 MR. JORDE: Nothing further.

25 ALJ HOGAN: Mr. Pelham, any other questions?

1 MR. PELHAM: No.

2 ALJ HOGAN: Any other questions from the  
3 commissioners?

4 All right. Thank you, Mr. Dotzenrod.

5 THE WITNESS: Thank you.

6 MR. JORDE: All right. I now call Rose  
7 Dotzenrod.

8 And, Ben -- yeah, appreciate that.

9 ALJ HOGAN: Good afternoon, Ms. Dotzenrod.

10 ROSE DOTZENROD: Hello.

11 ALJ HOGAN: Did you hear me this morning go  
12 through the penalties for perjury?

13 ROSE DOTZENROD: Yes, I did.

14 ALJ HOGAN: And do you understand what perjury  
15 is?

16 ROSE DOTZENROD: Yes.

17 ALJ HOGAN: And being advised of the potential  
18 penalties for perjury, do you promise to tell the truth  
19 in this case today?

20 ROSE DOTZENROD: Yes.

21 ALJ HOGAN: And I'll just have you state your  
22 full name for the record.

23 ROSE DOTZENROD: Rose Dotzenrod. That's  
24 D-O-T-Z-E-N-R-O-D.

25 ALJ HOGAN: All right. Thank you.

1           Go ahead, Mr. Jorde.

2           MR. JORDE:   Thank you.

3                         ROSE DOTZENROD,

4   being first duly sworn, was examined and testified as  
5   follows:

6                         DIRECT EXAMINATION

7   BY MR. JORDE:

8         Q.   Ma'am, to pick up where we left off, your son,  
9   Ben, had talked about what he believed to be a  
10   January 2023 new offer where the route hadn't changed  
11   reflective of the desires he expressed to Summit. Can  
12   you confirm if, in fact, you received that in January  
13   of 2023?

14         A.   Yes, I did.

15         Q.   All right.

16                 ALJ HOGAN:   Ms. Dotzenrod, yeah, do you want to  
17   pull that a little closer so we can hear you? Thank  
18   you.

19         Q.   Now, again, ma'am, I know you have a lot to talk  
20   about, and in the interest of time, is it okay with you  
21   if I pass out your packets?

22         A.   Yes, please.

23                 MR. JORDE:   Your Honor, may I pass these out  
24   since they're a little bigger?

25         A.   Should I begin speaking or just wait?



1           Q.   Mr. Pelham is assisting us.  We appreciate that.  
2                   And you've assembled some documents.  And I  
3   don't know, ma'am, if we need to go through every single  
4   one in detail, but I do want you, obviously, to have  
5   your opportunity to share information that maybe your  
6   son hadn't touched on.  And so, with that, I guess we  
7   should mark this --

8                   MR. JORDE:  Should this be RD1, Your Honor?

9                   ALJ HOGAN:  Yeah, let's do that.  RD1.

10                  MR. JORDE:  Okay.

11                Q.  (BY MR. JORDE)  So, ma'am, what we've marked as  
12   RD1 is a binder that you, yourself, have put together;  
13   is that correct?

14                A.  Yes.

15                Q.  And the first several pages of that have to do  
16   with aerials of your property.  And what is -- before we  
17   get into it, just generally, what would be the gist or  
18   the point of you discussing those pages?

19                A.  Things that are relative to the property that we  
20   own and my son farms.

21                Q.  Okay.  As to your concerns about this project?

22                A.  Yes.

23                Q.  All right.

24                  MR. JORDE:  And I wonder, Your Honor, since  
25   we've got a lot of different things in here, I wonder if

1 I should maybe -- I don't know if we can partially offer  
2 it.

3 Well, let's try this. I'll offer the whole  
4 binder, and then if we have problems, we'll just go  
5 through it one by one. So I offer RD1.

6 ALJ HOGAN: Any objection, Mr. Mahlberg? I know  
7 there's a lot of documents in here.

8 MR. MAHLBERG: Maybe it's -- it's a lot of  
9 documents and within each of these folders there's some  
10 clips. And I would not like to not object to documents  
11 that I don't know the content of.

12 ALJ HOGAN: Okay. So we'll hold off. Maybe if  
13 you could just proceed with her testimony and --

14 MR. JORDE: That's fine. And then maybe reoffer  
15 it as we go.

16 ALJ HOGAN: Sure.

17 MR. JORDE: Okay.

18 Q. (BY MR. JORDE) Again, ma'am, it might be  
19 easier if I ask you an open-ended question. As to the  
20 maps, it looks like pages -- or the inserts starting  
21 with the map that shows the route and then going in  
22 about five more -- six more inserts are all various  
23 aerials of your land; is that correct?

24 A. Yes. On the second page there's 133 and 134  
25 that shows the pipeline as it crosses our property.

1 It's at the bottom of one page and at the top of the  
2 next page.

3 Q. And just for reference, ma'am, the Commission  
4 now does have that first and second easement which also  
5 show the Summit-provided aerial in terms of the  
6 orientation of the pipeline?

7 A. That is correct.

8 Q. All right. And in terms of those aerial  
9 exhibits that we've just discussed, is there anything  
10 specific you'd like to discuss?

11 A. Not at this time.

12 Q. All right. And then if we go to what appears to  
13 be the next non-aerial map is some type of a document  
14 that says "Summit Carbon Solutions" at the top; is that  
15 right?

16 A. Maybe. I'm right here.

17 Q. Oh, do you want to pause there?

18 A. Yeah.

19 Q. Okay.

20 A. I'm sorry. On page 81, I circled with pink  
21 highlighter that the pipeline is going straight and then  
22 makes two sharp 90-degree turns.

23 Q. All right. And you've got an "81" handwritten  
24 in the upper right-hand corner of that aerial map?

25 A. That is the internet page numbers.

1 Q. Okay. And what are you intending to show by  
2 highlighting or circling that 90-degree --

3 A. I just thought it was interesting that  
4 apparently the pipeline company had the potential to do  
5 that.

6 Q. To make 90-degree turns?

7 A. Correct, in short distances.

8 Q. Have you been told or led to believe that they  
9 somehow, quote/unquote, can't move the route as you  
10 desire because they're unable to make 90-degree turns?

11 A. That had been inferred but, you know, I won't  
12 say that they directly -- they did not comment on it  
13 directly to me.

14 Q. All right. And then let's just -- we'll walk  
15 through this together. If we turn to the next page that  
16 you're showing there, what's the significance of that  
17 page?

18 A. So the significance of this page here, it's the  
19 northwest of 26-135-51 -- zoom out. This is a picture  
20 that was gotten off of the internet from the Richland  
21 County mapping service of drain tile. And it shows what  
22 land is tiled, what land is not tiled. Our quarter has  
23 a star on it. It shows that our quarter drains by  
24 gravity and some uses a lift pump. And this is  
25 information that I shared with numerous Summit agents,

1 and they had no interest in that information.

2 Q. And when you say they had no interest in the  
3 information, why is that a problem? What are you trying  
4 to express that you believe they didn't have interest  
5 in?

6 A. I have been concerned about the soil conditions,  
7 the instability of the soil, and with the tiling and the  
8 cutting of the tiles, and that there are options  
9 available to them. And Richland County website has this  
10 information and they have a very helpful technological  
11 advisor who will answer questions. And they were not  
12 interested in it.

13 Q. All right. And then do you want to discuss the  
14 second page that shows the quarter in green there?

15 A. Right. And that's just a close-up of our  
16 quarter. It's basically the same -- from the same  
17 mapping service.

18 Q. All right. Then let's go to the next one, and  
19 now we're at that -- appears to be some type of a letter  
20 from a Wade Boeshans from Summit Carbon. What do you  
21 believe the significance of this document is?

22 A. On page 2 there is a star and the highlighted  
23 statement "Summit Carbon Solutions has provided life of  
24 project warranty for drain tile within the right of  
25 way." They state -- they state within the right of way.

1     However, as Ben previously testified, it seems very  
2     likely that there will be problems beyond the right of  
3     way. For example, if the -- there are breaks and the  
4     tile lines fill up with soil, that would --

5           Q. And we established that the right of way, the  
6     permanent right of way, is 50 feet. And is your point  
7     that the tile lines extend beyond the 50-foot in many  
8     ways, and an issue within that 50-foot could cause other  
9     problems elsewhere?

10          A. Correct.

11          Q. All right. But yet they're only claiming, at  
12     least in this letter but we learned not in the easement,  
13     to warranty within the 50-foot?

14          A. Only within the right of way.

15          Q. All right. Okay. And then what are you looking  
16     at there? Did we page forward a couple of pages?

17          A. Oh, I'm sorry if I have them out of order, but  
18     this is 144 from the internet. And I framed in pink  
19     highlighter, if you look -- it shows up better on the  
20     electronic version, but there is discoloration of the  
21     land running parallel to the railroad. And I believe  
22     that that is where a -- pipelines were previously  
23     installed, and I'm not sure, but it would seem to  
24     indicate that the productivity in that area is still  
25     diminished.

1 Q. All right. And what's next?

2 A. The Farmers Union letter.

3 Q. All right. Did you have some concern about  
4 whether or not you are able to obtain insurance coverage  
5 to protect yourself from liability against any risks or  
6 spills that may occur?

7 A. Absolutely.

8 Q. And have you taken any steps to determine if you  
9 can, in fact -- if you, in fact, already have coverage  
10 that would protect you if Summit's CO2 were to leak from  
11 your property and injure somebody?

12 A. In this letter, the way I interpret it, is that  
13 we do not have coverage.

14 Q. All right. And have you made any attempts to  
15 inquire if you could purchase a rider or purchase  
16 additional coverage up and above your homeowners or  
17 general liability or farm policy?

18 A. We have been requesting this letter for quite  
19 some time. We just received it. It's quite shocking to  
20 me but -- so at this point, no, we have not, although  
21 I'm sure it would be expensive. You would certainly  
22 think so.

23 Q. And have you had any conversations or have come  
24 to understand that CO2 is classified as a pollutant and,  
25 therefore, liability policies exclude CO2 from within

1 the pollution exclusion exception?

2 A. Yes.

3 Q. All right. And then did you take that to mean  
4 that if damage is caused by CO2, that that would be  
5 excluded from your policy coverage?

6 A. Correct.

7 Q. All right. What's the next page?

8 A. The resolution, Richland County resolution.

9 Q. And what's the significance of that?

10 A. Significance of the resolution is that the  
11 Richland County commission, on March 15th of last year,  
12 voted unanimously to be opposed to eminent domain for  
13 the Summit Carbon pipeline.

14 Q. All right. Let's go to the next one, ma'am.

15 A. This -- this is a web soil survey data, it's  
16 from the USDA NRCS, and it is specific to the  
17 schoolhouse quarter. There are four similar reports in  
18 here, and they deal with different topics such as  
19 shallow infiltration of the systems, deep infiltration  
20 systems, shallow excavations, and corrosion of steel.  
21 There's a high impact, and probably for the interest of  
22 time that's something that they would want to review on  
23 their own.

24 Q. And, again, just summarize, that's government  
25 data and that you intend to show it to express what



1 point?

2 A. Well, give me a moment and I'll --

3 Q. Sure.

4 A. -- find it.

5 (Pause)

6 A. So, for example, infiltration shallow, it shows  
7 that specific to this quarter it's severely limited on  
8 all soil types on this quarter. On the infiltration  
9 deep, it is severely limited on all soil types on this  
10 quarter.

11 The infiltration rates have relevance because,  
12 through Ben's implemented conservation farming  
13 practices, infiltration rates have greatly improved. My  
14 understanding, improved infiltration rates mean a lot  
15 less soil erosion and nutrient loss. Nutrient and soil  
16 losses go into ditches, rivers, and streams.

17 The shallow excavations is severely limited on  
18 all soil types and corrosion of steel is high on all  
19 soil types on this quarter. Excavations and corrosion  
20 have relevance because of project installation and  
21 long-term integrity of the project.

22 The schoolhouse quarter has a high water table  
23 and unstable soil. The proposed pipeline placement on  
24 our land will dramatically create further soil  
25 instability.

1           Q.    Okay.  Very good.  And then what do we have  
2           next?

3           A.    The next is the letter from the surveyors, the  
4           North Dakota -- I forget -- Society of Professional Land  
5           Surveyors.  It addresses their concerns regarding  
6           blanket easements and strip easements.  As I know the  
7           easement that I read, it is a blanket easement that they  
8           have, which is problematic.

9           Q.    And, ma'am, were you here when I had the  
10          exchange with Mr. Powell about that very issue, the  
11          access easement, and he -- I believe the testimony was  
12          something to the effect that the landowner determines  
13          that?  Has that been your experience?

14          A.    Not at all, no.

15          Q.    And in the easement you actually received, did  
16          it, to your understanding, have any language or any  
17          discussion at all that you were in charge of the access  
18          easement?

19          A.    No.

20          Q.    And is it your understanding from the access  
21          easement that, in fact, they can access the property  
22          wherever, whichever way they want to get to their right  
23          of way?

24          A.    That is my understanding.

25          Q.    All right.  What do we have next?

1           A.    Let me figure that out.

2           Q.    Okay.

3                   (Pause)

4           A.    I would like to share the history and investment  
5 in the schoolhouse quarter, if I could.

6           Q.    And what this land means to you?

7           A.    Exactly.

8           Q.    Go ahead.

9           A.    About 20 years ago, my husband and I made a  
10 major investment -- I'm sorry, this is too emotional.  
11 I'm just going to submit it as written testimony, if  
12 that's all right.

13          Q.    That's fine, ma'am. And if I can try to sum it  
14 up, although not as well as you could, suffice it to say  
15 you and your husband have sacrificed and have a lot of  
16 blood, sweat, and tears in this land and depend on it  
17 for revenue, depend on it for your son as well who farms  
18 it, and you are extremely concerned with the fact that  
19 you don't believe Summit has taken your concerns  
20 seriously?

21          A.    Yes.

22          Q.    All right.

23          A.    Thank you.

24          Q.    Anything else, ma'am, before I -- well, anything  
25 else on this binder or any comments at all?

1           A.    The Brehm soil health study.   The main takeaway  
2 points from that would be 44 percent decrease in  
3 aggregate stability and 23 percent -- 10 years later,  
4 corn yields are still reduced by 23 percent.

5           Q.    All right.

6           MR. JORDE:   So, Your Honor, with that, I think  
7 we've touched on individually each and every subpart of  
8 what has been marked as RD1.   I would now offer those.

9           ALJ HOGAN:   That last document, the Brehm  
10 pipeline review --

11          THE WITNESS:   Yep.

12          ALJ HOGAN:   -- does that top page go with the  
13 article in back?

14          THE WITNESS:   That is an analysis of the review.

15          ALJ HOGAN:   Where did you get -- where does this  
16 document come from, or article?

17          THE WITNESS:   I did get it off the internet.   I  
18 think -- I believe -- I'm not sure.   I believe it was a  
19 Ohio University graduate student's thesis, I believe.  
20 I'm not positive about that.

21          ALJ HOGAN:   And this top page came with it as  
22 well?

23          THE WITNESS:   No.   That was an analysis that was  
24 done after reading the review.

25          ALJ HOGAN:   And who drafted the top page?

1 THE WITNESS: Ben did.

2 ALJ HOGAN: Okay. All right.

3 Mr. Mahlberg, have you had a chance to -- I  
4 should note, let's see, the letter, the February 11,  
5 2023, letter from the Society of Professional Land  
6 Surveyors, I know that packet is already in the record.

7 MR. MAHLBERG: There are -- excuse me, Your  
8 Honor. There are a couple of documents that either came  
9 in through Mr. Dotzenrod or are already in the record.

10 ALJ HOGAN: Yep.

11 MR. MAHLBERG: With respect to the last one,  
12 which is the only one that I had pulled out, I don't  
13 think there's foundation for the article printed off of  
14 the internet. Mr. Ben Dotzenrod could get up and  
15 explain to us what this is, I'm okay with that top page  
16 coming in if they want it, but the content of a  
17 scholarly article where I can't even identify the  
18 authors of it, I'm not okay with --

19 ALJ HOGAN: Okay.

20 MR. MAHLBERG: -- and would object to just that  
21 portion of it coming in.

22 MR. JORDE: That's fine. And I mean we'll --  
23 well, I won't withdraw it, but I understand the  
24 objection and the likely ruling. I might just ask one  
25 or two more questions about the cover page that you

1 don't have an objection to.

2 MR. MAHLBERG: If the questions are going to be  
3 of this witness who just said that somebody else  
4 prepared it, then the objection to that is going to be  
5 fairly obvious.

6 MR. JORDE: Uh-huh. Well, I mean, Mr. Powell  
7 didn't prepare the easements and he can still talk about  
8 them. I think that's a little too technical. The  
9 question would be what is the significance -- what does  
10 she believe the significance of the analysis is? What's  
11 the nexus? What's the connection to anything? So if I  
12 could just ask her that question and then I don't have  
13 any more questions for this witness.

14 ALJ HOGAN: Yeah, she can answer that.

15 A. The long-term degradation to the soil.

16 Q. (BY MR. JORDE) All right. Post soil  
17 disturbance of a pipeline installation?

18 A. Correct. Sorry. Yep.

19 Q. Okay. We just need to connect the dots.

20 MR. JORDE: All right. I don't have anything  
21 further, Your Honor. And, again, I guess I would need  
22 to renew the offer subject to the objection.

23 ALJ HOGAN: Okay. And, Mr. Pelham, any  
24 objections?

25 MR. PELHAM: I don't have any objection except

1 for as noted. I don't believe that there's foundation  
2 for the Brehm exhibit included in BD -- or RD1, rather,  
3 and would join in that objection.

4 ALJ HOGAN: For all of it or just the article?

5 MR. PELHAM: No. Just the Brehm -- the Brehm  
6 study.

7 ALJ HOGAN: Okay.

8 MR. PELHAM: Yeah.

9 ALJ HOGAN: So, yeah, I'm going to pull the  
10 study out because I think there's some foundation issues  
11 there, but the rest of it will be admitted.

12 MR. JORDE: Thank you, Your Honor. No further  
13 questions.

14 ALJ HOGAN: All right. Mr. Mahlberg, any  
15 questions for Ms. Dotzenrod?

16 MR. MAHLBERG: No, Your Honor. Thank you.

17 ALJ HOGAN: Mr. Pelham, any questions? Mr.  
18 Schock.

19 MR. SCHOCK: No, Your Honor.

20 ALJ HOGAN: Commissioner Christmann.

21 COMMISSIONER CHRISTMANN: Regarding your --  
22 whichever -- toward the middle, the land surveyors'  
23 letter -- you don't need to find it, but as I recall  
24 from when they testified to us, their concern is that  
25 the easements ought to be strip easements and not

1 blanket easements. And if we review the easements,  
2 offers, that came in January of 2022 and then the second  
3 one in January of 2023, I haven't had time to read them  
4 yet, obviously, but are you saying that those are  
5 blanket easements that cover the whole quarter?

6 THE WITNESS: That's my understanding, yes.

7 COMMISSIONER CHRISTMANN: Your understand --  
8 does that mean it's not clear? I don't know -- I don't  
9 know what point to take from this.

10 THE WITNESS: My understanding is that it's not  
11 a strip easement. The easement that has been provided,  
12 my understanding is that it is a blanket easement for  
13 the entirety of the quarter.

14 COMMISSIONER CHRISTMANN: Okay. Thank you.

15 ALJ HOGAN: Commissioner Haugen-Hoffart.

16 COMMISSIONER HAUGEN-HOFFART: No questions.

17 ALJ HOGAN: Mr. Dawson.

18 SUBSTITUTE DECISIONMAKER DAWSON: No, Your  
19 Honor.

20 ALJ HOGAN: All right. Anything else,  
21 Mr. Jorde?

22 MR. JORDE: Just one follow-up on the  
23 Commissioner's question.  
24  
25



REDIRECT EXAMINATION

BY MR. JORDE:

Q. If you could just briefly pull out the January 2023 easement that was just discussed there, ma'am, and turn to the second page, please. All right. Do you see there's a subparagraph C that says "Access easement" in the middle of the page?

A. Yeah.

Q. And when you read those few lines that define -- where Summit defines what the access easement is, did you see any limiting language limiting it to a specific area, or is it your understanding that that allows access from anywhere they see fit?

A. I think it looks like they can do whatever they want on that land.

Q. All right.

A. Also, somewhere in here they have the legal description. And it's right in front of the maps so it's the page in front of the maps. And there's a schoolhouse on that quarter. And the legal description for the easement, the way I take this, is that it's for the entirety of the quarter except for that schoolhouse. I don't know if that's correct, but that's my interpretation.

Q. So when they're describing the land, they're

1 describing the entire quarter?

2 A. Correct.

3 Q. All right. Okay, ma'am.

4 MR. JORDE: Nothing further, Your Honor. Thank  
5 you.

6 ALJ HOGAN: Mr. Mahlberg, any other questions?

7 MR. MAHLBERG: No, Your Honor. Thank you.

8 ALJ HOGAN: Mr. Pelham.

9 MR. PELHAM: No, Your Honor.

10 ALJ HOGAN: Any other commissioner questions?

11 All right. Thank you, Ms. Dotzenrod.

12 MR. JORDE: Can I call my next witness?

13 ALJ HOGAN: Yep. Absolutely. Go ahead.

14 MR. JORDE: Your Honor, we call Mr. James Tiegs.

15 JAMES TIEGS: Good afternoon.

16 ALJ HOGAN: Good afternoon, Mr. Tiegs. Can you  
17 state your full name and spell your last name for the  
18 record.

19 JAMES TIEGS: James Allen Tiegs, T-I-E-G-S, from  
20 Ellendale. We have land in Dickey County.

21 ALJ HOGAN: And, Mr. Tiegs, were you in the room  
22 this morning when I went through the penalties for  
23 perjury?

24 JAMES TIEGS: Yes, I was.

25 ALJ HOGAN: And do you understand what perjury

1 is?

2 JAMES TIEGS: Yes, I do.

3 ALJ HOGAN: And being advised of the potential  
4 penalties for perjury, do you promise to tell the truth  
5 in this case today?

6 JAMES TIEGS: Yes. Yes, I do.

7 ALJ HOGAN: All right. Thank you.

8 Go ahead, Mr. Jorde.

9 **JAMES TIEGS,**

10 being first duly sworn, was examined and testified as  
11 follows:

12 DIRECT EXAMINATION

13 BY MR. JORDE:

14 Q. Yes, sir. Can you just orientate the Commission  
15 in terms of where your land is located that's  
16 potentially at issue here?

17 A. There's three different parcels. We have some  
18 land southwest of Ellendale about three miles, some  
19 southeast, and then we have some east of Ellendale about  
20 eight miles. Two of the parcels have been in our family  
21 for over 40 -- 40 years. The one section that goes  
22 through, there's Game and Fish land in the middle of it,  
23 but of course we do not go through the Game and Fish.  
24 We'll go around the good ag land with the pipeline.

25 The issue -- my big concern is the depth. Some

1 of this land is -- it's hilly in certain areas. We have  
2 water runoff, washout issues, and then we have issues  
3 where there's a lot of low ground. And it was stated  
4 earlier, we talked about frost heaves, when you put  
5 something in wet soil, pipeline, culvert, whatever, it's  
6 going to -- it's going to lift. And my concern is only  
7 a four-foot depth in there.

8 This land -- some of this land I was -- I was  
9 going to tile. Now after today -- I mean, it sounds  
10 like you can do that. It's going to be more expensive  
11 with headers and planning but -- I mean, it sounds like  
12 it can be done, but it sounds, you know, a lot more --  
13 more intense, more money.

14 The third parcel is rented land I've probably  
15 farmed for at least 15 years. I guess, quite frankly,  
16 this is our livelihood as a farmer.

17 You know, to Summit, I feel it's just another  
18 piece of ground we got to get through to get this  
19 project done so we can start collecting our --  
20 collecting our money from our carbon credits and -- you  
21 know, I guess there's a lot -- there's a lot of things  
22 that are concerning.

23 Q. So let's just kind of unpack that a little bit.  
24 Are you saying that you either own or have an economic  
25 interest via leasehold in three separate parcels?

1           A.   That's correct.

2           Q.   Okay.  And you own two of them in fee simple and  
3 you rent one of them?  Is that yes?

4           A.   Yes.  Well, the one -- the one half section is  
5 -- is in a trust, but the other one is owned, but I've  
6 operated the land -- I operate all the land.  I rent it.  
7 I farmed it since I was a kid so -- those two parcels  
8 that we own.  Like I said, the others I farmed for like  
9 the last 15 years.

10          Q.   And are you a lifelong North Dakota farmer then?

11          A.   That's correct.

12          Q.   And in your personal experience with the  
13 inclement weather North Dakota can obviously have and  
14 the freeze and the thaw, do you have any personal  
15 experience in terms of the depth of the freeze, the  
16 frost line?

17          A.   Well, we've had septic systems -- I mean, now  
18 I'll hear -- I shouldn't deviate, but I've seen frost  
19 when we dig up to five to six feet deep.  If you get 20  
20 below weather with no cover, anybody that's lived here  
21 any amount of time, you -- talk to anybody that does any  
22 excavating and they'll tell you how deep it gets.  It  
23 gets below four feet.

24          Q.   And is that a concern when Summit says that, you  
25 know, they'll go four foot deep when you've seen frost

1 at the six-foot level?

2 A. Yes. I guess -- and I'm concerned too about the  
3 washouts. The one -- the one piece has a creek on one  
4 side and a drainage ditch going through it. And there's  
5 times when we get a lot of heavy torrential rain,  
6 there's a lot of surface water washouts that -- you  
7 know, you can't control Mother Nature. When it comes,  
8 it comes.

9 Q. And has Summit made any attempts to you -- or  
10 any promises to you in writing or otherwise that they  
11 would bury the pipe at a cover level of six-foot?

12 A. They said at one point they would -- they would  
13 do -- the land agent said they would do what is  
14 necessary. And we -- I guess from the beginning we just  
15 -- we really didn't want it. We hoped it would go away  
16 or there would be a reroute. And he kept pestering.  
17 And finally we hired legal counsel from Sioux Falls just  
18 -- because if we're forced to do this, I want -- we want  
19 the easements to be fair and right, so we hired legal  
20 counsel.

21 And I -- the last -- I speak with -- with my  
22 lawyer at least twice a month. And I guess from the  
23 first offer to the offer we had now, they've tripled --  
24 they've tripled the offer, but I really have not had any  
25 direct contact with Summit. I really -- I just decided

1 let the -- let the lawyers handle it.

2 Q. And whether the offer's been tripled or  
3 quadrupled or a million times, that's all relative based  
4 on the starting point; correct? Is that yes?

5 A. Yes. Yes.

6 Q. And regardless of what the offer is, have you  
7 made the determination that, based upon all of the  
8 concerns, all of the unknowns, the economic damage  
9 potentially to you through loss of yield, compaction,  
10 soil mixing, other things, that regardless of what the  
11 offer is, it's not sufficient?

12 A. No. It's -- I mean, this is something --  
13 99 years is -- like it was said earlier, might as well  
14 be forever. My -- my son wants to farm. His grandkids  
15 will all have to deal with this.

16 And I hope there's never a breach. You know, we  
17 always -- we always try to do the best we can, but if  
18 there is, I -- I sure don't want to be out there.

19 And I saw some in the meeting in Bismarck, the  
20 first meeting, and there's sure a lot of outrage when  
21 the pipeline goes through a heavily populated area, but  
22 it seems like in rural North Dakota, it -- not so much.  
23 Nobody's really too upset about it. And that kind of --  
24 kind of -- kind of bothers me a little bit, I guess.

25 Q. Well, do you think your land and your home and

1 your concerns are any less important than folks who live  
2 near the city of Bismarck?

3 A. No. No, I don't. I mean, we were talking about  
4 staying eight miles away from Bismarck. Well, this  
5 pipeline is only going -- it's only going to be probably  
6 two miles from Ellendale, south of Ellendale, right  
7 north of the golf course. Probably a quarter mile from  
8 the golf course.

9 So, yeah, just because it's a small scale, I  
10 mean -- I don't know. It's just -- seems like a lot of  
11 risk for not a lot of reward, is my -- my feeling on it.

12 Q. Were you here today when Mr. Powell testified?

13 A. Yes. Yes.

14 Q. And you were -- did you track his explanation of  
15 the benefits being the taxes, and then he couldn't  
16 answer questions about the taxes, and then it ended up  
17 being benefit for the one ethanol plant?

18 A. Yes. And I guess I want to add to that is that  
19 one flyer from Summit, I think I have it in my folder,  
20 but they talk about keeping the value of our land up and  
21 our commodity prices. Well, quite frankly, the land  
22 that this pipeline is going on, the value is going to go  
23 down. How can it not go down? And if it's going to go  
24 down, I will petition my county to lower the taxes on  
25 it. Why should I pay extra taxes if it's going to go



1 down?

2 Q. And so, you know, would you agree that what sets  
3 a market price is a willing buyer and a willing seller?

4 A. Correct.

5 Q. And you as a farmer, lifelong North Dakota  
6 farmer, would you even be willing to purchase land as a  
7 new purchase if it had this pipeline through it?

8 A. I'd have an awful tough time with it.

9 Q. And would you criticize a potential future buyer  
10 if you ever had to sell, or your son in the future, if  
11 they offered you a discount because the pipeline was  
12 there?

13 A. Run that by me --

14 Q. Yeah. Would you understand if someone offered  
15 you a discounted price due to the pipeline's existence?

16 A. Absolutely. Absolutely.

17 Q. And in terms of, again, Mr. Powell claims that  
18 taxes are a benefit and then couldn't answer questions  
19 about it, but in that regard --

20 MR. MAHLBERG: I'm sorry, I'm going to object to  
21 the form of that question. Those sorts of side remarks  
22 are just not necessary for a direct examination.

23 ALJ HOGAN: I agree.

24 Can you rephrase the question, please.

25 MR. JORDE: Sure.

1           Q.   (BY MR. JORDE)   From Mr. Powell's testimony,  
2   did you get a clear answer of what the alleged tax  
3   benefits were?

4           A.   No, I really didn't.   I just know that our  
5   property -- I mean, I'm going to have to still pay the  
6   same amount of property tax on this land whether --  
7   regardless.   So I don't quite understand how that works  
8   either.

9           Q.   And your statement earlier that if you believe  
10   this devalues your land and you still have to pay a  
11   hundred percent of the real property taxes, that you  
12   would be petitioning your county, your assessor, for a  
13   reduction in property tax?

14          A.   Definitely.

15          Q.   All right.   And if you did that and others did  
16   that and were successful, that would lead to actually a  
17   negative property tax revenue?

18          A.   That's correct.

19          Q.   All right.   Do you have any tile lines on any of  
20   your fields?

21          A.   I do not.   We've been looking into it.   We just  
22   haven't -- haven't proceeded yet with it.   I know we  
23   have some potential to do some.

24          Q.   After you heard everything today and learned  
25   probably more about tile than a lot of us ever knew

1 before, have you -- have second thoughts about tiling  
2 your field if the pipeline goes through?

3 A. I do, yes.

4 Q. And if you didn't have the opportunity to tile  
5 and didn't make that decision, is it fair to say that  
6 your yields would be reduced and the fertility or  
7 productivity of your ground would be reduced?

8 A. Yes. Because we have -- with -- we have salt  
9 issues. That's, you know, the biggest problem with a  
10 high water table.

11 Q. All right. And although I asked Mr. Powell, do  
12 you believe you got a clear answer that if the pipeline  
13 went through your property and then later you wanted to  
14 add tiling in the future, did you get a clear answer of  
15 whether or not they would commit to pay for the increase  
16 due to the inconvenience of their pipeline?

17 A. I guess no, I -- I guess let's put it this way.  
18 If we're going to go on that avenue, I want it drawn out  
19 black and white in the easement. That would be the only  
20 way I would depend on that happening.

21 Q. So rather than listening to claims and pamphlets  
22 and brochures and what they intend to do, you would want  
23 it in black and white and signed by them?

24 A. That's why I hired a representative.

25 Q. All right. And just to be clear, the

1 representative from Sioux Falls, that's other counsel,  
2 that's not me; correct?

3 A. Right, yep.

4 Q. All right. Very good. Sir, can you think of,  
5 as you sit here today, any other particular concerns  
6 related to your land, your economic future vis-a-vis  
7 this pipeline?

8 A. The doctor from NDSU talked about putting the  
9 soil back in order, and I definitely agree with that.  
10 More for us, it's just, you know, obviously the topsoil  
11 and the clay, but he brings up a valid point with the  
12 salt. That is -- that's another important issue. Let  
13 me look here.

14 (Pause)

15 A. Oh, one other thing with the shallow -- with the  
16 -- with even a four-foot pipeline, four-foot depth is  
17 concerning. Like with these big self-propelled sprayers  
18 that we use nowadays, they're tremendously heavy. They  
19 have narrow tires on them. And when you cross this  
20 pipeline with soft dirt, I guarantee you that sprayer  
21 will sink in at least four feet or more.

22 Q. And on that point, sir, I have an exhibit  
23 that --

24 MR. JORDE: I don't know. Would it be JT1, Your  
25 Honor, James Tiegs 1?

1 ALJ HOGAN: Yes.

2 MR. JORDE: Okay. I'm just going to mark this  
3 JT1. I'll just pass this around. Thank you.

4 Q. (BY MR. JORDE) Sir, in front of you I have  
5 placed what's been marked as JT1 to pick up on your last  
6 comments. And can you identify what we see there as a  
7 sprayer?

8 A. It's a large self-propelled sprayer that is sunk  
9 in above the axle, the rear axle.

10 Q. And, again, we didn't have a tape measure, but  
11 if -- if we can ask for the indulgence of the fact that  
12 those tires are six feet wide, is this demonstrative --

13 A. At least. I'm only 5-10 or 5-11. When I stand  
14 next to -- next to the sprayer, the tires are taller  
15 than I am.

16 Q. All right. And this would be demonstrative of  
17 the concern of the type of equipment, the weight of the  
18 equipment, and then the soil conditions in North Dakota  
19 where, if the pipeline was four feet, we could  
20 potentially have a problem?

21 A. Right. And the other thing, some people would  
22 just tie onto that and pull it out, but sometimes if  
23 they go down bad enough, you need to come with an  
24 excavator or trackhoe and dig the dirt -- dig the mud  
25 away from them so you can get it pulled out without

1       tearing that piece of equipment in two.

2           Q.   All right.

3           MR. JORDE:   I would offer JT1.

4           ALJ HOGAN:   Any objection to JT1, Mr. Mahlberg?

5           MR. MAHLBERG:   For the limited purpose of  
6       demonstrating a piece of equipment that is bottomed out  
7       after sinking, no.   I have questions about foundation  
8       otherwise.

9           ALJ HOGAN:   That's my understanding of why it's  
10       being offered.

11          MR. JORDE:   Correct.   That's it.

12          ALJ HOGAN:   Mr. Pelham, any objection?

13          MR. PELHAM:   For demonstrative purposes only, no  
14       objection.

15          ALJ HOGAN:   All right.   It is admitted for those  
16       purposes only.

17          Q.   (BY MR. JORDE)   Sir, anything else?   I know  
18       there's a lot, but anything else you'd like the  
19       Commission to know?

20          A.   I guess the other thing I'm going to bring up,  
21       we had petitioned for a meeting in Dickey County.   I'm  
22       pretty sure you guys received that letter.   And three of  
23       the five of us, we're in a landowner group east of us.  
24       And Summit found out about this and they contacted them  
25       and told them "You have a day to decide.   You withdraw

1 your -- you withdraw your testimonies, we'll double your  
2 offer." That's why we know it did not have a hearing in  
3 Dickey County.

4 So when we talk about voluntary easements,  
5 there's nothing voluntary about this. When eminent  
6 domain is in the back of every landowner's mind, there's  
7 nothing voluntary. Because who wants to take eminent  
8 domain? I mean, really.

9 And this is land that people worked their whole  
10 lives to get. And it's -- property rights are being  
11 violated for a pipeline that is for CO2. It's not for  
12 oil. It's not for rural water. You know, if it's for  
13 the good of the community, I think it's great, but I  
14 really struggle with this -- we can talk about the green  
15 -- the green, the carbon offsets. We can talk about all  
16 that great stuff. But there's a ton of money behind  
17 that.

18 And that's all I'm going to say. I'm going to  
19 leave it at that. Thank you for your time. I don't  
20 know if you have anything more you want me to talk about  
21 but...

22 Q. I don't think so, sir. Thank you.

23 A. Thank you.

24 ALJ HOGAN: All right. Mr. Mahlberg, any  
25 questions?

1 MR. MAHLBERG: No questions, Your Honor. Thank  
2 you.

3 ALJ HOGAN: Mr. Pelham, any questions?

4 CROSS EXAMINATION

5 BY MR. PELHAM:

6 Q. Just if you know, sir, any idea where this JT1  
7 is a picture from, how you got that?

8 A. That is for demonstration purposes.

9 Q. Right, I know that, but where did you get it?

10 MR. JORDE: I could help him or refresh his  
11 memory.

12 MR. PELHAM: Sure.

13 A. It's in one of the Dickey County fields.

14 Q. (BY MR. PELHAM) This is in North Dakota?

15 A. Yes.

16 Q. Somewhere in Dickey County?

17 A. And I've seen other sprayers. I mean, I've seen  
18 combines. I've had combines go down to where the header  
19 is flat on the ground. And then this was not anywhere  
20 near any, you know, excavation. I mean, it's -- it  
21 happens, unfortunately, when it gets wet.

22 Q. Sure. Thank you. No further questions.

23 ALJ HOGAN: Mr. Schock?

24 MR. SCHOCK: I have a few questions just for  
25 kind of some education purposes, honestly.



1 CROSS EXAMINATION

2 BY MR. SCHOCK:

3 Q. So I spent a lot of time with the 811 law in  
4 North Dakota. So if you get stuck to this degree, do  
5 you think you need to call somebody?

6 A. Well, in light of this, yeah. I mean, I don't  
7 know. If I bury my sprayer on top of one of their  
8 pipelines, I'll be calling them right away and say,  
9 "Hey, I got to get this thing out. What are we going to  
10 do?"

11 Q. Sure. Even outside of there being a CO2 or any  
12 other pipeline on a piece of property, so if you get a  
13 piece of equipment stuck for whatever reason, do you  
14 think there's a point where you need to call 811?

15 A. If -- if you think there's a line nearby, I  
16 certainly would. In other instances I've had machinery  
17 stuck, but I know the land well enough that, where I was  
18 stuck, there's -- it's kind of the middle of nowhere.  
19 But that's a very good point.

20 Q. Sure. And I'm not accusing you of doing  
21 anything illegal or anything like that. I just -- I  
22 like to take these opportunities for education.

23 A. Right, right. That's a very good point.

24 Q. But would you be surprised to learn that if you  
25 are -- if you get stuck to the point where you're

1     disturbing the earth greater than 18 inches down, would  
2     you be surprised to learn that you'd be in violation of  
3     the 811 law if you did not call 811?

4           A.    I learned something today.  Yeah, I am.  
5     That's --

6           Q.    That was my only point, is just a little bit of  
7     education.  But thank you for --

8           A.    Well, thank you for that.

9           ALJ HOGAN:  Commissioner Christmann.

10          COMMISSIONER CHRISTMANN:  James, would you go  
11     through slow enough that I can make notes --

12          THE WITNESS:  Sure.

13          COMMISSIONER CHRISTMANN:  -- of your -- the  
14     legal descriptions of your three properties?

15          THE WITNESS:  Okay.

16          COMMISSIONER CHRISTMANN:  And tell me which one  
17     is the owned, the trust, and the leased?

18          THE WITNESS:  Let's see.  I should have that  
19     here.  Okay.  The first one, the section that I own  
20     solely with my wife is section 17, township 129, range  
21     61.  That's the one east of Ellendale about eight miles.  
22     The land that's in a trust is section 27, 129 north, 63  
23     W.  And the third one, I was just speaking with my --  
24     with my -- the guy I rent the land from this morning,  
25     and I hadn't talked to him for a while and I should

1 have. I don't have the legal of that one. He said  
2 originally he heard a lot from Summit, but lately he  
3 hasn't heard a word. And I don't believe he even has  
4 legal counsel. But that was section -- God, I wish I  
5 would have wrote that one down. That was section --  
6 section 30, and that was in Ellendale Township. I do  
7 not -- yeah, that was in -- no. That was Van Meter.  
8 Section 30 in Van Meter Township.

9 COMMISSIONER CHRISTMANN: Okay. On your section  
10 17, do you have the whole section or --

11 THE WITNESS: Yeah. We have the whole section  
12 with the exception of there's about 80 to a hundred  
13 acres of Game and Fish property on one end and then  
14 right through the middle of it, kind of up in the middle  
15 of it.

16 COMMISSIONER CHRISTMANN: And that comes in  
17 toward the north side of the section on -- from the  
18 east --

19 THE WITNESS: Yeah.

20 COMMISSIONER CHRISTMANN: -- goes westerly and  
21 then, when it gets about three-quarters of the way  
22 through it, angles more southeast?

23 THE WITNESS: Yes. Yep, that's the one.

24 COMMISSIONER CHRISTMANN: Is that -- this map  
25 would indicate it's a good part cropland, and maybe that

1 western side, I can't tell if that's pasture or  
2 cropland.

3 THE WITNESS: No. The western side is cropland.  
4 It's just a lot higher. The topography -- the elevation  
5 really changes a lot in that field. And that's one that  
6 we have a lot of issues with runoff. The neighbor's  
7 field is a little bit higher even. And I've been  
8 fighting washouts on that ground for years. And then it  
9 goes down the hill and then there's a lot -- a lot of  
10 low issues -- low ground issues.

11 COMMISSIONER CHRISTMANN: So the -- pretty much  
12 the whole mile that they're going through here, it's in  
13 cropland?

14 THE WITNESS: That's correct. You bet.

15 COMMISSIONER CHRISTMANN: And I didn't find  
16 the --

17 THE WITNESS: Section 27?

18 COMMISSIONER CHRISTMANN: Is it, like, similar?  
19 You have the whole section?

20 THE WITNESS: Yeah. It's a half section. It's  
21 going through the long way across, all the way across a  
22 half section.

23 COMMISSIONER CHRISTMANN: The north or south?

24 THE WITNESS: South. That's the south half of  
25 27.

1           COMMISSIONER CHRISTMANN: And is that cropland  
2 or pasture?

3           THE WITNESS: That's cropland. There's a little  
4 bit of grass on the east side with a creek and then  
5 there's also a drainage ditch running -- running through  
6 that field the long way. And as it approaches the east  
7 -- the east half, the erosion over the last few years  
8 has gotten a lot worse on that land also with all the  
9 excess moisture we've been receiving.

10          COMMISSIONER CHRISTMANN: Okay. No other  
11 questions. Thank you.

12          ALJ HOGAN: Commissioner Haugen-Hoffart.

13          COMMISSIONER HAUGEN-HOFFART: Well, Victor took  
14 my public service announcement about calling before you  
15 dig with this and just to let you know April is Safe  
16 Digging Month.

17          ALJ HOGAN: Mr. Dawson.

18          SUBSTITUTE DECISIONMAKER DAWSON: Your Honor.  
19 No questions. Thank you.

20          ALJ HOGAN: Mr. Jorde, any redirect?

21          MR. JORDE: Just one.

22                         REDIRECT EXAMINATION

23 BY MR. JORDE:

24           Q. So, sir, if this pipeline goes through -- and  
25 thanks to the education I learned something new myself

1 on the 18 inches -- is it fair to say you'll just be  
2 calling 811 every day in the spring or in wet  
3 conditions?

4 A. I think it would probably be a pretty good idea.

5 Q. All right. Thank you. Nothing further.

6 A. Thank you.

7 ALJ HOGAN: Thank you, Mr. Tiegs.

8 THE WITNESS: Thank you.

9 MR. JORDE: Next witness, Your Honor?

10 ALJ HOGAN: Yes.

11 MR. JORDE: Your Honor, we call Volera  
12 (phonetic) Hayen -- or sorry. I always do that.

13 Valera. Valera Hayen.

14 ALJ HOGAN: Can you state your full name for the  
15 record and spell your last name, please.

16 VALERA HAYEN: Valera Ann Hayen, H-A-Y-E-N.

17 ALJ HOGAN: I'm going to have you pull that mic  
18 really close so we can all hear you.

19 Ms. Hayen, were you in the room this morning  
20 when I went through the penalties for perjury?

21 VALERA HAYEN: Yes.

22 ALJ HOGAN: And do you understand what perjury  
23 is?

24 VALERA HAYEN: Yes.

25 ALJ HOGAN: And being advised of the potential

1 penalties for perjury, do you promise to tell the truth  
2 in this case today?

3 VALERA HAYEN: Yes.

4 ALJ HOGAN: All right. Thank you.

5 Go ahead, Mr. Jorde.

6 **VALERA HAYEN,**

7 being first duly sworn, was examined and testified as  
8 follows:

9 DIRECT EXAMINATION

10 BY MR. JORDE:

11 Q. Ma'am, orientate the Commission, please, to  
12 where your land in question that's potentially affected  
13 is located.

14 A. Okay.

15 Q. And talk real kind of close to that microphone  
16 if you can.

17 A. My land is in Sargent County, in Jackson  
18 Township. And it's a low range of hills between  
19 Cogswell and Oakes.

20 Q. And, ma'am, do you live near the land in  
21 question?

22 A. Yes, I do. I live on the county road.

23 Q. All right. And so you would live near to where  
24 this proposed pipeline would be located?

25 A. The pipeline is going to go approximately

1 500 feet from my house.

2 Q. All right. And you describe this as a low-lying  
3 area. Were you here earlier when we talked about CO2  
4 being heavier than air?

5 A. My -- the pipeline path is in the low range of  
6 hills.

7 Q. All right. Does that concern you in terms of  
8 any safety or risk features living in a lower-lying  
9 area?

10 A. Yes.

11 Q. All right. And has Summit contacted you about  
12 any waiver or any of your concerns given that your home  
13 is so near the potential pipeline?

14 A. No, they haven't.

15 Q. I know you prepared, ma'am, a few items, a few  
16 topics. If you just want to walk through some of your  
17 other concerns for the Commission.

18 A. The first thing is safety. My land up in the  
19 hills has limited access. There are no -- no maintained  
20 road or -- and an off-road portion of it is  
21 environmentally sensitive. Access would be unsafe in  
22 and of itself. We do not go up there after a hard rain  
23 and it is blocked by snow in the winter. Small or -- or  
24 any leak could harm or kill people, livestock, and  
25 wildlife. There are two cattle ranches located, one to



1 the south and one to the north, which would be affected.

2 Another thing. My land is native prairie. It's  
3 been maintained many years for -- to preserve native  
4 plants and grasses: Bluestem, crocuses, coneflowers,  
5 yellow-headed daisies, and prairie smoke, and possibly  
6 many more that have not been identified. Driving on or  
7 digging through would cause permanent damage and the  
8 virgin prairie would be gone forever.

9 On the western -- southwestern part of this  
10 pasture there are Native American artifacts and tipi  
11 rings, hunting campsites, and gravesite within the path  
12 of this pipeline, and possibly more than what I know.  
13 These would also be destroyed.

14 I told them that I didn't want anything to do  
15 with it and to find another route.

16 Q. Ma'am, in terms of -- now, have you been in that  
17 area your whole life?

18 A. Yes, I have.

19 Q. And do you have personal firsthand knowledge  
20 relative to the Native American cultural artifacts in  
21 that immediate area?

22 A. Yes, I do.

23 Q. And what is that based on?

24 A. I've been up there. There's tipi rings. You  
25 can see them. And when I first moved there, I never

1 noticed it and stuff, but there's an area farmer who's  
2 really, really interested in that, and he came up there  
3 and he -- he showed it to me.

4 Q. And in terms of native prairie, have you in your  
5 life observed where native prairie is destroyed and then  
6 it's attempted to be restored but never gets back to the  
7 way it was?

8 A. Well, it will never be virgin prairie again.

9 Q. That's certainly impossible.

10 A. It's gone. It's gone.

11 Q. Right. And is that one of your main concerns  
12 that --

13 A. Yes.

14 Q. -- you've worked hard to preserve this the way  
15 that native is?

16 A. Yes.

17 Q. And has Summit contacted you to attempt to work  
18 around any of your concerns?

19 A. They -- they wanted me to allow a survey, and I  
20 -- I would not. I didn't agree to a survey.

21 Q. All right. And is that because part of the  
22 survey would allow them to potentially trench, drill,  
23 and dig upon your land?

24 A. I just don't want them up there. Even driving  
25 on it is not good for it.

1 Q. Okay. Understood. Is there anything else  
2 specifically about your property or the immediate area  
3 around it that you want the Commission to know about?

4 A. Well, when they asked permission for the survey  
5 and I didn't sign, now they've sued me. And I haven't  
6 heard anything more about that yet but -- then we have  
7 zoning in our township. And the pipeline is in  
8 violation of our zoning. Our -- it's a half a mile --  
9 should be a half a mile from any residence, and I'm only  
10 500 feet.

11 Q. And were you here today when I asked Mr. Powell,  
12 relative to the setbacks that Burleigh County put in  
13 place, if they were going to reroute or apply for a new  
14 permit, and he said they weren't? Were you here for  
15 that?

16 A. Yes.

17 Q. And do you have any confidence that they're  
18 going to take into account your local zoning ordinances?

19 A. I -- I don't have any idea.

20 Q. All right. All right. Do you think that if the  
21 county has placed ordinances in place designed to state  
22 how land should be used and should not be used in a  
23 county, that a pipeline company like this should follow  
24 those rules?

25 A. Yes.

1           Q. All right. And do you believe those rules are  
2 designed to protect people like you who have a home  
3 approximately 500 feet from this proposed hazardous  
4 pipeline?

5           A. Yeah. And if -- if we -- if our laws don't mean  
6 anything, if our zoning doesn't mean anything, I don't  
7 know.

8           Q. Ma'am, anything else at all for today?

9           A. I think this is a for-profit organization and it  
10 violates my property rights. And what will be -- who  
11 will be the next company that wants my land? I depend  
12 on this land for my livelihood.

13          Q. And are you widowed?

14          A. Yes.

15          Q. Okay. And you depend on this land to live;  
16 right?

17          A. Yes.

18          Q. All right. And you're concerned, if this goes  
19 through, that could affect your livelihood?

20          A. Yes, it could.

21          Q. All right. I don't have anything further.  
22 Thank you.

23                 ALJ HOGAN: Mr. Mahlberg, any questions?

24                 MR. MAHLBERG: No, Your Honor. Thank you.

25                 ALJ HOGAN: Mr. Pelham, any questions?

1 MR. PELHAM: No.

2 ALJ HOGAN: Mr. Schock.

3 MR. SCHOCK: No, Your Honor.

4 ALJ HOGAN: Commissioner Christmann.

5 COMMISSIONER CHRISTMANN: Valera, could you tell  
6 me the legal description of your land?

7 THE WITNESS: Yeah. Where we've got the native  
8 plants is the south half of the southwest quarter,  
9 11-13-58.

10 COMMISSIONER CHRISTMANN: 130-58?

11 THE WITNESS: Yes. And then my home -- my home  
12 is in section 12, township 130, range 58.

13 COMMISSIONER CHRISTMANN: Your Honor, would you  
14 like to go around the horn and let me find the page?

15 ALJ HOGAN: Sure.

16 COMMISSIONER CHRISTMANN: I might have a  
17 follow-up.

18 ALJ HOGAN: Yep. Commissioner Haugen-Hoffart.

19 THE WITNESS: The --

20 ALJ HOGAN: Oh. Go ahead.

21 THE WITNESS: All the native -- native plants  
22 and cultural is in section 15, township 130, range 58.

23 ALJ HOGAN: Go ahead.

24 COMMISSIONER HAUGEN-HOFFART: I have a question.  
25 I understand when you have concerns about allowing a

1 surveyor to drive on your property, it could further  
2 damage.

3 THE WITNESS: Uh-huh.

4 COMMISSIONER HAUGEN-HOFFART: My question for  
5 you is you indicate that there's a cemetery, native  
6 artifacts there. Do you think if you allowed someone to  
7 walk on your land, that they would recognize that you  
8 have these things on your land and with -- if things  
9 were historical, that they could not go through that  
10 area?

11 THE WITNESS: If they -- if they route this away  
12 from my house, they won't be able to go through that  
13 land.

14 COMMISSIONER HAUGEN-HOFFART: Because?

15 THE WITNESS: They won't have a way, a pass,  
16 through there. My land is -- and my neighbor, neither  
17 one of us has signed.

18 COMMISSIONER HAUGEN-HOFFART: Okay. I guess I  
19 was getting at that you were expressing that there was a  
20 lot of historical things you want to preserve.

21 THE WITNESS: Uh-huh.

22 COMMISSIONER HAUGEN-HOFFART: And by not  
23 allowing them on your land to survey, I was just  
24 wondering if, by allowing them to be there on it, that  
25 they would see that --

1           THE WITNESS: It just seems to me, once you  
2 allow a survey, they -- you don't even -- they don't  
3 even give you a chance to get a route away from you at  
4 all. So I said no survey.

5           COMMISSIONER HAUGEN-HOFFART: Okay. Thank you.  
6 No further questions.

7           ALJ HOGAN: Mr. Dawson, any questions?

8           SUBSTITUTE DECISIONMAKER DAWSON: How large is  
9 the area of native prairie acre-wise?

10          THE WITNESS: It would be 80 acres, I think.

11          SUBSTITUTE DECISIONMAKER DAWSON: And how far  
12 away is your home?

13          THE WITNESS: I'm a half a mile. I'm on the  
14 county road.

15          SUBSTITUTE DECISIONMAKER DAWSON: Unless I see a  
16 map, I have no further questions.

17          ALJ HOGAN: Commissioner Christmann, did you  
18 find your map?

19          COMMISSIONER CHRISTMANN: I believe I did, Your  
20 Honor.

21                 So if I'm looking at this right, your -- what  
22 I'm presuming to be your home is kind of in the  
23 northwest corner of the southwest quarter of section 12;  
24 right? Does that sound right?

25          THE WITNESS: Yeah.

1 COMMISSIONER CHRISTMANN: But the pipeline is up  
2 in the northwest quarter -- it's north of your home?

3 THE WITNESS: It's right northwest of my house.

4 COMMISSIONER CHRISTMANN: Yeah. And you say  
5 that's about 500 feet?

6 THE WITNESS: Yeah.

7 COMMISSIONER CHRISTMANN: And the county road  
8 you're referring to goes north and south there on the  
9 section line?

10 THE WITNESS: Yes. Uh-huh.

11 COMMISSIONER CHRISTMANN: Okay. Thank you. I  
12 have no other questions.

13 ALJ HOGAN: Redirect, Mr. Jorde?

14 MR. JORDE: No, thank you.

15 ALJ HOGAN: All right. Thank you, Ms. Hayen.  
16 Next witness.

17 MR. JORDE: Yes. Let's see. Marvin or Jeanne  
18 Lugert. Marvin? Yeah, Marvin Lugert is making his way  
19 down here.

20 And then, Your Honor, after that I think I just  
21 have one last witness, just for everyone's knowledge.

22 ALJ HOGAN: Good afternoon, Mr. Lugert. Can you  
23 state your full name and spell your last name for the  
24 record.

25 MARVIN LUGERT: Marvin Lugert, L-U-G-E-R-T.



1           ALJ HOGAN: Mr. Lugert, were you in the room  
2 this morning when I went through the penalties for  
3 perjury?

4           MARVIN LUGERT: Yes, I was.

5           ALJ HOGAN: And do you understand what perjury  
6 is?

7           MARVIN LUGERT: Yes.

8           ALJ HOGAN: Being advised of the potential  
9 penalties for perjury, do you promise to tell the truth  
10 in this case today?

11          MARVIN LUGERT: Yes.

12          ALJ HOGAN: All right. Thank you.

13          Go ahead, Mr. Jorde.

14          MR. JORDE: Thank you, Your Honor.

15                           MARVIN LUGERT,

16 being first duly sworn, was examined and testified as  
17 follows:

18                           DIRECT EXAMINATION

19 BY MR. JORDE:

20           Q. Sir, can you just orientate us as to where your  
21 potentially affected land is and what do you use that  
22 land for?

23           A. My land is located in mid one-third of section  
24 3-131-51, west one-half of the northwest one quarter of  
25 section 5-131-51.

1           Q.   And where -- help us out with -- I mean, was  
2           that near a certain town?  What county are we talking  
3           also?

4           A.   In Liberty Grove Township, between Mantador,  
5           Wyndmere, and Lidgerwood.

6           Q.   Which -- and, I'm sorry, which county was that?

7           A.   Oh, county?  Richland.

8           Q.   Richland County, okay.  And then are you --  
9           which part of the county?  North, south, east, west?

10          A.   Sort of the middle.

11          Q.   Okay.  All right.  Sort of in the middle.  And,  
12          again, the sections?  Can we get those sections again  
13          from that township?

14          A.   Mid one-third of section 3-131-51, the west  
15          one-half of the northwest quarter of section 5-131-51.

16          Q.   And, sir, do you live on one of those tracts?

17          A.   No, I don't.

18          Q.   All right.  And what type of activity occurs on  
19          each of those parcels?

20          A.   Cropping.

21          Q.   Row crop?

22          A.   Yeah, row crop.

23          Q.   And are -- I'm sorry.  Are you a farmer to this  
24          day?

25          A.   Yes, I am.

1           Q. All right. And do you have any tenants or do  
2 you do this yourself?

3           A. I have a renter and I farm myself.

4           Q. All right. Very good. Have you been here all  
5 day, sir?

6           A. Yes, I have.

7           Q. All right. And I'm sure you share a lot of the  
8 concerns that were expressed by your fellow landowners.  
9 Are there specific things that you would like to  
10 highlight for the Commission?

11          A. I guess what I would like to highlight is I've  
12 had two pipelines going across other land of mine and  
13 they promised to put the land back the way it was  
14 supposed to be and separate the topsoil from the bottom  
15 soil and not to leave any debris behind. And they did  
16 not do a very good job of separating the top from the  
17 bottom.

18                 And I still got crop loss due to that. And  
19 where the pipeline is I can still see 20 years later,  
20 just by looking at the crops, I can see it does not  
21 produce as good. You can see the height of the crops  
22 less than what the rest of the field is.

23                 And after the pipeline was put in -- five, six,  
24 seven years, I don't remember for sure -- I kept getting  
25 planks, big cables, tires, other things coming up, which

1 they promised they would not leave any debris behind.

2 So I have a very tough time believing that  
3 Summit will do the same, that they'll leave stuff behind  
4 too, just because I can't be out there every day  
5 watching what they're doing.

6 And I was promised by Alliance that they would  
7 not work when the conditions were not fit to work in,  
8 and they worked when it was just mud. So now I've got a  
9 depression where that pipeline is the full length of the  
10 section, or the field, and water pools there and stays  
11 pooled there longer than any other place in that field.

12 And, also, the one that this is going across I  
13 have rocks in now. And I know when they work on that,  
14 there's going to be a lot of rocks coming up. So are  
15 they going to come out and take care of all the rocks  
16 that come up all the time after they dig that up or am I  
17 going to have to do that? And I'm suspecting I will  
18 have to do it because I don't think they're going to  
19 send somebody out to pick rocks for me.

20 And I also know that Alliance Pipeline went  
21 across mine, and after that was installed, the next year  
22 it came up and they had to come out and put weights on  
23 it to keep it from coming up more. Big weights they put  
24 on it. So on my land, I can't remember for sure, I  
25 think it's about 24 inches from the surface now instead

1 of the four feet like they promised.

2 I guess that's about all I have to say. Yeah,  
3 I'm very concerned about it going across my land and for  
4 them upholding their obligations.

5 Q. Sir, let me just ask you a few follow-up. So  
6 you've been through the whole process of the promises  
7 and everything is going to be great and there's not  
8 going to be any problems, and you lived to see a  
9 different outcome on your field?

10 A. Yes, I have.

11 Q. And you're concerned that the same type of  
12 promises with yet now potentially a third pipeline are  
13 going to end up being empty as they have been before?

14 A. I have heard the same promises from Summit as  
15 Alliance gave me.

16 Q. And you have firsthand knowledge of a previous  
17 pipeline actually migrating up due to the changing  
18 conditions, weather, temperature, moisture in the soil?

19 A. Yes.

20 Q. And so a pipeline that was once four feet, over  
21 the 20 years, has come up to close to almost only  
22 two-foot of cover?

23 A. Yes. It is now. Did that within a couple  
24 years' time.

25 Q. In a couple years' time?

1 A. Yes.

2 Q. All right. And so, again, all the promises, all  
3 the happy, wonderful things in the world can be said,  
4 but you're living proof of promises being broken and,  
5 when people aren't looking, companies not doing the  
6 right thing; is that right?

7 A. Yes.

8 Q. Is there anything that Summit has said at all or  
9 promised or put in their pamphlets that makes you feel  
10 any better?

11 A. No, not a thing.

12 Q. All right, sir. Thank you. Appreciate that.

13 ALJ HOGAN: Mr. Mahlberg, any questions?

14 MR. MAHLBERG: No. Thank you, Your Honor.

15 ALJ HOGAN: Mr. Pelham, any questions?

16 MR. PELHAM: Yes.

17 CROSS EXAMINATION

18 BY MR. PELHAM:

19 Q. Mr. Lugert, I'm just wondering what type of  
20 pipeline you have on your land currently?

21 A. I have a Alliance pipeline which they put in --  
22 I believe in there they got three or four different  
23 products they pump through it at different times.

24 Q. You said two pipelines. So you have an Alliance  
25 pipeline. What's the other pipeline?

1           A.   Dome.   It was Dome.   I don't know what it's  
2   called now.

3           Q.   Dome?

4           A.   It was Dome.

5           Q.   What type of product was it transporting?

6           A.   I do not remember what that -- that was one my  
7   dad dealt with.

8           Q.   Okay.   How long has the Alliance pipeline been  
9   in place?

10          A.   22 years, if I remember right.

11          Q.   And what about the Dome line, if you know?

12          A.   That one, probably 40, 45 years.

13          Q.   Thank you, sir.   I don't have any other  
14   questions for you.

15          A.   Okay.

16               ALJ HOGAN:   Mr. Schock, any questions?

17               MR. SCHOCK:   No questions.   Thank you.

18               ALJ HOGAN:   Commissioner Christmann.

19               COMMISSIONER CHRISTMANN:   On your land  
20   in 131-51, in section 5, you kind of gave a more  
21   detailed description.   Could you tell me that again?

22               THE WITNESS:   Section 5?

23               COMMISSIONER CHRISTMANN:   Yeah.   You said like  
24   a --

25               THE WITNESS:   It's the west half of the

1 northwest one quarter of section 5.

2 COMMISSIONER CHRISTMANN: West half of the  
3 northwest quarter?

4 THE WITNESS: Yes.

5 COMMISSIONER CHRISTMANN: And that looks like  
6 it's farmed going north and south in this --

7 THE WITNESS: Yes, it is.

8 COMMISSIONER CHRISTMANN: -- cuts through the  
9 middle of it. And there's another farm off to the east  
10 of you a half mile.

11 THE WITNESS: Yeah.

12 COMMISSIONER CHRISTMANN: Quarter mile.

13 THE WITNESS: It's the west 80 acres on that  
14 section.

15 COMMISSIONER CHRISTMANN: Okay. Thank you. Is  
16 this tiled?

17 THE WITNESS: I am planning on tiling it  
18 sometime.

19 COMMISSIONER CHRISTMANN: Okay. And your other  
20 piece in section 3, is that tiled?

21 THE WITNESS: No, that was not tiled.

22 COMMISSIONER CHRISTMANN: Okay. Thank you.

23 ALJ HOGAN: Commissioner Haugen-Hoffart.

24 COMMISSIONER HAUGEN-HOFFART: Thank you.

25 You talked about the pipelines that are there



1 migrating up. Can you tell me the reasons why -- in  
2 your opinion, why they're migrating up?

3 THE WITNESS: Well, all I know is that I have to  
4 pick rocks every year on my rocky ground, and that comes  
5 up because frost pushes it up all the time. And I have  
6 rocks -- I have a boulder that I had to dig out one time  
7 that was five feet by probably six feet. And that kept  
8 coming up for quite a few years; it come up about an  
9 inch or two. If you dig out a big rock and you excavate  
10 underneath it, that's got about a gap of that much, two  
11 inches, nothing underneath it, just got a space. It  
12 just keeps pushing up.

13 COMMISSIONER HAUGEN-HOFFART: So that frost  
14 comes down and then pushes it up?

15 THE WITNESS: I'm not sure how it works, but it  
16 does.

17 COMMISSIONER HAUGEN-HOFFART: Okay. That's all  
18 I had. Thank you.

19 THE WITNESS: Okay.

20 ALJ HOGAN: Mr. Dawson.

21 SUBSTITUTE DECISIONMAKER DAWSON: My question  
22 is, piggybacking on hers, are you saying rocks push up  
23 the pipeline or are you saying that rocks migrate to the  
24 surface because of the work?

25 THE WITNESS: Rocks migrate to the surface

1 because of the way frost pushes stuff up. So I'm  
2 thinking that it will push the pipeline up the same way.

3 SUBSTITUTE DECISIONMAKER DAWSON: Okay. No  
4 further questions. Thank you.

5 ALJ HOGAN: Any redirect?

6 MR. JORDE: Just briefly.

7 REDIRECT EXAMINATION

8 BY MR. JORDE:

9 Q. On this question, the frost kind of heaves and  
10 over time it keeps pushing up foreign objects or even  
11 rocks that are in that area, is that your experience?

12 A. Yes. Yep.

13 Q. All right. Nothing more complicated than just  
14 Mother Nature and the temperature?

15 A. Yep. And that is why those planks and stuff  
16 came up from the Alliance pipeline. It kept working up  
17 over years.

18 Q. All right. And you mentioned on the yields, the  
19 yields have never been the same from when they tore up  
20 the ground for those prior pipelines?

21 A. Never. No.

22 Q. You mentioned that you would like to do some  
23 tiling. Are you having second thoughts on both the cost  
24 and liability of doing that should the pipeline exist  
25 before you get the tiling done?

1           A.    Yes.   Definitely.

2           Q.    And if you weren't able to tile, would that  
3   affect your yields and the moisture contents -- or the  
4   moisture in your ground?

5           A.    Yes, it does.   Yeah.

6           Q.    All right.   So obviously that would be an  
7   economic detriment if you weren't able to tile in the  
8   future and have dryer, more farmable ground?

9           A.    Yes.   Because I can't get in the ground as soon,  
10   I have to wait longer for it to dry out.   And when it  
11   gets excess water, crops don't do as good either.

12          Q.    Right.   Okay.

13          MR. JORDE:   Nothing further, Your Honor.

14          ALJ HOGAN:   Mr. Mahlberg, any questions?

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

16          ALJ HOGAN:   Mr. Pelham?   Mr. Schock?   Any  
17   further commissioner questions?

18          Nope.   All right.   Thank you.

19          MR. JORDE:   All right.   I think this is our last  
20   witness, Your Honor.   I call Mr. Loren Staroba.

21          ALJ HOGAN:   Good afternoon.

22          LOREN STAROBA:   Good afternoon.

23          ALJ HOGAN:   I'll have you state your full name  
24   for the record and spell your last name.

25          LOREN STAROBA:   My name is Loren Edwin Staroba.

1 The last name is spelled S-T-A-R-O-B-A.

2 ALJ HOGAN: Mr. Staroba, were you in the room  
3 this morning when I went through the penalties for  
4 perjury?

5 LOREN STAROBA: Yes, I was.

6 ALJ HOGAN: And do you understand what perjury  
7 is?

8 LOREN STAROBA: I do.

9 ALJ HOGAN: And being advised of the potential  
10 penalties for perjury, do you promise to tell the truth  
11 in this case today?

12 LOREN STAROBA: I do.

13 ALJ HOGAN: All right. Thank you.

14 Go ahead, Mr. Jorde.

15 MR. JORDE: Your Honor, again, in the interest  
16 of time, Mr. Staroba has also put together some  
17 materials. I'm going to go ahead and pass those around,  
18 and then I think he's going to want to walk through some  
19 of that.

20 ALJ HOGAN: Okay. Go ahead.

21 MR. JORDE: I guess -- I'm sorry, Your Honor. I  
22 guess I would mark the packet as LS1, if that's okay.

23 ALJ HOGAN: Yep.

24 MR. JORDE: All right. Very good.

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**LOREN STAROBA,**

being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. JORDE:

Q. Sir, while LS1 is being passed around, which is the documents you've assembled --

A. Yes.

Q. -- help us out in terms of where precisely your land is located, what county?

A. Okay. My wife, Diane, and I own land in Danton Township and Liberty Grove Township in Richland County. It's south and east of Wyndmere, North Dakota. We managed and farmed that until our retirement in September of 2018. I just got to put in there that both she and I are NDSU graduates.

And we've been basically working with this pipeline coming through here. And we have declined access to our land and -- and any offered easement, and we're currently being sued by carbon -- or Summit Carbon Solutions. We researched and learned a lot since this all started, and we know a whole lot more about pipelines than we ever wanted to know so...

Q. And, sir, why don't we -- if you've got your materials there --

1           A.    Yes.

2           Q.    -- the Commission and everyone now has those.  
3    If you want to just select and show everyone what you're  
4    referencing and why it's important, please.

5           A.    The maps here are the actual maps of the  
6    pipeline's proposed route.  And on the two sections of  
7    land that involves for us, the two tracts, are the east  
8    half of section 35-132-51, and that's Danton Township.  
9    And the other one that we're involved with, it's the  
10   northwest quarter of section 2-131-51, Liberty Grove  
11   Township.  And these are maps basically taken from the  
12   permit application from your maps there so...

13                I wish I could give you the page number there  
14   but it's real close to the last -- Marvin Lugert is a  
15   neighbor there so...

16           Q.    And so, sir, I can see the Summit logo on each  
17   of the first two colored maps you've discussed.  So  
18   you've taken their actual maps, and then on the first  
19   one we've got like a blue oval --

20           A.    Yes.

21           Q.    -- or rectangle?

22           A.    I circled where the property that we have is  
23   affected.

24           Q.    All right.  And then it depicts a pipeline -- a  
25   proposed pipeline corridor going through in the southern

1 portion of that property?

2 A. Yes. That's the proposed pipeline.

3 Q. All right. And then the next of those pages you  
4 also have like a square around what appears to be two  
5 90-degree elbow turns in the route --

6 A. Yes.

7 Q. -- proposed route?

8 A. That is our property. There, I've labeled it  
9 Staroba property that's affected. And the pipeline  
10 comes from the original -- or the first sheet and comes  
11 down to the west and then comes down into ours just in  
12 the very little corner there, and then comes across.

13 Q. Okay. All right. So if we kind of hold them  
14 almost like this, that's how it connects up?

15 A. That's correct.

16 Q. And what's your understanding about why they're  
17 making a 90-degree elbow bend on your property?

18 A. It's a good question. Originally, the very  
19 first maps we received, it did not come on our property  
20 at all, and it basically came across on the north of us,  
21 the quarter north of us, and all the way across and then  
22 came at an angle through the county road. I think --  
23 I'm not sure what the reasoning was there, but maybe  
24 it's because we were -- we, from the very beginning,  
25 said we were a hard no, that we did not want to have

1 another pipeline. So maybe they -- it was just a  
2 temporary easement, the only thing we had before, for  
3 its construction, and now they moved the pipeline down  
4 this way so not -- not absolutely sure why.

5 Q. Have you been able to talk to any of your  
6 neighbors as to why or if they have any idea of why this  
7 got rerouted onto you?

8 A. The only thing that was mentioned, that possibly  
9 because the county was looking at right angles across  
10 their roads.

11 Q. All right. And, sir, then you also included  
12 what appears to be two yield maps that -- do they show  
13 the two separate fields?

14 A. This basically shows the -- the one field,  
15 section 2 -- excuse me -- section 35 in Danton.

16 Q. Okay. So both of the yield maps, one is kind of  
17 a zoomed-in version of the same rectangular, roughly,  
18 field; is that right?

19 A. Actually, the one that has the -- this one here  
20 is what they -- what they call is a vegetation health  
21 map. And it shows the different -- the healthy  
22 vegetation and the different colors that are showing.  
23 And I included this one just to show where two existing  
24 pipelines cross my land.

25 Q. And so what you've circled on each of these two,



1 almost infrared-kind-of-looking pages here that show the  
2 health, and then it looks to be a yield map --

3 A. It's a yield map, the other one.

4 Q. And that's showing where you said you have two  
5 existing pipelines?

6 A. Yes. If you look -- I'd like to point it out on  
7 the map that was submitted, you know, from Summit  
8 Carbon. I've pointed out the two existing pipelines.  
9 And you can see the scar that comes across from the  
10 southeast and going to the northwest. And there are two  
11 pipelines there. And I just wanted to make a point to  
12 point that out.

13 And these are the same pipelines that Marvin  
14 Lugert was talking about. But they come across ours.  
15 And the first one was there before we owned the land.  
16 It was the Dome pipeline. And it was installed in 1975  
17 so it's 45 years ago. The second one is -- and it's a  
18 12-inch pipe and reportedly carries LP. Adjoining side  
19 by side to the Dome pipeline is the Alliance pipeline  
20 which was built in 1998, 25 years ago. And we -- we  
21 purchased the land the year before Alliance was built.  
22 So basically the Dome pipeline was there, and then  
23 because a corridor was basically established, another  
24 pipeline came along and it was much easier to get  
25 approval.

1           I included these maps just because it's been 25  
2     to 45 years, and you can see on the map that came with  
3     your permit that they submitted, that you can see the  
4     pipeline and it's a difference in the soil, the  
5     difference in the greenery. And then if you look at the  
6     yield maps, it shows up on the yield maps every year.  
7     It has since the beginning. And it shows up on the  
8     vegetative map. That one really shows up. So you can  
9     tell the crop does not grow like it should.

10           And we've had problems since the beginning with  
11     compaction, settling, drainage, and of course the crop  
12     -- the decreased crop yields. So it's really pronounced  
13     when you look at the maps. And you can follow it even  
14     further, it follows along to the neighbor's too, you  
15     know. And there have been spots that have been just low  
16     that have never been corrected.

17           There were many promises made and they kind of  
18     tried at first, but these pipelines have been sold,  
19     they've been -- they transferred hands and it's kind of  
20     everybody's left in a lurch and that's what we have.

21           So one of our main reasons is we are already  
22     have two pipelines. Do we want another one? On one  
23     piece of land? And by doing that, I mean that was one  
24     of the main reasons we were concerned about having  
25     another one so we said no, you know, move it to someone

1 else that wants it. Because we've been dealing with  
2 this for years.

3 And I did include -- I'm not sure if this study  
4 -- the -- there's an Ohio State University study that I  
5 included there and it's that same Brehm one, but this  
6 one actually is the original article and it's Theresa  
7 Brehm and Steve Culman. And it's a soil science -- Soil  
8 Science Society of America Journal it was in. So this  
9 is the whole thing.

10 And they're basically saying that this  
11 disturbance -- you know, in their studies, the  
12 disturbance persisted five years following the pipeline  
13 installation. And they're saying even with the current  
14 best management practices, a pipeline installation and  
15 remediation employed by the three companies that they  
16 worked with -- or researched, it was insufficient --  
17 insufficient to combat widespread soil degradation and  
18 crop yield loss. And they say this can go on for many  
19 more years in their study.

20 That's just one study I thought I would --  
21 besides -- I would present besides whatever I have  
22 personally.

23 Q. So the study is obviously one thing, but the  
24 unrefutable aerial evidence where anyone can clearly see  
25 the scar of those existing pipelines some 20 and

1 45 years later, wouldn't you agree that that is, rather  
2 than a study by a university, we have firsthand  
3 unrefutable knowledge of pipeline effects?

4 A. That's right. And we can see it throughout the  
5 season. At harvest you can see it when you're coming  
6 across those areas. And it was soft and everything for  
7 years.

8 So we've had those problems and we -- we said  
9 from the very beginning we have two already, we aren't  
10 interested in another one. So that was the thought and  
11 that was one of our reasons.

12 Q. Do you feel, sir, like through this process, by  
13 you exercising your right to say no thank you to this  
14 for-profit pipeline, that you have been either  
15 ostracised or pigeon-holed or made to feel like what's  
16 wrong with you?

17 A. Yes, we really do. We did say -- we said it's a  
18 hard no. And basically after a certain amount of time  
19 we just passed things on to our lawyer. And then all  
20 the lawsuits came out. I believe there were 29 lawsuits  
21 that were in -- I think about that in Richland County  
22 alone. And then basically of those 29, after -- it  
23 wasn't that long later they were dismissed without  
24 prejudice and there was only two left in our county, and  
25 it was us and another. So basically we are -- we have

1       been sued by Summit for access to our property.

2           Q.   And those cases are ongoing, as you understand?

3           A.   They're ongoing, yes.

4           Q.   And, again, you don't -- I mean, I don't suppose  
5       you have a problem with a company with an economic  
6       interest and to take a business risk and do a project,  
7       but is it your position, if this is such a wonderful  
8       thing, just put it on people's land who want it?

9           A.   I -- I do feel that this is a hazardous waste  
10       and it's being basically carried -- and for whatever  
11       reasons they say but coming across into North Dakota and  
12       it's a pollutant.

13               And I know you as a Public Service Commission  
14       have to make the decisions and you told us upfront what  
15       it was based on. And I noticed in one of those it was  
16       based on basically continuing the energy needs in the --  
17       I think it was in the third section. And I have a  
18       problem -- I don't quite understand how this pipeline  
19       itself, carbon dioxide, contributes to energy in our  
20       state. That's one of the -- one of the things I thought  
21       that was interesting. And I know that's one of the  
22       things you have to consider.

23           Q.   And, sir, there you're referencing one of the  
24       items that the PSC has to consider related to, well, the  
25       construction, operation, and maintenance of the facility

1 at the proposed locations, then go on and on, ensuring  
2 that energy needs are met and fulfilled in an orderly  
3 and timely fashion. Is that what you're referencing?

4 A. That's what I'm referencing, yes.

5 Q. And when Mr. Powell today admitted in the  
6 application on its face says that this is for permanent  
7 sequestration of CO2 into the ground in North Dakota,  
8 can you, in your wildest imagination, think how that is  
9 ensuring that energy needs are met and fulfilled in  
10 North Dakota?

11 A. No, I can't. I have a hard time understanding  
12 that.

13 Q. And would you submit that on that basis alone  
14 this Commission must, by the very factors they have to  
15 consider, deny this application because it has nothing  
16 to do with ensuring energy needs being met?

17 A. Yes.

18 Q. All right. Anything further for you, sir?

19 A. We are very concerned about the safety. And I  
20 know that's one of the other things you need to  
21 consider, or have to consider. It's a hazardous waste  
22 pipeline with very high pressures. I think of the  
23 danger to our community caused by a pipeline blowout.  
24 It's unknown. SCS won't review the plume models of a  
25 pipeline break and the possible extent of danger.

1           We do have -- I counted about ten neighbors  
2       within a mile of where this pipeline comes across. I  
3       guess we're expected to accept their words, and these  
4       were their words, that they are comfortable with the  
5       risk. I'm not feeling as comfortable as SCS is when we  
6       look at the videos and reports of Satartia, Mississippi,  
7       and such. So we're just not comfortable with the safety  
8       on it.

9           Q. And in terms of the safety and then in terms of  
10      potential risks and liability, have you had an  
11      opportunity to research your own current insurance  
12      policy which you pay premiums on to hopefully protect  
13      you and your family in terms of liability from damages  
14      on your property?

15      A. Yes, I have. We'd heard where there were  
16      insurance companies that weren't able or were saying  
17      they couldn't insure the liability. Studied our policy.  
18      Got the complete policies. I went through the whole  
19      thing and basically found that there's a pollutant  
20      exemption. And this is a pollutant.

21           So we wanted to make sure that we -- we were  
22      covered or weren't so we did ask our insurance agents to  
23      give us a letter and that is the letter that I've  
24      included in the packet from them. Received it last  
25      Friday. He didn't date it, but it is Friday the 13th

1     that we got it so... But it's saying basically that  
2     it's -- the pollutant exemption means we are not covered  
3     for certain liabilities.

4           Q. All right. Do you and your wife depend on this  
5     ground for your economic well-being?

6           A. We do.

7           Q. All right. And you believe that the existence  
8     of this pipeline as evidenced by the ones you already  
9     have would harm that economic impact, not to even  
10    mention the safety and risk issues?

11          A. That's true.

12                 We also have considered tile and we would like  
13     to do that. Originally, the first two pipelines were  
14     making it quite expensive to tile because they would  
15     have had to have been done in sections on each side of  
16     the pipeline, and then there would have to have been a  
17     pump to take it up and over, into the ditch so it could  
18     flow down the ditch. Well -- and then there's another  
19     pump on the bottom side that would have to pump it up  
20     and away. So it was two pumps involved. And then we go  
21     with another pipeline, that's the third pump. So it  
22     would be prohibitive to do that. Besides, there's no  
23     electricity close by so just to run that would be  
24     terrible. So we'd like to tile, but even adding another  
25     pipeline would not be good.



1           And the land value is another thing that we --  
2   I'm very concerned about. You know, yes, two -- maybe  
3   someone could accept two pipelines that have been there  
4   for years, but another one pipeline, what's that going  
5   to do to the value of our land? And it is prime Red  
6   River Valley land.

7           Q. Would you agree with Mr. Tiegs that you may be  
8   petitioning the assessor in terms of property tax  
9   reduction if this pipeline were to go through?

10          A. Yes, we will.

11          Q. All right. Which would be a negative economic  
12   impact as a result of this pipeline; correct?

13          A. It definitely would.

14          Q. All right. Nothing further, sir. Thank you.

15                 MR. JORDE: Well, I better offer -- formally  
16   offer LS1.

17                 ALJ HOGAN: Is there any objection to LS1?

18                 MR. MAHLBERG: No.

19                 ALJ HOGAN: Mr. Pelham?

20                 MR. PELHAM: No objection.

21                 ALJ HOGAN: All right. LS1 is admitted.

22                 Mr. Mahlberg, any questions?

23                 MR. MAHLBERG: Very briefly.

24

25

CROSS EXAMINATION

BY MR. MAHLBERG:

Q. Have you petitioned for a reduction in your taxes because of the existence of the Dome and Alliance pipelines?

A. We have not. The first pipeline was there before -- before we even owned it.

Q. Okay.

A. The other one was 25 years ago. We did not.

MR. MAHLBERG: Okay. Thanks.

ALJ HOGAN: Mr. Pelham, any questions?

MR. PELHAM: No, Your Honor.

ALJ HOGAN: Mr. Schock.

MR. SCHOCK: No questions, Your Honor.

ALJ HOGAN: Commissioner Christmann.

COMMISSIONER CHRISTMANN: Where that -- where the pipeline comes out of section 35 and down into section 2 way at the west end --

THE WITNESS: Yes.

COMMISSIONER CHRISTMANN: -- I see what looks like a farm about a half mile north and another one about a half mile south. Are one of those your home or do you live out in this area?

THE WITNESS: If you look to the one to the south, that was our farm home. We live in Fargo now.

1 We're retired.

2 COMMISSIONER CHRISTMANN: Okay.

3 THE WITNESS: And we sold that out. But there's  
4 a young family lives there now.

5 COMMISSIONER CHRISTMANN: Someone is living  
6 there?

7 THE WITNESS: Yes.

8 COMMISSIONER CHRISTMANN: Okay. Thanks. No  
9 other questions.

10 ALJ HOGAN: Commissioner Haugen-Hoffart.

11 COMMISSIONER HAUGEN-HOFFART: Thank you.

12 You said you received that Farmers Union  
13 insurance letter this past month?

14 THE WITNESS: Friday.

15 COMMISSIONER HAUGEN-HOFFART: April 7th?

16 THE WITNESS: Yes. I said the 13th. I'm sorry.  
17 It was the 7th.

18 COMMISSIONER HAUGEN-HOFFART: Okay. Thank you.  
19 That's all I have.

20 ALJ HOGAN: Mr. Dawson.

21 SUBSTITUTE DECISIONMAKER DAWSON: No questions.  
22 Thanks for coming.

23 ALJ HOGAN: Any redirect?  
24  
25

REDIRECT EXAMINATION

BY MR. JORDE:

Q. In terms of petitioning for the taxes, obviously the first pipeline was there, you kind of had to swallow on that one, the second one you've tried to deal with, but a third one is just a bridge too far. Is that fair?

A. That's correct.

MR. JORDE: All right. Nothing further.

ALJ HOGAN: Okay. All right. Thank you.

MR. JORDE: And let me just scan the audience just in case, but any other intervenors that are dying to say something? Going once, going twice.

Oh, you'll have to be in the public comment section.

Yeah. So any of my folks, we're good? Okay.

That concludes our witness and evidence presentation.

ALJ HOGAN: Okay. All right. That brings us to public testimony. And I just want to know, by a show of hands, how many people want to provide public testimony.

Okay. I think we'll take just a short bathroom break, so maybe five minutes or so, and then we will get to the public testimony.

(Recess)

ALJ HOGAN: All right. We're now going to move

1 to public testimony. So if you're wishing to provide  
2 public testimony today, I'd ask that you start making  
3 your way down and towards the stage. And I'll have you  
4 come up to the witness chair one at a time.

5 And just like all our other witnesses today, I  
6 will have to swear you in, and I'd ask that you state  
7 your name for the record. If you're representing a  
8 group or an entity, if you could please identify that  
9 group and your relationship for the group for our  
10 record. That would be helpful. Likewise, if you're a  
11 landowner, if you could identify where your property is  
12 located, that would be helpful as well.

13 Just like our other witnesses today, you are  
14 providing testimony in an evidentiary hearing, which  
15 means this is not the time or place to ask other parties  
16 questions or to ask the commissioners questions today.  
17 It's your opportunity to provide information to the  
18 Commission.

19 Likewise, we've heard from lots of landowners  
20 and interested parties already, so in the interest of  
21 time, if you have similar concerns, I'd ask that you  
22 just state that you have similar concerns rather than  
23 just stating -- repeating everything that's already been  
24 said today.

25 And, with that, we have our first -- okay. I'll

1 let you guys look at one. Can I get you to state your  
2 full name for the record and spell your last name,  
3 please?

4 TODD MCMICHAEL: Yeah. Todd -- Todd Allen  
5 McMichael. McMichael is M-C-M-I-C-H-A-E-L.

6 ALJ HOGAN: All right. And, Mr. McMichael, were  
7 you in the room earlier when I went through the  
8 penalties for perjury?

9 TODD MCMICHAEL: Yes, I was.

10 ALJ HOGAN: And do you understand what perjury  
11 is?

12 TODD MCMICHAEL: Yes, I do.

13 ALJ HOGAN: And being advised of the potential  
14 penalties for perjury, do you promise to tell the truth  
15 in this case today?

16 TODD MCMICHAEL: Yes, I do.

17 ALJ HOGAN: All right. Thank you. Go ahead.

18 TODD MCMICHAEL,  
19 being first duly sworn, testified as follows:

20 TODD MCMICHAEL: So my family is a landowner --  
21 we're landowners in Barrie Township, Richland County,  
22 section -- so it would be 136, range 51, sections 21,  
23 16, and 22. So in 16, it's the southwest quarter; 21,  
24 it would be the southeast quarter; and in 22, again, it  
25 would be the southwest quarter, and that's where we

1 cross the Sheyenne River, in those sections.

2 Did you get that? Did I go too fast?

3 And I would say the majority of my stuff that I  
4 was going to discuss has already been talked about. I  
5 did print out a little -- for those that have a thing, I  
6 have a little cheat sheet here. We're not going to go  
7 through this whole pamphlet because it's not necessary.  
8 We have -- and I'd say everything that's in -- about  
9 everything in this pamphlet has already been turned in  
10 to the Public Service Commission for -- as evidence  
11 already. So I'll just go through it real -- real quick.

12 Tile lines. I think we probably have --  
13 probably beat that to death. On page 9, I went through  
14 tile lines there, but I don't think we need to go  
15 through that. The only thing I have on tile lines is  
16 that Summit continues to have advertising regarding how  
17 they want to work with landowners, and we've heard  
18 testimony in regards to that, but we've also seen  
19 landowners where the line is still going either down the  
20 middle or diagonally across their tiled fields so that's  
21 -- I kind of -- I have an issue with that, saying  
22 working with landowners on that.

23 Easement language, page 11. One of the things  
24 that -- in all the stuff I've done, North Dakota Century  
25 Code, we're allowed to ask for shorter than 99 years on

1     our easements, but yet Summit would not allow us -- they  
2     wouldn't agree to the easement if we went to less than  
3     99 years in our easements. So I -- I find that to be a  
4     --

5             Also, Most Favored Nations clause, we could not  
6     put that in our easements. That was not allowed. And  
7     I'm sure the -- the bodies may not know what that is.  
8     Most Favored Nations is basically no discrimination  
9     against you. You basically get -- whatever their best  
10    offer is, they have to give that same offer to you,  
11    basically. So for people that don't know what that is.

12            Listing landowners as an additional insured also  
13    was refused in our easement language. So we're seeing  
14    now more letters regarding insurance companies not  
15    insuring us. This would have covered that or taken care  
16    of that. And in a lot of research that I did,  
17    additional insured is usually a pretty easy thing for a  
18    pipeline company to do, to add the landowner as an  
19    additional insured. And we couldn't get that in the  
20    easement language.

21            We talked about strip and blanket easements. We  
22    don't need to go down that.

23            So the next page would be -- talked about  
24    insurance and indemnification. Again, that's been done.

25            Pictures. So I have some pictures here and I



1 have some maps, and what -- what those are for is my  
2 land is just to the east of the Sheyenne National  
3 Grasslands. So they want to cross the Sheyenne River.  
4 And when you take and look at all the different maps  
5 that North Dakota has, you'll notice that they avoid  
6 that area.

7 So this would be -- Your Honor, it would be page  
8 -- go to page 11, it should be the next page. It would  
9 be -- the maps are A, B -- A, B, C, showing pipeline  
10 routes. And then the area where our land is at, I have  
11 a circle on it.

12 And you'll notice that they -- the pipelines  
13 tend to avoid that portion of the Sheyenne River. You  
14 can kind of look -- there is a proposed gas line that  
15 goes across the Sheyenne River, but it goes across right  
16 at Kindred. It doesn't continue to go south. It will  
17 just go down and it will -- and that's map B. And  
18 you'll see I have the major natural gas infrastructure  
19 pipelines there on that page, and you'll see where they  
20 have the proposed gas line to go from Mapleton to  
21 Wahpeton.

22 And then map C is just a close-up of how the  
23 Alliance pipeline goes through by Lisbon and avoids Fort  
24 Ransom State Park and avoids the Sheyenne Grasslands.  
25 You'll see where it crosses the river at that point.

1           On page 13 is actually -- this is a picture of  
2   my grandparents' farmstead. That's our house. And this  
3   is what a rainstorm does in the -- what we call the sand  
4   hills of Kindred. So that washout, our tractor tipped  
5   over in that. It was a 4010 gas tractor so those are  
6   89 inches wide. And you could stand on that to look  
7   over the top of that ridge. So that gully, in 1975, on  
8   June 30th, was about eight to ten feet deep. Okay. If  
9   you go to page 15 and look at that one, that's the same  
10  rainstorm on page 15. That washout is about 30 feet  
11  deep. Both of these washouts are a mile and a half from  
12  where they're proposing the pipeline.

13           It's important to look at that because this is  
14  also where the state geologist has said that those are  
15  the -- that where the -- where that washout or that  
16  landslide possibility can be -- I can't remember the  
17  number, it's later in here, the numbers are listed, but  
18  those are where those washouts could be. And this is  
19  just 1975. We had issues in 2009 and we had issues in  
20  2019, not as dramatic as '75, but added to these  
21  washouts and were -- we had to fix a bunch of  
22  infrastructure. But both the washout from my  
23  grandparents' farmstead, which is where I farm  
24  currently, and the picture on page 15 are both a mile  
25  and a half away from where they propose to cross the

1 Sheyenne River.

2 Pipeline safety, page 17. Okay. So it is.

3 It's the state geologist GPS locations 12 and 13. Our  
4 concerns on the Sheyenne River. Location 13 is the one  
5 on our property from the state geologist, the letter you  
6 guys got from those folks.

7 The other one is Summit has never released a  
8 plume study which requires us to do speculation, which  
9 is not always good. We've asked for a plume study many  
10 different times.

11 And I'll look at the page number here, but there  
12 actually is an email from Lynn Helms on page 31. Lynn  
13 Helms actually sent an email stating that -- now you  
14 have to understand he had to use speculative  
15 information. It's not hard facts information on  
16 Summit's data. It's speculative information on a  
17 24-inch pipeline going through -- down by Bismarck. And  
18 he says for this volume, the distance to safe levels is  
19 one mile. This is from Lynn Helms. So it's page 31 of  
20 this handout. I don't think that one has ever been  
21 submitted to the Public Service Commission for any kind  
22 of a looking at. But that's just coming from somebody  
23 who considers -- you know, he's Mineral Resources board.  
24 People consider him to be fairly up to date on this  
25 stuff.

1           Surveying we don't need to go through. We've  
2           been through that enough.

3           Routing, page 19. So regarding routing, we've  
4           asked several times for them to change the route for  
5           this pipeline, up to four different times. We've been  
6           refused four different -- four different times on that.  
7           Again, I don't think we need to beat the routing stuff  
8           to death. I want to get through this quick because I  
9           think we all want to get home and do whatever so...  
10          Routing has been an issue. We've asked for routing  
11          several times.

12          If you want to go to sleep at night and look  
13          through this whole little pamphlet, feel free.

14          And then siting, I have 21 bullet points here.  
15          I'm not going to go through all the bullet points. When  
16          I've talked to people at the Public Service Commission  
17          prior to this ever being applied for, 49-22 is the  
18          bible. So I've gone through 49-22 and I've put bullet  
19          points on each one of them. And I don't want to go  
20          through every single one of these for you guys tonight.  
21          You have handouts. I'm assuming it will probably get  
22          put into an exhibit. You can read it yourself on what I  
23          -- what I think on each of the bullet points.

24          I mean, we have not -- one of the main things  
25          that I have is on 49-22 -- not 13. Which one is it?

1 It's the one regarding how people are treated and things  
2 to consider. Unfair tactics. 49-22.1-14, unfair  
3 tactics.

4 I'm going to -- I have to be honest here, my  
5 family did sign an easement with Summit, but one of the  
6 things that always frustrated me is they took the land  
7 agent away from me in my negotiations. To me, that's an  
8 unfair attack. My family signed the easement based on  
9 the fact that they don't want to deal with eminent  
10 domain. So they told me to go and negotiate with Summit  
11 and talk to people. And so who I negotiated -- so first  
12 I talked to Wade Boeshans and then after that Jimmy  
13 Powell. The conversation that Jimmy Powell had two  
14 weeks with a landowner, that was me. And we did sign  
15 after that. But we signed because we didn't want to  
16 come up and retain an attorney to fight eminent domain.  
17 To me, that's -- as one of the gentleman said earlier,  
18 it sticks in the back of your mind.

19 Our farm this year is 140 years old. We've  
20 never had to deal with anything like this and I don't  
21 ever want to deal with it again. And that's good  
22 enough. I'll let you --

23 ALJ HOGAN: All right. Thank you.

24 Who's doing questioning? Mr. Mahlberg, any  
25 questions?

1 Mr. Pelham, any questions?

2 MR. PELHAM: I guess I do have a question.

3 Because your family did sign the easement, are  
4 you testifying in opposition to the project today? I'm  
5 a little bit unclear on that.

6 TODD MCMICHAEL: So personally I'm still not  
7 happy about it, but I'm one of seven.

8 MR. PELHAM: Gotcha.

9 TODD MCMICHAEL: Okay? So you can't -- it's  
10 frustrating for me. Okay? Let's put it that way.

11 MR. PELHAM: Fair enough.

12 TODD MCMICHAEL: I am one of seven.

13 MR. PELHAM: Appreciate it. Thank you. No  
14 other questions.

15 ALJ HOGAN: Mr. Schock.

16 MR. SCHOCK: No questions. Thank you.

17 ALJ HOGAN: Mr. Jorde, any questions?

18 MR. JORDE: Yes. Thank you.

19 Sir, so you've signed an easement yet you've  
20 taken your time here today and prepared materials to  
21 testify here of your concerns about the project  
22 irregardless of the fact that you and your family, I  
23 guess, made the majority decision to sign an easement.  
24 Is that fair?

25 TODD MCMICHAEL: Correct. My biggest -- one of

1 my biggest issues is the fact that, as a landowner, and  
2 you've heard many of these landowners, "Why do we have  
3 to get an attorney if we want to say no? Why do we have  
4 to get an attorney if the easement is not worded  
5 correctly?" So, in other words, strip easement versus  
6 blanket easement.

7 North Dakota spells out strip easement, but yet  
8 the first easements were blanket easements. Now, those  
9 folks that have a blanket easement, when they have to go  
10 fix them because somebody wants to take a mortgage out  
11 on that land and the bank says, "Oh, wait a minute,  
12 there's an easement here we got to get cleared up," they  
13 have to hire an attorney. It's always nickel, diming  
14 the landowner, attorney, attorney, attorney, attorney.  
15 It frustrates me. I don't like that. No offense. I  
16 know you guys got to make a living, but I don't want to  
17 pay for it. Okay? And I have to.

18 MR. JORDE: And you make that statement because  
19 Summit, in this case, in your opinion, leaves you with  
20 no options other than to have to defend yourself by  
21 hiring professionals at your own dime and so,  
22 essentially, you've acquiesced to an easement which you  
23 really didn't want?

24 TODD MCMICHAEL: I have an easement that I feel  
25 we did our due diligence on and probably have a very,

1 very strong easement. Am I happy about having a  
2 pipeline going across my family land? No. So the  
3 easement that we have, I feel, is extremely strong.  
4 Okay? Do I like it? No. And I don't like the fact  
5 that we have that going across that ground.

6 I mean, I've asked -- we did the -- so I went  
7 with the surveyors out on the property because I didn't  
8 want to let them on the property. But there's a thing  
9 called the western prairie fringe orchid that resides on  
10 that property. Well, of course we never found it last  
11 year so that didn't move them. We do have leks. Leks  
12 are where prairie chickens and sharp-tail do their  
13 mating dance. Okay. There's leks on my ground. But  
14 you know what? We didn't find any when we walked out  
15 and did it. Well, it was in July. Because July is when  
16 the prairie fringe orchid -- guess when the leks are  
17 active? The leks are active in May. So we didn't see  
18 the leks or find them. I know they're out there. I've  
19 run across them several times turkey hunting. I mean,  
20 it's -- whatever. I -- it's frustrating. And that's  
21 where we're at.

22 And I tried to get it moved several times. Jeff  
23 Skaare, Jimmy Powell, Wade Boeshans, Erik Schovanec, all  
24 of them, we tried to get this -- we tried to get the  
25 pipeline moved, asked for it several times, and it -- to



1 no avail.

2 MR. JORDE: And, sir, you've stated that you  
3 believe, although you're not necessarily for this, that  
4 you were able to negotiate an easement that you at least  
5 obviously believe you can stomach. Would you be willing  
6 or have an objection, if we were to cross out the  
7 compensation so none of the financials are in there, to  
8 share the terms so other landowners could benefit from  
9 that?

10 TODD MCMICHAEL: I would love to, but we had to  
11 sign a do not -- an NDA.

12 MR. JORDE: Okay.

13 TODD MCMICHAEL: Non-disclosure agreement.

14 MR. JORDE: Okay. So Summit, in order to give  
15 you what you thought you could stomach, forced you to  
16 sign a non-disclosure agreement so you couldn't share  
17 those beneficial terms with other families?

18 TODD MCMICHAEL: Correct.

19 MR. JORDE: Okay. Perhaps the Commission could  
20 ask for a copy of that. It just seems strange that if  
21 they're willing and they know they can make  
22 accommodations, but they don't want anyone else in North  
23 Dakota to know about it, I just find that strange, sir.  
24 So thank you --

25 MR. MAHLBERG: I'm going to object.

1 MR. JORDE: -- for your testimony.

2 MR. MAHLBERG: There's not a question involved.  
3 It's a statement about counsel's observations as to what  
4 he thinks is strange.

5 MR. JORDE: That's fine.

6 MR. MAHLBERG: It's not appropriate for direct  
7 or cross-examination, I don't know which we're treating  
8 this as.

9 MR. JORDE: All right. Well, then I'll just ask  
10 this witness then.

11 Do you find it troubling that you're unable to  
12 share those terms so other people like you dealing with  
13 these potential risks and problems could benefit from  
14 it?

15 TODD MCMICHAEL: In my conversations with  
16 Summit, I knew it was coming so I don't find it to be --  
17 I don't like it, that it can't be shared with other  
18 folks. Granted, take the compensation out. But it is  
19 -- that's today's world that we live in and that's where  
20 we're at so...

21 MR. JORDE: And, sir, you understand that the  
22 three Commission members here can determine what world  
23 we live in and could put conditions and/or reject this  
24 entire project? You understand they have that power?

25 TODD MCMICHAEL: Uh-huh.

1 MR. JORDE: All right.

2 TODD MCMICHAEL: But, also, once it's filed at  
3 Richland County, anybody can go get it once they file  
4 it. Now, when they file it, I don't know, but, you  
5 know, that -- that easement will be filed at Richland  
6 County and anybody can go get it at that time.

7 MR. JORDE: Usually --

8 TODD MCMICHAEL: But I gave my word that I was  
9 not going to disclose it. That's on them to file it  
10 with Richland County so somebody can go get it. I'm not  
11 doing it.

12 MR. JORDE: All right. Thank you very much.

13 ALJ HOGAN: Commissioner Christmann.

14 COMMISSIONER CHRISTMANN: I just want to make  
15 sure I understand your land situation right because I  
16 got a little confused. The three parcels that I wrote  
17 down are not interconnected. So is that right, that  
18 that --

19 TODD MCMICHAEL: Yeah. They jump across the  
20 neighbor's property a little bit. They jump across a  
21 couple acres of a neighbor's property on section 21.

22 COMMISSIONER CHRISTMANN: Okay. So then I've  
23 got it down right. And this is all grazing land; right?

24 TODD MCMICHAEL: Correct.

25 COMMISSIONER CHRISTMANN: And where that crosses

1 the Sheyenne River, that's where you said that that --  
2 that is the Geological Survey's --

3 TODD MCMICHAEL: Well, number 12 and 13 on the  
4 geological points of landslide -- so what did I tell  
5 you, 12 is on my land or 13 is on my land? I can't  
6 remember which one --

7 COMMISSIONER CHRISTMANN: 13.

8 TODD MCMICHAEL: So 13 is on my property. 12 is  
9 across the river. So it's on the south side of the  
10 river. But it's -- it's actually more recreational  
11 lands than grazing land. It's more deer hunting. It's  
12 more -- that land has devolved into more recreational  
13 land than actually graze -- because that value of that  
14 land on the river, we've had offers of over \$8,000 an  
15 acre to buy that from the family. That's -- you don't  
16 pay that for grazing land. You show me how that works  
17 out for cattle. I don't even know how it works out for  
18 hunting deer, but anyway that's --

19 COMMISSIONER CHRISTMANN: But like up in 16 and  
20 further away from the river, do you graze that?

21 TODD MCMICHAEL: Yep. 16 is grazed. That's  
22 actually where the leks are at too, is in 16.

23 COMMISSIONER CHRISTMANN: Okay. And I regretted  
24 that I neglected to bring this up to Ms. Hayen -- I  
25 don't know if she's still here or not.

1           TODD MCMICHAEL:  Yep, right there.

2           COMMISSIONER CHRISTMANN:  Good.  When you've  
3   discussed this with the company and the reseeding of  
4   grasslands -- and that's why I mentioned her, because  
5   she had native species grasses as well, did you discuss  
6   or negotiate what exactly was going to be seeded back  
7   there?

8           TODD MCMICHAEL:  So I want to -- can I answer  
9   that quick, because that is part of my contract.

10          COMMISSIONER CHRISTMANN:  Maybe if it's an NDA  
11   -- okay.  Yeah, so I better not put you on the spot like  
12   that.

13          TODD MCMICHAEL:  Okay.

14          COMMISSIONER CHRISTMANN:  I'll just say that an  
15   observation like Mr. Schock's earlier with one-call, we  
16   also do mine reclamation.  And on these native species  
17   of grasses, it is possible to revert land, although it's  
18   not virgin sod anymore, but to get back to the native  
19   species of grasses.  And it's important for people to  
20   work with their local soil conservation or someone.  
21   Because I don't think any of us that graze cattle can  
22   identify all these various species that are out there  
23   and so...  I just throw that out as an aside.

24          The last thing I want to say is even though your  
25   family has reached an agreement, you've spent the whole

1 day here with us, listening, providing good information,  
2 we had to share some packets --

3 TODD MCMICHAEL: Yeah, I apologize for that. I  
4 should have printed off five or better but I did --

5 COMMISSIONER CHRISTMANN: Okay. I'll review it  
6 a little later. I appreciate your citizenship to still  
7 bring your concerns because, as I said at 9:00 this  
8 morning, this is how we learn and reach our best  
9 decision. So thank you, Todd.

10 ALJ HOGAN: Commissioner Haugen-Hoffart.

11 COMMISSIONER HAUGEN-HOFFART: Yeah, I just want  
12 to echo, you made a comment earlier, Todd, about not  
13 wanting to be bothersome or expedite your testimony. At  
14 the beginning, Chairman Christmann did a good job saying  
15 we come to these counties because we want to hear from  
16 the public, we want to hear from the company so they can  
17 educate people on what the project is, you know, we want  
18 to hear from the intervenors, but we also want to hear  
19 from you, from the public. We're willing to sit here  
20 and listen. There's some guidelines with that, you  
21 know, on repetitive information, but it is important for  
22 us to hear from you.

23 So I want to thank you for your time and this  
24 well-thought-out, well-prepared information. I just  
25 have one question. The stuff in the back, that is just

1 the petition --

2 TODD MCMICHAEL: Those are the -- so we don't  
3 have Burleigh County in there but we have over 624  
4 signatures of the -- from the counties of -- that passed  
5 resolutions to -- for no eminent domain in their  
6 counties. So you have every county in there except for  
7 Burleigh because, for some reason, Burleigh County did  
8 not scan and keep the signatures that we had for the  
9 resolutions in Burleigh County for the eminent domain  
10 but -- so Cass County and Logan, I think, are the only  
11 two counties that did not pass a resolution. So  
12 Sargent, Dickey, Richland, Emmons, Burleigh -- Morton  
13 didn't either.

14 But we had over 620-some signatures of people,  
15 of landowners, stating that they didn't want the use of  
16 eminent domain for this pipeline. And I just put them  
17 in there. Those are in there. I know that this  
18 Commission does not do anything about eminent domain.

19 Okay. Common pipeline carrier is 49 dash  
20 whatever and all it says is that they have to write a  
21 letter stating that they will go by your guys' guidance  
22 on that so they got that so... Unfortunately, that's  
23 what it is.

24 I'm asking -- hopefully, we can get better than  
25 -- hopefully, we can get a really high threshold of

1 volunteer easements. That's my goal by being --  
2 testifying today, is hoping that the Commission takes a  
3 look at this and says we have people here that are still  
4 on the edge on this thing, they need to do their work.  
5 You know, they've always stated their goal is  
6 100 percent volunteer easements. Let's help them get  
7 their goal.

8 COMMISSIONER HAUGEN-HOFFART: Okay. And I just  
9 have one more question. It's more of a curiosity  
10 question. You were talking about the easement, that you  
11 requested less than 99 years. What did you ask for?

12 TODD MCMICHAEL: Well, first we asked for  
13 25 years, but we knew that wasn't going to fly, but 50.  
14 Yeah, there was a group of us asking for 50.

15 COMMISSIONER HAUGEN-HOFFART: Okay. That's all  
16 I have. Thank you so much for your testimony and being  
17 here all day.

18 ALJ HOGAN: Mr. Dawson, any questions?

19 SUBSTITUTE DECISIONMAKER DAWSON: Thank you for  
20 your time and testimony. It's much appreciated.

21 TODD MCMICHAEL: Thank you.

22 ALJ HOGAN: Thank you.

23 TODD MCMICHAEL: Thank you.

24 ALJ HOGAN: Who would like to go next?

25 Can I get your name? And if you want to spell



1 your last name for the record, please.

2 ROBERT SCHAEFER: Robert J. Schaefer,  
3 S-C-H-A-E-F-E-R.

4 ALJ HOGAN: Mr. Schaefer, were you in the room  
5 this morning when I went through the penalties for  
6 perjury?

7 ROBERT SCHAEFER: Yes, I was.

8 ALJ HOGAN: And do you understand what perjury  
9 is?

10 ROBERT SCHAEFER: Yes, I do.

11 ALJ HOGAN: And being advised of the potential  
12 penalties for perjury, do you promise to tell the truth  
13 in this case today?

14 ROBERT SCHAEFER: Yes, I do.

15 ALJ HOGAN: All right. Thank you. Go ahead.

16 ROBERT SCHAEFER,  
17 being first duly sworn, testified as follows:

18 ROBERT SCHAEFER: It's kind of good to be here  
19 because this is my whole -- my old hometown. I  
20 graduated from Wahpeton after Uncle Sam thought I should  
21 go play in Vietnam for two or three years. And so a lot  
22 of my friends never got the opportunity to sit anywhere.  
23 But I taught the farm business management program here.  
24 Started it in the state of North Dakota. The  
25 legislature funded it. So I worked with hundreds of the

1 farms in this area at the time the sugar beet plant was  
2 being put in. So I taught them what a sugar beet was,  
3 how to plant it, how to hire the migrants.

4 Then I left here because NDSU hired me. So I  
5 ended up at NDSU in the engineering department. I went  
6 back to school, graduated from NDSU, and then started at  
7 the University of Minnesota.

8 Then after that I went over to leave all this  
9 business and go farm. Well, that didn't work real good  
10 until 20 years later. So I ended up at Oakes, North  
11 Dakota, where I helped put in the vocational center and  
12 I taught business management for 30 years there. I was  
13 a little slow, I didn't get out of town. They hired me  
14 for one year. It took 30 years to get out of town.

15 So I am a landowner. Section -- I'm going to  
16 apologize. I'm in McPherson County. So the pipeline  
17 that everyone's playing with here goes into South  
18 Dakota, part of Dickey County, goes into South Dakota.  
19 The main line comes up through South Dakota. They both  
20 meet on my land. So I got a 24-inch pipe and a 12-inch  
21 pipe.

22 So if you look at section 12, township 126,  
23 range 68 W in McPherson County -- I would give you that  
24 sheet so you can see it -- they go diagonally across  
25 three quarters of land. You'll also see they've got

1       straps put on -- about eight straps. Those are  
2       500-pound weights to hold that pipe down because there's  
3       a couple of valleys that go -- there's a couple of  
4       valleys that go through. A few years ago, the man  
5       testified here, that the ravine was washed out. That's  
6       happened.

7               The farmhouse is -- sits about 500 feet from the  
8       pipeline, the two-foot pipeline. So all of that's nice  
9       and fun --

10              ALJ HOGAN: Hang on.

11              UNIDENTIFIED SPEAKER: For clarity sake, do we  
12       have North Dakota land at issue? That exhibit that  
13       you're holding up is too small for me to read.

14              ROBERT SCHAEFER: This what?

15              UNIDENTIFIED SPEAKER: That what you're holding  
16       up, I can't tell whether you're talking about the  
17       McPherson County land or if there's North Dakota land in  
18       addition.

19              ROBERT SCHAEFER: I have land in Dickey County.

20              UNIDENTIFIED SPEAKER: Land in Dickey -- that's  
21       what that is.

22              ROBERT SCHAEFER: But this is in McPherson  
23       County, South Dakota. I'm across the border.

24              I had a chance to testify before the Public  
25       Service Commission in Bismarck and I was kind of

1     pleased. They had a guy that run it just as good as  
2     you're running it.

3             Anyway, they came up with the idea, after they  
4     listened to everybody, that they would set up an escrow  
5     account. If they wanted to make all them promises,  
6     let's put a little money in an escrow so if they're not  
7     around -- like that last time a pipeline had a problem,  
8     they -- within three, four, five months, they filed  
9     bankruptcy, somebody else took them over. Let's have  
10    them put their money where their mouth is. They're  
11    considering that when they issue -- if they issue a  
12    permit to build a pipeline through the land there.

13            So being a Bison, uneducated, my insurance --  
14    and you have one of these. I have two or three  
15    insurance companies. Farmers Union just mailed me one  
16    yesterday. It has the same information. I'll just read  
17    the bottom line. "In summary, having a pipeline running  
18    through your property carrying CO2 pollutant subjects  
19    you to substantial, uninsurable exposure." They will  
20    not cover me.

21            Farmers Union just sent me one and they state  
22    "Please to be aware that your liability policy contains  
23    exclusions for losses caused by pollutants. The policy  
24    may also exclude coverage for your responsibility to  
25    clean up, remove, treat, detoxify, redeem, or

1 reconstruct, or in any way respond to a loss caused by  
2 or due to pollutants." This means that there may be no  
3 coverage from your policy in the event that there's a  
4 release of pollutants.

5 The company has told me they're covering  
6 everything. There's people down there waiting three  
7 years that are getting nothing so I have a small problem  
8 with that.

9 So being an educator most of my life and a  
10 farmer for 40 years, I found out, when they decided to  
11 cross my land, we looked at the abstract. You want an  
12 education, 1920, or something, the railroad took a  
13 hundred-foot easement through two of those quarters.  
14 They sold it three times. Finally a railroad built a  
15 railroad from Ashley to Leola, the Galloping Goose. In  
16 about the '30s they took the train off. They sold the  
17 easement to somebody. They came in and took the  
18 railroad ties and the rail off. The guy that had that  
19 decided he wanted to make some money so he sold all the  
20 easements for that 20-some miles.

21 The last I found out where that easement was,  
22 was when the attorney went through my abstract. He  
23 goes, "You got a hundred-foot easement a mile long."  
24 It's got a railroad bed 10-feet high so the Indians  
25 couldn't attack the train or the buffalo couldn't run

1 over it, all the way along. "Yeah," I said, "there used  
2 to be one that size." He said, "What do you mean 'used  
3 to be'?" I said, "I got tired -- the father-in-law  
4 farmed around it for 40 years. I farmed around it for  
5 30 years. I finally got tired. I owned a Caterpillar.  
6 So I busted a hole through it, and a neighbor had a  
7 blader, and we leveled it." The attorney looks at me  
8 and he goes, "That's not yours. That easement you don't  
9 have. You don't have ownership to that land. You may  
10 have to put it back." And I go, "I don't think so."

11 We don't know who owns that easement. Last we  
12 know is the guy that had it died. My father-in-law, my  
13 mother-in-law have died, so everybody is dead.

14 So when we're done with all this game, I'm going  
15 to have to hire an attorney to get a quit claim deed to  
16 that 14 acres or something that goes through that land.  
17 Now, that's 90-some years that that's been there. So  
18 that's just one easement.

19 Have a pipeline on this land, was put in three  
20 years ago -- four years ago. WEB Water. They  
21 guaranteed me that they would put a pipeline for a mile  
22 across two quarters. Well, they got started. This is a  
23 hook. It only goes seven feet deep, putting a two-inch  
24 pipe in. Not a big deal. I don't think I got paid  
25 anything. I gave them the right do it alongside of a

1 power line, alongside of another line that's for  
2 telecommunications.

3 So I'm in the yard working and I hear a whole  
4 lot of noise. I look and there's a lot of smoke coming  
5 out of two big Caterpillars. Then they shut down. Two,  
6 three hours later I see semis coming with backhoes and  
7 trackhoes. They dug a trench a half mile long, seven  
8 feet deep, about four feet wide. Took them about part  
9 of the week to do that. Piled dirt up to about as high  
10 as these lights.

11 Two weeks later, the renter I had called and he  
12 goes, "Hey, Bob, you better come down here and take a  
13 look." So I come down. They got a row of rocks, some  
14 of them the size of this table, sitting all over the  
15 field. They got everything packed back in the ditch.

16 So I called their legal -- you know, their legal  
17 department. They sent a guy out and he says, "What do  
18 you want?" I said, "I want the rocks taken out of  
19 here." "Where do you want them?" I said, "Where you  
20 found them." And he thought I was a smart ass, I think,  
21 because he said, "We ain't putting them back in there.  
22 Where do you want them?" I said, "I don't want them  
23 anywhere. You found them, you get them out of here."

24 So they bring in a whole bunch of big trucks.  
25 They got a big Cat. Now we've got about, I don't know,

1     20 acres they've been driving around with everything you  
2     can imagine packing the ground. They didn't separate  
3     the topsoil and the bottom. They pack it all in the  
4     hole.

5             Two weeks later it rains. They're planting  
6     crop. A guy gets stuck with a 40-row planter, big  
7     four-wheel drive tractor in yellow muck. So he called  
8     me. I go back down there. I call their legal  
9     department. The guy comes out and he goes, "What's your  
10    problem now?" I said, "You want to look at that mess?"  
11    "What do you want?" I said, "I want you to dig the dirt  
12    back out, find my topsoil, put it on the top, and put  
13    the rest where it belongs." "Can't do it."

14            They did 50-some loads, semi loads, of black  
15    dirt got delivered at many thousands of dollars.

16            So do I need another pipeline? They didn't get  
17    the second mile. They went across the section line and  
18    give the neighbor a crack at it.

19            So when I'm playing all these games, I figure,  
20    you know, I may not win. They didn't kill me overseas  
21    so I'm still around 80 years later.

22            You have one I sent out. This is a fairly  
23    decent thing that everybody should have in their hand.  
24    It's just a simple answer to what is CO2 and what does  
25    it do? Inert gas, carbon dioxide compressed. If you go



1 to the second page, conditions by volume.

2           You know, I was thinking today when they were  
3 doing all of this drain tile, we have a problem where  
4 I'm at because we have some glacial comes down out of  
5 the Coteau hills and there's a title name on most of our  
6 soil. It says boulder loam. That's a joke, you know.  
7 Because them guys that put that water pipeline in found  
8 out what boulder loam meant, you know, when they stuck  
9 that thing in the ground. These guys, if they dig that  
10 thing there, they're going to find out how many rocks  
11 are under that ground.

12           Anyway, I think -- getting back to that tile, I  
13 said if there's a leak in that pipe, I'd like to have it  
14 on my quarter land that's tiled so it leaks into my  
15 drain tile because I think I could raise 600-bushel corn  
16 if I had CO2 at a 2 or 3 percent level instead of at a 1  
17 percent.

18           I did most of the research at NDSU with grad  
19 students on all kinds of things. This one would be a  
20 great one. Because that's what a corn plant needs. You  
21 and I need CO2. It does our bone structure. It builds  
22 -- it's the lifeblood of us, is the CO2. It's heavier  
23 than air. I haven't figured out how they get it all the  
24 way up there in the stratosphere.

25           If you read anything and you got any desire to

1 read, read what happened after 9/11. They shut the  
2 26,000 airplanes down in the United States. That's how  
3 many flights every day. You can check it on your smart  
4 check. 26,000 flights a day. They burned millions, if  
5 not billions, of pounds of fuel. When they quit flying  
6 for a week, it was a miratic (phonetic) change in the  
7 atmosphere. They were not covering the sun up there  
8 with all of their streams.

9 CO2, when they call it a pollutant, it's like  
10 they tell us voting is just a popularity contest if we  
11 get rid of voting. Well, I got to find in one of those  
12 messes where our government decided, you know, don't let  
13 the people vote.

14 But anyway, at 1 or 2 percent, if you look  
15 there, 1 to 1 and a half percent, this room I don't have  
16 a meter in, but we're probably at that 1 percent. If  
17 we're at over 1 and a half percent, you might see a  
18 little chemical, you know, change. If you get to 3  
19 percent --

20 And I work with people that have greenhouses.  
21 They buy CO2 in bottles. You want flowers for a  
22 wedding, graduation, and they don't have them ready?  
23 They can speed them up. They just buy a bottle of CO2  
24 and they spray it in the greenhouse and they can speed  
25 them up weeks, one or two weeks faster. You don't want

1 to work in there very long, though.

2 So at 3 percent, the gas is a weak narcotic at  
3 this level giving rise to a deeper breathing.

4 So when we were in -- can't remember where we  
5 were at -- one of the Summit guys answered one of the  
6 farmers when he asked, "If my tractor quits running in  
7 the middle of the field, what should I do?" Well, the  
8 first thing he said is I better look at my fuel gauge to  
9 see if I got fuel. I got fuel, but it's not running.  
10 So he got out of the tractor and he asked the guy "What  
11 do you think I should do?" And the guy says, "Well,  
12 maybe you should head into the wind."

13 And I'm sitting there thinking "Where do you  
14 think the CO2 came from to stop the tractor? It came  
15 with the wind." So you're going to make it about  
16 20 feet into the wind and that's where they're going to  
17 find you. You should have been standing on top of the  
18 tractor because the CO2 settles into the lower areas and  
19 moves around.

20 So at 3 percent -- at 4 percent you don't need  
21 to buy beer, you start getting a little funny. You  
22 start feeling like you're intoxicated.

23 If you're somewhere in that 7, 8 percent, if  
24 you're a smoker, if you got any problems, you're  
25 probably not going to be breathing. The boys that are

1 in good shape, the gals that are running the marathons  
2 might make it to 10 percent, but at 10 percent,  
3 basically everything dies. But you can't see it, you  
4 can't smell it. You know, you have no idea what you're  
5 fighting.

6 I thank you for your time.

7 ALJ HOGAN: All right. Mr. Mahlberg, any  
8 questions?

9 MR. MAHLBERG: I just want to clarify the land  
10 ownership piece because I'm struggling to find it. The  
11 land that you own in Dickey County, it is crossed by the  
12 Summit pipeline or not crossed?

13 ROBERT SCHAEFER: Not -- not in Dickey County.

14 MR. MAHLBERG: Got it. But you have land --

15 ROBERT SCHAEFER: Land in McPherson, South  
16 Dakota, across the border.

17 MR. MAHLBERG: That you own --

18 ROBERT SCHAEFER: Yes.

19 MR. MAHLBERG: -- that is where there's -- the  
20 12 --

21 ROBERT SCHAEFER: Yeah.

22 MR. MAHLBERG: -- and 24 connect? Okay. I was  
23 just trying to get that clarified. Thank you.

24 ALJ HOGAN: Mr. Pelham, any questions?

25 MR. PELHAM: No questions.

1 ALJ HOGAN: Mr. Schock.

2 MR. SCHOCK: No questions.

3 ALJ HOGAN: Mr. Jorde.

4 MR. JORDE: So all of your concerns as a North  
5 Dakota landowner that you've referenced relative to your  
6 South Dakota land are still relevant for the pipeline  
7 located in North Dakota; correct?

8 ROBERT SCHAEFER: Well, the pipeline doesn't go  
9 far from my house in Oakes.

10 MR. JORDE: Okay. All right.

11 ROBERT SCHAEFER: As a homeowner, I have a real  
12 concern. I have a little genius called a grandson who  
13 the government has paid large bonuses to to get him,  
14 decided one day that he had nothing to do so he figured  
15 out how much CO2 is in a pipeline 20 miles between two  
16 shutoffs, break it in the middle, and how far it would  
17 spread. One chemist looked at that and he goes, "Where  
18 the heck did you figure out all that stuff?" He said it  
19 will cover a mile in only so many minutes at ten feet  
20 deep that's lethal. Okay. So it's not a pipeline.  
21 It's a bomb.

22 The government -- I have a son who's going to  
23 become a general, commands the 34th Division. I asked  
24 him, I said, "You're playing with drones." "Yep,  
25 playing with drones." I said, "Are you playing with

1 anything else?" "Yeah." I said, "What?" "CO2."

2 If we're fighting -- we got like the Russians  
3 right now, they got a ghost bomb. We think that's what  
4 it is. They don't want to destroy the infrastructure,  
5 but they want to get rid of the troops or people hiding  
6 in the low parts, trenches or in buildings, in the  
7 basement. Nothing better. Works beautiful.

8 MR. JORDE: Thank you.

9 ALJ HOGAN: Commissioner Christmann.

10 COMMISSIONER CHRISTMANN: How far does this go  
11 from Oakes?

12 ROBERT SCHAEFER: What was that?

13 COMMISSIONER CHRISTMANN: How far is this from  
14 Oakes, the pipeline, at the closest?

15 ROBERT SCHAEFER: The pipeline is about three  
16 miles south.

17 COMMISSIONER CHRISTMANN: Thank you. No other  
18 questions. Thank you for being here.

19 ALJ HOGAN: Commissioner Haugen-Hoffart.

20 Hang on.

21 ROBERT SCHAEFER: Yes.

22 COMMISSIONER HAUGEN-HOFFART: I have no  
23 questions, but thank you for your testimony.

24 ROBERT SCHAEFER: Yes. Thank you.

25 ALJ HOGAN: Mr. Dawson.

1           SUBSTITUTE DECISIONMAKER DAWSON: No questions.

2           ALJ HOGAN: All right. I guess you can leave.

3 Thank you.

4           ROBERT SCHAEFER: Do you want that?

5           ALJ HOGAN: That's from the South Dakota --

6           ROBERT SCHAEFER: Yeah.

7           ALJ HOGAN: Yeah, I don't think we need it since  
8 it's South Dakota. Yep.

9           TIA BOPP: Good evening.

10          ALJ HOGAN: Good evening. You want to state  
11 your full name for the record and spell your last name,  
12 please.

13          TIA BOPP: Sure. My name is Tia Bopp. Last  
14 name is spelled B-O-P-P.

15          ALJ HOGAN: Ms. Bopp, were you in the room this  
16 morning when I went through the penalties for perjury?

17          TIA BOPP: I was.

18          ALJ HOGAN: And do you understand what perjury  
19 is?

20          TIA BOPP: I do.

21          ALJ HOGAN: And being advised of the potential  
22 penalties for perjury, do you promise to tell the truth  
23 in this case today?

24          TIA BOPP: I do.

25          ALJ HOGAN: All right. Thank you. Go ahead.

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**TIA BOPP,**

being first duly sworn, testified as follows:

TIA BOPP: I don't have anything prepared for you today, I didn't come here thinking that I would be testifying, but I'm here on behalf of my family. Our family farmstead has been in the family for over 125 years. My folks are 78 and 83 years respectively.

And we have concerns with the pipeline, but we didn't even know that the pipeline affected our farmstead until the hearing took place in Gwinner. I did not attend that, again, because I didn't believe that it pertained to me or my family. After that hearing, we were contacted by some attendees at that hearing that said our farmstead -- and they gave the quadrants of it. It's section 12 in township 131, range 54 -- was identified and called out at the hearing in Gwinner as one of the only pieces of property where a waiver had not been obtained up to this point.

So as we came here today, we looked at the maps that were out front and we noted where the projected pipeline is going. And the boundaries, I believe it's the 300-foot boundaries, do come over onto our family farmstead.

We obviously have grave concerns with the safety that that poses, not only for my folks' well-being.



1 Their house is -- we haven't exactly measured it, we  
2 certainly can, but we believe well within 500 feet of  
3 the proposed pipeline location.

4           Additionally, we have livestock out there. We  
5 have a gentleman who rents some of our pastureland there  
6 that raises high dollar quarter horses. I also have  
7 livestock out there. And all of this livestock, the  
8 pasture runs right alongside the township road, and the  
9 proposed pipeline location, for the most part, is on the  
10 other side of the township road. However, the set off  
11 or the boundary, the red lines, I guess, if you will, on  
12 the maps that we viewed out there does come across onto  
13 our parents' land.

14           So part of my concern and frustration is why are  
15 my parents not notified of this? To the best of their  
16 knowledge, they have not received any correspondence or  
17 any communication on this. It's unfortunate and it's  
18 tough when your parents age, that they should even have  
19 to be dealing with this, let alone the fact that now  
20 they haven't been notified. And how do we ensure that  
21 their safety and their rights have been taken into  
22 consideration?

23           I'm just -- as I sat here today, I've learned a  
24 lot and it's been very eye-opening for multiple reasons,  
25 but if I understood earlier testimony, that there is a

1 reason where the application should be redone based on  
2 some location of some stuff in Burleigh County, and  
3 they're not willing to reapply or redo that application  
4 for that, how can I be assured that if my parents'  
5 rights will be taken into consideration if they don't,  
6 you know, sign a waiver? Will they just be overlooked  
7 and this pipeline will go there regardless? So that's a  
8 grave concern for us and our family.

9           Additionally, if there would be a breach and if  
10 insurance is an issue, like it sounds like it is for  
11 many of these people, you know, there's a huge economic  
12 loss potentially there if there would be a breach, not  
13 to mention the loss of human life. And how do you put a  
14 price tag on that?

15           So I guess I'm concerned with what I heard today  
16 with the pipeline personnel wanting us as landowners, or  
17 as my folks being landowners, to trust them, but yet we  
18 don't know who owns this product that's going through  
19 these pipelines. We don't know who's backing all of  
20 this.

21           And I'm just concerned that also, if there's an  
22 easement that was granted by the adjacent property owner  
23 on the other side of the township road but the set off  
24 comes over on our -- our side of the road, should my  
25 parents not have some notification or been involved in

1     some of this process up to this point?

2             My brother is here with me. I don't know if he  
3     has anything additional that he would like to add, but I  
4     guess that's what I'm probably most concerned about, is  
5     I feel like we're coming into this at the eleventh hour,  
6     and up to this point we've had no notification and  
7     didn't attend previous hearings because we didn't know  
8     that our property was at issue.

9             Thank you for your time.

10            ALJ HOGAN: Thank you.

11            Were you going to testify too, Mr. Bopp?

12            TROY MAHLER: Yep, that's fine. My name is Troy  
13     Mahler, M-A-H-L-E-R. I guess I would just --

14            ALJ HOGAN: Hang on. I've got to swear you in  
15     if you're going to provide testimony.

16            Were you in the room when I went through the  
17     penalties for perjury this morning?

18            TROY MAHLER: I was.

19            ALJ HOGAN: And do you understand what perjury  
20     is?

21            TROY MAHLER: I do.

22            ALJ HOGAN: And being advised of the potential  
23     penalties for perjury, do you promise to tell the truth  
24     in this case today?

25            TROY MAHLER: I do.

1 ALJ HOGAN: All right. Thank you. Go ahead.

2 TROY MAHLER,

3 being first duly sworn, testified as follows:

4 TROY MAHLER: Well, it's just -- I mean, we sat  
5 and we listened, and it seems that -- it seems that it's  
6 a company from outside North Dakota. I mean, we're  
7 supposed to trust the company and we're supposed to put  
8 our trust in you, but some of the most basic questions  
9 no one's got answers to.

10 So how does that not raise a question to you as  
11 the Public Service Commission who are supposed to take  
12 care of the needs of the community and North Dakota  
13 residents when you can't get any straight answers? How  
14 do we trust that Summit is just not going to railroad  
15 this through and -- and us being the landowner are just  
16 supposed to accept it.

17 There will never be any more land. It's not  
18 like a house where you can move it or do something else.  
19 This is where we're supposed to be. This was supposed  
20 to be our legacy. The intent was to retire and move out  
21 there. Well, now we don't even know if that's a  
22 possibility.

23 It doesn't seem like we can get any insurance.  
24 And what do we do? I mean, we're just left holding the  
25 bag. It seems like it's for the betterment of someone

1 else outside of the state and we're just supposed to  
2 accept it. It just doesn't seem right. It leaves a --  
3 it leaves a sour taste in our mouth.

4 And just being the lonely landowner, if you  
5 will, speaking of my parents, I mean, where's the trust?  
6 I guess that's what I would leave with, is where's the  
7 trust and what are we supposed to do? It seems like  
8 everyone has to hire an attorney to do everything, but  
9 we're just supposed to accept that the things are going  
10 to be looked at for us, and clearly everyone has stated  
11 before us, that's not the -- that's not the case. So  
12 it's just frustrating.

13 So thank you for your time and thank you for  
14 giving us a voice.

15 ALJ HOGAN: Thank you.

16 Mr. Mahlberg, any questions?

17 MR. MAHLBERG: Only if I get the names of the  
18 owners of the property. I don't know if it's your  
19 parents or --

20 TROY MAHLER: It's Curtis, so C-U-R-T-I-S, and  
21 Violet, V-I-O-L-E-T, Mahler. And they're in Shuman  
22 Township in Sargent County, section 12, township 131,  
23 range 54.

24 He's been Santa Claus for 43 years, if that  
25 means anything.

1 ALJ HOGAN: Do you have any other questions?

2 MR. MAHLBERG: I'm going to hold off and not  
3 follow up on that last one.

4 ALJ HOGAN: Okay. Mr. Pelham, any questions?

5 MR. PELHAM: No questions. Thank you.

6 ALJ HOGAN: Mr. Schock.

7 MR. SCHOCK: No questions. Thank you.

8 ALJ HOGAN: Mr. Jorde.

9 MR. JORDE: If I understand your testimony  
10 correct, your parents have land that, if the corridor --  
11 this 300-foot corridor is approved, could potentially be  
12 affected by this pipeline, yet you've had no  
13 communication as far as you're aware from this company;  
14 is that correct?

15 TIA BOPP: That is correct.

16 MR. JORDE: Okay. And that's what's disturbing  
17 to you, because it could affect you, if they're granted  
18 the right they want, yet you don't have any idea what's  
19 going on with it?

20 TIA BOPP: That's correct. Had some concerned  
21 people not reached out to us after the Gwinner hearing,  
22 we would have known nothing about the land that my  
23 parents own being affected by the pipeline.

24 MR. JORDE: Okay. All right. Thank you very  
25 much. Appreciate it.

1 ALJ HOGAN: Commissioner Christmann.

2 COMMISSIONER CHRISTMANN: I'm going to say I'm  
3 bummed out with myself because I actually had this  
4 place, I believe, circled in my maps before the Gwinner  
5 hearing and then no one brought it up and I -- I forgot  
6 to ask about this one, ask the company. So now I'm glad  
7 you're here so that I can. And I expect at a subsequent  
8 meeting I'll get a response to this, but I just want to  
9 make sure, so you live -- or your parents -- do they  
10 live there or just own this?

11 TIA BOPP: They live there.

12 COMMISSIONER CHRISTMANN: And it is the  
13 northwest quarter of section 12 that their home is on,  
14 way on the north edge of it?

15 TIA BOPP: That is correct. Like I said, we --  
16 we haven't measured specifically, but the house is  
17 probably within 500 feet of the township road.

18 COMMISSIONER CHRISTMANN: That's a county road  
19 that runs along there east and west?

20 TIA BOPP: No. It's a township road.

21 COMMISSIONER CHRISTMANN: Township road. Sorry,  
22 where I'm from, we don't have organized --

23 I thought too that -- I mean it could be  
24 500 feet, but from looking at the maps, I thought too it  
25 seemed close, which is why I --

1 TIA BOPP: It's very close.

2 COMMISSIONER CHRISTMANN: -- highlighted it. So  
3 I'm going to be expecting along the way here some  
4 details with some precise measurements on that. And  
5 just know that you've highlighted it now and I'm going  
6 to be watching this one.

7 TIA BOPP: So are you expecting -- just for  
8 clarification purposes, are you expecting us to do some  
9 measurements and get back to you?

10 COMMISSIONER CHRISTMANN: No. I am expecting  
11 the company will provide me with some information, with  
12 some precise measurements --

13 TIA BOPP: Okay.

14 COMMISSIONER CHRISTMANN: -- that I can verify.

15 TIA BOPP: And you can share that information  
16 with us?

17 COMMISSIONER CHRISTMANN: I won't be  
18 communicating with you but --

19 TIA BOPP: But we can reach out to the --

20 COMMISSIONER CHRISTMANN: It will be done  
21 publicly in --

22 TIA BOPP: Okay.

23 COMMISSIONER CHRISTMANN: -- either information  
24 that's filed with us or at a future hearing.

25 TIA BOPP: Okay. Thank you.



1 ALJ HOGAN: Commissioner Haugen-Hoffart.

2 COMMISSIONER HAUGEN-HOFFART: I have no  
3 questions, but I want to thank you both for being very  
4 active and being advocates for your parents. Thank you  
5 for coming.

6 TIA BOPP: Thank you.

7 ALJ HOGAN: Mr. Dawson, any questions?

8 SUBSTITUTE DECISIONMAKER DAWSON: Thank you for  
9 your testimony today. You brought up an issue. No  
10 further questions.

11 ALJ HOGAN: All right. Thank you both.

12 TROY MAHLER: Thank you.

13 TIA BOPP: Thank you.

14 ALJ HOGAN: Is there anyone else that wants to  
15 provide public testimony?

16 Thank you. Can I get your full name for the  
17 record and if you'll spell your last name.

18 STEVEN ACKERMAN: Steven A. Ackerman,  
19 A-C-K-E-R-M-A-N.

20 ALJ HOGAN: Mr. Ackerman, were you in the room  
21 this morning when I went through the penalties for  
22 perjury?

23 STEVEN ACKERMAN: Yes.

24 ALJ HOGAN: And do you understand what perjury  
25 is?

1 STEVEN ACKERMAN: Yes.

2 ALJ HOGAN: And being advised of the potential  
3 penalties for perjury, do you promise to tell the truth  
4 in this case today?

5 STEVEN ACKERMAN: Yes.

6 ALJ HOGAN: All right. Thank you. Go ahead.

7 STEVEN ACKERMAN,

8 being first duly sworn, testified as follows:

9 STEVEN ACKERMAN: I heard testimony earlier  
10 today that the PSC is not concerned with the easement  
11 document itself. However, that is why I'm here today.  
12 And I'm wondering, will you allow me to continue?

13 ALJ HOGAN: Is this similar to what we've heard  
14 at the last two hearings regarding the easements and  
15 recording them? I guess just -- I know it's almost 7:00  
16 so I -- it's more a time concern and the fact that we've  
17 heard that testimony and it's in the record already. So  
18 I guess my first thought is the same testimony we've  
19 heard before.

20 STEVEN ACKERMAN: This is a 10-minute read. And  
21 I was before you previously as a representative of the  
22 North Dakota Society of Professional Land Surveyors.  
23 Today I'm here as an individual professional land  
24 surveyor and there are things that I could not say being  
25 a representative of the society, but I can say on my own

1 accord.

2 ALJ HOGAN: Rather than reading this to us,  
3 could you maybe just summarize your concerns?

4 STEVEN ACKERMAN: I can try.

5 ALJ HOGAN: Okay. Thank you.

6 STEVEN ACKERMAN: Basically my concern is that  
7 -- again, I'm a professional land surveyor. I have  
8 44 years of experience. And pretty much on a daily  
9 basis I'm asked to discern easements and legal  
10 descriptions and write legal descriptions and easements.  
11 And in these particular easements, exhibit --

12 COMMISSIONER HAUGEN-HOFFART: Excuse me, Steve,  
13 can you go closer to your mic?

14 STEVEN ACKERMAN: Excuse me.

15 COMMISSIONER HAUGEN-HOFFART: Thank you so much.

16 STEVEN ACKERMAN: In these particular easements  
17 -- I've got to go back. I did a search through the  
18 Richland County courthouse and I found that there were  
19 78 of these easements recorded. So I did a sampling. I  
20 pulled every seventh one. So I pulled, roughly, 11 of  
21 these easements out of the record. And I found that ten  
22 of these samplings did not have an Exhibit B. An  
23 Exhibit B is the one that identifies the location of the  
24 construction easement, the access easement, and the  
25 pipeline easement. So Exhibit B is mentioned nine times

1 in these recorded documents and there is no Exhibit B  
2 included in the document.

3 So I have no way of knowing -- as a land  
4 surveyor, I have no way of knowing from the public  
5 record where this easement is located. And that's  
6 significant because it affects a lot of people, people  
7 that have to deal with the land down the road in the  
8 future. Where is the limits of this easement? Without  
9 it being in the public record, what do we have?

10 So -- and then in the last sampling that I took,  
11 the eleventh one, Easement B was included in the  
12 document. And Easement B had two sentences in there,  
13 and I got to read exactly what the sentences are. It's  
14 on the back sheet of the paper I just handed you.  
15 Exhibit B is a sketch of the intended location of the  
16 easement as of the date of the document and it remains  
17 on file with the company.

18 So now we got a recorded instrument that says  
19 Exhibit B identifies the location of these easements,  
20 and yet here Exhibit B says Exhibit B is on file with  
21 our company. So this document, all of a sudden, is  
22 being split and is occupying two different locations.

23 And the final sentence in there, it says Exhibit  
24 B will not be recorded. Well, holy smokes. Are you  
25 kidding me? How in the world can we have Exhibit B not

1 recorded? So all of these folks here have a legitimate  
2 concern without an Exhibit B that identifies a specific  
3 location of the pipeline which is -- should be a strip  
4 easement, Exhibit B will not be recorded.

5 So it goes against what was recited in Bismarck  
6 about -- by the Summit personnel that said Exhibit B  
7 will be recorded after the pipeline is in. Now we're  
8 hearing Exhibit B will not be recorded.

9 So there's something going on here and I'd like  
10 to know what it is. Do you see the problem here?  
11 That's what I have to say.

12 ALJ HOGAN: All right. Thank you.

13 Mr. Mahlberg, any questions?

14 MR. MAHLBERG: Yes, Your Honor. Thank you.

15 Mr. Ackerman, you understand that Exhibit B1  
16 will be an as-built of the pipeline, it will reflect the  
17 pipeline's exact location, it will be recorded? Yes or  
18 no?

19 STEVEN ACKERMAN: I don't see that anywhere.

20 MR. MAHLBERG: Okay.

21 ALJ HOGAN: All right. Mr. Pelham, any  
22 questions?

23 MR. PELHAM: I'm just wondering, sir, if you've  
24 talked to the recorder's office as to the issues that  
25 you're presenting to the Commission?

1           STEVEN ACKERMAN: I have talked to the  
2 recorder's office and I discussed with them about why  
3 they're accepting these, what I call substandard  
4 documents.

5           MR. PELHAM: What was their response?

6           STEVEN ACKERMAN: The response was that the  
7 document meets the recording standard in North Dakota.  
8 There's a grantee, a grantor, there's signatures, and  
9 the signatures are notarized. It meets the requirements  
10 for recording.

11           The recorders are not concerned with what the  
12 document says. They're only concerned about that the  
13 recording -- that the document meets recording  
14 standards.

15           MR. PELHAM: Sir, have you talked to the North  
16 Dakota Professional Engineers Land Surveying Board  
17 concerning this?

18           STEVEN ACKERMAN: I have not talked to the  
19 board.

20           MR. PELHAM: Why not?

21           STEVEN ACKERMAN: The board has issued a -- they  
22 went through the process to get an Attorney General  
23 opinion about exhibits attached to a document that -- a  
24 document that -- I'm searching for the word -- a  
25 document that conveys an interest in real estate. And

1 the Attorney General says that any exhibit attached to a  
2 document that conveys an interest in real estate must be  
3 signed and sealed by a registered land surveyor. And  
4 probably that's the reason why they're not wanting to  
5 record Exhibit B.

6 MR. PELHAM: So there is an Attorney General's  
7 opinion on this issue or it's been requested?

8 STEVEN ACKERMAN: No. There is an Attorney  
9 General opinion dated May 27th, I believe, 2017.

10 MR. PELHAM: Okay. But there's been no report  
11 to the board as far as any of the issues that you're  
12 testifying here about or that your society has  
13 provided --

14 STEVEN ACKERMAN: Again, I don't think the board  
15 is going to consider this either because the board has  
16 authority over --

17 MR. PELHAM: Land surveyors.

18 STEVEN ACKERMAN: -- registered professionals.

19 MR. PELHAM: Right.

20 STEVEN ACKERMAN: So...

21 MR. PELHAM: Thank you, sir. I don't have any  
22 other questions for you.

23 MR. SCHOCK: No questions, but thank you for  
24 being here.

25 ALJ HOGAN: Mr. Jorde, any questions?

1 MR. JORDE: Yes.

2 Sir, do you understand that if this Commission  
3 grants the corridor, this 300-foot corridor, that  
4 Exhibit B that landowners may be signing easement  
5 agreements about could -- Summit at its own discretion  
6 can move the easement anywhere it wants within that  
7 300 feet?

8 STEVEN ACKERMAN: That's correct.

9 MR. JORDE: All right. Is that something that's  
10 troubling to you, the fact that it's not being  
11 pinpointed in the easement agreements?

12 STEVEN ACKERMAN: I find that extremely  
13 troubling.

14 MR. JORDE: All right. Thank you very much.

15 ALJ HOGAN: Commissioner Christmann.

16 COMMISSIONER CHRISTMANN: I don't think I have  
17 any questions. Thank you.

18 ALJ HOGAN: Commissioner Haugen-Hoffart.

19 COMMISSIONER HAUGEN-HOFFART: I have no  
20 questions, but thank you for your testimony.

21 ALJ HOGAN: Mr. Dawson.

22 SUBSTITUTE DECISIONMAKER DAWSON: Thank you.

23 ALJ HOGAN: Thank you, Mr. Ackerman.

24 STEVEN ACKERMAN: Thank you for your time.

25 ALJ HOGAN: Do we have anybody else that wants



1 to provide public testimony?

2 All right. Seeing none, nobody else, that will  
3 conclude our public testimony portion of today's  
4 hearing.

5 Before we conclude, I'll just ask if there's any  
6 other issues we need to address.

7 Mr. Bender or Mr. Mahlberg?

8 MR. BENDER: Mr. Pelham has an issue he wants to  
9 talk about, and I support that. It has to do with the  
10 filing of documents that we want to be held  
11 confidential.

12 ALJ HOGAN: All right. Mr. Pelham.

13 MR. PELHAM: Yes, Your Honor. There was a  
14 letter that was filed recently with the Commission by  
15 Mr. Bender requesting for a waiver of the requirement in  
16 the Administrative Code allowing for protected  
17 information of documentation and requesting a waiver of  
18 having to also file with the Commission a redacted  
19 public version.

20 On reviewing this, there's been some email  
21 communication between the attorneys on this, and it's  
22 the Commission's position that an application should  
23 first be filed by Summit Carbon Solutions as to the  
24 request that it's going to be filing, the -- what is the  
25 dispersion model with the Commission as protected

1 information, and in that application include the request  
2 for a waiver and explain that, so then the parties as  
3 well as Commission staff can then respond to that  
4 request. I think, procedurally, that would be the  
5 proper way of doing that.

6 I discussed this with Mr. Bender, and I think  
7 I've reiterated that right now to everyone here as to  
8 our -- as to the Commission's position on the letter  
9 that was filed by Mr. Bender.

10 MR. BENDER: Your Honor, if I may respond. I  
11 think the rule is less than clear. And I'm not putting  
12 any fault on the Commission or the Commission staff. I  
13 think this rule has been in place for a long time. But  
14 I don't have any problem with Mr. Pelham's  
15 interpretation of the rule, and we'll pursue the request  
16 under the interpretation that Mr. Pelham just laid out.

17 ALJ HOGAN: All right. Mr. Pelham, any other  
18 matters you want to address?

19 MR. PELHAM: I don't think so. Thank you, Your  
20 Honor.

21 ALJ HOGAN: All right. Mr. Jorde, any --

22 MR. JORDE: I just want to be heard on that  
23 matter because I didn't totally understand that. So  
24 they're going to be -- Summit's proposal is they're  
25 going to submit an unredacted as-is plume model,

1 dispersion model, whatever they call it, and then the  
2 Commission will have a hearing where the parties can  
3 object to their confidentiality designations and then  
4 you'll make a decision? Or what's the process?

5 ALJ HOGAN: It's my understanding Summit filed a  
6 letter asking for a waiver of the requirement to file a  
7 redacted version of the information they want protected.  
8 And my understanding is Mr. Pelham is saying file your  
9 motion for the protection of the information and then  
10 the Commission will consider that along with the waiver  
11 that's already been requested. So then it will be taken  
12 up at that point.

13 MR. JORDE: Okay. I just wanted to make sure  
14 there will be due process where we can be heard and  
15 weigh in.

16 ALJ HOGAN: Correct. Yep.

17 MR. JORDE: Okay. Very good. Thank you.

18 MR. PELHAM: Just to clarify, the Administrative  
19 Code provision is 69-02-09-01. If you take a look at  
20 that, you'll understand.

21 MR. JORDE: Give that to me one more time,  
22 please.

23 MR. PELHAM: It's in the letter, April 5th  
24 letter, but it's 69-02-09-01.

25 MR. JORDE: Okay. Great.

1 ALJ HOGAN: All right. Any other matters to  
2 address, Mr. Jorde, today?

3 MR. JORDE: No. Thank you.

4 ALJ HOGAN: And I'll just ask the Commissioners  
5 if they want to provide any closing comments before we  
6 end.

7 Commissioner Christmann, did you have anything?

8 COMMISSIONER CHRISTMANN: I do not other than  
9 for the crowd that's left, thank you for your time and  
10 for all the information. Very helpful.

11 ALJ HOGAN: Commissioner Haugen-Hoffart.

12 COMMISSIONER HAUGEN-HOFFART: I'm just going to  
13 ditto what Randy said. Thank you, guys, so much for  
14 staying engaged and staying with us throughout the whole  
15 hearing. May your travels be safe.

16 ALJ HOGAN: And Mr. Dawson.

17                   SUBSTITUTE DECISIONMAKER DAWSON: I'm saving all  
18 my comments up. So, with that, thanks for coming today  
19 and I appreciate it.

20 ALJ HOGAN: I'll just note before we conclude,  
21 the next hearing is scheduled for May 9th in Linton.  
22 And we will stand in recess.

23 | -----

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**CERTIFICATE OF TRANSCRIPTIONIST**

STATE OF NORTH DAKOTA       ) ss.

I, Lisa A. Hulm, CET-783, a certified electronic transcriber, do hereby certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter, to the best of my professional skills and abilities. I further state that I was not present during these recorded proceedings, and I am only the transcriber of the recorded proceedings.

I further certify that I am not a relative or employee or attorney or counsel of any of the parties hereto, nor a relative or employee of such attorney or counsel; nor do I have any interest in the outcome or events of the action.

Dated this date of August 4, 2025.

*Lisa A. Hulm*

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LISA A. HULM, CET-783

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