

SCS Carbon Transport LLC, Case No. PU-22-391

June 27, 2023, Formal hearing
ND Public Service Commission

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STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

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

Case No.
PU-22-391

TRANSCRIPT OF FORMAL HEARING

June 27, 2023

Bismarck, North Dakota

APPEARANCES

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

TYLER GLUDT, Fredrikson & Byron, P.A., on behalf
of Applicant SCS Carbon Transport LLC

JAMES CURRY, Babst Calland, on behalf of Applicant
SCS Carbon Transport LLC

RANDALL J. BAKKE, Bakke Grinolds Wiederholt, on
behalf of Intervenor John H. Warford as Trustee of the
John H. Warford, Jr. Revocable Trust and Chad Moldenhauer
and Chad Wachter

STEVE J. LEIBEL, Knoll Leibel LLP, on behalf of
Intervenor/Landowners

ZACHARY PELHAM, Special Assistant Attorney General
Advisory Counsel to the Public Service Commission

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C O N T E N T S

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1 ALJ HOGAN: All right. Good morning. My watch
2 shows it's 8:30 so we are going to get started.
3 My name is Hope Hogan and I have been designated
4 as the administrative law judge at the request of the
5 Public Service Commission for this hearing. Let the
6 record reflect it's June 27th, 2023, at 8:30 a.m. This
7 is the time, date, and place set by the Notice of
8 Hearing issued by the North Dakota Public Service
9 Commission on June 15th, 2023, in Case No. PU-22-391.
10 UNIDENTIFIED SPEAKER: Can't hear back here.
11 ALJ HOGAN: All right. Is this better?
12 UNIDENTIFIED SPEAKER: Yes.
13 ALJ HOGAN: Sorry.
14 This hearing is being held today in the Pioneer
15 Room at the State Capitol in Bismarck, North Dakota. As
16 we begin, I would ask that everybody please check your
17 phones to make sure they're either silenced or turned
18 off.
19 On April 21st, 2023, SCS Carbon Transport LLC
20 filed model outputs and a risk assessment with the
21 Commission. SCS Carbon Transport also filed an
22 application for protection of that information. The
23 request is to protect the information from public
24 disclosure pursuant to North Dakota Century Code Section
25 44-04-24. On May 1st, 2023, Intervenor John H. Warford,

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1 Jr. Revocable Trust filed an objection to the
2 application and request for hearing.
3 Today's hearing was scheduled to hear oral
4 arguments regarding SCS Carbon Transport's application.
5 The issue to be considered is whether the application to
6 protect information should be granted.
7 I'm now going to ask the parties to make their
8 appearance for the record.
9 On behalf of the Applicant we have Mr. Curry and
10 Mr. Gludt. Would you like to please state your
11 appearances for the record?
12 MR. GLUDT: Yes. Thank you, Judge. Tyler
13 Gludt, Fredrikson & Byron, PA, Bismarck, North Dakota,
14 on behalf of the Applicant, SCS Carbon Transport LLC.
15 MR. CURRY: Good morning, Judge. I'm Jim Curry.
16 I'm at the law firm of Babst Calland. My office is
17 located at 505 9th Street Northwest, Suite 602,
18 Washington, DC 20004. I appear today as counsel for SCS
19 Carbon Transport LLC.
20 ALJ HOGAN: And I'll note that a motion for pro
21 hac vice status was filed by -- Mr. Gludt, I believe,
22 filed the motion on behalf of Mr. Curry on Friday.
23 And, Mr. Gludt, can you just confirm that
24 required fees have been paid to the Bar Association?
25 MR. GLUDT: Yes, Judge. I believe Mr. Bender

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<p>1 may have actually signed off on there, but we included</p> <p>2 both myself and Mr. Bender as potential local counsel</p> <p>3 that may appear with him. And we did receive</p> <p>4 acknowledgment from the State Board of Law Examiners of</p> <p>5 receipt of Mr. Curry's fee.</p> <p>6 ALJ HOGAN: All right. I have reviewed the</p> <p>7 motion and it does appear to satisfy all the other</p> <p>8 requirements of the rule. I have not yet issued a</p> <p>9 written order, but I will do that after this hearing,</p> <p>10 but for the record I will grant the motion to appear pro</p> <p>11 hac vice in this matter.</p> <p>12 Mr. Pelham, would you like to state your</p> <p>13 appearance for the record?</p> <p>14 MR. PELHAM: Good morning, Judge. Zachary</p> <p>15 Pelham, special assistant attorney general on behalf of</p> <p>16 the Public Service Commission. To my left is Victor</p> <p>17 Schock, public utilities director. Thank you.</p> <p>18 ALJ HOGAN: And on behalf of the intervenors,</p> <p>19 Mr. Leibel, would you like to state your appearance for</p> <p>20 the record?</p> <p>21 MR. LEIBEL: Sure, Judge. Steve Leibel on</p> <p>22 behalf of landowner intervenors.</p> <p>23 ALJ HOGAN: And, Mr. Bakke, would you like to</p> <p>24 make your appearance for the record?</p> <p>25 MR. BAKKE: Yes, Your Honor. Good morning.</p> <p>PAGE 5</p>	<p>1 protections available for the materials that we've</p> <p>2 submitted, I thought it would be helpful to provide a</p> <p>3 bit of background information in terms of the relevance</p> <p>4 and role of dispersion modeling and things like pipeline</p> <p>5 safety and the federal pipeline safety oversight program</p> <p>6 administered by the -- by the Federal Government through</p> <p>7 the Pipeline and Hazardous Materials Safety</p> <p>8 Administration.</p> <p>9 As a former attorney at PHMSA, I'm familiar with</p> <p>10 all of PHMSA's pipeline safety programs including the</p> <p>11 regulations that apply to CO2 pipelines. And most of my</p> <p>12 practice today relates to PHMSA's programs and how they</p> <p>13 are implemented throughout the country including here in</p> <p>14 North Dakota.</p> <p>15 Summit seeks to construct and operate an</p> <p>16 interstate CO2 pipeline system in several states</p> <p>17 including approximately 320 miles here in North Dakota.</p> <p>18 If constructed, the pipeline will join the existing</p> <p>19 approximately 5,300 miles of liquid pipelines here in</p> <p>20 the state of North Dakota and more than 12,000 miles of</p> <p>21 gas pipelines already in operation here in the state,</p> <p>22 all of which are subject to safety regulations.</p> <p>23 The safety aspects of Summit's proposed pipeline</p> <p>24 are regulated by PHMSA under the Pipeline Safety Act and</p> <p>25 the pipeline safety regulations for hazardous liquid and</p> <p>PAGE 7</p>
<p>1 Randy Bakke on behalf of intervenors John Warford, Chad</p> <p>2 Wachter, and Chad Moldenhauer.</p> <p>3 ALJ HOGAN: And I will note we have one more</p> <p>4 intervenor in this case, LIUNA, and they are -- their</p> <p>5 representative is Mr. Pranis and he is not appearing for</p> <p>6 this hearing. And for my recollection, LIUNA has not</p> <p>7 taken a position on this particular motion.</p> <p>8 As indicated in the notice, the Commission will</p> <p>9 only be receiving oral argument on the motion this</p> <p>10 morning. And as discussed prior to today's hearing,</p> <p>11 each party will be given 20 minutes to present oral</p> <p>12 arguments to the commissioners. The Applicant will go</p> <p>13 first followed by the intervenors.</p> <p>14 So, with that, I will turn to you, Mr. Curry, if</p> <p>15 you want to begin your argument.</p> <p>16 MR. CURRY: Thank you, Judge. Good morning,</p> <p>17 Commissioners. Today I'll argue on behalf of Summit on</p> <p>18 its application to protect certain confidential</p> <p>19 information filed with the North Dakota PUC -- PSC,</p> <p>20 excuse me, related to its application for a siting</p> <p>21 certificate for the proposed Midwest Carbon Express</p> <p>22 pipeline project. I and Summit welcome the opportunity</p> <p>23 to be heard today.</p> <p>24 Before getting into the specifics and the bases</p> <p>25 of the application itself and the information</p> <p>PAGE 6</p>	<p>1 CO2 pipelines at 49 CFR Part 195. PHMSA has exclusive</p> <p>2 jurisdiction to regulate the safety aspects of</p> <p>3 interstate CO2 pipelines and has done so since 1991.</p> <p>4 PHMSA administers an active pipeline inspection and</p> <p>5 enforcement program under which it inspects operators,</p> <p>6 including CO2 operators, frequently, and in those</p> <p>7 inspections PHMSA provides guidance on how operators can</p> <p>8 improve their safety performance.</p> <p>9 As part of this oversight, the agency also</p> <p>10 issues enforcement actions including orders directing</p> <p>11 compliance and civil penalties. The agency safety</p> <p>12 regulations provide detailed safety standards for</p> <p>13 design, construction, really everything from kind of</p> <p>14 cradle to grave, from before you even put a shovel in</p> <p>15 the ground until the abandonment of the facility. So</p> <p>16 things like emergency response, public awareness, a</p> <p>17 program called "integrity management," which ends up</p> <p>18 being pretty relevant to the materials that Summit has</p> <p>19 filed, as well as other aspects of pipeline safety.</p> <p>20 PHMSA's safety standards generally follow a</p> <p>21 risk-based approach. And what does that mean? It means</p> <p>22 that more stringent standards apply to pipelines the</p> <p>23 closer they are to people and sensitive environmental</p> <p>24 locations. Those locations under Part 195 are called</p> <p>25 "high consequence areas." We call them "HCAs."</p> <p>PAGE 8</p>

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<p>1 To determine what parts of a pipeline could 2 affect those sensitive areas, operators conduct detailed 3 analyses of several factors including location, land 4 terrain, topography, the nature and characteristics of 5 the material being transported, various operational 6 parameters, and physical pathways between the pipeline 7 and the HCA or the high consequence area. 8 And this is really kind of where dispersion 9 modeling plays its role, one of the few areas where it 10 plays its role in Part 195. And so these efforts to 11 figure out what happens to material when it gets out of 12 a pipeline are often called "spill modeling" or "release 13 modeling." And they take different forms depending on 14 the commodity. So for an oil pipeline, you'd do an 15 overland transport analysis. You'd look at things like 16 drain tiles in a farm field, dry creek beds to try to 17 figure out, if you did have a release, where would it 18 go. 19 And for CO2 we do slightly different modeling 20 called "dispersion modeling" because CO2 doesn't flow on 21 the ground like an oil does. It creates a vapor cloud. 22 As related to CO2 pipelines, PHMSA has stated in 23 guidance and in precedential enforcement cases its 24 expectations that operators perform vapor dispersion 25 modeling and do certain things and consider certain</p> <p>PAGE 9</p>	<p>1 dispersion modeling issues, including here in North 2 Dakota, and that it will step in and issue enforcement 3 actions, take other measures when it believes dispersion 4 modeling is inadequate. 5 And where CO2 -- let's talk more about the role 6 of dispersion modeling. Where a CO2 operator determines 7 through that model that a failure of a segment could 8 affect a high consequence area, it's required to 9 develop, among other things, an integrity management 10 plan for those parts of the pipeline. 11 Now, the integrity management plan is sort of an 12 overlay. You have the basic Part 195 regulations; you 13 know, design, construction, operation, maintenance, 14 corrosion control. And then over atop that you have the 15 integrity management requirements which are a set of 16 heightened, much more stringent requirements for 17 pipeline safety that apply specifically in areas where 18 people or sensitive environmental locations are located. 19 The heart of any integrity management plan is a 20 risk analysis. Sometimes it's also called a "risk 21 assessment," which is required under the integrity 22 management regulations. CO2 pipeline operators must use 23 the risk analysis to identify what are called 24 "preventive and mitigative measures" to further public 25 safety and environmental protection.</p> <p>PAGE 11</p>
<p>1 factors when they do that modeling to figure out and 2 determine physical pathways for transporting of vapor, 3 CO2 vapor. 4 So we have some integrity management FAQs that 5 the agency has issued. They've been out for many years. 6 FAQ 3.4 gets into dispersion modeling. 7 And then we have a series of cases in which 8 PHMSA has specifically opined on the quality of 9 operators' dispersion modelings. There's actually a 10 case here in North Dakota, the west -- or excuse me, the 11 Dakota Gasification case from 2018 where PHMSA came in, 12 did a routine inspection here in North Dakota and cited 13 the operator of that CO2 pipeline for not evaluating 14 terrain effects when looking at its dispersion modeling. 15 So when you model a CO2 release, you can't just 16 assume the ground is flat, right? You have to look for 17 low spots where the CO2 might go. You have to look for 18 valleys, changes in elevation that can serve essentially 19 as a conduit for CO2. 20 There's also a series of Denbury cases that were 21 issued in response to an accident that Denbury had in 22 Mississippi a few years ago where the agencies also 23 cited Denbury for not doing adequate air dispersion or 24 vapor dispersion modeling. 25 These cases demonstrate that PHMSA is active on</p> <p>PAGE 10</p>	<p>1 So what's preventative and what's mitigative? 2 Preventative is just like it sounds. You put additional 3 measures in to prevent an accident from ever occurring. 4 Mitigative is on the other side. If an accident 5 occurs, you put measures in place to reduce the 6 consequences of such an accident. Those actions might 7 include more frequent inspections of the pipeline, 8 enhanced training of pipeline personnel, additional 9 public outreach and education, additional installation 10 of valves, and a host of other measures. It's sort of a 11 performance-based part of the regulations and operators 12 have sort of -- are only limited by their own creativity 13 in terms of additional measures that they can apply, but 14 they have to be reasonable. 15 So to properly develop a risk analysis and 16 identify these measures, Summit must consider and apply 17 the information obtained from its dispersion modeling. 18 It's important to note that while Summit is only 19 required to apply this integrity management program to 20 the really quite limited areas along the pipeline that 21 could affect high consequence areas, it has, 22 nonetheless, decided to apply its integrity management 23 plan to the entire pipeline system, including the 24 entirety of the mileage in North Dakota. 25 In addition, Summit has met with PHMSA twice to</p> <p>PAGE 12</p>

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<p>1 discuss its approach to pipeline safety. In those 2 meetings, Summit specifically sought and received 3 PHMSA's feedback on dispersion modeling. You know, we 4 went in and asked PHMSA, "What have you learned from 5 recent events? What have you learned over time? What 6 can you tell us here at Summit about how to do the best 7 dispersion model we can?" And the agency did provide 8 feedback on that.</p> <p>9 Summit has also studied the available 10 information on past failures and PHMSA enforcement of 11 those cases that I mentioned earlier as well as others 12 related to dispersion model in an effort to incorporate 13 all the learnings it can, it could, into its current 14 model.</p> <p>15 As noted in Summit's application to protect, the 16 dispersion modeling information is used for other 17 purposes as well, including development of our emergency 18 response plans, public awareness plans. And 19 specifically by understanding where CO2 may go in the 20 unlikely event of an incident, Summit can allocate 21 prevention and mitigation resources to areas that are 22 more sensitive.</p> <p>23 I hope you found that background helpful. Now 24 I'll turn to a discussion of the application to protect 25 itself and the various bases for protection of the model</p> <p>PAGE 13</p>	<p>1 -- in this case the Commission -- and records regarding 2 disaster mitigation, preparation, response, 3 vulnerability, or recovery are exempt from disclosure.</p> <p>4 A security system plan is broadly defined to include, 5 among other things, threat assessments, vulnerability 6 and capability assessments, threat response plans, and 7 emergency evacuation plans.</p> <p>8 The information in the documents provided to the 9 Commission constitute a security system plan. The 10 dispersion modeling and risk assessment information 11 assesses threats to the pipeline, identifies sensitive 12 locations along the pipeline, the potential for failure, 13 preventative and mitigative measures, and consequence 14 modeling to inform emergency response activities, all 15 information that is squarely within the definition of 16 security system plan. This information relates directly 17 to the physical security of the pipeline as it could be 18 used to selectively target sensitive areas of the line.</p> <p>19 Next we'll go through some of the federal 20 protections that could be applied. While both North 21 Dakota and the federal law, which is the Freedom of 22 Information Act, or we'll call it "FOIA" today, lean 23 towards providing government records, that's certainly 24 clear, you know, there's a tendency towards 25 transparency, however, there are important and</p> <p>PAGE 15</p>
<p>1 and risk assessment-related materials.</p> <p>2 Summit's application to protect is based on the 3 sensitive nature of information contained in these 4 documents. Specifically, they contain confidential 5 business information that, if released, would pose 6 security risks. And these are not hypothetical risks. 7 I'll get to that later. As a result, these materials 8 would be protected from disclosure under both state and 9 federal law. Accordingly, Summit respectfully requests 10 that the Commission grant its April 21st, 2023, 11 application to protect these materials.</p> <p>12 I thought it would be appropriate to start with 13 the state law protections available for these materials 14 and then talk a little bit about the federal protections 15 that may also be available.</p> <p>16 The dispersion model and risk assessment 17 information is protected under the North Dakota open 18 records law. Much like PHMSA and other federal 19 agencies, North Dakota has recognized the need to keep 20 sensitive -- certain sensitive information relating to 21 pipelines confidential.</p> <p>22 The modeling and risk assessment documentation 23 should be protected from disclosure under North Dakota 24 Century Code Section 44-4-24. Under that section, 25 so-called security system plans kept by a public entity</p> <p>PAGE 14</p>	<p>1 well-founded public policy limits on this tendency to 2 release. We face these limits here today, or 3 security-related limits.</p> <p>4 The federal protections under the FOIA are 5 motivated by some of the same policy concerns as those 6 underpinning the North Dakota law. As such, it's 7 instructive to consider them in conjunction with any 8 evaluation of state law information protections.</p> <p>9 Indeed, in a 1998 North Dakota Attorney General's 10 guidance document, the AG noted that North Dakota should 11 consider federal FOIA law and cases when evaluating 12 state-level exemptions to disclosure.</p> <p>13 Although the FOIA generally allows for 14 disclosure of records kept by a federal agency, a range 15 of materials are exempt from those disclosure 16 requirements. Summit respectfully contends that the 17 dispersion modeling and risk analysis-related documents 18 it provided to the PSC would qualify for protection from 19 disclosure by PHMSA under FOIA pursuant to at least two 20 exemptions: FOIA Exemption 7(F) and Exemption 4.</p> <p>21 7(F) is the more relevant exemption. It has to 22 deal with security-related information so we'll start 23 there. Under Exemption 7(F), information compiled for 24 law enforcement purposes that could reasonably be 25 expected to endanger the life or physical safety of any</p> <p>PAGE 16</p>

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<p>1 individual is exempt from disclosure. Now, when we say</p> <p>2 compiled for law enforcement purposes, that's basically</p> <p>3 anything in PHMSA's possession that relates to</p> <p>4 compliance and its oversight programs. So it's a pretty</p> <p>5 broad construction of what that is.</p> <p>6 And PHMSA has determined that documents</p> <p>7 containing certain kinds of pipeline information, not</p> <p>8 all but certain limited information that would allow</p> <p>9 others to target and damage or destroy infrastructure,</p> <p>10 would be protected from disclosure. PHMSA has</p> <p>11 specifically noted that spill modeling data in the</p> <p>12 context of oil pipelines, for example, that could be</p> <p>13 used to rank desirable targets would be protected from</p> <p>14 disclosure under Exemption 7(F).</p> <p>15 Courts have actually weighed in on PHMSA's</p> <p>16 determinations under 7(F) including in the context of</p> <p>17 the Dakota Access Pipeline. There's a Federal District</p> <p>18 Court case from 2017 that specifically looked at this</p> <p>19 issue. There was a challenge to a federal records</p> <p>20 protection claim by PHMSA over spill modeling</p> <p>21 information related to the DAPL. And in that context,</p> <p>22 the D.C. Federal District Court made a finding that</p> <p>23 certain oil spill-related information including things</p> <p>24 like maps of pipeline at certain crossings, the names of</p> <p>25 segments, when you paired that with other information,</p> <p>PAGE 17</p>	<p>1 targeting and shooting at a diesel pipeline resulting in</p> <p>2 a spill into a waterway and a felony Clean Water Act</p> <p>3 series of violations; in Ohio, in 2019, two individuals</p> <p>4 pled guilty for plotting a terrorist attack against an</p> <p>5 interstate pipeline; closer to home here, there were</p> <p>6 obviously a number of attacks against DAPL in terms of</p> <p>7 cutting holes in the pipeline and arson attacks of</p> <p>8 construction equipment that caused millions of dollars</p> <p>9 in damage. So targeting pipelines has happened,</p> <p>10 unfortunately.</p> <p>11 Obviously, there's been some recent media</p> <p>12 coverage of this as well. A movie, "How to Blow Up a</p> <p>13 Pipeline," recently -- recently was issued just in the</p> <p>14 last few months and caused quite consternation at the</p> <p>15 FBI, the Royal Canadian Mounted Police, and multiple</p> <p>16 state agencies were concerned that that movie could</p> <p>17 serve as inspiration for an attack on infrastructure.</p> <p>18 So these risks are not hypothetical.</p> <p>19 That's Exemption 7(F).</p> <p>20 Next I'll briefly touch on Exemption 4.</p> <p>21 Exemption 4 is a lot broader. It covers confidential</p> <p>22 commercial information that's also exempt from</p> <p>23 disclosure. And basically, in this instance, we would</p> <p>24 ask for protection from PHMSA for the dispersion model</p> <p>25 and risk analysis materials because they're</p> <p>PAGE 19</p>
<p>1 timelines for detecting and shutting down spills, for</p> <p>2 example, risk scoring information, maps of spill</p> <p>3 scenarios, predictions of volumes, all that would be</p> <p>4 protected. Now, there's a whole lot of other</p> <p>5 information that can sometimes be related to those</p> <p>6 issues that isn't protected, but these really sensitive</p> <p>7 pieces of information must be protected.</p> <p>8 And this is the same kind of information that</p> <p>9 Summit has sought to protect here. The dispersion</p> <p>10 modeling documentation explains how the modeling was</p> <p>11 performed. It explains release scenarios and types of</p> <p>12 releases that could occur, locations where impacts could</p> <p>13 result including high consequence areas, and other</p> <p>14 sensitive information. If released to the public,</p> <p>15 someone with nefarious purposes could identify which</p> <p>16 specific pipeline segments to target. This information</p> <p>17 is squarely prevented from disclosure under Exemption</p> <p>18 7(F).</p> <p>19 And this isn't a hypothetical risk. I mean,</p> <p>20 there has been a number of attacks on pipeline</p> <p>21 infrastructure over the years. I went through some</p> <p>22 report outs by the FBI and other intelligence agencies</p> <p>23 that are publicly available.</p> <p>24 Just to provide a few examples: in Montana,</p> <p>25 2021, two individuals were convicted of intentionally</p> <p>PAGE 18</p>	<p>1 confidential, which under Exemption 4 means they're the</p> <p>2 kinds of materials that are customarily treated as</p> <p>3 private and not released to the public and because</p> <p>4 they're commercial materials relating to technical</p> <p>5 design and modeling information. That's just briefly on</p> <p>6 Exemption 4.</p> <p>7 I'll wrap up here with a third and final</p> <p>8 potential sort of source of federal information</p> <p>9 protection, and that's a program administered by the</p> <p>10 Department of Homeland Security called the Security</p> <p>11 Sensitive Information Program. That's under 49 CFR Part</p> <p>12 1520. And that protects certain information that would</p> <p>13 reveal confidential information or be detrimental to the</p> <p>14 security of transportation. Specifically in this case,</p> <p>15 the dispersion modeling and risk analysis, we believe,</p> <p>16 would constitute a vulnerability assessment subject to</p> <p>17 protection if submitted to the TSA, which is a subagency</p> <p>18 of the Department of Homeland Security.</p> <p>19 So that covers it. I see I have about two</p> <p>20 minutes left. Judge, may I reserve my final two minutes</p> <p>21 for rebuttal?</p> <p>22 ALJ HOGAN: Yes.</p> <p>23 MR. CURRY: Thank you.</p> <p>24 ALJ HOGAN: I'll just ask before we move to the</p> <p>25 intervenors, are there any questions from the</p> <p>PAGE 20</p>

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1 commissioners for Mr. Curry?
2 COMMISSIONER CHRISTMANN: I do not, Your Honor.
3 COMMISSIONER HAUGEN-HOFFART: I have no
4 questions.
5 SUBSTITUTE DECISIONMAKER DAWSON: No questions,
6 Your Honor.
7 ALJ HOGAN: All right. Thank you.
8 And now I will turn to intervenors, and it's my
9 understanding that, Mr. Leibel, you're going to go
10 first. All right. Go ahead.
11 MR. LEIBEL: Good morning, Commissioners. As
12 you know, my name is Steve Leibel. I represent the
13 landowner intervenors.
14 I wanted to begin first by discussing what we're
15 here about and kind of how this came about. As you
16 know, there was a lot of discussion during the hearings
17 about the dispersion modeling or the plume modeling. I
18 understand that their submission includes a number of
19 other documents, some specific safety response plans, an
20 integrity management plan. And as I'm going to discuss
21 a little bit later, I certainly would agree with some of
22 what Mr. Curry had said, that there is a legitimate
23 interest in keeping some of that confidential.
24 But I'm going to focus for the purpose of this
25 on the dispersion analysis which is important for three

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1 reasons.
2 The first reason, of course, is risk avoidance.
3 One of the issues that have been discussed during these
4 hearings is the 500-foot setback. Is that reasonable?
5 Is it proper in the context of a CO2 pipeline? One of
6 the reasons for risk avoidance is we want to avoid
7 impact on existing structures, existing schools, but
8 also to allow people to make their own decisions.
9 We've heard a lot of testimony from some of the
10 Bismarck developers represented by Mr. Bakke that people
11 are going to -- and people are making decisions that
12 they don't want to be located next to this pipeline.
13 This information, especially the plume modeling, would
14 be helpful to that.
15 The second, of course, is risk management. For
16 those places within the danger zone, the idea of
17 figuring out what should be done, one of the discussions
18 with -- during one of the hearings was the safety
19 valves, the shut-off valves, whether they're properly
20 spaced at 20 miles or whether they should be spaced
21 closer. And one of the things I think is important is
22 for people to make their own understanding and their own
23 analysis based on what a cataclysmic failure looks like.
24 Finally, of course, is the issue of emergency
25 response. We've heard from both Emmons County and

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1 Burleigh County talk about, you know, "We need this
2 information because we want to know what our first
3 responders need to be trained at."
4 And while I understand there are some
5 confidentiality, I have trouble believing that this
6 entire model is -- all the information including the
7 plume study should be kept confidential, especially when
8 we have -- you know, PHMSA obviously didn't believe that
9 it was necessary to keep the Sartaria dispersion
10 modeling confidential.
11 The reason that's important is because, in order
12 to determine risk, you have to know the probability of
13 the event versus the consequence to the public. And at
14 this point, as members of the landowner intervenors, we
15 don't really know either of these variables except very
16 generally.
17 The other thing that we need to know is,
18 assuming the dispersion analysis would become public, is
19 we would need some information so we could investigate
20 it. You know, what is the weight? How much credibility
21 does this person have? What methodology did they
22 follow? Basically, the ordinary things that in any
23 courtroom would be relevant to any factfinder. And like
24 I said earlier, everyone understands generally that some
25 of this information absolutely should remain private for

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1 some of the reasons that Mr. Curry discussed, but the
2 idea that all of it should can't be right.
3 One of the things I did in preparing for this,
4 my original discussion was I probably don't need to say
5 very much because I know Mr. Bakke will cover just about
6 everything. And as I was going through this, I just
7 wanted to look through the statutes enough so I
8 understood where the real conflict point is. Where is
9 the issue that the Commission is going to need to weigh
10 in on so I could add my comments and restrict just to
11 that issue? And so I started with --
12 Judge Hogan, if I could approach the Commission?
13 I've just printed out the statute so I can kind of walk
14 through the issues.
15 ALJ HOGAN: Sure. Yes.
16 MR. LEIBEL: And so what I've provided the
17 Commission is a printout of Chapter 44-04, and this, of
18 course, is our public records statute in North Dakota.
19 And I wanted to begin by first making clear that
20 our default in North Dakota is that information is
21 public and especially information that's determined by
22 any records of a public entity. And certainly we
23 believe that this default rule would apply to this
24 information that was provided to the PSC.
25 Now, the section, the exemption that was

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<p>1 discussed by Mr. Curry can be found on page 23. So it's</p> <p>2 in the bottom -- you'll see the page numbers from this</p> <p>3 printout. Page 23 is where 44-04-24, the security</p> <p>4 system plan language, can be found.</p> <p>5 And so I started by going through this because</p> <p>6 this is our North Dakota statute, our North Dakota</p> <p>7 exemption to whether or not this information is public.</p> <p>8 And as I was going through this, the first thing is,</p> <p>9 under Subsection 1, a security system plan kept by a</p> <p>10 public entity, and records regarding disaster</p> <p>11 mitigation, preparation, response, vulnerability, or</p> <p>12 recovery, or for cybersecurity planning is exempt from</p> <p>13 Section 18. So that's the general public records</p> <p>14 production.</p> <p>15 And as I read that, I mean it really comes down</p> <p>16 to the issue of how broadly is it fair, in the context</p> <p>17 of this statute generally, to read it broadly enough</p> <p>18 that anything as part of a mitigation plan is absolutely</p> <p>19 confidential. You know, especially because that really</p> <p>20 for, I would say, the majority of the testimony that the</p> <p>21 Commission heard, the response of the public was</p> <p>22 concerns about safety. And where a -- you know, the</p> <p>23 same information can be gathered from -- generally from</p> <p>24 the Sartaria, Mississippi, report that's already</p> <p>25 admitted, so where is the security system plan? And I</p> <p>PAGE 25</p>	<p>1 pretty good summary, but the issue as I read that, it</p> <p>2 talks about documents that a law enforcement agency.</p> <p>3 Now, I understand their argument is that while PHMSA is</p> <p>4 a law enforcement agency, PHMSA has made these, you</p> <p>5 know, determinations and, in fact, a district court --</p> <p>6 you know, they listed a 2017 district court case, some</p> <p>7 examples in Montana in 2022, a 2019 violation in Ohio.</p> <p>8 None of this stuff was in their brief. I don't know if</p> <p>9 that's because the Washington DC guy knows stuff that</p> <p>10 the rest of us don't. I mean, that's certainly</p> <p>11 possible. But ordinarily that's not right to come and</p> <p>12 for the first time at a hearing throw a bunch of</p> <p>13 information out that we haven't had a chance to look at</p> <p>14 or vet.</p> <p>15 The next issue, of course, is -- so I next turn</p> <p>16 to the information they cite in their brief about this</p> <p>17 sensitive security information. And I assume that if</p> <p>18 this is such a big deal, that PHMSA itself would have a</p> <p>19 regulation that, hey, when you submit dispersion</p> <p>20 modeling, it's confidential. It doesn't go to the</p> <p>21 public. Again, when you look at 49 CFR 1520, and I</p> <p>22 would be happy to give --</p> <p>23 I brought copies for the Commission, if I may</p> <p>24 approach?</p> <p>25 ALJ HOGAN: Sure.</p> <p>PAGE 27</p>
<p>1 would submit that there's a difference between a plan</p> <p>2 and an event.</p> <p>3 You know, Mr. Curry talked a great deal about</p> <p>4 this is -- you know, "The importance of our plan. We</p> <p>5 have to be able to not give a roadmap to someone that</p> <p>6 intends to do a bad thing."</p> <p>7 Well, that's very different than what the</p> <p>8 consequence of the bad thing. Again, the public has no</p> <p>9 way to weigh Summit's submission or even the decision</p> <p>10 from the Commission without knowing what is the</p> <p>11 consequence. What are you all weighing in deciding on</p> <p>12 this application? What is the ultimate threat to the</p> <p>13 public? And that information can only be found in that</p> <p>14 dispersion analysis. And under the definition of a</p> <p>15 security system plan, as I read this, it is much more</p> <p>16 focused on the plan, the response.</p> <p>17 Certainly I can see where there could be</p> <p>18 specific pieces of information within a packet, within a</p> <p>19 submission, like I'm assuming the PSC has received, but</p> <p>20 the idea that it all, especially this issue of the</p> <p>21 consequence, should remain confidential, to me, isn't</p> <p>22 consistent with this reading of the statute.</p> <p>23 So I next went to what I assumed would be the</p> <p>24 federal FOIA, and I brought it with. I'm going to not</p> <p>25 provide that copy because I felt like Mr. Curry gave a</p> <p>PAGE 26</p>	<p>1 MR. LEIBEL: So this is the section of the</p> <p>2 Statute 1520 that actually contains the sensitive</p> <p>3 security information that Mr. Curry referenced. This is</p> <p>4 the actual statute, or I guess it would be the</p> <p>5 regulation.</p> <p>6 And if you look to the second page, the second</p> <p>7 page, that 1520.5, that's the sensitive security</p> <p>8 information citation that they use in their brief.</p> <p>9 And, first of all, I wanted to point out that</p> <p>10 there is no -- apparently no regulation, no code</p> <p>11 provision, nothing that says PHMSA requires a dispersion</p> <p>12 plume model, it's confidential. Everything requires a</p> <p>13 little bit of -- you know, some generous interpretation</p> <p>14 from our perspective to encompass this document or at</p> <p>15 least all of this document.</p> <p>16 And, again, this sensitive security information</p> <p>17 talks about "information obtained or developed in the</p> <p>18 conduct of security activities, including research and</p> <p>19 development, the disclosure of which the TSA has</p> <p>20 determined would," and then they list three things that</p> <p>21 are possible.</p> <p>22 Well, first of all, we don't have a</p> <p>23 determination from the TSA. At least that I'm aware of,</p> <p>24 they haven't provided one to that.</p> <p>25 If you look at the second one, part (b), it says</p> <p>PAGE 28</p>

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<p>1 "Except as otherwise provided in writing by the TSA in 2 the interest of public safety or in furtherance of 3 transportation security, the following information 4 constitute SSI," and then they list a number of them. 5 Summit is taking the position, if you look on -- 6 this would be page 3 of 10, Subsection 5, there's a 7 vulnerability assessment, and it says "Any vulnerability 8 assessment directed, created, held, funded, or approved 9 by the DOT, DHS, or that will be provided to DOT or DHS 10 in support of a Federal security program." 11 And so, again, I read this and, to me, this is 12 the legal equivalent of a round peg in a square hole. I 13 mean, I can see there's a possibility that a federal 14 judge somewhere could look at this and pull the 15 regulatory history, pull the information from these 16 appropriate agencies, and determine that, okay, that's 17 close enough, but it certainly is not conclusive. 18 And that's one of the things as I was going 19 through this document, this idea that something that's 20 so important, that really is the very heart of what the 21 public is wanting to know and wanting to understand, 22 that we're going to withhold that information based upon 23 kind of a flimflam of not -- nothing that's very clear 24 that would ever address all of this information when the 25 agency certainly -- or the Congress certainly could have</p> <p>PAGE 29</p>	<p>1 has the City of Bismarck, Burleigh County, the 2 intervenors had to scrutinize this information? 3 Because Summit has consistently, throughout this 4 proceeding, taken the position that this pipeline is, in 5 their words, entirely safe, but yet they want to, in 6 secret, provide this information to the PSC, not share 7 it with the public, not share it with the City and say, 8 "Just trust us, be willing to take that risk, citizens 9 of Burleigh County and Bismarck," with no opportunity to 10 question, no opportunity to scrutinize the information 11 they provided to the PSC only. 12 And, importantly, the PSC has not had an 13 opportunity to scrutinize this information. Have they 14 presented one witness to the PSC that the PSC could 15 question about this dispersion modeling to find out 16 important information such as who prepared it? What was 17 the level of experience of that individual or the 18 individuals involved in doing dispersion modeling? How 19 many pipelines have they built before that contain CO2? 20 What assumptions have they made? What was the pressure? 21 Where was the leak? You don't have any of that 22 information. All you have is an unchallenged report. 23 And one of the functions of the PSC is to 24 scrutinize all the information that's provided to you 25 and determine is it reliable. You had no opportunity to</p> <p>PAGE 31</p>
<p>1 kept this confidential. 2 That's all I have. 3 ALJ HOGAN: All right. Mr. Leibel, I have you 4 at 14 and a half minutes. It's my understanding you 5 wanted to cede the rest of your time to Mr. Bakke? 6 MR. LEIBEL: Yes, that's correct. 7 ALJ HOGAN: So, Mr. Bakke, you would then have 8 24 and a half minutes. You may begin. 9 MR. BAKKE: Okay. Thank you, Your Honor. 10 Members of the Commission, I want to focus on 11 some things that haven't been covered by Mr. Leibel and 12 then also respond to some of the arguments by Mr. Curry. 13 And the first thing I want to point out, it is Summit's 14 burden here to show to the Commission that this 15 information does present a security concern or is 16 confidential as they assert so that the public and the 17 intervenors and the city and the county and the 18 emergency responders cannot see this information. And 19 they clearly have not met that burden under either state 20 law or federal law. 21 But one of the issues that has to be considered 22 here is any information that Summit provides needs to be 23 scrutinized. So the Commission needs to ask itself: 24 what opportunity has the Commission had? What 25 opportunity have the intervenors had? What opportunity</p> <p>PAGE 30</p>	<p>1 do that nor have the intervenors had any opportunity to 2 question a witness or the author, the unknown author, of 3 this dispersion modeling. No opportunity at all. And 4 we've requested that opportunity at multiple hearings 5 and never has Summit presented a witness in that regard. 6 That's completely unlike other situations before 7 including Satartia, Mississippi. 8 And I'm glad Mr. Curry mentioned DGC. Because I 9 went back and I looked at what did the PSC receive from 10 DGC back with its application on May 11, 2007. And 11 that's still publicly available information on the PSC 12 document for that proceeding. Well, with the 13 application to the PSC, what did DGC provide to the PSC 14 in order to allow the PSC to assess that application and 15 what information did they provide publicly? 16 Because the reality is Summit is asking to be 17 held to a different standard than the PSC has required 18 before and a different and lower standard than DGC 19 complied with, a North Dakota company. They're asking 20 for an exemption. They're saying, "We shouldn't have to 21 do what others have had to do before us." 22 So what did DGC provide way back in 2007? 23 Because they keep holding out DGC as an example of a 24 safe pipeline for CO2 that's been in existence for many 25 years in North Dakota. Well, in their -- in the</p> <p>PAGE 32</p>

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1 application itself, in other words, it wasn't later in
2 the PSC hearing, in the application itself they provided
3 information on the dispersion modeling they had already
4 done, and it showed the extent to the area that would be
5 affected by a rupture or leak. They modeled a
6 catastrophic failure, a worst-case scenario. They did a
7 worst-case scenario of the highest concentration of CO2
8 at the greatest distances. It was a smaller pipeline,
9 12 inches, and they determined how far away that
10 concentration of CO2 would travel. They modeled at
11 multiple locations along the 167-mile pipeline in North
12 Dakota of that CO2 pipeline, much shorter. And they
13 considered weather conditions. Provided all of that on
14 the front end.
15 Well, what else did they do? In its
16 application, DGC had already developed an emergency
17 response plan. They had engaged in pre-emergency
18 planning and education. They had operational safety
19 precautions set up for the pipeline. They had emergency
20 response procedures in place. They had associated
21 agency coordination. They had addressed animal health
22 and safety and plant life effects. And they had --
23 importantly, they had already distributed emergency
24 preparedness information to local emergency responders
25 and law enforcement.

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1 So they had already distributed all of that
2 information, engaged in all those efforts at the time
3 they submitted their application. I would suggest to
4 you DGC did what a responsible company building a CO2
5 pipeline would do. It was fully transparent with the
6 Commission, with the public, with emergency responders,
7 with law enforcement, and it was proactive in doing all
8 these things before it even submitted an application.
9 And I think the question the PSC has to ask
10 itself is: are we going to allow Summit to be held to a
11 lower standard, a different standard, than other CO2
12 pipelines in North Dakota have complied with previously?
13 And then in relation to the statutes, and I'm
14 not going to go over what Mr. Leibel already covered,
15 but they rely on the security system plan exemption
16 under NDCC 44-04-24, which Mr. Leibel provided a copy to
17 you. And subpart 2(a) defines critical infrastructure.
18 And they haven't explained how this Summit pipeline,
19 this CO2 pipeline, complies with the definition under
20 the statute of critical infrastructure. Because they
21 have to show "critical infrastructure" is defined as
22 something "so vital to the state that the incapacity or
23 destruction of these systems would have a debilitating
24 effect on security, state economic security, state
25 public health or safety, or any combination of those

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1 matters."
2 Well, this is not vital to the state at all.
3 This is a private company bringing in waste, pollution,
4 from other states and asking to dump it in North Dakota.
5 It's their responsibility to show it's so vital to the
6 state and that it would affect the state economic
7 security and the other things that I mentioned. They
8 haven't done that. And so that's a required element
9 under that statute that they cannot meet.
10 It's also not a security system plan because it
11 doesn't relate directly to the physical or electronic
12 security of the system involved.
13 And bear in mind here that -- and, of course, we
14 haven't seen what they filed with the PSC, but what
15 their submission suggests is that they have filed only
16 the model outputs of the plume study with the PSC.
17 That's what they've represented in their filing, not the
18 entire plume study.
19 And they talk about DAPL and they request in
20 their brief that the PSC rely on some Associated Press
21 news articles. I can tell you that Mr. Curry is
22 incorrect in terms of what happened in DAPL. Our firm
23 has been involved since the summer of 2016 in
24 representing law enforcement on numerous legal matters
25 including all the lawsuits, the seven lawsuits,

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1 currently on file in Federal Court in North Dakota
2 against law enforcement. So we have intimate knowledge
3 on that. And any damage on the DAPL pipeline occurred
4 before there was any product in that pipeline. And it
5 was not holes, as Mr. Curry suggested. And then he
6 points to a situation where someone shot a pipeline.
7 You don't need the security information to go out and
8 shoot at a pipeline or to figure out what the potential
9 damage could be. So the examples they're raising simply
10 aren't on point and aren't a basis to keep their
11 information confidential.
12 And all the arguments that they make about
13 Section 7(F) and Exemption 4, those all get the cart
14 before the horse because those are requirements once you
15 have obtained PHMSA approval. They concede they have
16 not obtained PHMSA approval for this pipeline.
17 And Mr. Curry talked about that there's been two
18 meetings by Summit with PHMSA and PHMSA is providing
19 some input. That's, once again, to my knowledge, not
20 evidence before the PSC. The only one who has said that
21 is Mr. Curry. There's been no witness who has come in
22 and testified at any hearing I was at where they said,
23 "Yes, we've gone to PHMSA, we've had two meetings, this
24 is the feedback they gave us." None of that is part of
25 the record in the case. So whether it's accurate or

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<p>1 not, but it's certainly not before the PSC. But they</p> <p>2 concede they haven't provided their plume study to</p> <p>3 PHMSA.</p> <p>4 And in relation to the federal statutes, if you</p> <p>5 look at 49 CFR 195.402(e) and 195.408 that they rely on</p> <p>6 in their briefing in this case, those statutes have</p> <p>7 nothing to do with dispersion modeling. They deal with</p> <p>8 the procedures after the pipeline is built, after the</p> <p>9 pipeline is approved by PHMSA, as to what local law</p> <p>10 enforcement information is provided.</p> <p>11 And we've conceded in our brief and we agree</p> <p>12 with Mr. Leibel there are certain things that could be</p> <p>13 confidential, that could be protected, that the public</p> <p>14 doesn't need to know, such as, after the pipeline is</p> <p>15 built, what a local law enforcement's plan might be</p> <p>16 responding to emergencies. But what they're asking for</p> <p>17 is not covered by these federal statutes and not</p> <p>18 supported in any way their arguments.</p> <p>19 And I thought it was interesting that Mr. Curry</p> <p>20 indicated PHMSA has exclusive jurisdiction. So if PHMSA</p> <p>21 has exclusive jurisdiction, shouldn't this Commission</p> <p>22 wait until PHMSA weighs in on the new regulations that</p> <p>23 are planned and in the works for 2024 before it</p> <p>24 addresses their application overall? I mean, they're</p> <p>25 essentially admitting today that their application is</p> <p>PAGE 37</p>	<p>1 independent experts the questions can be asked so that</p> <p>2 they can have an accurate dispersion modeling to present</p> <p>3 to the PSC that may require some alterations or safety</p> <p>4 changes?</p> <p>5 Bear in mind here that we're talking about what</p> <p>6 Mr. Curry defined as a high consequence area. That's</p> <p>7 why my clients are involved in this matter, is because</p> <p>8 the area where this pipeline is going through Burleigh</p> <p>9 County, particularly in north and east Bismarck, is a</p> <p>10 high consequence area as defined under the statutes and</p> <p>11 under PHMSA. Under those circumstances, it's</p> <p>12 particularly important to be allowed to vet this</p> <p>13 information, to ask questions, to scrutinize that</p> <p>14 information, to test it, to make sure it doesn't pose</p> <p>15 any public safety risk.</p> <p>16 And I'll simply close by saying I'm not as smart</p> <p>17 as a Washington DC attorney and probably not near as</p> <p>18 expensive, but my question is: what is Summit trying to</p> <p>19 hide?</p> <p>20 ALJ HOGAN: All right. Thank you.</p> <p>21 Are there any Commission questions for either of</p> <p>22 the intervenor attorneys?</p> <p>23 COMMISSIONER CHRISTMANN: Not for me.</p> <p>24 COMMISSIONER HAUGEN-HOFFART: I have no</p> <p>25 questions.</p> <p>PAGE 39</p>
<p>1 premature if PHMSA has exclusive jurisdiction. But they</p> <p>2 want to have it both ways. They want to say Burleigh</p> <p>3 County with their ordinances, Emmons County with their</p> <p>4 ordinance doesn't have jurisdiction because PHMSA does.</p> <p>5 But they're saying PHMSA has exclusive jurisdiction so</p> <p>6 the PSC should wait until PHMSA has weighed in.</p> <p>7 And in relation to the federal statutes, when</p> <p>8 you look at those, it also deals with a procedural</p> <p>9 manual to be onsite and available in the event of a</p> <p>10 leak. So all the statutes that they're relying on, the</p> <p>11 federal statutes, are based upon what happens after the</p> <p>12 pipeline is built and what information might be</p> <p>13 confidential or a security concern. That's not what</p> <p>14 we're dealing with here.</p> <p>15 And they don't address the public health and</p> <p>16 safety matters related to this. They don't talk about</p> <p>17 allowing independent experts to review their plume</p> <p>18 study. And they say, well, PHMSA has suggested to</p> <p>19 Denbury -- Denbury and DGC that you have to do certain</p> <p>20 things to improve your safety plan in the event of a</p> <p>21 leak.</p> <p>22 Isn't that the whole purpose of the PSC</p> <p>23 scrutinizing and allowing the intervenors and the city</p> <p>24 and the county and the citizens, is to scrutinize that</p> <p>25 so that if there is some flaw, so that through</p> <p>PAGE 38</p>	<p>1 SUBSTITUTE DECISIONMAKER DAWSON: No questions.</p> <p>2 ALJ HOGAN: All right. Mr. Curry, you still</p> <p>3 have two minutes so go ahead.</p> <p>4 MR. CURRY: Okay. Thanks very much. A lot to</p> <p>5 say in two minutes.</p> <p>6 Summit's not trying to hide anything. Summit</p> <p>7 has submitted a variety of sensitive security</p> <p>8 information to the PSC for their review and we're happy</p> <p>9 to continue conversations with the Commission on that</p> <p>10 front. And if there is additional information, pieces</p> <p>11 of information the Commission requires, we're happy to</p> <p>12 have those conversations. So we're not trying to hide</p> <p>13 anything.</p> <p>14 A couple of other points I'll make. In terms of</p> <p>15 Mr. Bakke's comment on why don't we just wait for</p> <p>16 PHMSA's new rules. If you did that, no pipeline would</p> <p>17 ever be built or operated in the United States. PHMSA's</p> <p>18 constantly in the process of updating and changing its</p> <p>19 rules. It has had CO2 pipeline regulations in place</p> <p>20 with a good safety record since 1991. So I think</p> <p>21 waiting for whatever PHMSA's going to do, which, you</p> <p>22 know, could just be fine-tuning of those rules, I don't</p> <p>23 think is in anybody's interests.</p> <p>24 In terms of the arguments around FOIA issues,</p> <p>25 that FOIA for some reason only attaches once PHMSA</p> <p>PAGE 40</p>

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1 approves a pipeline, PHMSA does not approve pipeline
2 facilities. It has a lot of jurisdiction, but it's not
3 a certificating agency in the way that, say, the Federal
4 Energy Regulatory Commission is for other types of
5 pipelines. PHMSA has a robust inspection and
6 enforcement program, but it doesn't approve facilities.
7 And the FOIA rules apply to any records in
8 PHMSA's possession. And we intend to apply these --
9 excuse me -- submit these dispersion model documentation
10 to PHMSA. So FOIA would apply to anything in the
11 agency's possession.
12 In terms of the comment that you could just
13 shoot -- you know where you could shoot a pipeline, you
14 know, you don't need any security sensitive information
15 to find that pipeline and shoot it, I think that
16 oversimplifies the point. The problem with broad public
17 release of the information that we're talking about is
18 that it allows you to selectively target an asset for
19 maximum destruction. So it's not just seeing a pipeline
20 and shooting at it. It's understanding kind of the
21 various places that, if you wanted to cause harm, you
22 could cause the most harm.
23 What else can I say? You know, in terms of the
24 44-04-24 arguments that this pipeline does not qualify
25 as critical infrastructure, I don't think the Commission

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1 needs to reach that question. I think there are
2 independent bases for concluding that the materials
3 we've submitted are security system plans. You can find
4 those in 44-04-24 2(b)(3) through (6) which do not rely
5 on the designation of critical infrastructure.
6 Dakota Gasification, you know, we live in a
7 different world, unfortunately, than we did in 2007. I
8 can tell you just from my own experience with clients
9 all around the country, in 2007 people were a lot less
10 worried about pipeline security than they are today. A
11 lot has happened since then. So I have clients who, you
12 know, probably would have submitted things without
13 thinking about it. People don't do that now because of
14 incidents that have occurred on DAPL and other
15 pipelines. People are much more careful and PHMSA is
16 much more careful about the information. So there's
17 kind of an arc of history here that we need to take into
18 consideration. So whatever might be available in past
19 dockets, I think, reflected the context of that time and
20 we're in a different context now.
21 I'll also add that Summit has engaged in -- I
22 think there was an implication Summit has not engaged
23 with emergency responders. Summit has engaged with
24 emergency response agencies in all the affected
25 counties. It's been in contact with them and has had

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1 conversations with them. There's more work to be done
2 there, but that outreach and effort has begun and has
3 been robust.

4 I think that brings me to the end of my time
5 here. I'm happy to provide any of the additional
6 information that was not included in our previous
7 briefing to you all in a subsequent filing if you wish
8 with citations to authority and documentation. Thank
9 you.

10 ALJ HOGAN: All right. Thank you.

11 Any Commission questions for Mr. Curry?

12 COMMISSIONER CHRISTMANN: None for me.

13 COMMISSIONER HAUGEN-HOFFART: No questions.

14 SUBSTITUTE DECISIONMAKER DAWSON: None.

15 ALJ HOGAN: All right. Well, the Commission
16 does not intend to decide this motion this morning. The
17 Commission will take this matter under advisement and
18 issue an order at a later date.

19 Is there anything else for the record before we
20 conclude?

21 All right. Seeing none, I will note for the
22 record that it is 9:29 a.m. and that will conclude our
23 hearing for today. Thank you.

24 -----
25

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Dated this date of October 3, 2025.

LISA A. HULM, CET-783

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