

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**

**May 28, 2024**

**Bismarck, North Dakota**

APPEARANCES

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

BRET DUBLINSKE, PATRICK MAHLBERG, TYLER GLUDT, and  
BRANT LEONARD, Fredrikson & Byron, PA, and MARK  
SCHULTHEIS, Schultheis White, PLC, on behalf of Applicant  
SCS Carbon Transport LLC

RANDALL J. BAKKE, Bakke Grinolds Wiederholt, on  
behalf of Intervenor Burleigh County

BRIAN E. JORDE, Domina Law Group, on behalf of  
Intervenors/Landowners

STEVE J. LEIBEL and MICHAEL JOYNER, Knoll Leibel  
LLP, on behalf of Intervenors/Landowners

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

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1           ALJ HOGAN: All right. We are going to get  
2 started. Sorry for the delay getting started this  
3 morning.

4           Good morning. My name is Hope Hogan and I'm the  
5 administrative law judge that's been designated upon the  
6 request of the Public Service Commission to serve as the  
7 hearing officer for today's hearing.

8           Let the record show it's May 28th, 2024, at  
9 8:38 a.m. This is the time, date, and place set by a  
10 notice of technical hearing issued by the Public Service  
11 Commission on April 25th, 2024, for a technical hearing  
12 in Case No. PU-22-391. This hearing is being held today  
13 at the Brynhild Haugland Room at the State Capitol in  
14 Bismarck, North Dakota.

15           Just to note that the next two days that have  
16 been scheduled for this hearing will be held in the  
17 Pioneer Room, which is on the other side of the Capitol  
18 in the Judicial Wing.

19           We will adjourn today's hearing around 5 p.m.  
20 And we will also take two 15-minute breaks, a morning  
21 and an afternoon break, and we will break for lunch for  
22 approximately an hour.

23           As we begin today, I'd ask that everybody please  
24 check your cell phones to make sure they're either  
25 silenced or turned off so that we do not have cell phone

1 interruptions as we move through our hearing today.

2 This hearing concerns the application of SCS  
3 Carbon Transport LLC for a certificate of corridor  
4 compatibility and route permit concerning approximately  
5 320 miles of carbon dioxide pipeline ranging from 4.5-  
6 to 24-inch diameter and associated facilities in  
7 Burleigh, Cass, Dickey, Emmons, Logan, McIntosh, Morton,  
8 Oliver, Richland, and Sargent counties, North Dakota.

9 On August 4th, 2023, the Commission issued  
10 findings of fact, conclusions of law and an order  
11 denying the application. On September 15th, 2023, the  
12 Commission issued an order granting the Applicant's  
13 petition for reconsideration.

14 This hearing was scheduled pursuant to an order  
15 on a motion for continuance issued by the Commission on  
16 April 9th, 2024. The purpose of this hearing is to  
17 allow Burleigh County and the landowner intervenors who  
18 could not attend the April 22nd, 2024, public hearing an  
19 opportunity to participate. Burleigh County and the  
20 landowner intervenors will have the opportunity to  
21 cross-examine the witnesses who testified at the  
22 April 22nd hearing and to offer their own witness  
23 testimony.

24 There will be no public testimony or input taken  
25 at this hearing.

1           I would note again that this matter or these  
2       hearings have been scheduled based on the Commission's  
3       order to re-open this case. All evidence previously  
4       accepted into the record, including testimony, remain a  
5       part of the record. The purpose of this hearing is to  
6       address deficiencies noted in the Commission's order and  
7       route adjustments. The purpose is not to address issues  
8       the Commission has already determined it does not have  
9       jurisdiction over or items the Commission has determined  
10      were already appropriately addressed by the Applicant.

11           I'm now going to ask the parties to note their  
12      appearance for the record.

13           And on behalf of the Applicant, I'll start with  
14      you, Mr. Dublinske. Do you want to note your appearance  
15      for the record and introduce who you have with you  
16      today?

17           MR. DUBLINSKE: Thank you, Your Honor. Bret  
18      Dublinske of Fredrikson & Byron for the Applicant, SCS  
19      Carbon Transport. With me is Pat Mahlberg, also of  
20      Fredrikson & Byron, on behalf of SCS and Tyler Gludt,  
21      also on behalf of SCS.

22           ALJ HOGAN: Thank you.

23           On behalf of the Commission, Mr. Pelham, did you  
24      want to note your appearance for the record?

25           MR. PELHAM: Thank you, Your Honor. Good

1 morning. Zachary Pelham, special assistant attorney  
2 general on behalf of the Commission. To my left is  
3 Victor Schock. He is the Public Utilities director.  
4 And Victor may have some questions today. Thank you.

5 ALJ HOGAN: Mr. Bakke, would you like to  
6 introduce yourself and note your appearance for the  
7 record?

8 MR. BAKKE: Yes, Your Honor. Good morning. I'm  
9 Randy Bakke. I'm here on behalf of Burleigh County.  
10 And with me is one of our paralegals, Kate Finck.

11 ALJ HOGAN: And either Mr. Leibel or Mr. Jorde,  
12 would you like to note your appearance for the record  
13 and introduce the other individuals appearing on behalf  
14 of the landowner intervenors?

15 MR. JORDE: Steve, why don't you go ahead?

16 MR. LEIBEL: This is Steve Leibel and Michael  
17 Joyner for landowner intervenors. Mr. Brian Jorde is  
18 appearing remotely via GoTo Meeting. And we also have  
19 Rosanne Ogden from my office.

20 ALJ HOGAN: Thank you.

21 All right. And since this a continuance of the  
22 April 22nd hearing, it's my intent to jump right in, but  
23 before we do that, I'll just go around and make sure  
24 there isn't any other preliminary matters we need to  
25 address before we get started.

1           Mr. Dublinske, did you have anything?

2           MR. DUBLINSKE: Your Honor, the only preliminary  
3 matter I have is that I inadvertently forgot to  
4 introduce the people that are with us on the phone. So  
5 Brant Leonard on behalf of SCS also appearing as an  
6 attorney and Mark Schultheis who is appearing for an  
7 attorney on behalf -- or as an attorney on behalf of  
8 SCS.

9           We have no other preliminary matters.

10          ALJ HOGAN: All right. Thank you.

11          Mr. Pelham.

12          MR. PELHAM: No, Your Honor. Thank you.

13          ALJ HOGAN: Mr. Bakke.

14          MR. BAKKE: No, Your Honor.

15          ALJ HOGAN: And Mr. Jorde or Mr. Leibel.

16          MR. JORDE: No, Your Honor.

17          ALJ HOGAN: All right. So it's my understanding  
18 that the Applicant's going to call Mr. Olson to testify  
19 first; is that correct?

20          MR. MAHLBERG: That's correct, Your Honor. The  
21 Applicant would call Jeff Olson.

22          ALJ HOGAN: All right. Mr. Olson, if you want  
23 to take a seat at the witness stand. The first question  
24 is whether the microphone is on. Do you see a blue  
25 light?

1 JEFF OLSON: There, how about now?

2 ALJ HOGAN: That's perfect.

3 Mr. Olson, I'll have you start by stating your  
4 full name for the record and spelling your last name.

5 JEFF OLSON: Sure. Can you still hear me okay?

6 ALJ HOGAN: Yep.

7 JEFF OLSON: All right. Jeffery Alan Olson. My  
8 middle name is spelled A-L-A-N, my last name, O-L-S-O-N.

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

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

15 Do you understand what perjury is?

16 MR. OLSON: Yes, I do.

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 MR. OLSON: Yes, I do.

21 ALJ HOGAN: All right. Thank you.

22 Go ahead, Mr. Mahlberg.

23 MR. MAHLBERG: Thank you, Your Honor.

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**JEFF OLSON,**

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

DIRECT EXAMINATION

BY MR. MAHLBERG:

Q. Mr. Olson, can you state your business address, please?

A. My business address is 1621 North Fourth Street in Tomahawk, Wisconsin.

Q. Mr. Olson, what's your profession?

A. I am a senior appraiser with LandVest, Incorporated.

Q. What licensures or designations do you hold in the appraisal field?

A. I am a certified general appraiser licensed in four states: North Dakota, Wisconsin, Minnesota, and Michigan.

Q. Mr. Olson, in connection with this proceeding, did you prepare or cause to be prepared written testimony?

A. I did.

Q. Was that written testimony prepared by you or under your control and supervision?

A. Yes.

Q. When you prepared that testimony, Mr. Olson, was

1 it true and correct?

2 A. Yes.

3 Q. Are there any corrections you need --

4 A. No.

5 Q. -- any corrections you need to make to your  
6 testimony, Mr. Olson?

7 A. No.

8 Q. As you sit here today, if you were asked those  
9 same questions, would your answers be the same or  
10 substantially the same?

11 A. Yes.

12 UNIDENTIFIED SPEAKER: Unfortunately, I think  
13 it's just any of them in the room, feedback possibly  
14 because of the ventilation system too being so loud.  
15 But you may contact the people who service the room.

16 UNIDENTIFIED SPEAKER: Matt, so would it be  
17 best, if we're not speaking, to shut it off?

18 UNIDENTIFIED SPEAKER: Yeah, correct. If you're  
19 not currently talking, please leave the microphone off.

20 Q. (BY MR. MAHLBERG) All right. Mr. Olson, do  
21 you understand that the written testimony that you  
22 prepared has been entered in the docket as Docket  
23 No. 578?

24 A. Correct. Yes.

25 MR. MAHLBERG: At this time, Applicant would

1 offer the direct testimony of Jeff Olson, dated  
2 April 22nd, 2024, as SCS R-16.

3 ALJ HOGAN: Mr. Pelham, any objection?

4 MR. PELHAM: I don't.

5 ALJ HOGAN: Mr. Bakke.

6 MR. BAKKE: No, Your Honor.

7 ALJ HOGAN: And Mr. Jorde.

8 MR. JORDE: I'd say foundation and hearsay.

9 ALJ HOGAN: All right. The objections are  
10 noted. SCS R-16 will be received.

11 Q. (BY MR. MAHLBERG) Mr. Olson, would there be  
12 any documents in addition to what has just been admitted  
13 that you have also prepared in connection with this  
14 proceeding?

15 A. Yes.

16 Q. And can you explain what that -- what that is,  
17 Mr. Olson?

18 A. Sure. I've been licensed in North Dakota for  
19 about ten years now. I continue to do research on -- on  
20 pipeline-encumbered properties and their impact on  
21 value. And it's my understanding that there's a -- one  
22 CO2 line in existence going through several counties in  
23 North Dakota. So I'm -- I'm continuing to do my  
24 research, looking for easement-encumbered properties.  
25 And I recently -- since my testimony, I've -- I've

1 recently uncovered one property that is encumbered with  
2 a CO2 line.

3 Q. And did you prepare a written report of the  
4 research that you performed about that sale?

5 A. Yes.

6 Q. Okay. Mr. Olson, is that document entitled  
7 "Market Analysis, North Dakota CO2 Pipeline Research"?

8 A. Correct.

9 Q. Can you explain what that document -- what that  
10 document concludes to?

11 A. Sure. It's a paired sale analysis similar to  
12 the paired sale analysis in my -- in my written  
13 testimony. So there's one sale; 478 acres in Divide  
14 County sold in January of 2023. It sold for \$1,264 per  
15 acre. It was two non-contiguous parcels, three quarter  
16 sections totaling the 478 acres.

17 Nearby, within a mile, there -- I have in my  
18 database two other similar sales. One is 160 acres in  
19 size, the other is 263 acres in size. Both of those  
20 properties sold for \$1,275 per acre.

21 So the difference in the sale price between the  
22 encumbered and the unencumbered is about 1 percent,  
23 minus 1 percent.

24 MR. MAHLBERG: We'd offer that "Market Analysis,  
25 North Dakota CO2 Pipeline Research" as SCS R-17.

1 ALJ HOGAN: Mr. Pelham, any objection?

2 MR. PELHAM: No objection.

3 ALJ HOGAN: Mr. Bakke.

4 MR. BAKKE: Your Honor, can I voir dire the  
5 witness for purpose of foundation and relevance?

6 ALJ HOGAN: Yes.

7 MR. BAKKE: This pipeline that you're referring  
8 to for Dakota Gasification Company, what was the  
9 diameter of that pipeline?

10 THE WITNESS: I am unaware of the diameter of  
11 the pipeline.

12 MR. BAKKE: What was the volume of CO2 that's in  
13 that pipeline?

14 THE WITNESS: I -- they have it on their  
15 website. I have it printed out, not with me. I don't  
16 recall the specifications.

17 MR. BAKKE: Okay. What was the pressure in that  
18 pipeline?

19 THE WITNESS: Again, I don't have that with me,  
20 but it's on the -- on the information that I reviewed.

21 MR. BAKKE: What was the depth that that  
22 pipeline is buried?

23 THE WITNESS: I do not know.

24 MR. BAKKE: When was the pipeline installed?

25 THE WITNESS: I believe it's been in operation

1 almost 20 years.

2 MR. BAKKE: Okay. How does this pipeline  
3 compare to the proposed Summit pipeline in terms of  
4 volume, pressure, diameter, pipeline depth? Do you know  
5 any of those things?

6 THE WITNESS: I do not.

7 MR. BAKKE: Okay. And then in relation to the  
8 properties that you're comparing the sales price for,  
9 did you go out and physically walk that land or examine  
10 that land in any way?

11 THE WITNESS: The two unencumbered properties,  
12 yes, I have previously. The property that is encumbered  
13 with the pipeline, no, I have not. I have not been up  
14 there yet.

15 MR. BAKKE: Okay. And do you know, for  
16 instance, if there's differences between the  
17 unencumbered properties and the encumbered properties in  
18 terms of what type of soil index there is for the  
19 property?

20 THE WITNESS: Yes. The properties are -- are,  
21 like I said, less than a mile apart. The soil  
22 productivity, the crop productivity indexes are very  
23 similar. The encumbered sale -- the encumbered sale is  
24 -- the land characteristics are slightly less tillable  
25 acreage. There's -- if you're familiar with northern --

1 northern North Dakota, lots of ponds, small ponds. So  
2 the encumbered sale has a slightly less tillable acreage  
3 than the unencumbered sales.

4 MR. BAKKE: Okay. Do you have any photographs  
5 or information on the properties that identifies water  
6 sources or indicates whether one has a stock dam,  
7 another doesn't, what water features there might be,  
8 other things that might be pertinent to a sale, access  
9 issues, easement issues, those types of things? Do you  
10 have any photographs or details on that?

11 THE WITNESS: Of the -- of which --

12 MR. BAKKE: Of any of these properties that  
13 would be part of what went into what the price per acre  
14 might be.

15 THE WITNESS: Sure. I've got aerial photos, but  
16 I do not have any pictures that I personally took.

17 MR. BAKKE: Okay. So we don't have those here  
18 today to look at the differences?

19 THE WITNESS: I do have a couple with me here,  
20 yes.

21 MR. BAKKE: Okay. But they're not part of this  
22 proposal?

23 THE WITNESS: They're not.

24 MR. BAKKE: Okay. Your Honor, we'd object for  
25 lack of foundation and relevance.

1           And let me also ask you, Mr. Olson, are there  
2           residences on any of these properties?

3           THE WITNESS: Vacant land.

4           You know, to go back to one of your previous  
5           questions, it's just ponding. It's not -- you know,  
6           there aren't any controlled structures on any of these  
7           so it's ponds.

8           MR. BAKKE: So there's no residences that would  
9           be impacted in that immediate location?

10          THE WITNESS: No. These -- all three of these  
11          sales are vacant cropland.

12          MR. BAKKE: I'd object on the basis of lack of  
13          foundation and relevance.

14          ALJ HOGAN: Mr. Jorde, any objection?

15          MR. JORDE: Yes. We would object on the same  
16          basis.

17          ALJ HOGAN: All right. The objections are  
18          noted. I am going to admit SCS R-17 and the Commission  
19          can determine what relevance, if any, to give this  
20          evidence.

21          Mr. Mahlberg.

22          MR. MAHLBERG: Thank you, Your Honor.

23          Q. (BY MR. MAHLBERG) Mr. Olson, to back up a  
24          little bit from that voir dire, higher level, what's the  
25          purpose of your testimony?



1           A.    Sure.  I'm here to provide the Commission with  
2           an unbiased USPAP compliant opinion as to the effects of  
3           pipelines and easements on land values.

4           Q.    In connection with that assignment, did you  
5           study both residential and agricultural lands?

6           A.    Yes.

7           Q.    Have you reached an opinion as to whether and  
8           how a Summit pipeline easement may affect residential  
9           lands?

10          A.    Yes.

11          Q.    What is that opinion?

12               MR. JORDE:  Objection.  Foundation, relevance.

13               MR. BAKKE:  Same objection.

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

15          A.    Okay.  Can you restate the question?

16          Q.    (BY MR. MAHLBERG)  Yes.  What is that opinion?

17               MR. JORDE:  Same objections.

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

19          A.    I previously testified to my -- my body of work  
20           in North Dakota.  So I've been working on similar  
21           projects for about ten years.  I continue to gather  
22           market evidence on pipeline-encumbered properties, both  
23           residential, large parcel residential, commercial,  
24           industrial, and even ag properties.  My opinion is that  
25           pipelines, and especially, you know, a similar pipeline

1 to Summit Carbon, has very minimal impact, if any, on  
2 land value.

3 Q. What leads you to that opinion?

4 A. Again, paired sales analysis. I've been  
5 conducting research for ten years on similar properties,  
6 not only in North Dakota but in four, five states.

7 Q. Mr. Olson, what's a paired sales analysis for  
8 those people who don't read appraisal reports all day  
9 long?

10 A. Sure. There's two different types of paired  
11 sales analysis that I typically do. One is a -- what is  
12 termed by the appraisal industry as "grouped paired sale  
13 analysis." That's where you gather a bunch of sales, a  
14 grouping of sales of similar property types, and you  
15 compare them to, in this case, encumbered properties  
16 versus unencumbered properties.

17 So a paired sale analysis is trying to isolate  
18 the impact of, in this case, a pipeline easement. You  
19 can do a paired sale analysis on residential property.  
20 If you want to know what is the contributing value of a  
21 swimming pool, you look at a house -- 2,000-square-foot  
22 house that has a swimming pool, a 2,000-square-foot  
23 house that does not have a swimming pool, and you  
24 compare the two and, hopefully, you can isolate that  
25 difference, and that difference would be the impact.

1 Q. And did you also reach an opinion as to whether  
2 and how a Summit pipeline easement may affect  
3 agricultural land?

4 A. Yes.

5 Q. What is that opinion?

6 A. The same opinion.

7 MR. JORDE: Same objections. Foundation,  
8 relevance.

9 MR. BAKKE: I'll join in that objection.

10 ALJ HOGAN: The objection is noted, but I'll  
11 allow him to answer.

12 A. Sorry.

13 Yes. I -- pipelines going across rural ag  
14 properties have very little impact on value.

15 Q. And what leads you to that opinion, Mr. Olson?

16 A. Paired sale analysis. I'm gathering data  
17 continuously. Just uncovered the CO2 sale up in Divide  
18 County. I'm continuing to gather data. And the data is  
19 overwhelming that pipelines and pipeline easements have  
20 very little impact on value.

21 MR. MAHLBERG: I don't have anything else for  
22 Mr. Olson right now. He'd be available for  
23 cross-examination.

24 ALJ HOGAN: All right. Mr. Pelham, any  
25 questions?

CROSS EXAMINATION

BY MR. PELHAM:

Q. Good morning, Mr. Olson. I appreciate the data. I'm just wondering, as part of your research, did you talk to any of the landowners who are involved in any of the sales that you looked at?

A. Not of the CO2 sale that I just presented here today, but the other sales, yes, I have -- myself and a colleague have verified these sales with buyers or sellers.

Q. In those conversations with those sellers or buyers, if you had any, were concerns related to pipeline easements or the existence of pipelines discussed with those individuals?

A. Yes.

Q. And as far as those discussions, were there any concerns noted by those individuals who were involved in the sales involving their lands with the pipelines on their lands?

MR. JORDE: Hearsay and relevance.

MR. BAKKE: Join.

MR. PELHAM: I asked him if there were conversations. I didn't ask him what they were.

ALJ HOGAN: You can answer.

A. Yes, there were conversations.

1 Q. (BY MR. PELHAM) All right. And as part of  
2 your research, sir, and your investigations into this  
3 matter, what -- were there any concerns that were stated  
4 as to the impact of pipelines as to the economic value  
5 of the pipelines on the properties that you reviewed?

6 MR. JORDE: Hearsay and relevance.

7 MR. BAKKE: Join.

8 ALJ HOGAN: The objection is noted. I'll allow  
9 him to answer.

10 A. No, not on -- not on the sales that I provided  
11 in my written testimony.

12 MR. PELHAM: Thank you, sir. I don't have any  
13 other questions.

14 ALJ HOGAN: Mr. Schock, did you have any  
15 questions?

16 MR. SCHOCK: No questions, Your Honor.

17 ALJ HOGAN: Mr. Bakke.

18 MR. BAKKE: Yes, Your Honor.

19 CROSS EXAMINATION

20 BY MR. BAKKE:

21 Q. So, Mr. Olson, I think I heard you say, quote,  
22 "I'm here to provide an unbiased opinion and a USPAP  
23 compliance opinion." Is that accurate?

24 A. Correct.

25 Q. Okay. So what appraisal did you do in this case

1 and of what property?

2 A. I haven't -- I'm doing some preliminary work on  
3 -- on appraisals, but I have not completed appraisals  
4 yet.

5 Q. Okay. And what is USPAP?

6 A. That's the -- USPAP is the governing body that  
7 appraisers have to adhere to. They -- they've got -- we  
8 have to sign a certification. We have to take  
9 continuing education every -- every two years. So I do  
10 that in every state that I'm in. But it's the governing  
11 body that tells appraisers how they need to act and  
12 perform their duties.

13 Q. Okay. Is it a violation of USPAP standards to  
14 offer an opinion of a value of a property without  
15 conducting an appraisal?

16 A. I've -- I believe you have to have a work file.  
17 If you opine to a value of a specific piece of property,  
18 you should have a work file.

19 Q. Okay. Well, the document you provided to the  
20 PSC, which has now been accepted into the record,  
21 SCS R-17, in order for you to offer a compliance opinion  
22 as to the value of that property, USPAP states that you  
23 must complete an appraisal before offering opinions as  
24 to value of properties, doesn't it?

25 A. Well, I'm not appraising these properties.

1     Okay. This is a paired sales analysis. I'm not  
2     conducting an appraisal on any of the properties that  
3     you see in my testimony. Those aren't -- those are not  
4     appraisals.

5           Q. Okay. So maybe I misunderstood your testimony.  
6     You're not offering testimony here today, providing an  
7     opinion of value as to any specific property?

8           A. Correct.

9           Q. Okay. And so you have done no appraisal which  
10    would allow you to offer an opinion as to the value of  
11    the properties described in R-17 which has been admitted  
12    into this case?

13          A. Correct. So -- so an appraisal, you know, on a  
14    -- on a specific piece of property, I'm engaged in -- in  
15    this case, maybe I'm engaged by SCS to perform  
16    appraisals on a specific piece of property. That  
17    process, in order to value these properties, we do it in  
18    a before and after scenario. Okay. So we appraise the  
19    property in the before condition and we appraise the  
20    property in the after condition, meaning now this  
21    property has a pipeline easement going across it, and in  
22    this case a CO2 pipeline.

23                 To determine the impacts of that pipeline,  
24    typically you do a paired sales analysis. Appraisers do  
25    those quite -- quite frequently. Or -- and -- and the

1 best case scenario, this subject, one of the subject  
2 properties I'm appraising, two years ago sold for X  
3 amount of dollars. Now after two years the pipeline is  
4 in place, the property again sells. That's -- that's  
5 the -- that's the perfect paired sales analysis.

6 But you don't have that in most of these  
7 situations. So in order to determine the after value,  
8 you have to look at similar situations to value it in  
9 the after condition.

10 Q. Okay. And that wasn't what I was asking about,  
11 a paired sales analysis, but I'll move on.

12 As I understand it, any testimony you provided  
13 in your written testimony provided to the commissioners  
14 here today, you're not offering an opinion as to value  
15 on any of the properties discussed in your written  
16 testimony; correct?

17 A. Correct.

18 Q. Okay. Because you've done no appraisal of any  
19 of those properties?

20 A. Correct.

21 Q. Okay. And there's two aspects of your testimony  
22 you're providing to the PSC here today. One relates to  
23 residential properties and one relates to agricultural  
24 properties?

25 A. Correct.



1           Q.   Okay.  So let's take those separately and let's  
2   start with the residential properties.  The residential  
3   properties that are the subject of your written  
4   testimony, are those residential properties in Bismarck,  
5   North Dakota?

6           A.   They are, correct.

7           Q.   Okay.  Did you consider residential properties  
8   from any other location other than within the city of  
9   Bismarck itself?

10          A.   In my body of work, yes, but for this testimony,  
11   no.  This only pertains to the -- to the residential  
12   subdivisions on the northwest side of Bismarck.

13          Q.   Okay.  So, for instance, for my client, Burleigh  
14   County, which has jurisdiction outside the city limits  
15   for housing subdivisions, you have done no analysis of  
16   values for any residences in any rural subdivisions in  
17   Burleigh County; correct?

18          A.   Correct.

19          Q.   Or any other county in North Dakota, for that  
20   matter?

21          A.   Not as part of this testimony, no.

22          Q.   Okay.  And how many appraisals have you  
23   performed in Burleigh County of residential homes,  
24   including the city of Bismarck, in the past?

25          A.   Of residential homes?

1 Q. Correct.

2 A. I have done no residential home valuations in --  
3 in Burleigh County.

4 Q. Okay. How many residential home appraisals have  
5 you done in any city or location in North Dakota?

6 A. Probably approaching 100.

7 Q. Okay. And which cities or towns were those in?

8 A. Mostly, in relation to my work, I do quite a bit  
9 of work on the FM Diversion Canal project in Fargo and  
10 Moorhead. So I -- I've conducted nearly a hundred  
11 residential -- rural residential and also urban  
12 residential valuations as part of that project.

13 Q. And do any of them involve the effect of a CO2  
14 pipeline on any of those residential homes in Cass  
15 County?

16 A. I don't believe so, no.

17 Q. Okay. How many appraisals of either residential  
18 or agricultural land have you performed in the past in  
19 North Dakota where there was a nearby CO2 pipeline?

20 A. None for a CO2 pipeline.

21 Q. Okay. How many residential or agricultural  
22 appraisals have you done for residences or agricultural  
23 lands that are located and encumbered by a CO2 pipeline?

24 A. Again, I have not conducted any.

25 Q. So this is the first case where you're offering

1 testimony on how either agricultural land or residential  
2 land might be impacted by being encumbered by a CO2  
3 pipeline?

4 A. Correct.

5 Q. What knowledge do you have in relation to the  
6 differences between the dangers of CO2 pipeline leaks  
7 versus a natural gas leak?

8 A. I have very little information in regard to  
9 that.

10 Q. Okay. Do you know what the health concerns are  
11 in relation to a leak from a CO2 pipeline if you're in a  
12 nearby residence?

13 A. Yes. I've read about them. Correct.

14 Q. So you understand there's some fairly  
15 significant differences between the health concerns by  
16 being located near a CO2 pipeline versus a natural gas  
17 pipeline?

18 A. Correct.

19 Q. Okay. And you understand that homes need  
20 natural gas pipelines to provide a natural gas source  
21 for heating and cooking for their homes; correct?

22 A. Yes.

23 Q. Versus there's no need for a CO2 for residences;  
24 correct?

25 A. Correct.

1           Q.   And that might help explain why -- how natural  
2           gas impacts the values of homes could be dramatically  
3           different than a CO2 pipeline in addition to the health  
4           concern difference; correct?

5           A.   Well, I think that's speculation.

6           Q.   Well, you don't know one way or the other?

7           A.   At this point, I've got very little data on  
8           properties that are encumbered by a CO2 pipeline.

9           Q.   Okay. And in your written testimony, you  
10          indicate that you rely on the written testimony of Jeff  
11          Skaare as part of your basis for your opinions you're  
12          offering to the PSC in this case; correct?

13          A.   Correct.

14          Q.   Okay. And what expertise does Mr. Skaare have  
15          in relation to real estate values and, in particular, in  
16          relation to Burleigh County real estate values?

17          A.   I don't know that he has any.

18          Q.   Okay. And what knowledge, if any, does  
19          Mr. Skaare, who I believe has indicated he lives in  
20          Dickinson, have about residential subdivisions in  
21          Bismarck or in Burleigh County?

22          A.   Well, he's aware of the presence of pipelines in  
23          -- going through residential developments in Bismarck.

24          Q.   Well, I'm sure there's a lot of people that are,  
25          but does he have some special expertise in pipelines?

1     Isn't Mr. Skaare an attorney for Summit?

2           A.    I don't know the answer to that.

3           Q.    Which residential subdivisions, rural  
4   residential subdivisions, in Burleigh County have you  
5   driven through that are in the area where the CO2  
6   pipeline is projected to be routed or nearby?

7           A.    Well, I -- I don't -- I haven't seen any rural  
8   residential properties, large, bulk development-type  
9   properties, in -- in the location of the proposed route.

10          Q.    Okay. Do you know if there are any?

11          A.    I don't know.

12          Q.    Okay. So you're just speculating that there  
13   might not be any, but you don't know?

14          A.    Well, I've driven the route, I've driven -- I've  
15   driven throughout the county, but I haven't seen any  
16   rural bulk development properties that the pipeline is  
17   going through. But, again, it's preliminary.

18          Q.    Okay. Have you talked to anybody at Burleigh  
19   County to ask them whether there are any nearby rural  
20   residential subdivisions?

21          A.    I have not.

22          Q.    Okay. And have you asked anybody at Burleigh  
23   County any questions about development in the area where  
24   the pipeline is proposed to go?

25          A.    At this point, no, because I -- I -- again, I'm

1 not appraising properties yet, but if we get to that  
2 point, then that's when I start doing that -- that type  
3 of investigation.

4 Q. Okay. You indicate in your written testimony  
5 that you rely on Mr. Becker's May 30, 2023, report,  
6 which is a part of the record in this case; is that  
7 correct?

8 A. Correct.

9 Q. Okay. And that's not an appraisal either;  
10 correct?

11 A. No.

12 Q. Okay. And he doesn't offer any values in his  
13 report, does he?

14 A. No.

15 Q. Okay. And he only looks, Mr. Becker, at  
16 subdivisions within the city of Bismarck; correct?

17 A. Correct.

18 Q. He didn't look at any rural residential  
19 subdivisions in Burleigh County; correct?

20 A. I believe it was limited to the city of  
21 Bismarck.

22 Q. Okay. And in relation to the properties  
23 considered by Mr. Becker and considered by you, all of  
24 those properties where you look at pipelines, those were  
25 either oil and gas pipelines or natural gas pipelines;

1 correct?

2 A. Yeah. It's the NuStar line and the west Bakken  
3 lines. Right.

4 Q. None of them were CO2 pipelines?

5 A. Correct.

6 Q. Okay. And as part of the work that you did in  
7 this case for Summit and in regards to any opinions  
8 you're offering here today, did you have any  
9 communications with real estate subdivision developers  
10 who build or have built in the past residential homes in  
11 Bismarck?

12 A. Not in Bismarck, no.

13 Q. Okay. Did you talk to any real estate  
14 developers who have in the past or currently are  
15 building housing subdivisions, rural housing  
16 subdivisions, in Burleigh County?

17 A. No.

18 Q. Okay. Did you talk to any of the developers who  
19 have testified in this case regarding the impact and  
20 what their personal experience has been when potential  
21 purchasers learn that the CO2 pipeline might be  
22 constructed near their homes?

23 A. No.

24 Q. Okay. So that's not considered as part of your  
25 testimony?

1           A.   No.   Again, I'm not appraising properties yet.  
2   So when I get to that point, if I get to that point,  
3   that's when I would do more research.

4           Q.   Okay.   And then you also talk about, in your  
5   written testimony, what you call, quote, "independent  
6   research," end quote.   What independent research did you  
7   do, if any, in regards to values of residential property  
8   that are encumbered by CO2 pipelines?

9           A.   Well, the -- really the -- I've only uncovered  
10  -- there's a couple of sales in the state of Iowa and  
11  they -- the property in Divide County.   That's really  
12  the only market evidence I have at this point that is  
13  analyzing CO2 pipeline-encumbered properties.

14          Q.   Okay.   And neither one of those situations  
15  involve residences?

16          A.   No.

17          Q.   Okay.   As part of the conclusions you indicate  
18  in your written testimony in this case, you have two  
19  primary opinions.   First, you say, quote, "There is no  
20  pattern as to which lots are developed first.   Many of  
21  the encumbered lots were some of the first to sell," end  
22  quote.

23               And that comment, once again, is not in relation  
24  to residential lots or homes encumbered by a CO2  
25  pipeline?



1           A.    Correct.

2           Q.    Okay.  And that's a comment in relation to what?  
3   Some residential subdivision in Bismarck?

4           A.    Yeah.  The six developments on the northwest  
5   side of Bismarck.  Okay.  So it's -- it's an observation  
6   that, when a property is developed, you look to see  
7   which properties are selling first and -- and for how  
8   much.  So the west Bakken line and the NuStar line going  
9   through the developments in the northwest side of  
10   Bismarck, there's -- there's no rhyme or reason as to  
11   which lots were selling first.  Some of them were  
12   encumbered, some of them were unencumbered.

13          Q.    And when you say the six developments in  
14   northwest Bismarck, what were those developments called?

15          A.    I don't recall the names of them off the top of  
16   my head.

17          Q.    Promontory Point?

18          A.    I believe that was one of them.  I -- I don't  
19   recall the names of those.

20          Q.    Well, when you say "northwest Bismarck," can you  
21   give us some location by street?

22          A.    Off the top of my head, no.

23          Q.    So you can't even identify either the housing  
24   subdivision or even an approximate location other than  
25   to say "northwest Bismarck"?

1           A.    No.

2           Q.    Can you identify a nearby school?

3           A.    No.

4           Q.    Can you identify a nearby landmark or feature?

5           A.    In the northwest side of Bismarck, no.

6           Q.    Okay.  Do you have any documents to support your  
7   opinions about there's no pattern as to which lots are  
8   developed first?

9           A.    No, other than doing -- pulling deeds and  
10   looking at dates of sale.

11          Q.    Okay.  Well, did you contact any of the  
12   developers of those residential subdivisions to  
13   determine why those lots sold when they did or what the  
14   reasons were?

15          A.    At this point, no, I have not.

16          Q.    And then the second opinion you offer is, quote,  
17   "There is no market evidence uncovered that suggests  
18   that pipelines impact the market value of residential  
19   properties."

20                And, once again, this was not an opinion as to  
21   CO2 pipelines; correct?

22          A.    It was based on my analysis of non-CO2  
23   pipelines.

24          Q.    Natural gas?

25          A.    Natural gas -- natural gas, crude oil, yes.

1           Q.    Okay.  And then you say there was no market  
2 evidence uncovered, is what you say in your opinion when  
3 you say "no market evidence uncovered," that just means  
4 you didn't find anything; correct?

5           A.    I did not find anything at this point, no.

6           Q.    Okay.  But you didn't talk to any of the  
7 salespeople involved in selling those lots to find out  
8 why particular lots sold when they did?

9           A.    Why they sold when they did?

10          Q.    Right.

11          A.    No.

12          Q.    Okay.  Or what the reasons were in relation to  
13 pricing?

14          A.    No.

15          Q.    Okay.  Then the other topic in your written  
16 testimony that you've offered opinions on is the  
17 pipeline's impact on agricultural land.  And you've  
18 looked back, I think, not at CO2 pipelines other than  
19 what you testified here today regarding Dakota  
20 Gasification Company, but you talk about Dakota Access  
21 Pipeline, WBI pipeline, and a Marathon pipeline;  
22 correct?

23          A.    Correct.

24          Q.    None of those are CO2 pipelines?

25          A.    Correct.

1           Q.   Okay.  And have you reviewed any of the  
2   testimony in this case by the agricultural landowners  
3   who have expressed significant concerns about the health  
4   risk, the safety risk, the diminishment in value of  
5   their properties due to the presence of a CO2 pipeline?

6           A.   No.

7           Q.   Okay.  So your opinions in this case do not  
8   factor in the evidence in this case from agricultural  
9   landowners on how they have significant safety concerns  
10   and how that, they believe, impacts the value of their  
11   land?

12          A.   Well, impacts to value is based on market  
13   evidence; correct?  If I haven't found any market  
14   evidence to support a loss in value, I'm not sure how  
15   anybody else can -- can make that determination.

16          Q.   Well, there is no market evidence because none  
17   of these residents have sold that have been encumbered  
18   by a nearby CO2 pipeline; correct?

19          A.   Correct.

20          Q.   Okay.  So you can't offer any opinions whether  
21   it will or will not value these residences because you  
22   haven't found any that you can analyze, correct, or do  
23   an appraisal on?

24          A.   I have a few sales and that's it.

25          Q.   Okay.  Well, but you're not able to tell the PSC

1 in this case about a single sale of any home encumbered  
2 by a CO2 pipeline?

3 A. No.

4 Q. Okay. And you do agree agricultural landowners  
5 are entitled, under North Dakota law and perhaps the law  
6 of many other jurisdictions, to offer an opinion as to  
7 the value of their property?

8 A. Correct.

9 Q. Because they -- they know that value from often  
10 having lived there and farmed there and ranched there  
11 and knowing the value of nearby properties as well;  
12 correct?

13 A. Entirely agree.

14 Q. Okay. Would you agree that, over time, safety  
15 concerns and valuation impacts have changed in relation  
16 to the presence of pipelines?

17 A. No. I don't agree with that.

18 Q. Okay. So you haven't seen a -- I don't really  
19 want to call it a trend but a change historically that  
20 many people now have concerns about pipelines and living  
21 by them or farming by them that perhaps 20 years ago did  
22 not have those same concerns?

23 A. I -- I agree with the concerns. However, I  
24 disagree with the impact on value. The market data  
25 speaks for itself. I agree with you in that there's --

1     there's significant concerns even with this project.  
2     Almost with every project that I work on there's --  
3     there's significant concerns. It -- it most likely  
4     reduces your potential pool of buyers, without a doubt.  
5     But there's also investors out there and buyers out  
6     there that have a checklist; right? They -- they go to  
7     buy property. They've got these things in mind. And if  
8     it has a pipeline on it and it's far down the list, it  
9     doesn't -- it doesn't make that much of a difference to  
10    them. And there's always somebody willing to pay top  
11    dollar or market value or above market value even if  
12    it's encumbered.

13             So I agree with the concerns, but I haven't seen  
14    market evidence to support an impact on value that  
15    coincides with the concerns.

16             Q. Well, except for you're now switching to natural  
17    gas pipeline, oil pipelines. You haven't found any  
18    sales of property other than the one in Divide County  
19    involving a CO2 pipeline; correct?

20             A. Well -- okay. Even the ones in the state of  
21    Iowa, right on the -- on the brochure, on the -- on the  
22    flier, it says "Summit Carbon pipeline" on it. It was  
23    prominently displayed on it. So people are aware of  
24    Summit Carbon in Iowa and these properties sold for --  
25    for more than the surrounding properties or the

1 unencumbered properties.

2           So, again, there's -- there's concerns in Iowa,  
3 there's concerns in North Dakota. And I -- I totally  
4 understand that. But what I have to try and analyze is  
5 that impact, what is the impact of that pipeline going  
6 across these properties. And my market evidence is --  
7 is overwhelming the same in every state that I work on.  
8 It's very little impact on value.

9           Q. Okay. Well, you've only found two situations.  
10 One in Iowa and then this other agricultural land in  
11 Divide County in North Dakota?

12          A. To date, correct.

13          Q. Okay. And neither one of those involved a  
14 residence nearby or where their land was encumbered by a  
15 CO2 pipeline?

16          A. Correct.

17          Q. Okay. That's all the questions I have. Thank  
18 you.

19               ALJ HOGAN: Mr. Jorde, do you have any questions  
20 for Mr. Olson?

21               MR. JORDE: I do. Thank you.

22                               CROSS EXAMINATION

23               BY MR. JORDE:

24               Q. Mr. Olson, you mentioned the sale in Iowa. And  
25 there's no Summit pipeline operating in Iowa. You're

1     aware of that; right?

2           A.   Well, they're -- they're not operating yet, but  
3     there are signed easements in the state of Iowa,  
4     voluntary easements signed.

5           Q.   Okay.  And you're saying that the example of the  
6     Iowa property, that there was -- someone signed an  
7     easement and then that someone sold that property with  
8     the easement to someone else.  Is that what you're  
9     saying?

10          A.   Yes.  They sold at auction.  And on the auction  
11     flier, it -- it prominently displayed "Summit Carbon  
12     pipeline."

13          Q.   All right.  And so you don't know if the buyer  
14     believes that the Summit pipeline will never be approved  
15     and he or she thinks they got a great buy.  I mean, the  
16     fact the pipeline doesn't exist, that's not a fair  
17     comparison for saying that an operating pipeline doesn't  
18     affect market value; correct?

19          A.   Well, I disagree.  There's -- there's an  
20     easement on the property.  There -- yes, it hasn't been  
21     constructed, but there is an easement.  And you have to  
22     consider those easements when you're valuing property.

23          Q.   How many easements has Summit obtained any -- in  
24     any state of the five-state footprint where they have  
25     announced they are no longer going to target or



1 potentially route a CO2 pipeline across those lands?

2 A. I -- I guess I'm not -- can you restate the  
3 question, please?

4 Q. Yeah. Are you aware -- I mean, you could sell  
5 me an easement across your front yard and I might never  
6 do the project. You understand that the existence of an  
7 easement, there's no risk, there's no pipeline, there's  
8 nothing there at the moment when someone purchases  
9 property with a right to maybe do something that hasn't  
10 yet happened. You agree with that; right?

11 A. Right. In most situations an easement is  
12 perpetual, right? It goes with the land. It transfers.  
13 So you have to consider it even though the project isn't  
14 built yet.

15 Q. And in Iowa you didn't talk to those buyers, of  
16 whether they considered it or what -- what stock they  
17 put in if Summit is going to get their Iowa permits;  
18 correct?

19 A. Correct. At this point I have not spoken with  
20 anybody in Iowa.

21 Q. And if you were working in North Dakota and you  
22 were in a condemnation proceeding, you couldn't bring in  
23 a sale of Iowa as relevant data to affect a, say,  
24 Burleigh County condemnation proceeding, could you?

25 A. I -- if I analyzed it, I absolutely could. It

1 speaks to the local market and, you know, I -- I use  
2 paired sales analysis in Michigan and I compare them to  
3 paired sales analysis in North Dakota. I -- you  
4 absolutely can if -- if you go do the -- do the work to  
5 understand, you know, what was -- what the whole  
6 transaction -- all of the specifics of a transaction.

7 Q. So you think you could use the paired analysis  
8 where a pipeline doesn't exist in order to give a  
9 valuation opinion on where a pipeline does exist?

10 A. Again, we're -- you know, we're kind of  
11 hypothetically speaking. Right now I -- I'm not going  
12 to use it to value any properties here in North Dakota  
13 because I don't have any specifics on it.

14 Q. And twice you said that you're not appraising  
15 individual properties in North Dakota, but you would get  
16 to that point during condemnation proceedings; correct?

17 A. Potentially, yes.

18 Q. And that's work that you would be assisting  
19 Summit with if it gets to that point; correct?

20 A. Correct. I've -- I've been working on this  
21 Summit project for about two years, just gathering data,  
22 looking at relevant information.

23 Q. And so you -- you've been gathering data, you've  
24 been helping Summit for two years. Any reason why they  
25 didn't put you forward as an expert a year or two years

1 ago in these proceedings? Do you know?

2 A. I don't know.

3 Q. And so the one sale in North Dakota, that one  
4 sale doesn't make a trend, does it? You can't  
5 extrapolate much from a single sale where you don't know  
6 the motivations of the buyer and the seller, can you?

7 A. Well, I -- I think you -- you can look at that  
8 data and the sale prices are -- are very similar. One  
9 paired sales analysis, I'm not going to base my  
10 after-condition value on just one paired sales analysis,  
11 no.

12 Q. And that -- that pipeline is owned and operated  
13 by who?

14 A. It is -- the name escapes me. Dakota  
15 Gasification. And it -- it goes through several  
16 counties, you know, Dunn County, McKenzie, Divide, and  
17 it goes up into Canada.

18 Q. And do you know when that -- when the in-service  
19 date of that pipeline was?

20 A. It was in the early 2000s.

21 Q. And so give or take 20 years ago; is that right?

22 A. Yes.

23 Q. And so in 20 years of the existence of the  
24 pipeline, which doesn't count the couple years that  
25 maybe easements would have been obtained prior to

1 construction, you were able to find exactly one sale; is  
2 that right?

3 A. Well, to date I've uncovered one sale, yes.

4 Q. And that's pretty good evidence that those  
5 properties are darned hard to sell, isn't it?

6 A. No, it's not.

7 Q. Okay.

8 A. That isn't what it means.

9 Q. Okay. Now what did you say here? Oh, you say  
10 someone is always willing to pay top dollar. Are you  
11 aware of auctions, both in Iowa where the Summit  
12 pipeline was projected to cross and then in South Dakota  
13 where the Navigator pipeline was projected to cross,  
14 where auctions were no-saled because of the lack of  
15 buyers?

16 A. I am not aware of that, no.

17 Q. Okay. What data and information did Summit  
18 provide you relative to the specific risks and risk  
19 profile of a CO2 pipeline which they claim will be in  
20 supercritical state that must maintain a constant  
21 pressure?

22 A. I have not seen any data yet from -- from Summit  
23 Carbon on the operation of the pipeline. I've just been  
24 doing some cursory research on -- on similar pipelines  
25 and that's all the data I have at this point.

1           Q.   Is that kind of Google.com CO2 pipeline, or what  
2   did you do to familiarize yourself?

3           A.   Well, the -- there's all -- there's a  
4   significant amount of information on -- on the Dakota  
5   Gas pipeline so -- it's right on their website and you  
6   can get that kind of information.

7           Q.   Okay.   So if they didn't have publicly available  
8   dispersion modeling or hazard distances or other type of  
9   risk data, you wouldn't have seen that and you wouldn't  
10   know about that; correct?

11          A.   Correct.

12          Q.   And I think Mr. Bakke asked you, but you haven't  
13   talked to any -- certainly of our clients, have you, and  
14   are aware that none of them would purchase land with a  
15   CO2 pipeline?  Were you aware of that testimony?

16          A.   I am not, no.

17          Q.   All right.  But you admitted that certainly the  
18   pool of buyers, especially in a local market, would  
19   decrease if those attitudes and perceptions persist;  
20   correct?

21          A.   I would agree, yes.

22          Q.   And I don't suppose you've done any appraisals  
23   or analysis on sales of property that have a  
24   Summit-owned-and-operated CO2 pipeline, have you?

25          A.   No.

1 Q. And you understand this particular project would  
2 be the very first, kind of the guinea pig for the Summit  
3 group in terms of CO2 pipelines; correct?

4 A. I can't answer that. I'm not aware of Summit  
5 infrastructure.

6 Q. Okay.

7 MR. JORDE: I don't think I have any more  
8 questions. I would just renew all the objections  
9 previously of foundation and relevance to this entire  
10 testimony. Thank you.

11 ALJ HOGAN: Commissioner Christmann.

12 COMMISSIONER CHRISTMANN: In your -- in your  
13 testimony you had some pictures of residential  
14 neighborhoods with the pipeline warning signs. So in  
15 North Dakota, not based on anything that we do randomly,  
16 but North Dakota code, with very limited exceptions, a  
17 pipeline would have to stay back 500 feet from a  
18 residence that exists, but then you could build a  
19 residence closer. These appear to be much closer.

20 As you've researched pipelines in general, how  
21 close do residential neighborhoods spring up -- how  
22 close do they usually put the homes to a pipeline?

23 THE WITNESS: So -- so in North Dakota, some  
24 mineral -- mineral owners don't necessarily need to  
25 acquire a pipeline easement corridor, right. So their

1 mineral rights allow them to put in a crude oil line or  
2 -- I'm not talking CO2 but -- so sometimes there's  
3 easements. Sometimes there's not an easement but the  
4 centerline is marked.

5 Driving through these subdivisions, some of  
6 these homes are probably 15 or 20 feet from where the  
7 markers are. You can see in some of the pictures,  
8 people utilize those -- those pipeline corridors,  
9 playground equipment, there's -- there's gardens in  
10 them, it's green space. Those -- those areas are  
11 utilized. But some of the homes are fairly close.

12 COMMISSIONER CHRISTMANN: So does it seem that  
13 the -- what I was trying to get at is if a development  
14 is 40 acres and the pipeline runs right through the  
15 middle of it, how many acres out of that might be off  
16 limits for development that, yeah, the homeowner, if  
17 they're not worried about the pipeline, they might like  
18 living close to it because they get a little extra yard?

19 THE WITNESS: Green space.

20 COMMISSIONER CHRISTMANN: But the developer  
21 can't sell that for a development. So is a developer  
22 losing much of a corridor through that that he or she is  
23 unable to sell?

24 THE WITNESS: No, they're not. Typically, the  
25 way they -- they put their infrastructure, the roads --

1 a developer now, not a -- not a pipeline company,  
2 they'll -- if there's a pipeline corridor going through  
3 it, they'll have access roads and the back end -- the  
4 rear yards butt up to the -- to the pipeline easement.  
5 So the houses are closer to the roads and then they have  
6 a larger backyard. So they're always able to utilize  
7 that space. And sometimes they're -- some -- and not  
8 necessarily Bismarck, but I've seen other developments  
9 where they have some park corridors so there's --  
10 there's bike trails and -- and, you know, pet areas that  
11 are also part of a development plan, and some cities  
12 require that.

13 So those areas are -- are seldom lost because  
14 they're always utilized. So those -- so those  
15 residential lots with -- that are encumbered are selling  
16 for the same prices as lots that aren't because of --  
17 they're the same size. There's utility there because  
18 they can put a house on it, but they just have a little  
19 bit larger backyard.

20 COMMISSIONER CHRISTMANN: And then my other  
21 question involves agricultural land and specifically  
22 tilled land. I could imagine if a pipeline was buried  
23 too close to the surface, and let's say if it was an  
24 inch down, it's going to cause problems for tilling it;  
25 right? If it was 20 feet down, it should cause



1 certainly none. Somewhere in between there is something  
2 more logical.

3 So do you know what state requirements are in  
4 the states that you work? Is North Dakota -- in most  
5 cases pipelines need to be down to the top of the  
6 pipeline. Is that kind of a norm in states? Are some  
7 of these other states you work on burying them  
8 significantly deeper or shallower than what we do?

9 THE WITNESS: Wisconsin is a little bit deeper.  
10 Typically there I see five -- five or six feet.  
11 Michigan is about the same. It's about four or five  
12 feet. Most -- from what I've seen designs anyway in  
13 North Dakota, most pipelines, I think, are about four,  
14 four-plus feet. So not that much different.

15 COMMISSIONER CHRISTMANN: Okay. No other  
16 questions. Thank you, Your Honor.

17 ALJ HOGAN: Commissioner Haugen-Hoffart.

18 COMMISSIONER HAUGEN-HOFFART: Thank you.

19 You talked about your independent research. And  
20 in your independent research, do you have, in your  
21 database, the 5,000 pipeline -- CO2 pipelines in the  
22 U.S.?

23 THE WITNESS: No, I do not.

24 COMMISSIONER HAUGEN-HOFFART: Okay. Looking at  
25 Exhibit B on the ag sales, I know you looked at three

1 pipelines, but we have about 300 -- 30,000 miles of  
2 pipeline in North Dakota. So I was kind of curious when  
3 I went through that why some of the other counties were  
4 not evaluated.

5 THE WITNESS: Well, they are, but for this  
6 testimony I tried to stick to -- you know, closer to the  
7 eastern -- eastern part as much as possible. So I do a  
8 lot of work in Dunn County and McKenzie County. And a  
9 lot of properties -- because we're kind of out of the  
10 Bakken over here, right. You get west of here, you're  
11 in the Bakken. There's pipelines on many, many  
12 properties. So I've got analysis that I've done, you  
13 know, in the west and northwest part of North Dakota.  
14 These are -- Dakota Access was a highly publicized  
15 pipeline.

16 COMMISSIONER HAUGEN-HOFFART: And I get that.  
17 So when I'm looking at agricultural land values and  
18 listening to the landowners, we just came off of a  
19 hearing and listening to Sargent and Richland County  
20 where there's a lot of drain tile and the concerns there  
21 with the drain tile and all that. So I was just curious  
22 why all the counties in which this pipeline crossed  
23 wasn't in your Exhibit B.

24 So I have no further questions.

25 ALJ HOGAN: Mr. Dawson.

1           SUBSTITUTE DECISIONMAKER DAWSON: No questions,  
2 Your Honor.

3           ALJ HOGAN: Any redirect, Mr. Mahlberg?

4           MR. MAHLBERG: Briefly, Your Honor.

5                       REDIRECT EXAMINATION

6 BY MR. MAHLBERG:

7           Q. Mr. Olson, Mr. Bakke was asking you some  
8 questions about the paired sales analyses that you had  
9 done didn't relate to CO2 pipelines specifically. Do  
10 you recall that?

11          A. Yes.

12          Q. They relate to refined products pipelines or  
13 natural gas transmission lines. Is that -- is that  
14 right?

15          A. Correct.

16          Q. Why do you use those natural gas pipeline  
17 easements, why do you use those refined products  
18 pipeline easements when you're doing a paired sales  
19 analysis for a CO2 pipeline easement?

20          A. That's a good question. The first answer is  
21 there's -- I don't have a whole lot of data on pipeline  
22 -- CO2 pipeline-encumbered properties. But I -- I do  
23 this kind of work on gas pipelines, transmission lines,  
24 all sorts of easements.

25               And a lot of these projects are -- are highly

1 scrutinized by the public. People are -- are against  
2 them and they're -- they're -- they're cautious and they  
3 feel like there's going to be significant impacts to  
4 their land values. So I do a lot of different types of  
5 paired sales analysis and I think this is the closest --  
6 at this point anyway, until I start doing actual  
7 appraisal work, if I do. At this point, these paired  
8 sales analysis are -- are mirroring what's going on  
9 right now.

10 Dakota Access Pipeline, a lot of -- a lot of  
11 public interest in that. People were saying the same  
12 thing back in 2015 and 2016 about how their property  
13 values are going to diminish and they didn't want it,  
14 but now that we're seeing data, the -- the impact on  
15 value is minimal. And I think it's a -- it's a -- it's  
16 the same scenario as what we're working into on Summit  
17 Carbon.

18 Q. But does the fact that concerns are stated, that  
19 landowners have those concerns, those valid concerns,  
20 that that sentiment is publicized, how is that  
21 reflecting in the data that you find after the projects  
22 are built?

23 A. Right. So after the projects are -- are built,  
24 most of these -- these companies, whether it's, you  
25 know, Continental Resources -- I do a lot of work on

1     some of their cases. And after the public sees how  
2     they're being treated by these companies and they  
3     understand, you know, what -- what the purpose is and  
4     what is actually being built, the public perception of  
5     the investors is what I have to try and analyze and  
6     measure. And the investors are -- are -- are, by the  
7     evidence, are showing that very little impact, if any,  
8     is being accounted for as a result of these pipelines.

9           Q. Mr. Bakke asked you whether any of the analysis  
10     that's in your report related to rural residential  
11     properties, that beyond city limits and within Burleigh  
12     County's jurisdiction. Do you recall that?

13           A. Yes.

14           Q. Do you have data that would support a conclusion  
15     that market participants in Burleigh County, not within  
16     the city of Bismarck, are going to behave differently  
17     than other market participants?

18           A. No.

19           Q. And how would you expect that those market  
20     participants for more rural residential properties would  
21     behave?

22           MR. JORDE: Foundation, speculation.

23           MR. BAKKE: Join.

24           ALJ HOGAN: The objection is noted.

25           You can answer.

1           A.    So there's -- there's a lot of publications and  
2   peer-reviewed studies on transmission line easements,  
3   and I think -- and how they impact small lots,  
4   residential lots, versus larger rural residential lots.  
5   And I -- I see the same -- same -- for gas pipelines, I  
6   see the same kind of impacts.

7           So if you've got a one-acre residential lot and  
8   you have a pipeline going across one end of it and you  
9   still have maybe some utility to build a house or  
10   residence, the impact -- as long as they can use it and  
11   have the same utility as a lot that's unencumbered, the  
12   impact on value is very minimal.

13           But as the property -- as the acreage increases,  
14   the impact decreases because you've got -- if you've got  
15   a 10-acre lot and the pipeline cuts through the middle  
16   of it, you still have five acres that you can put a  
17   house on on either side. So you're not really losing --  
18   as the property size increases, the utility decreases  
19   and the impact decreases.

20           Q.    Okay. Mr. Jorde asked you if you would base  
21   your opinion on one paired sale of a CO2 pipeline. Do  
22   you recall that?

23           A.    Yes.

24           Q.    That -- that one paired sale that you did of a  
25   CO2 pipeline and the sale that you talked about down in

1 Iowa, the data that you do have about CO2 pipelines is  
2 consistent with the data that you have about other types  
3 of pipelines; is that right?

4 A. Correct.

5 MR. MAHLBERG: I don't have anything else.  
6 Thank you.

7 ALJ HOGAN: Mr. Pelham, any additional  
8 questions?

9 MR. PELHAM: I don't. Thank you.

10 ALJ HOGAN: Mr. Schock.

11 Mr. Bakke.

12 MR. BAKKE: Just briefly, Your Honor.

13 RECROSS EXAMINATION

14 BY MR. BAKKE:

15 Q. You were just asked why you used natural gas  
16 pipelines and that information. The reason you did is  
17 because there is no information available on how CO2  
18 pipelines affect residential values; correct?

19 A. Correct.

20 Q. Okay. And to draw an analogy, someone buying a  
21 home or thinking about developing homes may have a total  
22 different line of thought on how their sales are going  
23 to be impacted if they're building next to a nuclear  
24 plant versus a solar wind farm; correct?

25 A. It's likely, yes.

1           Q.   Okay.  And it all boils down to the safety  
2           concerns and the health risks posed by that particular  
3           thing that you're going to be developing or building  
4           next to; correct?

5           A.   Correct.

6                     There's a lot of factors that go into  
7           competition and substitution, right.  So, you know, if  
8           there's a new residential development going -- with a  
9           CO2 pipeline going across it and it's in a very  
10          favorable neighborhood, you've got competition, right.  
11          So it -- it's hard to say right now at this point how  
12          the values of those residential lots will be impacted.

13          Q.   Right.  Because of the significant concerns by  
14          the public over safety and health issues due to exposure  
15          to a CO2 pipeline and the fact that we've seen a number  
16          of CO2 pipeline leaks as recently just -- just as of  
17          March of 2024 in Louisiana; correct?

18          A.   Correct.

19          Q.   Okay.  And you talked about the appraisal you're  
20          doing of the diversion land property in the Fargo area.  
21          Is your client who has hired you Cass County Joint Water  
22          Resource District?

23          A.   Correct.

24          Q.   Okay.  And you're aware that there's been very  
25          dramatic differences in values between what the



1 appraisers hired by the Cass County Joint Water Resource  
2 District have come up with versus the landowner values;  
3 correct?

4 A. Yes.

5 Q. Okay. And in that situation, the valuation  
6 difference has often been because the CCJWRD appraisers  
7 are appraising the value of land as agricultural land  
8 and the landowners are valuing the land based on  
9 development land values in many instances; correct?

10 A. In many instances, yes, they are inappropriately  
11 valuing these properties as development property.

12 Q. Well, the proof is in the pudding because in  
13 many of those situations Cass County Joint Water  
14 Resource District has been paying 100 percent higher,  
15 200 percent higher, 300, 400 percent higher than the  
16 appraisal values by the Cass County Joint Water Resource  
17 District appraisers; correct?

18 A. That, I don't --

19 MR. MAHLBERG: Your Honor, I'll object as to the  
20 relevance. We're now getting into details about  
21 settlements of purchases based on appraisals of a  
22 different project.

23 MR. BAKKE: I'm just responding to the same  
24 thing that Mr. Mahlberg just discussed, and that is  
25 values based on using a natural gas versus CO2 pipeline.

1           Q.   (BY MR. BAKKE)   My only point is there can be  
2   dramatic differences based on what is considered by the  
3   appraiser as to what will affect that value and how it  
4   affects it. Can we agree on that?

5           A.   Well, an appraisal is an opinion of value,  
6   correct.

7           Q.   Okay.

8           MR. BAKKE: I have no further questions.

9           ALJ HOGAN: Mr. Jorde, any other questions?

10          MR. JORDE: Yes.

11                               RECROSS EXAMINATION

12   BY MR. JORDE:

13          Q.   Sir, your job when you're valuing -- valuating a  
14   property for your corporate clients like a Summit is to  
15   come up with low values; correct?

16          A.   No.

17          Q.   And, in fact, it's better for your client if the  
18   appraised values based on your work are lower because  
19   then that allows them to potentially pay less or a jury  
20   awarding less in a condemnation proceeding; correct?

21          A.   Well, I disagree with that. I think you heard  
22   some line of questioning on acquisition amounts are --  
23   are sometimes significantly different than appraised  
24   values. So appraised values sometimes are not in  
25   relation to an acquisition value.

1 Q. Okay. And I believe Mr. Bakke was citing  
2 valuation opinions that were 300, 400 percent incorrect  
3 or low; is that right?

4 A. I don't -- I guess I don't know -- I'm not sure  
5 what your -- what your question is.

6 Q. Well, didn't he say Cass County was paying 300  
7 -- three times, four times what the appraised values  
8 were?

9 A. Right. But that doesn't mean that the appraised  
10 values were three times low. I guess I'm not sure what  
11 you mean by that.

12 Q. Well, aren't you -- when you do an appraisal,  
13 you're trying to find the market value; right?

14 A. Correct.

15 Q. Okay. And so the market values in those  
16 instances were three, four times off; correct?

17 A. No. I don't think they're three or four times  
18 off. I think the acquisition is much higher than what  
19 the appraised values are.

20 Q. Okay. And when a willing buyer and a willing  
21 seller get together, is that known as the market price?

22 A. Typically, yes.

23 Q. All right. And you said that after the public  
24 understands, there is little impact to be accounted for.  
25 And is that your way of saying that after three years

1 and how publicized this was, if the darn public wouldn't  
2 just understand everything is going to be fine, they  
3 wouldn't have these concerns?

4 A. No. I -- I don't agree with -- no, I -- that's  
5 not what my testimony is. I -- the public is going to  
6 have a perception of these projects regardless of -- of  
7 my paired sales of -- about any testimony. The public  
8 has a perception.

9 What I'm trying to determine is -- and I agree,  
10 some of those buyers and some of those investors will  
11 likely walk away and not look at these properties.  
12 There's investors out there that -- that are willing to  
13 pay full market value for these properties regardless of  
14 the presence of a pipeline.

15 I don't -- I know that there's people that are  
16 not going to want to buy these properties and that --  
17 that is, no doubt, going to happen. But what does  
18 happen, and what you see in the data, is that there's  
19 people, investors, willing to pay full market value.

20 Q. And are you saying then that it was an investor  
21 that bought the one and only CO2 pipeline property that  
22 you cite to? Was that an investor?

23 A. It was a local agricultural buyer.

24 Q. Okay.

25 A. A local farmer.

1 Q. Okay. So you don't know what those  
2 circumstances were?

3 A. Not yet, no.

4 Q. All right. And you're not coming here today,  
5 are you, to get this Public Service Commission to make  
6 such a monumental decision based on a single sale of  
7 property, of one North Dakota property that has an  
8 operating CO2 pipeline on it, are you?

9 A. Well, it -- I'm here to provide testimony on  
10 market evidence. That's one data set. That's all I'm  
11 here for.

12 Q. Okay. Thank you, sir. Appreciate it.

13 A. Thank you.

14 ALJ HOGAN: Are there any other commissioner  
15 questions or Mr. Dawson?

16 All right. Well, thank you, Mr. Olson.

17 THE WITNESS: Okay. Thank you.

18 ALJ HOGAN: It's about 10:00 and I think we'll  
19 take our morning break when we're in between witnesses.

20 And is Mr. Pickering next?

21 MR. GLUDT: Yes, Your Honor. We would be --

22 ALJ HOGAN: Okay.

23 MR. GLUDT: -- putting Mr. Pickering forward for  
24 cross-examination.

25 ALJ HOGAN: Okay. If you want to get him set

1 up, we will take a 15-minute break and reconvene at  
2 10:15.

3 (Recess)

4 ALJ HOGAN: All right. My clock shows 10:15 so  
5 we are going to get started again. We are now going to  
6 move to cross-examination of witnesses that testified at  
7 our April 22nd hearing. So we're starting with  
8 Mr. Pickering.

9 I'll have you state your full name for the  
10 record.

11 DAN PICKERING: Hi. Daniel Ray Pickering.

12 ALJ HOGAN: I'll just note that Mr. Pickering is  
13 appearing through video conference for his  
14 cross-examination this morning.

15 Mr. Pickering, I am going to swear you in. Were  
16 you part of our conference this morning when I went  
17 through the penalties for perjury?

18 DAN PICKERING: I was not, but I'm aware of the  
19 penalties for perjury.

20 ALJ HOGAN: Okay. And do you understand what  
21 perjury is?

22 DAN PICKERING: I do.

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

1 DAN PICKERING: I do.

2 ALJ HOGAN: All right. And I will turn to you,  
3 Mr. Bakke.

4 MR. BAKKE: I think Mr. Jorde is going to be  
5 starting with this witness today.

6 ALJ HOGAN: Okay. Mr. Jorde, you can proceed.

7 MR. JORDE: Thank you.

8 DAN PICKERING,

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

11 CROSS EXAMINATION

12 BY MR. JORDE:

13 Q. Sir, where are you located right now?

14 A. I'm physically in Houston, Texas, this morning.

15 Q. All right. And who's in the room with you  
16 there?

17 A. Mark Schultheis.

18 Q. Okay. And is that your -- is that your personal  
19 lawyer?

20 A. No, it is not.

21 Q. Okay. Who -- why is Mr. Schultheis there with  
22 you?

23 THE WITNESS: Mark, do you want to answer?

24 MR. SCHULTHEIS: Certainly. Your Honor, I'm  
25 just -- I'm here and I've appeared as attorney or as

1 counsel for Summit and simply one of Summit's attorneys.

2 Q. (BY MR. JORDE) Okay. All right. Are you  
3 being represented then by Summit's counsel? Is that  
4 your understanding?

5 A. I'm not being represented by anyone.

6 Q. Okay. All right. How did Summit find you?

7 A. So I've -- I've been aware of this particular  
8 project and have interacted with Summit in terms of  
9 several of the projects they're working on from a  
10 research perspective. I know a couple of the folks at  
11 Summit from prior work experience. And Mr. Harold Hamm,  
12 who's involved as an investor in the project, is also a  
13 relationship of mine.

14 Q. And so you've worked with Mr. Hamm and his  
15 affiliated entities previously; correct?

16 A. I have interacted with him. I have not been  
17 hired or received any compensation from Continental or  
18 his entities in the past.

19 Q. When you say "interacted with him," what does  
20 that mean?

21 A. Sure. Part of my role is a research analyst and  
22 portfolio manager. And so Continental, Mr. Hamm's  
23 company, was a public company. And so when I say  
24 "interacted," I have -- I participated in investor  
25 conferences, investor meetings with Mr. Hamm and have



1 spoken with him as an investor, asking questions about  
2 his business.

3 Q. And other than the testimony you've previously  
4 provided, have you done any other economic analysis or  
5 valuation analysis of the Summit project or system or  
6 been in any conversations relative or related to exit  
7 strategies?

8 A. I have not.

9 Q. When you speak of the Summit project or the  
10 system in your testimony, that, again, in your mind is  
11 looking at everything from A to Z, from the CO2 capture,  
12 the CO2 processing, the pipeline itself, and then the  
13 sequestration and storage; correct?

14 A. That is correct.

15 Q. All right. And you would agree with me that  
16 it's not the North Dakota PSC's purpose to approve  
17 projects that will allegedly create jobs; correct?

18 A. I don't know enough about the stated goals or  
19 objectives of the North Dakota PSC to either say yes or  
20 no to that question.

21 Q. Fair enough.

22 And so you're not aware of the factors or the  
23 burdens of proof, so to speak, that Summit needs to  
24 satisfy in order to get both of their applications  
25 approved; correct?

1           A.   That's correct.

2           Q.   All right.  And so that would be the same --  
3   same for -- you don't know if it's the Public Service  
4   Commission's purpose to create economic development;  
5   correct?

6           A.   That's correct.

7           Q.   Now, you state that you believe Summit would use  
8   a significant amount of electricity should the project  
9   at large be built and operated and you think Summit's  
10   drawing on the electrical grid is a benefit to the  
11   citizens of North Dakota; right?

12          A.   I do.  I think it's incremental demand  
13   associated with the project.

14          Q.   And --

15               UNIDENTIFIED SPEAKER:  (Indiscernible) my  
16   interruption, but one of you two has notifications that  
17   we can hear so if you can please silence those.

18               THE WITNESS:  I think that was mine.  I  
19   apologize.  I will -- I will try to make sure those are  
20   silent.

21               Sorry, Mr. Jorde.

22          Q.   (BY MR. JORDE)   That's just fine.

23               Okay.  And so have you ever been, you know, a  
24   farmer or worked with farmers who were trying to  
25   irrigate via electricity and there was a brownout or a

1     blackout or something to that effect and they couldn't  
2     do that because of the energy draw?

3           A.   You had a couple of questions there.  Have I  
4     ever been a farmer?  I grew up on a farm in Missouri and  
5     -- but I've not been a farmer or been associated with a  
6     situation requiring electricity for irrigation.

7           Q.   All right.  But you think another major  
8     competing electrical -- electricity demander is a  
9     benefit to the rest of the citizens of North Dakota?

10          A.   I think an aggregate growth, demand growth, is  
11     generally a positive for -- for the citizens of North  
12     Dakota.

13          Q.   Have you done any analysis on, if there is an  
14     instance where electricity is being -- the system in  
15     North Dakota is being overly taxed, if the Summit  
16     pipeline would be shut off or restricted from  
17     electricity or would a farmer or an agriculture user be  
18     shut off first?

19          A.   I haven't seen in any of my research any -- any  
20     discussion of that topic.

21          Q.   Do you believe that the CO2 Summit intends to  
22     sequester will one day be used for enhanced oil  
23     recovery?

24          A.   My understanding of the CO2 is that it's to be  
25     permanently sequestered so that's -- that's all I know

1 at this point.

2 Q. If Summit were to sell its operations or -- or  
3 part of their exit strategy sell out, do you have any  
4 understanding if a new buyer would have to honor the  
5 permanent sequestration claims or do you know one way or  
6 another if they could then utilize that CO2 for other  
7 purposes?

8 A. I don't know one way or the other.

9 Q. And you're aware, are you not, that the proposed  
10 capacity of the Summit pipeline that would travel  
11 through North Dakota is 18 million metric tons of CO2  
12 per year?

13 A. Correct. Ballpark, 20 million tons, yes.

14 Q. Okay. And you're aware -- I believe you  
15 testified previously about the 45Q tax credits. And  
16 you're aware that those currently are paying out at a  
17 total of \$85 per metric ton; is that right?

18 A. Correct. \$85 a ton is the number for  
19 sequestered CO2 --

20 Q. And --

21 A. -- currently.

22 Q. I'm sorry.

23 And you're aware that current tax credit is  
24 available for a period of 12 years; correct?

25 A. That's right.

1           Q.   And I suppose you've run the math on 18 million  
2   metric tons by \$85 a metric ton by 12 years.  Would you  
3   agree with me that equals out to \$18.36 billion?

4           A.   I was looking for my calculator to punch in to  
5   see if I could agree or disagree so I don't know the  
6   exact number so I can't -- I can neither agree nor  
7   disagree.

8           Q.   All right.  If I represented to you I just did  
9   it on my calculator and that's what came up, would you  
10   have a reason to disagree with that?

11          A.   I -- if you punched the math out, I'll buy into  
12   it.

13          Q.   All right.  And so in your analysis, you would  
14   agree that the project -- that 18.36 billion is a  
15   project cost and not a project benefit; correct?

16          A.   The way I think about it is that is a benefit --  
17   it is a benefit to the -- to the CO2 owner and so the  
18   government is paying that money.  So it depends on net  
19   -- it's a net zero.  The government pays, the owners  
20   receive.  If I'm an owner, it's certainly a benefit.

21          Q.   Well, certainly.  And I get you're hired by the  
22   company here, Summit, and not the taxpayers, but you  
23   understand the concept of a tax credit.  And if it's the  
24   government paying it, that's really, by extension, every  
25   taxpayer in America paying it; correct?

1           A. Eventually -- eventually the taxpayers have to  
2 pay.

3           I do want to make one point relative to your --  
4 to your comment. I'm -- I have not been hired by  
5 Summit. I'm not a Summit employee or contractor. And  
6 so I'm -- I'm kind of here as an industry expert, not as  
7 someone hired by Summit.

8           Q. Okay. Well, so who is paying you? Are you just  
9 doing this out of the goodness of your heart or is  
10 someone -- someone paying you to do whatever you did, to  
11 prepare your report, to travel around? Who's  
12 reimbursing you for that?

13          A. Yeah, good questions. So the -- the -- the  
14 purpose of my testimony is essentially -- I don't know  
15 if it's the goodness of my heart, but my goal is to kind  
16 of learn and understand more about how projects like  
17 this move ahead. And so it's kind of -- call it a  
18 research component.

19               I was reimbursed by Summit for a trip to North  
20 Dakota to testify, but that's the extent of any payments  
21 that I've received.

22          Q. And so for counsel in the room with you there,  
23 you understand that Summit is -- Summit is paying him to  
24 be there?

25          A. That's correct.

1 Q. Okay. Now when you look at a project, you agree  
2 it's important to look at what the net economic  
3 benefits, if any, are, which would take into account all  
4 costs of the project; correct?

5 A. Yes.

6 Q. And would you agree with the Ernst & Young  
7 author of the report that you cite to heavily, that the  
8 18.36 billion is a cost to the project?

9 A. Well, again, I guess I -- I disagree. And the  
10 reason I say I disagree is that the 45Q is -- is a  
11 transfer from the government to the CO2 owners and,  
12 again, so this project benefits from those tax credits.  
13 So I -- I would call it a benefit so I disagree with --  
14 with that comment.

15 Q. So when you pay your taxes, is that a cost to  
16 you? Is that a net outflow of money to you?

17 A. It -- absolutely.

18 Q. All right. And you're aware there's currently  
19 six ethanol plants in North Dakota; is that right?

20 A. I don't know the exact number of plants in North  
21 Dakota. I focused on a couple that are -- have CO2  
22 sequestration and the Tharaldson plant that's a part of  
23 this project.

24 Q. And for -- I believe there's two that you looked  
25 at that currently have sequestration. Do you know about

1     what time those plants started sequestering carbon  
2     dioxide?

3           A.   I don't.  I just know they're in -- in operation  
4     today.

5           Q.   All right.  And have you looked at the negative  
6     or impact either way upon the other North Dakota ethanol  
7     plants that don't currently have sequestration?

8           A.   I have -- I have not done any analysis on either  
9     benefits or negatives associated with those two plants.

10          Q.   Okay.  Well -- and I -- my question was a little  
11     bit different.  It could have been confusing.  But I'm  
12     curious, sir, if you've done any analysis or have any  
13     data to suggest that the other four existing CO2 -- or,  
14     pardon, ethanol plants in North Dakota had any type of  
15     negative economic downturn or lost profits from the  
16     moment in time the other two plants started sequestering  
17     CO2?

18          A.   I haven't done -- I haven't done any work around  
19     that topic.

20          Q.   And so you would agree it would be pure  
21     speculation to say that the Tharaldson plant, if it  
22     wasn't connected somehow to the proposed hazardous  
23     Summit pipeline, it would be speculation to say that  
24     they would have negative economic impacts?

25          A.   Who's the "they" in your question?



1 Q. Tharaldson.

2 A. Could you repeat it again for me, please?

3 Q. Well, yeah. I'm just trying to figure out if  
4 you -- how you get to a conclusion that Tharaldson is  
5 somehow going to be negatively impacted if the existing  
6 two sequestering ethanol plants didn't have that same  
7 impact on the others?

8 A. I didn't -- I didn't come to any conclusion  
9 about how those two plants impact Tharaldson.

10 Q. All right. So you don't have any opinion that  
11 you're providing the PSC on any competitive advantage  
12 one way or another should Tharaldson not hook up to the  
13 proposed Summit pipeline?

14 A. I am not providing any testimony to that effect.  
15 Correct.

16 Q. You talk about higher corn prices as some type  
17 of flow-through should the Tharaldson plant be  
18 associated or hooked up to the Summit pipeline. Where  
19 specifically do you think those higher corn prices would  
20 be paid?

21 A. Yeah. So -- so a point of clarification would  
22 be that I view the project in general, not necessarily  
23 one specific ethanol plant, Tharaldson.

24 I think that there's a potential -- I stress the  
25 word "potential" -- that the sequestration economics

1 have a positive impact, which, in turn, creates better  
2 economics for ethanol, which, in turn, creates better  
3 demand for corn and, all else being equal, more demand,  
4 same supply, equals better price.

5 And so the -- the comment about Tharaldson is  
6 really -- the corn price implication is really more  
7 about the project in general, not any one specific  
8 ethanol plant, essentially the whole project.

9 Q. Okay. And so let's just assume I agree with you  
10 on all those hypotheticals and assumptions. Do you  
11 think it's the North Dakota PSC's job to approve a  
12 project so that a farmer in southeast Iowa may get paid  
13 a little bit more for the corn they deliver to an Iowa  
14 ethanol plant?

15 MR. GLUDT: Objection, Your Honor. That calls  
16 for speculation, legal conclusion.

17 ALJ HOGAN: I'll note the objection. He can  
18 answer.

19 A. I -- I would repeat the comment I made earlier,  
20 which is that I don't know the specific mandate of the  
21 North Dakota PSC and so I can't really say if it's in  
22 their purview or not.

23 Q. So as to the currently only -- well, we haven't  
24 seen a contract, but we assume there's a contract with  
25 Tharaldson and Summit. You don't have any opinion

1 specifically if a single farmer selling to Tharaldson  
2 would, in fact, receive higher payment on -- for their  
3 corn, do you?

4 A. I think that the earlier comment which is that  
5 the -- the overall Summit project has the potential to  
6 result in higher corn prices. My experience with  
7 commodities is that very seldom do you have regional  
8 price impacts. You tend to have more global price  
9 impacts. And so I would expect that -- that if price  
10 goes up in Iowa, price would go up in North Dakota. But  
11 I do not have a specific conclusion about farmers  
12 selling to Tharaldson and the price they would receive.

13 Q. Nor do you have a specific conclusion of any  
14 farmer selling to any Summit-contracted ethanol plant or  
15 the price they would receive; correct?

16 A. That's fair.

17 Q. Do you know how many corn farmers there are in  
18 North Dakota?

19 A. I don't.

20 Q. Would you be willing to concede that there are  
21 more consumers of corn-based products or corn-derived  
22 products to North Dakota than there are corn farmers?

23 A. I assume almost everyone consumes corn products  
24 and so, by definition, there are more consumers than  
25 farmers.

1           Q. And so if your speculation is correct that corn  
2 prices go up, that would be a net negative to consumers,  
3 wouldn't it?

4           A. I think what we'd have to figure out in that  
5 instance -- and this was similar to the tax question  
6 from the perspective of an individual's impact is likely  
7 to be quite small. Just like a tax impact of 45Q  
8 personally is going to be small to any individual  
9 taxpayer, I assume that the impact of a CO2-influenced  
10 increase in corn prices would be a pretty small impact  
11 to an individual consumer.

12          Q. And that's work you haven't done; correct?

13          A. I have not specifically modeled that, correct.  
14 That's just my opinion.

15          Q. And would you agree that inflation is bad for  
16 consumers?

17          A. I would agree with that.

18          Q. All right. And inflation is rapidly increasing  
19 prices or increasing on a basket of goods. Would you  
20 agree with that?

21          A. I think it's much -- "rapidly" is a qualitative  
22 term, but inflation has been high relative to previous  
23 norms.

24          Q. And you would agree that we wouldn't want to  
25 contribute to that with higher commodity prices that

1 would affect the consumers; correct?

2 A. I think the definition of "we" is important  
3 there. Anyone who's in the business of -- of selling a  
4 commodity wants higher prices for that commodity. And  
5 so "we" is too broad a term to make a general  
6 conclusion, I think.

7 Q. Have you done any analysis on corn price  
8 increase relative to input increases such as seed,  
9 fertilizer, herbicide, pesticides, phosphorous, any of  
10 those things?

11 A. I haven't.

12 Q. All right. And so an increased price in corn  
13 doesn't necessarily mean increased profits if the inputs  
14 that a farmer needs are increasing faster than the price  
15 of corn; correct?

16 A. As you phrase the statement, if costs are going  
17 up faster than price, by definition profits would not be  
18 higher.

19 Q. Now your prior testimony heavily cites and  
20 relies upon an Ernst & Young and an EY April 2022  
21 report; correct?

22 A. That's correct.

23 Q. And, sir, I take it, by you citing that so  
24 heavily, that you're familiar with that report?

25 A. I am.

1 Q. And have you read it?

2 A. I have.

3 Q. All right. And did you prepare your prefiled  
4 testimony or was that prepared by someone else and then  
5 you reviewed it?

6 A. No. I prepared that testimony.

7 Q. And your testimony essentially re-states much of  
8 the information and data from the Ernst & Young report;  
9 correct?

10 A. I -- I -- "restate," I think, is -- is probably  
11 too strong a word. I definitely referenced the EY  
12 report and some of the numbers included in there.

13 Just as an FYI, kind of the other things that I  
14 looked at in preparing my testimony, one is sort of my  
15 experience with commodity projects, but I looked at Iowa  
16 Corn Growers report, I looked at the US EPA statistics,  
17 the USDA has some information that I reviewed.  
18 Bloomberg has a lot of information around pipelines,  
19 etcetera. Congressional Research Service has a lot of  
20 data, government data.

21 And so EY -- the EY report was certainly a key  
22 piece of research that I reviewed, but there was other  
23 research as well.

24 Q. And have you ever talked to any of the authors  
25 of that report or Mr. Phillips, Andrew Phillips?

1           A.    I have not.

2           Q.    Are you aware of the Ernst & Young, that report  
3 that you relied upon, the disclaimer that it has?

4           A.    I know it has one at the end.

5           Q.    Okay. And do you recollect what it -- the  
6 disclaimer says relative to third-party use of the  
7 report?

8           A.    I don't.

9           Q.    We've marked, sir, as Exhibit 40, 4-0, some  
10 excerpts of that Ernst & Young 2022 report. It should  
11 be four pages.

12               MR. JORDE: And I would ask my folks in the room  
13 there to distribute that if it hasn't. If you have a  
14 binder, it would be Tab 40. And I guess this witness is  
15 appearing remotely.

16           Q.    (BY MR. JORDE) Are you familiar with the Ernst  
17 & Young report? Do you have a copy of it there with  
18 you, by any chance? Okay.

19           A.    (Indiscernible).

20           Q.    Thank you.

21               Can you turn to the second page of that?

22           A.    The limitations and restrictions?

23           Q.    Yes. On the second page, there's like a  
24 nice-looking corn field and sunset.

25           A.    Uh-huh.

1 Q. And then at the bottom it has limitations and  
2 restrictions; is that right?

3 A. That's correct.

4 Q. And there's two paragraphs, sir, there. In the  
5 second paragraph, the middle sentence starting with the  
6 word "any," do you see that?

7 A. Yes.

8 Q. Can you read that sentence, please?

9 A. "Any third parties reading the report should be  
10 aware that the report is subject to limitations, and the  
11 scope of the report was not designed for use or reliance  
12 by third parties for investment purposes or any other  
13 purpose."

14 Q. All right.

15 A. "We assume no duty, obligation, or  
16 responsibility whatsoever to any third parties that may  
17 obtain access to the report."

18 Q. Okay. And that's a disclaimer that is telling  
19 the North Dakota PSC as a third party that the authors  
20 that you rely upon do not intend that the North Dakota  
21 PSC should rely on this for any purpose; correct?

22 A. I -- I don't know if that is a correct  
23 interpretation or not.

24 Q. All right. Well, you read the words correctly  
25 and it says that it's not intended or designed for



1 reliance by third parties for any purpose; right?

2 A. Correct.

3 Q. Okay.

4 MR. JORDE: I would offer Exhibit 40, which  
5 should be four pages including the page that  
6 Mr. Pickering just looked at.

7 ALJ HOGAN: Any objection to 40 on behalf of the  
8 Applicant?

9 MR. GLUDT: We'll object on foundation, but just  
10 to note the paper copies of Exhibit 40 that we received  
11 only have three pages in our binder.

12 ALJ HOGAN: I think it's in the front cover.

13 MR. GLUDT: Okay. Same objection.

14 ALJ HOGAN: Mr. Pelham.

15 MR. PELHAM: No objection.

16 ALJ HOGAN: Mr. Bakke.

17 MR. BAKKE: No objection.

18 ALJ HOGAN: The objection is noted, but I will  
19 admit or receive landowner No. 40.

20 Q. (BY MR. JORDE) Now, sir, are any of your  
21 projections contingent upon the CO2 that would be  
22 transported in the Summit pipeline eventually one day  
23 being used for enhanced oil recovery?

24 A. No.

25 Q. Are you aware of a recent capital call by Summit

1     trying to raise money to fund ongoing operations?

2             MR. GLUDT:  Objection, Your Honor.  It's outside  
3     the scope of his direct.

4             MR. JORDE:  Well, it's not because there were  
5     specifically concerns about access to capital and he got  
6     into why he didn't think capital would be a problem.

7             ALJ HOGAN:  The objection is noted.  I'll let  
8     him answer.

9             A.  I'm not aware of a capital call.

10            Q.  (BY MR. JORDE)  All right.  Are you aware of  
11     Summit laying off contractors or employees in the last  
12     several months?

13            A.  I am not aware of that.

14            Q.  All right.  Are you aware of Summit changing its  
15     land acquisition strategy from paying all of the  
16     negotiated price for an easement upfront to paying  
17     20 percent upfront?

18            A.  Not those specific terms.  I have heard that  
19     there was -- that there was a (indiscernible) deferment  
20     of some payments in an effort to align -- my  
21     understanding was in an effort to align the landowners  
22     and Summit, but I don't know the specifics of those.

23            Q.  So then in terms of access to capital for Summit  
24     to be an ongoing concern, to operate and to construct  
25     and do all these things appropriately, you don't have

1 any facts or testimony you can provide to suggest that  
2 Summit will have the needed amount of capital to fund  
3 this project, do you?

4 A. No facts, only opinion.

5 Q. Got it. Sir, I don't have anything further for  
6 you.

7 MR. JORDE: For the record, Your Honor, I would  
8 note we do have a motion on file to strike the entirety  
9 of Mr. Pickering's written and prior testimony. I  
10 conducted this cross-examination subject to that  
11 objection and just wanted to make that known for the  
12 record. Thank you.

13 ALJ HOGAN: Mr. Bakke, any questions?

14 MR. BAKKE: Yes, Your Honor.

15 CROSS EXAMINATION

16 BY MR. BAKKE:

17 Q. Mr. Pickering, have you ever lived or worked in  
18 North Dakota?

19 A. I haven't.

20 Q. Okay.

21 ALJ HOGAN: Mr. Bakke, can you pull the  
22 microphone a little bit closer?

23 MR. BAKKE: Sure. Is that better?

24 ALJ HOGAN: It's a little hard to hear you over  
25 here.

1 MR. BAKKE: Okay. Sorry about that. Is that  
2 better?

3 ALJ HOGAN: Yep.

4 MR. BAKKE: Okay.

5 Q. (BY MR. BAKKE) And as I understand your prior  
6 testimony on April 22nd, you testified there is a  
7 potential to at least support, if not enhance, the price  
8 of corn which would then flow through to farmers here in  
9 the state of North Dakota; is that correct?

10 A. That's correct.

11 Q. Okay. And the key word there, as you pointed  
12 out already, is "potential." You're not saying that's  
13 going to happen. You're saying simply there's a  
14 potential?

15 A. That's correct.

16 Q. Okay. So there's three things that would have  
17 to happen. First of all, the Summit pipeline to have to  
18 enhance the price of corn; correct?

19 A. I want to hear all three before I say correct to  
20 the first one.

21 Q. Okay. Well, it would have to enhance the price  
22 of corn, and then there would have to be some type of  
23 corresponding increase in the price of corn, and then  
24 finally that price increase would have to flow through  
25 to the farmers in North Dakota. Would you agree with

1 all that?

2 A. I would. I do agree.

3 Q. So you've got to have three different steps  
4 happen that are all hypothetical, all three steps of the  
5 way, before what you're saying is a possibility could  
6 occur; correct?

7 A. Correct.

8 Q. Okay. Are you saying that the citizens of North  
9 Dakota should give up on health and safety concerns for  
10 the sake of a three-part hypothetical that somehow the  
11 price of corn might increase if the Summit pipeline were  
12 built here?

13 A. I'm not making any comment on -- any health and  
14 safety as it relates to the citizens of North Dakota.

15 Q. Okay. Let's talk about carbon capture and  
16 carbon storage. Are you familiar with carbon intensity  
17 indexes?

18 A. I am.

19 Q. Okay. And are there competitive advantages to  
20 ethanol plants that have a positive CI index score?

21 A. My understanding of carbon intensity scores,  
22 lower is better and so higher is worse.

23 Q. Okay. And so I want to go through some things  
24 that -- and see if you agree whether all of the  
25 following are competitive advantages that ethanol plants

1 have that are involved in carbon capture and storage.

2 Do you agree those plants that have carbon  
3 capture and storage have the competitive advantage in  
4 the respect they can position themselves as leaders in  
5 the biofuel industry, attracting new customers and  
6 investors who are seeking environmentally-friendly  
7 alternatives and thereby gain a competitive advantage?  
8 Do you agree with that?

9 A. I agree with that.

10 Q. Okay. And do you agree that ethanol plants that  
11 can engage in carbon capture and storage can --  
12 producers that don't have that competitive advantage  
13 can't achieve the same carbon reduction as those that  
14 can use carbon capture and storage?

15 A. There, I'm not sure. And the reason I say that  
16 is carbon capture and storage is one way of dealing with  
17 CO2. It could be dealt with in other ways. And so I --  
18 I believe that CCUS offers many times the most  
19 cost-advantaged way to deal with carbon, assuming you  
20 don't want to just vent it to the atmosphere.

21 Q. Okay. But you do agree that -- that one of the  
22 ways that carbon capture and storage can disadvantage  
23 someone else, another ethanol plant, is if they don't  
24 have that same competitive advantage?

25 A. Correct.

1 Q. Okay. And sometimes those that don't have the  
2 competitive advantage of carbon capture and storage can  
3 face economic penalties and loss of market share;  
4 correct?

5 A. I don't know about economic penalties. And  
6 there's a potential for loss of market share, but it's  
7 not a given.

8 Q. Okay. And do you agree low-carbon ethanol  
9 producers can increase their margins and diversify their  
10 product portfolio which can help them mitigate the  
11 impact of volatile commodity prices and reduce their  
12 exposure to market risk by using carbon capture and  
13 storage?

14 A. I agree with that statement.

15 Q. Do you agree that the ethanol plants that use  
16 carbon capture and storage can reduce their carbon  
17 footprint and improve their company's scorecard with  
18 respect to ESG, environmental, stewardship, and  
19 governance?

20 A. ESG, as I define it, is environmental, social,  
21 and governance. But, yes, I believe -- I agree with the  
22 statement that -- that you said as it respect -- as it  
23 relates to ESG scores.

24 Q. Okay. And so in order to analyze whether  
25 there's any economic benefit or other benefit to ethanol

1 producers in North Dakota, those competitive advantages  
2 need to be considered; correct?

3 A. Correct.

4 Q. Okay. And so you were asked some questions  
5 about North Dakota ethanol plants. Can you tell me the  
6 names and the locations of the currently operating North  
7 Dakota ethanol plants?

8 A. I don't know the names of the two operating  
9 plants. And I know they're in the northern part of the  
10 state. Those are the things that I know.

11 Q. Well, and I think you previously testified there  
12 were five. Aren't there, in fact, six currently  
13 operating ethanol plants in North Dakota?

14 A. I don't think I testified to the number. The  
15 number was stated and I responded to the question.

16 Q. Okay. Well, let's go through them. Blue Flint  
17 Ethanol, are you familiar with that?

18 A. Only the name, not -- nothing -- keep going.

19 Q. Okay. Dakota Spirit?

20 A. Familiar with the name.

21 Q. Where's that located?

22 A. I'm -- I'm not sure.

23 Q. Okay.

24 A. I couldn't give you an exact physical location.

25 Q. Guardian Energy?



1 A. Not familiar.

2 Q. Okay. Red Trail Energy?

3 A. Not familiar.

4 Q. Okay. Red River Biorefinery?

5 A. Not familiar.

6 Q. Okay. And Tharaldson Ethanol?

7 A. Familiar.

8 Q. Okay. And so are there some North Dakota  
9 ethanol plants that already have a competitive advantage  
10 for the reasons we've discussed already that are located  
11 in North Dakota?

12 A. Yeah. The two plants in existence -- the two  
13 CCUS plants would have the qualitative benefits that you  
14 discussed. I don't believe they would have received the  
15 45Q and so I don't know about the economic benefits, but  
16 the qualitative benefits they would be receiving.

17 Q. Okay. So we've already got two existing ethanol  
18 plants, Red Trail Energy and Blue Flint, in North Dakota  
19 that you understand use their own carbon capture and  
20 storage; correct?

21 A. Yeah. I'm -- I'm -- I'm not sure which of  
22 the two are -- are actively involved in CCUS. I can  
23 look back through my notes but -- so I don't want to --  
24 I don't want to agree or disagree to tag the specific  
25 plants with a specific action.

1 Q. Well, that's what their literature indicates,  
2 that they both have carbon capture and storage that they  
3 use. It's been -- it's been in use for some time for  
4 each of those plants. Do you disagree?

5 A. What I'm saying is -- is I'm not -- I'm not  
6 familiar with which two plants have the specific carbon  
7 capture. So if you're telling me it's those two, that  
8 those are the names of plants -- I just looked at  
9 capacity --

10 Q. Okay.

11 A. -- then I'll agree with you.

12 Q. Okay. So currently there are two ethanol plants  
13 in North Dakota who have these competitive advantages  
14 over these 56 other out-of-state plants that Summit is  
15 proposing to give the advantage of putting carbon into  
16 the pipeline at no cost to them; correct?

17 A. Well, I don't -- I don't know that I can -- I  
18 can agree or disagree with the statement. The reason I  
19 say that is economic advantages imply an understanding  
20 of the profit and loss and -- of the specific plants  
21 relative to other plants. And I just don't think we  
22 have that information. And so I -- I can neither agree  
23 nor disagree with the comment -- with the question.

24 Q. Well, there's been testimony in this case that  
25 the ethanol plants that will put carbon into the Summit

1 pipeline will pay nothing to do that. Do you disagree  
2 with that?

3 A. Please -- please repeat that.

4 Q. Yeah. There's been testimony in this case that  
5 the ethanol plants, including these 56 plants from  
6 outside the state of North Dakota, will be able to dump  
7 their carbon into the Summit pipeline at no cost to  
8 them, they don't pay anything to put it in the pipeline.

9 MR. GLUDT: Objection, Your Honor. I think  
10 that's a mischaracterization of the evidence. I don't  
11 believe we've had anybody say that there are -- that  
12 Summit -- or allege that Summit is taking CO2 for free  
13 from any customer. And, in fact, we've made specific  
14 points not to discuss the terms of those contracts.

15 ALJ HOGAN: Mr. Bakke, can you expand on the  
16 basis for that question?

17 MR. BAKKE: Well, there has been previous  
18 testimony in that regard. But I can rephrase it a  
19 different way.

20 Q. (BY MR. BAKKE) Is it your understanding,  
21 Mr. Pickering, that the 56 ethanol plants will be able  
22 to input their carbon into the Summit pipeline for free?

23 A. It is not my understanding that that's the case.

24 Q. Okay. So what are they going to pay?

25 MR. GLUDT: Objection, Your Honor. Now we're

1 getting into the terms of these contracts.

2 MR. BAKKE: I'm not asking for the dollar  
3 amount. What are they going to pay for? Is it so much  
4 a pound?

5 MR. GLUDT: Whether or not they pay or not is a  
6 term of the contract.

7 MR. BAKKE: It's a government contract. It's a  
8 government subsidy. There's nothing --

9 MR. GLUDT: It is not a government contract. It  
10 is a contract between two private entities.

11 ALJ HOGAN: Which contract are you asking about?

12 MR. BAKKE: I'm asking about any agreement in  
13 relation to the transportation costs for the carbon  
14 going in the pipeline.

15 ALJ HOGAN: From the ethanol plant to Summit?  
16 How is that not a private contract?

17 MR. BAKKE: Because Summit's getting reimbursed  
18 by the government and, by their very nature, they're  
19 going to have to disclose to the government what those  
20 terms are. The government is not going to pay them  
21 unless they know the quantities and all of those things.

22 Q. (BY MR. BAKKE) But let me approach it a  
23 different way. And the attorney for Summit just made a  
24 good point. That money, if there is money that's paid  
25 by the ethanol producers, that will go to Summit;

1 correct?

2 MR. GLUDT: Same objection, Your Honor.

3 ALJ HOGAN: The objection is noted. I'll allow  
4 him to answer this question, if he knows.

5 A. I -- I don't know the nature of the contract  
6 between the ethanol plants and Summit.

7 Q. (BY MR. BAKKE) Okay. So assuming counsel for  
8 Summit is correct, that the money goes to Summit, that  
9 doesn't provide any benefit to the citizens of North  
10 Dakota, does it?

11 A. That's a question for me, sir?

12 Q. It is.

13 A. Yeah. So, again, not knowing the specifics of  
14 the contract, it's -- it's hard to answer where the  
15 money goes relative to Summit or the citizens of North  
16 Dakota.

17 Q. Well, I thought, in response to Mr. Jorde's  
18 question earlier today, you indicated this \$18 billion  
19 came from the government and would go to the investors  
20 in the Summit pipeline. Is that not accurate?

21 A. What I said was the 45Q would go to the owners  
22 of the CO2 that's being injected. And so it's going --  
23 it's going into the system or into the project, and then  
24 I would assume some of that is -- is retained by Summit,  
25 some of that goes to landowners, some of that is going

1 to go to vendors. So it's -- I think it is incorrect to  
2 assume that it all goes to Summit.

3 Q. Okay. So then back to the two ethanol producers  
4 in North Dakota who already have those competitive  
5 advantages by carbon capture and storage, you agree that  
6 they had certain costs they incurred for that carbon  
7 capture and storage capability; correct?

8 A. I agree.

9 Q. Okay. And so that -- that money is going to be  
10 money they're out that somebody else -- 56 producers  
11 from out of state are not going to have to incur or they  
12 may incur a lesser amount to the extent they do incur  
13 costs; correct?

14 A. I think that -- that a project undertaken in a  
15 prior time period, it's very hard to compare what --  
16 what benefits or disbenefits they would be experiencing  
17 if they tried to do that today.

18 Q. Okay.

19 A. So I'm not sure I can answer your question.

20 Q. And then those two ethanol plants, in order to  
21 continue carbon capture and storage in the future, will  
22 also incur certain costs to do that for their two plants  
23 in North Dakota; correct?

24 A. There will be operating costs, yes, sir.

25 Q. Okay. And then there will be another three

1 ethanol plants in North Dakota, and we just named them a  
2 few minutes ago, that it's your understanding will not  
3 be contributing their carbon into the Summit pipeline;  
4 correct?

5 A. I don't know -- I take that back. My  
6 understanding is Tharaldson is the only North Dakota  
7 ethanol plant contributing to the Summit project so, by  
8 definition, the other two at this point in time, based  
9 on what I know, are not.

10 Q. Okay. Well, there's actually three. Red River  
11 Bio- --

12 A. Yeah, the other three. Yes, sir.

13 Q. Red River Biorefinery, Guardian Energy, and  
14 Dakota Spirit.

15 So they're going to be -- in the event this  
16 pipeline is approved, those three ethanol plants in  
17 North Dakota that will not be inputting carbon into the  
18 Summit pipeline, they're going to be economically  
19 disadvantaged; correct?

20 A. They won't be receiving the same benefits that  
21 other projects with carbon capture have, specifically  
22 the qualitative benefits, and then hard to know the  
23 quantitative impact.

24 Q. Well, except for the numerous competitive  
25 advantages that you agreed upon earlier in your

1 testimony a few moments ago, those three existing  
2 ethanol plants in North Dakota won't have any of those  
3 competitive advantages, economic or otherwise; correct?

4 A. They will not have those qualitative benefits,  
5 that's correct.

6 Q. Okay. And to that extent, what we would be  
7 doing by approving this pipeline is we would be giving  
8 that competitive advantage to 56 out-of-state ethanol  
9 plants who currently don't have those competitive  
10 advantages; correct?

11 A. I think that the -- the plants that are part of  
12 the project will have more advantages than those that  
13 don't.

14 Q. Sure. And the end result of approving the  
15 Summit pipeline, at least for the ethanol plants in  
16 North Dakota, is five out of six of the existing ethanol  
17 plants in North Dakota will not get any benefit from the  
18 Summit pipeline; correct?

19 A. There, I disagree. And the reason I disagree is  
20 that, as I indicated in my initial testimony, I think  
21 that the overall benefit of the Summit project is to  
22 create a potential for a growing CO2 economy --

23 MR. BAKKE: I think we lost the feed somehow.

24 UNIDENTIFIED SPEAKER: Mr. Pickering, are you  
25 there?



1 I think we'll have to wait a few minutes for him  
2 to reconnect.

3 (Pause)

4 UNIDENTIFIED SPEAKER: I see both him and Mark  
5 disconnected, but Fredrikson & Byron are there so I  
6 believe the problem is on their end.

7 MR. BAKKE: Your Honor, I don't know if it makes  
8 sense but perhaps a suggestion. I see Mr. Boeshans is  
9 here. Does it make sense to stop my examination -- I  
10 know it's not ideal, but if we can't get him back and  
11 try to get that figured out over noon hour or something  
12 and continue with another witness's testimony?

13 ALJ HOGAN: Let's see if there's a quick fix  
14 before we make adjustments.

15 UNIDENTIFIED SPEAKER: We'd have to wait for  
16 them to try to reconnect. I have no contact with them  
17 otherwise.

18 ALJ HOGAN: Do you know? Does anybody have  
19 contact with them, if they're trying to reconnect?

20 MR. JORDE: Well, Summit can certainly call the  
21 lawyer. That's Summit's lawyer they're paying for.

22 UNIDENTIFIED SPEAKER: Your Honor, we're working  
23 on making contact with --

24 ALJ HOGAN: Okay. Let's see if we can get him  
25 reconnected real quick. Otherwise, we'll talk about

1       shifting gears.

2                                       (Pause)

3               ALJ HOGAN:   Do you have a lot of additional  
4       questions, Mr. Bakke?

5               MR. BAKKE:   A fair amount.

6               ALJ HOGAN:   Okay.

7               UNIDENTIFIED SPEAKER:   Also, Your Honor, a  
8       workaround on this sometimes is to use the video option  
9       of whatever the service is, GoTo Meeting, but then mute  
10      the video and call in from a phone so we never lose  
11      audio at least.   Just an idea.

12              UNIDENTIFIED SPEAKER:   That is true.   They could  
13      either just call in directly via phone, or if one of you  
14      guys could provide a phone number, I can dial out from  
15      GoTo Meeting to them.

16                                       (Pause)

17              UNIDENTIFIED SPEAKER:   Hello.   Dan Pickering has  
18      joined again via phone.

19              UNIDENTIFIED SPEAKER:   Hello, we can hear you.

20              ALJ HOGAN:   All right.   Thank you for calling  
21      in.

22              THE WITNESS:   So sorry for that.

23              ALJ HOGAN:   That's fine.   I think -- we did not  
24      hear your answer to the question so I'll maybe have  
25      Mr. Bakke ask his last question so our memories are

1 refreshed and then we'll have you repeat your answer,  
2 Mr. Pickering.

3 THE WITNESS: Fabulous.

4 Q. (BY MR. BAKKE) Yeah. I think, Mr. Pickering,  
5 you were midstream through an answer when we lost you,  
6 but I'll try to rephrase the question as best I can.

7 So my question was that five out of the six  
8 ethanol plants in North Dakota will not have the  
9 advantage of being able to provide their carbon into the  
10 Summit pipeline under the existing agreement; correct?

11 A. Yeah. So I think what I was trying to describe  
12 when I was interrupted was I -- I agree that -- that  
13 those five plants will not be putting their carbon into  
14 the Summit pipeline, but I do think that the potential  
15 advantage associated with the project that all ethanol  
16 plants in North Dakota will benefit from is this  
17 potential creation of a -- kind of a carbon -- a carbon  
18 economy or a carbon ecosphere, if you will, where --  
19 where the fact that there is more carbon-related  
20 activity in the state could attract more investment,  
21 more pipeline, more sequestration, etcetera, which then  
22 could be used to the advantage of those other five  
23 plants.

24 So as it relates to the specific Summit project,  
25 five of those six plants will not be accessing those

1 direct benefits, but I do think there will be an overall  
2 benefit that is created.

3 Q. Okay. And so you agree that advantage will be  
4 real in terms of these 56 out-of-state plants  
5 contributing carbon to the Summit pipeline; correct?  
6 That's not hypothetical, that's a real competitive  
7 advantage; correct?

8 A. Should be, yes, sir.

9 Q. Okay. Versus you use not a -- not a three-part  
10 hypothetical this time in your answer but, instead, a  
11 two-part hypothetical where you said there was, quote,  
12 "a potential advantage," end quote, and then "a  
13 potential creation of a carbon economy," end quote, in  
14 North Dakota for the North Dakota ethanol plants;  
15 correct?

16 A. Yeah. I think that in a situation like this  
17 where none of -- this project is not yet built, that the  
18 word "potential" is appropriate in most of the  
19 discussion.

20 Q. And in terms of the Tharaldson plant, they are  
21 the only plant out of the six plants in North Dakota who  
22 would see these competitive advantages by being able to  
23 use the Summit pipeline; correct?

24 A. It's my understanding Tharaldson is the only  
25 plant currently connected or proposed to be connected to

1 the project.

2 Q. Okay. And you understand Mr. Tharaldson himself  
3 is a significant monetary investor in the Summit  
4 pipeline; correct?

5 A. I am not aware of -- of Mr. Tharaldson's  
6 investment. I'm not aware of that.

7 Q. Well, there has been testimony, not of the  
8 amount of his investment, they won't disclose that, but  
9 Mr. Tharaldson is an investor in the pipeline. So he  
10 would get a double benefit if the Summit pipeline is  
11 built and he can contribute carbon into that pipeline,  
12 correct, as a personal investor and then through his  
13 plant by having these competitive advantages over the  
14 other five ethanol plants in North Dakota; correct?

15 A. I haven't seen that testimony with respect to  
16 Mr. Tharaldson's investment. And I think that any time  
17 you're making an assessment of economic benefit of one  
18 thing relative to another, you have to -- you have to  
19 know the details, and we don't know -- I don't know the  
20 details of either Mr. Tharaldson's investment, his  
21 ownership of that facility, or the specific economics  
22 associated with any of the other five North Dakota  
23 plants. So I think it's pretty hard to make a relative  
24 assessment one versus the other.

25 Q. Okay. Well, let's use your language. Let's use

1 your word of "potential." He's going to have --  
2 Mr. Tharaldson's going to have the potential benefit of  
3 getting the tax money, part of the 18 --

4 MR. GLUDT: Your Honor, I'm going to object.  
5 We're talking about benefits to Mr. Tharaldson right  
6 now.

7 ALJ HOGAN: Yes. Can you address relevance?

8 MR. BAKKE: Sure. The Tharaldson plant has been  
9 touted as a beneficiary of the Summit pipeline by  
10 Summit. Been a lot of discussion about that. I wasn't  
11 in Wahpeton, but my understanding is there was a witness  
12 from the Tharaldson plant, I believe the chief operating  
13 officer, that talked about the benefits to Tharaldson.  
14 That's clearly something Summit has presented in the  
15 case so I'm just following up on that benefit and what  
16 that benefit looks like.

17 MR. GLUDT: Your Honor, just a quick  
18 distinction. We've talked about the benefits to the  
19 plant in general. Mr. Bakke's line of questioning is  
20 going to the benefits to Mr. Tharaldson.

21 MR. BAKKE: Actually, my question is to both  
22 benefits, the plant and to Mr. Tharaldson. And he's  
23 already testified here today about the \$18 billion and  
24 the investors sharing in that. So I'm just following up  
25 on his earlier testimony today.

1           ALJ HOGAN: I think if we're going into benefits  
2 to Mr. Tharaldson personally, I think that's too far  
3 down the road. So if you can keep your questions to the  
4 plant itself, I think that's the way we should proceed.

5           MR. BAKKE: Well, there's been all kinds of  
6 testimony in relation to the investors in the plant and  
7 now we can't ask about one of them?

8           ALJ HOGAN: Correct. I'm asking you to limit  
9 your questions to the benefits to the plant.

10          MR. BAKKE: Well, I'll move on. Because that's  
11 an important component, is his individual investment,  
12 not the amount but the fact that he will benefit.

13          Q. (BY MR. BAKKE) Would you agree with me that  
14 since Summit has added from 32 out-of-state ethanol  
15 producers contributing to the Summit pipeline to 56  
16 out-of-state plants contributing to the Summit pipeline,  
17 that the benefit has been diluted somewhat?

18          A. The benefit?

19          Q. Of contributing carbon to the Summit pipeline.  
20 There's going to be more people that get that benefit  
21 than before. Let me just ask it that way.

22          A. Yeah, I think that -- that the benefits here are  
23 additive. Each plant is incremental and will receive,  
24 you know, its -- its -- its own economic benefit. And  
25 so I don't think that adding one dilutes from the

1 others.

2 Q. And you mentioned a few moments ago one of the  
3 benefits was what you called, quote, "the potential  
4 creation of a carbon economy," end quote, in North  
5 Dakota; is that correct?

6 A. Correct.

7 Q. Okay. Doesn't North Dakota already have a  
8 significant investment in the carbon economy?

9 A. Well, when -- my definition here of "carbon  
10 economy" is really around CO2 and that specific -- that  
11 specific subeconomy, if you will. Hydrocarbons are  
12 obviously part of the carbon economy as well. And so  
13 what I was referencing is kind of creation of a new  
14 subindustry around CO2 and what's happening with CO2.

15 Q. And that's what I -- I was referring to as well.  
16 Because there's already been a lot of money spent by  
17 North Dakota, including through the University of North  
18 Dakota and through private companies developing carbon  
19 capture and storage and actually taking affirmative  
20 steps to make that happen; correct?

21 A. I'm not aware of the efforts of -- that you  
22 referenced.

23 Q. Okay. So you're not aware of Project Tundra  
24 that's currently being used for carbon capture and  
25 storage by Minnkota Power plant, a coal gasification --



1 or coal electrical power plant?

2 A. I'm not aware of Project Tundra.

3 Q. Would you agree that North Dakota, western North  
4 Dakota, has a geologic advantage for carbon storage?

5 A. A geologic advantage relative to what?

6 Q. To being able to store carbon below ground.

7 A. You indicated it has an advantage, and I'm  
8 asking advantage compared to not being able to store or  
9 another state --

10 Q. Compared to other states.

11 A. I think that -- that there are many states that  
12 have the potential for carbon capture and sequestration.  
13 One of the potential advantages here in North Dakota is  
14 a first mover advantage. And so I think that -- that  
15 moving ahead with this particular project, you know,  
16 potentially puts North Dakota at the top of the list  
17 where further incremental projects would be developed.  
18 So I think it does have an advantage in terms --  
19 relative to some other state.

20 Q. Well, isn't North Dakota already the leader in  
21 carbon capture and storage in comparison to other  
22 states?

23 A. Depends on your definition of "leader." There  
24 are other projects proposed in Texas, Louisiana,  
25 offshore, etcetera, that would be bigger. North Dakota

1 is ahead of many of those projects.

2 Q. Okay. And isn't North Dakota ahead in terms of  
3 carbon capture and storage for coal plants as well as  
4 for natural gas production facilities?

5 A. I don't know specific the numbers for those two  
6 categories and so can't provide an answer.

7 Q. And is there a limited quantity of carbon  
8 storage available in North Dakota?

9 A. So the answer is yes. The limited quantity is  
10 -- would be defined by the underground storage volume  
11 that's available to receive carbon. And so that's a  
12 function of both geology and aerial extent or the size  
13 of the various geologic formation. And so, by  
14 definition, there is a limit.

15 We are -- the Summit project and subsequent  
16 projects, if there are any, are nowhere close to  
17 fulfilling that total potential pore volume for carbon  
18 injection.

19 Q. Well, but aren't there gasification plants,  
20 including new gasification plants, that are going to be  
21 built in North Dakota that could use some of the  
22 existing carbon storage?

23 A. Absolutely. I think your question was is there  
24 a limit, and of course there's a limit because there's  
25 -- the State's only so big and the earth's only so deep.

1 But my point is whether there's a Summit project or 5  
2 or 10 or 50 gas-fired plants or other plants, the pore  
3 volume available to inject carbon in is -- is ample.

4 Q. And aren't there coal plants that could also use  
5 the carbon -- existing carbon storage in North Dakota to  
6 their benefit?

7 A. It is -- is a very expensive process to extract  
8 CO2 from a coal-fired power plant, but if those  
9 investments were made, they could absolutely inject that  
10 carbon in North Dakota.

11 Q. And they're actually doing that through Project  
12 Tundra with the Minnkota coal facility; correct?

13 A. As I indicated, I don't know Project Tundra, but  
14 I'll take your word for it that that's occurring.

15 Q. Okay. And to the extent coal-fired plants can  
16 use carbon capture and storage, that means that those  
17 plants can stay open longer, be economically  
18 competitive, and continue to employ and support  
19 communities where they're located; correct?

20 A. Completely agree.

21 Q. Okay. So all of us -- all of this leads us to  
22 the conclusion it would be best for the welfare of the  
23 citizens of North Dakota to use our existing carbon  
24 capture and storage locations for the energy industry  
25 where it's already being used; correct?

1           A. I don't know how to assess what is best. I  
2 think the capital markets or the free markets, if you  
3 will, determine what's best by where capital is  
4 allocated and what projects move forward and don't move  
5 forward.

6           So I think that to the extent that projects make  
7 economic sense, that whether it's one project -- one  
8 project is good, 10 projects is better, 50 projects  
9 would be even better because all of those are doing two  
10 things. One, in theory, they're not being invested  
11 unless they're creating economic value. And, two,  
12 they're sequestering carbon which is something that, you  
13 know, is a good thing from a climate perspective.

14           So -- so I hope that answered your question.

15           Q. Well, and by virtue of the fact that we've gone  
16 from 32 out-of-state plants to 56 ethanol plants  
17 contributing more carbon into the Summit pipeline, that  
18 means less carbon storage available for the North Dakota  
19 energy industry to use; correct?

20           MR. GLUDT: Your Honor, I'm going to object to  
21 this line of questioning. Mr. Pickering is an economic  
22 analyst, not a geologist. He's already answered the  
23 question that he thinks there's enough storage for a lot  
24 of companies. I think we can move on.

25           ALJ HOGAN: I agree. The objection is

1       sustained. I don't know that he has the expertise to  
2       talk about that particular issue.

3               MR. BAKKE: I don't think it calls for an expert  
4       opinion. It's just a reality. If you put on more  
5       plants contributing CO2, increase it from 32 to 56, it's  
6       using up more storage. I'm just asking whether he  
7       agrees or disagrees with that proposition.

8               ALJ HOGAN: I've already ruled.

9               MR. BAKKE: Okay.

10              Q. (BY MR. BAKKE) And you've had some discussion  
11       about enhanced oil recovery; correct?

12              A. Yes, sir. That was part of my initial  
13       testimony.

14              Q. Okay. And if carbon capture and storage can be  
15       used for enhanced oil recovery, that would be used for  
16       North Dakota oil operations; correct?

17              A. So one clarification. Carbon capture and  
18       storage implies that the CO2 is going into the ground  
19       and being stored there. And EOR would be a different  
20       use for carbon. And so CO2 can be sequestered  
21       permanently, and that's what I believe the Summit  
22       pipeline is targeting. And EOR would be a separate use  
23       of the carbon --

24              Q. Okay.

25              A. -- or the CO2.

1 Q. Earlier in your testimony today, you testified  
2 that the electrical demand growth would be a good thing  
3 for North Dakota, what you see as a benefit to the  
4 Summit pipeline; is that correct?

5 A. I think the Summit pipeline will use incremental  
6 amounts of electricity which I view as a benefit to the  
7 state, correct.

8 Q. Okay. And so where will this electricity come  
9 from to power the Summit pipeline?

10 A. So --

11 MR. GLUDT: Objection.

12 If you know, Dan, you can answer.

13 MR. BAKKE: How can he analyze if it's an  
14 economic benefit or not without knowing where it's  
15 coming from?

16 ALJ HOGAN: I'm not sure what the objection was,  
17 but I'll allow him to answer.

18 A. So my assumption is that the existing -- or the  
19 incremental power demand will be supplied by the  
20 existing power facilities in the state. And so my  
21 assumption that it's a benefit is that incremental --  
22 incremental capacity utilization will carry higher  
23 revenues for the electricity generation companies and,  
24 therefore, that's an incremental economic benefit to the  
25 state and its citizens.

1           Q.   (BY MR. BAKKE)    Okay.   So you don't know where  
2           that power -- electrical power would come from?

3           A.   Well, the way the -- the way the power grid  
4           works typically is that -- that power is generated in  
5           any number of different locations and then flows -- and  
6           flows across the transmission lines to the sources of  
7           demand or load.   And so it's -- it isn't -- it isn't  
8           like power plant A or power plant B will be specifically  
9           supplying the power.   The power goes into the grid, and  
10          the grid is then tapped by Summit for that incremental  
11          power.   So it's hard to specifically allocate which  
12          exact plant will supply the power.

13          Q.   Okay.   Are you talking about the SPP?

14          A.   What is SPP?

15          Q.   Okay.   You answered my question.

16                Will the Summit pipeline, in order to function  
17               properly, need a continuous flow of electricity?

18          A.   I'm not -- I'm not close enough to the  
19               day-to-day operations or don't understand the day-to-day  
20               operations to know if that electricity consumption will  
21               be intermittent or -- or continuous.

22          Q.   And I'm assuming that means you wouldn't be able  
23               to answer questions about what happens if the Summit  
24               pipeline loses electrical power.   Is that true?

25          A.   That's correct.

1 Q. Okay.

2 MR. BAKKE: I can ask these questions of  
3 Mr. Powell or Mr. Boeshans. Okay. That's all the  
4 questions I have.

5 ALJ HOGAN: Mr. Pelham, any other questions?

6 MR. PELHAM: I do not. Thank you.

7 ALJ HOGAN: Commissioner Christmann.

8 COMMISSIONER CHRISTMANN: Mine were all answered  
9 in April.

10 ALJ HOGAN: Commissioner Haugen-Hoffart.

11 COMMISSIONER HAUGEN-HOFFART: No. No questions.

12 ALJ HOGAN: Mr. Dawson.

13 SUBSTITUTE DECISIONMAKER DAWSON: None for me.  
14 Thank you.

15 ALJ HOGAN: Mr. Gludt, any redirect?

16 MR. GLUDT: None for me.

17 ALJ HOGAN: All right. Well, thank you,  
18 Mr. Pickering. And sorry about the --

19 THE WITNESS: No. My apologies on the internet  
20 glitch. Thank you.

21 ALJ HOGAN: All right. Next witness, is it  
22 Mr. Boeshans?

23 UNIDENTIFIED SPEAKER: Yes, I believe so, Your  
24 Honor.

25 ALJ HOGAN: All right. Easiest question first.



1 Is your microphone on? No.

2 WADE BOESHANS: Is it on now?

3 ALJ HOGAN: Yes.

4 WADE BOESHANS: All right. Thank you.

5 ALJ HOGAN: I'll have you state your full name  
6 for the record.

7 WADE BOESHANS: Wade Wayne Boeshans.

8 ALJ HOGAN: Mr. Boeshans, were you in the room  
9 this morning when I went through the penalties for  
10 perjury?

11 WADE BOESHANS: I was.

12 ALJ HOGAN: And do you understand what perjury  
13 is?

14 WADE BOESHANS: I do.

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

18 WADE BOESHANS: I do.

19 ALJ HOGAN: All right. And who is going first?  
20 Mr. Bakke?

21 MR. BAKKE: I am, Your Honor. Yes.

22 ALJ HOGAN: Okay. And just so you're aware,  
23 we're going to break for lunch around 12:30.

24 MR. BAKKE: Okay. Thank you.

25 ALJ HOGAN: Go ahead.

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**WADE BOESHANS,**

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

CROSS EXAMINATION

BY MR. BAKKE:

Q. Good morning, Mr. Boeshans. I have some questions for you based on your April 22nd testimony you provided to the PSC. And the first topic I want to ask you about that you provided testimony on was electricity for the Summit pipeline. And you, I think, talked about a number of \$14 million being paid annually to operate the carbon capture and storage project; is that correct?

A. Yeah, that sounds correct.

Q. Okay. And you said that would be an economic benefit to North Dakota; correct?

A. Correct.

Q. Okay. And so who have you or anyone else at Summit spoken to about supplying electricity for the Summit pipeline?

A. I have not spoken to anybody about supplying electricity. Members of our team have engaged with the cooperatives across the footprint of the project or utility providers across the footprint of the project. I believe we submitted into the record here filings related to kind of the load within the different

1       electrical cooperatives that would serve the different  
2       substations across the footprint.

3           Q.    Okay.  And maybe could you pull that microphone  
4       a little closer?  I'm having a little difficulty hearing  
5       you.

6                   And so you said some members talked to some  
7       cooperatives.  Who was spoken to in Burleigh County in  
8       regards to the electrical requirements for the Summit  
9       pipeline that's proposed to go in here?

10          A.    I can't testify as to who specifically in  
11       Burleigh County or at the -- the electrical cooperative.

12          Q.    Okay.  Well, who are the potential candidates in  
13       terms of the cooperatives that would be -- that this  
14       would be discussed with that would be providing  
15       electrical power?

16          A.    I believe that's Capital Electric.  I'm not a  
17       hundred -- not a hundred percent sure in terms of all  
18       the service territories.  Again, my responsibility was  
19       on the sequestration side.  And so, you know, they're  
20       aware of our engagement with Roughrider Electric.

21          Q.    So has Capital Electric or any other electrical  
22       supplier in Burleigh County indicated that they will be  
23       able to provide continuous electricity for the Summit  
24       pipeline?

25          A.    That's my understanding.

1           Q.   And is it your testimony you believe that was  
2   Capital Electric?

3           A.   Yeah, I believe it's Capital Electric in -- you  
4   know, in Burleigh County, but, again, as I mentioned,  
5   the pipeline team would have made those -- those  
6   contacts and been communicating with those electric  
7   cooperatives. It was not me.

8           Q.   Well, has anything been provided by Summit, to  
9   your knowledge, to the PSC indicating that there has  
10   been a commitment by an electrical provider to provide a  
11   continuous supply of reliable electricity for the Summit  
12   pipeline?

13          A.   Not to my knowledge.

14          Q.   Okay. And is it correct that in order for the  
15   Summit pipeline to function properly, it will need a  
16   continuous and reliable flow of electricity?

17          A.   Yeah, that's -- that's fair, I believe.

18          Q.   Okay.

19          A.   It's going to need electricity to function, to  
20   operate the pumps.

21          Q.   And what would happen if there was no electrical  
22   power supply to the Summit pipeline, as an example, in  
23   Burleigh County?

24          A.   I think that's a better question for Jimmy  
25   Powell since he's responsible for the pipeline

1       hydraulics and system operations.

2           Q.   And do you know whether there would be a  
3       catastrophic event with the Summit pipeline if it lost  
4       electrical power or is that something I should ask  
5       Mr. Powell?

6           A.   Again, Jimmy's the expert on that.

7           Q.   Okay.   And then in terms of the source of the  
8       electrical power, do you know whether the source of the  
9       electrical power will be wind turbine, solar, coal, some  
10      combination thereof?   Do you have any knowledge on that?

11          A.   I'm presuming it will be grid power.   I don't  
12      know specifically, you know, exactly where all the power  
13      sources will come from, but assuming it's served by an  
14      electric cooperative utility, it would be, you know, the  
15      power that is available on the grid and in their  
16      systems.

17          Q.   Well, when you say "the grid," would that  
18      include all three of the sources I described, wind  
19      turbines, solar, coal-fired electricity?

20          A.   Yeah, it would be inclusive of all the  
21      generating -- generating or generating sources that are  
22      providing power or supplying power under the grid.

23          Q.   Okay.   And you were previously the CEO of BNI  
24      Coal for many years; is that correct?

25          A.   Yeah, the president and general manager.

1 Q. Okay. So you have some knowledge base,  
2 including locally, about sources of electricity and  
3 generation of electricity; correct?

4 A. That's correct.

5 Q. Okay. And so if we take, as an example, wind  
6 turbines in Burleigh County, have there been reliability  
7 issues with wind turbines producing electricity on a  
8 reliable basis?

9 A. Well, I think just by nature, you know, wind  
10 generation is an intermittent generation so it's  
11 available when the wind blows and it's not available  
12 when the wind is not blowing. So if that's what you  
13 mean by "reliability." But I think it's come -- you  
14 know, it's implied with those types of -- of generation  
15 -- or generator sources.

16 Q. Okay. And it's also -- wind turbines, at least  
17 in Burleigh County, are impacted by other weather  
18 events; correct?

19 A. I'm not really -- I'm not sure I understand your  
20 question.

21 Q. Do you know if extreme cold or at a certain  
22 temperature the wind turbines, the metal becomes brittle  
23 and they can't function?

24 A. Yeah, I'm aware that there are reasons for  
25 weather, like extreme cold, to shut in a wind farm or --

1 or not generate.

2 Q. Okay. And also ice and other factors?

3 A. Yeah, it could be for ice as well, I presume.

4 Q. And there are also time periods where the  
5 coal-fired electricity in North Dakota shuts down as  
6 well; correct?

7 A. So -- why don't you restate that?

8 Q. Are there time periods where the coal-fired  
9 electricity plants experience either blackouts or  
10 brownouts or planned maintenance?

11 A. Sure. There are times where the coal-fired  
12 plants are shut down for maintenance, for sure.

13 Q. Okay. And do you know, have there been time  
14 periods where Capital Electric has lost power in  
15 Burleigh County?

16 A. I'm aware of a event in the past, I believe it  
17 was 2020, if I recall correctly, where there was  
18 disruptions in the availability of power.

19 Q. Okay. Meaning there were time periods when  
20 consumers were without electrical power for some time  
21 period?

22 A. Yeah, that's my understanding.

23 Q. Okay. And there can be other events that affect  
24 the availability of electrical power in Burleigh County  
25 and other locations along the Summit pipeline route

1 including strikes of electrical lines?

2 A. You know, I really can't testify or comment on,  
3 you know, the electrical systems operations in terms of  
4 how much redundancy they have or how susceptible they  
5 are to lightning strikes or other types of outages.

6 Q. Well, there can be mechanical strikes by  
7 equipment that shut down electrical power supplies;  
8 correct?

9 A. Yep, there could be.

10 Q. Okay. What has Summit done to determine what  
11 the current electrical power supply in Burleigh County  
12 or other locations along the pipeline will accommodate?

13 A. Again, as I mentioned before, I haven't been  
14 involved with those discussions with the electrical  
15 providers. I really can't testify to that.

16 Q. Doesn't Summit need to know on the front end  
17 before the pipeline is built what electrical power  
18 supply will be available and whether they can deliver  
19 reliable power to the Summit pipeline on a consistent  
20 basis?

21 A. Yeah, I would presume we would, you know, need  
22 to know that power is available and that it's reasonably  
23 reliable to run the system.

24 Q. Okay. Well, let's turn -- and has that been  
25 done, to your knowledge, by anyone at Summit, to confirm



1 through an electrical power supplier that they can  
2 guarantee the amount of electrical power that Summit  
3 needs and that it will be available on a guaranteed  
4 consistent basis?

5 A. What do you mean by "guarantee"?

6 Q. That you'll have it all the time, that you'll  
7 never have any interruptions.

8 A. So, again, not -- not to my knowledge because,  
9 again, I wasn't part of those discussions with the  
10 electrical suppliers.

11 Q. Is there any backup power supply that Summit has  
12 implemented or plans to implement in relation to the  
13 Summit pipeline in the event of a power shutdown?

14 A. So I believe Jimmy Powell testified to this  
15 previously, about redundant supply for the control  
16 system. So, again, he would be the right person to  
17 circle back with on that.

18 Q. Okay, I'll ask him that.

19 Let's switch to another topic. And you  
20 testified previously about the percentages of easements  
21 secured in North Dakota; is that correct?

22 A. I testified to the percentage of acquisition on  
23 the Burleigh reroute.

24 Q. Okay.

25 A. And Jimmy testified to the broader North Dakota

1 footprint.

2 Q. Okay. And I'm going to have you turn in your  
3 binder there to the Burleigh County exhibit binder,  
4 Burleigh County Exhibit 113. Burleigh County 113.

5 MR. BAKKE: And this is, Your Honor, part of the  
6 documents submitted by Summit in this case. I don't  
7 know if you want me to offer this individually. It's, I  
8 believe, already part of the record, but I'll offer it  
9 individually so it's a stand-alone exhibit.

10 ALJ HOGAN: Any objection to Burleigh County  
11 113?

12 MR. GLUDT: No objection, Your Honor.

13 ALJ HOGAN: All right. Mr. Pelham.

14 MR. PELHAM: No objection.

15 ALJ HOGAN: All right. Burleigh County 113 is  
16 received.

17 Q. (BY MR. BAKKE) Do you recognize this,  
18 Mr. Boeshans, as a document prepared by Summit which  
19 shows the status of the right of way progress for  
20 easements secured for properties in various counties in  
21 North Dakota?

22 A. Yeah, it looks familiar. Yes.

23 Q. Okay. And it lists the percentage of parcels  
24 executed as the last column; correct?

25 A. That's correct.

1 Q. Okay. And it also lists the right of way miles  
2 executed by percentage as well, second -- the third to  
3 the last column; correct?

4 A. Yeah, that's correct.

5 Q. Okay. And what this shows is that Burleigh  
6 County is the lowest in the percentage of right of way  
7 miles executed of any county in the state; correct?

8 A. Yeah, that's correct.

9 Q. And it also shows Burleigh County is the lowest  
10 percentage of parcels executed of any county in the  
11 state; correct?

12 A. Yes, that's correct.

13 Q. With that percentage of parcels executed in  
14 Burleigh County being 57.34 percent; correct?

15 A. Yeah, that's what it says.

16 Q. Okay. And I believe you testified, in response  
17 to a question from Mr. Pelham on April 22nd, that Summit  
18 has, quote, "no plans to initiate condemnation," end  
19 quote, actions against landowners who will not  
20 voluntarily provide easements in Burleigh County; is  
21 that correct?

22 A. Can you refer me to the document on that?

23 Q. Well, it would be -- it would be your testimony.  
24 But I can ask it a different way.

25 Am I correct in understanding you testified at

1 the previous hearing that Summit has no plans to  
2 initiate condemnation actions in relation to landowners  
3 in Burleigh County who will not provide easements across  
4 their property for the pipeline?

5 A. That's not correct.

6 Q. Okay. So tell me what is correct.

7 A. My recollection is I testified to we had no  
8 plans to initiate condemnation plans.

9 Q. I think that's what I just said --

10 A. (Indiscernible) --

11 Q. -- so I think we're --

12 A. -- what I said.

13 Q. Okay. So if Summit has no plans to initiate  
14 condemnation actions, why is it that Summit threatens  
15 landowners with eminent domain? Can you explain that to  
16 me?

17 A. I'm not aware of Summit threatening landowners  
18 with eminent domain.

19 Q. Is that improper if they are?

20 A. I would say that would not be a good way to do  
21 business.

22 Q. Is it improper?

23 A. What do you mean by "improper"?

24 Q. It's not right.

25 A. Well, I certainly would not support doing that.

1 Q. Okay. Are you able to commit on behalf of  
2 Summit today, Mr. Boeshans, that if landowners in  
3 Burleigh County refuse to voluntarily provide easements  
4 to Summit, Summit will not initiate eminent domain or  
5 condemnation actions against hold-out landowners?

6 MR. GLUDT: I'm going to object, Your Honor.  
7 Eminent domain is -- was outside the scope of this  
8 jurisdiction of the Commission. We've been down this  
9 line of questioning multiple times before. The question  
10 has been asked and answered. I think we can move on.

11 MR. BAKKE: This witness testified on  
12 April 22nd, and I think he just agreed, that they have  
13 no plans to initiate condemnation action. So I'm  
14 entitled to follow up on that and see what their plans  
15 are or are not.

16 ALJ HOGAN: The objection is noted. I'll allow  
17 him to -- I will allow him to answer.

18 MR. BAKKE: Okay.

19 Q. (BY MR. BAKKE) So let me ask the question  
20 again, Mr. Boeshans. Are you able to commit on behalf  
21 of Summit today that if landowners in Burleigh County  
22 refuse to voluntarily provide easements to Summit,  
23 Summit will not initiate eminent domain or condemnation  
24 actions against hold-out landowners?

25 A. I cannot make that commitment.

1           Q.   And when you say you cannot make that  
2           commitment, what that means is that Summit reserves the  
3           right and will initiate eminent domain or condemnation  
4           actions against hold-out landowners, doesn't it?

5           MR. GLUDT:  Objection, Your Honor.  He answered  
6           the question and now we're getting into the specifics of  
7           eminent domain.

8           ALJ HOGAN:  Well, I'll allow him to clarify  
9           because I wasn't clear whether or not there -- he's  
10          stating they're not willing to make that commitment or  
11          if he personally cannot make that commitment.

12          MR. BAKKE:  Well, I think I asked on behalf of  
13          Summit.

14          ALJ HOGAN:  Right.  Well, what's the purpose of  
15          your follow-up question?  I thought it was to clarify  
16          his answer, but you tell me if I'm --

17          MR. BAKKE:  No.  I'm following up on that and  
18          asking him is what you're saying by that answer, is that  
19          they're reserving that right -- Summit reserves the  
20          right to pursue eminent domain or to initiate  
21          condemnation actions against hold-out landowners.

22          ALJ HOGAN:  I'll allow him to answer that.

23          A.   Could you state it again?

24          Q.   (BY MR. BAKKE)  Yes.  By your testimony, do you  
25          mean to say that Summit is indicating that it reserves

1 the right to pursue eminent domain or condemnation  
2 actions against hold-out landowners who will not  
3 voluntarily provide easements to Summit?

4 A. What I said was I cannot make that commitment.

5 Q. Right. And I'm asking you, by saying that, do  
6 you mean Summit's reserving the right to pursue eminent  
7 domain or condemnation actions against hold-out  
8 landowners?

9 A. Yeah, that would be fair.

10 Q. Okay. You provided some testimony previously on  
11 the financial benefits to the Tharaldson Ethanol plant  
12 due to the Summit pipeline; correct?

13 A. Can you give me specifics? I can't recall that  
14 specifically.

15 Q. Well, let me ask you this. Can you -- would you  
16 agree that whether the Tharaldson Ethanol plant gets a  
17 financial benefit from putting carbon in the Summit  
18 pipeline isn't relevant to any safety, health, or  
19 welfare of the citizens of North Dakota? Two different  
20 things, aren't they?

21 A. So I can't testify to what Tharaldson's economic  
22 benefits are. I'm not privy to their -- their business,  
23 their financials, or the contract between us and them.  
24 So I can't really testify to specifically what are their  
25 benefits.

1           What I do know is that the Tharaldson Ethanol  
2    plant consumes a significant amount of corn, north of 60  
3    million bushels a year. And according to their COO's  
4    testimony and other information that I've seen, most of  
5    that is purchased in North Dakota. So those are things  
6    I know. But in terms of, you know, what are exactly the  
7    economic benefits of Tharaldson plant or the benefits of  
8    -- economic benefit to Tharaldson to connecting to our  
9    project, I don't know those details.

10          Q. Okay. Are you aware of any of that corn coming  
11    from Burleigh County farmers?

12          A. I am not aware of exactly where the corn comes  
13    from.

14          Q. Okay. Then my question dealt not only with the  
15    financial benefits but whether you agree financial  
16    benefits to -- for sales of corn is a different issue  
17    than what's best for the safety, health, and welfare of  
18    the citizens of North Dakota. Do you agree those are  
19    two totally separate issues?

20          A. Yeah, I agree they're separate.

21          Q. Switching to the topic of meetings with  
22    emergency managers and first responders both in Burleigh  
23    County and the City of Bismarck, do you recall giving  
24    testimony on that topic?

25          A. I do.



1 Q. Okay. So tell us when you had those meetings  
2 starting with the first meeting with Burleigh County  
3 and/or the City of Bismarck?

4 A. So I participated in the meeting with Burleigh  
5 County, and in that meeting were members of both the  
6 City of Bismarck and Burleigh County emergency  
7 management, first responders. And I believe that was on  
8 November 27th of last year, of '23, but it was right --  
9 that last week of November.

10 Q. So this would have been after the Summit  
11 application was denied by the PSC in their August 4,  
12 2023, order?

13 A. Yeah. That was the meeting in which we met with  
14 them and just, you know, shared a dispersion -- or  
15 discussed dispersion modeling, was that -- that November  
16 meeting. There had been numerous meetings prior to  
17 that, as I understand it, from other members of our team  
18 prior to the denial and reapplication.

19 Q. Okay. And who was present on behalf of Burleigh  
20 County?

21 A. Who was present on -- at the November meeting?

22 Q. Correct.

23 A. I don't recall everybody that was present at  
24 that meeting. I know there was a sign-in sheet. I  
25 recall that Commissioner Bitner was there. I recall

1     that Boespflug from City of Bismarck was there, Joel  
2     Boespflug, but I don't recall everybody that was there.  
3     I want to say there was 15 to 20 people that attended  
4     the meeting.

5           Q.   And at the meeting were there any handouts or  
6     written materials provided to any of the emergency  
7     management people or first responders or county  
8     officials or city officials?

9           A.   I don't recall there being handouts, but there  
10    may have been some, you know, general project  
11    information. I don't recall specific handouts.

12          Q.   Okay. And who presented on behalf of Summit?

13          A.   I believe it was Alex Lange.

14          Q.   Alex Lange?

15          A.   Yeah. Alex Lange was the primary presenter.  
16    Jimmy Powell also participated in that meeting.

17          Q.   And was the topic that Mr. Lange was presenting  
18    on in relation to what you're calling the dispersion  
19    modeling?

20          A.   Yeah. As I recall, Alex presented on dispersion  
21    modeling, the methodology, and talked people through how  
22    a dispersion model is used and -- and developed, if you  
23    will.

24          Q.   Okay. And who else presented on behalf of  
25    Summit?

1           A.   Again, I don't recall exactly -- or who --  
2   everybody that was in the room that day that had a role  
3   as it related to presenting, but I remember that Alex  
4   Lange and Jimmy Powell both participated in the meeting,  
5   as did Dave Daum.

6           Q.   Okay.

7           A.   And I believe those are all on the sign-in sheet  
8   for the meeting.

9           Q.   And what was the topic or issue Mr. David Daum  
10  presented on?

11          A.   Again, I don't recall David presenting.  I  
12  recall discussions about emergency response and  
13  preparedness and how the plan would come together.  I  
14  don't recall specific slides or something of that nature  
15  that he was presenting.

16          Q.   Mr. Daum would be the individual from Summit who  
17  would be most knowledgeable on emergency management  
18  procedures and preparedness?

19          A.   Yeah.  David's knowledgeable and is responsible  
20  for -- for safety.  I believe his title is director of  
21  safety.

22          Q.   Including emergency management procedures and  
23  preparedness?

24          A.   Correct.

25          Q.   Okay.  And you mentioned slides.  Was there some

1 sort of PowerPoint presentation made?

2 A. Yes. There were PowerPoint slides used during  
3 the meeting.

4 Q. And by its nature, was the PowerPoint  
5 presentation two-dimensional?

6 A. Yes.

7 Q. Okay. And there were no videos shown at this  
8 meeting with the emergency manager and county officials  
9 and first responders?

10 A. I don't recall any videos.

11 Q. Okay. So anything that was presented to the  
12 emergency managers and to the first responders was  
13 presented in a two-dimensional fashion as opposed to a  
14 3-D simulation or video of any type?

15 A. What I recall is what was presented was in  
16 PowerPoint slides projected on a screen. I don't recall  
17 videos being part of that.

18 Q. So in relation to the dispersion modeling, there  
19 were no simulations or videos presented that would show  
20 real-life conditions in the event of a CO2 leak;  
21 correct?

22 A. Again, I don't recall any videos being used in  
23 that meeting.

24 Q. Well, for instance, have you seen the  
25 simulation, the dispersion modeling simulation or test

1 in Norway which shows an actual CO2 leak under certain  
2 conditions in a pipeline of a certain diameter, certain  
3 pressures, certain volume, certain weather conditions?

4 A. Yeah, I -- I believe I've seen that video.

5 Q. Okay.

6 A. But I don't know exactly the -- if it's the same  
7 one you're talking about.

8 Q. And there was nothing like that shown to the  
9 emergency managers or first responders or county  
10 officials on November 27, 2023, but, rather, it was just  
11 a slide show PowerPoint-type two-dimensional  
12 presentation; correct?

13 A. Again, I don't recall any videos.

14 Q. Okay. So were there additional meetings that  
15 you attended after November 27, 2023, with emergency  
16 managers, first responders, or county officials?

17 A. In which county?

18 Q. In Burleigh County.

19 A. No, I don't -- I didn't attend -- there were  
20 other meetings, but I was not in attendance.

21 Q. Okay. Specifically, were there any other  
22 meetings with any Burleigh County officials?

23 A. Between me and them?

24 Q. Well, you said that there were others that met.  
25 I'm assuming you mean others from Summit.

1           A.    Correct.

2           Q.    Okay.  So were there others from Summit, after  
3 November 27, 2023, that met with any of the Burleigh  
4 County officials, emergency managers, first responders?

5           A.    Yes.

6           Q.    Okay.  And when did that occur and who from  
7 Summit met with them?

8           A.    I don't recall specifically the dates or who was  
9 in attendance.  I believe it's part of the log that was  
10 submitted.  I would have to refer to that.

11          Q.    Well, I understand, based on the log, there were  
12 meetings with other county officials in other counties.  
13 I'm being specific to Burleigh County.  Are you saying  
14 the log will verify that there were additional meetings  
15 with Burleigh County officials after November 27, 2023?

16          A.    Again, I would have to see the log, but I do  
17 know that there were follow-up meetings with members of  
18 Burleigh County after November 27th.

19          Q.    And the reason I'm asking these questions is, at  
20 your initial testimony, you said, quote, "There were  
21 numerous meetings with emergency managers and first  
22 responders in both Burleigh County and City of  
23 Bismarck," end quote.

24                Is that accurate testimony?

25          A.    It is.

1 Q. Okay.

2 A. What I can tell you is the follow-up meetings, I  
3 was not at the meetings.

4 Q. Okay. And so you believe the log will bear out  
5 that there were additional meetings with Burleigh County  
6 officials after November 27th?

7 A. Again, as I said earlier, I'm not sure if that  
8 was -- those meetings are in the log, but I do know that  
9 they occurred because the people were in our office  
10 afterwards.

11 Q. Which people? People from Burleigh County?

12 A. People from Summit.

13 Q. Okay. Well, can you name any names of people  
14 from Summit who claim to have met with anyone from  
15 Burleigh County after November 27, 2023?

16 A. Yes. I know that Dave Daum met with them.

17 Q. Anyone else?

18 A. I believe Rod Dillon as well was part of those  
19 meetings.

20 Q. And who did they meet with at Burleigh County?

21 A. Again, I don't recall. My recollection is that  
22 it was the fire chief, but I didn't see specifically the  
23 agenda or itinerary of the meeting and who all attended.

24 Q. You testified about landowners that were met  
25 with regarding the Summit proposed reroute. Who

1 specifically did you meet of any landowners in Burleigh  
2 County who were asked about securing easements for their  
3 land for the reroute?

4 A. So you're asking me, of all of the landowners on  
5 the reroute, which ones I met with?

6 Q. In Burleigh County.

7 A. In Burleigh County. I met with a lot of  
8 different landowners.

9 Q. Well, can you give me some names?

10 A. Yes. I -- like I said, I met with --

11 MR. GLUDT: Your Honor, I'm going to go ahead  
12 and object. I don't think the names of the folks are  
13 relevant nor should Mr. Boeshans be under an obligation  
14 to start disclosing individuals he's met with and  
15 negotiated easements with. I think we're a little bit  
16 outside the scope.

17 ALJ HOGAN: Can you address relevance?

18 MR. BAKKE: Well, the easements are part of  
19 public record. There should be easements on file  
20 identifying the landowners. So the landowners that  
21 signed easements is not secret --

22 MR. GLUDT: You have the same access to them as  
23 we do and you can find them, those names.

24 ALJ HOGAN: Hang on.

25 What's the relevance of Mr. Boeshans disclosing



1     who he met with?

2             MR. BAKKE:   I'm following up on who he met with,  
3     and the next step I'm going to get to is which of those  
4     people signed easements and which did not.

5             ALJ HOGAN:   And the relevance of that?

6             MR. BAKKE:   The relevance of that is that it  
7     shows that there's a lot of resistance to the Summit  
8     pipeline in Burleigh County.

9             ALJ HOGAN:   How does that show relevance of that  
10    if we're talking about who he met with and the ones that  
11    signed easements?

12            MR. BAKKE:   He can tell me whether they did or  
13    did not sign easements.   I think it's relevant if he's  
14    meeting with people and they're not signing easements in  
15    Burleigh County.

16            ALJ HOGAN:   Well, just for the sake of time, can  
17    we ask in a general fashion rather than trying to have  
18    Mr. Boeshans recall specifics of who he met with?

19            MR. BAKKE:   Sure, I can do that.

20            My dilemma here is each and every time I get  
21    into a topic I'm meeting objections so I'm trying to be  
22    careful to walk through the process to establish the  
23    foundation for my questions.   I'd just as soon move  
24    along more quickly, but I'm encountering -- I mean, I  
25    can see that he's got his finger on the button to object

1 on a frequent basis, as is happening, but I can try to  
2 speed this up, but I'm afraid I'm going to have to then  
3 go backwards and lay foundation for the questions. But  
4 I can do that in this situation.

5 Q. (BY MR. BAKKE) Mr. Boeshans, in relation to  
6 these meetings, did some of these people you met with  
7 not agree to provide easements to Summit along the  
8 reroute?

9 A. So as of today, we've signed easements on  
10 46 percent of the route. So, yes, we have not secured  
11 all the easements.

12 Q. Right. But my question is some of the people  
13 you met with, did they tell you they would not be  
14 signing easements for the reroute?

15 A. I'm trying to recall if they used those specific  
16 words. What I do know is we haven't signed all the  
17 easements.

18 Q. Take a look at Exhibit 113 again, the one you  
19 have open in front of you, the right of way progress in  
20 terms of percentages of easements obtained in Burleigh  
21 County.

22 A. Yeah.

23 Q. Are you able to identify for us how many people  
24 along the reroute in Burleigh County, what percentage  
25 have refused to provide easements?

1           A.    I'm not.

2           Q.    Because Exhibit 113 is just a general statement  
3           in relation to percentages of easements secured in  
4           Burleigh County which could include people under the  
5           original route --

6           A.    Yep.

7           Q.    -- and also under the reroute?

8           A.    Yeah, that's correct.

9           Q.    Okay. My assumption is Summit has information  
10          they could provide the PSC in regards to what percentage  
11          of the people on the reroute location in Burleigh County  
12          have or have not agreed to easements on their property.  
13          Correct?

14          A.    Correct. And that's the information I provided  
15          at the hearing in Mandan and just stated here. We have  
16          -- we've acquired 46 percent of the miles of -- on the  
17          reroute.

18          Q.    And is that just for Burleigh County, that  
19          percentage is 46 percent?

20          A.    That's -- that's just the reroute, the new  
21          route. So we'd have to go to the map so you could see  
22          exactly what that is, but the reroute is about 25 or  
23          just over 25 miles. From where we left the old route,  
24          went further north and east of Bismarck and reattached  
25          to where the river crossing is.

1 Q. Right. But what I'm trying to focus on, is all  
2 of that in Burleigh County?

3 A. Is all of that reroute? Yes.

4 Q. Okay.

5 A. But there are other tracts in Burleigh County as  
6 well, which is why the numbers are different here. The  
7 number that you see in your Exhibit 113 is all of  
8 Burleigh County. I'm talking to you about numbers  
9 related to the Bismarck reroute.

10 Q. And then in terms of the reroute locations, does  
11 Summit offer to pay only 20 percent down or less than  
12 the full amount of the easement amount that might be  
13 negotiated with those landowners that are willing to do  
14 so?

15 MR. GLUDT: Objection, Your Honor. This goes to  
16 private easement negotiations.

17 ALJ HOGAN: Can you discuss relevance of that?

18 MR. BAKKE: Yeah. The relevance of it is that  
19 might help explain why they're not getting easement or  
20 it may not. If they're offering a full price and  
21 they're turning them down, I think that's more important  
22 than if they're just offering them 20 percent.

23 ALJ HOGAN: Can we just get to that in a general  
24 fashion of what his understanding is of why the  
25 easements aren't being acquired?

1           MR. BAKKE: I'm asking if that's a specific  
2 reason.

3           ALJ HOGAN: Well, I'm asking you to ask your  
4 question in a general fashion.

5           Q. (BY MR. BAKKE) Are people offering reasons why  
6 they won't provide easements?

7           A. I would say generally in every -- this gets  
8 into, ultimately, negotiations and, you know, settlement  
9 with individual landowners. But, yeah, they'll have  
10 reasons.

11          Q. What are the reasons they're offering?

12          A. Sometimes it's money; they want more. Sometimes  
13 it's "We want to wait to see how the PSC hearing goes."  
14 Sometimes it's, you know, not all the family members  
15 agree on an easement and so it's divided amongst  
16 multiple -- you know, there's multiple parties involved.  
17 So, I mean, there's a variety of reasons why people  
18 would not want to -- to sign an easement. Could be  
19 related to safety. They still have safety concerns that  
20 are not yet addressed. So, again, there's a variety of  
21 reasons why people would, you know, not enter into --  
22 you know, into an easement.

23                 What I can tell you is when we -- like I  
24 testified to last time, you know, when we initially  
25 started selecting a route around Bismarck and we were

1     able to get -- have lots of different meetings with the  
2     vast majority of the landowners along the route and  
3     ultimately secure the permission to survey from them,  
4     and from that survey and our interactions with those  
5     landowners we were able to define the route. And it was  
6     no secret, we were very much upfront with "Hey, when we  
7     find a route, we're going to be back to talk easement  
8     terms." And so that's where we -- you know, that's  
9     where we continued to -- to advance those discussions  
10    with -- with landowners.

11         Q. Well, in --

12             ALJ HOGAN: Mr. Bakke, I need to stop you right  
13     there. The commissioners have a commitment at 12:30 so  
14     they've asked that we break at 12:20 to make that 12:30  
15     commitment.

16             MR. BAKKE: Okay.

17             ALJ HOGAN: So we are going to take our lunch  
18     break and we will pick up at 1:30.

19                             (Recess)

20             ALJ HOGAN: All right. We're going to get  
21     started again. Before we start with testimony, I just  
22     want to remind everybody or let everybody know that we  
23     have a hard end today at 5:00 so we will not be able to  
24     go over 5:00 today because of other events taking place  
25     in this room this evening.

1           Likewise, prior to today's hearing I did send  
2           out a schedule and so today was reserved for  
3           cross-examination of Summit's witnesses. So if there's  
4           any changes to that schedule, I'd ask the parties work  
5           that out amongst themselves, and if there's an  
6           agreement, you have to let me know.

7           And, with that, I will turn back to you,  
8           Mr. Bakke. You can continue.

9           MR. BAKKE: Okay. Thank you, Your Honor.

10          Q. (BY MR. BAKKE) Mr. Boeshans, at your prior  
11          testimony, you testified about meetings you had after  
12          the initial Summit application was denied on August 4,  
13          2023, with the Bismarck intervenors. Do you recall that  
14          testimony?

15          A. I do.

16          Q. Okay. And there were three Bismarck  
17          intervenors: Dr. Warford, Chad Moldenhauer, and Chad  
18          Wachter; correct?

19          A. That's correct.

20          Q. Okay. And when did you have a meeting with  
21          Mr. Chad Moldenhauer after August 4, 2023, regarding the  
22          Summit pipeline?

23          A. As I said in my written testimony and my verbal  
24          testimony last time, I did not have a face-to-face  
25          meeting with Chad Moldenhauer. I indicated that I

1 contacted Chad Moldenhauer.

2 Q. Well, I'm reading from the transcript where you  
3 said, quote, "So as I mentioned, had numerous meetings  
4 with Bismarck area intervenors," end quote. And you  
5 were making that comment in relation to after August 4,  
6 2023. Is that testimony inaccurate?

7 A. No. I believe if you look in the beginning of  
8 that testimony where I was very specific to I met with  
9 two, I contacted all three.

10 Q. Yeah, I don't see that in the transcript and  
11 I've reviewed it. But when did you meet with John  
12 Warford after August 4, 2023?

13 A. I don't recall specifically or have the specific  
14 date in front of me. I believe it was around  
15 September 7th, I want to say it was.

16 Q. And where did you meet?

17 A. We met in our office in Bismarck.

18 Q. And then in relation to Chad Wachter, when did  
19 you meet with him?

20 A. I met with him -- I don't have the exact dates  
21 again, but I met with him in August. I want to say it  
22 was around the -- between the 12th and the 16th  
23 sometime. It was the first -- the first time I met with  
24 him. I also met with him in -- I don't recall the exact  
25 dates, but I met with him two other times for sure.



1 Q. And where were these meetings at?

2 A. Once was at -- once was at the Petroleum Council  
3 office in Bismarck and another time was at the  
4 University of Mary.

5 Q. And you mentioned there was a third time. Where  
6 was that at?

7 A. I mentioned I met with him three times. The  
8 first time, we met at Kroll's Diner downtown.

9 Q. And the meeting at the Petroleum Council when  
10 you met with Mr. Wachter, what was the purpose of that  
11 meeting?

12 A. So, you know, as I indicated in my testimony, we  
13 -- in my written and -- and verbal testimony this past  
14 time, I met with -- the very first of these meetings was  
15 to understand their concerns and, you know, include them  
16 in -- you know, as we moved forward and developed the  
17 project, developed the route, to, as best we could,  
18 address the concerns of various stakeholders, which is,  
19 you know, why I reached out to the intervenors  
20 specifically, to make sure I fully understood what their  
21 concerns were and could, you know, do my best to address  
22 them as we rerouted the project.

23 Q. Did you indicate to Mr. Wachter when you met  
24 with him on any of these three occasions that under the  
25 proposed reroute by Summit there was any change in the

1 location of the Summit pipeline from the original route  
2 on the east side of Bismarck near Silver Ranch?

3 A. No. What I indicated to him was that there was  
4 no change to the route directly to the east. We didn't  
5 change the crossing of, you know, I-94 and, roughly, the  
6 first four, five miles going north thereabouts as is  
7 shown on -- on the exhibit that's in the map book here.

8 Q. Okay. And if you would look at Exhibit 100,  
9 Burleigh County 100 --

10 A. That's in this -- this book?

11 Q. Should be the first one.

12 Burleigh County 100 is the first page of the  
13 Petition for Reconsideration Notice of Route Adjustment  
14 and Request for Limited Rehearing from Summit. And then  
15 the second page is page 8 of that Petition For  
16 Reconsideration, which has a map on the top called  
17 Figure 1 in Summit's Petition For Reconsideration.

18 A. Yeah. I see the figure.

19 Q. Okay.

20 MR. BAKKE: We'll offer Burleigh County 100.

21 ALJ HOGAN: Any objection, Mr. Gludt?

22 MR. GLUDT: No objection.

23 ALJ HOGAN: Mr. Pelham.

24 MR. PELHAM: No.

25 ALJ HOGAN: All right. Burleigh County 100 is

1 received.

2 Q. (BY MR. BAKKE) And then Figure 1 on page 8 of  
3 BC-100, that shows the reroute being proposed by Summit  
4 in Burleigh County; correct?

5 A. Yeah. I would say this looks to be conceptual  
6 in nature. This -- this looks like what was filed in --  
7 as part of the reconsideration; is that correct?

8 Q. Right. By Summit.

9 A. Yeah, that's correct.

10 Q. Okay.

11 A. But that's not the route today exactly. I mean,  
12 there was -- this was the preliminary route. There's  
13 been lots of changes to the exact route location and  
14 through the engagement with landowners and determining  
15 of the route that's actually filed in the -- in the  
16 docket today.

17 Q. But no changes on the original route to the east  
18 of Bismarck near Silver Ranch; correct?

19 A. Yeah, that's correct.

20 Q. Okay. That's remained the same?

21 A. That's correct.

22 Q. Okay. And if we look at the blue, that's the  
23 original route, and then the reroute is the pinkish or  
24 reddish color on Figure 1; correct?

25 A. Yeah. That's the approximate reroute. Again,

1 as I mentioned, there was numerous changes between the  
2 filing of this and the filing of the updated route in, I  
3 believe it was the 1st -- around about the 1st of  
4 November.

5 Q. We'll talk a little bit more about this in a few  
6 minutes, but, first of all, at your prior testimony, you  
7 talked about landowners who had been, quote, "pressured  
8 by others," unquote. And when you say "pressured by  
9 others," who are you talking about?

10 A. I'm talking about they were pressured by other  
11 people. You know, as we filed in the docket, they'd  
12 all, you know, received a letter from the North Dakota  
13 Easement Team, had received follow-ups on that letter  
14 and -- yeah, so that's what I'm talking about.

15 Q. Well, have you talked or have you been present  
16 when any -- you've overheard some landowners say, "Gee,  
17 I got pressured by someone not to enter into an easement  
18 with Summit"?

19 A. Yeah, I've had landowners tell me that.

20 Q. Pardon?

21 A. Yes, I've had landowners say "I've been  
22 pressured not to talk to you."

23 Q. Okay. No. That's -- that's not my question.  
24 My question was were you personally present when the  
25 pressuring occurred?

1           A.    I was not.

2           Q.    Okay.  So anything you would know on that topic  
3 is hearsay from somebody else because you weren't there?

4           A.    It's just what the landowners had told me.

5           Q.    And so is there anybody who's going to come and  
6 testify for Summit that they were pressured by others  
7 not to enter into easements with Summit, to your  
8 knowledge?

9           A.    Not that I'm aware of.

10          Q.    I want to talk about the alternative southern  
11 route around Bismarck.  And that's something you  
12 provided some testimony about, but so did Mr. Powell.  
13 What knowledge do you have about the possible southern  
14 alternative route around Bismarck?

15          A.    Yeah, just -- my -- my knowledge is that the  
16 southern route analysis was completed and it was filed  
17 into the docket.  I was not involved in the analysis so  
18 I can't speak to the detail or the specifics of the  
19 southern route analysis.

20          Q.    Okay.  So you didn't make any personal contacts  
21 yourself in regards to the viability of a southern route  
22 around Bismarck for the Summit pipeline?

23          A.    I did not.

24          Q.    Would that have been Mr. Powell?

25          A.    Yes, that would have been Mr. Powell or it was

1 under his direction.

2 Q. But you did talk about -- in your prior  
3 testimony, about the proximity to Bismarck of the  
4 alternative southern route that shows on another map  
5 Summit provided. Were you involved in communications in  
6 regards to the proximity to Bismarck on -- for any  
7 southern route?

8 A. I don't recall testifying as to the proximity of  
9 the southern route analysis previously so could you  
10 point me to where that's at?

11 Q. Well, it's on page -- page 80. And what you  
12 said is that Summit considered the proximity to Bismarck  
13 for the southern alternative route. But I'm just asking  
14 what do you remember about that and did you have any  
15 involvement or are you just repeating something that  
16 Mr. Powell or somebody else at Summit told you?

17 A. Yes, I was -- like I said, I was not involved in  
18 the southern route analysis.

19 Q. Does Summit, in relation to the reroute around  
20 Bismarck, have a responsibility to be transparent with  
21 the PSC in regards to that reroute location?

22 A. Well, absolutely. We always want to be  
23 transparent.

24 Q. And do you agree Summit has a responsibility to  
25 be transparent to the parties to this matter in regards

1 to the proposed reroute location?

2 A. Like I said, I think it's always good business  
3 practice, if you will, to be transparent. I'm not sure  
4 who you're referring to as the parties but certainly  
5 want to be transparent, and I believe we have been.

6 Q. Well, should Summit be transparent on  
7 information regarding the reroute to my client, Burleigh  
8 County?

9 A. Well, yes.

10 Q. Okay. And to the public in Burleigh County as  
11 well?

12 A. Yes.

13 Q. Okay. And to landowners in Burleigh County as  
14 well?

15 A. Yes.

16 Q. And do they have a responsibility to be honest  
17 and forthcoming regarding information on the proposed  
18 reroute around Bismarck?

19 A. Yes.

20 Q. Okay. Take a look at the map we've been talking  
21 about on page 8 of BC-100.

22 A. Sure.

23 Q. Who prepared --

24 A. On page 8?

25 Q. Page 8, Figure 1. Second page of BC-100.

1 A. Okay.

2 Q. Okay. Do you have that in front of you?

3 A. I do.

4 Q. Okay. Who prepared that?

5 A. I'm not sure.

6 Q. Someone prepared it at Summit or on Summit's  
7 behalf?

8 A. Yeah. Somebody at Summit prepared this.

9 Q. And is it your understanding that the purpose of  
10 this reroute figure and diagram is to show how the  
11 reroute location has changed from the original route  
12 requested by Summit?

13 A. Yeah. The purpose of this figure is to, I  
14 guess, provide an indication of the reroute or the  
15 change in the route that we would propose to pursue when  
16 granted, you know, reconsideration. This was prior to  
17 the granting of reconsideration and this rehearing.

18 Q. Sure. And formed the basis for the request for  
19 the reroute location after the original application of  
20 Summit was denied?

21 A. Yeah. It was part of -- you know, part of the  
22 basis for reconsideration. That's correct.

23 Q. And Summit understood and believed that the PSC  
24 and the parties to this matter and the public would rely  
25 on this information in the reroute as being accurate;



1 correct?

2 A. "Accurate" in terms of "exactly"? I don't think  
3 that's correct. I wouldn't agree with that. This was  
4 showing a -- it wouldn't be possible for us do a  
5 complete reroute in two weeks and have done all of the  
6 things that we -- steps we've since gone through to  
7 engage with landowners, survey properties, define the  
8 route, all those things, considerations, that go into  
9 routing a pipeline. Couldn't possibly be done in just  
10 two weeks around any significant reroute such as this.

11 And so this was informing, hey, here's what  
12 we're proposing to do, is to move this line out to the  
13 north an additional, you know, five to six miles and --  
14 or four to six miles, whatever the dimensions are here  
15 exactly, but here's an approximate reroute to move the  
16 line further away from Bismarck to address the concerns  
17 that were identified in the order.

18 Q. But Summit wasn't trying to be inaccurate in the  
19 location of the reroute, was it?

20 A. No. It was a best estimate of here's what we  
21 think is maybe a suitable location.

22 Q. Would you agree with me that this map which  
23 would then be available to the public is not transparent  
24 at all?

25 A. I wouldn't agree with that.

1           Q.    Okay.  Well, as an example, does it show the  
2   location of Interstate I-94?

3           A.    It does not.

4           Q.    Does it show Highway 83?

5           A.    It does not.

6           Q.    Does it show any section lines on here so  
7   landowners could try to determine whether their land is  
8   or is not affected?

9           A.    It doesn't include those things.

10          Q.    Does it have any landmarks?

11          A.    It has the city -- city limits and ETA.

12          Q.    Have any roads?

13          A.    Doesn't have any roads.

14               MR. GLUDT:  Your Honor, I'm going to object.  
15   The witness has testified this was a preliminary route.  
16   We have since filed a map book that provides great  
17   detail on the route.  I think we can move past this line  
18   of questioning.  It's been asked and answered.

19               MR. BAKKE:  Well, I'll get to the map books in a  
20   few minutes.  That's not transparent either.  But this  
21   is what the public would have seen initially in regards  
22   to the reroute so that's why I'm asking these questions.

23               ALJ HOGAN:  Yep.  And I think the point's been  
24   made that this is a pretty generic map.

25               MR. BAKKE:  Right.

1           Q.   (BY MR. BAKKE)   And there's no structures shown  
2   on this; is that correct?

3           A.   Like I said, you can see the map.  It's -- it  
4   just has the city limits and the ETA and the previous  
5   route and a potential new route.

6           Q.   Okay.  And would you agree that the only way  
7   landowners in Burleigh County would know whether their  
8   land was affected based on seeing this map is if Summit  
9   contacted them and indicated "We're interested in an  
10   easement across your property"?

11          A.   Yeah, I would say that's reasonably accurate if  
12   -- if -- I mean, other than, you know, kind of the  
13   approximate route north of -- of Bismarck, and depending  
14   on how much land they owned, they may or may not be able  
15   to determine, you know, if the route was crossing their  
16   property.

17          Q.   Okay.  So let's talk about the map book that was  
18   referenced by Summit's counsel just a moment ago.  And  
19   for Burleigh County -- and understand there's other  
20   counties in there, but for -- for Burleigh County, is  
21   that pages 33 through 46, which is part of Summit's  
22   Exhibit R-1?

23          A.   That's 33 in this book?

24          Q.   Starts at -- starts at 33 for Burleigh County  
25   and ends at 46.  The other pages would relate -- of the

1 -- what your counsel is calling the map book, the other  
2 pages would be for other counties. I just am interested  
3 in Burleigh County.

4 A. Looks like Burleigh County goes up to page 57 in  
5 the map book.

6 Q. 57? Okay. My apologies.

7 And if we look at page 33 of the map book, it  
8 doesn't identify who the landowners are for any of the  
9 land identified; correct?

10 A. Looks like it identifies, you know, section,  
11 township, range, but no landowners, no land ownership on  
12 the map, if that's your question.

13 Q. Which would be something that Summit could have  
14 secured. That's a matter of public records, who the  
15 landowners are, isn't it?

16 A. Yeah, it's -- it's public record.

17 Q. So if someone was looking at this or perhaps  
18 they knew they had a neighbor who lived out of state or  
19 lived in Fargo or someplace else and didn't know their  
20 specific section or range number, there would be no way  
21 for that person to identify whether their land was  
22 affected by the map book documents where Summit's  
23 identifying locations for the reroute; correct?

24 A. Well, I -- I would say no, not correct. Most  
25 landowners --

1 Q. Are the landowner names on here somewhere? Did  
2 I miss --

3 A. No. I would say most landowners would know what  
4 property they own, section, township, range, etcetera.  
5 If I owned property, I would know where it's at.

6 Q. Well, you may or may not.

7 A. Without somebody putting it on a map is my  
8 point.

9 Q. Well, you may or may not; correct? Can we agree  
10 to that?

11 A. Well, I would say it would be unusual for a  
12 landowner not to know that they own section 1, 2, or 3,  
13 or whatever, what properties they own.

14 Q. My --

15 A. I guess it's possible.

16 Q. Yeah. Might depend on if they lived there;  
17 correct?

18 A. Depend on if they lived on the property?

19 Q. On the property.

20 A. I guess it could.

21 Q. Okay. Might depend if they lived nearby;  
22 correct?

23 A. I don't really understand the question in terms  
24 of --

25 Q. Well, my point here is you're telling us Summit

1 has got a responsibility to be transparent?

2 A. Uh-huh.

3 Q. And we're seeing information that doesn't even  
4 identify the names of the landowners whose property is  
5 affected; correct?

6 A. It does not identify the names of the landowners  
7 or who owns these parcels.

8 Q. Okay.

9 A. But as a landowner, I would tell you that I know  
10 what section, township, range I own property at.

11 Q. Well, I think that's commendable that you do,  
12 but there are many landowners who don't live near their  
13 land; correct?

14 A. Yeah, there may be.

15 Q. Okay. There's landowners who live out of state?

16 A. Sure, yeah.

17 Q. Much of this land has turned over so that now  
18 another generation owns this land; correct?

19 A. I would say certainly other generations own  
20 land, but I'll tell you, working on this reroute, most  
21 of the people that -- whose property we're on lived  
22 here, not all of them but most of them.

23 Q. Can you explain to me why Summit, when it was  
24 publicly available information, didn't just put the  
25 landowners' names on the property so people could more

1 readily recognize whether their land was affected by the  
2 Summit pipeline?

3 A. No, I can't. It wasn't intentional.

4 Q. Did Summit do anything to alert adjacent  
5 landowners to the reroute location that Summit was  
6 proposing that the reroute would be located close to  
7 their land?

8 A. We did not take steps to notify adjacent  
9 landowners of the planned reroute on adjacent  
10 properties.

11 Q. Okay. And you would agree with me, based on  
12 Figure 1 on page 8 of BC-100, those nearby landowners  
13 wouldn't be able to figure it out based on that map with  
14 -- with no landmarks around the reroute; correct?

15 A. Yeah, I would say it's likely that they, yeah,  
16 wouldn't be able to pick out the exact parcel that the  
17 line was crossing or may not be able to.

18 Q. At your prior testimony, you talked about a  
19 preliminary study of anticipated power with Minnkota.  
20 Has that been provided by Summit?

21 A. Say this again. I'm not sure what you're  
22 referring to.

23 Q. Well, I'm looking at page 60. And you  
24 indicated, as of April 22nd, Summit had completed a  
25 preliminary study of an anticipated power agreement with

1 Minnkota and you and Summit were asked to submit a copy,  
2 and I believe it was Mr. Bender said there would be no  
3 problem in doing so.

4 My question is was that done? Was it provided  
5 to the PSC and to the parties in this matter?

6 A. Yeah, so what I was indicating was not with  
7 Minnkota Power. It was with Roughrider Electric who is  
8 the electric cooperative that would serve the power to  
9 the sequestration area. In Oliver and Mercer County,  
10 that's their service territory.

11 Q. So there was no anticipated power agreement with  
12 Minnkota?

13 A. No, not with Minnkota.

14 Q. And if I'm recalling correctly, Roughrider  
15 Electric is in Stark County?

16 A. No. It's in -- well, it's in Oliver and Mercer  
17 County. I think it combined with -- a number of  
18 different -- of the co-ops combined and formed  
19 Roughrider Electric so I don't know exactly their  
20 footprint, but I know that they are the cooperative that  
21 serves Oliver and Mercer County.

22 Q. Okay. Is that just going to be electric power  
23 for the sequestration area only in Oliver County?

24 A. That's correct.

25 Q. Okay. So getting back to any power agreement,



1 is there any power agreement with Summit in Burleigh  
2 County to provide electricity to the Summit pipeline  
3 here in Burleigh County?

4 A. So I'm not aware of a specific, you know, power  
5 purchase agreement. You know, Jimmy may be able to  
6 testify to that.

7 What I can tell you is that, you know, we've  
8 reached out to all of the cooperatives. They've, you  
9 know, done their load studies. And, you know, we filed  
10 the -- the response in the docket of that information  
11 that, you know, basically indicated that the -- we'd  
12 engaged with the cooperatives, we -- they'd affirm that  
13 they could serve the load, they'd done the system  
14 analysis to determine what system improvements are  
15 required. I believe they're itemized in that filing. I  
16 don't have it in front of me. And, you know, itemizes  
17 out, you know, these are the system improvements and the  
18 cost of those improvements and the amount of load that  
19 they would be serving, etcetera.

20 Q. Well, except for I thought you told me earlier  
21 today in your testimony that you can't tell me the  
22 details of where the power is going to come from for the  
23 Summit pipeline in Burleigh County, what happens if it  
24 gets interrupted, what happens if the pipeline were to  
25 shut down due to lack of power. You can't address any

1 of those issues; correct?

2 A. Yeah, that's correct. I could address them  
3 generically, but specifically, you know, Jimmy's going  
4 to be in a better position to answer that question  
5 because that's under his, you know, area of  
6 responsibility and his team has been working on those  
7 things.

8 Q. Mr. Powell?

9 A. Mr. Powell.

10 Q. Okay.

11 A. What I can tell you is, you know, I know what's  
12 been filed in the docket, I saw it, you know, reviewed  
13 it --

14 Q. Sure.

15 A. -- it was filed, those kinds of things, which,  
16 again, the specific loads and the specific cooperatives  
17 are identified, you know, in that table and in that  
18 filing.

19 Q. But that's something different than what I'm  
20 asking about. I'm asking about what happens if there  
21 isn't power, what happens to the pipeline if it goes  
22 without power, what's required to start it back up, what  
23 happens to the volume, what happens to the pressure in  
24 the pipeline. You can't answer any of those questions;  
25 correct? That's not in the filings.

1           A.    Yeah, those would be better questions for Jimmy.

2           Q.    Okay.   Okay.   So, briefly, let's turn back to  
3   that November 27, 2023, meeting with the emergency  
4   planning people in Burleigh County.   And then in terms  
5   of this two-dimensional presentation, the PowerPoint, in  
6   relation to the dispersion modeling, was that  
7   two-dimensional -- to the extent you can do that in a  
8   two-dimensional fashion, was that specific to Burleigh  
9   County or was that just generic information about the  
10   Summit pipeline in general?

11           MR. GLUDT:   Objection, Your Honor.   The  
12   PowerPoint presentation that Mr. Bakke is referencing  
13   has been filed under the protective order with the  
14   Commission for their review.   I think he's getting into  
15   the details of what this PowerPoint does or does not  
16   show, which is subject to our protective order.

17           ALJ HOGAN:   Can you repeat your question?

18           MR. BAKKE:   Sure.   What I'm asking about is the  
19   two-dimensional presentation, which, incidentally, was  
20   not a dispersion model or plume model.   He's already  
21   said it wasn't a video, it wasn't a simulation, it  
22   wasn't real time.   It was just --

23           ALJ HOGAN:   I think he's already answered that  
24   question.

25           MR. BAKKE:   He said it was just a PowerPoint

1 presentation. And what I'm asking about, whether it  
2 accounted for -- whether it related specifically to  
3 Burleigh County or was it just two-dimensional  
4 information generic about -- could be a location  
5 anywhere on the pipeline.

6 ALJ HOGAN: I'll allow him to answer that  
7 question.

8 A. Yes, I would say that it was both. There was  
9 portions that were specific to Burleigh County and there  
10 were portions that were more general or generic in  
11 nature.

12 Q. (BY MR. BAKKE) Okay. And when you say  
13 "specific to Burleigh County," what components were  
14 specific to Burleigh County? And let me -- and just a  
15 few to speed this up. Was it specific as to certain  
16 topography in Burleigh County?

17 A. Yes. I believe topography was part of it, of  
18 the specific nature.

19 Q. When you say "topography was part of it," what  
20 do you mean by that?

21 A. What I mean is there's lots of different  
22 variables that go into developing dispersion modeling,  
23 and one of them is topography. You know, so you have  
24 the actual X, Y, Z location, which the Z is the  
25 topography element of it. And so there were parts of

1       that that were specific to Burleigh County.

2           Q.    Okay.

3           ALJ HOGAN:   Mr. Boeshans, can you pull your mic  
4   closer to you?

5           THE WITNESS:   Sure.

6           ALJ HOGAN:   Thank you.

7           Q.    (BY MR. BAKKE)    So it wasn't just a  
8   two-dimensional model that presumed the -- it was flat  
9   where the dispersion modeling took place, the ground was  
10   flat?

11          A.    So what I would say is the -- you asked me  
12   earlier, was this a two-dimensional presentation. Well,  
13   it was two-dimensional in the fact that it was on a  
14   screen, right, and we showed slides. But in terms of,  
15   you know, the output specifically that we were looking  
16   at, you know, they contemplated lots of different input  
17   variables. And so that's the best way for me to  
18   describe it to you.

19          Q.    Okay. But --

20          A.    To make it, a flat piece of paper,  
21   three-dimensional was not easy so it's on a screen.  
22   That's what I was trying to respond to you with.

23          Q.    Right. But my point is, if it's not  
24   three-dimensional, it can't account for changes in  
25   elevations or topography; correct?

1           A.    Yeah, I think that's correct.

2           Q.    Okay.  And then did it account for any  
3 particular wind speed and wind direction?

4           A.    Yes.  There -- we were looking at a scenario  
5 with a set of assumptions, one of -- included in those  
6 assumptions would be wind speed.

7           Q.    Okay.  And did it assume a certain wind  
8 direction?

9           A.    It did not.

10          Q.    Okay.  Versus in Burleigh County or Bismarck,  
11 north of Bismarck, there would be a certain typical  
12 prevailing wind direction; correct?

13          A.    Yeah, there's -- I'm guessing there's a  
14 prevailing wind direction.  It's probably the same as it  
15 is at my house.  It's northwest.

16          Q.    Okay.  And then the same if -- if it was  
17 determining wind direction from east of Bismarck, that  
18 would -- there would be a prevailing wind direction for  
19 that as well; correct?

20          A.    Yeah.  Wind direction, wind speed are all inputs  
21 into -- into a model.

22          Q.    Okay.  But the model did not account for wind  
23 direction, just an assumed wind speed; correct?

24          A.    Yeah, that's -- that's correct.  As I recall,  
25 the model contemplated all wind directions, right.  It

1 was showing or predicting an output in any direction of  
2 wind at the same speed, right. So regardless of what  
3 the wind direction would be, it would influence the --  
4 you know, the dispersion, but the -- the outputs that we  
5 were looking at were referencing, well, if -- if -- the  
6 wind could be any direction. So it was like looking at  
7 a 360 around a point and said, well, if the wind was  
8 from the south it would be up, if it was from the north  
9 it would be down, those kinds of things.

10 Q. Do you know what a real-time video or real-time  
11 presentation is?

12 A. No, I don't.

13 Q. Okay. So let's say, hypothetically, you say,  
14 okay, this is going to show you simulated conditions  
15 where the wind speed is one mile an hour and then we're  
16 going to gradually progress it on the video or the  
17 real-time presentation up to 45 miles per hour.

18 A. Sure.

19 Q. This wasn't that type of presentation?

20 A. It was not.

21 Q. Okay. It was certain static conditions,  
22 correct, an assumed wind speed at X miles an hour?

23 A. That's correct.

24 Q. Okay. It didn't account for if the wind speed  
25 or direction changed?

1           A. It accounted for direction change, but not for  
2 speed change. It was assuming an input of a certain  
3 speed.

4           Q. Did it account for variable humidity?

5           A. I don't recall what the humidity was, but I  
6 don't believe it was variable.

7           Q. Did it consider or account for the  
8 Pasquill-Gifford atmospheric stability class rating?

9           A. So now you're getting far enough into the  
10 details of the dispersion modeling and the presentation  
11 that I can't answer that specifically. You'd have to  
12 have one of the experts talk to that.

13          Q. Did it account for the pressure inside the CO2  
14 pipeline?

15          A. I believe so, yes.

16          Q. What was the assumed pressure?

17          A. I don't recall specifically. I believe it was  
18 maximum operating pressure.

19          Q. Which would be what?

20          A. 2,180 or 2,183.

21          Q. What volume of CO2 did it account for as being  
22 in the pipeline?

23          A. I don't recall.

24          Q. Was it a single volume or did it have the  
25 ability to fluctuate the volume so that under this



1 condition we're assuming the pipeline's a quarter full,  
2 under this condition we're assuming 50 percent full,  
3 under this condition 75 percent full, etcetera?

4 A. So I don't think that matters, but again that --  
5 because you're simulating what is the -- if it's  
6 operating at maximum pressure, it's, you know, at  
7 maximum pressure. And so the line is full and pressured  
8 to that amount, to that -- to that -- I guess to that  
9 pressure. So I don't know that it necessarily would  
10 have an impact but -- again, on the dispersion output,  
11 because the amount of volume that's in the line and the  
12 pressure that's on the line, I believe, would give you  
13 the same result. But, again, you'd have to have the  
14 people that actually drove the model to answer that  
15 question with more detail than I just did.

16 Q. And do you know, did it account for how long the  
17 leak would last?

18 MR. GLUDT: Your Honor, I'm going to restate my  
19 objection. Now we're getting progressively further and  
20 further down into the weeds of what this dispersion  
21 modeling showed and what -- essentially, he's just  
22 picking out details about the PowerPoint presentation,  
23 which, again, is filed subject to our protective order  
24 and he's just eliciting information from the witness,  
25 trying to gain information about this PowerPoint.

1           ALJ HOGAN:   Would you like to respond,  
2   Mr. Bakke?

3           MR. BAKKE:   Yeah.   I think we've outlined in our  
4   -- the reasons previously, but there's nothing under the  
5   National Security Act that applies here at all.   In fact  
6   they, in their filing, that's only a potential and that  
7   doesn't apply.   And I understand that wasn't the basis  
8   for the PSC's prior order on this issue.   It was the  
9   open records law.   But this pipeline hasn't even been  
10   built and we're talking about emergency preparedness,  
11   emergency management, you know, the citizens being able  
12   to know how they should prepare, what the concerns are.  
13   None of that has anything to do with protected  
14   information on the open records law.

15           I mean, you know, they're relying on this.   It's  
16   a sword and a shield.   Now we're seeing the shield part  
17   of it.   They're saying, "Well, we've done the dispersion  
18   modeling and everything looks fine," but yet they're  
19   using it as a shield to not allow us to question them  
20   about some of the parameters.

21           You know, so I'm just asking how long did the  
22   leak last.   And that's not, you know, anything that's  
23   protected, how long a leak might last and what  
24   conditions they considered.   That's of no use to a  
25   terrorist or anybody else in relation to this pipeline,

1     what they did in a two-dimensional study of what they're  
2     calling a dispersion modeling, which we don't believe  
3     was a dispersion model at all. The dispersion model is  
4     a three-dimensional real-time event that you're able to  
5     adjust the parameters on that particular real-time  
6     video. And that's not what this was.

7             ALJ HOGAN: Mr. Pelham, does the Commission have  
8     a position on this?

9             MR. PELHAM: Yeah. Be that all as it may, there  
10    is an order that deems it protected. And there was a  
11    reconsideration motion filed yesterday by Burleigh  
12    County. Burleigh County's been an intervenor since  
13    August of 2023. The protective order has been in place  
14    since August of 2023. The protective order is the  
15    protective order.

16            I would also note that while this Commission is  
17    -- and considered safety a very important aspect of the  
18    application, this Commission's jurisdiction related to  
19    safety is limited by federal law and PHMSA and this  
20    Commission has limited ability to make specific  
21    decisions and findings related to safety. The very fact  
22    that discussions between the company and Burleigh County  
23    and its emergency responders is an indication, at least  
24    in my opinion, that safety is being addressed.

25            As to the specifics of federal law that this

1 Commission does not have the ability to supersede, there  
2 is a limit to this line of questioning. And I have not  
3 interjected today as to this issue. I had previously  
4 last year when we had hearings, but there is a limit to  
5 the jurisdiction that the Commission has as to the  
6 safety element.

7 So I do think that we are starting to get into  
8 these areas in which the Commission simply does not have  
9 the intrinsic and detailed abilities to weigh in as to  
10 -- as to the safety issues. Because if it does, then  
11 the Commission's jurisdiction is effectively threatened  
12 by a review in court.

13 Thank you.

14 ALJ HOGAN: I went through the Commission's  
15 order too, and I know that at the April 22nd hearing  
16 there was some testimony regarding coordination with  
17 local emergency management teams and departments, but I  
18 don't believe that was one issue that this matter was  
19 re-opened for. And I think that we have generally  
20 covered those conversations so I am going to sustain the  
21 objection and not allow any further questions regarding  
22 any type of modeling or substance as it -- as it goes to  
23 what was discussed at that Burleigh County meeting.

24 MR. BAKKE: And, Your Honor, I'll just note for  
25 the record there's also been some subsequent events

1 since the initial order on August 4, 2023, including on  
2 January 11, 2024, when Summit submitted its plume model  
3 to the State of Minnesota, which I think in some  
4 respects was a plume model. That involved a 4-inch  
5 feeder line into the Summit pipeline or proposed 4-inch  
6 feeder line in Otter Tail County.

7 And then subsequent to that in this case Summit  
8 filed, on May 10, 2024, with the PSC information  
9 identifying the emergency and first responders by county  
10 and other county officials who attended the SCS meetings  
11 from November 7, 2023, through May 16, 2023, and then  
12 they go on to say Summit shared Summit's dispersion  
13 modeling methodology, generic model inputs, pipeline  
14 hazardous materials, PHMSA requirements, relative  
15 toxicity, potential CO2 release scenarios,  
16 shelter-in-place studies, emergency response plans and  
17 guidelines, and discussed specific training and  
18 equipment needs. We also invited emergency managers to  
19 CO2 emergency responders training at Texas A&M  
20 University. That's Docket 530.

21 And that's specifically what I'm exploring, is  
22 something they're relying on for their reapplication is  
23 that specific training, they're relying on potential CO2  
24 release scenarios, they're relying on generic model  
25 outputs, they're relying on Summit's dispersion modeling

1 methodology. And here we are at the point where I'm --  
2 should have ability, we believe, to ask these types of  
3 questions that they're relying on in support of their  
4 application and now I can't even ask questions about it  
5 for my client or for the benefit of the public and  
6 landowners affected by the Summit pipeline.

7 MR. JORDE: Landowners join for the record.  
8 Thank you.

9 ALJ HOGAN: Mr. Pelham, maybe you could address  
10 this, but previous discussions about conversations with  
11 local management, emergency management services, in my  
12 take, have been more general in nature and to address  
13 whether or not those conversations were happening rather  
14 than the full substance of the issues and specifics  
15 being discussed?

16 MR. PELHAM: Thank you, Your Honor.

17 Landowners Intervenor Exhibit 33 is a letter  
18 dated September 15, 2023, from PHMSA to Mr. Lee Blank,  
19 CEO of Summit Carbon Solutions, and on the second page  
20 summarize effectively what the Commission's limitations  
21 are.

22 "Federal safety standards apply to both  
23 interstate and intrastate pipeline facilities. Only  
24 PHMSA can regulate the safety of interstate pipelines,  
25 and federal pipeline safety laws expressly prohibit

1 states from enacting or enforcing pipeline safety  
2 standards with respect to interstate pipelines."

3 The Commission doesn't have any issue with  
4 questions being asked specific as to safety as to the  
5 application of the proposed line, Judge. I think the  
6 issue, and as I understand the objection, is -- is  
7 getting into the specifics as to the modeling and  
8 aspects in which the Commission simply does not have the  
9 jurisdiction to determine whether or not that meets the  
10 federal law. Federal law is what federal law is. And  
11 the State, through the Public Service Commission, is  
12 permitting the potential siting of a pipeline here.

13 So to the extent that we're going outside of --  
14 of the Commission's jurisdiction, that's my concern. I  
15 don't so much have a concern of Burleigh County and the  
16 landowners intervenors' ability to question as to what  
17 is being done for safety to ensure that the Commission  
18 knows that something is being done for safety so that  
19 there is compliance with federal law. I think the  
20 Commission does have a responsibility to do that. But  
21 as to the specific and the intricacies of that, that's  
22 where I question. Thank you.

23 ALJ HOGAN: I concur with that and I -- I can  
24 recall now the last question that was asked before all  
25 this discussion, I do think that crossed the line. And

1 I would also note that the Commission did make that  
2 statement in its August 4th order, saying that safety  
3 compliance with PHMSA construction and operation is  
4 outside of its jurisdiction so...

5 MR. BAKKE: Okay. And just to the note for the  
6 record the topics that I -- I would have addressed with  
7 this witness or other Summit witnesses on this would  
8 include but are not limited to the bullet points on page  
9 5 of our -- Burleigh County's Motion for Reconsideration  
10 of Order on Protect -- Protection of Information, Docket  
11 No. 364 or, in the alternative, for me to question  
12 regarding dispersion model.

13 MR. JORDE: Landowners join.

14 ALJ HOGAN: All right. Well, I've already  
15 addressed the objection.

16 MR. BAKKE: Okay. That's all the questions I  
17 have for this witness.

18 ALJ HOGAN: All right. Mr. Jorde, did you have  
19 any questions for Mr. Boeshans?

20 MR. JORDE: Believe it or not, I do. Let's see.

21 CROSS EXAMINATION

22 BY MR. JORDE:

23 Q. Okay. In your initial testimony on April 22nd,  
24 there was some discussion while you were testifying  
25 about shapefiles, and Mr. Braaten, I believe, was going



1 to speak or something with Mr. Bender. Are you aware,  
2 sir, if the shapefiles for the maps, your proposed route  
3 maps, have been shared with any other parties -- party  
4 in these proceedings other than the PSC itself?

5 A. I'm not aware.

6 Q. You previously testified there were three  
7 landowners who had not give permission for survey  
8 relative to the Bismarck reroute. What are the names of  
9 those three landowners?

10 A. They are Ray Wald, Jay Pahlke, and Brent  
11 Earsley.

12 Q. You mentioned that Summit doesn't have any plans  
13 to condemn, but then I think you conceded that if the  
14 PSC were to grant both your applications and there were  
15 landowner holdouts on land where you wish to place your  
16 hazardous pipeline, you would use the power of eminent  
17 domain against them; correct?

18 MR. GLUDT: Objection. Asked and answered.

19 ALJ HOGAN: Yeah, he already answered that.

20 MR. JORDE: Well, he --

21 Q. (BY MR. JORDE) Mr. Bakke's questions were  
22 premised specific to Burleigh County so I want to be  
23 sure that the record is clear that your -- your use of  
24 eminent domain would not be limited to Burleigh County;  
25 right? It would be anywhere on the line where Summit

1 saw that necessary; correct?

2 A. Yeah, I would say my -- my answer is the same  
3 regardless if it's Burleigh County or any other county.  
4 You know, I can't make a commitment or won't be the one  
5 to make a decision on will we use eminent domain or not  
6 use eminent domain.

7 Q. You stated that if a landowner signs a lease  
8 for, I believe it was the pore space, that that's  
9 exclusive, meaning only -- the landowner could only work  
10 with or allow Summit to occupy their pore space; is that  
11 correct?

12 A. Yeah, that's correct.

13 Q. You talked about --

14 A. We have an exclusive option.

15 Q. I'm sorry?

16 A. I said we have an exclusive option to use the  
17 pore space within our options agreements.

18 Q. Understood. And you have an option agreement  
19 because, if you don't get the permit, then obviously you  
20 don't need the pore space; right?

21 A. Yeah, correct. And when we signed many of these  
22 option agreements, it was, you know, prior to having  
23 completed the site characterization so we were, you  
24 know, not at the point of having a permitted operation  
25 and a need to use pore space.

1           Q.   Now Mr. Bakke asked a little bit about a  
2   Minnkota-Summit relationship. I thought you previously  
3   testified you had an agreement, that you signed a joint  
4   development agreement with Minnkota in April 2022. Is  
5   that true?

6           A.   Yeah, that's correct.

7           Q.   Okay. And has a copy of that agreement been  
8   provided to the parties in this case?

9           A.   It has not.

10          Q.   Okay. Has a copy of that agreement been  
11   provided to the PSC?

12          A.   It has not.

13          Q.   Now back to this meeting, I think you testified  
14   you attended five emergency management-type meetings  
15   where the PowerPoint that we discussed was shared with  
16   those who participated and attended; is that right?

17          A.   Yeah, that's correct.

18          Q.   And the meeting that you were recalling, the  
19   November 2023 meeting in Burleigh County, did you say  
20   Commissioner Bitner was the only Burleigh County  
21   commissioner who attended?

22          A.   I don't recall who -- who else from the  
23   commission was there. I recall Commissioner Bitner  
24   being there. There may have been another, but, again,  
25   I'd have to go back to the sign-in sheet to know.

1 Q. And that was my question. Has the sign-in sheet  
2 been produced to the parties in this case?

3 A. I'm not sure.

4 Q. Do you know if it's been produced or uploaded to  
5 the PSC's docket?

6 A. I do not know that.

7 Q. And without the sign-in sheet, you couldn't  
8 identify then who the emergency managers or first  
9 responders or other personnel who may have been in  
10 attendance; is that correct?

11 A. I could not.

12 Q. And did you mention a Boespflug -- I didn't hear  
13 you -- from the City of Bismarck? Who was that person?

14 A. The fire chief for the City of Bismarck.

15 Q. Okay. Thank you very much.

16 A. I recall meeting him at that meeting.

17 Q. Very good.

18 Now, I don't want to go over everything we've  
19 just kind of been through here, but there was a  
20 PowerPoint; Mr. Bakke got into that a little bit. Do  
21 you, sir, consider all of the information on each and  
22 every one of the PowerPoint slides to be confidential  
23 and under the Public Service Commission protective order  
24 in this case?

25 MR. GLUDT: Objection. Calls for a legal

1 conclusion. And the Commission has determined that the  
2 entirety of the PowerPoint is subject to the protective  
3 order. If we're here to relitigate, Mr. Bakke's got a  
4 Petition for Reconsideration, but this is not the venue  
5 to relitigate the protective order.

6 ALJ HOGAN: Any response?

7 MR. JORDE: Well, yeah. That doesn't, I guess,  
8 change the importance of my question. It's -- it's  
9 Summit's privilege, and I'd like an answer from him if  
10 Summit believes that all of the content of the  
11 PowerPoint slides is confidential.

12 ALJ HOGAN: I agree that he can't offer a legal  
13 conclusion or determination whether it falls under the  
14 protective order, but I will allow him to answer as a  
15 representative of Summit, in Summit's opinion, whether  
16 or not they believe that slideshow falls under the  
17 protected information.

18 A. I would say yes, the slideshow does fall under  
19 protective information, which is, you know, why we asked  
20 it to be protected.

21 Q. (BY MR. JORDE) And you believe then that each  
22 and every person that attended each and every one of the  
23 meetings, not just in Burleigh County but across the  
24 project in North Dakota, that all of those persons are  
25 also protected persons or, in other words, sir, persons

1     that fall under some type of exception so that this data  
2     can remain confidential?

3             A.   That's my understanding.

4             Q.   And in order to test that and see if there was  
5     any person who participated that doesn't, in fact, and  
6     if it was a waiver of any claimed privilege, we would  
7     need the sign-in sheets from each and every meeting; is  
8     that correct?

9             A.   Yeah, I -- I guess I can't testify as to what  
10    you would need.

11            Q.   Okay.

12            A.   I just don't have an answer for you.

13            Q.   Sure. But you required anyone who attended to  
14    sign in. Is that true?

15            A.   My recollection is there was sign-in sheets at  
16    these meetings.

17            Q.   But it wasn't mandatory to sign in?

18            A.   I don't -- I can't recall that everybody did or  
19    didn't sign in, is my point.

20            Q.   All right. Did you maintain -- did you or did  
21    you notice if Mr. Daum or Mr. Powell maintained any  
22    handwritten notes as a part of these meetings?

23            A.   I didn't notice that.

24            Q.   Did you maintain any?

25            A.   I did not.

1           Q. All right. But you didn't share any of this  
2 information directly with affected landowners; correct?

3           A. I would have to go back and look at what we  
4 shared with the landowners to confirm that. There may  
5 have been some overlap between these -- between what we  
6 shared with the landowners and what we shared with the  
7 emergency managers.

8           Q. And, sir, where would you go or what type of --  
9 would you go to a filing cabinet or a computer file?  
10 Where would you go to find that information?

11           MR. GLUDT: I'm going to object, Your Honor.  
12 Mr. Jorde's on a discovery expedition right now. He's  
13 had the opportunity to conduct discovery. I think the  
14 Petition for Reconsideration was granted September 15,  
15 2023, and here we are now on a discovery expedition.

16           MR. JORDE: Well, the surprising fact is we've  
17 asked for numerous discovery that hasn't been provided.  
18 The witness just said he has a place where he can find  
19 this information out. My question simply is where would  
20 that be.

21           ALJ HOGAN: I'll tell you what my concern is.  
22 I'm curious about the relevance. And I'll just note  
23 it's already 2:30 and we still have Mr. Powell to get  
24 through today. So my concern is the relevance of these  
25 type of questions and multiple questions that are on the

1 same issue or asking the same thing. So I guess maybe  
2 if you want to address relevance.

3 MR. JORDE: Certainly. If they showed -- he  
4 said there may have been overlap. If there's overlap  
5 with a landowner, there's a waiver. No landowner is  
6 under this protected -- alleged protected persons under  
7 whatever they're claiming it is. So that would be  
8 waiver of any confidentiality and we would have the  
9 right to see whatever was provided.

10 ALJ HOGAN: And, again, for the purpose of this  
11 hearing, I -- doesn't seem like this is an efficient use  
12 of our time.

13 I guess, Mr. Boeshans, if you know the answer,  
14 you can answer.

15 A. Yeah, as I said, I don't believe there's  
16 overlap, but, again, I don't want to testify to that  
17 without confirming.

18 Q. (BY MR. JORDE) I know. And I can move on. I  
19 just want to know what would you look at to confirm.  
20 That's all I want to know.

21 A. I would look at the presentation that we used  
22 with the landowners and compare it to the presentation  
23 we used with the emergency managers.

24 Q. Okay. And the presentation used with landowners  
25 specifically, is that something that Summit has provided



1 to the PSC?

2 A. It is not.

3 Q. All right. You had stated that you met with  
4 landowners because you wanted to understand their  
5 concerns. Is there any reason you haven't met with, in  
6 the last year, any of my clients relative to their  
7 concerns?

8 A. Yeah. Because to the best of my knowledge,  
9 they're not on the reroute around Bismarck and that was  
10 the portion of the route that I was focused on or  
11 working on.

12 Q. Okay. So if for anyone else, I should direct  
13 that to Mr. Powell, correct, any non-Burleigh County  
14 reroute landowners. Is that your testimony?

15 A. Yeah. For -- for the most part, I've met with  
16 landowners outside of Burleigh County. You know, we've  
17 been working on this project since 2021 and so there's,  
18 you know, many landowners outside of Burleigh County, or  
19 several -- I don't want to be too liberal with my  
20 language there but -- I've met many landowners over the  
21 course of the last close to three years now as I was  
22 across the footprint of the state providing project  
23 overviews and introductions, going all the way back  
24 to 2021.

25 And in the course of that time, you know, I met

1 many landowners. I assisted them in making connections  
2 with the right people within our pipeline right-of-way  
3 team to, you know, get their questions answered and in  
4 some cases facilitated conversations around reroutes,  
5 etcetera. But my engagement with landowners was never  
6 specific to, you know, an attorney or whether they were  
7 represented. It was whoever would come and approach me  
8 and ask for my help, I would help them. And that's what  
9 I did. And some of them, I think, did end up being your  
10 clients. I met, you know, prior to you being their  
11 clients, quite frankly.

12 But there was no reason to segregate one -- a  
13 landowner based on who -- what attorney represented  
14 them. It was just whoever reached out to me. And my  
15 standard was I'll take a meeting with anybody. And, you  
16 know, I found across the footprint of this project these  
17 are good North Dakota people and they like dealing with  
18 North Dakotans, and I'm a North Dakotan and I try to  
19 help them every chance I got.

20 Q. Since the Wahpeton hearing a few days ago, have  
21 you reached out to sit down with any of my clients or  
22 reached out to me to do that?

23 A. I have not.

24 Q. For the person -- for any setback waivers that  
25 you were a part of obtaining or you have knowledge of,

1     those 500-foot waivers, did you share -- did Summit  
2     share dispersion or risk modeling with the person who  
3     provided the waivers?

4             A.    Did we share dispersion or risk modeling with --

5             Q.    Yeah.   In other words --

6             A.    Who's --

7             Q.    Yeah.   You approached someone -- you testified  
8     that you have a -- there's a setback waiver on the  
9     Bismarck reroute.   Do you recall that?

10            A.    Yes.

11            Q.    All right.   And you said you have it.   And I  
12     assume you approached them, and in order to get it,  
13     you're trying to persuade them to give you something.  
14     Did you share with that person dispersion modeling or  
15     risk analysis during your conversations to try to obtain  
16     their waiver?

17            A.    No.   We did not share dispersion modeling.   I'm  
18     sure we talked about, you know, risks.   That was a  
19     common topic of conversation with landowners, is what  
20     are the risks and potential leakage scenarios, and that  
21     type of information was frequently discussed.   But if  
22     you're referring to sharing dispersion model outputs  
23     like we did with emergency managers, no, we did not.

24            Q.    Okay.   So the information on the emergency  
25     manager-type PowerPoint where you got into any details,

1 if you did, specific to North Dakota and dispersion  
2 modeling, that would not have been shared with any of  
3 the landowners to whom you received waivers; correct?

4 A. Not to my knowledge.

5 Q. All right. Then on the -- you mentioned about  
6 -- there was some discussion about the ten-year tax  
7 incentive, that the county still gets the tax revenue,  
8 but you understand the State provides the money to the  
9 county. And would you agree -- to the counties. And  
10 would you agree that's, therefore, a cost to the citizen  
11 taxpayers of North Dakota?

12 A. I would agree that the State of North Dakota is  
13 reimbursing the county with, you know -- with state  
14 revenues, which are in the form of taxes.

15 Q. Now, sir, do you or your family own any lands or  
16 have interest in any land where the CO2 is planned to be  
17 sequestered or stored?

18 MR. GLUDT: Objection. Relevance.

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

20 A. I do not own any land in the sequestration area.  
21 I'm from Mercer County. My wife is from Mercer County.  
22 We're both fourth generation so we have lots of  
23 relatives in that area. And so my wife's family is from  
24 -- from south of Beulah, which is in the area of the  
25 sequestration. And so my wife's family members or my

1 extended family members do have ownership in the  
2 sequestration areas.

3 Q. And, sir, in your written testimony, on page 9  
4 it says that -- well, you were asked a question, what  
5 has Summit done to address the items on the order  
6 denying the permit last August? And you said that "We  
7 reviewed the order and discussed internally how best to  
8 address the deficiencies identified therein."

9 Who -- who was a part of that team that did that  
10 review? Yourself and who else?

11 A. I don't at all recall everybody that was part of  
12 that without going back to -- but what I recall is that  
13 included Jimmy Powell and Erik Schovanec, members of our  
14 environmental permitting team, safety team. It would  
15 just be the project -- I would describe it as the  
16 project leadership team that was reviewing and deciding  
17 next steps.

18 Q. All right. Thank you.

19 MR. JORDE: I don't have anything further.

20 ALJ HOGAN: Mr. Pelham, any questions?

21 MR. PELHAM: No questions.

22 ALJ HOGAN: Commissioner Christmann.

23 COMMISSIONER CHRISTMANN: I do not.

24 ALJ HOGAN: Commissioner Haugen-Hoffart.

25 COMMISSIONER HAUGEN-HOFFART: Yes. This morning

1     you testified "not part of the discussion with the  
2     electrical suppliers"; is that correct?

3             THE WITNESS:   That's correct.

4             COMMISSIONER HAUGEN-HOFFART:   So I go to your  
5     testimony, on page 6, your question is "How does this  
6     project benefit North Dakota's energy industry?" And  
7     you referred to, in your response, "we." Who's "we"?  
8     I'll go to, like, line 16.

9             THE WITNESS:   "We" is the company, Summit  
10    Carbon.

11            COMMISSIONER HAUGEN-HOFFART:   Okay. So you're  
12    not included -- you're not included in the "we"?

13            THE WITNESS:   No. I am included in the "we."

14            COMMISSIONER HAUGEN-HOFFART:   Okay.

15            THE WITNESS:   We also have three sequestration  
16    injection wells, "we" being Summit Carbon.

17            COMMISSIONER HAUGEN-HOFFART:   Okay. So at that  
18    point in time you're not part of any discussion with the  
19    electrical suppliers; correct?

20            THE WITNESS:   No. I was part of the discussion  
21    with electrical suppliers related to the sequestration  
22    facilities.

23            COMMISSIONER HAUGEN-HOFFART:   Okay.

24            THE WITNESS:   So my team members -- not me  
25    specifically, but my team was -- under my leadership,

1 were meeting with Roughrider Electric to determine  
2 electric loads and electric supply and working directly  
3 with Roughrider Electric.

4 COMMISSIONER HAUGEN-HOFFART: Regarding the  
5 sequestration.

6 THE WITNESS: Yeah.

7 COMMISSIONER HAUGEN-HOFFART: Then on page 7,  
8 that table I'm going to refer you to --

9 THE WITNESS: Yes.

10 COMMISSIONER HAUGEN-HOFFART: -- who prepared  
11 that table?

12 THE WITNESS: I believe it was -- I believe it  
13 was Dave. I'm trying to remember Dave's last name but  
14 -- it was Dan Wood and Dave from Jimmy's team that lead  
15 the electrical side of the pipeline. So they deal with  
16 pump sizings and electric loads and all of that.

17 COMMISSIONER HAUGEN-HOFFART: Okay. So it's  
18 fair to say that a lot of -- some of the information in  
19 your testimony is given to you by members or employees  
20 of Summit Carbon Solutions so you can --

21 THE WITNESS: Yeah. This table specifically was  
22 given to me by others.

23 COMMISSIONER HAUGEN-HOFFART: Okay. Just one  
24 more follow-up question. There was a question asked of  
25 you since Wahpeton's meeting, which was just on Friday,

1 we had a weekend and a holiday, you haven't had any  
2 communication with any of the landowners that testified;  
3 correct?

4 THE WITNESS: I have not.

5 COMMISSIONER HAUGEN-HOFFART: Okay. That makes  
6 sense. Everybody deserves a weekend and a holiday.

7 Is Summit willing -- and let me preface this.  
8 In Wahpeton we talked about landowners and measures  
9 taken to address the need of landowners. So my question  
10 is, is Summit willing to take measures to address all  
11 landowners' needs who testified during hearings?

12 THE WITNESS: We're --

13 COMMISSIONER HAUGEN-HOFFART: To -- to have  
14 communication and -- and work with them on --  
15 landowners?

16 THE WITNESS: You know, I would say we're -- or  
17 I can say affirmatively, yes, we're absolutely willing  
18 to meet with landowners and to work with them. You  
19 know, whether or not we can address all of their  
20 concerns is another question. But absolutely we would  
21 attempt to do that and welcome the opportunity to meet  
22 with them to -- to accomplish that.

23 COMMISSIONER HAUGEN-HOFFART: Okay. I have no  
24 further questions. Thank you.

25 THE WITNESS: Yeah.



1 ALJ HOGAN: Mr. Dawson, any questions?

2 SUBSTITUTE DECISIONMAKER DAWSON: No.

3 ALJ HOGAN: Commissioner Christmann.

4 COMMISSIONER CHRISTMANN: Sorry, Judge, but I  
5 got so bogged down in all the safety discussion, I'm  
6 glad Commissioner Haugen-Hoffart asked the question  
7 about the electrical supply because I did have one in  
8 that regard.

9 I was surprised on -- at Wahpeton and again so  
10 much today that -- the level of alarm about that we're  
11 just no longer able to supply electricity for new loads  
12 in North Dakota. I believe from April you mentioned  
13 Roughrider Electric, Capital Electric, and maybe it was  
14 Dakota Valley Electric, the third one where there would  
15 be pump stations. Regardless, two, three. Did any of  
16 those --

17 THE WITNESS: That's correct.

18 COMMISSIONER CHRISTMANN: -- cooperatives  
19 express any concern about their ability to serve the  
20 load?

21 THE WITNESS: No, not to my -- not to my  
22 knowledge. Actually, when it was early in the project,  
23 they were reaching out to me because of my North Dakota  
24 presence, saying, "Hey, can you site the pump stations  
25 in my service territory?" They were competing for it.

1     Because, generally speaking, new load is a good thing  
2     for an electric utility or a cooperative.

3             You know, in our case, as is outlined in what we  
4     submitted here, you know, there's system upgrades that  
5     are required to serve this load, which the company would  
6     pay for, and makes the system more resilient, plus you  
7     get the additional benefit -- you -- I say the  
8     cooperative gets the additional benefit of serving that  
9     additional load so they're going to have a higher volume  
10    of sales over, you know, the same amount of fixed costs.  
11    And so I'm presuming that's why they're reaching out to  
12    me and saying, "Hey, how about putting your -- your pump  
13    stations in our service territory versus across the  
14    border." And so that's been my experience.

15            And, you know, kind of beyond that, as you know,  
16    I led the Lignite Council for many years and was part of  
17    the lignite industry. And our biggest challenge is we  
18    had more generation than we had demand for that  
19    generation and so we were curtailing our power  
20    generation. And our coal plants were running at less  
21    than full capacity because there wasn't enough market or  
22    enough market demand.

23            And so I've been equally surprised by the level  
24    of concern and attention to we don't have enough power  
25    to serve the load when I spent the last or most -- prior

1 to joining Summit, most of the previous decade trying to  
2 figure out how do we stay competitive in a over-supplied  
3 market.

4 COMMISSIONER CHRISTMANN: Okay. No other  
5 questions. Thank you.

6 ALJ HOGAN: Mr. Gludt, any redirect?

7 MR. GLUDT: No, Your Honor.

8 ALJ HOGAN: All right. Well, thank you,  
9 Mr. Boeshans.

10 THE WITNESS: You're welcome.

11 ALJ HOGAN: I think we'll take our afternoon  
12 break now so that we don't have to stop in the middle of  
13 Mr. Powell's testimony. So why don't we take a short  
14 break until 3:00.

15 And then if you want to get Mr. Powell ready to  
16 go, we'll start with him at 3:00.

17 (Recess)

18 ALJ HOGAN: All right. And I see we have  
19 Mr. Powell.

20 Mr. Powell, I'll have you start by stating your  
21 full name for the record.

22 JAMES POWELL: Good afternoon. James Powell.

23 ALJ HOGAN: And, Mr. Powell, I don't know if  
24 you've been part of our hearing up to this point, but  
25 have you heard me go through the penalties for perjury

1 today?

2 JAMES POWELL: I have.

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 And who's going first? Mr. Bakke?

12 MR. JORDE: I will, Your Honor.

13 ALJ HOGAN: Okay. Go ahead.

14 MR. JORDE: All right. Thanks.

15 **JAMES POWELL,**

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

18 CROSS EXAMINATION

19 BY MR. JORDE:

20 Q. I see you're there with Mr. Leonard. Are you in  
21 Des Moines today?

22 A. I am.

23 Q. All right. Is there anyone else present in the  
24 room with you, sir?

25 A. There is. Jon Schmidt is in the room as well.

1           Q.    Okay.  The same -- the same Jon Schmidt that  
2   provided prefiled written testimony in this matter;  
3   correct?

4           A.    Correct.

5           MR. JORDE:  And I don't know, Brant, if you have  
6   access to our exhibits there.

7           Q.    (BY MR. JORDE)    But I was going to ask you,  
8   sir, to pull up exhibit -- Landowner Exhibit 34, if you  
9   can.  It's the organizational chart that you submitted  
10   to us in the Iowa proceedings.  And just let me know  
11   when you have that in front of you, please.

12           And, actually, while Mr. Leonard is searching  
13   for that, I -- my question is fairly simple.  In the  
14   North Dakota proceedings, you submitted a new  
15   organizational chart, and in the North Dakota  
16   proceedings, in discovery, there's a new entity added  
17   under the parent tree from Summit Carbon Solutions and  
18   that's SCS Farm Carbon LLC.  The question, sir, is does  
19   that entity -- what is the role of that entity in North  
20   Dakota, if any?

21           A.    Mr. Jorde, I'd have to see the org chart because  
22   the name does not ring a bell.

23           Q.    Okay.  And I agree.  That's why I had the  
24   question.  So I'll wait for Mr. Leonard to pull up 34  
25   and 35, please.

1           MR. LEONARD: Brian, I'm looking at prefiled  
2           hearing exhibits Part 1 and Part 2. They don't go up to  
3           34 and 35. Is there another place I'd find those?

4           MR. JORDE: Well, I would -- let's see. I guess  
5           I'd ask a question to Roseanne there, if that email went  
6           out, Roseanne, to all the parties. I'm not sure if  
7           Mr. Leonard specifically got the email with the  
8           exhibits.

9           MR. DUBLINSKE: I have that pulled up. I can  
10          forward that to Mr. Leonard right now.

11          MR. JORDE: I'd appreciate that, Bret. And then  
12          maybe if you could forward all of them and that will go  
13          a little faster.

14          Q. (BY MR. JORDE) While we're doing that, sir,  
15          let me just get in a few other questions to save time  
16          here.

17                 When you gave your live testimony on April 22nd,  
18          you had stated that you updated dispersion modeling and  
19          then met with the emergency and first responders. My  
20          question is the -- is it the updated dispersion modeling  
21          you referenced since the late fall of 2021 that was  
22          provided to the PSC or does the PSC have an older  
23          version of your dispersion modeling?

24          A. Our dispersion model is updated on a regular  
25          basis, but what was shared with emergency managers, what

1 I was referencing, is it's evolved based on questions  
2 from emergency managers and first responders. So the  
3 first most recent presentations include toxicity tables,  
4 the API guidance on tactical response for CO2 that was  
5 published since we began these -- these conversations  
6 with the emergency managers, etcetera. So it's as new  
7 information becomes available or we're responding to  
8 inquiries in meetings, we update the slide deck  
9 accordingly.

10 Q. All right. And I appreciate that. And I'm  
11 trying to just get specific. Of the types of  
12 information you just listed off, have those -- all of  
13 those that you've listed off, sir, been provided to the  
14 North Dakota PSC?

15 A. I -- I think what we've covered has been. So  
16 the API document, the CTEH study, and a slide deck. I  
17 may be leaving one out. That's from memory.

18 Q. All right. And then you talk about Texas A&M  
19 University, a new program. Did Summit provide Texas A&M  
20 its dispersion modeling and any type of risk analysis  
21 for the benefits of that Texas A&M program?

22 A. No.

23 Q. All right. Do you have a copy of the program or  
24 lesson plan? I understand it's relatively new.

25 A. I do not. The program was developed -- it was a

1 joint effort between ExxonMobil and Texas A&M, but  
2 Mr. Daum and Mr. Dillon have both attended that training  
3 and have been part of that conversation.

4 Q. And you testified that you routed off landowners  
5 following the August 2023 denial, and the PSC order  
6 specifically named, for instance, Dotzenrod, Bernhardts,  
7 of my clients, but you -- you still are targeting  
8 approximately 14 or 15 of my clients; is that correct?

9 A. Well, I'm not sure of the term "targeting," but  
10 we still may cross a number of your clients, Mr. Jorde,  
11 but I don't remember the number.

12 Q. All right. And in order to reroute exclusively  
13 off the multiple Bernhardt properties and onto other  
14 non-Bernhardt-owned land, did you speak with the  
15 Bernhardts to do that?

16 A. Bruce -- I'm sorry, Mr. Bernhardt, I believe  
17 it's Kevin Bernhardt, the gentleman whose property we  
18 originally routed on? Are you talking about -- are you  
19 talking about --

20 Q. Yeah.

21 A. -- Mr. Bernhardt that we routed off of?

22 Q. Routed off of.

23 A. Because we routed onto -- because when we routed  
24 off of Mr. Bernhardt, we also routed onto other  
25 Bernhardts. I'm not sure if they're related, but they



1       were receptive.

2           Q.    Okay.

3           A.    We did not get permission or talk to Mr.  
4   Bernhardt that we routed off of about routing onto  
5   adjacent property owners.

6           Q.    Okay.   Correct.

7                   And so for my clients who for well over a year  
8   now who have expressed numerous issues, problems,  
9   concerns, and who would like to see a reroute off their  
10   property, you wouldn't need to sit down and talk to them  
11   in order to look at potential reroutes off their  
12   property, would you?

13          A.    Well, as I think Mr. Boeshans testified to, we  
14   welcomed an opportunity to talk with your clients and  
15   others.   Been some discussion between your -- yourself  
16   and Mr. Bender about providing survey access, etcetera,  
17   to see what we could do to accommodate your landowners.

18          Q.    Okay.   And I think the question there was that  
19   you wouldn't need to discuss anything with landowners if  
20   you are routing off of them.   Those discussions would  
21   have to be held with the adjacent or nearby landowners;  
22   correct?

23          A.    That's correct.

24          Q.    And you made the statement that your  
25   right-of-way team feels like they can obtain easements

1 voluntarily. Who is on your right-of-way team?

2 A. Well, the right-of-way team in North Dakota has  
3 obtained agreements with about 400 North Dakota  
4 landowners up to this point to get voluntary easements  
5 executed. And Mr. Boeshans mentioned it earlier, but on  
6 the northern reroute, it's some of his team that's North  
7 Dakota-based. And then the right-of-way team that's  
8 handling the rest of North Dakota are also North  
9 Dakotans. That's led by a lady named Julie DiMeo, who  
10 is a North Dakota native.

11 Q. Okay. And I just -- I don't particularly care  
12 where they're from, but I just wanted to know if -- who  
13 the right-of-way team is in North Dakota. So it's led  
14 by Ms. DiMeo. Is Mr. Rorie, Micah Rorie, still  
15 involved? Is he part of the right-of-way team?

16 A. Well, Mr. Rorie, he leads the overall land group  
17 so that's for the entire project. Ms. DiMeo reports up  
18 to Micah Rorie.

19 Q. All right. You stated that Rod Dillon maintains  
20 a list of requests for equipment from first responders  
21 and other -- other folks or entities. Is that a list  
22 that's been filed with the PSC?

23 A. It has not. In North Dakota, per my  
24 conversations with Mr. Dillon, that there have not been  
25 any requests for equipment. We have told first

1 responders and emergency managers that we will provide  
2 gas detectors, and nobody has requested any equipment or  
3 resources beyond that.

4 Q. And I have it that you testified that there were  
5 requests about documentation. What documentation was  
6 requested?

7 A. I'm not sure what you're referring to.

8 Q. These are in regards to the emergency manager  
9 meetings. You had testified that Mr. Dillon has a list  
10 from some of the emergency response managers, and then  
11 you said there were requests about documentation. And I  
12 just wanted to know if you know what documentation  
13 requests had been made relative to emergency management  
14 personnel?

15 A. The only one that I remember is Ms. Senger --  
16 well, I had that -- her last name correct, the emergency  
17 manager for, I believe, both Burleigh and Emmons, had  
18 requested from Dave Daum a copy of our emergency  
19 response plan and, I believe, the presentation. And  
20 Mr. Daum immediately responded by providing -- I believe  
21 he provided a draft emergency response. I'd have to  
22 verify. But, of course, we told Ms. Senger that the  
23 presentation was confidential.

24 Q. And to clarify, the presentation, sir, is that  
25 PowerPoint presentation we've spent some time on?

1           A.   That's correct.

2           Q.   You were asked about conditional use permits and  
3           said none have applied for. And is that because you  
4           don't have specific locations on where you might need  
5           the conditional use permits for the pump stations or why  
6           haven't you applied for them?

7           A.   Well, of the four pump stations, only Burleigh  
8           and Morton counties require conditional use permits.  
9           And there is a township in --

10          Q.   Logan --

11          A.   -- I believe it's in Richland -- yeah, Logan  
12          Township that requires a conditional use permit. The  
13          township will not -- they will not accept an application  
14          until we have a permit from the PSC. And the other two  
15          counties we have not submitted yet because, yes, until  
16          we get more mature in especially Burleigh County with  
17          the pipeline route, believe it or not, the hydraulics  
18          are so sensitive that the pump station could move a  
19          parcel or two or three, and we want to make sure that  
20          we've got it exactly right before we approach a  
21          landowner about an easement for -- or a lease for the  
22          pump station.

23          Q.   And in terms of the pump stations moving, are  
24          you aware of any area where the pump station could  
25          potentially move from one county to another such that

1     it's already close to a county line?

2             A.    No.

3             Q.    You were asked what percentage of landowners  
4     have you received permission to survey on where you  
5     still need survey access.  You had told Mr. Schock that  
6     you didn't know that answer.  Have you come to learn of  
7     that answer?

8             A.    We're about 94 percent surveyed along the route.  
9     And it's my understanding that there are about 15  
10    landowners that have denied survey access at this point.

11            Q.    You'd stated that you haven't done all the  
12    surveys but, quote, "We know where the cultural risks  
13    are."  Is that a true statement?

14            A.    I think it's a relatively accurate statement.  
15    Most of the cultural risk are on the west side of our  
16    system versus the east side of the system.  But that's  
17    cultural.  There are also paleontological and  
18    architectural.  So I think it's a generally correct  
19    statement.

20            Q.    You were asked some questions relative, I think,  
21    to your statement that SCS has not filed eminent domain  
22    suits on any North Dakota landowner, and your answer was  
23    that there's been a limited -- or then you moved to a  
24    survey question and said there's a limited number of  
25    instances where state law has been invoked.  And does

1     that mean where Summit has sued landowners for survey  
2     access?

3             A.    Correct.

4             Q.    All right.  Now maybe if Mr. Leonard is  
5     available with those exhibits, if I could go back to  
6     Exhibit 34, sir.

7             A.    I have it.

8             Q.    Okay.  Very good.  And I'll just represent  
9     that's what was already in evidence in Iowa of your org  
10    chart at that time in July of 2023.  And then if you  
11    want to toggle over to Exhibit 35, you'll -- you'll  
12    notice on the right-hand side there's a new entity, SCS  
13    Farm Carbon LLC.  And I'd like you to tell me if that  
14    has any function in North Dakota or with your proposed  
15    North Dakota operations.

16            A.    I can't tell you, Mr. Jorde.

17            Q.    All right.

18            A.    I mean, I don't know.  I don't know.  Not that I  
19    can't tell you.  I don't know.

20            Q.    All right.  And you wouldn't know why that  
21    structure was changed from your previous corporate  
22    structure, would you?

23            A.    I would not.

24            Q.    Would you agree that PHMSA does not have a  
25    restriction or does not have a rule that prohibits

1 companies such as Summit Carbon Solutions from sharing  
2 plume modeling that they may have conducted, that that's  
3 a company-based decision; correct?

4 MR. DUBLINSKE: Objection, Your Honor. Calls  
5 for a legal conclusion.

6 ALJ HOGAN: Will you repeat the question?

7 MR. JORDE: Yes. Just first for foundational  
8 purposes, this gentleman has testified many times  
9 related to PHMSA, and in his prefiled testimony he  
10 addresses PHMSA and talks about different items related  
11 to PHMSA. So the specific question is does he agree  
12 that PHMSA does not instruct companies on what they can  
13 and cannot share with the public, and if a company such  
14 as Summit wanted to share CO2 plume modeling, they could  
15 do so.

16 MR. DUBLINSKE: And the objection was calls for  
17 a legal conclusion.

18 ALJ HOGAN: I agree but I'll -- I agree it's  
19 ultimately a legal conclusion, but I'll allow Mr. Powell  
20 to testify what his understanding of that requirement  
21 is.

22 A. In my experience, that is sensitive security  
23 information and it is not shared other than in  
24 confidentiality.

25 Q. (BY MR. JORDE) And I appreciate that response,

1 but is that another way of saying that that's a company  
2 decision and you're not aware of any federal or PHMSA  
3 requirements saying or preventing Summit from sharing  
4 your plume modeling; correct?

5 MR. DUBLINSKE: Same objection.

6 ALJ HOGAN: And, again, I agree that it's a  
7 legal conclusion, but I'll allow Mr. Powell to testify  
8 what his understanding is.

9 A. I -- I don't know whether or not PHMSA would  
10 prevent someone from sharing that information, but I do  
11 know that it's -- it's -- it's defined as sensitive  
12 security information and, in some cases, as someone  
13 mentioned earlier today, it's -- it's not open to FOIA  
14 requests and that it's -- in some cases you have to have  
15 permission from the TSA to share information.

16 Q. (BY MR. JORDE) All right. If I could have  
17 Mr. Leonard pull up Landowner Exhibit 32, please.

18 And if you can just to yourself, sir, just look  
19 at that and read the first two sentences, not out loud,  
20 just to yourself, and tell me when you're done.

21 (Pause)

22 A. Okay.

23 Q. All right. So would you agree with me that it  
24 is a company-based decision relative to sharing plume  
25 modeling?



1 MR. DUBLINSKE: Same objection, Your Honor.  
2 Again, this -- the fact that he's asking the witness to  
3 read from a third-party communication doesn't change the  
4 fact that it's ultimately a legal conclusion and, in  
5 fact, if you read beyond those first two sentences, it's  
6 clear this is a little more complicated. That same  
7 communication notes that this is not subject to FOIA,  
8 which certainly tells you something about the  
9 confidentiality protections of the document. This is a  
10 complicated area that's been a matter of dispute, which  
11 is why we probably shouldn't have non-lawyers opining  
12 about what's ultimately a legal conclusion.

13 ALJ HOGAN: I agree. I'm going to sustain the  
14 objection.

15 MR. JORDE: Okay. Well, I'm going to offer  
16 Exhibit 32.

17 ALJ HOGAN: Any objection to Landowner  
18 Exhibit 32?

19 MR. DUBLINSKE: No, Your Honor.

20 ALJ HOGAN: Mr. Pelham.

21 MR. PELHAM: No objection.

22 ALJ HOGAN: All right. Landowner Exhibit 32 is  
23 received.

24 MR. JORDE: And I'm sorry, I forgot to offer 34  
25 and 35. Those are the organizational charts.

1 ALJ HOGAN: Any objection to 34 or 35,  
2 Mr. Dublinske?

3 MR. DUBLINSKE: I think relevance is  
4 questionable, but no objection.

5 ALJ HOGAN: All right. Mr. Pelham.

6 MR. PELHAM: No objection.

7 ALJ HOGAN: All right. 34 and 35 are received.

8 Q. (BY MR. JORDE) And then, sir, if we could look  
9 at Exhibit 33. That's a letter from PHMSA to Mr. Lee  
10 Blank, dated September 15th, 2023, which would have been  
11 after the North Dakota decision of last year. Are you  
12 familiar with that letter?

13 A. I am not, but I'm reading it.

14 Q. All right. But you're aware that that was a  
15 letter received by the CEO of Summit, Mr. Lee Blank,  
16 from PHMSA? You don't dispute that, do you?

17 A. It's addressed to him. Correct.

18 MR. JORDE: All right. And I can save us a lot  
19 of time, because I don't think it does any good arguing  
20 about the meaning of this letter so I'm just going to  
21 offer this letter into evidence, and if it comes in, I'm  
22 going to move on from it. So I offer 33.

23 ALJ HOGAN: Any objection to 33, Mr. Dublinske?

24 MR. DUBLINSKE: No objection.

25 ALJ HOGAN: Mr. Pelham.

1 MR. PELHAM: No objection.

2 ALJ HOGAN: All right. 33 is received.

3 MR. JORDE: Thank you.

4 Q. (BY MR. JORDE) Now I'd like to ask you a  
5 little bit about sequestration and the CI scores --  
6 you've talked about that in the past -- and projections  
7 of what carbon capture, storage might do and CI  
8 reduction. And I'd like you to take a look at  
9 Exhibit 41, sir. And my questions are simply do you  
10 agree that certain farming practices can have  
11 significant impacts on reducing carbon intensity scores?

12 A. From what I understand, farming practices, like  
13 cover crops, for example, can have an impact on the CI  
14 score, but I believe as the COO of Tharaldson may have  
15 testified to on Friday, that only carbon capture and  
16 sequestration can reduce that CI score below the  
17 threshold required to participate in the sustainable  
18 aviation fuel market.

19 Q. And I appreciate that. And -- and that CEO of  
20 Tharaldson also said that their baseline, I think, was  
21 like 69 or something, a fair amount higher than your  
22 standard baseline dry mill ethanol plant CI score.  
23 Would you agree with that?

24 A. I'm not an expert on where the CI scores, where  
25 their baselines are for the 57 plants that we partnered

1 with, but it's my understanding most of them are in that  
2 65 to 75 range.

3 Q. All right.

4 MR. JORDE: I would offer Exhibit 41.

5 ALJ HOGAN: Any objection to 41?

6 MR. DUBLINSKE: No objection.

7 ALJ HOGAN: Mr. Pelham.

8 MR. PELHAM: No.

9 ALJ HOGAN: All right. 41 is received.

10 Q. (BY MR. JORDE) Now, sir, you're aware  
11 certainly of the Navigator pipeline that is now not  
12 operational and, in fact, Summit has been obtaining in  
13 various states certain Navigator easements, namely in  
14 Iowa; is that correct?

15 A. I'm aware that the Navigator project has  
16 disbanded and we have obtained survey permission --  
17 limited survey permission and easement options.

18 Q. And relative to the Navigator pipeline and plume  
19 analysis that they either decided to make public or were  
20 forced to make public -- I don't recall -- in various  
21 states, are you familiar with the findings of their  
22 plume analysis?

23 A. I -- I saw what they published in South Dakota  
24 and I listened to that hearing and their testimony in  
25 South Dakota, the South Dakota evidentiary hearings.

1           Q. All right. And do you recall that in the Iowa  
2 IUB hearings certain of that information, the public  
3 information, was offered and received in the IUB hearing  
4 relative to their plume and dispersion findings?

5           A. I believe you introduced that, yes.

6           Q. If I could have you take a look at Landowner  
7 Exhibit 42, and if you look on the bottom right of  
8 the first page, you might recognize our Iowa exhibit  
9 sticker. And so, sir, my question to you then is do you  
10 dispute that an 8-inch diameter pipeline, if there was a  
11 rupture, a guillotine rupture, that a cloud of CO2 at  
12 concentration 40,000 parts per million could travel as  
13 far as 1,855 feet?

14           MR. DUBLINSKE: Objection, Your Honor. That is  
15 a backdoor way of getting behind the protective  
16 agreement that covers SCS's dispersion.

17           MR. JORDE: Your Honor, it's not. I'm asking  
18 him about the publicly-available findings related to an  
19 8-inch diameter pipeline. I'm not asking him if that --  
20 if that is what his analysis says.

21           MR. DUBLINSKE: Your Honor, that assumes that  
22 every 8-inch pipeline is subject to all the same  
23 conditions and all the same assumptions. If he wants to  
24 ask whether Mr. Powell has reason to question what  
25 Navigator's data shows about Navigator's then-proposed

1 project, I think that's fine, but the generic statement  
2 is simply a way to get behind the protective agreement  
3 for Summit's information.

4 ALJ HOGAN: Can you rephrase?

5 MR. JORDE: I can try.

6 Q. (BY MR. JORDE) Sir, are you aware that in  
7 South Dakota and Illinois, at various carbon dioxide  
8 hearings, that those agencies have required that the  
9 plume analysis and even the input and outputs have to be  
10 made public to the participants in those proceedings?

11 A. The only proceeding that I'm aware of where it  
12 was made public is in Minnesota, in our application,  
13 where -- where they performed -- Minnesota PUC and their  
14 sub-entity performed an EIS -- or had an EIS prepared,  
15 and there was a subject matter expert that actually  
16 modeled dispersement potential outcomes on that line  
17 segment and compared it to the information that Summit  
18 had submitted.

19 Q. All right. And you're aware that that Minnesota  
20 data is publicly available on the Minnesota Public  
21 Service Commission docket?

22 MR. DUBLINSKE: Objection, Your Honor.  
23 Relevance. Some states have. North Dakota has not.  
24 Iowa has not made it public. This Commission has made  
25 its ruling with regard to the protective order. There's

1 a pending motion that we haven't had a chance to resist  
2 yet. This, again trying to litigate the status of the  
3 protective order based on what states other than North  
4 Dakota did, seems both inappropriate legally and not a  
5 good use of time.

6 MR. JORDE: Well, I'm not litigating anything  
7 and I'm not asking about anything covered by the  
8 protective order. I'm asking him about  
9 publicly-available information that I believe is  
10 relevant to these proceedings.

11 MR. DUBLINSKE: And the objection was relevance.

12 ALJ HOGAN: Can you explain why it's relevant?  
13 I mean, this Commission has already granted the  
14 protective order on that information.

15 MR. JORDE: Sure. So the Commission has granted  
16 the protective order relative to Summit contracted, paid  
17 for, generated analysis. And I'm not talking about that  
18 at all. I'm saying I believe it's relevant to get this  
19 other publicly-available data that's not covered by a  
20 protective order in front of the PSC to consider when  
21 they're vetting Summit's data. Otherwise, the PSC has  
22 no possible way to vet Summit's data as there hasn't  
23 been cross-examination or development of expert  
24 witnesses by the parties around Summit's protected data.

25 MR. BAKKE: And I'll join in their position.

1           And I would also note this is a  
2 publicly-available document. So any protective order in  
3 North Dakota never addressed a publicly-available  
4 document. It wouldn't have any application to a  
5 document that is publicly available as a matter of law.  
6 And these plume study models, both on a 4-inch in  
7 Minnesota for Summit's feeder pipeline and an 8-inch  
8 pipeline are clearly relevant to a determination as to  
9 what effect a smaller plume of CO2 that leaked under  
10 certain scenarios would have on Burleigh County and on  
11 Bismarck because it's simple logic that, if you have a  
12 24-inch pipeline that leaks, it's going to be much more  
13 catastrophic than a 4-inch line or 8-inch line. So I  
14 think it's highly relevant to the issue being addressed  
15 as to the welfare and health and safety of the public  
16 citizens here in Burleigh County and in Bismarck.

17           ALJ HOGAN: Mr. Pelham, Commission's position on  
18 relevance of this topic or this line of questioning?

19           MR. PELHAM: Well, it certainly may be relevant  
20 to the Navigator project. Whether or not it's relevant  
21 to this project as to this proposed line is, I think,  
22 the question.

23           It certainly is not a protected piece of  
24 information. It is apparently public. It apparently  
25 has been made an exhibit in this particular case in



1 Iowa.

2 But as to the relevance, I think the question  
3 that was asked of the witness is whether or not he  
4 agrees with it, as to what it found. So the question  
5 then is, is it relevant for these proceedings? And I'm  
6 not sure that it is, but I don't have -- I don't have a  
7 position on the objection.

8 ALJ HOGAN: Mr. Jorde, can you restate your  
9 question?

10 MR. JORDE: I've forgotten my question.

11 ALJ HOGAN: And I'll tell you what my problem  
12 is. I think Mr. Powell has said he's seen perhaps these  
13 maps in 42, Exhibit 42, and he apparently is aware of  
14 Minnesota, but he's not aware of South Dakota and the  
15 other states. So I don't know that this is a great  
16 witness to get this information in.

17 MR. JORDE: Well -- and, look, I can easily get  
18 this in through other witnesses and I'm, frankly, trying  
19 to save some time here. And I don't have any more  
20 questions about either Exhibit 42 or 46 so I'm just  
21 going to -- I'm going to offer Exhibit 42 and Exhibit 46  
22 and Exhibit 45.

23 UNIDENTIFIED SPEAKER: (Inaudible).

24 ALJ HOGAN: Okay.

25 UNIDENTIFIED SPEAKER: (Inaudible).

1 ALJ HOGAN: Mr. Dublinske, any objection to 42,  
2 45, and 46?

3 MR. DUBLINSKE: I do not.

4 ALJ HOGAN: Mr. Pelham.

5 MR. PELHAM: I'm not sure which one is 45 and 46  
6 so...

7 ALJ HOGAN: You're getting 45 and 46. They're  
8 coming around.

9 MR. PELHAM: Is it just one -- oh, here's --

10 ALJ HOGAN: There's two.

11 MR. PELHAM: Gotcha. Okay.

12 MR. BAKKE: 45 is what you've just got handed.

13 MR. PELHAM: Thanks.

14 I'm not sure if they have any relevance to these  
15 proceedings, but I don't have an objection.

16 ALJ HOGAN: All right. Those exhibits will be  
17 received and the Commission can give it the relevance it  
18 determines appropriate, if any.

19 Go ahead, Mr. Jorde.

20 MR. JORDE: Yep. Appreciate that. And like I  
21 said, now that those are in, I'm going to spare all of  
22 us any questions related to that.

23 Q. (BY MR. JORDE) Sir, in your prefiled testimony  
24 of April 22nd, you had a right-of-way progress chart as  
25 of April 8th, and it looks like, by my math, sir, as of

1     that time, there were still approximately 201 parcels  
2     yet to be -- yet to have leases or easements acquired.  
3     Is that still true today?

4           A.    From April 22nd, I believe there has been one  
5     or two -- it's generally correct -- one or two other  
6     parcels that agreements have been executed with that  
7     landowner.  So it's generally correct.

8           Q.    And the 201 or so parcels, does that represent  
9     approximately 110 or so landowners?

10          A.    That is generally correct.

11          Q.    All right.  Okay.

12                Now, the matter about this corridor, in your  
13     application you -- reapplication, reconsideration --  
14     requested a 200-foot-wide corridor which, I believe, was  
15     a reduction of a hundred foot, but then you're now  
16     asking for, what is it, a hundred or 150-foot deviation  
17     outside of that 200 feet?  Or can you explain that?  I  
18     was a little confused from your testimony last time.

19          A.    The original application had a deviation buffer  
20     of 150 feet on either side of the pipeline, which would  
21     be 300 foot.  And in the petition for reconsideration,  
22     at least in response to the commissioner's question, we  
23     reduced that to a hundred foot on either side or 200.

24          Q.    Okay.  But help me out.  If the corridor is  
25     200 feet and the deviation is a hundred foot, does that

1 mean you can -- you are seeking to go a hundred foot  
2 outside of that 200-foot-band if necessary?

3 A. No. That's not the intent.

4 Q. Okay. So if you're asking for a hundred -- and  
5 I'm sorry, did you say a hundred or 150-foot deviation?

6 A. A hundred foot.

7 Q. A hundred foot. So if you're asking for a  
8 hundred-foot deviation, where do we measure that  
9 deviation start point from?

10 A. At least from my perspective, it's from the  
11 centerline of the pipeline.

12 Q. Okay. But if the centerline could be located  
13 anywhere within the 200 foot, if, let's say, it's on the  
14 very bottom of that band, then could you go another  
15 hundred foot outside of that corridor?

16 A. At least from my perspective, Mr. Jorde, it's a  
17 200-foot wide corridor. Regardless of where the  
18 pipeline is, it's 200 foot wide. So if it's narrower on  
19 the bottom, it's -- it's wider on the top, but it's  
20 still 200 from boundary to boundary.

21 Q. All right. Did you make any notes, sir, at any  
22 of these emergency responder or safety-kind-of-based  
23 meetings that you attended across North Dakota?

24 A. I did not.

25 Q. And would the sign-in sheets of the attendees --

1 strike that.

2 Would the sign-in sheets be the best evidence of  
3 who exactly attended each of those meetings?

4 A. I would agree with you that that would be -- and  
5 I know we had sign-in sheets for the majority of the  
6 meetings. I'm not sure if we had sign-in sheets for all  
7 of the meetings. But I agree that would be the best  
8 identification of who actually attended.

9 Q. And so on your April 22nd testimony, on page 8,  
10 at the bottom, you list out when, the date, where the  
11 meetings took place, the county, the date, the time they  
12 started, and then you have, like, 11 attendees. In  
13 order for you to put that together, were you using the  
14 sign-in sheets, sir?

15 A. The -- our -- our team that presented that  
16 information compiled that. And, yes, I believe that was  
17 the primary source. Whether or not they used -- they  
18 had their own notes or checked the attendee or the  
19 invitation list, I'm not sure how that was recorded,  
20 Mr. Jorde, but they were the source of that information.

21 Q. And would you, sir, in your role as an executive  
22 at Summit be willing to publicly file the names of the  
23 attendees at each one of those meetings you reference on  
24 page 8 and page 9 of your April 22nd, 2024, prefiled  
25 testimony?

1           A. I don't have an issue with that. We filed in  
2 the docket those who were invited so I -- I don't think  
3 there would be any issue with confirming who attended.

4           Q. And I don't want to go over all of the ground  
5 with Mr. Boeshans, but it seemed like he was only in  
6 attendance at five of the Burleigh County-specific  
7 emergency response type meetings we're discussing. How  
8 many were you personally in attendance with anywhere in  
9 North Dakota?

10          A. In North Dakota, I was only -- I only attended  
11 the Burleigh County meeting.

12          Q. Okay. So as Mr. Boeshans walked through that  
13 and recounted, without getting into the detail, kind of  
14 the category of information shared, did that comport  
15 with your recollection of what Summit shared that day?

16          A. Generally, yes, general information. And just  
17 for context, as I think I mentioned in April, this is an  
18 iterative process. So we began talking -- the team  
19 began talking with emergency management, first  
20 responders a couple years ago. I personally have met  
21 with first responders in North Dakota outside of those  
22 emergency manager meetings. And that will continue up  
23 until two and a half years from now when the pipeline  
24 is, hopefully, permitted, constructed, and in operation.

25          Q. And then for, sir, the meetings that you weren't

1 personally at, Mr. Boeshans wasn't at, would -- would  
2 David Daum or Rich Dillon, who -- who would have been  
3 the person attending those for Summit, the other  
4 meetings?

5 A. Alex Lange, I believe, attended all of those  
6 meetings. And Dave Daum and/or Rod Dillon typically  
7 attended those meetings. If -- if they did not have a  
8 scheduling conflict, they always try to attend those  
9 meetings.

10 Q. And forgive me, but I think it's your intent to  
11 make Mr. Daum and Mr. Dillon available for -- or maybe  
12 it's rebuttal. Are those gentlemen going to be  
13 testifying, to the best of your knowledge, Mr. Daum and  
14 Mr. Dillon?

15 A. I'm aware Mr. Daum is scheduled to testify. I'm  
16 not aware that Mr. Dillon is.

17 Q. And what about Mr. Lange, will we be hearing  
18 from him?

19 A. I believe he's scheduled to testify in rebuttal,  
20 but Mr. Dublinske would -- and Mr. Bender would have a  
21 better idea of who's scheduled when.

22 Q. That's fine.

23 MR. DUBLINSKE: Mr. Jorde, I can confirm that we  
24 intend to call Lange and Daum as part of the rebuttal  
25 case and therefore make them available for

1 cross-examination.

2 MR. JORDE: Thank you.

3 Q. (BY MR. JORDE) All right. Believe it or not,  
4 I'm getting close to being finished.

5 On the bottom of page 9, just to kind of put a  
6 bow on this, you talk about the areas that were covered  
7 at the meeting, and I'm going to list them off and then  
8 ask you if those, to your knowledge, those same areas of  
9 information were shared at all the meetings. That's  
10 dispersion modeling methodology, generic model outputs,  
11 the PHMSA requirements, relative toxicity, potential CO2  
12 release scenarios, shelter-in-place studies, emergency  
13 response plan guidelines, and discuss specific training  
14 and equipment needs.

15 Is that kind of the consistent checklist of  
16 information or data that was discussed at these  
17 meetings?

18 A. Yes. And, Mr. Jorde, Alex Lange, who was at  
19 every one of those meetings, can confirm. As I  
20 mentioned earlier, these meetings evolved so this  
21 shelter-in-place study and the toxicity levels -- or  
22 toxicity tables and thresholds, I can't confirm if they  
23 were presented in the first couple of meetings that were  
24 conducted. Mr. Lange can tell you --

25 Q. And, sir -- I'm sorry. Sir, is it your



1 understanding that those categories of data that I read  
2 off, would those have been embedded in or part of a  
3 PowerPoint or was there a PowerPoint and then maybe  
4 there was additional handouts relative to those  
5 categories?

6 A. The latter. So I know the API document, the  
7 shelter-in-place document, and, if requested, the draft  
8 emergency response plan, which I believe is already in  
9 the docket, those were available. They were not  
10 embedded in the PowerPoint.

11 Q. So of those items that I read off on the bottom  
12 of page 9 of your April 22nd, '24, prefiled testimony,  
13 so I'm clear, the ones that are -- that you claim  
14 confidentiality and have been determined to be  
15 confidential that the PSC has in their possession, does  
16 that include dispersion modeling methodology, generic  
17 model outputs, and relative toxicity, and potential CO2  
18 release scenarios?

19 A. It's my understanding the slide deck is  
20 maintained as confidential. The other ancillary  
21 documents have been provided.

22 Q. All right. And that's probably a better way.  
23 Would -- rather than me asking, so the auxiliary  
24 non-confidential documents, of those listed that are  
25 found on page 9, which of those are the non-confidential

1 documents, in your view?

2 A. The only confidential document is the slide deck  
3 which walks through the dispersion methodology and  
4 general output.

5 Q. Okay. So the relative toxicity and the  
6 potential CO2 release scenarios, is that -- are the  
7 potential CO2 release scenarios something that's not  
8 confidential, in your view?

9 A. No. It is confidential.

10 Q. Okay. All right. And, again, I'm not trying to  
11 be difficult. I just -- for the record, I have to be  
12 clear. So the confidential items are the dispersion  
13 modeling methodology, the generic model outputs, and the  
14 potential CO2 release scenarios; correct?

15 A. I believe that's correct. I don't want to  
16 misspeak, Mr. Jorde, but I know we filed with the PSC  
17 information that was provided to the emergency managers  
18 in those meetings and other attendees. And it's my  
19 recollection only the slide deck was categorized as  
20 confidential. So the other documents that were  
21 submitted to the PSC in the docket, those were not.

22 Q. But the -- but the slide deck would have been  
23 the information or the document that contains those  
24 three categories that are confidential; right?

25 A. Well, there are references to those

1 non-confidential documents in that slide deck, but  
2 they're standalone.

3 Q. Okay. Thank you for that clarification.

4 So if we're talking about PowerPoint or slide  
5 deck, that's synonymous? Can we agree on that?

6 A. Yes.

7 Q. And so there might be references to other  
8 documents in the slide deck, but then you're saying  
9 there could have been also separate handouts that are  
10 also confidential in addition to the slide deck; right?

11 A. I'm sorry if I'm not being clear, Mr. Jorde.  
12 The only confidential information is the PowerPoint or  
13 slide deck. The other information that was referenced  
14 is not confidential and was either provided or was  
15 indicated would be made available upon request. But the  
16 links where people could find that information was  
17 provided.

18 Q. But the -- the modeling and the outputs and the  
19 potential release, that data, that confidential data,  
20 was included to or referenced in the slide deck; is that  
21 right?

22 A. Generally, yes.

23 Q. All right. Okay. Good. Because you're not  
24 saying if someone requested the dispersion modeling  
25 methodology or the generic model outputs or the

1 potential CO2 release scenarios, you're not saying you  
2 would produce it, for instance, if I requested that,  
3 would you?

4 A. No. And even in the -- the PowerPoint itself,  
5 there's -- the first couple of slides talk about the  
6 FOIA exemption, talk about the sensitive security  
7 information, defines it, why we consider that, we think  
8 PHMSA considers that security sensitive information.  
9 And so it was very clear that it would not be provided.

10 Q. You make the statement on -- in your prefiled  
11 testimony as part of that March 1st, 2024, letter, at  
12 the bottom of page 3, which is an attachment, that  
13 "Neither PHMSA nor Congress are currently contemplating  
14 changes that would affect actual construction of the SCS  
15 pipeline system."

16 And I'm just curious. I mean, you're not in  
17 touch with Congress on a daily basis, are you, sir? You  
18 don't know what bills or laws or, you know, potential  
19 laws might be put out there, do you?

20 A. Well, no, I'm not, Mr. Jorde, but I know that  
21 API and LEPA provide us with updates. And I know that  
22 the Office of Management and Budget for the Federal  
23 Government has released a draft of the PIPES Act. And I  
24 believe even Tristan Brown, the director of PHMSA,  
25 testified recently to Congress about what would

1 essentially be in that -- in that bill or what he  
2 believed would be in that bill.

3 Q. On page 4 of that March 1st letter attachment,  
4 at the bottom, you say, quote, "Each easement agreement  
5 includes a clause that indemnifies a landowner from this  
6 responsibility," end quote. And that's relative to the  
7 liability insurance discussion.

8 Sir, what about the instance where you have to  
9 condemn or you choose to condemn, how would that term be  
10 provided to a landowner if there is no written easement  
11 and you obtain the easement via condemnation?

12 A. Well, Mr. Jorde, if we had to go through the  
13 process of condemnation, it's not my intent or anyone  
14 else's intent with Summit to penalize a landowner  
15 because we had to go through condemnation. I would  
16 offer that landowner the same terms and conditions of  
17 any other landowner that signed a voluntary easement.

18 Q. Would you agree that your liability insurance  
19 indemnification does not cover your insurer and does not  
20 prevent your insurer of suing a landowner if you make a  
21 claim to your insurer?

22 A. Could you restate the question, please?

23 Q. Yep. For instance, you state that Summit --  
24 let's see here. "Regarding liability insurance --" you  
25 state "-- there is no need for landowners to secure

1 insurance due to the pipeline's presence." And then  
2 previously you talked about indemnification for certain  
3 types of releases.

4 My question is: would you agree that if you  
5 make a claim, for instance, lost profits, if there's  
6 damage to the pipeline, and your insurance company pays  
7 you out on your policy with your insurer, that your  
8 insurer could go turn around and sue the landowner to  
9 collect what they paid you? Are you aware that's a  
10 possible legal action?

11 A. I am not aware that that's a possible legal  
12 conclusion.

13 Q. Okay. Would you agree that nothing in your  
14 easement prevents your insurer from exercising their  
15 subrogation rights or their rights to be made whole if  
16 they pay out on the insurance policy you have with them?

17 A. I'm sorry, can you repeat the question again?

18 Q. Yes. Are you aware that -- well, do you  
19 believe, I should say, that your indemnification  
20 language doesn't prevent your insurer from exercising  
21 their subrogation rights to collect from any other third  
22 party if they pay out to you?

23 A. I don't know that to be true with the landowner.  
24 If a third party is excavating without permission and  
25 strikes the pipeline, then, yes, I could see where that

1     could be a potential outcome. I'm not aware that that  
2     would apply to a landowner.

3           Q.   What about a tenant? Are the tenants of the  
4     landowners covered in your indemnification language?

5           MR. DUBLINSKE: I'm going to object, Your Honor.  
6     I think Mr. Powell has probably answered this to the  
7     best of his ability, but also the Commission, in the  
8     August 4th order, made a determination on the liability  
9     issue and it found that that issue had been resolved for  
10    purposes of this hearing.

11          MR. JORDE: Well, the problem is that they bring  
12    it back up. And now we have an exhibit, Mr. Powell's  
13    testimony, where they're attaching documents  
14    specifically putting this back in play. We didn't do  
15    it. So that's -- that's my last question, by the way,  
16    and then I'm done with this so I'd appreciate an answer.

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

18          A.   I'm not aware that that -- that is an option for  
19    the insurer, Mr. Jorde.

20          Q.   (BY MR. JORDE) Okay. And, I'm sorry, my  
21    question was as to the tenant. Are you aware that your  
22    language doesn't indemnify the tenant if the tenant is  
23    alleged to have struck the pipeline or caused damage?

24          A.   I'm not aware.

25          Q.   All right. Okay.

1           Oh, I do have one other question. In terms of  
2       raising funds and funding ongoing business activities  
3       across what is a multi-state project, is it true that  
4       there was a recent cash call looking for more capital  
5       contributions to fund your company as an ongoing  
6       concern?

7           A. Well, there was a certain equity raise that was  
8       completed two years ago and -- and there's ongoing cash  
9       calls to -- to draw from that equity pool.

10          Q. Understood. So you haven't raised --

11          A. So we don't get the full -- we don't get the  
12       full capital on day one. That's provided incrementally  
13       as we need it to fund the business.

14          Q. Understood. So there's a commitment made, which  
15       doesn't necessarily mean cash deposited, and then you go  
16       back and say you've committed this capital, we need it,  
17       and then you try to go collect it? Is that generally  
18       correct?

19          A. Correct.

20          Q. All right. Okay. Thank you, sir. I don't have  
21       anything more for you.

22                ALJ HOGAN: All right. Before I turn to you,  
23       Mr. Bakke, I'll just note it's 4:00 so you have an hour.  
24       And like I mentioned before, I reserved today to  
25       cross-examine the Summit witnesses and we didn't get to



1 Mr. Schmidt, so the parties are going to have to  
2 probably have a discussion when we're done today whether  
3 or not he's going to be available if -- if there's  
4 cross-examination requested of him.

5 So, again, we have a hard stop at 5:00 so I will  
6 interrupt you and stop you at 5:00, Mr. Bakke, but you  
7 can go ahead.

8 MR. BAKKE: Okay. Thank you, Your Honor.

9 CROSS EXAMINATION

10 BY MR. BAKKE:

11 Q. First of all, I want to make sure, Mr. Powell,  
12 you have available to you now the Burleigh County  
13 exhibits that were provided to your counsel?

14 MR. LEONARD: I do have the exhibits in that  
15 Dropbox link from your assistant this morning,  
16 Mr. Bakke.

17 MR. BAKKE: Okay.

18 ALJ HOGAN: And, Mr. Bakke, can you move your  
19 mic a little closer?

20 MR. BAKKE: Sure. Sorry about that.

21 ALJ HOGAN: Thank you.

22 Q. (BY MR. BAKKE) The first one I'm going to ask  
23 about is Burleigh County 106 so if you could have that  
24 available.

25 But, first of all, Mr. Powell, you used the term

1 "slide deck" and then you also used the term  
2 "PowerPoint," and it sounded like you used those to mean  
3 the same thing; correct?

4 A. Yes.

5 Q. Okay. Were you at the meeting at the Petroleum  
6 Council that Chad Wachter attended?

7 A. I have not been -- I've not attended a meeting  
8 with the Petroleum Council.

9 Q. Or at the Petroleum Council?

10 A. No.

11 Q. Okay. You weren't present at a meeting with Ron  
12 Ness and Chad Wachter?

13 A. I was not.

14 Q. Okay. Were you aware there was such a meeting  
15 that took place with Summit representatives?

16 A. If you're speaking of the meeting with Mr. Ness,  
17 Mr. Wachter, and Mr. Boeshans, I was aware of that  
18 meeting. And I believe Mr. Lange was there as well.

19 Q. And were you aware that at that meeting  
20 Mr. Wachter was shown and Mr. Ness was shown this  
21 PowerPoint presentation?

22 A. I'm not aware of that.

23 Q. Okay. And Mr. Ness, he's not employed by  
24 Summit, is he?

25 A. He is not.

1 Q. Okay. Were you aware he worked for the North  
2 Dakota Petroleum Council, which is a non-profit  
3 corporation?

4 A. I am aware of that, yes.

5 Q. Okay. And if Mr. Wachter testified that he was  
6 shown this PowerPoint presentation, that would mean that  
7 Summit was showing the PowerPoint presentation it's  
8 claiming confidential to select members of the public;  
9 correct?

10 A. Correct.

11 Q. Okay. And Mr. Ness isn't an emergency manager,  
12 to your knowledge?

13 A. Not to my knowledge.

14 Q. He's not a first responder?

15 A. Again, not to my knowledge.

16 Q. And Mr. Wachter is not an emergency manager  
17 or first responder, to your knowledge?

18 A. Correct.

19 MR. BAKKE: And, Your Honor, I'll just note for  
20 the record I'm not asking for a ruling or anything else,  
21 but once Mr. Wachter testifies about this PowerPoint, I  
22 think there's been a complete waiver of their position  
23 that this is confidential if they're selectively showing  
24 it to members of the public, but I'll move on to my next  
25 topic.

1           Q.    (BY MR. BAKKE)    I want to talk to you about the  
2           evaluation of a southern alternative route around  
3           Bismarck.   And you have Burleigh County 106 in front of  
4           you?

5           A.    Yes.

6           Q.    Okay.   And is that part of the submission that  
7           Summit presented to the PSC showing the proposed  
8           alternative southern route that Summit considered in  
9           relation to a different route around the city of  
10          Bismarck after the August 4, 2023, order?

11          A.    Yes.   I can't see the whole document, but it  
12          looks like it's part of the southern route analysis  
13          document that was submitted to the PSC.   So if it is,  
14          then, yes, I agree.

15          Q.    Okay.   And it's entitled "Figure 4"; is that  
16          correct?

17          A.    That's correct.

18          Q.    Okay.   And it doesn't identify any roads or  
19          landmarks or section numbers or landowners or any of  
20          that information; is that correct?

21          A.    Yes.   As you discussed with Mr. Boeshans this  
22          morning, this was intended to be conceptual in nature.

23          Q.    Well, this is a different map.   What we looked  
24          at with Mr. Boeshans today was Figure 1 on page 8.   This  
25          is page 12, which is Figure 4.

1           A. Again, this is intended to be conceptual in  
2 nature and shows that there's a -- there's a distance  
3 between the ETA of the city of Bismarck and the -- and  
4 the proposed route --

5           Q. Or actually --

6           A. -- route.

7           Q. Actually, that's -- that answer is not accurate.  
8 If you look at the map, in Figure 4 on the bottom, you  
9 can see the red line for the southern alternative route  
10 appears to intersect with the existing city of Bismarck  
11 ETA, doesn't it?

12          A. Yeah, I didn't -- I wasn't speaking about the  
13 southern route. I was speaking about the northern  
14 route.

15          Q. Okay. I'm asking about the southern route. Do  
16 you agree with me that the southern alternative route  
17 that Summit considered looks like, on the map presented  
18 to the PSC, was actually an alternative route that would  
19 have been either on the intersection of the southern ETA  
20 for the city of Bismarck or inside the ETA?

21          A. Yes. It actually intersects the ETA for about  
22 seven-tenths of a mile on the southern side. But as we  
23 also stated in the southern route analysis or the  
24 Bismarck route analysis, that there were many different  
25 factors. In fact, there were dozens of factors that can

1 be bucketed really into safety, environmental risk,  
2 cultural risk, tribal impacts, etcetera --

3 Q. Mr. Powell, I just -- I've got limited time here  
4 so I just want you to answer my question, not talk  
5 about --

6 A. Yes, it intersects --

7 Q. -- other topics.

8 A. It intersects for seven-tenths of a mile.  
9 That's correct.

10 Q. That was my only question.

11 Okay. So Summit was the one who made the  
12 determination of what southern alternative route to  
13 consider in Burleigh County; correct?

14 A. Yes.

15 Q. Okay. Summit didn't contact Burleigh County and  
16 ask for their input in regards to where an appropriate  
17 southern route south of Bismarck could or should be, did  
18 they?

19 A. The answer is no.

20 Q. Okay. And Summit similarly did not contact the  
21 City of Bismarck and ask for their input where an  
22 appropriate southern route could or should be south of  
23 Bismarck; correct?

24 A. Correct.

25 Q. Okay. And so you're the witness that's offered

1 by Summit to talk about this southern alternative route.  
2 And why is it that Summit considered only a southern  
3 alternative route that was contiguous with the existing  
4 city of Bismarck extraterritorial limits?

5 A. Because of the constraints on the southern side  
6 of Bismarck with Apple Creek and the ETA and the  
7 floodplains and proximity to residences and businesses,  
8 there was very limited option on where you could route  
9 the pipeline to the south side of Bismarck. And that's  
10 why in the -- in the draft environmental statement  
11 that's been released now for Energy Transfer, in that  
12 the government says the only viable option if Energy  
13 Transfer would have to relocate the pipeline, Dakota  
14 Access, would be on the north side of the city of  
15 Bismarck.

16 Q. Okay. So what I want to talk about now is what  
17 Summit did to explore what you've called those  
18 constraints. So did you contact any landowners who gave  
19 easements for the DAPL pipeline?

20 A. No.

21 Q. Did you contact anyone from the Standing Rock  
22 Sioux Tribe?

23 A. Well, we heard very clearly in the initial  
24 hearing in Bismarck that if -- from the Standing Rock  
25 Tribe representative, that if the pipeline were routed

1 on the southern side, I believe it was -- I'm taking it  
2 out of context and I'm not quoting directly but if the  
3 pipeline --

4 Q. I'm not asking what the testimony --

5 A. -- were moved further south, they would not --

6 Q. -- was --

7 A. -- support it.

8 Q. I'm asking -- Mr. Powell, I'm asking, after  
9 August 4, 2023, when Summit was told they needed to  
10 determine or consider an alternative southern route, did  
11 Summit contact anyone from the Standing Rock Sioux  
12 Tribe?

13 MR. DUBLINSKE: Your Honor, I think Mr. Powell  
14 is entitled to finish his answer which was about what  
15 communications they had had with Standing Rock and it's  
16 in context of the prior line of questioning about  
17 constraints. I think there's a good reason why we  
18 didn't talk to Standing Rock at that time, because we  
19 already knew the answer, and Mr. Powell should get to  
20 explain that.

21 ALJ HOGAN: I'll agree he didn't initially  
22 answer the question.

23 So, Mr. Powell, if you could answer the specific  
24 question, and then if you want to explain, I'll allow  
25 you to do that.



1           Q.   (BY MR. BAKKE)    Okay.  Did you contact anyone  
2           from the Standing Rock Sioux Tribe after August 4, 2023,  
3           when the PSC, as part of its order, said Summit should  
4           analyze or evaluate a southern route?

5           A.   As Mr. Dublinske correctly stated, we were very  
6           aware of the Standing Rock's position about a pipeline  
7           on the southern side of the city of Bismarck so we did  
8           not contact them again about that option.

9           Q.   Okay.  Well, that individual who came and  
10          testified at the PSC hearings also indicated that the  
11          entire state of North Dakota was tribal land, didn't he?

12          A.   He did.

13          Q.   Yeah.  So you're already at that point in  
14          violation of what -- what that individual from the tribe  
15          has testified to by having the northern crossing;  
16          correct?

17          A.   Well, but it's my understanding from -- from  
18          what I recollect from his testimony in Bismarck that --  
19          not that he accepted the northern route, but that they  
20          would not accept a southern route.

21          Q.   Well, I don't know that that's accurate, but the  
22          record is what it is.

23                   Did you contact the Army Corps of Engineers  
24          about a crossing of the Missouri River south of Bismarck  
25          after August 4, 2023?

1           A. We did not because of the constructability  
2 issues on the southern side of Bismarck, the  
3 floodplains, the topography --

4           Q. I'm just asking whether you contacted them or  
5 not, not what the reasons were.

6           A. We did not.

7           Q. Okay. Did you contact anyone from any of the  
8 township boards in Burleigh County?

9           A. Not that I'm aware of.

10          Q. Okay. Did you contact anyone from Emmons County  
11 about a possible southern route?

12          A. Again, not that I'm aware of.

13          Q. Okay. Did you contact anyone from the North  
14 Dakota State Water Commission?

15          A. Not that I'm aware of.

16          Q. Did you contact anyone from the City of Mandan?

17          A. Not that I'm aware of.

18          Q. And you contacted no landowners whatsoever; is  
19 that correct?

20          A. Again, not that I'm aware of.

21          Q. Okay. Did you contact anyone from Energy  
22 Transfer Partners?

23          A. I don't understand why we would contact someone  
24 from Energy Transfer, but not that I'm aware of.

25          Q. Okay. Did you contact anyone from Dakota Access

1 Pipeline?

2 A. Not that I'm aware of.

3 Q. Who was it that drew out or plotted out the  
4 alternative southern route?

5 A. Well, we used the same GIS program and  
6 methodology that we used for the entire pipeline system,  
7 which, as we've testified to, is a broad database with  
8 publicly and -- and available information and some  
9 information that you have to purchase that has things  
10 like federal grasslands and other avoidance areas,  
11 etcetera. And that's what we used to plot a route on  
12 the southern side of Bismarck.

13 Q. And the location of the southern alternative  
14 route, isn't that actually in an existing floodplain  
15 area?

16 A. The floodplain in that area is about 4.28 miles,  
17 if I remember correctly, wide. Significantly wider than  
18 on the north side.

19 Q. So in response to my question, did Summit show  
20 us a southern alternative route that was in the existing  
21 floodplain?

22 A. Yes.

23 Q. Okay. And were you aware --

24 A. Both routes were in the existing floodplain.  
25 The floodplain on the southern route is just much wider

1       than on the northern route.

2           Q.    Okay.  And in the location where Summit  
3       considered a southern alternative route, did you know  
4       going into it that that was a location that would be  
5       unlikely to be approved?

6           A.    Well, we knew that going into it -- and I think  
7       it's been discussed previously, but when we initially  
8       conceptually laid out the route almost three years ago,  
9       we were well aware of the issues that Dakota Access or  
10      Energy Transfer had on the southern side of Bismarck and  
11      so we were keenly aware of that and tried to -- tried to  
12      avoid that.

13          Q.    Well, except for the -- the Dakota Access  
14      Pipeline did, in fact, get built and is in operation;  
15      correct?

16          A.    It is.  It's still in litigation.

17          Q.    Okay.  As is this case.

18                  But in relation to the Dakota Access Pipeline,  
19      they were able to secure voluntary easements for that  
20      pipeline; correct?

21          A.    They had to secure voluntary easements to  
22      receive a certificate to construct, yes -- or a permit  
23      to construct.

24          Q.    In other words, they didn't threaten or pursue  
25      eminent domain or request permission from any

1 governmental agency to use eminent domain. They were  
2 able to get through the property involved, they were  
3 able to get voluntary easements from those landowners;  
4 correct?

5 MR. DUBLINSKE: Objection. I don't know that  
6 there's any foundation that Mr. Powell is aware of what  
7 Dakota Access did and whether or not those were disputed  
8 and whether or not or when those were obtained, on the  
9 courthouse steps or otherwise.

10 ALJ HOGAN: I agree. Foundation hasn't been  
11 laid for him to answer those -- that particular question  
12 or those type of questions about easements for Dakota  
13 Access.

14 Q. (BY MR. BAKKE) Well, are you aware of any  
15 situation where, for the Dakota Access Pipeline, eminent  
16 domain was exercised to obtain an easement for the  
17 pipeline?

18 A. Well, I am aware, since we -- members of our  
19 right-of-way acquisition team also were part of that  
20 Energy Transport, Dakota Access project, I am aware that  
21 condemnation suits were filed.

22 Q. Take a look at Burleigh County Exhibit 133. Do  
23 you have that available to you?

24 A. Yes.

25 Q. Okay. And it shows Bismarck on there and it

1 shows the Missouri River and it shows Emmons County and  
2 Morton County. Is it your understanding the Dakota  
3 Access Pipeline crosses a few miles directly north of  
4 Sioux County?

5 A. I can't discern from this map exactly where it  
6 crosses.

7 Q. Well, are you aware that the Dakota Access  
8 Pipeline does not go onto the Standing Rock Sioux  
9 Reservation in any location?

10 A. That is not my understanding.

11 Q. Okay. Well, let's assume that's the case, that  
12 it doesn't cross any tribal land on the existing  
13 reservation boundaries. Is it your testimony that even  
14 though you did nothing to determine whether or not  
15 landowners would give easements, that there's no -- no  
16 landowner easement possibility in that location, or do  
17 you simply not know because you never explored it?

18 A. Well, I do know that it's more populated on that  
19 southern route than it is on the northern route. And I  
20 do know that there would have been several instances,  
21 and I believe we cite at least 26, where we would be  
22 within close proximity to a business or a residence  
23 where we'd have to secure a waiver. So that introduced  
24 an element of difficulty.

25 Q. Where's it more populated in the south of

1 Bismarck?

2 A. Along the proposed southern route.

3 Q. I'm sorry?

4 A. Along the proposed southern route.

5 Q. Well, that's because it's right next to the  
6 city. I'm talking about further south than that. Is it  
7 your testimony there's more rural subdivision and  
8 population south of Bismarck where there is some  
9 floodplain issues than there is north of Bismarck?

10 A. My testimony is, Mr. Bakke, that there are  
11 numerous constraints that prevented a pipeline in this  
12 general area on the south side of Bismarck. And the  
13 route that we're showing or that we included in the  
14 analysis in our estimation was the least impactful route  
15 on the southern side of Bismarck but still very much  
16 more impactful to residents and the environment and the  
17 area, including the Standing Rock Tribe, than the  
18 northern route.

19 Q. Well, did you have any other surveys done in  
20 other locations south of Bismarck for an alternative  
21 route?

22 A. Well, Mr. Bakke, we did not want to disturb  
23 landowners and request survey permission when we didn't  
24 think it was a viable alternative to construct the  
25 pipeline on the southern side of Bismarck.

1 Q. So is the answer "no"?

2 A. Yes.

3 Q. Okay. Did you do any geological studies or  
4 surveys south of Bismarck?

5 A. No.

6 Q. Did you contact any wetlands organizations or  
7 governmental entities to determine whether there were  
8 any concerns or whether there was a way to avoid those  
9 through a southern route?

10 A. Well, what was publicly available in the U.S.  
11 Fish and Wildlife database, etcetera.

12 Q. Okay. But didn't make any contacts of those  
13 entities whatsoever?

14 A. Correct.

15 Q. You provided testimony -- well, let me ask you  
16 this in relation to a southern alternative route. Would  
17 you agree that Summit really made no good faith effort  
18 to try to explore the possibility of an alternative  
19 southern route for the Summit pipeline?

20 A. I would not agree. As I stated earlier, we --  
21 we used the same methodology that we did to route the  
22 entire pipeline system up to and including having a  
23 construction expert actually drive the location on that  
24 southern corridor where we could potentially route the  
25 pipeline and minimize risk to property owners, make sure



1     that we addressed constructability risk, maintenance and  
2     integrity risk, etcetera.

3           Q.    So how can you make a good faith effort if you  
4     don't contact any of the landowners, you don't contact  
5     the Corps of Engineers about an alternative crossing  
6     over the Missouri River, you don't -- you don't contact  
7     the Standing Rock Sioux Tribe, you don't contact any  
8     township boards, you don't contact Burleigh County, you  
9     don't contact the City of Bismarck, you don't contact  
10    the City of Mandan, you don't contact any governmental  
11    entities whatsoever? You would call that a good faith  
12    effort to explore the possibility of a southern  
13    alternative route?

14           MR. DUBLINSKE:  Objection, Your Honor.

15           Q.    Is that your testimony?

16           MR. DUBLINSKE:  First of all, asked and  
17    answered.  Second, badgering the witness.  Third,  
18    they're not going to get a lot of sympathy on  
19    rescheduling Mr. Schmidt if this sort of badgering and  
20    "Well, don't you think this is good -- isn't good faith"  
21    is how we're spending our time in this limited time we  
22    have left.

23           ALJ HOGAN:  I agree.  I think he's already  
24    answered those questions and I think the point has been  
25    made about the efforts made to explore the route around

1 south Bismarck.

2 Q. (BY MR. BAKKE) You provided testimony about  
3 locations that presented geologic risk at the prior  
4 hearing. You said there were 18 locations; is that  
5 correct?

6 A. That's correct.

7 Q. Okay. And previously Summit had provided  
8 testimony there were 14 known geologic risks in North  
9 Dakota. How many of these 18 locations are in Burleigh  
10 County?

11 A. I don't remember off the top of my head,  
12 Mr. Bakke.

13 Q. Okay. Well, 11 before out of the 14 were --  
14 were 14. Are any of the new four geologic risks that  
15 were identified by Summit in Burleigh County, and if so,  
16 why were they missed previously?

17 A. Well, the -- the number missed so the -- the  
18 change was associated with the change in route. And the  
19 North Dakota Geological Survey has reviewed our  
20 geotechnical analysis and concurred that we've  
21 satisfactorily addressed these risks.

22 Q. So you don't know if any of those are in  
23 Burleigh County?

24 A. I don't -- I don't know which ones were in  
25 Burleigh County off the top of my head. They're

1 obviously referenced on the map -- on the route maps  
2 that were submitted, our current route in the docket,  
3 but I don't know off the top of my head how many of  
4 the 18 are in Burleigh County.

5 Q. Okay. And who would know about that and what  
6 the -- the geologic risks are that were identified in  
7 Burleigh County?

8 A. Well, Mr. -- Mr. Lange would have the detail.  
9 But as we've submitted in our geotechnical report, you  
10 know, of the 18, five are being -- the risk is being  
11 mitigated by directionally drilling those. 11 were  
12 actually Class II. Field reconnaissance was conducted  
13 to make sure that moving a route or the pipeline away  
14 from those -- those geohazards was -- was adequate. And  
15 the remainder we can resolve via construction practices:  
16 how we ditch, how we store the soil, etcetera.

17 Q. Earlier today Summit's counsel indicated Summit  
18 is strictly a private company. Is that accurate?

19 A. We're not a publicly-traded company.

20 Q. You're a private company; correct?

21 A. Yes.

22 Q. Okay. Summit is not in any way a governmental  
23 entity?

24 A. Not to my knowledge.

25 Q. Okay. And did you hear Mr. Boeshans' testimony

1     when I asked him the questions about whether he can  
2     commit on behalf of Summit not to use eminent domain or  
3     condemnation proceedings in the event landowners will  
4     not agree to a voluntary easement for the Summit  
5     pipeline? Did you hear that testimony?

6             A. I did.

7             Q. Okay. And as the chief operating officer of  
8     Summit, can you commit that Summit will not use eminent  
9     domain or condemnation proceedings against landowners  
10    who will not provide an easement to Summit pipeline in  
11    North Dakota?

12            A. I cannot. I cannot.

13            Q. Okay. And, in fact, if these 42 percent of  
14    Burleigh County landowners will not agree to provide  
15    Summit with a voluntary easement, Summit's plan, in  
16    fact, is to pursue eminent domain or condemnation  
17    against those landowners; correct?

18            A. Well, I can tell you that we spent more than two  
19    years negotiating with landowners and we plan to  
20    continue doing that.

21            Q. That's not my question.

22            A. And condemnation -- condemnation is the last  
23    option. So we're going to try to negotiate with  
24    landowners and reach a voluntary agreement.

25            Q. And that wasn't my question. My question wasn't

1 are you going to wear them down. My question is if they  
2 keep saying no and say to you "Summit, we will not allow  
3 an easement on our private land," does Summit intend to  
4 pursue eminent domain or condemnation proceedings  
5 against private landowners in Burleigh County who will  
6 not voluntarily provide an easement to Summit?

7 A. And I'll restate what I said, Mr. Bakke. That  
8 is the very last option.

9 Q. But it's an option Summit intends to pursue if  
10 necessary?

11 A. Again, that is the very last option.

12 Q. Right. But I'd like an answer to my question.  
13 Does Summit intend to pursue that option if the  
14 landowners will not voluntarily provide an easement for  
15 the Summit pipeline?

16 A. I think I've answered it twice, Mr. Bakke, but  
17 I'll tell you it's premature. We have a long runway to  
18 continue to negotiate and if -- that would be a last  
19 option.

20 Q. Okay. So that's all you're going to tell me,  
21 it's a last option, you won't -- you won't concede that  
22 Summit will pursue eminent domain or condemnation  
23 proceedings against private landowners if they don't get  
24 the easement at the end of the process, you won't make  
25 that --

1           A. I said yes. I said yes, that's an option.

2           Q. Are you aware of any situation ever in North  
3 Dakota's history where a private company has pursued  
4 eminent domain or had the ability to pursue eminent  
5 domain against private landowners in North Dakota?

6           A. I'm not familiar with the history of North  
7 Dakota, private versus public, but condemnation is  
8 condemnation. So whether it's a public company or a  
9 private company, it's still condemnation.

10          Q. Except for you've conceded Summit is a private  
11 company. So my question to you is can you name any  
12 situation before in North Dakota's history where a  
13 strictly private company has been permitted and has  
14 exercised eminent domain or condemnation proceedings to  
15 take an easement or a property from a private landowner?

16          MR. DUBLINSKE: Objection, Your Honor. Not  
17 relevant to any issue in front of the Commission.  
18 Eminent domain is a separate matter outside the  
19 Commission's jurisdiction. And in any event, this  
20 distinction between public and private is not one that  
21 matters under the law.

22          ALJ HOGAN: I agree. The Commission  
23 specifically said in its August 4th, 2023, order that it  
24 did not have any jurisdiction over eminent domain  
25 associated with this project. So I will sustain that

1 objection.

2 MR. BAKKE: And I'll point out for the record  
3 they've raised this at the April 22nd hearing and have  
4 offered specific testimony on it so I'm just following  
5 up on that.

6 Q. (BY MR. BAKKE) Let's turn to another topic now  
7 and I'd ask you to turn to Burleigh County Exhibit 112.  
8 Do you have that available to you, Mr. Powell?

9 A. (Indiscernible).

10 Q. Okay. And that's a memorandum of easement.  
11 It's dated February 6, 2024. It's on file in Burleigh  
12 County. It identifies the landowners involved as the  
13 Hansens and Kathleen Mills. And it's what's called a  
14 "Memorandum of Easement"; correct?

15 A. That is correct.

16 Q. Okay. And that does not -- unlike before the  
17 prior application before the August 4, 2023, order, what  
18 Summit would do when they obtained an easement is they  
19 would actually file that easement at the Burleigh County  
20 courthouse and they would have a map attached which  
21 would identify the specific location on the property  
22 where the Summit pipeline easement was; correct?

23 A. That's correct, to my understanding.

24 Q. Yeah. And Summit no longer does that, because  
25 we look at the attachment to this memorandum of

1     easement, the only thing it identifies is Exhibit A,  
2     which is a description there, township 141 north, range  
3     80 west, fifth prime meridian, section 27, the northeast  
4     (sic) half of the northeast quarter; correct?

5           A.    Yes.   And this says it's an amendment so I'm not  
6     sure if this is an amendment to an existing easement.   I  
7     don't know what the context is here.

8           Q.    Well, but if someone reads this easement, what  
9     it's telling them is somewhere on those 80 acres  
10    described on Exhibit A the Summit pipeline is proposed  
11    to be installed and is going to go somewhere on those  
12    80 acres; correct?

13          A.    I'm -- I'm trying to scroll down to see what  
14    Exhibit A says.   Here it is.   I see a legal description  
15    on Exhibit A.

16          Q.    Right.   And the area it describes consists of  
17    80 acres; correct?   Because it says the north half of  
18    the northeast quarter.   So a quarter is 160 acres.   If  
19    you take half of that, that's 80 acres, isn't it?

20          A.    I believe that's correct.

21          Q.    Okay.   And so if you're an adjacent landowner  
22    that has a residence or some structures that are located  
23    close to the section line that adjourns that -- that  
24    quarter, you don't know whether that easement is for  
25    right next to the section line, right next to your home,



1     could be 50 feet away, could be a hundred feet away, you  
2     just don't know where the easement is for based on the  
3     public filing by Summit; correct?

4           A.   Well, again, I don't understand the context of  
5     this document.  Mr. Rorie signed it.  But I do know that  
6     typically there's always an agreement on where the  
7     corridor of a pipeline would be across a particular  
8     tract.  And then if we think that that would encroach  
9     within 500 feet of a residence or business, then we  
10    would also seek a waiver.  And since, to my knowledge,  
11    we haven't sought one in this instance -- again, I'm not  
12    sure what the context of this is.

13          Q.   And I don't think anybody in the public or an  
14    adjacent landowner does either because Summit has now  
15    switched how it records these easements so it's not  
16    transparent with the public or adjacent landowners where  
17    the easement is that Summit has secured from an adjacent  
18    landowner; correct?

19           MR. DUBLINSKE:  Your Honor, I'm going to object.  
20    First of all, Mr. Bakke is clearly testifying here as  
21    opposed to asking the witness a question.  Secondly, how  
22    a private agreement between a private entity and a  
23    private citizen is structured -- and Mr. Bakke certainly  
24    isn't suggesting that there's anything legally wrong  
25    about filing the memorandum of easement -- is of dubious

1 relevance to this proceeding. This is just a completely  
2 inappropriate line of questioning and Mr. Bakke is just  
3 testifying.

4 ALJ HOGAN: Can you address relevance?

5 MR. BAKKE: Sure. The relevance is, as an  
6 example, an adjacent landowner cannot determine, based  
7 on going to the courthouse or otherwise, where a Summit  
8 easement is on an adjacent landowner, which could be  
9 very close to their home. The only word we have that  
10 it's 500 feet away is Mr. Dublinske saying that and  
11 Mr. Powell saying that. But this doesn't do that.

12 And it's also relevant that Summit is not being  
13 transparent with the public as to where this pipeline  
14 may be installed and there could have been a whole lot  
15 of other interested parties who either may have  
16 intervened in this matter or may have appeared before  
17 this Commission and offered testimony that that pipeline  
18 is simply too close to their property but they don't  
19 have any ability to do that because Summit now hides  
20 that information.

21 MR. DUBLINSKE: Your Honor, we filed very  
22 detailed route maps. And this whole issue about  
23 transparency is just Mr. Bakke's opinion that he  
24 continues to testify about as if he were a witness.

25 MR. BAKKE: Well, Mr. Powell -- I can move on.

1           Q.   (BY MR. BAKKE)   Mr. Powell, let me ask you  
2           this. Mr. Boeshans testified earlier today that the  
3           route map that was provided has changed in some  
4           locations. Is that accurate?

5           A.   Not to my knowledge. So the route maps as -- as  
6           issued as part of this petition for reconsideration has  
7           not changed. As we survey, there may be some -- and as  
8           we talk to landowners about potentially signing an  
9           easement, there may be some micro changes, but they will  
10          all be made within the laws or the guidance of the PSC  
11          on -- on what the limitations are. And if notification  
12          has to be made to the PSC, it will be done.

13          Q.   In relation to this memorandum of easement that  
14          is filed, there would be no ability from an adjacent  
15          landowner to determine whether the location described on  
16          Exhibit A is the same location shown on the maps -- the  
17          map log submitted to the PSC. Is that correct?

18          A.   If this is an amendment to an easement, yes, the  
19          -- the route on the property or properties is -- is  
20          specific.

21          Q.   Well, but there's no way for the public or an  
22          adjacent landowner to determine whether it's the same  
23          one because Exhibit A only describes 80 acres. They  
24          don't know whether, subsequent to that map log being  
25          prepared by Summit, there was some change due to

1 negotiations with the landowner involved; correct?

2 A. Well, the change would be -- would be -- and  
3 ultimately in the easement the change would be reflected  
4 and recorded.

5 Q. But that hasn't happened because the -- nobody  
6 can see the easement. All you file now is a memorandum  
7 of easement; correct?

8 A. The only change in strategy is because of the  
9 change in schedule we are now negotiating options with  
10 landowners versus executing the easement and paying  
11 upfront.

12 Mr. Rorie will have -- Mr. Rorie would have to  
13 add further clarification around this specific document.  
14 He signed it.

15 Q. Well, I'm sure he would, but he isn't here  
16 today.

17 And in terms of the public's ability to respond  
18 to the reroute, this is their opportunity, not some  
19 later date when there's a more detailed easement filed  
20 with the Burleigh County courthouse. You understand  
21 that, don't you?

22 A. Well, I can tell you that the landowner that  
23 signs -- any landowner that signs, whether it's an  
24 option or an easement, knows where the pipeline is  
25 intended to traverse their property or properties. And

1 if that encroached on another business or residence off  
2 of that property and it fell within 500 feet, we would  
3 notify that landowner and secure a waiver and notify the  
4 PSC.

5 Q. Switching topics, is Summit aware of the latest  
6 CO2 pipeline leak that occurred in Sulphur, Louisiana,  
7 on April 3, 2024?

8 A. Yes. And actually, in the most recent emergency  
9 management meetings, that PowerPoint has been updated to  
10 include that release.

11 Q. And has Summit contacted Denbury or the  
12 government officials or others about this leak in  
13 Sulphur, Louisiana?

14 A. Well, Denbury has now been acquired by  
15 ExxonMobil and so there have been general conversations  
16 with ExxonMobil about that leak. But we do -- we do  
17 have a good understanding of what happened.

18 Q. Okay. And who spoke to ExxonMobil?

19 A. Either Mr. Daum or Mr. Dillon. I can't remember  
20 specifically who he spoke with.

21 Q. Okay. How many barrels of CO2 leaked in  
22 Sulphur, Louisiana?

23 A. Well, it was an atmospheric release. The  
24 quantity or the volume, I don't remember. I do -- I do  
25 know that, according to the reports, that the

1 atmospheric cloud did not leave the property that the  
2 receiver -- launcher, receiver barrel was actually  
3 located on.

4 Q. Were you aware it was in excess of 2,500 barrels  
5 of CO2 that leaked?

6 A. I am not aware of that.

7 Q. Okay. Were you aware that the pipeline company  
8 itself, Denbury, did not detect the leak but, rather, a  
9 nearby resident reported the leak to the sheriff's  
10 department?

11 A. I am not aware of that. I know what the cause  
12 of the leak was, but I'm not aware that what you just  
13 stated is accurate.

14 Q. Okay. And were you aware there were calls to  
15 the company that operated the pipeline and those calls  
16 were not answered?

17 A. I'm not aware of that. Again, I am aware of the  
18 fact that the atmospheric -- the gas cloud did not leave  
19 the property.

20 Q. Okay. Were you aware that the way that  
21 ExxonMobil learned about the leak was from the emergency  
22 services department in the local community?

23 A. I'm not aware of that.

24 Q. Okay. And were you aware that the local parish  
25 police jury received a shelter-in-place order because

1       there were homes nearby?

2           A.   I am aware that a shelter-in-place order was  
3       issued.

4           Q.   And were you aware it was approximately two and  
5       a half hours after the leak occurred before the leak was  
6       stopped?

7           A.   I -- I do not believe that's correct.

8           Q.   Who did you speak to from the local community or  
9       from ExxonMobil about how long it was after the leak  
10      occurred before it was stopped?

11          A.   Again, it wasn't me that spoke to anyone from  
12      ExxonMobil, but I believe that some -- a Summit  
13      representative spoke to someone that's in their  
14      emergency organization.

15          Q.   Let's assume hypothetically, Mr. Powell, you  
16      didn't live in Houston, Texas, that you lived here, and  
17      that someone wanted to build a CO2 pipeline, 24-inch  
18      pipeline, 500 feet away from your residence or even a  
19      bit further. Would you want to be fully informed and  
20      aware of the risk to you and your family posed by that  
21      CO2 pipeline in the event there was a leak?

22          A.   Well, there's -- there are actually requirements  
23      that you have to inform folks. And part of that is  
24      through the conversations we're having with emergency  
25      management, first responders, but there's a public

1 awareness program that we have to employ before the  
2 pipeline goes into operation. And that means anyone in  
3 proximity to the pipeline that could be affected has to  
4 be informed.

5 Q. Well, I'm not talking after it's constructed.  
6 I'm talking about when it's proposed to be constructed,  
7 easements obtained. Wouldn't you as a -- someone with a  
8 home very nearby and your family lived there with you  
9 too, wouldn't you want to see a plume dispersion model  
10 and the results of that to verify whether it was  
11 properly done and perhaps hire an engineer or perhaps  
12 not to make sure it was safe for that pipeline to go  
13 near your residence?

14 A. Well, I do live in Houston, Texas, so maybe I  
15 have a different perspective, but I can tell you that I  
16 -- I trust in the professionals and the subject matter  
17 experts such as the staff at the Public Service  
18 Commission and others, emergency managers, first  
19 responders, to evaluate information provided by Summit  
20 or Energy Transfer or any other operator that intends to  
21 conduct and operate a pipeline to ensure that it's being  
22 designed, constructed, and ultimately operated according  
23 to state and federal requirements.

24 Q. So is it your testimony it's unreasonable for  
25 members of the public who believe they may be affected



1 by a leak in the Summit pipeline to want to be fully  
2 informed in advance of the dangers posed should the  
3 pipeline leak, including viewing a dispersion model?

4 A. What I am saying is that there are subject  
5 matter experts and stakeholders in these communities  
6 that will have access to information that can share  
7 information to the extent they think it's necessary with  
8 -- with landowners or potentially impacted parties.

9 Q. Okay. So you think that's unreasonable for  
10 nearby homeowners to want to view and understand the  
11 dispersion model information. That's your testimony?

12 MR. DUBLINSKE: Your Honor, asked and answered.

13 I would also ask, are we intending to reserve  
14 any time yet today for Commission and for redirect?

15 ALJ HOGAN: I was not intending so -- there  
16 hasn't been redirect on the other Summit witnesses so I  
17 presumed, maybe incorrectly, that there would not be for  
18 this one as well.

19 Yeah, I think he did answer the question.

20 MR. BAKKE: Okay.

21 Q. (BY MR. BAKKE) So what you're saying, just so  
22 I understand your answer, Mr. Powell, is people in the  
23 public should just rely on the so-called expert to tell  
24 them whether or not there is a danger or a risk to their  
25 health, life, or safety, including their family members?

1 That's your testimony?

2 MR. DUBLINSKE: Your Honor, that's just a  
3 restatement of the question that you just sustained an  
4 objection on.

5 ALJ HOGAN: Correct. He already answered that.

6 MR. BAKKE: I think that's the first time I  
7 asked it, but anyway.

8 Q. (BY MR. BAKKE) There's been testimony about  
9 the waiver agreement, Exhibit A. And the waiver  
10 agreement indicates that parties who are signing that  
11 waiver or agreement in relation to an inhabited  
12 residence acknowledge and do not object to the pipe or  
13 the placement of one or both Summit Carbon Solutions LLC  
14 pipelines within 500 feet.

15 And this came up at the last hearing and there  
16 was no answer provided. What are one or both of the  
17 Summit pipelines that these people are providing a  
18 waiver for?

19 A. Well, that's -- the word "both" is not  
20 applicable in North Dakota. It is applicable in other  
21 states. But individual easements and the waivers that  
22 have been signed are, to my knowledge, landowners that  
23 we have executed easements with, they are aware that in  
24 their specific easement it is very specific to a single  
25 pipeline.

1           Q. Well, it may not be applicable to North Dakota  
2 law, but doesn't -- once they sign the waiver, can't  
3 Summit argue it would apply to a second pipeline  
4 installed in the same easement location?

5           A. No. Because the easement is very specific. It  
6 will stipulate a single pipeline of either 24-inch  
7 or 12-inch or 8-inch or 4-inch in diameter, depending on  
8 what segment of pipeline it is in North Dakota.

9           Q. Okay. Will the Summit CO2 pipeline and the CO2  
10 have any impurities in it, and if so, what will those  
11 impurities be?

12          A. It will in --

13           MR. DUBLINSKE: Objection.

14           Hang on, Jimmy. Hang on, Jimmy.

15           That -- I'm going to object on scope. That  
16 question is clearly one that could have been discussed  
17 and, frankly, surely was discussed in the original  
18 proceeding. That has nothing to do with anything  
19 specific to the reconsideration.

20           MR. BAKKE: It has to do with the safety of the  
21 CO2 and the health effects. The impurities will, in  
22 fact, have an effect on health considerations as with  
23 any other gaseous liquid on their -- on their health.  
24 So it's -- it's relevant to the issue being addressed by  
25 the PSC at this hearing.

1           MR. DUBLINSKE: But general safety is not -- I  
2           mean, that was the first hearing, right. There's  
3           nothing that's changed about the composition or the  
4           impact of impurities because of the reconsideration  
5           issues.

6           ALJ HOGAN: I agree it was discussed in the  
7           first round of hearings and I also believe it is outside  
8           the scope of what the rehearing was issued for so I will  
9           sustain the objection.

10          And I'll just also note that it's 4:51,  
11          Mr. Bakke, so you can plan accordingly.

12          MR. BAKKE: Yes.

13          And my understanding, Your Honor, is the issue  
14          to be addressed -- one of the issues is the requirement  
15          that the Summit pipeline produce minimal adverse effects  
16          on the welfare of the citizens of North Dakota,  
17          irrespective of whether that was a topic covered by  
18          Summit in their questioning, it is something we're  
19          entitled to ask about, but I understand you're not going  
20          to permit me to do so.

21          Q. (BY MR. BAKKE) Is there any certification  
22          process, Mr. Powell, for the CO2 in the Summit pipeline?

23          A. There -- there is a quality specification.

24          Q. Okay. Let's turn to the topic of electricity.  
25          What happens if this Summit pipeline loses electrical

1 power?

2 A. Depending on where it loses power, it -- it  
3 could be up to and including shutting-in the pipeline  
4 system.

5 Q. Okay. If it loses electrical power, can there  
6 be a catastrophic failure?

7 A. No.

8 Q. And why do you say no? What would prevent a  
9 catastrophic failure?

10 A. Because there's very clear -- we have very clear  
11 shut-down procedures in an emergency or in normal  
12 operation and those include loss of power. And so those  
13 will be followed and the pipeline will be shut down  
14 safely.

15 Q. Well, how long does it take to shut down the  
16 pipeline?

17 A. Again, it depends on the situation, but we can  
18 shut these valves -- all main line valves in a matter of  
19 seconds, but in our surge analysis we have assumed that  
20 it would take a few minutes to shut just to make sure  
21 that it's a -- it's a safe shutdown.

22 Q. Okay. And ExxonMobil had a similar redundancy  
23 or shutdown backup system in Louisiana and that system  
24 failed; correct?

25 A. Not -- again, I'm not familiar with the very

1 specifics of what they -- how they shut in their system.

2 Q. What has Summit done to ensure, if anything,  
3 that they'll have an adequate electrical supply to  
4 operate the Summit pipeline in North Dakota?

5 A. Well, specific to Burleigh County, I know that  
6 our power and control team, our electrical team, has  
7 spoke with each of the utilities. In the case of  
8 Burleigh, I believe it's Capital Electric. And I  
9 believe they spoke with the manager of engineering  
10 services. And as we've -- as we stated in our submittal  
11 to the Public Service Commission, you know, they have  
12 internally decided that they can handle the load or the  
13 demand. They do need to make some infrastructure  
14 modifications that Summit will -- will provide the  
15 capital for.

16 Q. So has Capital Electric or any other power  
17 supplier indicated that they can provide continuous  
18 electrical power for the Summit pipeline in North  
19 Dakota?

20 A. Again, our team has been working with these  
21 power providers for at least two years and I'm not aware  
22 of any concern about intermittent failure or shutdown.

23 Q. Have there been any -- is there -- has there  
24 been any history of power outages in Burleigh County,  
25 say, in the last 5, 10 years of the electrical system?

1           A. I wouldn't have that information, Mr. Bakke.

2           Q. Does Summit have any backup generators that will  
3 be available at the site of the valves or other  
4 locations along the Summit pipeline route that will be  
5 stationed there permanently?

6           A. We do have solar backup, the main line valves.  
7 So in the case there's a loss of power -- and these  
8 valves are fail close. But in case of a loss of power,  
9 then there will be -- in case of lost power from the  
10 grid or from the electrical provider, we will still have  
11 power to the valves and the actuators.

12          Q. And do you know whether or not there are any  
13 reliability issues with those solar backup valves at --  
14 valves in relation to extreme weather conditions such as  
15 extreme cold or ice or other weather events?

16          A. We've installed the same type of infrastructure  
17 in North Dakota on the western side in Montana and  
18 Wyoming so my assumption is there will be no issue.

19          Q. Where in Montana?

20          A. We built a pipeline from Medora, North Dakota,  
21 down to southeastern Wyoming. And I used to work for  
22 Hiland Partners and we had a lot of pipeline and  
23 facilities in and around the Williston Basin so there  
24 were quite a few of those installations. And to my  
25 knowledge, we never had an issue.

1 Q. Do you know what water hammer is?

2 A. I do know what water hammer is.

3 Q. And do you know whether that can occur if  
4 there's a power outage?

5 A. Again, that's why we have battery backup on  
6 these valves, so that we can control the valves if  
7 there's a power outage.

8 Q. Is water hammer a catastrophic failure  
9 condition?

10 A. It could be. Your surge -- your surge analysis  
11 will indicate where those risk may occur.

12 Q. Okay. Let's turn quickly to the Welspun Tubular  
13 lawsuit for \$15 million in federal court. Is it correct  
14 in the Welspun legal pleadings, that they will not be  
15 the carbon steel pipeline provider for the Summit  
16 pipeline?

17 A. That is not correct. And they were -- they were  
18 never the sole provider of carbon steel line pipe. But  
19 that is not correct.

20 Q. Okay. So the lawsuit's been resolved and  
21 Welspun is now going to provide the carbon steel  
22 pipeline? Is that your testimony?

23 A. Well, that's -- it's really up to Summit because  
24 the lawsuit -- Welspun ordered (indiscernible) coil  
25 outside of the production window, which meant it was



1     totally -- it was totally their obligation. They tried  
2     to take advantage of a market condition. Our schedule  
3     changed and we told them we weren't going to reimburse  
4     them for that. And so if we can satisfactorily resolve  
5     that issue, we'd love to have Welspun be part of the --  
6     the group of steel mills that -- of pipe mills that  
7     manufacture our pipe. But there are other alternatives  
8     so we're not solely dependent on Welspun.

9           Q.    Okay. But presently Welspun will not be  
10    providing the carbon steel pipeline; is that correct?

11          A.    That's not correct. It's pending the outcome of  
12    this suit.

13          Q.    Okay. So if it's -- if it's resolved to both  
14    parties' satisfaction, they may be producing the carbon  
15    steel pipeline, if it isn't, they won't; is that  
16    correct?

17          A.    Yes. But, again, they would produce some of the  
18    steel, some of the pipe, not all of the pipe in any  
19    situation.

20          Q.    Okay. And has Summit entered into another  
21    contract with another American carbon steel manufacturer  
22    to replace the steel pipeline that was to be provided by  
23    Welspun?

24          A.    Well, we are under contract with four different  
25    pipe manufacturers in the U.S., Welspun being one of

1     those four. The other three could -- could actually  
2     produce all of the line pipe that's needed. So Welspun  
3     -- if we can resolve this issue, then Welspun will  
4     remain part of the mix. If we can't, then we'll utilize  
5     the other three mills to supply the line pipe.

6           Q. When the Summit pipeline is being constructed,  
7     who will be inspecting the pipeline?

8           A. We'll have third-party inspection companies that  
9     actually provide the -- the craft inspection. And then  
10    we will have our in-house construction managers and  
11    project engineers and third-party subject matter  
12    metallurgists that will also inspect the quality of the  
13    work.

14          Q. Are these third-party inspectors paid by Summit?

15          A. They are.

16          Q. Okay. Will there be any governmental agencies  
17    that will be inspecting the construction of the Summit  
18    pipeline?

19          A. Well, it's my experience, especially a project  
20    of this size, PHMSA will have third-party subject matter  
21    experts that are inspecting the welding procedures.  
22    They'll be on-site in the field during construction.  
23    And they'll most likely evaluate our mill test reports  
24    from the pipe manufacturer and our X-ray or radiographic  
25    information from -- from welds and other non-destructive

1 testing.

2 Q. Does Summit --

3 ALJ HOGAN: All right. My clock shows that it's  
4 5:01. And as I indicated before, we do have a hard end  
5 at 5:00 so we are going to break now and we will  
6 reconvene tomorrow morning at 8:30.

7 MR. DUBLINSKE: Your Honor, could I just ask, to  
8 try to make tomorrow go a little more smoothly, if  
9 Mr. Jorde and Mr. Leibel can let us know what witnesses  
10 they're calling tomorrow?

11 ALJ HOGAN: Yep. And it was my understanding  
12 Mr. Jorde intended to file something -- I would ask  
13 tonight or as soon as possible -- with the list of  
14 planned witnesses for tomorrow.

15 MR. JORDE: So I -- let me just jump in quickly.  
16 I don't know if we're going to have Mr. Powell or Jon  
17 Schmidt in the morning, but Howard Malloy, a landowner,  
18 we plan to get him on tomorrow. And then Mr. Bakke, I  
19 believe, has Mr. Flanagan and then Mary Senger and then  
20 Brian Bitner and Jeff Steinbronn. And that will take us  
21 through after lunch. Then I'm working on trying to  
22 juggle people around for after lunch.

23 ALJ HOGAN: Well, it might be helpful,  
24 Mr. Jorde, if you could provide a list of all the  
25 witnesses you intend to call. I mean, I just -- I feel

1     like the prehearing filings were maybe not realistic of  
2     the number of witnesses that were actually going to be  
3     called during the hearing.

4             MR. JORDE: I can tighten that up. I just can't  
5     tell you a specific order at this time.

6             ALJ HOGAN: Okay. Well, as much as you can give  
7     us would be helpful.

8             MR. DUBLINSKE: And just to be clear, today had  
9     been set. Is Mr. Powell no longer on the stand when we  
10    start tomorrow morning? And is Mr. Schmidt -- and  
11    Mr. Schmidt is going to have to change some plans.  
12    Frankly, I don't think he should be expected to be  
13    inconvenienced given how the afternoon's time was spent,  
14    but if it's important to the Commission, we will make  
15    him available.

16            ALJ HOGAN: I don't think -- I think the purpose  
17    of the cross-examination of these witnesses were for the  
18    benefit of the intervenors and not for the Commission  
19    itself. So if intervenors want to call Mr. Schmidt  
20    during the two and a half days they've been allowed or  
21    allotted time and Summit's willing to accommodate, I'll  
22    allow it. But I think that's up to the parties to work  
23    out. And same with further testimony from Mr. Powell.

24            MR. DUBLINSKE: Thank you, Your Honor.

25            MR. BAKKE: And, Your Honor, I'll just note for

1 the record, you know, originally my understanding was  
2 this day was set aside for the intervenors to conduct  
3 cross-examination of Summit's witnesses. They added a  
4 witness, Mr. Olson, this morning in their case. So they  
5 ate up part of our time with Mr. Olson, which included  
6 cross-examination, but they threw in a new witness. So  
7 to suggest we weren't efficient with our time I don't  
8 think is -- is accurate. But at any rate, we didn't get  
9 a full day and I'll just note our objection to that.

10 And in relation to tomorrow, the witnesses that  
11 Mr. Jorde described that we'll be calling is accurate.  
12 I can't state that we'll get them in in the morning,  
13 because there is one witness of theirs that I understand  
14 they want to go on first, Mr. Malloy, which is fine, but  
15 I'm just saying those other witnesses could be  
16 throughout the day tomorrow.

17 ALJ HOGAN: Well, and I'll just note that the  
18 time allocations -- because I was told by the  
19 intervenors at the prehearing conference that no  
20 schedule was necessary and that the intervenors were  
21 working together to develop a schedule. And I'm not  
22 saying that didn't happen, but I sent an email last week  
23 asking for that schedule because it was my understanding  
24 the two parties were working together to schedule  
25 witnesses. That's not what I received.

1 I would also note that the letter I sent out  
2 regarding a schedule for this hearing did acknowledge  
3 that Summit requested and was granted permission to call  
4 one additional witness which they estimated would take  
5 15 minutes for their direct. I think they complied with  
6 that. They also prefiled testimony for that witness.

7 And, again, at numerous rehearing conferences  
8 the parties were advised that you could prefile  
9 testimony to save hearing time, and I believe, to date,  
10 Summit is the only party that's taken advantage of that  
11 option. So that's my thoughts on the schedule.

12 And I think I was clear in providing just  
13 minimum guidelines on use of time. So I'm doing the  
14 best I can in managing time. We only have so much time  
15 to get through lots of witnesses. So that's where we're  
16 at.

17 And like I said, if you want to call Mr. Schmidt  
18 or recall Mr. Powell, those arrangements are going to  
19 have to be made with Summit's counsel.

20 MR. BAKKE: Just for the record, we did submit  
21 our list of witnesses to --

22 ALJ HOGAN: Yes, you did. Thank you.

23 MR. BAKKE: -- call today --

24 ALJ HOGAN: Yes.

25 MR. BAKKE: -- yesterday so I --

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Dated this date of October 28, 2025.

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