

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

May 28, 2024, Formal hearing

## ND PUBLIC SERVICE COMMISSION

<p style="text-align: right;">1</p> <p style="text-align: center;">STATE OF NORTH DAKOTA PUBLIC SERVICE COMMISSION</p> <p>SCS Carbon Transport LLC Midwest Carbon Express CO2 Pipeline Project Siting Application</p> <p style="text-align: right;">Case No. PU-22-391</p> <p style="text-align: center;"><b>TRANSCRIPT OF FORMAL HEARING</b> <b>May 28, 2024</b> <b>Bismarck, North Dakota</b></p> <p style="text-align: center;">APPEARANCES</p> <p>Commissioners Randy Christmann, Sheri Haugen-Hoffart, and Substitute Decisionmaker Timothy J. Dawson</p> <p>BRET DUBLINSKE, PATRICK MAHLBERG, TYLER GLUDT, and BRANT LEONARD, Fredrikson &amp; Byron, PA, and MARK SCHULTHEIS, Schultheis White, PLC, on behalf of Applicant SCS Carbon Transport LLC</p> <p>RANDALL J. BAKKE, Bakke Grinolds Wiederholt, on behalf of Intervenor Burleigh County</p> <p>BRIAN E. JORDE, Domina Law Group, on behalf of Intervenors/Landowners</p> <p>STEVE J. LEIBEL and MICHAEL JOYNER, Knoll Leibel LLP, on behalf of Intervenors/Landowners</p> <p>ZACHARY PELHAM, Special Assistant Attorney General Advisory Counsel to the Public Service Commission</p>	<p>1 ALJ HOGAN: All right. We are going to get</p> <p>2 started. Sorry for the delay getting started this</p> <p>3 morning.</p> <p>4 Good morning. My name is Hope Hogan and I'm the</p> <p>5 administrative law judge that's been designated upon the</p> <p>6 request of the Public Service Commission to serve as the</p> <p>7 hearing officer for today's hearing.</p> <p>8 Let the record show it's May 28th, 2024, at</p> <p>9 8:38 a.m. This is the time, date, and place set by a</p> <p>10 notice of technical hearing issued by the Public Service</p> <p>11 Commission on April 25th, 2024, for a technical hearing</p> <p>12 in Case No. PU-22-391. This hearing is being held today</p> <p>13 at the Brynhild Haugland Room at the State Capitol in</p> <p>14 Bismarck, North Dakota.</p> <p>15 Just to note that the next two days that have</p> <p>16 been scheduled for this hearing will be held in the</p> <p>17 Pioneer Room, which is on the other side of the Capitol</p> <p>18 in the Judicial Wing.</p> <p>19 We will adjourn today's hearing around 5 p.m.</p> <p>20 And we will also take two 15-minute breaks, a morning</p> <p>21 and an afternoon break, and we will break for lunch for</p> <p>22 approximately an hour.</p> <p>23 As we begin today, I'd ask that everybody please</p> <p>24 check your cell phones to make sure they're either</p> <p>25 silenced or turned off so that we do not have cell phone</p> <p style="text-align: right;">PAGE 3</p>
<p style="text-align: right;">2</p> <p style="text-align: center;">C O N T E N T S</p> <p style="text-align: center;"><b>SCS CARBON TRANSPORT LLC WITNESSES</b></p> <p>JEFF OLSON Direct Examination by MR. MAHLBERG . . . . 9 Cross Examination by MR. PELHAM . . . . . 20 Cross Examination by MR. BAKKE . . . . . 21 Cross Examination by MR. JORDE . . . . . 39 Questions by COMMISSION . . . . . 46 Redirect Examination by MR. MAHLBERG . . . . 51 Recross Examination by MR. BAKKE . . . . . 55 Recross Examination by MR. JORDE . . . . . 58</p> <p>DAN PICKERING Cross Examination by MR. JORDE . . . . . 63 Cross Examination by MR. BAKKE . . . . . 83</p> <p>WADE BOESHANS Cross Examination by MR. BAKKE . . . . . 114 Cross Examination by MR. JORDE . . . . . 176 Questions by COMMISSION . . . . . 189</p> <p>JAMES POWELL Cross Examination by MR. JORDE . . . . . 196 Cross Examination by MR. BAKKE . . . . . 233</p> <p style="text-align: center;">-----</p>	<p>1 interruptions as we move through our hearing today.</p> <p>2 This hearing concerns the application of SCS</p> <p>3 Carbon Transport LLC for a certificate of corridor</p> <p>4 compatibility and route permit concerning approximately</p> <p>5 320 miles of carbon dioxide pipeline ranging from 4.5-</p> <p>6 to 24-inch diameter and associated facilities in</p> <p>7 Burleigh, Cass, Dickey, Emmons, Logan, McIntosh, Morton,</p> <p>8 Oliver, Richland, and Sargent counties, North Dakota.</p> <p>9 On August 4th, 2023, the Commission issued</p> <p>10 findings of fact, conclusions of law and an order</p> <p>11 denying the application. On September 15th, 2023, the</p> <p>12 Commission issued an order granting the Applicant's</p> <p>13 petition for reconsideration.</p> <p>14 This hearing was scheduled pursuant to an order</p> <p>15 on a motion for continuance issued by the Commission on</p> <p>16 April 9th, 2024. The purpose of this hearing is to</p> <p>17 allow Burleigh County and the landowner intervenors who</p> <p>18 could not attend the April 22nd, 2024, public hearing an</p> <p>19 opportunity to participate. Burleigh County and the</p> <p>20 landowner intervenors will have the opportunity to</p> <p>21 cross-examine the witnesses who testified at the</p> <p>22 April 22nd hearing and to offer their own witness</p> <p>23 testimony.</p> <p>24 There will be no public testimony or input taken</p> <p>25 at this hearing.</p> <p style="text-align: right;">PAGE 4</p>

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<p>1 I would note again that this matter or these</p> <p>2 hearings have been scheduled based on the Commission's</p> <p>3 order to re-open this case. All evidence previously</p> <p>4 accepted into the record, including testimony, remain a</p> <p>5 part of the record. The purpose of this hearing is to</p> <p>6 address deficiencies noted in the Commission's order and</p> <p>7 route adjustments. The purpose is not to address issues</p> <p>8 the Commission has already determined it does not have</p> <p>9 jurisdiction over or items the Commission has determined</p> <p>10 were already appropriately addressed by the Applicant.</p> <p>11 I'm now going to ask the parties to note their</p> <p>12 appearance for the record.</p> <p>13 And on behalf of the Applicant, I'll start with</p> <p>14 you, Mr. Dublinske. Do you want to note your appearance</p> <p>15 for the record and introduce who you have with you</p> <p>16 today?</p> <p>17 MR. DUBLINSKE: Thank you, Your Honor. Bret</p> <p>18 Dublinske of Fredrikson &amp; Byron for the Applicant, SCS</p> <p>19 Carbon Transport. With me is Pat Mahlberg, also of</p> <p>20 Fredrikson &amp; Byron, on behalf of SCS and Tyler Gludt,</p> <p>21 also on behalf of SCS.</p> <p>22 ALJ HOGAN: Thank you.</p> <p>23 On behalf of the Commission, Mr. Pelham, did you</p> <p>24 want to note your appearance for the record?</p> <p>25 MR. PELHAM: Thank you, Your Honor. Good</p> <p>PAGE 5</p>	<p>1 Mr. Dublinske, did you have anything?</p> <p>2 MR. DUBLINSKE: Your Honor, the only preliminary</p> <p>3 matter I have is that I inadvertently forgot to</p> <p>4 introduce the people that are with us on the phone. So</p> <p>5 Brant Leonard on behalf of SCS also appearing as an</p> <p>6 attorney and Mark Schultheis who is appearing for an</p> <p>7 attorney on behalf -- or as an attorney on behalf of</p> <p>8 SCS.</p> <p>9 We have no other preliminary matters.</p> <p>10 ALJ HOGAN: All right. Thank you.</p> <p>11 Mr. Pelham.</p> <p>12 MR. PELHAM: No, Your Honor. Thank you.</p> <p>13 ALJ HOGAN: Mr. Bakke.</p> <p>14 MR. BAKKE: No, Your Honor.</p> <p>15 ALJ HOGAN: And Mr. Jorde or Mr. Leibel.</p> <p>16 MR. JORDE: No, Your Honor.</p> <p>17 ALJ HOGAN: All right. So it's my understanding</p> <p>18 that the Applicant's going to call Mr. Olson to testify</p> <p>19 first; is that correct?</p> <p>20 MR. MAHLBERG: That's correct, Your Honor. The</p> <p>21 Applicant would call Jeff Olson.</p> <p>22 ALJ HOGAN: All right. Mr. Olson, if you want</p> <p>23 to take a seat at the witness stand. The first question</p> <p>24 is whether the microphone is on. Do you see a blue</p> <p>25 light?</p> <p>PAGE 7</p>
<p>1 morning. Zachary Pelham, special assistant attorney</p> <p>2 general on behalf of the Commission. To my left is</p> <p>3 Victor Schock. He is the Public Utilities director.</p> <p>4 And Victor may have some questions today. Thank you.</p> <p>5 ALJ HOGAN: Mr. Bakke, would you like to</p> <p>6 introduce yourself and note your appearance for the</p> <p>7 record?</p> <p>8 MR. BAKKE: Yes, Your Honor. Good morning. I'm</p> <p>9 Randy Bakke. I'm here on behalf of Burleigh County.</p> <p>10 And with me is one of our paralegals, Kate Finck.</p> <p>11 ALJ HOGAN: And either Mr. Leibel or Mr. Jorde,</p> <p>12 would you like to note your appearance for the record</p> <p>13 and introduce the other individuals appearing on behalf</p> <p>14 of the landowner intervenors?</p> <p>15 MR. JORDE: Steve, why don't you go ahead?</p> <p>16 MR. LEIBEL: This is Steve Leibel and Michael</p> <p>17 Joyner for landowner intervenors. Mr. Brian Jorde is</p> <p>18 appearing remotely via GoTo Meeting. And we also have</p> <p>19 Rosanne Ogden from my office.</p> <p>20 ALJ HOGAN: Thank you.</p> <p>21 All right. And since this a continuance of the</p> <p>22 April 22nd hearing, it's my intent to jump right in, but</p> <p>23 before we do that, I'll just go around and make sure</p> <p>24 there isn't any other preliminary matters we need to</p> <p>25 address before we get started.</p> <p>PAGE 6</p>	<p>1 JEFF OLSON: There, how about now?</p> <p>2 ALJ HOGAN: That's perfect.</p> <p>3 Mr. Olson, I'll have you start by stating your</p> <p>4 full name for the record and spelling your last name.</p> <p>5 JEFF OLSON: Sure. Can you still hear me okay?</p> <p>6 ALJ HOGAN: Yep.</p> <p>7 JEFF OLSON: All right. Jeffery Alan Olson. My</p> <p>8 middle name is spelled A-L-A-N, my last name, O-L-S-O-N.</p> <p>9 ALJ HOGAN: And, Mr. Olson, before you testify</p> <p>10 this morning, I'm required by law to advise you on the</p> <p>11 penalties for perjury in the state of North Dakota.</p> <p>12 Perjury is a Class C felony, punishable by a</p> <p>13 maximum fine of \$10,000, a maximum five years'</p> <p>14 imprisonment, or both.</p> <p>15 Do you understand what perjury is?</p> <p>16 MR. OLSON: Yes, I do.</p> <p>17 ALJ HOGAN: And being advised of the potential</p> <p>18 penalties for perjury, do you promise to tell the truth</p> <p>19 in this case today?</p> <p>20 MR. OLSON: Yes, I do.</p> <p>21 ALJ HOGAN: All right. Thank you.</p> <p>22 Go ahead, Mr. Mahlberg.</p> <p>23 MR. MAHLBERG: Thank you, Your Honor.</p> <p>24</p> <p>25</p> <p>PAGE 8</p>

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<p>1 <b>JEFF OLSON.</b></p> <p>2 being first duly sworn, was examined and testified as</p> <p>3 follows:</p> <p>4 DIRECT EXAMINATION</p> <p>5 BY MR. MAHLBERG:</p> <p>6 Q. Mr. Olson, can you state your business address,</p> <p>7 please?</p> <p>8 A. My business address is 1621 North Fourth Street</p> <p>9 in Tomahawk, Wisconsin.</p> <p>10 Q. Mr. Olson, what's your profession?</p> <p>11 A. I am a senior appraiser with LandVest,</p> <p>12 Incorporated.</p> <p>13 Q. What licensures or designations do you hold in</p> <p>14 the appraisal field?</p> <p>15 A. I am a certified general appraiser licensed</p> <p>16 in four states: North Dakota, Wisconsin, Minnesota, and</p> <p>17 Michigan.</p> <p>18 Q. Mr. Olson, in connection with this proceeding,</p> <p>19 did you prepare or cause to be prepared written</p> <p>20 testimony?</p> <p>21 A. I did.</p> <p>22 Q. Was that written testimony prepared by you or</p> <p>23 under your control and supervision?</p> <p>24 A. Yes.</p> <p>25 Q. When you prepared that testimony, Mr. Olson, was</p> <p>PAGE 9</p>	<p>1 offer the direct testimony of Jeff Olson, dated</p> <p>2 April 22nd, 2024, as SCS R-16.</p> <p>3 ALJ HOGAN: Mr. Pelham, any objection?</p> <p>4 MR. PELHAM: I don't.</p> <p>5 ALJ HOGAN: Mr. Bakke.</p> <p>6 MR. BAKKE: No, Your Honor.</p> <p>7 ALJ HOGAN: And Mr. Jorde.</p> <p>8 MR. JORDE: I'd say foundation and hearsay.</p> <p>9 ALJ HOGAN: All right. The objections are</p> <p>10 noted. SCS R-16 will be received.</p> <p>11 Q. (BY MR. MAHLBERG) Mr. Olson, would there be</p> <p>12 any documents in addition to what has just been admitted</p> <p>13 that you have also prepared in connection with this</p> <p>14 proceeding?</p> <p>15 A. Yes.</p> <p>16 Q. And can you explain what that -- what that is,</p> <p>17 Mr. Olson?</p> <p>18 A. Sure. I've been licensed in North Dakota for</p> <p>19 about ten years now. I continue to do research on -- on</p> <p>20 pipeline-encumbered properties and their impact on</p> <p>21 value. And it's my understanding that there's a -- one</p> <p>22 CO2 line in existence going through several counties in</p> <p>23 North Dakota. So I'm -- I'm continuing to do my</p> <p>24 research, looking for easement-encumbered properties.</p> <p>25 And I recently -- since my testimony, I've -- I've</p> <p>PAGE 11</p>
<p>1 it true and correct?</p> <p>2 A. Yes.</p> <p>3 Q. Are there any corrections you need --</p> <p>4 A. No.</p> <p>5 Q. -- any corrections you need to make to your</p> <p>6 testimony, Mr. Olson?</p> <p>7 A. No.</p> <p>8 Q. As you sit here today, if you were asked those</p> <p>9 same questions, would your answers be the same or</p> <p>10 substantially the same?</p> <p>11 A. Yes.</p> <p>12 UNIDENTIFIED SPEAKER: Unfortunately, I think</p> <p>13 it's just any of them in the room, feedback possibly</p> <p>14 because of the ventilation system too being so loud.</p> <p>15 But you may contact the people who service the room.</p> <p>16 UNIDENTIFIED SPEAKER: Matt, so would it be</p> <p>17 best, if we're not speaking, to shut it off?</p> <p>18 UNIDENTIFIED SPEAKER: Yeah, correct. If you're</p> <p>19 not currently talking, please leave the microphone off.</p> <p>20 Q. (BY MR. MAHLBERG) All right. Mr. Olson, do</p> <p>21 you understand that the written testimony that you</p> <p>22 prepared has been entered in the docket as Docket</p> <p>23 No. 578?</p> <p>24 A. Correct. Yes.</p> <p>25 MR. MAHLBERG: At this time, Applicant would</p> <p>PAGE 10</p>	<p>1 recently uncovered one property that is encumbered with</p> <p>2 a CO2 line.</p> <p>3 Q. And did you prepare a written report of the</p> <p>4 research that you performed about that sale?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Mr. Olson, is that document entitled</p> <p>7 "Market Analysis, North Dakota CO2 Pipeline Research"?</p> <p>8 A. Correct.</p> <p>9 Q. Can you explain what that document -- what that</p> <p>10 document concludes to?</p> <p>11 A. Sure. It's a paired sale analysis similar to</p> <p>12 the paired sale analysis in my -- in my written</p> <p>13 testimony. So there's one sale; 478 acres in Divide</p> <p>14 County sold in January of 2023. It sold for \$1,264 per</p> <p>15 acre. It was two non-contiguous parcels, three quarter</p> <p>16 sections totaling the 478 acres.</p> <p>17 Nearby, within a mile, there -- I have in my</p> <p>18 database two other similar sales. One is 160 acres in</p> <p>19 size, the other is 263 acres in size. Both of those</p> <p>20 properties sold for \$1,275 per acre.</p> <p>21 So the difference in the sale price between the</p> <p>22 encumbered and the unencumbered is about 1 percent,</p> <p>23 minus 1 percent.</p> <p>24 MR. MAHLBERG: We'd offer that "Market Analysis,</p> <p>25 North Dakota CO2 Pipeline Research" as SCS R-17.</p> <p>PAGE 12</p>

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<p>1 ALJ HOGAN: Mr. Pelham, any objection?</p> <p>2 MR. PELHAM: No objection.</p> <p>3 ALJ HOGAN: Mr. Bakke.</p> <p>4 MR. BAKKE: Your Honor, can I voir dire the</p> <p>5 witness for purpose of foundation and relevance?</p> <p>6 ALJ HOGAN: Yes.</p> <p>7 MR. BAKKE: This pipeline that you're referring</p> <p>8 to for Dakota Gasification Company, what was the</p> <p>9 diameter of that pipeline?</p> <p>10 THE WITNESS: I am unaware of the diameter of</p> <p>11 the pipeline.</p> <p>12 MR. BAKKE: What was the volume of CO2 that's in</p> <p>13 that pipeline?</p> <p>14 THE WITNESS: I -- they have it on their</p> <p>15 website. I have it printed out, not with me. I don't</p> <p>16 recall the specifications.</p> <p>17 MR. BAKKE: Okay. What was the pressure in that</p> <p>18 pipeline?</p> <p>19 THE WITNESS: Again, I don't have that with me,</p> <p>20 but it's on the -- on the information that I reviewed.</p> <p>21 MR. BAKKE: What was the depth that that</p> <p>22 pipeline is buried?</p> <p>23 THE WITNESS: I do not know.</p> <p>24 MR. BAKKE: When was the pipeline installed?</p> <p>25 THE WITNESS: I believe it's been in operation</p> <p>PAGE 13</p>	<p>1 northern North Dakota, lots of ponds, small ponds. So</p> <p>2 the encumbered sale has a slightly less tillable acreage</p> <p>3 than the unencumbered sales.</p> <p>4 MR. BAKKE: Okay. Do you have any photographs</p> <p>5 or information on the properties that identifies water</p> <p>6 sources or indicates whether one has a stock dam,</p> <p>7 another doesn't, what water features there might be,</p> <p>8 other things that might be pertinent to a sale, access</p> <p>9 issues, easement issues, those types of things? Do you</p> <p>10 have any photographs or details on that?</p> <p>11 THE WITNESS: Of the -- of which --</p> <p>12 MR. BAKKE: Of any of these properties that</p> <p>13 would be part of what went into what the price per acre</p> <p>14 might be.</p> <p>15 THE WITNESS: Sure. I've got aerial photos, but</p> <p>16 I do not have any pictures that I personally took.</p> <p>17 MR. BAKKE: Okay. So we don't have those here</p> <p>18 today to look at the differences?</p> <p>19 THE WITNESS: I do have a couple with me here,</p> <p>20 yes.</p> <p>21 MR. BAKKE: Okay. But they're not part of this</p> <p>22 proposal?</p> <p>23 THE WITNESS: They're not.</p> <p>24 MR. BAKKE: Okay. Your Honor, we'd object for</p> <p>25 lack of foundation and relevance.</p> <p>PAGE 15</p>
<p>1 almost 20 years.</p> <p>2 MR. BAKKE: Okay. How does this pipeline</p> <p>3 compare to the proposed Summit pipeline in terms of</p> <p>4 volume, pressure, diameter, pipeline depth? Do you know</p> <p>5 any of those things?</p> <p>6 THE WITNESS: I do not.</p> <p>7 MR. BAKKE: Okay. And then in relation to the</p> <p>8 properties that you're comparing the sales price for,</p> <p>9 did you go out and physically walk that land or examine</p> <p>10 that land in any way?</p> <p>11 THE WITNESS: The two unencumbered properties,</p> <p>12 yes, I have previously. The property that is encumbered</p> <p>13 with the pipeline, no, I have not. I have not been up</p> <p>14 there yet.</p> <p>15 MR. BAKKE: Okay. And do you know, for</p> <p>16 instance, if there's differences between the</p> <p>17 unencumbered properties and the encumbered properties in</p> <p>18 terms of what type of soil index there is for the</p> <p>19 property?</p> <p>20 THE WITNESS: Yes. The properties are -- are,</p> <p>21 like I said, less than a mile apart. The soil</p> <p>22 productivity, the crop productivity indexes are very</p> <p>23 similar. The encumbered sale -- the encumbered sale is</p> <p>24 -- the land characteristics are slightly less tillable</p> <p>25 acreage. There's -- if you're familiar with northern --</p> <p>PAGE 14</p>	<p>1 And let me also ask you, Mr. Olson, are there</p> <p>2 residences on any of these properties?</p> <p>3 THE WITNESS: Vacant land.</p> <p>4 You know, to go back to one of your previous</p> <p>5 questions, it's just ponding. It's not -- you know,</p> <p>6 there aren't any controlled structures on any of these</p> <p>7 so it's ponds.</p> <p>8 MR. BAKKE: So there's no residences that would</p> <p>9 be impacted in that immediate location?</p> <p>10 THE WITNESS: No. These -- all three of these</p> <p>11 sales are vacant cropland.</p> <p>12 MR. BAKKE: I'd object on the basis of lack of</p> <p>13 foundation and relevance.</p> <p>14 ALJ HOGAN: Mr. Jorde, any objection?</p> <p>15 MR. JORDE: Yes. We would object on the same</p> <p>16 basis.</p> <p>17 ALJ HOGAN: All right. The objections are</p> <p>18 noted. I am going to admit SCS R-17 and the Commission</p> <p>19 can determine what relevance, if any, to give this</p> <p>20 evidence.</p> <p>21 Mr. Mahlberg.</p> <p>22 MR. MAHLBERG: Thank you, Your Honor.</p> <p>23 Q. (BY MR. MAHLBERG) Mr. Olson, to back up a</p> <p>24 little bit from that voir dire, higher level, what's the</p> <p>25 purpose of your testimony?</p> <p>PAGE 16</p>

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<p>1 <b>A. Sure. I'm here to provide the Commission with</b></p> <p>2 <b>an unbiased USPAP compliant opinion as to the effects of</b></p> <p>3 <b>pipelines and easements on land values.</b></p> <p>4 <b>Q.</b> In connection with that assignment, did you</p> <p>5 study both residential and agricultural lands?</p> <p>6 <b>A. Yes.</b></p> <p>7 <b>Q.</b> Have you reached an opinion as to whether and</p> <p>8 how a Summit pipeline easement may affect residential</p> <p>9 lands?</p> <p>10 <b>A. Yes.</b></p> <p>11 <b>Q.</b> What is that opinion?</p> <p>12 MR. JORDE: Objection. Foundation, relevance.</p> <p>13 MR. BAKKE: Same objection.</p> <p>14 ALJ HOGAN: I'll allow him to answer.</p> <p>15 <b>A. Okay. Can you restate the question?</b></p> <p>16 <b>Q.</b> (BY MR. MAHLBERG) Yes. What is that opinion?</p> <p>17 MR. JORDE: Same objections.</p> <p>18 ALJ HOGAN: I'll allow him to answer.</p> <p>19 <b>A. I previously testified to my -- my body of work</b></p> <p>20 <b>in North Dakota. So I've been working on similar</b></p> <p>21 <b>projects for about ten years. I continue to gather</b></p> <p>22 <b>market evidence on pipeline-encumbered properties, both</b></p> <p>23 <b>residential, large parcel residential, commercial,</b></p> <p>24 <b>industrial, and even ag properties. My opinion is that</b></p> <p>25 <b>pipelines, and especially, you know, a similar pipeline</b></p> <p>PAGE 17</p>	<p>1 <b>Q.</b> And did you also reach an opinion as to whether</p> <p>2 and how a Summit pipeline easement may affect</p> <p>3 agricultural land?</p> <p>4 <b>A. Yes.</b></p> <p>5 <b>Q.</b> What is that opinion?</p> <p>6 <b>A. The same opinion.</b></p> <p>7 MR. JORDE: Same objections. Foundation,</p> <p>8 relevance.</p> <p>9 MR. BAKKE: I'll join in that objection.</p> <p>10 ALJ HOGAN: The objection is noted, but I'll</p> <p>11 allow him to answer.</p> <p>12 <b>A. Sorry.</b></p> <p>13 <b>Yes. I -- pipelines going across rural ag</b></p> <p>14 <b>properties have very little impact on value.</b></p> <p>15 <b>Q.</b> And what leads you to that opinion, Mr. Olson?</p> <p>16 <b>A. Paired sale analysis. I'm gathering data</b></p> <p>17 <b>continuously. Just uncovered the CO2 sale up in Divide</b></p> <p>18 <b>County. I'm continuing to gather data. And the data is</b></p> <p>19 <b>overwhelming that pipelines and pipeline easements have</b></p> <p>20 <b>very little impact on value.</b></p> <p>21 MR. MAHLBERG: I don't have anything else for</p> <p>22 Mr. Olson right now. He'd be available for</p> <p>23 cross-examination.</p> <p>24 ALJ HOGAN: All right. Mr. Pelham, any</p> <p>25 questions?</p> <p>PAGE 19</p>
<p>1 <b>to Summit Carbon, has very minimal impact, if any, on</b></p> <p>2 <b>land value.</b></p> <p>3 <b>Q.</b> What leads you to that opinion?</p> <p>4 <b>A. Again, paired sales analysis. I've been</b></p> <p>5 <b>conducting research for ten years on similar properties,</b></p> <p>6 <b>not only in North Dakota but in four, five states.</b></p> <p>7 <b>Q.</b> Mr. Olson, what's a paired sales analysis for</p> <p>8 those people who don't read appraisal reports all day</p> <p>9 long?</p> <p>10 <b>A. Sure. There's two different types of paired</b></p> <p>11 <b>sales analysis that I typically do. One is a -- what is</b></p> <p>12 <b>termed by the appraisal industry as "grouped paired sale</b></p> <p>13 <b>analysis." That's where you gather a bunch of sales, a</b></p> <p>14 <b>grouping of sales of similar property types, and you</b></p> <p>15 <b>compare them to, in this case, encumbered properties</b></p> <p>16 <b>versus unencumbered properties.</b></p> <p>17 <b>So a paired sale analysis is trying to isolate</b></p> <p>18 <b>the impact of, in this case, a pipeline easement. You</b></p> <p>19 <b>can do a paired sale analysis on residential property.</b></p> <p>20 <b>If you want to know what is the contributing value of a</b></p> <p>21 <b>swimming pool, you look at a house -- 2,000-square-foot</b></p> <p>22 <b>house that has a swimming pool, a 2,000-square-foot</b></p> <p>23 <b>house that does not have a swimming pool, and you</b></p> <p>24 <b>compare the two and, hopefully, you can isolate that</b></p> <p>25 <b>difference, and that difference would be the impact.</b></p> <p>PAGE 18</p>	<p>1 CROSS EXAMINATION</p> <p>2 BY MR. PELHAM:</p> <p>3 <b>Q.</b> Good morning, Mr. Olson. I appreciate the data.</p> <p>4 I'm just wondering, as part of your research, did you</p> <p>5 talk to any of the landowners who are involved in any of</p> <p>6 the sales that you looked at?</p> <p>7 <b>A. Not of the CO2 sale that I just presented here</b></p> <p>8 <b>today, but the other sales, yes, I have -- myself and a</b></p> <p>9 <b>colleague have verified these sales with buyers or</b></p> <p>10 <b>sellers.</b></p> <p>11 <b>Q.</b> In those conversations with those sellers or</p> <p>12 buyers, if you had any, were concerns related to</p> <p>13 pipeline easements or the existence of pipelines</p> <p>14 discussed with those individuals?</p> <p>15 <b>A. Yes.</b></p> <p>16 <b>Q.</b> And as far as those discussions, were there any</p> <p>17 concerns noted by those individuals who were involved in</p> <p>18 the sales involving their lands with the pipelines on</p> <p>19 their lands?</p> <p>20 MR. JORDE: Hearsay and relevance.</p> <p>21 MR. BAKKE: Join.</p> <p>22 MR. PELHAM: I asked him if there were</p> <p>23 conversations. I didn't ask him what they were.</p> <p>24 ALJ HOGAN: You can answer.</p> <p>25 <b>A. Yes, there were conversations.</b></p> <p>PAGE 20</p>

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May 28, 2024, Formal hearing

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<p>1 Q. (BY MR. PELHAM) All right. And as part of</p> <p>2 your research, sir, and your investigations into this</p> <p>3 matter, what -- were there any concerns that were stated</p> <p>4 as to the impact of pipelines as to the economic value</p> <p>5 of the pipelines on the properties that you reviewed?</p> <p>6 MR. JORDE: Hearsay and relevance.</p> <p>7 MR. BAKKE: Join.</p> <p>8 ALJ HOGAN: The objection is noted. I'll allow</p> <p>9 him to answer.</p> <p>10 A. No, not on -- not on the sales that I provided</p> <p>11 in my written testimony.</p> <p>12 MR. PELHAM: Thank you, sir. I don't have any</p> <p>13 other questions.</p> <p>14 ALJ HOGAN: Mr. Schock, did you have any</p> <p>15 questions?</p> <p>16 MR. SCHOCK: No questions, Your Honor.</p> <p>17 ALJ HOGAN: Mr. Bakke.</p> <p>18 MR. BAKKE: Yes, Your Honor.</p> <p>19 CROSS EXAMINATION</p> <p>20 BY MR. BAKKE:</p> <p>21 Q. So, Mr. Olson, I think I heard you say, quote,</p> <p>22 "I'm here to provide an unbiased opinion and a USPAP</p> <p>23 compliance opinion." Is that accurate?</p> <p>24 A. Correct.</p> <p>25 Q. Okay. So what appraisal did you do in this case</p> <p>PAGE 21</p>	<p>1 Okay. This is a paired sales analysis. I'm not</p> <p>2 conducting an appraisal on any of the properties that</p> <p>3 you see in my testimony. Those aren't -- those are not</p> <p>4 appraisals.</p> <p>5 Q. Okay. So maybe I misunderstood your testimony.</p> <p>6 You're not offering testimony here today, providing an</p> <p>7 opinion of value as to any specific property?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. And so you have done no appraisal which</p> <p>10 would allow you to offer an opinion as to the value of</p> <p>11 the properties described in R-17 which has been admitted</p> <p>12 into this case?</p> <p>13 A. Correct. So -- so an appraisal, you know, on a</p> <p>14 -- on a specific piece of property, I'm engaged in -- in</p> <p>15 this case, maybe I'm engaged by SCS to perform</p> <p>16 appraisals on a specific piece of property. That</p> <p>17 process, in order to value these properties, we do it in</p> <p>18 a before and after scenario. Okay. So we appraise the</p> <p>19 property in the before condition and we appraise the</p> <p>20 property in the after condition, meaning now this</p> <p>21 property has a pipeline easement going across it, and in</p> <p>22 this case a CO2 pipeline.</p> <p>23 To determine the impacts of that pipeline,</p> <p>24 typically you do a paired sales analysis. Appraisers do</p> <p>25 those quite -- quite frequently. Or -- and -- and the</p> <p>PAGE 23</p>
<p>1 and of what property?</p> <p>2 A. I haven't -- I'm doing some preliminary work on</p> <p>3 -- on appraisals, but I have not completed appraisals</p> <p>4 yet.</p> <p>5 Q. Okay. And what is USPAP?</p> <p>6 A. That's the -- USPAP is the governing body that</p> <p>7 appraisers have to adhere to. They -- they've got -- we</p> <p>8 have to sign a certification. We have to take</p> <p>9 continuing education every -- every two years. So I do</p> <p>10 that in every state that I'm in. But it's the governing</p> <p>11 body that tells appraisers how they need to act and</p> <p>12 perform their duties.</p> <p>13 Q. Okay. Is it a violation of USPAP standards to</p> <p>14 offer an opinion of a value of a property without</p> <p>15 conducting an appraisal?</p> <p>16 A. I've -- I believe you have to have a work file.</p> <p>17 If you opine to a value of a specific piece of property,</p> <p>18 you should have a work file.</p> <p>19 Q. Okay. Well, the document you provided to the</p> <p>20 PSC, which has now been accepted into the record,</p> <p>21 SCS R-17, in order for you to offer a compliance opinion</p> <p>22 as to the value of that property, USPAP states that you</p> <p>23 must complete an appraisal before offering opinions as</p> <p>24 to value of properties, doesn't it?</p> <p>25 A. Well, I'm not appraising these properties.</p> <p>PAGE 22</p>	<p>1 best case scenario, this subject, one of the subject</p> <p>2 properties I'm appraising, two years ago sold for X</p> <p>3 amount of dollars. Now after two years the pipeline is</p> <p>4 in place, the property again sells. That's -- that's</p> <p>5 the -- that's the perfect paired sales analysis.</p> <p>6 But you don't have that in most of these</p> <p>7 situations. So in order to determine the after value,</p> <p>8 you have to look at similar situations to value it in</p> <p>9 the after condition.</p> <p>10 Q. Okay. And that wasn't what I was asking about,</p> <p>11 a paired sales analysis, but I'll move on.</p> <p>12 As I understand it, any testimony you provided</p> <p>13 in your written testimony provided to the commissioners</p> <p>14 here today, you're not offering an opinion as to value</p> <p>15 on any of the properties discussed in your written</p> <p>16 testimony; correct?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. Because you've done no appraisal of any</p> <p>19 of those properties?</p> <p>20 A. Correct.</p> <p>21 Q. Okay. And there's two aspects of your testimony</p> <p>22 you're providing to the PSC here today. One relates to</p> <p>23 residential properties and one relates to agricultural</p> <p>24 properties?</p> <p>25 A. Correct.</p> <p>PAGE 24</p>

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<p>1 Q. Okay. So let's take those separately and let's</p> <p>2 start with the residential properties. The residential</p> <p>3 properties that are the subject of your written</p> <p>4 testimony, are those residential properties in Bismarck,</p> <p>5 North Dakota?</p> <p>6 A. They are, correct.</p> <p>7 Q. Okay. Did you consider residential properties</p> <p>8 from any other location other than within the city of</p> <p>9 Bismarck itself?</p> <p>10 A. In my body of work, yes, but for this testimony,</p> <p>11 no. This only pertains to the -- to the residential</p> <p>12 subdivisions on the northwest side of Bismarck.</p> <p>13 Q. Okay. So, for instance, for my client, Burleigh</p> <p>14 County, which has jurisdiction outside the city limits</p> <p>15 for housing subdivisions, you have done no analysis of</p> <p>16 values for any residences in any rural subdivisions in</p> <p>17 Burleigh County; correct?</p> <p>18 A. Correct.</p> <p>19 Q. Or any other county in North Dakota, for that</p> <p>20 matter?</p> <p>21 A. Not as part of this testimony, no.</p> <p>22 Q. Okay. And how many appraisals have you</p> <p>23 performed in Burleigh County of residential homes,</p> <p>24 including the city of Bismarck, in the past?</p> <p>25 A. Of residential homes?</p> <p>PAGE 25</p>	<p>1 testimony on how either agricultural land or residential</p> <p>2 land might be impacted by being encumbered by a CO2</p> <p>3 pipeline?</p> <p>4 A. Correct.</p> <p>5 Q. What knowledge do you have in relation to the</p> <p>6 differences between the dangers of CO2 pipeline leaks</p> <p>7 versus a natural gas leak?</p> <p>8 A. I have very little information in regard to</p> <p>9 that.</p> <p>10 Q. Okay. Do you know what the health concerns are</p> <p>11 in relation to a leak from a CO2 pipeline if you're in a</p> <p>12 nearby residence?</p> <p>13 A. Yes. I've read about them. Correct.</p> <p>14 Q. So you understand there's some fairly</p> <p>15 significant differences between the health concerns by</p> <p>16 being located near a CO2 pipeline versus a natural gas</p> <p>17 pipeline?</p> <p>18 A. Correct.</p> <p>19 Q. Okay. And you understand that homes need</p> <p>20 natural gas pipelines to provide a natural gas source</p> <p>21 for heating and cooking for their homes; correct?</p> <p>22 A. Yes.</p> <p>23 Q. Versus there's no need for a CO2 for residences;</p> <p>24 correct?</p> <p>25 A. Correct.</p> <p>PAGE 27</p>
<p>1 Q. Correct.</p> <p>2 A. I have done no residential home valuations in --</p> <p>3 in Burleigh County.</p> <p>4 Q. Okay. How many residential home appraisals have</p> <p>5 you done in any city or location in North Dakota?</p> <p>6 A. Probably approaching 100.</p> <p>7 Q. Okay. And which cities or towns were those in?</p> <p>8 A. Mostly, in relation to my work, I do quite a bit</p> <p>9 of work on the FM Diversion Canal project in Fargo and</p> <p>10 Moorhead. So I -- I've conducted nearly a hundred</p> <p>11 residential -- rural residential and also urban</p> <p>12 residential valuations as part of that project.</p> <p>13 Q. And do any of them involve the effect of a CO2</p> <p>14 pipeline on any of those residential homes in Cass</p> <p>15 County?</p> <p>16 A. I don't believe so, no.</p> <p>17 Q. Okay. How many appraisals of either residential</p> <p>18 or agricultural land have you performed in the past in</p> <p>19 North Dakota where there was a nearby CO2 pipeline?</p> <p>20 A. None for a CO2 pipeline.</p> <p>21 Q. Okay. How many residential or agricultural</p> <p>22 appraisals have you done for residences or agricultural</p> <p>23 lands that are located and encumbered by a CO2 pipeline?</p> <p>24 A. Again, I have not conducted any.</p> <p>25 Q. So this is the first case where you're offering</p> <p>PAGE 26</p>	<p>1 Q. And that might help explain why -- how natural</p> <p>2 gas impacts the values of homes could be dramatically</p> <p>3 different than a CO2 pipeline in addition to the health</p> <p>4 concern difference; correct?</p> <p>5 A. Well, I think that's speculation.</p> <p>6 Q. Well, you don't know one way or the other?</p> <p>7 A. At this point, I've got very little data on</p> <p>8 properties that are encumbered by a CO2 pipeline.</p> <p>9 Q. Okay. And in your written testimony, you</p> <p>10 indicate that you rely on the written testimony of Jeff</p> <p>11 Skaare as part of your basis for your opinions you're</p> <p>12 offering to the PSC in this case; correct?</p> <p>13 A. Correct.</p> <p>14 Q. Okay. And what expertise does Mr. Skaare have</p> <p>15 in relation to real estate values and, in particular, in</p> <p>16 relation to Burleigh County real estate values?</p> <p>17 A. I don't know that he has any.</p> <p>18 Q. Okay. And what knowledge, if any, does</p> <p>19 Mr. Skaare, who I believe has indicated he lives in</p> <p>20 Dickinson, have about residential subdivisions in</p> <p>21 Bismarck or in Burleigh County?</p> <p>22 A. Well, he's aware of the presence of pipelines in</p> <p>23 -- going through residential developments in Bismarck.</p> <p>24 Q. Well, I'm sure there's a lot of people that are,</p> <p>25 but does he have some special expertise in pipelines?</p> <p>PAGE 28</p>

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<p>1 Isn't Mr. Skaare an attorney for Summit?</p> <p>2 <b>A. I don't know the answer to that.</b></p> <p>3 <b>Q.</b> Which residential subdivisions, rural</p> <p>4 residential subdivisions, in Burleigh County have you</p> <p>5 driven through that are in the area where the CO2</p> <p>6 pipeline is projected to be routed or nearby?</p> <p>7 <b>A. Well, I -- I don't -- I haven't seen any rural</b></p> <p>8 <b>residential properties, large, bulk development-type</b></p> <p>9 <b>properties, in -- in the location of the proposed route.</b></p> <p>10 <b>Q.</b> Okay. Do you know if there are any?</p> <p>11 <b>A. I don't know.</b></p> <p>12 <b>Q.</b> Okay. So you're just speculating that there</p> <p>13 might not be any, but you don't know?</p> <p>14 <b>A. Well, I've driven the route, I've driven -- I've</b></p> <p>15 <b>driven throughout the county, but I haven't seen any</b></p> <p>16 <b>rural bulk development properties that the pipeline is</b></p> <p>17 <b>going through. But, again, it's preliminary.</b></p> <p>18 <b>Q.</b> Okay. Have you talked to anybody at Burleigh</p> <p>19 County to ask them whether there are any nearby rural</p> <p>20 residential subdivisions?</p> <p>21 <b>A. I have not.</b></p> <p>22 <b>Q.</b> Okay. And have you asked anybody at Burleigh</p> <p>23 County any questions about development in the area where</p> <p>24 the pipeline is proposed to go?</p> <p>25 <b>A. At this point, no, because I -- I -- again, I'm</b></p> <p>PAGE 29</p>	<p>1 correct?</p> <p>2 <b>A. Yeah. It's the NuStar line and the west Bakken</b></p> <p>3 <b>lines. Right.</b></p> <p>4 <b>Q.</b> None of them were CO2 pipelines?</p> <p>5 <b>A. Correct.</b></p> <p>6 <b>Q.</b> Okay. And as part of the work that you did in</p> <p>7 this case for Summit and in regards to any opinions</p> <p>8 you're offering here today, did you have any</p> <p>9 communications with real estate subdivision developers</p> <p>10 who build or have built in the past residential homes in</p> <p>11 Bismarck?</p> <p>12 <b>A. Not in Bismarck, no.</b></p> <p>13 <b>Q.</b> Okay. Did you talk to any real estate</p> <p>14 developers who have in the past or currently are</p> <p>15 building housing subdivisions, rural housing</p> <p>16 subdivisions, in Burleigh County?</p> <p>17 <b>A. No.</b></p> <p>18 <b>Q.</b> Okay. Did you talk to any of the developers who</p> <p>19 have testified in this case regarding the impact and</p> <p>20 what their personal experience has been when potential</p> <p>21 purchasers learn that the CO2 pipeline might be</p> <p>22 constructed near their homes?</p> <p>23 <b>A. No.</b></p> <p>24 <b>Q.</b> Okay. So that's not considered as part of your</p> <p>25 testimony?</p> <p>PAGE 31</p>
<p>1 <b>not appraising properties yet, but if we get to that</b></p> <p>2 <b>point, then that's when I start doing that -- that type</b></p> <p>3 <b>of investigation.</b></p> <p>4 <b>Q.</b> Okay. You indicate in your written testimony</p> <p>5 that you rely on Mr. Becker's May 30, 2023, report,</p> <p>6 which is a part of the record in this case; is that</p> <p>7 correct?</p> <p>8 <b>A. Correct.</b></p> <p>9 <b>Q.</b> Okay. And that's not an appraisal either;</p> <p>10 correct?</p> <p>11 <b>A. No.</b></p> <p>12 <b>Q.</b> Okay. And he doesn't offer any values in his</p> <p>13 report, does he?</p> <p>14 <b>A. No.</b></p> <p>15 <b>Q.</b> Okay. And he only looks, Mr. Becker, at</p> <p>16 subdivisions within the city of Bismarck; correct?</p> <p>17 <b>A. Correct.</b></p> <p>18 <b>Q.</b> He didn't look at any rural residential</p> <p>19 subdivisions in Burleigh County; correct?</p> <p>20 <b>A. I believe it was limited to the city of</b></p> <p>21 <b>Bismarck.</b></p> <p>22 <b>Q.</b> Okay. And in relation to the properties</p> <p>23 considered by Mr. Becker and considered by you, all of</p> <p>24 those properties where you look at pipelines, those were</p> <p>25 either oil and gas pipelines or natural gas pipelines;</p> <p>PAGE 30</p>	<p>1 <b>A. No. Again, I'm not appraising properties yet.</b></p> <p>2 <b>So when I get to that point, if I get to that point,</b></p> <p>3 <b>that's when I would do more research.</b></p> <p>4 <b>Q.</b> Okay. And then you also talk about, in your</p> <p>5 written testimony, what you call, quote, "independent</p> <p>6 research," end quote. What independent research did you</p> <p>7 do, if any, in regards to values of residential property</p> <p>8 that are encumbered by CO2 pipelines?</p> <p>9 <b>A. Well, the -- really the -- I've only uncovered</b></p> <p>10 <b>-- there's a couple of sales in the state of Iowa and</b></p> <p>11 <b>they -- the property in Divide County. That's really</b></p> <p>12 <b>the only market evidence I have at this point that is</b></p> <p>13 <b>analyzing CO2 pipeline-encumbered properties.</b></p> <p>14 <b>Q.</b> Okay. And neither one of those situations</p> <p>15 involve residences?</p> <p>16 <b>A. No.</b></p> <p>17 <b>Q.</b> Okay. As part of the conclusions you indicate</p> <p>18 in your written testimony in this case, you have two</p> <p>19 primary opinions. First, you say, quote, "There is no</p> <p>20 pattern as to which lots are developed first. Many of</p> <p>21 the encumbered lots were some of the first to sell," end</p> <p>22 quote.</p> <p>23 And that comment, once again, is not in relation</p> <p>24 to residential lots or homes encumbered by a CO2</p> <p>25 pipeline?</p> <p>PAGE 32</p>



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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"?

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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.**

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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.**

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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

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<p>1 in this case about a single sale of any home encumbered</p> <p>2 by a CO2 pipeline?</p> <p>3 <b>A. No.</b></p> <p>4 <b>Q.</b> Okay. And you do agree agricultural landowners</p> <p>5 are entitled, under North Dakota law and perhaps the law</p> <p>6 of many other jurisdictions, to offer an opinion as to</p> <p>7 the value of their property?</p> <p>8 <b>A. Correct.</b></p> <p>9 <b>Q.</b> Because they -- they know that value from often</p> <p>10 having lived there and farmed there and ranched there</p> <p>11 and knowing the value of nearby properties as well;</p> <p>12 correct?</p> <p>13 <b>A. Entirely agree.</b></p> <p>14 <b>Q.</b> Okay. Would you agree that, over time, safety</p> <p>15 concerns and valuation impacts have changed in relation</p> <p>16 to the presence of pipelines?</p> <p>17 <b>A. No. I don't agree with that.</b></p> <p>18 <b>Q.</b> Okay. So you haven't seen a -- I don't really</p> <p>19 want to call it a trend but a change historically that</p> <p>20 many people now have concerns about pipelines and living</p> <p>21 by them or farming by them that perhaps 20 years ago did</p> <p>22 not have those same concerns?</p> <p>23 <b>A. I -- I agree with the concerns. However, I</b></p> <p>24 <b>disagree with the impact on value. The market data</b></p> <p>25 <b>speaks for itself. I agree with you in that there's --</b></p> <p>PAGE 37</p>	<p>1 <b>unencumbered properties.</b></p> <p>2 <b>So, again, there's -- there's concerns in Iowa,</b></p> <p>3 <b>there's concerns in North Dakota. And I -- I totally</b></p> <p>4 <b>understand that. But what I have to try and analyze is</b></p> <p>5 <b>that impact, what is the impact of that pipeline going</b></p> <p>6 <b>across these properties. And my market evidence is --</b></p> <p>7 <b>is overwhelming the same in every state that I work on.</b></p> <p>8 <b>It's very little impact on value.</b></p> <p>9 <b>Q.</b> Okay. Well, you've only found two situations.</p> <p>10 One in Iowa and then this other agricultural land in</p> <p>11 Divide County in North Dakota?</p> <p>12 <b>A. To date, correct.</b></p> <p>13 <b>Q.</b> Okay. And neither one of those involved a</p> <p>14 residence nearby or where their land was encumbered by a</p> <p>15 CO2 pipeline?</p> <p>16 <b>A. Correct.</b></p> <p>17 <b>Q.</b> Okay. That's all the questions I have. Thank</p> <p>18 you.</p> <p>19 ALJ HOGAN: Mr. Jorde, do you have any questions</p> <p>20 for Mr. Olson?</p> <p>21 MR. JORDE: I do. Thank you.</p> <p>22 CROSS EXAMINATION</p> <p>23 BY MR. JORDE:</p> <p>24 <b>Q.</b> Mr. Olson, you mentioned the sale in Iowa. And</p> <p>25 there's no Summit pipeline operating in Iowa. You're</p> <p>PAGE 39</p>
<p>1 <b>there's significant concerns even with this project.</b></p> <p>2 <b>Almost with every project that I work on there's --</b></p> <p>3 <b>there's significant concerns. It -- it most likely</b></p> <p>4 <b>reduces your potential pool of buyers, without a doubt.</b></p> <p>5 <b>But there's also investors out there and buyers out</b></p> <p>6 <b>there that have a checklist; right? They -- they go to</b></p> <p>7 <b>buy property. They've got these things in mind. And if</b></p> <p>8 <b>it has a pipeline on it and it's far down the list, it</b></p> <p>9 <b>doesn't -- it doesn't make that much of a difference to</b></p> <p>10 <b>them. And there's always somebody willing to pay top</b></p> <p>11 <b>dollar or market value or above market value even if</b></p> <p>12 <b>it's encumbered.</b></p> <p>13 <b>So I agree with the concerns, but I haven't seen</b></p> <p>14 <b>market evidence to support an impact on value that</b></p> <p>15 <b>coincides with the concerns.</b></p> <p>16 <b>Q.</b> Well, except for you're now switching to natural</p> <p>17 gas pipeline, oil pipelines. You haven't found any</p> <p>18 sales of property other than the one in Divide County</p> <p>19 involving a CO2 pipeline; correct?</p> <p>20 <b>A. Well -- okay. Even the ones in the state of</b></p> <p>21 <b>Iowa, right on the -- on the brochure, on the -- on the</b></p> <p>22 <b>flier, it says "Summit Carbon pipeline" on it. It was</b></p> <p>23 <b>prominently displayed on it. So people are aware of</b></p> <p>24 <b>Summit Carbon in Iowa and these properties sold for --</b></p> <p>25 <b>for more than the surrounding properties or the</b></p> <p>PAGE 38</p>	<p>1 aware of that; right?</p> <p>2 <b>A. Well, they're -- they're not operating yet, but</b></p> <p>3 <b>there are signed easements in the state of Iowa,</b></p> <p>4 <b>voluntary easements signed.</b></p> <p>5 <b>Q.</b> Okay. And you're saying that the example of the</p> <p>6 Iowa property, that there was -- someone signed an</p> <p>7 easement and then that someone sold that property with</p> <p>8 the easement to someone else. Is that what you're</p> <p>9 saying?</p> <p>10 <b>A. Yes. They sold at auction. And on the auction</b></p> <p>11 <b>flier, it -- it prominently displayed "Summit Carbon</b></p> <p>12 <b>pipeline."</b></p> <p>13 <b>Q.</b> All right. And so you don't know if the buyer</p> <p>14 believes that the Summit pipeline will never be approved</p> <p>15 and he or she thinks they got a great buy. I mean, the</p> <p>16 fact the pipeline doesn't exist, that's not a fair</p> <p>17 comparison for saying that an operating pipeline doesn't</p> <p>18 affect market value; correct?</p> <p>19 <b>A. Well, I disagree. There's -- there's an</b></p> <p>20 <b>easement on the property. There -- yes, it hasn't been</b></p> <p>21 <b>constructed, but there is an easement. And you have to</b></p> <p>22 <b>consider those easements when you're valuing property.</b></p> <p>23 <b>Q.</b> How many easements has Summit obtained any -- in</p> <p>24 any state of the five-state footprint where they have</p> <p>25 announced they are no longer going to target or</p> <p>PAGE 40</p>

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<p>1 potentially route a CO2 pipeline across those lands?</p> <p>2 <b>A. I -- I guess I'm not -- can you restate the</b></p> <p>3 <b>question, please?</b></p> <p>4 <b>Q.</b> Yeah. Are you aware -- I mean, you could sell</p> <p>5 me an easement across your front yard and I might never</p> <p>6 do the project. You understand that the existence of an</p> <p>7 easement, there's no risk, there's no pipeline, there's</p> <p>8 nothing there at the moment when someone purchases</p> <p>9 property with a right to maybe do something that hasn't</p> <p>10 yet happened. You agree with that; right?</p> <p>11 <b>A. Right. In most situations an easement is</b></p> <p>12 <b>perpetual, right? It goes with the land. It transfers.</b></p> <p>13 <b>So you have to consider it even though the project isn't</b></p> <p>14 <b>built yet.</b></p> <p>15 <b>Q.</b> And in Iowa you didn't talk to those buyers, of</p> <p>16 whether they considered it or what -- what stock they</p> <p>17 put in if Summit is going to get their Iowa permits;</p> <p>18 correct?</p> <p>19 <b>A. Correct. At this point I have not spoken with</b></p> <p>20 <b>anybody in Iowa.</b></p> <p>21 <b>Q.</b> And if you were working in North Dakota and you</p> <p>22 were in a condemnation proceeding, you couldn't bring in</p> <p>23 a sale of Iowa as relevant data to affect a, say,</p> <p>24 Burleigh County condemnation proceeding, could you?</p> <p>25 <b>A. I -- if I analyzed it, I absolutely could. It</b></p> <p>PAGE 41</p>	<p>1 ago in these proceedings? Do you know?</p> <p>2 <b>A. I don't know.</b></p> <p>3 <b>Q.</b> And so the one sale in North Dakota, that one</p> <p>4 sale doesn't make a trend, does it? You can't</p> <p>5 extrapolate much from a single sale where you don't know</p> <p>6 the motivations of the buyer and the seller, can you?</p> <p>7 <b>A. Well, I -- I think you -- you can look at that</b></p> <p>8 <b>data and the sale prices are -- are very similar. One</b></p> <p>9 <b>paired sales analysis, I'm not going to base my</b></p> <p>10 <b>after-condition value on just one paired sales analysis,</b></p> <p>11 <b>no.</b></p> <p>12 <b>Q.</b> And that -- that pipeline is owned and operated</p> <p>13 by who?</p> <p>14 <b>A. It is -- the name escapes me. Dakota</b></p> <p>15 <b>Gasification. And it -- it goes through several</b></p> <p>16 <b>counties, you know, Dunn County, McKenzie, Divide, and</b></p> <p>17 <b>it goes up into Canada.</b></p> <p>18 <b>Q.</b> And do you know when that -- when the in-service</p> <p>19 date of that pipeline was?</p> <p>20 <b>A. It was in the early 2000s.</b></p> <p>21 <b>Q.</b> And so give or take 20 years ago; is that right?</p> <p>22 <b>A. Yes.</b></p> <p>23 <b>Q.</b> And so in 20 years of the existence of the</p> <p>24 pipeline, which doesn't count the couple years that</p> <p>25 maybe easements would have been obtained prior to</p> <p>PAGE 43</p>
<p>1 <b>speaks to the local market and, you know, I -- I use</b></p> <p>2 <b>paired sales analysis in Michigan and I compare them to</b></p> <p>3 <b>paired sales analysis in North Dakota. I -- you</b></p> <p>4 <b>absolutely can if -- if you go do the -- do the work to</b></p> <p>5 <b>understand, you know, what was -- what the whole</b></p> <p>6 <b>transaction -- all of the specifics of a transaction.</b></p> <p>7 <b>Q.</b> So you think you could use the paired analysis</p> <p>8 where a pipeline doesn't exist in order to give a</p> <p>9 valuation opinion on where a pipeline does exist?</p> <p>10 <b>A. Again, we're -- you know, we're kind of</b></p> <p>11 <b>hypothetically speaking. Right now I -- I'm not going</b></p> <p>12 <b>to use it to value any properties here in North Dakota</b></p> <p>13 <b>because I don't have any specifics on it.</b></p> <p>14 <b>Q.</b> And twice you said that you're not appraising</p> <p>15 individual properties in North Dakota, but you would get</p> <p>16 to that point during condemnation proceedings; correct?</p> <p>17 <b>A. Potentially, yes.</b></p> <p>18 <b>Q.</b> And that's work that you would be assisting</p> <p>19 Summit with if it gets to that point; correct?</p> <p>20 <b>A. Correct. I've -- I've been working on this</b></p> <p>21 <b>Summit project for about two years, just gathering data,</b></p> <p>22 <b>looking at relevant information.</b></p> <p>23 <b>Q.</b> And so you -- you've been gathering data, you've</p> <p>24 been helping Summit for two years. Any reason why they</p> <p>25 didn't put you forward as an expert a year or two years</p> <p>PAGE 42</p>	<p>1 construction, you were able to find exactly one sale; is</p> <p>2 that right?</p> <p>3 <b>A. Well, to date I've uncovered one sale, yes.</b></p> <p>4 <b>Q.</b> And that's pretty good evidence that those</p> <p>5 properties are darned hard to sell, isn't it?</p> <p>6 <b>A. No, it's not.</b></p> <p>7 <b>Q.</b> Okay.</p> <p>8 <b>A. That isn't what it means.</b></p> <p>9 <b>Q.</b> Okay. Now what did you say here? Oh, you say</p> <p>10 someone is always willing to pay top dollar. Are you</p> <p>11 aware of auctions, both in Iowa where the Summit</p> <p>12 pipeline was projected to cross and then in South Dakota</p> <p>13 where the Navigator pipeline was projected to cross,</p> <p>14 where auctions were no-saled because of the lack of</p> <p>15 buyers?</p> <p>16 <b>A. I am not aware of that, no.</b></p> <p>17 <b>Q.</b> Okay. What data and information did Summit</p> <p>18 provide you relative to the specific risks and risk</p> <p>19 profile of a CO2 pipeline which they claim will be in</p> <p>20 supercritical state that must maintain a constant</p> <p>21 pressure?</p> <p>22 <b>A. I have not seen any data yet from -- from Summit</b></p> <p>23 <b>Carbon on the operation of the pipeline. I've just been</b></p> <p>24 <b>doing some cursory research on -- on similar pipelines</b></p> <p>25 <b>and that's all the data I have at this point.</b></p> <p>PAGE 44</p>

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<p>1 Q. Is that kind of Google.com CO2 pipeline, or what</p> <p>2 did you do to familiarize yourself?</p> <p>3 A. Well, the -- there's all -- there's a</p> <p>4 significant amount of information on -- on the Dakota</p> <p>5 Gas pipeline so -- it's right on their website and you</p> <p>6 can get that kind of information.</p> <p>7 Q. Okay. So if they didn't have publicly available</p> <p>8 dispersion modeling or hazard distances or other type of</p> <p>9 risk data, you wouldn't have seen that and you wouldn't</p> <p>10 know about that; correct?</p> <p>11 A. Correct.</p> <p>12 Q. And I think Mr. Bakke asked you, but you haven't</p> <p>13 talked to any -- certainly of our clients, have you, and</p> <p>14 are aware that none of them would purchase land with a</p> <p>15 CO2 pipeline? Were you aware of that testimony?</p> <p>16 A. I am not, no.</p> <p>17 Q. All right. But you admitted that certainly the</p> <p>18 pool of buyers, especially in a local market, would</p> <p>19 decrease if those attitudes and perceptions persist;</p> <p>20 correct?</p> <p>21 A. I would agree, yes.</p> <p>22 Q. And I don't suppose you've done any appraisals</p> <p>23 or analysis on sales of property that have a</p> <p>24 Summit-owned-and-operated CO2 pipeline, have you?</p> <p>25 A. No.</p> <p>PAGE 45</p>	<p>1 mineral rights allow them to put in a crude oil line or</p> <p>2 -- I'm not talking CO2 but -- so sometimes there's</p> <p>3 easements. Sometimes there's not an easement but the</p> <p>4 centerline is marked.</p> <p>5 Driving through these subdivisions, some of</p> <p>6 these homes are probably 15 or 20 feet from where the</p> <p>7 markers are. You can see in some of the pictures,</p> <p>8 people utilize those -- those pipeline corridors,</p> <p>9 playground equipment, there's -- there's gardens in</p> <p>10 them, it's green space. Those -- those areas are</p> <p>11 utilized. But some of the homes are fairly close.</p> <p>12 COMMISSIONER CHRISTMANN: So does it seem that</p> <p>13 the -- what I was trying to get at is if a development</p> <p>14 is 40 acres and the pipeline runs right through the</p> <p>15 middle of it, how many acres out of that might be off</p> <p>16 limits for development that, yeah, the homeowner, if</p> <p>17 they're not worried about the pipeline, they might like</p> <p>18 living close to it because they get a little extra yard?</p> <p>19 THE WITNESS: Green space.</p> <p>20 COMMISSIONER CHRISTMANN: But the developer</p> <p>21 can't sell that for a development. So is a developer</p> <p>22 losing much of a corridor through that that he or she is</p> <p>23 unable to sell?</p> <p>24 THE WITNESS: No, they're not. Typically, the</p> <p>25 way they -- they put their infrastructure, the roads --</p> <p>PAGE 47</p>
<p>1 Q. And you understand this particular project would</p> <p>2 be the very first, kind of the guinea pig for the Summit</p> <p>3 group in terms of CO2 pipelines; correct?</p> <p>4 A. I can't answer that. I'm not aware of Summit</p> <p>5 infrastructure.</p> <p>6 Q. Okay.</p> <p>7 MR. JORDE: I don't think I have any more</p> <p>8 questions. I would just renew all the objections</p> <p>9 previously of foundation and relevance to this entire</p> <p>10 testimony. Thank you.</p> <p>11 ALJ HOGAN: Commissioner Christmann.</p> <p>12 COMMISSIONER CHRISTMANN: In your -- in your</p> <p>13 testimony you had some pictures of residential</p> <p>14 neighborhoods with the pipeline warning signs. So in</p> <p>15 North Dakota, not based on anything that we do randomly,</p> <p>16 but North Dakota code, with very limited exceptions, a</p> <p>17 pipeline would have to stay back 500 feet from a</p> <p>18 residence that exists, but then you could build a</p> <p>19 residence closer. These appear to be much closer.</p> <p>20 As you've researched pipelines in general, how</p> <p>21 close do residential neighborhoods spring up -- how</p> <p>22 close do they usually put the homes to a pipeline?</p> <p>23 THE WITNESS: So -- so in North Dakota, some</p> <p>24 mineral -- mineral owners don't necessarily need to</p> <p>25 acquire a pipeline easement corridor, right. So their</p> <p>PAGE 46</p>	<p>1 a developer now, not a -- not a pipeline company,</p> <p>2 they'll -- if there's a pipeline corridor going through</p> <p>3 it, they'll have access roads and the back end -- the</p> <p>4 rear yards butt up to the -- to the pipeline easement.</p> <p>5 So the houses are closer to the roads and then they have</p> <p>6 a larger backyard. So they're always able to utilize</p> <p>7 that space. And sometimes they're -- some -- and not</p> <p>8 necessarily Bismarck, but I've seen other developments</p> <p>9 where they have some park corridors so there's --</p> <p>10 there's bike trails and -- and, you know, pet areas that</p> <p>11 are also part of a development plan, and some cities</p> <p>12 require that.</p> <p>13 So those areas are -- are seldom lost because</p> <p>14 they're always utilized. So those -- so those</p> <p>15 residential lots with -- that are encumbered are selling</p> <p>16 for the same prices as lots that aren't because of --</p> <p>17 they're the same size. There's utility there because</p> <p>18 they can put a house on it, but they just have a little</p> <p>19 bit larger backyard.</p> <p>20 COMMISSIONER CHRISTMANN: And then my other</p> <p>21 question involves agricultural land and specifically</p> <p>22 tilled land. I could imagine if a pipeline was buried</p> <p>23 too close to the surface, and let's say if it was an</p> <p>24 inch down, it's going to cause problems for tilling it;</p> <p>25 right? If it was 20 feet down, it should cause</p> <p>PAGE 48</p>

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<p>1 certainly none. Somewhere in between there is something</p> <p>2 more logical.</p> <p>3 So do you know what state requirements are in</p> <p>4 the states that you work? Is North Dakota -- in most</p> <p>5 cases pipelines need to be down to the top of the</p> <p>6 pipeline. Is that kind of a norm in states? Are some</p> <p>7 of these other states you work on burying them</p> <p>8 significantly deeper or shallower than what we do?</p> <p>9 THE WITNESS: Wisconsin is a little bit deeper.</p> <p>10 Typically there I see five -- five or six feet.</p> <p>11 Michigan is about the same. It's about four or five</p> <p>12 feet. Most -- from what I've seen designs anyway in</p> <p>13 North Dakota, most pipelines, I think, are about four,</p> <p>14 four-plus feet. So not that much different.</p> <p>15 COMMISSIONER CHRISTMANN: Okay. No other</p> <p>16 questions. Thank you, Your Honor.</p> <p>17 ALJ HOGAN: Commissioner Haugen-Hoffart.</p> <p>18 COMMISSIONER HAUGEN-HOFFART: Thank you.</p> <p>19 You talked about your independent research. And</p> <p>20 in your independent research, do you have, in your</p> <p>21 database, the 5,000 pipeline -- CO2 pipelines in the</p> <p>22 U.S.?</p> <p>23 THE WITNESS: No, I do not.</p> <p>24 COMMISSIONER HAUGEN-HOFFART: Okay. Looking at</p> <p>25 Exhibit B on the ag sales, I know you looked at three</p> <p>PAGE 49</p>	<p>1 SUBSTITUTE DECISIONMAKER DAWSON: No questions,</p> <p>2 Your Honor.</p> <p>3 ALJ HOGAN: Any redirect, Mr. Mahlberg?</p> <p>4 MR. MAHLBERG: Briefly, Your Honor.</p> <p>5 REDIRECT EXAMINATION</p> <p>6 BY MR. MAHLBERG:</p> <p>7 Q. Mr. Olson, Mr. Bakke was asking you some</p> <p>8 questions about the paired sales analyses that you had</p> <p>9 done didn't relate to CO2 pipelines specifically. Do</p> <p>10 you recall that?</p> <p>11 A. Yes.</p> <p>12 Q. They relate to refined products pipelines or</p> <p>13 natural gas transmission lines. Is that -- is that</p> <p>14 right?</p> <p>15 A. Correct.</p> <p>16 Q. Why do you use those natural gas pipeline</p> <p>17 easements, why do you use those refined products</p> <p>18 pipeline easements when you're doing a paired sales</p> <p>19 analysis for a CO2 pipeline easement?</p> <p>20 A. That's a good question. The first answer is</p> <p>21 there's -- I don't have a whole lot of data on pipeline</p> <p>22 -- CO2 pipeline-encumbered properties. But I -- I do</p> <p>23 this kind of work on gas pipelines, transmission lines,</p> <p>24 all sorts of easements.</p> <p>25 And a lot of these projects are -- are highly</p> <p>PAGE 51</p>
<p>1 pipelines, but we have about 300 -- 30,000 miles of</p> <p>2 pipeline in North Dakota. So I was kind of curious when</p> <p>3 I went through that why some of the other counties were</p> <p>4 not evaluated.</p> <p>5 THE WITNESS: Well, they are, but for this</p> <p>6 testimony I tried to stick to -- you know, closer to the</p> <p>7 eastern -- eastern part as much as possible. So I do a</p> <p>8 lot of work in Dunn County and McKenzie County. And a</p> <p>9 lot of properties -- because we're kind of out of the</p> <p>10 Bakken over here, right. You get west of here, you're</p> <p>11 in the Bakken. There's pipelines on many, many</p> <p>12 properties. So I've got analysis that I've done, you</p> <p>13 know, in the west and northwest part of North Dakota.</p> <p>14 These are -- Dakota Access was a highly publicized</p> <p>15 pipeline.</p> <p>16 COMMISSIONER HAUGEN-HOFFART: And I get that.</p> <p>17 So when I'm looking at agricultural land values and</p> <p>18 listening to the landowners, we just came off of a</p> <p>19 hearing and listening to Sargent and Richland County</p> <p>20 where there's a lot of drain tile and the concerns there</p> <p>21 with the drain tile and all that. So I was just curious</p> <p>22 why all the counties in which this pipeline crossed</p> <p>23 wasn't in your Exhibit B.</p> <p>24 So I have no further questions.</p> <p>25 ALJ HOGAN: Mr. Dawson.</p> <p>PAGE 50</p>	<p>1 scrutinized by the public. People are -- are against</p> <p>2 them and they're -- they're -- they're cautious and they</p> <p>3 feel like there's going to be significant impacts to</p> <p>4 their land values. So I do a lot of different types of</p> <p>5 paired sales analysis and I think this is the closest --</p> <p>6 at this point anyway, until I start doing actual</p> <p>7 appraisal work, if I do. At this point, these paired</p> <p>8 sales analysis are -- are mirroring what's going on</p> <p>9 right now.</p> <p>10 Dakota Access Pipeline, a lot of -- a lot of</p> <p>11 public interest in that. People were saying the same</p> <p>12 thing back in 2015 and 2016 about how their property</p> <p>13 values are going to diminish and they didn't want it,</p> <p>14 but now that we're seeing data, the -- the impact on</p> <p>15 value is minimal. And I think it's a -- it's a -- it's</p> <p>16 the same scenario as what we're working into on Summit</p> <p>17 Carbon.</p> <p>18 Q. But does the fact that concerns are stated, that</p> <p>19 landowners have those concerns, those valid concerns,</p> <p>20 that that sentiment is publicized, how is that</p> <p>21 reflecting in the data that you find after the projects</p> <p>22 are built?</p> <p>23 A. Right. So after the projects are -- are built,</p> <p>24 most of these -- these companies, whether it's, you</p> <p>25 know, Continental Resources -- I do a lot of work on</p> <p>PAGE 52</p>

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<p>1 <b>some of their cases. And after the public sees how</b></p> <p>2 <b>they're being treated by these companies and they</b></p> <p>3 <b>understand, you know, what -- what the purpose is and</b></p> <p>4 <b>what is actually being built, the public perception of</b></p> <p>5 <b>the investors is what I have to try and analyze and</b></p> <p>6 <b>measure. And the investors are -- are -- are, by the</b></p> <p>7 <b>evidence, are showing that very little impact, if any,</b></p> <p>8 <b>is being accounted for as a result of these pipelines.</b></p> <p>9 <b>Q.</b> Mr. Bakke asked you whether any of the analysis</p> <p>10 that's in your report related to rural residential</p> <p>11 properties, that beyond city limits and within Burleigh</p> <p>12 County's jurisdiction. Do you recall that?</p> <p>13 <b>A. Yes.</b></p> <p>14 <b>Q.</b> Do you have data that would support a conclusion</p> <p>15 that market participants in Burleigh County, not within</p> <p>16 the city of Bismarck, are going to behave differently</p> <p>17 than other market participants?</p> <p>18 <b>A. No.</b></p> <p>19 <b>Q.</b> And how would you expect that those market</p> <p>20 participants for more rural residential properties would</p> <p>21 behave?</p> <p>22 MR. JORDE: Foundation, speculation.</p> <p>23 MR. BAKKE: Join.</p> <p>24 ALJ HOGAN: The objection is noted.</p> <p>25 You can answer.</p> <p>PAGE 53</p>	<p>1 Iowa, the data that you do have about CO2 pipelines is</p> <p>2 consistent with the data that you have about other types</p> <p>3 of pipelines; is that right?</p> <p>4 <b>A. Correct.</b></p> <p>5 MR. MAHLBERG: I don't have anything else.</p> <p>6 Thank you.</p> <p>7 ALJ HOGAN: Mr. Pelham, any additional</p> <p>8 questions?</p> <p>9 MR. PELHAM: I don't. Thank you.</p> <p>10 ALJ HOGAN: Mr. Schock.</p> <p>11 Mr. Bakke.</p> <p>12 MR. BAKKE: Just briefly, Your Honor.</p> <p>13 <b>RE CROSS EXAMINATION</b></p> <p>14 <b>BY MR. BAKKE:</b></p> <p>15 <b>Q.</b> You were just asked why you used natural gas</p> <p>16 pipelines and that information. The reason you did is</p> <p>17 because there is no information available on how CO2</p> <p>18 pipelines affect residential values; correct?</p> <p>19 <b>A. Correct.</b></p> <p>20 <b>Q.</b> Okay. And to draw an analogy, someone buying a</p> <p>21 home or thinking about developing homes may have a total</p> <p>22 different line of thought on how their sales are going</p> <p>23 to be impacted if they're building next to a nuclear</p> <p>24 plant versus a solar wind farm; correct?</p> <p>25 <b>A. It's likely, yes.</b></p> <p>PAGE 55</p>
<p>1 <b>A. So there's -- there's a lot of publications and</b></p> <p>2 <b>peer-reviewed studies on transmission line easements,</b></p> <p>3 <b>and I think -- and how they impact small lots,</b></p> <p>4 <b>residential lots, versus larger rural residential lots.</b></p> <p>5 <b>And I -- I see the same -- same -- for gas pipelines, I</b></p> <p>6 <b>see the same kind of impacts.</b></p> <p>7 <b>So if you've got a one-acre residential lot and</b></p> <p>8 <b>you have a pipeline going across one end of it and you</b></p> <p>9 <b>still have maybe some utility to build a house or</b></p> <p>10 <b>residence, the impact -- as long as they can use it and</b></p> <p>11 <b>have the same utility as a lot that's unencumbered, the</b></p> <p>12 <b>impact on value is very minimal.</b></p> <p>13 <b>But as the property -- as the acreage increases,</b></p> <p>14 <b>the impact decreases because you've got -- if you've got</b></p> <p>15 <b>a 10-acre lot and the pipeline cuts through the middle</b></p> <p>16 <b>of it, you still have five acres that you can put a</b></p> <p>17 <b>house on on either side. So you're not really losing --</b></p> <p>18 <b>as the property size increases, the utility decreases</b></p> <p>19 <b>and the impact decreases.</b></p> <p>20 <b>Q.</b> Okay. Mr. Jorde asked you if you would base</p> <p>21 your opinion on one paired sale of a CO2 pipeline. Do</p> <p>22 you recall that?</p> <p>23 <b>A. Yes.</b></p> <p>24 <b>Q.</b> That -- that one paired sale that you did of a</p> <p>25 CO2 pipeline and the sale that you talked about down in</p> <p>PAGE 54</p>	<p>1 <b>Q.</b> Okay. And it all boils down to the safety</p> <p>2 concerns and the health risks posed by that particular</p> <p>3 thing that you're going to be developing or building</p> <p>4 next to; correct?</p> <p>5 <b>A. Correct.</b></p> <p>6 <b>There's a lot of factors that go into</b></p> <p>7 <b>competition and substitution, right. So, you know, if</b></p> <p>8 <b>there's a new residential development going -- with a</b></p> <p>9 <b>CO2 pipeline going across it and it's in a very</b></p> <p>10 <b>favorable neighborhood, you've got competition, right.</b></p> <p>11 <b>So it -- it's hard to say right now at this point how</b></p> <p>12 <b>the values of those residential lots will be impacted.</b></p> <p>13 <b>Q.</b> Right. Because of the significant concerns by</p> <p>14 the public over safety and health issues due to exposure</p> <p>15 to a CO2 pipeline and the fact that we've seen a number</p> <p>16 of CO2 pipeline leaks as recently just -- just as of</p> <p>17 March of 2024 in Louisiana; correct?</p> <p>18 <b>A. Correct.</b></p> <p>19 <b>Q.</b> Okay. And you talked about the appraisal you're</p> <p>20 doing of the diversion land property in the Fargo area.</p> <p>21 Is your client who has hired you Cass County Joint Water</p> <p>22 Resource District?</p> <p>23 <b>A. Correct.</b></p> <p>24 <b>Q.</b> Okay. And you're aware that there's been very</p> <p>25 dramatic differences in values between what the</p> <p>PAGE 56</p>

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<p>1 appraisers hired by the Cass County Joint Water Resource</p> <p>2 District have come up with versus the landowner values;</p> <p>3 correct?</p> <p>4 <b>A. Yes.</b></p> <p>5 <b>Q.</b> Okay. And in that situation, the valuation</p> <p>6 difference has often been because the CCJWRD appraisers</p> <p>7 are appraising the value of land as agricultural land</p> <p>8 and the landowners are valuing the land based on</p> <p>9 development land values in many instances; correct?</p> <p>10 <b>A. In many instances, yes, they are inappropriately</b></p> <p>11 <b>valuing these properties as development property.</b></p> <p>12 <b>Q.</b> Well, the proof is in the pudding because in</p> <p>13 many of those situations Cass County Joint Water</p> <p>14 Resource District has been paying 100 percent higher,</p> <p>15 200 percent higher, 300, 400 percent higher than the</p> <p>16 appraisal values by the Cass County Joint Water Resource</p> <p>17 District appraisers; correct?</p> <p>18 <b>A. That, I don't --</b></p> <p>19 MR. MAHLBERG: Your Honor, I'll object as to the</p> <p>20 relevance. We're now getting into details about</p> <p>21 settlements of purchases based on appraisals of a</p> <p>22 different project.</p> <p>23 MR. BAKKE: I'm just responding to the same</p> <p>24 thing that Mr. Mahlberg just discussed, and that is</p> <p>25 values based on using a natural gas versus CO2 pipeline.</p> <p>PAGE 57</p>	<p>1 <b>Q.</b> Okay. And I believe Mr. Bakke was citing</p> <p>2 valuation opinions that were 300, 400 percent incorrect</p> <p>3 or low; is that right?</p> <p>4 <b>A. I don't -- I guess I don't know -- I'm not sure</b></p> <p>5 <b>what your -- what your question is.</b></p> <p>6 <b>Q.</b> Well, didn't he say Cass County was paying 300</p> <p>7 -- three times, four times what the appraised values</p> <p>8 were?</p> <p>9 <b>A. Right. But that doesn't mean that the appraised</b></p> <p>10 <b>values were three times low. I guess I'm not sure what</b></p> <p>11 <b>you mean by that.</b></p> <p>12 <b>Q.</b> Well, aren't you -- when you do an appraisal,</p> <p>13 you're trying to find the market value; right?</p> <p>14 <b>A. Correct.</b></p> <p>15 <b>Q.</b> Okay. And so the market values in those</p> <p>16 instances were three, four times off; correct?</p> <p>17 <b>A. No. I don't think they're three or four times</b></p> <p>18 <b>off. I think the acquisition is much higher than what</b></p> <p>19 <b>the appraised values are.</b></p> <p>20 <b>Q.</b> Okay. And when a willing buyer and a willing</p> <p>21 seller get together, is that known as the market price?</p> <p>22 <b>A. Typically, yes.</b></p> <p>23 <b>Q.</b> All right. And you said that after the public</p> <p>24 understands, there is little impact to be accounted for.</p> <p>25 And is that your way of saying that after three years</p> <p>PAGE 59</p>
<p>1 <b>Q.</b> (BY MR. BAKKE) My only point is there can be</p> <p>2 dramatic differences based on what is considered by the</p> <p>3 appraiser as to what will affect that value and how it</p> <p>4 affects it. Can we agree on that?</p> <p>5 <b>A. Well, an appraisal is an opinion of value,</b></p> <p>6 <b>correct.</b></p> <p>7 <b>Q.</b> Okay.</p> <p>8 MR. BAKKE: I have no further questions.</p> <p>9 ALJ HOGAN: Mr. Jorde, any other questions?</p> <p>10 MR. JORDE: Yes.</p> <p>11 RECROSS EXAMINATION</p> <p>12 BY MR. JORDE:</p> <p>13 <b>Q.</b> Sir, your job when you're valuing -- valuating a</p> <p>14 property for your corporate clients like a Summit is to</p> <p>15 come up with low values; correct?</p> <p>16 <b>A. No.</b></p> <p>17 <b>Q.</b> And, in fact, it's better for your client if the</p> <p>18 appraised values based on your work are lower because</p> <p>19 then that allows them to potentially pay less or a jury</p> <p>20 awarding less in a condemnation proceeding; correct?</p> <p>21 <b>A. Well, I disagree with that. I think you heard</b></p> <p>22 <b>some line of questioning on acquisition amounts are --</b></p> <p>23 <b>are sometimes significantly different than appraised</b></p> <p>24 <b>values. So appraised values sometimes are not in</b></p> <p>25 <b>relation to an acquisition value.</b></p> <p>PAGE 58</p>	<p>1 and how publicized this was, if the darn public wouldn't</p> <p>2 just understand everything is going to be fine, they</p> <p>3 wouldn't have these concerns?</p> <p>4 <b>A. No. I -- I don't agree with -- no, I -- that's</b></p> <p>5 <b>not what my testimony is. I -- the public is going to</b></p> <p>6 <b>have a perception of these projects regardless of -- of</b></p> <p>7 <b>my paired sales of -- about any testimony. The public</b></p> <p>8 <b>has a perception.</b></p> <p>9 <b>What I'm trying to determine is -- and I agree,</b></p> <p>10 <b>some of those buyers and some of those investors will</b></p> <p>11 <b>likely walk away and not look at these properties.</b></p> <p>12 <b>There's investors out there that -- that are willing to</b></p> <p>13 <b>pay full market value for these properties regardless of</b></p> <p>14 <b>the presence of a pipeline.</b></p> <p>15 <b>I don't -- I know that there's people that are</b></p> <p>16 <b>not going to want to buy these properties and that --</b></p> <p>17 <b>that is, no doubt, going to happen. But what does</b></p> <p>18 <b>happen, and what you see in the data, is that there's</b></p> <p>19 <b>people, investors, willing to pay full market value.</b></p> <p>20 <b>Q.</b> And are you saying then that it was an investor</p> <p>21 that bought the one and only CO2 pipeline property that</p> <p>22 you cite to? Was that an investor?</p> <p>23 <b>A. It was a local agricultural buyer.</b></p> <p>24 <b>Q.</b> Okay.</p> <p>25 <b>A. A local farmer.</b></p> <p>PAGE 60</p>

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<p>1 Q. Okay. So you don't know what those</p> <p>2 circumstances were?</p> <p>3 A. Not yet, no.</p> <p>4 Q. All right. And you're not coming here today,</p> <p>5 are you, to get this Public Service Commission to make</p> <p>6 such a monumental decision based on a single sale of</p> <p>7 property, of one North Dakota property that has an</p> <p>8 operating CO2 pipeline on it, are you?</p> <p>9 A. Well, it -- I'm here to provide testimony on</p> <p>10 market evidence. That's one data set. That's all I'm</p> <p>11 here for.</p> <p>12 Q. Okay. Thank you, sir. Appreciate it.</p> <p>13 A. Thank you.</p> <p>14 ALJ HOGAN: Are there any other commissioner</p> <p>15 questions or Mr. Dawson?</p> <p>16 All right. Well, thank you, Mr. Olson.</p> <p>17 THE WITNESS: Okay. Thank you.</p> <p>18 ALJ HOGAN: It's about 10:00 and I think we'll</p> <p>19 take our morning break when we're in between witnesses.</p> <p>20 And is Mr. Pickering next?</p> <p>21 MR. GLUDT: Yes, Your Honor. We would be --</p> <p>22 ALJ HOGAN: Okay.</p> <p>23 MR. GLUDT: -- putting Mr. Pickering forward for</p> <p>24 cross-examination.</p> <p>25 ALJ HOGAN: Okay. If you want to get him set</p> <p>PAGE 61</p>	<p>1 DAN PICKERING: I do.</p> <p>2 ALJ HOGAN: All right. And I will turn to you,</p> <p>3 Mr. Bakke.</p> <p>4 MR. BAKKE: I think Mr. Jorde is going to be</p> <p>5 starting with this witness today.</p> <p>6 ALJ HOGAN: Okay. Mr. Jorde, you can proceed.</p> <p>7 MR. JORDE: Thank you.</p> <p>8 <b>DAN PICKERING.</b></p> <p>9 being first duly sworn, was examined and testified as</p> <p>10 follows:</p> <p>11 CROSS EXAMINATION</p> <p>12 BY MR. JORDE:</p> <p>13 Q. Sir, where are you located right now?</p> <p>14 A. I'm physically in Houston, Texas, this morning.</p> <p>15 Q. All right. And who's in the room with you</p> <p>16 there?</p> <p>17 A. Mark Schultheis.</p> <p>18 Q. Okay. And is that your -- is that your personal</p> <p>19 lawyer?</p> <p>20 A. No, it is not.</p> <p>21 Q. Okay. Who -- why is Mr. Schultheis there with</p> <p>22 you?</p> <p>23 THE WITNESS: Mark, do you want to answer?</p> <p>24 MR. SCHULTHEIS: Certainly. Your Honor, I'm</p> <p>25 just -- I'm here and I've appeared as attorney or as</p> <p>PAGE 63</p>
<p>1 up, we will take a 15-minute break and reconvene at</p> <p>2 10:15.</p> <p>3 (Recess)</p> <p>4 ALJ HOGAN: All right. My clock shows 10:15 so</p> <p>5 we are going to get started again. We are now going to</p> <p>6 move to cross-examination of witnesses that testified at</p> <p>7 our April 22nd hearing. So we're starting with</p> <p>8 Mr. Pickering.</p> <p>9 I'll have you state your full name for the</p> <p>10 record.</p> <p>11 DAN PICKERING: Hi. Daniel Ray Pickering.</p> <p>12 ALJ HOGAN: I'll just note that Mr. Pickering is</p> <p>13 appearing through video conference for his</p> <p>14 cross-examination this morning.</p> <p>15 Mr. Pickering, I am going to swear you in. Were</p> <p>16 you part of our conference this morning when I went</p> <p>17 through the penalties for perjury?</p> <p>18 DAN PICKERING: I was not, but I'm aware of the</p> <p>19 penalties for perjury.</p> <p>20 ALJ HOGAN: Okay. And do you understand what</p> <p>21 perjury is?</p> <p>22 DAN PICKERING: I do.</p> <p>23 ALJ HOGAN: And being advised of the potential</p> <p>24 penalties for perjury, do you promise to tell the truth</p> <p>25 in this case today?</p> <p>PAGE 62</p>	<p>1 counsel for Summit and simply one of Summit's attorneys.</p> <p>2 Q. (BY MR. JORDE) Okay. All right. Are you</p> <p>3 being represented then by Summit's counsel? Is that</p> <p>4 your understanding?</p> <p>5 A. I'm not being represented by anyone.</p> <p>6 Q. Okay. All right. How did Summit find you?</p> <p>7 A. So I've -- I've been aware of this particular</p> <p>8 project and have interacted with Summit in terms of</p> <p>9 several of the projects they're working on from a</p> <p>10 research perspective. I know a couple of the folks at</p> <p>11 Summit from prior work experience. And Mr. Harold Hamm,</p> <p>12 who's involved as an investor in the project, is also a</p> <p>13 relationship of mine.</p> <p>14 Q. And so you've worked with Mr. Hamm and his</p> <p>15 affiliated entities previously; correct?</p> <p>16 A. I have interacted with him. I have not been</p> <p>17 hired or received any compensation from Continental or</p> <p>18 his entities in the past.</p> <p>19 Q. When you say "interacted with him," what does</p> <p>20 that mean?</p> <p>21 A. Sure. Part of my role is a research analyst and</p> <p>22 portfolio manager. And so Continental, Mr. Hamm's</p> <p>23 company, was a public company. And so when I say</p> <p>24 "interacted," I have -- I participated in investor</p> <p>25 conferences, investor meetings with Mr. Hamm and have</p> <p>PAGE 64</p>



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<p>1 <b>spoken with him as an investor, asking questions about</b></p> <p>2 <b>his business.</b></p> <p>3 <b>Q.</b> And other than the testimony you've previously</p> <p>4 provided, have you done any other economic analysis or</p> <p>5 valuation analysis of the Summit project or system or</p> <p>6 been in any conversations relative or related to exit</p> <p>7 strategies?</p> <p>8 <b>A. I have not.</b></p> <p>9 <b>Q.</b> When you speak of the Summit project or the</p> <p>10 system in your testimony, that, again, in your mind is</p> <p>11 looking at everything from A to Z, from the CO2 capture,</p> <p>12 the CO2 processing, the pipeline itself, and then the</p> <p>13 sequestration and storage; correct?</p> <p>14 <b>A. That is correct.</b></p> <p>15 <b>Q.</b> All right. And you would agree with me that</p> <p>16 it's not the North Dakota PSC's purpose to approve</p> <p>17 projects that will allegedly create jobs; correct?</p> <p>18 <b>A. I don't know enough about the stated goals or</b></p> <p>19 <b>objectives of the North Dakota PSC to either say yes or</b></p> <p>20 <b>no to that question.</b></p> <p>21 <b>Q.</b> Fair enough.</p> <p>22 And so you're not aware of the factors or the</p> <p>23 burdens of proof, so to speak, that Summit needs to</p> <p>24 satisfy in order to get both of their applications</p> <p>25 approved; correct?</p> <p>PAGE 65</p>	<p>1 blackout or something to that effect and they couldn't</p> <p>2 do that because of the energy draw?</p> <p>3 <b>A. You had a couple of questions there. Have I</b></p> <p>4 <b>ever been a farmer? I grew up on a farm in Missouri and</b></p> <p>5 <b>-- but I've not been a farmer or been associated with a</b></p> <p>6 <b>situation requiring electricity for irrigation.</b></p> <p>7 <b>Q.</b> All right. But you think another major</p> <p>8 competing electrical -- electricity demander is a</p> <p>9 benefit to the rest of the citizens of North Dakota?</p> <p>10 <b>A. I think an aggregate growth, demand growth, is</b></p> <p>11 <b>generally a positive for -- for the citizens of North</b></p> <p>12 <b>Dakota.</b></p> <p>13 <b>Q.</b> Have you done any analysis on, if there is an</p> <p>14 instance where electricity is being -- the system in</p> <p>15 North Dakota is being overly taxed, if the Summit</p> <p>16 pipeline would be shut off or restricted from</p> <p>17 electricity or would a farmer or an agriculture user be</p> <p>18 shut off first?</p> <p>19 <b>A. I haven't seen in any of my research any -- any</b></p> <p>20 <b>discussion of that topic.</b></p> <p>21 <b>Q.</b> Do you believe that the CO2 Summit intends to</p> <p>22 sequester will one day be used for enhanced oil</p> <p>23 recovery?</p> <p>24 <b>A. My understanding of the CO2 is that it's to be</b></p> <p>25 <b>permanently sequestered so that's -- that's all I know</b></p> <p>PAGE 67</p>
<p>1 <b>A. That's correct.</b></p> <p>2 <b>Q.</b> All right. And so that would be the same --</p> <p>3 same for -- you don't know if it's the Public Service</p> <p>4 Commission's purpose to create economic development;</p> <p>5 correct?</p> <p>6 <b>A. That's correct.</b></p> <p>7 <b>Q.</b> Now, you state that you believe Summit would use</p> <p>8 a significant amount of electricity should the project</p> <p>9 at large be built and operated and you think Summit's</p> <p>10 drawing on the electrical grid is a benefit to the</p> <p>11 citizens of North Dakota; right?</p> <p>12 <b>A. I do. I think it's incremental demand</b></p> <p>13 <b>associated with the project.</b></p> <p>14 <b>Q.</b> And --</p> <p>15 UNIDENTIFIED SPEAKER: (Indiscernible) my</p> <p>16 interruption, but one of you two has notifications that</p> <p>17 we can hear so if you can please silence those.</p> <p>18 THE WITNESS: I think that was mine. I</p> <p>19 apologize. I will -- I will try to make sure those are</p> <p>20 silent.</p> <p>21 Sorry, Mr. Jorde.</p> <p>22 <b>Q.</b> (BY MR. JORDE) That's just fine.</p> <p>23 Okay. And so have you ever been, you know, a</p> <p>24 farmer or worked with farmers who were trying to</p> <p>25 irrigate via electricity and there was a brownout or a</p> <p>PAGE 66</p>	<p>1 <b>at this point.</b></p> <p>2 <b>Q.</b> If Summit were to sell its operations or -- or</p> <p>3 part of their exit strategy sell out, do you have any</p> <p>4 understanding if a new buyer would have to honor the</p> <p>5 permanent sequestration claims or do you know one way or</p> <p>6 another if they could then utilize that CO2 for other</p> <p>7 purposes?</p> <p>8 <b>A. I don't know one way or the other.</b></p> <p>9 <b>Q.</b> And you're aware, are you not, that the proposed</p> <p>10 capacity of the Summit pipeline that would travel</p> <p>11 through North Dakota is 18 million metric tons of CO2</p> <p>12 per year?</p> <p>13 <b>A. Correct. Ballpark, 20 million tons, yes.</b></p> <p>14 <b>Q.</b> Okay. And you're aware -- I believe you</p> <p>15 testified previously about the 45Q tax credits. And</p> <p>16 you're aware that those currently are paying out at a</p> <p>17 total of \$85 per metric ton; is that right?</p> <p>18 <b>A. Correct. \$85 a ton is the number for</b></p> <p>19 <b>sequestered CO2 --</b></p> <p>20 <b>Q.</b> And --</p> <p>21 <b>A. -- currently.</b></p> <p>22 <b>Q.</b> I'm sorry.</p> <p>23 And you're aware that current tax credit is</p> <p>24 available for a period of 12 years; correct?</p> <p>25 <b>A. That's right.</b></p> <p>PAGE 68</p>

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<p>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?</p> <p>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.</p> <p>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?</p> <p>11 A. I -- if you punched the math out, I'll buy into 12 it.</p> <p>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?</p> <p>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.</p> <p>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?</p> <p>PAGE 69</p>	<p>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?</p> <p>5 A. Yes.</p> <p>6 Q. And would you agree with the Ernst &amp; Young 7 author of the report that you cite to heavily, that the 8 18.36 billion is a cost to the project?</p> <p>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.</p> <p>15 Q. So when you pay your taxes, is that a cost to 16 you? Is that a net outflow of money to you?</p> <p>17 A. It -- absolutely.</p> <p>18 Q. All right. And you're aware there's currently 19 six ethanol plants in North Dakota; is that right?</p> <p>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.</p> <p>24 Q. And for -- I believe there's two that you looked 25 at that currently have sequestration. Do you know about</p> <p>PAGE 71</p>
<p>1 A. Eventually -- eventually the taxpayers have to 2 pay.</p> <p>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.</p> <p>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?</p> <p>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.</p> <p>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.</p> <p>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?</p> <p>25 A. That's correct.</p> <p>PAGE 70</p>	<p>1 what time those plants started sequestering carbon 2 dioxide?</p> <p>3 A. I don't. I just know they're in -- in operation 4 today.</p> <p>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?</p> <p>8 A. I have -- I have not done any analysis on either 9 benefits or negatives associated with those two plants.</p> <p>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?</p> <p>18 A. I haven't done -- I haven't done any work around 19 that topic.</p> <p>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?</p> <p>25 A. Who's the "they" in your question?</p> <p>PAGE 72</p>

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<p>1 Q. Tharaldson.</p> <p>2 A. <b>Could you repeat it again for me, please?</b></p> <p>3 Q. Well, yeah. I'm just trying to figure out if</p> <p>4 you -- how you get to a conclusion that Tharaldson is</p> <p>5 somehow going to be negatively impacted if the existing</p> <p>6 two sequestering ethanol plants didn't have that same</p> <p>7 impact on the others?</p> <p>8 A. <b>I didn't -- I didn't come to any conclusion</b></p> <p>9 <b>about how those two plants impact Tharaldson.</b></p> <p>10 Q. All right. So you don't have any opinion that</p> <p>11 you're providing the PSC on any competitive advantage</p> <p>12 one way or another should Tharaldson not hook up to the</p> <p>13 proposed Summit pipeline?</p> <p>14 A. <b>I am not providing any testimony to that effect.</b></p> <p>15 <b>Correct.</b></p> <p>16 Q. You talk about higher corn prices as some type</p> <p>17 of flow-through should the Tharaldson plant be</p> <p>18 associated or hooked up to the Summit pipeline. Where</p> <p>19 specifically do you think those higher corn prices would</p> <p>20 be paid?</p> <p>21 A. <b>Yeah. So -- so a point of clarification would</b></p> <p>22 <b>be that I view the project in general, not necessarily</b></p> <p>23 <b>one specific ethanol plant, Tharaldson.</b></p> <p>24 <b>I think that there's a potential -- I stress the</b></p> <p>25 <b>word "potential" -- that the sequestration economics</b></p> <p>PAGE 73</p>	<p>1 specifically if a single farmer selling to Tharaldson</p> <p>2 would, in fact, receive higher payment on -- for their</p> <p>3 corn, do you?</p> <p>4 A. <b>I think that the earlier comment which is that</b></p> <p>5 <b>the -- the overall Summit project has the potential to</b></p> <p>6 <b>result in higher corn prices. My experience with</b></p> <p>7 <b>commodities is that very seldom do you have regional</b></p> <p>8 <b>price impacts. You tend to have more global price</b></p> <p>9 <b>impacts. And so I would expect that -- that if price</b></p> <p>10 <b>goes up in Iowa, price would go up in North Dakota. But</b></p> <p>11 <b>I do not have a specific conclusion about farmers</b></p> <p>12 <b>selling to Tharaldson and the price they would receive.</b></p> <p>13 Q. Nor do you have a specific conclusion of any</p> <p>14 farmer selling to any Summit-contracted ethanol plant or</p> <p>15 the price they would receive; correct?</p> <p>16 A. <b>That's fair.</b></p> <p>17 Q. Do you know how many corn farmers there are in</p> <p>18 North Dakota?</p> <p>19 A. <b>I don't.</b></p> <p>20 Q. Would you be willing to concede that there are</p> <p>21 more consumers of corn-based products or corn-derived</p> <p>22 products to North Dakota than there are corn farmers?</p> <p>23 A. <b>I assume almost everyone consumes corn products</b></p> <p>24 <b>and so, by definition, there are more consumers than</b></p> <p>25 <b>farmers.</b></p> <p>PAGE 75</p>
<p>1 <b>have a positive impact, which, in turn, creates better</b></p> <p>2 <b>economics for ethanol, which, in turn, creates better</b></p> <p>3 <b>demand for corn and, all else being equal, more demand,</b></p> <p>4 <b>same supply, equals better price.</b></p> <p>5 <b>And so the -- the comment about Tharaldson is</b></p> <p>6 <b>really -- the corn price implication is really more</b></p> <p>7 <b>about the project in general, not any one specific</b></p> <p>8 <b>ethanol plant, essentially the whole project.</b></p> <p>9 Q. Okay. And so let's just assume I agree with you</p> <p>10 on all those hypotheticals and assumptions. Do you</p> <p>11 think it's the North Dakota PSC's job to approve a</p> <p>12 project so that a farmer in southeast Iowa may get paid</p> <p>13 a little bit more for the corn they deliver to an Iowa</p> <p>14 ethanol plant?</p> <p>15 MR. GLUDT: Objection, Your Honor. That calls</p> <p>16 for speculation, legal conclusion.</p> <p>17 ALJ HOGAN: I'll note the objection. He can</p> <p>18 answer.</p> <p>19 A. <b>I -- I would repeat the comment I made earlier,</b></p> <p>20 <b>which is that I don't know the specific mandate of the</b></p> <p>21 <b>North Dakota PSC and so I can't really say if it's in</b></p> <p>22 <b>their purview or not.</b></p> <p>23 Q. So as to the currently only -- well, we haven't</p> <p>24 seen a contract, but we assume there's a contract with</p> <p>25 Tharaldson and Summit. You don't have any opinion</p> <p>PAGE 74</p>	<p>1 Q. And so if your speculation is correct that corn</p> <p>2 prices go up, that would be a net negative to consumers,</p> <p>3 wouldn't it?</p> <p>4 A. <b>I think what we'd have to figure out in that</b></p> <p>5 <b>instance -- and this was similar to the tax question</b></p> <p>6 <b>from the perspective of an individual's impact is likely</b></p> <p>7 <b>to be quite small. Just like a tax impact of 45Q</b></p> <p>8 <b>personally is going to be small to any individual</b></p> <p>9 <b>taxpayer, I assume that the impact of a CO2-influenced</b></p> <p>10 <b>increase in corn prices would be a pretty small impact</b></p> <p>11 <b>to an individual consumer.</b></p> <p>12 Q. And that's work you haven't done; correct?</p> <p>13 A. <b>I have not specifically modeled that, correct.</b></p> <p>14 <b>That's just my opinion.</b></p> <p>15 Q. And would you agree that inflation is bad for</p> <p>16 consumers?</p> <p>17 A. <b>I would agree with that.</b></p> <p>18 Q. All right. And inflation is rapidly increasing</p> <p>19 prices or increasing on a basket of goods. Would you</p> <p>20 agree with that?</p> <p>21 A. <b>I think it's much -- "rapidly" is a qualitative</b></p> <p>22 <b>term, but inflation has been high relative to previous</b></p> <p>23 <b>norms.</b></p> <p>24 Q. And you would agree that we wouldn't want to</p> <p>25 contribute to that with higher commodity prices that</p> <p>PAGE 76</p>

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<p>1 would affect the consumers; correct?</p> <p>2 <b>A. I think the definition of "we" is important</b></p> <p>3 <b>there. Anyone who's in the business of -- of selling a</b></p> <p>4 <b>commodity wants higher prices for that commodity. And</b></p> <p>5 <b>so "we" is too broad a term to make a general</b></p> <p>6 <b>conclusion, I think.</b></p> <p>7 <b>Q.</b> Have you done any analysis on corn price</p> <p>8 increase relative to input increases such as seed,</p> <p>9 fertilizer, herbicide, pesticides, phosphorous, any of</p> <p>10 those things?</p> <p>11 <b>A. I haven't.</b></p> <p>12 <b>Q.</b> All right. And so an increased price in corn</p> <p>13 doesn't necessarily mean increased profits if the inputs</p> <p>14 that a farmer needs are increasing faster than the price</p> <p>15 of corn; correct?</p> <p>16 <b>A. As you phrase the statement, if costs are going</b></p> <p>17 <b>up faster than price, by definition profits would not be</b></p> <p>18 <b>higher.</b></p> <p>19 <b>Q.</b> Now your prior testimony heavily cites and</p> <p>20 relies upon an Ernst &amp; Young and an EY April 2022</p> <p>21 report; correct?</p> <p>22 <b>A. That's correct.</b></p> <p>23 <b>Q.</b> And, sir, I take it, by you citing that so</p> <p>24 heavily, that you're familiar with that report?</p> <p>25 <b>A. I am.</b></p> <p>PAGE 77</p>	<p>1 <b>A. I have not.</b></p> <p>2 <b>Q.</b> Are you aware of the Ernst &amp; Young, that report</p> <p>3 that you relied upon, the disclaimer that it has?</p> <p>4 <b>A. I know it has one at the end.</b></p> <p>5 <b>Q.</b> Okay. And do you recollect what it -- the</p> <p>6 disclaimer says relative to third-party use of the</p> <p>7 report?</p> <p>8 <b>A. I don't.</b></p> <p>9 <b>Q.</b> We've marked, sir, as Exhibit 40, 4-0, some</p> <p>10 excerpts of that Ernst &amp; Young 2022 report. It should</p> <p>11 be four pages.</p> <p>12 <b>MR. JORDE:</b> And I would ask my folks in the room</p> <p>13 there to distribute that if it hasn't. If you have a</p> <p>14 binder, it would be Tab 40. And I guess this witness is</p> <p>15 appearing remotely.</p> <p>16 <b>Q.</b> (BY MR. JORDE) Are you familiar with the Ernst</p> <p>17 &amp; Young report? Do you have a copy of it there with</p> <p>18 you, by any chance? Okay.</p> <p>19 <b>A. (Indiscernible).</b></p> <p>20 <b>Q.</b> Thank you.</p> <p>21 Can you turn to the second page of that?</p> <p>22 <b>A. The limitations and restrictions?</b></p> <p>23 <b>Q.</b> Yes. On the second page, there's like a</p> <p>24 nice-looking corn field and sunset.</p> <p>25 <b>A. Uh-huh.</b></p> <p>PAGE 79</p>
<p>1 <b>Q.</b> And have you read it?</p> <p>2 <b>A. I have.</b></p> <p>3 <b>Q.</b> All right. And did you prepare your prefiled</p> <p>4 testimony or was that prepared by someone else and then</p> <p>5 you reviewed it?</p> <p>6 <b>A. No. I prepared that testimony.</b></p> <p>7 <b>Q.</b> And your testimony essentially re-states much of</p> <p>8 the information and data from the Ernst &amp; Young report;</p> <p>9 correct?</p> <p>10 <b>A. I -- I -- "restate," I think, is -- is probably</b></p> <p>11 <b>too strong a word. I definitely referenced the EY</b></p> <p>12 <b>report and some of the numbers included in there.</b></p> <p>13 <b>Just as an FYI, kind of the other things that I</b></p> <p>14 <b>looked at in preparing my testimony, one is sort of my</b></p> <p>15 <b>experience with commodity projects, but I looked at Iowa</b></p> <p>16 <b>Corn Growers report, I looked at the US EPA statistics,</b></p> <p>17 <b>the USDA has some information that I reviewed.</b></p> <p>18 <b>Bloomberg has a lot of information around pipelines,</b></p> <p>19 <b>etcetera. Congressional Research Service has a lot of</b></p> <p>20 <b>data, government data.</b></p> <p>21 <b>And so EY -- the EY report was certainly a key</b></p> <p>22 <b>piece of research that I reviewed, but there was other</b></p> <p>23 <b>research as well.</b></p> <p>24 <b>Q.</b> And have you ever talked to any of the authors</p> <p>25 of that report or Mr. Phillips, Andrew Phillips?</p> <p>PAGE 78</p>	<p>1 <b>Q.</b> And then at the bottom it has limitations and</p> <p>2 restrictions; is that right?</p> <p>3 <b>A. That's correct.</b></p> <p>4 <b>Q.</b> And there's two paragraphs, sir, there. In the</p> <p>5 second paragraph, the middle sentence starting with the</p> <p>6 word "any," do you see that?</p> <p>7 <b>A. Yes.</b></p> <p>8 <b>Q.</b> Can you read that sentence, please?</p> <p>9 <b>A. "Any third parties reading the report should be</b></p> <p>10 <b>aware that the report is subject to limitations, and the</b></p> <p>11 <b>scope of the report was not designed for use or reliance</b></p> <p>12 <b>by third parties for investment purposes or any other</b></p> <p>13 <b>purpose."</b></p> <p>14 <b>Q.</b> All right.</p> <p>15 <b>A. "We assume no duty, obligation, or</b></p> <p>16 <b>responsibility whatsoever to any third parties that may</b></p> <p>17 <b>obtain access to the report."</b></p> <p>18 <b>Q.</b> Okay. And that's a disclaimer that is telling</p> <p>19 the North Dakota PSC as a third party that the authors</p> <p>20 that you rely upon do not intend that the North Dakota</p> <p>21 PSC should rely on this for any purpose; correct?</p> <p>22 <b>A. I -- I don't know if that is a correct</b></p> <p>23 <b>interpretation or not.</b></p> <p>24 <b>Q.</b> All right. Well, you read the words correctly</p> <p>25 and it says that it's not intended or designed for</p> <p>PAGE 80</p>

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<p>1 reliance by third parties for any purpose; right?</p> <p>2 <b>A. Correct.</b></p> <p>3 <b>Q.</b> Okay.</p> <p>4 MR. JORDE: I would offer Exhibit 40, which</p> <p>5 should be four pages including the page that</p> <p>6 Mr. Pickering just looked at.</p> <p>7 ALJ HOGAN: Any objection to 40 on behalf of the</p> <p>8 Applicant?</p> <p>9 MR. GLUDT: We'll object on foundation, but just</p> <p>10 to note the paper copies of Exhibit 40 that we received</p> <p>11 only have three pages in our binder.</p> <p>12 ALJ HOGAN: I think it's in the front cover.</p> <p>13 MR. GLUDT: Okay. Same objection.</p> <p>14 ALJ HOGAN: Mr. Pelham.</p> <p>15 MR. PELHAM: No objection.</p> <p>16 ALJ HOGAN: Mr. Bakke.</p> <p>17 MR. BAKKE: No objection.</p> <p>18 ALJ HOGAN: The objection is noted, but I will</p> <p>19 admit or receive landowner No. 40.</p> <p>20 <b>Q.</b> (BY MR. JORDE) Now, sir, are any of your</p> <p>21 projections contingent upon the CO2 that would be</p> <p>22 transported in the Summit pipeline eventually one day</p> <p>23 being used for enhanced oil recovery?</p> <p>24 <b>A. No.</b></p> <p>25 <b>Q.</b> Are you aware of a recent capital call by Summit</p> <p>PAGE 81</p>	<p>1 any facts or testimony you can provide to suggest that</p> <p>2 Summit will have the needed amount of capital to fund</p> <p>3 this project, do you?</p> <p>4 <b>A. No facts, only opinion.</b></p> <p>5 <b>Q.</b> Got it. Sir, I don't have anything further for</p> <p>6 you.</p> <p>7 MR. JORDE: For the record, Your Honor, I would</p> <p>8 note we do have a motion on file to strike the entirety</p> <p>9 of Mr. Pickering's written and prior testimony. I</p> <p>10 conducted this cross-examination subject to that</p> <p>11 objection and just wanted to make that known for the</p> <p>12 record. Thank you.</p> <p>13 ALJ HOGAN: Mr. Bakke, any questions?</p> <p>14 MR. BAKKE: Yes, Your Honor.</p> <p>15 CROSS EXAMINATION</p> <p>16 BY MR. BAKKE:</p> <p>17 <b>Q.</b> Mr. Pickering, have you ever lived or worked in</p> <p>18 North Dakota?</p> <p>19 <b>A. I haven't.</b></p> <p>20 <b>Q.</b> Okay.</p> <p>21 ALJ HOGAN: Mr. Bakke, can you pull the</p> <p>22 microphone a little bit closer?</p> <p>23 MR. BAKKE: Sure. Is that better?</p> <p>24 ALJ HOGAN: It's a little hard to hear you over</p> <p>25 here.</p> <p>PAGE 83</p>
<p>1 trying to raise money to fund ongoing operations?</p> <p>2 MR. GLUDT: Objection, Your Honor. It's outside</p> <p>3 the scope of his direct.</p> <p>4 MR. JORDE: Well, it's not because there were</p> <p>5 specifically concerns about access to capital and he got</p> <p>6 into why he didn't think capital would be a problem.</p> <p>7 ALJ HOGAN: The objection is noted. I'll let</p> <p>8 him answer.</p> <p>9 <b>A. I'm not aware of a capital call.</b></p> <p>10 <b>Q.</b> (BY MR. JORDE) All right. Are you aware of</p> <p>11 Summit laying off contractors or employees in the last</p> <p>12 several months?</p> <p>13 <b>A. I am not aware of that.</b></p> <p>14 <b>Q.</b> All right. Are you aware of Summit changing its</p> <p>15 land acquisition strategy from paying all of the</p> <p>16 negotiated price for an easement upfront to paying</p> <p>17 20 percent upfront?</p> <p>18 <b>A. Not those specific terms. I have heard that</b></p> <p>19 <b>there was -- that there was a (indiscernible) deferment</b></p> <p>20 <b>of some payments in an effort to align -- my</b></p> <p>21 <b>understanding was in an effort to align the landowners</b></p> <p>22 <b>and Summit, but I don't know the specifics of those.</b></p> <p>23 <b>Q.</b> So then in terms of access to capital for Summit</p> <p>24 to be an ongoing concern, to operate and to construct</p> <p>25 and do all these things appropriately, you don't have</p> <p>PAGE 82</p>	<p>1 MR. BAKKE: Okay. Sorry about that. Is that</p> <p>2 better?</p> <p>3 ALJ HOGAN: Yep.</p> <p>4 MR. BAKKE: Okay.</p> <p>5 <b>Q.</b> (BY MR. BAKKE) And as I understand your prior</p> <p>6 testimony on April 22nd, you testified there is a</p> <p>7 potential to at least support, if not enhance, the price</p> <p>8 of corn which would then flow through to farmers here in</p> <p>9 the state of North Dakota; is that correct?</p> <p>10 <b>A. That's correct.</b></p> <p>11 <b>Q.</b> Okay. And the key word there, as you pointed</p> <p>12 out already, is "potential." You're not saying that's</p> <p>13 going to happen. You're saying simply there's a</p> <p>14 potential?</p> <p>15 <b>A. That's correct.</b></p> <p>16 <b>Q.</b> Okay. So there's three things that would have</p> <p>17 to happen. First of all, the Summit pipeline to have to</p> <p>18 enhance the price of corn; correct?</p> <p>19 <b>A. I want to hear all three before I say correct to</b></p> <p>20 <b>the first one.</b></p> <p>21 <b>Q.</b> Okay. Well, it would have to enhance the price</p> <p>22 of corn, and then there would have to be some type of</p> <p>23 corresponding increase in the price of corn, and then</p> <p>24 finally that price increase would have to flow through</p> <p>25 to the farmers in North Dakota. Would you agree with</p> <p>PAGE 84</p>

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<p>1 all that?</p> <p>2 <b>A. I would. I do agree.</b></p> <p>3 <b>Q.</b> So you've got to have three different steps</p> <p>4 happen that are all hypothetical, all three steps of the</p> <p>5 way, before what you're saying is a possibility could</p> <p>6 occur; correct?</p> <p>7 <b>A. Correct.</b></p> <p>8 <b>Q.</b> Okay. Are you saying that the citizens of North</p> <p>9 Dakota should give up on health and safety concerns for</p> <p>10 the sake of a three-part hypothetical that somehow the</p> <p>11 price of corn might increase if the Summit pipeline were</p> <p>12 built here?</p> <p>13 <b>A. I'm not making any comment on -- any health and</b></p> <p>14 <b>safety as it relates to the citizens of North Dakota.</b></p> <p>15 <b>Q.</b> Okay. Let's talk about carbon capture and</p> <p>16 carbon storage. Are you familiar with carbon intensity</p> <p>17 indexes?</p> <p>18 <b>A. I am.</b></p> <p>19 <b>Q.</b> Okay. And are there competitive advantages to</p> <p>20 ethanol plants that have a positive CI index score?</p> <p>21 <b>A. My understanding of carbon intensity scores,</b></p> <p>22 <b>lower is better and so higher is worse.</b></p> <p>23 <b>Q.</b> Okay. And so I want to go through some things</p> <p>24 that -- and see if you agree whether all of the</p> <p>25 following are competitive advantages that ethanol plants</p> <p>PAGE 85</p>	<p>1 <b>Q.</b> Okay. And sometimes those that don't have the</p> <p>2 competitive advantage of carbon capture and storage can</p> <p>3 face economic penalties and loss of market share;</p> <p>4 correct?</p> <p>5 <b>A. I don't know about economic penalties. And</b></p> <p>6 <b>there's a potential for loss of market share, but it's</b></p> <p>7 <b>not a given.</b></p> <p>8 <b>Q.</b> Okay. And do you agree low-carbon ethanol</p> <p>9 producers can increase their margins and diversify their</p> <p>10 product portfolio which can help them mitigate the</p> <p>11 impact of volatile commodity prices and reduce their</p> <p>12 exposure to market risk by using carbon capture and</p> <p>13 storage?</p> <p>14 <b>A. I agree with that statement.</b></p> <p>15 <b>Q.</b> Do you agree that the ethanol plants that use</p> <p>16 carbon capture and storage can reduce their carbon</p> <p>17 footprint and improve their company's scorecard with</p> <p>18 respect to ESG, environmental, stewardship, and</p> <p>19 governance?</p> <p>20 <b>A. ESG, as I define it, is environmental, social,</b></p> <p>21 <b>and governance. But, yes, I believe -- I agree with the</b></p> <p>22 <b>statement that -- that you said as it respect -- as it</b></p> <p>23 <b>relates to ESG scores.</b></p> <p>24 <b>Q.</b> Okay. And so in order to analyze whether</p> <p>25 there's any economic benefit or other benefit to ethanol</p> <p>PAGE 87</p>
<p>1 have that are involved in carbon capture and storage.</p> <p>2 Do you agree those plants that have carbon</p> <p>3 capture and storage have the competitive advantage in</p> <p>4 the respect they can position themselves as leaders in</p> <p>5 the biofuel industry, attracting new customers and</p> <p>6 investors who are seeking environmentally-friendly</p> <p>7 alternatives and thereby gain a competitive advantage?</p> <p>8 Do you agree with that?</p> <p>9 <b>A. I agree with that.</b></p> <p>10 <b>Q.</b> Okay. And do you agree that ethanol plants that</p> <p>11 can engage in carbon capture and storage can --</p> <p>12 producers that don't have that competitive advantage</p> <p>13 can't achieve the same carbon reduction as those that</p> <p>14 can use carbon capture and storage?</p> <p>15 <b>A. There, I'm not sure. And the reason I say that</b></p> <p>16 <b>is carbon capture and storage is one way of dealing with</b></p> <p>17 <b>CO2. It could be dealt with in other ways. And so I --</b></p> <p>18 <b>I believe that CCUS offers many times the most</b></p> <p>19 <b>cost-advantaged way to deal with carbon, assuming you</b></p> <p>20 <b>don't want to just vent it to the atmosphere.</b></p> <p>21 <b>Q.</b> Okay. But you do agree that -- that one of the</p> <p>22 ways that carbon capture and storage can disadvantage</p> <p>23 someone else, another ethanol plant, is if they don't</p> <p>24 have that same competitive advantage?</p> <p>25 <b>A. Correct.</b></p> <p>PAGE 86</p>	<p>1 producers in North Dakota, those competitive advantages</p> <p>2 need to be considered; correct?</p> <p>3 <b>A. Correct.</b></p> <p>4 <b>Q.</b> Okay. And so you were asked some questions</p> <p>5 about North Dakota ethanol plants. Can you tell me the</p> <p>6 names and the locations of the currently operating North</p> <p>7 Dakota ethanol plants?</p> <p>8 <b>A. I don't know the names of the two operating</b></p> <p>9 <b>plants. And I know they're in the northern part of the</b></p> <p>10 <b>state. Those are the things that I know.</b></p> <p>11 <b>Q.</b> Well, and I think you previously testified there</p> <p>12 were five. Aren't there, in fact, six currently</p> <p>13 operating ethanol plants in North Dakota?</p> <p>14 <b>A. I don't think I testified to the number. The</b></p> <p>15 <b>number was stated and I responded to the question.</b></p> <p>16 <b>Q.</b> Okay. Well, let's go through them. Blue Flint</p> <p>17 Ethanol, are you familiar with that?</p> <p>18 <b>A. Only the name, not -- nothing -- keep going.</b></p> <p>19 <b>Q.</b> Okay. Dakota Spirit?</p> <p>20 <b>A. Familiar with the name.</b></p> <p>21 <b>Q.</b> Where's that located?</p> <p>22 <b>A. I'm -- I'm not sure.</b></p> <p>23 <b>Q.</b> Okay.</p> <p>24 <b>A. I couldn't give you an exact physical location.</b></p> <p>25 <b>Q.</b> Guardian Energy?</p> <p>PAGE 88</p>

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<p>1 <b>A. Not familiar.</b></p> <p>2 <b>Q.</b> Okay. Red Trail Energy?</p> <p>3 <b>A. Not familiar.</b></p> <p>4 <b>Q.</b> Okay. Red River Biorefinery?</p> <p>5 <b>A. Not familiar.</b></p> <p>6 <b>Q.</b> Okay. And Tharaldson Ethanol?</p> <p>7 <b>A. Familiar.</b></p> <p>8 <b>Q.</b> Okay. And so are there some North Dakota</p> <p>9 ethanol plants that already have a competitive advantage</p> <p>10 for the reasons we've discussed already that are located</p> <p>11 in North Dakota?</p> <p>12 <b>A. Yeah. The two plants in existence -- the two</b></p> <p>13 <b>CCUS plants would have the qualitative benefits that you</b></p> <p>14 <b>discussed. I don't believe they would have received the</b></p> <p>15 <b>45Q and so I don't know about the economic benefits, but</b></p> <p>16 <b>the qualitative benefits they would be receiving.</b></p> <p>17 <b>Q.</b> Okay. So we've already got two existing ethanol</p> <p>18 plants, Red Trail Energy and Blue Flint, in North Dakota</p> <p>19 that you understand use their own carbon capture and</p> <p>20 storage; correct?</p> <p>21 <b>A. Yeah. I'm -- I'm -- I'm not sure which of</b></p> <p>22 <b>the two are -- are actively involved in CCUS. I can</b></p> <p>23 <b>look back through my notes but -- so I don't want to --</b></p> <p>24 <b>I don't want to agree or disagree to tag the specific</b></p> <p>25 <b>plants with a specific action.</b></p> <p>PAGE 89</p>	<p>1 pipeline will pay nothing to do that. Do you disagree</p> <p>2 with that?</p> <p>3 <b>A. Please -- please repeat that.</b></p> <p>4 <b>Q.</b> Yeah. There's been testimony in this case that</p> <p>5 the ethanol plants, including these 56 plants from</p> <p>6 outside the state of North Dakota, will be able to dump</p> <p>7 their carbon into the Summit pipeline at no cost to</p> <p>8 them, they don't pay anything to put it in the pipeline.</p> <p>9 MR. GLUDT: Objection, Your Honor. I think</p> <p>10 that's a mischaracterization of the evidence. I don't</p> <p>11 believe we've had anybody say that there are -- that</p> <p>12 Summit -- or allege that Summit is taking CO2 for free</p> <p>13 from any customer. And, in fact, we've made specific</p> <p>14 points not to discuss the terms of those contracts.</p> <p>15 ALJ HOGAN: Mr. Bakke, can you expand on the</p> <p>16 basis for that question?</p> <p>17 MR. BAKKE: Well, there has been previous</p> <p>18 testimony in that regard. But I can rephrase it a</p> <p>19 different way.</p> <p>20 <b>Q.</b> (BY MR. BAKKE) Is it your understanding,</p> <p>21 Mr. Pickering, that the 56 ethanol plants will be able</p> <p>22 to input their carbon into the Summit pipeline for free?</p> <p>23 <b>A. It is not my understanding that that's the case.</b></p> <p>24 <b>Q.</b> Okay. So what are they going to pay?</p> <p>25 MR. GLUDT: Objection, Your Honor. Now we're</p> <p>PAGE 91</p>
<p>1 <b>Q.</b> Well, that's what their literature indicates,</p> <p>2 that they both have carbon capture and storage that they</p> <p>3 use. It's been -- it's been in use for some time for</p> <p>4 each of those plants. Do you disagree?</p> <p>5 <b>A. What I'm saying is -- is I'm not -- I'm not</b></p> <p>6 <b>familiar with which two plants have the specific carbon</b></p> <p>7 <b>capture. So if you're telling me it's those two, that</b></p> <p>8 <b>those are the names of plants -- I just looked at</b></p> <p>9 <b>capacity --</b></p> <p>10 <b>Q.</b> Okay.</p> <p>11 <b>A. -- then I'll agree with you.</b></p> <p>12 <b>Q.</b> Okay. So currently there are two ethanol plants</p> <p>13 in North Dakota who have these competitive advantages</p> <p>14 over these 56 other out-of-state plants that Summit is</p> <p>15 proposing to give the advantage of putting carbon into</p> <p>16 the pipeline at no cost to them; correct?</p> <p>17 <b>A. Well, I don't -- I don't know that I can -- I</b></p> <p>18 <b>can agree or disagree with the statement. The reason I</b></p> <p>19 <b>say that is economic advantages imply an understanding</b></p> <p>20 <b>of the profit and loss and -- of the specific plants</b></p> <p>21 <b>relative to other plants. And I just don't think we</b></p> <p>22 <b>have that information. And so I -- I can neither agree</b></p> <p>23 <b>nor disagree with the comment -- with the question.</b></p> <p>24 <b>Q.</b> Well, there's been testimony in this case that</p> <p>25 the ethanol plants that will put carbon into the Summit</p> <p>PAGE 90</p>	<p>1 getting into the terms of these contracts.</p> <p>2 MR. BAKKE: I'm not asking for the dollar</p> <p>3 amount. What are they going to pay for? Is it so much</p> <p>4 a pound?</p> <p>5 MR. GLUDT: Whether or not they pay or not is a</p> <p>6 term of the contract.</p> <p>7 MR. BAKKE: It's a government contract. It's a</p> <p>8 government subsidy. There's nothing --</p> <p>9 MR. GLUDT: It is not a government contract. It</p> <p>10 is a contract between two private entities.</p> <p>11 ALJ HOGAN: Which contract are you asking about?</p> <p>12 MR. BAKKE: I'm asking about any agreement in</p> <p>13 relation to the transportation costs for the carbon</p> <p>14 going in the pipeline.</p> <p>15 ALJ HOGAN: From the ethanol plant to Summit?</p> <p>16 How is that not a private contract?</p> <p>17 MR. BAKKE: Because Summit's getting reimbursed</p> <p>18 by the government and, by their very nature, they're</p> <p>19 going to have to disclose to the government what those</p> <p>20 terms are. The government is not going to pay them</p> <p>21 unless they know the quantities and all of those things.</p> <p>22 <b>Q.</b> (BY MR. BAKKE) But let me approach it a</p> <p>23 different way. And the attorney for Summit just made a</p> <p>24 good point. That money, if there is money that's paid</p> <p>25 by the ethanol producers, that will go to Summit;</p> <p>PAGE 92</p>

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<p>1 correct?</p> <p>2 MR. GLUDD: Same objection, Your Honor.</p> <p>3 ALJ HOGAN: The objection is noted. I'll allow</p> <p>4 him to answer this question, if he knows.</p> <p>5 <b>A. I -- I don't know the nature of the contract</b></p> <p>6 <b>between the ethanol plants and Summit.</b></p> <p>7 Q. (BY MR. BAKKE) Okay. So assuming counsel for</p> <p>8 Summit is correct, that the money goes to Summit, that</p> <p>9 doesn't provide any benefit to the citizens of North</p> <p>10 Dakota, does it?</p> <p>11 <b>A. That's a question for me, sir?</b></p> <p>12 Q. It is.</p> <p>13 <b>A. Yeah. So, again, not knowing the specifics of</b></p> <p>14 <b>the contract, it's -- it's hard to answer where the</b></p> <p>15 <b>money goes relative to Summit or the citizens of North</b></p> <p>16 <b>Dakota.</b></p> <p>17 Q. Well, I thought, in response to Mr. Jorde's</p> <p>18 question earlier today, you indicated this \$18 billion</p> <p>19 came from the government and would go to the investors</p> <p>20 in the Summit pipeline. Is that not accurate?</p> <p>21 <b>A. What I said was the 45Q would go to the owners</b></p> <p>22 <b>of the CO2 that's being injected. And so it's going --</b></p> <p>23 <b>it's going into the system or into the project, and then</b></p> <p>24 <b>I would assume some of that is -- is retained by Summit,</b></p> <p>25 <b>some of that goes to landowners, some of that is going</b></p> <p>PAGE 93</p>	<p>1 ethanol plants in North Dakota, and we just named them a</p> <p>2 few minutes ago, that it's your understanding will not</p> <p>3 be contributing their carbon into the Summit pipeline;</p> <p>4 correct?</p> <p>5 <b>A. I don't know -- I take that back. My</b></p> <p>6 <b>understanding is Tharaldson is the only North Dakota</b></p> <p>7 <b>ethanol plant contributing to the Summit project so, by</b></p> <p>8 <b>definition, the other two at this point in time, based</b></p> <p>9 <b>on what I know, are not.</b></p> <p>10 Q. Okay. Well, there's actually three. Red River</p> <p>11 Bio- --</p> <p>12 <b>A. Yeah, the other three. Yes, sir.</b></p> <p>13 Q. Red River Biorefinery, Guardian Energy, and</p> <p>14 Dakota Spirit.</p> <p>15 So they're going to be -- in the event this</p> <p>16 pipeline is approved, those three ethanol plants in</p> <p>17 North Dakota that will not be inputting carbon into the</p> <p>18 Summit pipeline, they're going to be economically</p> <p>19 disadvantaged; correct?</p> <p>20 <b>A. They won't be receiving the same benefits that</b></p> <p>21 <b>other projects with carbon capture have, specifically</b></p> <p>22 <b>the qualitative benefits, and then hard to know the</b></p> <p>23 <b>quantitative impact.</b></p> <p>24 Q. Well, except for the numerous competitive</p> <p>25 advantages that you agreed upon earlier in your</p> <p>PAGE 95</p>
<p>1 <b>to go to vendors. So it's -- I think it is incorrect to</b></p> <p>2 <b>assume that it all goes to Summit.</b></p> <p>3 Q. Okay. So then back to the two ethanol producers</p> <p>4 in North Dakota who already have those competitive</p> <p>5 advantages by carbon capture and storage, you agree that</p> <p>6 they had certain costs they incurred for that carbon</p> <p>7 capture and storage capability; correct?</p> <p>8 <b>A. I agree.</b></p> <p>9 Q. Okay. And so that -- that money is going to be</p> <p>10 money they're out that somebody else -- 56 producers</p> <p>11 from out of state are not going to have to incur or they</p> <p>12 may incur a lesser amount to the extent they do incur</p> <p>13 costs; correct?</p> <p>14 <b>A. I think that -- that a project undertaken in a</b></p> <p>15 <b>prior time period, it's very hard to compare what --</b></p> <p>16 <b>what benefits or disbenefits they would be experiencing</b></p> <p>17 <b>if they tried to do that today.</b></p> <p>18 Q. Okay.</p> <p>19 <b>A. So I'm not sure I can answer your question.</b></p> <p>20 Q. And then those two ethanol plants, in order to</p> <p>21 continue carbon capture and storage in the future, will</p> <p>22 also incur certain costs to do that for their two plants</p> <p>23 in North Dakota; correct?</p> <p>24 <b>A. There will be operating costs, yes, sir.</b></p> <p>25 Q. Okay. And then there will be another three</p> <p>PAGE 94</p>	<p>1 testimony a few moments ago, those three existing</p> <p>2 ethanol plants in North Dakota won't have any of those</p> <p>3 competitive advantages, economic or otherwise; correct?</p> <p>4 <b>A. They will not have those qualitative benefits,</b></p> <p>5 <b>that's correct.</b></p> <p>6 Q. Okay. And to that extent, what we would be</p> <p>7 doing by approving this pipeline is we would be giving</p> <p>8 that competitive advantage to 56 out-of-state ethanol</p> <p>9 plants who currently don't have those competitive</p> <p>10 advantages; correct?</p> <p>11 <b>A. I think that the -- the plants that are part of</b></p> <p>12 <b>the project will have more advantages than those that</b></p> <p>13 <b>don't.</b></p> <p>14 Q. Sure. And the end result of approving the</p> <p>15 Summit pipeline, at least for the ethanol plants in</p> <p>16 North Dakota, is five out of six of the existing ethanol</p> <p>17 plants in North Dakota will not get any benefit from the</p> <p>18 Summit pipeline; correct?</p> <p>19 <b>A. There, I disagree. And the reason I disagree is</b></p> <p>20 <b>that, as I indicated in my initial testimony, I think</b></p> <p>21 <b>that the overall benefit of the Summit project is to</b></p> <p>22 <b>create a potential for a growing CO2 economy --</b></p> <p>23 MR. BAKKE: I think we lost the feed somehow.</p> <p>24 UNIDENTIFIED SPEAKER: Mr. Pickering, are you</p> <p>25 there?</p> <p>PAGE 96</p>



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<p>1 I think we'll have to wait a few minutes for him</p> <p>2 to reconnect.</p> <p>3 (Pause)</p> <p>4 UNIDENTIFIED SPEAKER: I see both him and Mark</p> <p>5 disconnected, but Fredrikson &amp; Byron are there so I</p> <p>6 believe the problem is on their end.</p> <p>7 MR. BAKKE: Your Honor, I don't know if it makes</p> <p>8 sense but perhaps a suggestion. I see Mr. Boeshans is</p> <p>9 here. Does it make sense to stop my examination -- I</p> <p>10 know it's not ideal, but if we can't get him back and</p> <p>11 try to get that figured out over noon hour or something</p> <p>12 and continue with another witness's testimony?</p> <p>13 ALJ HOGAN: Let's see if there's a quick fix</p> <p>14 before we make adjustments.</p> <p>15 UNIDENTIFIED SPEAKER: We'd have to wait for</p> <p>16 them to try to reconnect. I have no contact with them</p> <p>17 otherwise.</p> <p>18 ALJ HOGAN: Do you know? Does anybody have</p> <p>19 contact with them, if they're trying to reconnect?</p> <p>20 MR. JORDE: Well, Summit can certainly call the</p> <p>21 lawyer. That's Summit's lawyer they're paying for.</p> <p>22 UNIDENTIFIED SPEAKER: Your Honor, we're working</p> <p>23 on making contact with --</p> <p>24 ALJ HOGAN: Okay. Let's see if we can get him</p> <p>25 reconnected real quick. Otherwise, we'll talk about</p> <p>PAGE 97</p>	<p>1 refreshed and then we'll have you repeat your answer,</p> <p>2 Mr. Pickering.</p> <p>3 THE WITNESS: Fabulous.</p> <p>4 Q. (BY MR. BAKKE) Yeah. I think, Mr. Pickering,</p> <p>5 you were midstream through an answer when we lost you,</p> <p>6 but I'll try to rephrase the question as best I can.</p> <p>7 So my question was that five out of the six</p> <p>8 ethanol plants in North Dakota will not have the</p> <p>9 advantage of being able to provide their carbon into the</p> <p>10 Summit pipeline under the existing agreement; correct?</p> <p>11 A. Yeah. So I think what I was trying to describe</p> <p>12 when I was interrupted was I -- I agree that -- that</p> <p>13 those five plants will not be putting their carbon into</p> <p>14 the Summit pipeline, but I do think that the potential</p> <p>15 advantage associated with the project that all ethanol</p> <p>16 plants in North Dakota will benefit from is this</p> <p>17 potential creation of a -- kind of a carbon -- a carbon</p> <p>18 economy or a carbon ecosphere, if you will, where --</p> <p>19 where the fact that there is more carbon-related</p> <p>20 activity in the state could attract more investment,</p> <p>21 more pipeline, more sequestration, etcetera, which then</p> <p>22 could be used to the advantage of those other five</p> <p>23 plants.</p> <p>24 So as it relates to the specific Summit project,</p> <p>25 five of those six plants will not be accessing those</p> <p>PAGE 99</p>
<p>1 shifting gears.</p> <p>2 (Pause)</p> <p>3 ALJ HOGAN: Do you have a lot of additional</p> <p>4 questions, Mr. Bakke?</p> <p>5 MR. BAKKE: A fair amount.</p> <p>6 ALJ HOGAN: Okay.</p> <p>7 UNIDENTIFIED SPEAKER: Also, Your Honor, a</p> <p>8 workaround on this sometimes is to use the video option</p> <p>9 of whatever the service is, GoTo Meeting, but then mute</p> <p>10 the video and call in from a phone so we never lose</p> <p>11 audio at least. Just an idea.</p> <p>12 UNIDENTIFIED SPEAKER: That is true. They could</p> <p>13 either just call in directly via phone, or if one of you</p> <p>14 guys could provide a phone number, I can dial out from</p> <p>15 GoTo Meeting to them.</p> <p>16 (Pause)</p> <p>17 UNIDENTIFIED SPEAKER: Hello. Dan Pickering has</p> <p>18 joined again via phone.</p> <p>19 UNIDENTIFIED SPEAKER: Hello, we can hear you.</p> <p>20 ALJ HOGAN: All right. Thank you for calling</p> <p>21 in.</p> <p>22 THE WITNESS: So sorry for that.</p> <p>23 ALJ HOGAN: That's fine. I think -- we did not</p> <p>24 hear your answer to the question so I'll maybe have</p> <p>25 Mr. Bakke ask his last question so our memories are</p> <p>PAGE 98</p>	<p>1 direct benefits, but I do think there will be an overall</p> <p>2 benefit that is created.</p> <p>3 Q. Okay. And so you agree that advantage will be</p> <p>4 real in terms of these 56 out-of-state plants</p> <p>5 contributing carbon to the Summit pipeline; correct?</p> <p>6 That's not hypothetical, that's a real competitive</p> <p>7 advantage; correct?</p> <p>8 A. Should be, yes, sir.</p> <p>9 Q. Okay. Versus you use not a -- not a three-part</p> <p>10 hypothetical this time in your answer but, instead, a</p> <p>11 two-part hypothetical where you said there was, quote,</p> <p>12 "a potential advantage," end quote, and then "a</p> <p>13 potential creation of a carbon economy," end quote, in</p> <p>14 North Dakota for the North Dakota ethanol plants;</p> <p>15 correct?</p> <p>16 A. Yeah. I think that in a situation like this</p> <p>17 where none of -- this project is not yet built, that the</p> <p>18 word "potential" is appropriate in most of the</p> <p>19 discussion.</p> <p>20 Q. And in terms of the Tharaldson plant, they are</p> <p>21 the only plant out of the six plants in North Dakota who</p> <p>22 would see these competitive advantages by being able to</p> <p>23 use the Summit pipeline; correct?</p> <p>24 A. It's my understanding Tharaldson is the only</p> <p>25 plant currently connected or proposed to be connected to</p> <p>PAGE 100</p>

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<p>1 <b>the project.</b></p> <p>2 <b>Q.</b> Okay. And you understand Mr. Tharaldson himself</p> <p>3 is a significant monetary investor in the Summit</p> <p>4 pipeline; correct?</p> <p>5 <b>A. I am not aware of -- of Mr. Tharaldson's</b></p> <p>6 <b>investment. I'm not aware of that.</b></p> <p>7 <b>Q.</b> Well, there has been testimony, not of the</p> <p>8 amount of his investment, they won't disclose that, but</p> <p>9 Mr. Tharaldson is an investor in the pipeline. So he</p> <p>10 would get a double benefit if the Summit pipeline is</p> <p>11 built and he can contribute carbon into that pipeline,</p> <p>12 correct, as a personal investor and then through his</p> <p>13 plant by having these competitive advantages over the</p> <p>14 other five ethanol plants in North Dakota; correct?</p> <p>15 <b>A. I haven't seen that testimony with respect to</b></p> <p>16 <b>Mr. Tharaldson's investment. And I think that any time</b></p> <p>17 <b>you're making an assessment of economic benefit of one</b></p> <p>18 <b>thing relative to another, you have to -- you have to</b></p> <p>19 <b>know the details, and we don't know -- I don't know the</b></p> <p>20 <b>details of either Mr. Tharaldson's investment, his</b></p> <p>21 <b>ownership of that facility, or the specific economics</b></p> <p>22 <b>associated with any of the other five North Dakota</b></p> <p>23 <b>plants. So I think it's pretty hard to make a relative</b></p> <p>24 <b>assessment one versus the other.</b></p> <p>25 <b>Q.</b> Okay. Well, let's use your language. Let's use</p> <p>PAGE 101</p>	<p>1 ALJ HOGAN: I think if we're going into benefits</p> <p>2 to Mr. Tharaldson personally, I think that's too far</p> <p>3 down the road. So if you can keep your questions to the</p> <p>4 plant itself, I think that's the way we should proceed.</p> <p>5 MR. BAKKE: Well, there's been all kinds of</p> <p>6 testimony in relation to the investors in the plant and</p> <p>7 now we can't ask about one of them?</p> <p>8 ALJ HOGAN: Correct. I'm asking you to limit</p> <p>9 your questions to the benefits to the plant.</p> <p>10 MR. BAKKE: Well, I'll move on. Because that's</p> <p>11 an important component, is his individual investment,</p> <p>12 not the amount but the fact that he will benefit.</p> <p>13 <b>Q.</b> (BY MR. BAKKE) Would you agree with me that</p> <p>14 since Summit has added from 32 out-of-state ethanol</p> <p>15 producers contributing to the Summit pipeline to 56</p> <p>16 out-of-state plants contributing to the Summit pipeline,</p> <p>17 that the benefit has been diluted somewhat?</p> <p>18 <b>A. The benefit?</b></p> <p>19 <b>Q.</b> Of contributing carbon to the Summit pipeline.</p> <p>20 There's going to be more people that get that benefit</p> <p>21 than before. Let me just ask it that way.</p> <p>22 <b>A. Yeah, I think that -- that the benefits here are</b></p> <p>23 <b>additive. Each plant is incremental and will receive,</b></p> <p>24 <b>you know, its -- its -- its own economic benefit. And</b></p> <p>25 <b>so I don't think that adding one dilutes from the</b></p> <p>PAGE 103</p>
<p>1 your word of "potential." He's going to have --</p> <p>2 Mr. Tharaldson's going to have the potential benefit of</p> <p>3 getting the tax money, part of the 18 --</p> <p>4 MR. GLUDT: Your Honor, I'm going to object.</p> <p>5 We're talking about benefits to Mr. Tharaldson right</p> <p>6 now.</p> <p>7 ALJ HOGAN: Yes. Can you address relevance?</p> <p>8 MR. BAKKE: Sure. The Tharaldson plant has been</p> <p>9 touted as a beneficiary of the Summit pipeline by</p> <p>10 Summit. Been a lot of discussion about that. I wasn't</p> <p>11 in Wahpeton, but my understanding is there was a witness</p> <p>12 from the Tharaldson plant, I believe the chief operating</p> <p>13 officer, that talked about the benefits to Tharaldson.</p> <p>14 That's clearly something Summit has presented in the</p> <p>15 case so I'm just following up on that benefit and what</p> <p>16 that benefit looks like.</p> <p>17 MR. GLUDT: Your Honor, just a quick</p> <p>18 distinction. We've talked about the benefits to the</p> <p>19 plant in general. Mr. Bakke's line of questioning is</p> <p>20 going to the benefits to Mr. Tharaldson.</p> <p>21 MR. BAKKE: Actually, my question is to both</p> <p>22 benefits, the plant and to Mr. Tharaldson. And he's</p> <p>23 already testified here today about the \$18 billion and</p> <p>24 the investors sharing in that. So I'm just following up</p> <p>25 on his earlier testimony today.</p> <p>PAGE 102</p>	<p>1 <b>others.</b></p> <p>2 <b>Q.</b> And you mentioned a few moments ago one of the</p> <p>3 benefits was what you called, quote, "the potential</p> <p>4 creation of a carbon economy," end quote, in North</p> <p>5 Dakota; is that correct?</p> <p>6 <b>A. Correct.</b></p> <p>7 <b>Q.</b> Okay. Doesn't North Dakota already have a</p> <p>8 significant investment in the carbon economy?</p> <p>9 <b>A. Well, when -- my definition here of "carbon</b></p> <p>10 <b>economy" is really around CO2 and that specific -- that</b></p> <p>11 <b>specific subeconomy, if you will. Hydrocarbons are</b></p> <p>12 <b>obviously part of the carbon economy as well. And so</b></p> <p>13 <b>what I was referencing is kind of creation of a new</b></p> <p>14 <b>subindustry around CO2 and what's happening with CO2.</b></p> <p>15 <b>Q.</b> And that's what I -- I was referring to as well.</p> <p>16 Because there's already been a lot of money spent by</p> <p>17 North Dakota, including through the University of North</p> <p>18 Dakota and through private companies developing carbon</p> <p>19 capture and storage and actually taking affirmative</p> <p>20 steps to make that happen; correct?</p> <p>21 <b>A. I'm not aware of the efforts of -- that you</b></p> <p>22 <b>referenced.</b></p> <p>23 <b>Q.</b> Okay. So you're not aware of Project Tundra</p> <p>24 that's currently being used for carbon capture and</p> <p>25 storage by Minnkota Power plant, a coal gasification --</p> <p>PAGE 104</p>

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<p>1 or coal electrical power plant?</p> <p>2 <b>A. I'm not aware of Project Tundra.</b></p> <p>3 <b>Q.</b> Would you agree that North Dakota, western North</p> <p>4 Dakota, has a geologic advantage for carbon storage?</p> <p>5 <b>A. A geologic advantage relative to what?</b></p> <p>6 <b>Q.</b> To being able to store carbon below ground.</p> <p>7 <b>A. You indicated it has an advantage, and I'm</b></p> <p>8 <b>asking advantage compared to not being able to store or</b></p> <p>9 <b>another state --</b></p> <p>10 <b>Q.</b> Compared to other states.</p> <p>11 <b>A. I think that -- that there are many states that</b></p> <p>12 <b>have the potential for carbon capture and sequestration.</b></p> <p>13 <b>One of the potential advantages here in North Dakota is</b></p> <p>14 <b>a first mover advantage. And so I think that -- that</b></p> <p>15 <b>moving ahead with this particular project, you know,</b></p> <p>16 <b>potentially puts North Dakota at the top of the list</b></p> <p>17 <b>where further incremental projects would be developed.</b></p> <p>18 <b>So I think it does have an advantage in terms --</b></p> <p>19 <b>relative to some other state.</b></p> <p>20 <b>Q.</b> Well, isn't North Dakota already the leader in</p> <p>21 carbon capture and storage in comparison to other</p> <p>22 states?</p> <p>23 <b>A. Depends on your definition of "leader." There</b></p> <p>24 <b>are other projects proposed in Texas, Louisiana,</b></p> <p>25 <b>offshore, etcetera, that would be bigger. North Dakota</b></p> <p>PAGE 105</p>	<p>1 <b>But my point is whether there's a Summit project or 5</b></p> <p>2 <b>or 10 or 50 gas-fired plants or other plants, the pore</b></p> <p>3 <b>volume available to inject carbon in is -- is ample.</b></p> <p>4 <b>Q.</b> And aren't there coal plants that could also use</p> <p>5 the carbon -- existing carbon storage in North Dakota to</p> <p>6 their benefit?</p> <p>7 <b>A. It is -- is a very expensive process to extract</b></p> <p>8 <b>CO2 from a coal-fired power plant, but if those</b></p> <p>9 <b>investments were made, they could absolutely inject that</b></p> <p>10 <b>carbon in North Dakota.</b></p> <p>11 <b>Q.</b> And they're actually doing that through Project</p> <p>12 Tundra with the Minnkota coal facility; correct?</p> <p>13 <b>A. As I indicated, I don't know Project Tundra, but</b></p> <p>14 <b>I'll take your word for it that that's occurring.</b></p> <p>15 <b>Q.</b> Okay. And to the extent coal-fired plants can</p> <p>16 use carbon capture and storage, that means that those</p> <p>17 plants can stay open longer, be economically</p> <p>18 competitive, and continue to employ and support</p> <p>19 communities where they're located; correct?</p> <p>20 <b>A. Completely agree.</b></p> <p>21 <b>Q.</b> Okay. So all of us -- all of this leads us to</p> <p>22 the conclusion it would be best for the welfare of the</p> <p>23 citizens of North Dakota to use our existing carbon</p> <p>24 capture and storage locations for the energy industry</p> <p>25 where it's already being used; correct?</p> <p>PAGE 107</p>
<p>1 <b>is ahead of many of those projects.</b></p> <p>2 <b>Q.</b> Okay. And isn't North Dakota ahead in terms of</p> <p>3 carbon capture and storage for coal plants as well as</p> <p>4 for natural gas production facilities?</p> <p>5 <b>A. I don't know specific the numbers for those two</b></p> <p>6 <b>categories and so can't provide an answer.</b></p> <p>7 <b>Q.</b> And is there a limited quantity of carbon</p> <p>8 storage available in North Dakota?</p> <p>9 <b>A. So the answer is yes. The limited quantity is</b></p> <p>10 <b>-- would be defined by the underground storage volume</b></p> <p>11 <b>that's available to receive carbon. And so that's a</b></p> <p>12 <b>function of both geology and aerial extent or the size</b></p> <p>13 <b>of the various geologic formation. And so, by</b></p> <p>14 <b>definition, there is a limit.</b></p> <p>15 <b>We are -- the Summit project and subsequent</b></p> <p>16 <b>projects, if there are any, are nowhere close to</b></p> <p>17 <b>fulfilling that total potential pore volume for carbon</b></p> <p>18 <b>injection.</b></p> <p>19 <b>Q.</b> Well, but aren't there gasification plants,</p> <p>20 including new gasification plants, that are going to be</p> <p>21 built in North Dakota that could use some of the</p> <p>22 existing carbon storage?</p> <p>23 <b>A. Absolutely. I think your question was is there</b></p> <p>24 <b>a limit, and of course there's a limit because there's</b></p> <p>25 <b>-- the State's only so big and the earth's only so deep.</b></p> <p>PAGE 106</p>	<p>1 <b>A. I don't know how to assess what is best. I</b></p> <p>2 <b>think the capital markets or the free markets, if you</b></p> <p>3 <b>will, determine what's best by where capital is</b></p> <p>4 <b>allocated and what projects move forward and don't move</b></p> <p>5 <b>forward.</b></p> <p>6 <b>So I think that to the extent that projects make</b></p> <p>7 <b>economic sense, that whether it's one project -- one</b></p> <p>8 <b>project is good, 10 projects is better, 50 projects</b></p> <p>9 <b>would be even better because all of those are doing two</b></p> <p>10 <b>things. One, in theory, they're not being invested</b></p> <p>11 <b>unless they're creating economic value. And, two,</b></p> <p>12 <b>they're sequestering carbon which is something that, you</b></p> <p>13 <b>know, is a good thing from a climate perspective.</b></p> <p>14 <b>So -- so I hope that answered your question.</b></p> <p>15 <b>Q.</b> Well, and by virtue of the fact that we've gone</p> <p>16 from 32 out-of-state plants to 56 ethanol plants</p> <p>17 contributing more carbon into the Summit pipeline, that</p> <p>18 means less carbon storage available for the North Dakota</p> <p>19 energy industry to use; correct?</p> <p>20 <b>MR. GLUDT:</b> Your Honor, I'm going to object to</p> <p>21 this line of questioning. Mr. Pickering is an economic</p> <p>22 analyst, not a geologist. He's already answered the</p> <p>23 question that he thinks there's enough storage for a lot</p> <p>24 of companies. I think we can move on.</p> <p>25 <b>ALJ HOGAN:</b> I agree. The objection is</p> <p>PAGE 108</p>

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<p>1 sustained. I don't know that he has the expertise to</p> <p>2 talk about that particular issue.</p> <p>3 MR. BAKKE: I don't think it calls for an expert</p> <p>4 opinion. It's just a reality. If you put on more</p> <p>5 plants contributing CO2, increase it from 32 to 56, it's</p> <p>6 using up more storage. I'm just asking whether he</p> <p>7 agrees or disagrees with that proposition.</p> <p>8 ALJ HOGAN: I've already ruled.</p> <p>9 MR. BAKKE: Okay.</p> <p>10 Q. (BY MR. BAKKE) And you've had some discussion</p> <p>11 about enhanced oil recovery; correct?</p> <p>12 A. Yes, sir. That was part of my initial</p> <p>13 testimony.</p> <p>14 Q. Okay. And if carbon capture and storage can be</p> <p>15 used for enhanced oil recovery, that would be used for</p> <p>16 North Dakota oil operations; correct?</p> <p>17 A. So one clarification. Carbon capture and</p> <p>18 storage implies that the CO2 is going into the ground</p> <p>19 and being stored there. And EOR would be a different</p> <p>20 use for carbon. And so CO2 can be sequestered</p> <p>21 permanently, and that's what I believe the Summit</p> <p>22 pipeline is targeting. And EOR would be a separate use</p> <p>23 of the carbon --</p> <p>24 Q. Okay.</p> <p>25 A. -- or the CO2.</p> <p>PAGE 109</p>	<p>1 Q. (BY MR. BAKKE) Okay. So you don't know where</p> <p>2 that power -- electrical power would come from?</p> <p>3 A. Well, the way the -- the way the power grid</p> <p>4 works typically is that -- that power is generated in</p> <p>5 any number of different locations and then flows -- and</p> <p>6 flows across the transmission lines to the sources of</p> <p>7 demand or load. And so it's -- it isn't -- it isn't</p> <p>8 like power plant A or power plant B will be specifically</p> <p>9 supplying the power. The power goes into the grid, and</p> <p>10 the grid is then tapped by Summit for that incremental</p> <p>11 power. So it's hard to specifically allocate which</p> <p>12 exact plant will supply the power.</p> <p>13 Q. Okay. Are you talking about the SPP?</p> <p>14 A. What is SPP?</p> <p>15 Q. Okay. You answered my question.</p> <p>16 Will the Summit pipeline, in order to function</p> <p>17 properly, need a continuous flow of electricity?</p> <p>18 A. I'm not -- I'm not close enough to the</p> <p>19 day-to-day operations or don't understand the day-to-day</p> <p>20 operations to know if that electricity consumption will</p> <p>21 be intermittent or -- or continuous.</p> <p>22 Q. And I'm assuming that means you wouldn't be able</p> <p>23 to answer questions about what happens if the Summit</p> <p>24 pipeline loses electrical power. Is that true?</p> <p>25 A. That's correct.</p> <p>PAGE 111</p>
<p>1 Q. Earlier in your testimony today, you testified</p> <p>2 that the electrical demand growth would be a good thing</p> <p>3 for North Dakota, what you see as a benefit to the</p> <p>4 Summit pipeline; is that correct?</p> <p>5 A. I think the Summit pipeline will use incremental</p> <p>6 amounts of electricity which I view as a benefit to the</p> <p>7 state, correct.</p> <p>8 Q. Okay. And so where will this electricity come</p> <p>9 from to power the Summit pipeline?</p> <p>10 A. So --</p> <p>11 MR. GLUDT: Objection.</p> <p>12 If you know, Dan, you can answer.</p> <p>13 MR. BAKKE: How can he analyze if it's an</p> <p>14 economic benefit or not without knowing where it's</p> <p>15 coming from?</p> <p>16 ALJ HOGAN: I'm not sure what the objection was,</p> <p>17 but I'll allow him to answer.</p> <p>18 A. So my assumption is that the existing -- or the</p> <p>19 incremental power demand will be supplied by the</p> <p>20 existing power facilities in the state. And so my</p> <p>21 assumption that it's a benefit is that incremental --</p> <p>22 incremental capacity utilization will carry higher</p> <p>23 revenues for the electricity generation companies and,</p> <p>24 therefore, that's an incremental economic benefit to the</p> <p>25 state and its citizens.</p> <p>PAGE 110</p>	<p>1 Q. Okay.</p> <p>2 MR. BAKKE: I can ask these questions of</p> <p>3 Mr. Powell or Mr. Boeshans. Okay. That's all the</p> <p>4 questions I have.</p> <p>5 ALJ HOGAN: Mr. Pelham, any other questions?</p> <p>6 MR. PELHAM: I do not. Thank you.</p> <p>7 ALJ HOGAN: Commissioner Christmann.</p> <p>8 COMMISSIONER CHRISTMANN: Mine were all answered</p> <p>9 in April.</p> <p>10 ALJ HOGAN: Commissioner Haugen-Hoffart.</p> <p>11 COMMISSIONER HAUGEN-HOFFART: No. No questions.</p> <p>12 ALJ HOGAN: Mr. Dawson.</p> <p>13 SUBSTITUTE DECISIONMAKER DAWSON: None for me.</p> <p>14 Thank you.</p> <p>15 ALJ HOGAN: Mr. Gludt, any redirect?</p> <p>16 MR. GLUDT: None for me.</p> <p>17 ALJ HOGAN: All right. Well, thank you,</p> <p>18 Mr. Pickering. And sorry about the --</p> <p>19 THE WITNESS: No. My apologies on the internet</p> <p>20 glitch. Thank you.</p> <p>21 ALJ HOGAN: All right. Next witness, is it</p> <p>22 Mr. Boeshans?</p> <p>23 UNIDENTIFIED SPEAKER: Yes, I believe so, Your</p> <p>24 Honor.</p> <p>25 ALJ HOGAN: All right. Easiest question first.</p> <p>PAGE 112</p>

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<p>1 Is your microphone on? No.</p> <p>2 WADE BOESHANS: Is it on now?</p> <p>3 ALJ HOGAN: Yes.</p> <p>4 WADE BOESHANS: All right. Thank you.</p> <p>5 ALJ HOGAN: I'll have you state your full name</p> <p>6 for the record.</p> <p>7 WADE BOESHANS: Wade Wayne Boeshans.</p> <p>8 ALJ HOGAN: Mr. Boeshans, were you in the room</p> <p>9 this morning when I went through the penalties for</p> <p>10 perjury?</p> <p>11 WADE BOESHANS: I was.</p> <p>12 ALJ HOGAN: And do you understand what perjury</p> <p>13 is?</p> <p>14 WADE BOESHANS: I do.</p> <p>15 ALJ HOGAN: And being advised of the potential</p> <p>16 penalties for perjury, do you promise to tell the truth</p> <p>17 in this case today?</p> <p>18 WADE BOESHANS: I do.</p> <p>19 ALJ HOGAN: All right. And who is going first?</p> <p>20 Mr. Bakke?</p> <p>21 MR. BAKKE: I am, Your Honor. Yes.</p> <p>22 ALJ HOGAN: Okay. And just so you're aware,</p> <p>23 we're going to break for lunch around 12:30.</p> <p>24 MR. BAKKE: Okay. Thank you.</p> <p>25 ALJ HOGAN: Go ahead.</p> <p>PAGE 113</p>	<p>1 <b>electrical cooperatives that would serve the different</b></p> <p>2 <b>substations across the footprint.</b></p> <p>3 <b>Q.</b> Okay. And maybe could you pull that microphone</p> <p>4 a little closer? I'm having a little difficulty hearing</p> <p>5 you.</p> <p>6 And so you said some members talked to some</p> <p>7 cooperatives. Who was spoken to in Burleigh County in</p> <p>8 regards to the electrical requirements for the Summit</p> <p>9 pipeline that's proposed to go in here?</p> <p>10 <b>A. I can't testify as to who specifically in</b></p> <p>11 <b>Burleigh County or at the -- the electrical cooperative.</b></p> <p>12 <b>Q.</b> Okay. Well, who are the potential candidates in</p> <p>13 terms of the cooperatives that would be -- that this</p> <p>14 would be discussed with that would be providing</p> <p>15 electrical power?</p> <p>16 <b>A. I believe that's Capital Electric. I'm not a</b></p> <p>17 <b>hundred -- not a hundred percent sure in terms of all</b></p> <p>18 <b>the service territories. Again, my responsibility was</b></p> <p>19 <b>on the sequestration side. And so, you know, they're</b></p> <p>20 <b>aware of our engagement with Roughrider Electric.</b></p> <p>21 <b>Q.</b> So has Capital Electric or any other electrical</p> <p>22 supplier in Burleigh County indicated that they will be</p> <p>23 able to provide continuous electricity for the Summit</p> <p>24 pipeline?</p> <p>25 <b>A. That's my understanding.</b></p> <p>PAGE 115</p>
<p>1 <b><u>WADE BOESHANS,</u></b></p> <p>2 being first duly sworn, was examined and testified as</p> <p>3 follows:</p> <p>4 CROSS EXAMINATION</p> <p>5 BY MR. BAKKE:</p> <p>6 <b>Q.</b> Good morning, Mr. Boeshans. I have some</p> <p>7 questions for you based on your April 22nd testimony you</p> <p>8 provided to the PSC. And the first topic I want to ask</p> <p>9 you about that you provided testimony on was electricity</p> <p>10 for the Summit pipeline. And you, I think, talked about</p> <p>11 a number of \$14 million being paid annually to operate</p> <p>12 the carbon capture and storage project; is that correct?</p> <p>13 <b>A. Yeah, that sounds correct.</b></p> <p>14 <b>Q.</b> Okay. And you said that would be an economic</p> <p>15 benefit to North Dakota; correct?</p> <p>16 <b>A. Correct.</b></p> <p>17 <b>Q.</b> Okay. And so who have you or anyone else at</p> <p>18 Summit spoken to about supplying electricity for the</p> <p>19 Summit pipeline?</p> <p>20 <b>A. I have not spoken to anybody about supplying</b></p> <p>21 <b>electricity. Members of our team have engaged with the</b></p> <p>22 <b>cooperatives across the footprint of the project or</b></p> <p>23 <b>utility providers across the footprint of the project.</b></p> <p>24 <b>I believe we submitted into the record here filings</b></p> <p>25 <b>related to kind of the load within the different</b></p> <p>PAGE 114</p>	<p>1 <b>Q.</b> And is it your testimony you believe that was</p> <p>2 Capital Electric?</p> <p>3 <b>A. Yeah, I believe it's Capital Electric in -- you</b></p> <p>4 <b>know, in Burleigh County, but, again, as I mentioned,</b></p> <p>5 <b>the pipeline team would have made those -- those</b></p> <p>6 <b>contacts and been communicating with those electric</b></p> <p>7 <b>cooperatives. It was not me.</b></p> <p>8 <b>Q.</b> Well, has anything been provided by Summit, to</p> <p>9 your knowledge, to the PSC indicating that there has</p> <p>10 been a commitment by an electrical provider to provide a</p> <p>11 continuous supply of reliable electricity for the Summit</p> <p>12 pipeline?</p> <p>13 <b>A. Not to my knowledge.</b></p> <p>14 <b>Q.</b> Okay. And is it correct that in order for the</p> <p>15 Summit pipeline to function properly, it will need a</p> <p>16 continuous and reliable flow of electricity?</p> <p>17 <b>A. Yeah, that's -- that's fair, I believe.</b></p> <p>18 <b>Q.</b> Okay.</p> <p>19 <b>A. It's going to need electricity to function, to</b></p> <p>20 <b>operate the pumps.</b></p> <p>21 <b>Q.</b> And what would happen if there was no electrical</p> <p>22 power supply to the Summit pipeline, as an example, in</p> <p>23 Burleigh County?</p> <p>24 <b>A. I think that's a better question for Jimmy</b></p> <p>25 <b>Powell since he's responsible for the pipeline</b></p> <p>PAGE 116</p>

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<p>1 <b>hydraulics and system operations.</b></p> <p>2 <b>Q.</b> And do you know whether there would be a</p> <p>3 catastrophic event with the Summit pipeline if it lost</p> <p>4 electrical power or is that something I should ask</p> <p>5 Mr. Powell?</p> <p>6 <b>A.</b> Again, Jimmy's the expert on that.</p> <p>7 <b>Q.</b> Okay. And then in terms of the source of the</p> <p>8 electrical power, do you know whether the source of the</p> <p>9 electrical power will be wind turbine, solar, coal, some</p> <p>10 combination thereof? Do you have any knowledge on that?</p> <p>11 <b>A.</b> I'm presuming it will be grid power. I don't</p> <p>12 know specifically, you know, exactly where all the power</p> <p>13 sources will come from, but assuming it's served by an</p> <p>14 electric cooperative utility, it would be, you know, the</p> <p>15 power that is available on the grid and in their</p> <p>16 systems.</p> <p>17 <b>Q.</b> Well, when you say "the grid," would that</p> <p>18 include all three of the sources I described, wind</p> <p>19 turbines, solar, coal-fired electricity?</p> <p>20 <b>A.</b> Yeah, it would be inclusive of all the</p> <p>21 generating -- generating or generating sources that are</p> <p>22 providing power or supplying power under the grid.</p> <p>23 <b>Q.</b> Okay. And you were previously the CEO of BNI</p> <p>24 Coal for many years; is that correct?</p> <p>25 <b>A.</b> Yeah, the president and general manager.</p> <p>PAGE 117</p>	<p>1 <b>or not generate.</b></p> <p>2 <b>Q.</b> Okay. And also ice and other factors?</p> <p>3 <b>A.</b> Yeah, it could be for ice as well, I presume.</p> <p>4 <b>Q.</b> And there are also time periods where the</p> <p>5 coal-fired electricity in North Dakota shuts down as</p> <p>6 well; correct?</p> <p>7 <b>A.</b> So -- why don't you restate that?</p> <p>8 <b>Q.</b> Are there time periods where the coal-fired</p> <p>9 electricity plants experience either blackouts or</p> <p>10 brownouts or planned maintenance?</p> <p>11 <b>A.</b> Sure. There are times where the coal-fired</p> <p>12 plants are shut down for maintenance, for sure.</p> <p>13 <b>Q.</b> Okay. And do you know, have there been time</p> <p>14 periods where Capital Electric has lost power in</p> <p>15 Burleigh County?</p> <p>16 <b>A.</b> I'm aware of a event in the past, I believe it</p> <p>17 was 2020, if I recall correctly, where there was</p> <p>18 disruptions in the availability of power.</p> <p>19 <b>Q.</b> Okay. Meaning there were time periods when</p> <p>20 consumers were without electrical power for some time</p> <p>21 period?</p> <p>22 <b>A.</b> Yeah, that's my understanding.</p> <p>23 <b>Q.</b> Okay. And there can be other events that affect</p> <p>24 the availability of electrical power in Burleigh County</p> <p>25 and other locations along the Summit pipeline route</p> <p>PAGE 119</p>
<p>1 <b>Q.</b> Okay. So you have some knowledge base,</p> <p>2 including locally, about sources of electricity and</p> <p>3 generation of electricity; correct?</p> <p>4 <b>A.</b> That's correct.</p> <p>5 <b>Q.</b> Okay. And so if we take, as an example, wind</p> <p>6 turbines in Burleigh County, have there been reliability</p> <p>7 issues with wind turbines producing electricity on a</p> <p>8 reliable basis?</p> <p>9 <b>A.</b> Well, I think just by nature, you know, wind</p> <p>10 generation is an intermittent generation so it's</p> <p>11 available when the wind blows and it's not available</p> <p>12 when the wind is not blowing. So if that's what you</p> <p>13 mean by "reliability." But I think it's come -- you</p> <p>14 know, it's implied with those types of -- of generation</p> <p>15 -- or generator sources.</p> <p>16 <b>Q.</b> Okay. And it's also -- wind turbines, at least</p> <p>17 in Burleigh County, are impacted by other weather</p> <p>18 events; correct?</p> <p>19 <b>A.</b> I'm not really -- I'm not sure I understand your</p> <p>20 question.</p> <p>21 <b>Q.</b> Do you know if extreme cold or at a certain</p> <p>22 temperature the wind turbines, the metal becomes brittle</p> <p>23 and they can't function?</p> <p>24 <b>A.</b> Yeah, I'm aware that there are reasons for</p> <p>25 weather, like extreme cold, to shut in a wind farm or --</p> <p>PAGE 118</p>	<p>1 including strikes of electrical lines?</p> <p>2 <b>A.</b> You know, I really can't testify or comment on,</p> <p>3 you know, the electrical systems operations in terms of</p> <p>4 how much redundancy they have or how susceptible they</p> <p>5 are to lightning strikes or other types of outages.</p> <p>6 <b>Q.</b> Well, there can be mechanical strikes by</p> <p>7 equipment that shut down electrical power supplies;</p> <p>8 correct?</p> <p>9 <b>A.</b> Yep, there could be.</p> <p>10 <b>Q.</b> Okay. What has Summit done to determine what</p> <p>11 the current electrical power supply in Burleigh County</p> <p>12 or other locations along the pipeline will accommodate?</p> <p>13 <b>A.</b> Again, as I mentioned before, I haven't been</p> <p>14 involved with those discussions with the electrical</p> <p>15 providers. I really can't testify to that.</p> <p>16 <b>Q.</b> Doesn't Summit need to know on the front end</p> <p>17 before the pipeline is built what electrical power</p> <p>18 supply will be available and whether they can deliver</p> <p>19 reliable power to the Summit pipeline on a consistent</p> <p>20 basis?</p> <p>21 <b>A.</b> Yeah, I would presume we would, you know, need</p> <p>22 to know that power is available and that it's reasonably</p> <p>23 reliable to run the system.</p> <p>24 <b>Q.</b> Okay. Well, let's turn -- and has that been</p> <p>25 done, to your knowledge, by anyone at Summit, to confirm</p> <p>PAGE 120</p>

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<p>1 through an electrical power supplier that they can</p> <p>2 guarantee the amount of electrical power that Summit</p> <p>3 needs and that it will be available on a guaranteed</p> <p>4 consistent basis?</p> <p>5 <b>A. What do you mean by "guarantee"?</b></p> <p>6 <b>Q.</b> That you'll have it all the time, that you'll</p> <p>7 never have any interruptions.</p> <p>8 <b>A. So, again, not -- not to my knowledge because,</b></p> <p>9 <b>again, I wasn't part of those discussions with the</b></p> <p>10 <b>electrical suppliers.</b></p> <p>11 <b>Q.</b> Is there any backup power supply that Summit has</p> <p>12 implemented or plans to implement in relation to the</p> <p>13 Summit pipeline in the event of a power shutdown?</p> <p>14 <b>A. So I believe Jimmy Powell testified to this</b></p> <p>15 <b>previously, about redundant supply for the control</b></p> <p>16 <b>system. So, again, he would be the right person to</b></p> <p>17 <b>circle back with on that.</b></p> <p>18 <b>Q.</b> Okay, I'll ask him that.</p> <p>19 Let's switch to another topic. And you</p> <p>20 testified previously about the percentages of easements</p> <p>21 secured in North Dakota; is that correct?</p> <p>22 <b>A. I testified to the percentage of acquisition on</b></p> <p>23 <b>the Burleigh reroute.</b></p> <p>24 <b>Q.</b> Okay.</p> <p>25 <b>A. And Jimmy testified to the broader North Dakota</b></p> <p>PAGE 121</p>	<p>1 <b>Q.</b> Okay. And it also lists the right of way miles</p> <p>2 executed by percentage as well, second -- the third to</p> <p>3 the last column; correct?</p> <p>4 <b>A. Yeah, that's correct.</b></p> <p>5 <b>Q.</b> Okay. And what this shows is that Burleigh</p> <p>6 County is the lowest in the percentage of right of way</p> <p>7 miles executed of any county in the state; correct?</p> <p>8 <b>A. Yeah, that's correct.</b></p> <p>9 <b>Q.</b> And it also shows Burleigh County is the lowest</p> <p>10 percentage of parcels executed of any county in the</p> <p>11 state; correct?</p> <p>12 <b>A. Yes, that's correct.</b></p> <p>13 <b>Q.</b> With that percentage of parcels executed in</p> <p>14 Burleigh County being 57.34 percent; correct?</p> <p>15 <b>A. Yeah, that's what it says.</b></p> <p>16 <b>Q.</b> Okay. And I believe you testified, in response</p> <p>17 to a question from Mr. Pelham on April 22nd, that Summit</p> <p>18 has, quote, "no plans to initiate condemnation," end</p> <p>19 quote, actions against landowners who will not</p> <p>20 voluntarily provide easements in Burleigh County; is</p> <p>21 that correct?</p> <p>22 <b>A. Can you refer me to the document on that?</b></p> <p>23 <b>Q.</b> Well, it would be -- it would be your testimony.</p> <p>24 But I can ask it a different way.</p> <p>25 Am I correct in understanding you testified at</p> <p>PAGE 123</p>
<p>1 <b>footprint.</b></p> <p>2 <b>Q.</b> Okay. And I'm going to have you turn in your</p> <p>3 binder there to the Burleigh County exhibit binder,</p> <p>4 Burleigh County Exhibit 113. Burleigh County 113.</p> <p>5 MR. BAKKE: And this is, Your Honor, part of the</p> <p>6 documents submitted by Summit in this case. I don't</p> <p>7 know if you want me to offer this individually. It's, I</p> <p>8 believe, already part of the record, but I'll offer it</p> <p>9 individually so it's a stand-alone exhibit.</p> <p>10 ALJ HOGAN: Any objection to Burleigh County</p> <p>11 113?</p> <p>12 MR. GLUDT: No objection, Your Honor.</p> <p>13 ALJ HOGAN: All right. Mr. Pelham.</p> <p>14 MR. PELHAM: No objection.</p> <p>15 ALJ HOGAN: All right. Burleigh County 113 is</p> <p>16 received.</p> <p>17 <b>Q.</b> (BY MR. BAKKE) Do you recognize this,</p> <p>18 Mr. Boeshans, as a document prepared by Summit which</p> <p>19 shows the status of the right of way progress for</p> <p>20 easements secured for properties in various counties in</p> <p>21 North Dakota?</p> <p>22 <b>A. Yeah, it looks familiar. Yes.</b></p> <p>23 <b>Q.</b> Okay. And it lists the percentage of parcels</p> <p>24 executed as the last column; correct?</p> <p>25 <b>A. That's correct.</b></p> <p>PAGE 122</p>	<p>1 the previous hearing that Summit has no plans to</p> <p>2 initiate condemnation actions in relation to landowners</p> <p>3 in Burleigh County who will not provide easements across</p> <p>4 their property for the pipeline?</p> <p>5 <b>A. That's not correct.</b></p> <p>6 <b>Q.</b> Okay. So tell me what is correct.</p> <p>7 <b>A. My recollection is I testified to we had no</b></p> <p>8 <b>plans to initiate condemnation plans.</b></p> <p>9 <b>Q.</b> I think that's what I just said --</p> <p>10 <b>A. (Indiscernible) --</b></p> <p>11 <b>Q.</b> -- so I think we're --</p> <p>12 <b>A. -- what I said.</b></p> <p>13 <b>Q.</b> Okay. So if Summit has no plans to initiate</p> <p>14 condemnation actions, why is it that Summit threatens</p> <p>15 landowners with eminent domain? Can you explain that to</p> <p>16 me?</p> <p>17 <b>A. I'm not aware of Summit threatening landowners</b></p> <p>18 <b>with eminent domain.</b></p> <p>19 <b>Q.</b> Is that improper if they are?</p> <p>20 <b>A. I would say that would not be a good way to do</b></p> <p>21 <b>business.</b></p> <p>22 <b>Q.</b> Is it improper?</p> <p>23 <b>A. What do you mean by "improper"?</b></p> <p>24 <b>Q.</b> It's not right.</p> <p>25 <b>A. Well, I certainly would not support doing that.</b></p> <p>PAGE 124</p>

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<p>1 <b>Q.</b> Okay. Are you able to commit on behalf of</p> <p>2 Summit today, Mr. Boeshans, that if landowners in</p> <p>3 Burleigh County refuse to voluntarily provide easements</p> <p>4 to Summit, Summit will not initiate eminent domain or</p> <p>5 condemnation actions against hold-out landowners?</p> <p>6 MR. GLUDT: I'm going to object, Your Honor.</p> <p>7 Eminent domain is -- was outside the scope of this</p> <p>8 jurisdiction of the Commission. We've been down this</p> <p>9 line of questioning multiple times before. The question</p> <p>10 has been asked and answered. I think we can move on.</p> <p>11 MR. BAKKE: This witness testified on</p> <p>12 April 22nd, and I think he just agreed, that they have</p> <p>13 no plans to initiate condemnation action. So I'm</p> <p>14 entitled to follow up on that and see what their plans</p> <p>15 are or are not.</p> <p>16 ALJ HOGAN: The objection is noted. I'll allow</p> <p>17 him to -- I will allow him to answer.</p> <p>18 MR. BAKKE: Okay.</p> <p>19 <b>Q.</b> (BY MR. BAKKE) So let me ask the question</p> <p>20 again, Mr. Boeshans. Are you able to commit on behalf</p> <p>21 of Summit today that if landowners in Burleigh County</p> <p>22 refuse to voluntarily provide easements to Summit,</p> <p>23 Summit will not initiate eminent domain or condemnation</p> <p>24 actions against hold-out landowners?</p> <p>25 <b>A. I cannot make that commitment.</b></p> <p>PAGE 125</p>	<p>1 the right to pursue eminent domain or condemnation</p> <p>2 actions against hold-out landowners who will not</p> <p>3 voluntarily provide easements to Summit?</p> <p>4 <b>A. What I said was I cannot make that commitment.</b></p> <p>5 <b>Q.</b> Right. And I'm asking you, by saying that, do</p> <p>6 you mean Summit's reserving the right to pursue eminent</p> <p>7 domain or condemnation actions against hold-out</p> <p>8 landowners?</p> <p>9 <b>A. Yeah, that would be fair.</b></p> <p>10 <b>Q.</b> Okay. You provided some testimony previously on</p> <p>11 the financial benefits to the Tharaldson Ethanol plant</p> <p>12 due to the Summit pipeline; correct?</p> <p>13 <b>A. Can you give me specifics? I can't recall that</b></p> <p>14 <b>specifically.</b></p> <p>15 <b>Q.</b> Well, let me ask you this. Can you -- would you</p> <p>16 agree that whether the Tharaldson Ethanol plant gets a</p> <p>17 financial benefit from putting carbon in the Summit</p> <p>18 pipeline isn't relevant to any safety, health, or</p> <p>19 welfare of the citizens of North Dakota? Two different</p> <p>20 things, aren't they?</p> <p>21 <b>A. So I can't testify to what Tharaldson's economic</b></p> <p>22 <b>benefits are. I'm not privy to their -- their business,</b></p> <p>23 <b>their financials, or the contract between us and them.</b></p> <p>24 <b>So I can't really testify to specifically what are their</b></p> <p>25 <b>benefits.</b></p> <p>PAGE 127</p>
<p>1 <b>Q.</b> And when you say you cannot make that</p> <p>2 commitment, what that means is that Summit reserves the</p> <p>3 right and will initiate eminent domain or condemnation</p> <p>4 actions against hold-out landowners, doesn't it?</p> <p>5 MR. GLUDT: Objection, Your Honor. He answered</p> <p>6 the question and now we're getting into the specifics of</p> <p>7 eminent domain.</p> <p>8 ALJ HOGAN: Well, I'll allow him to clarify</p> <p>9 because I wasn't clear whether or not there -- he's</p> <p>10 stating they're not willing to make that commitment or</p> <p>11 if he personally cannot make that commitment.</p> <p>12 MR. BAKKE: Well, I think I asked on behalf of</p> <p>13 Summit.</p> <p>14 ALJ HOGAN: Right. Well, what's the purpose of</p> <p>15 your follow-up question? I thought it was to clarify</p> <p>16 his answer, but you tell me if I'm --</p> <p>17 MR. BAKKE: No. I'm following up on that and</p> <p>18 asking him is what you're saying by that answer, is that</p> <p>19 they're reserving that right -- Summit reserves the</p> <p>20 right to pursue eminent domain or to initiate</p> <p>21 condemnation actions against hold-out landowners.</p> <p>22 ALJ HOGAN: I'll allow him to answer that.</p> <p>23 <b>A. Could you state it again?</b></p> <p>24 <b>Q.</b> (BY MR. BAKKE) Yes. By your testimony, do you</p> <p>25 mean to say that Summit is indicating that it reserves</p> <p>PAGE 126</p>	<p>1 <b>What I do know is that the Tharaldson Ethanol</b></p> <p>2 <b>plant consumes a significant amount of corn, north of 60</b></p> <p>3 <b>million bushels a year. And according to their COO's</b></p> <p>4 <b>testimony and other information that I've seen, most of</b></p> <p>5 <b>that is purchased in North Dakota. So those are things</b></p> <p>6 <b>I know. But in terms of, you know, what are exactly the</b></p> <p>7 <b>economic benefits of Tharaldson plant or the benefits of</b></p> <p>8 <b>-- economic benefit to Tharaldson to connecting to our</b></p> <p>9 <b>project, I don't know those details.</b></p> <p>10 <b>Q.</b> Okay. Are you aware of any of that corn coming</p> <p>11 from Burleigh County farmers?</p> <p>12 <b>A. I am not aware of exactly where the corn comes</b></p> <p>13 <b>from.</b></p> <p>14 <b>Q.</b> Okay. Then my question dealt not only with the</p> <p>15 financial benefits but whether you agree financial</p> <p>16 benefits to -- for sales of corn is a different issue</p> <p>17 than what's best for the safety, health, and welfare of</p> <p>18 the citizens of North Dakota. Do you agree those are</p> <p>19 two totally separate issues?</p> <p>20 <b>A. Yeah, I agree they're separate.</b></p> <p>21 <b>Q.</b> Switching to the topic of meetings with</p> <p>22 emergency managers and first responders both in Burleigh</p> <p>23 County and the City of Bismarck, do you recall giving</p> <p>24 testimony on that topic?</p> <p>25 <b>A. I do.</b></p> <p>PAGE 128</p>



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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

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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?

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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

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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

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<p>1 in Norway which shows an actual CO2 leak under certain</p> <p>2 conditions in a pipeline of a certain diameter, certain</p> <p>3 pressures, certain volume, certain weather conditions?</p> <p>4 <b>A. Yeah, I -- I believe I've seen that video.</b></p> <p>5 <b>Q.</b> Okay.</p> <p>6 <b>A. But I don't know exactly the -- if it's the same</b></p> <p>7 <b>one you're talking about.</b></p> <p>8 <b>Q.</b> And there was nothing like that shown to the</p> <p>9 emergency managers or first responders or county</p> <p>10 officials on November 27, 2023, but, rather, it was just</p> <p>11 a slide show PowerPoint-type two-dimensional</p> <p>12 presentation; correct?</p> <p>13 <b>A. Again, I don't recall any videos.</b></p> <p>14 <b>Q.</b> Okay. So were there additional meetings that</p> <p>15 you attended after November 27, 2023, with emergency</p> <p>16 managers, first responders, or county officials?</p> <p>17 <b>A. In which county?</b></p> <p>18 <b>Q.</b> In Burleigh County.</p> <p>19 <b>A. No, I don't -- I didn't attend -- there were</b></p> <p>20 <b>other meetings, but I was not in attendance.</b></p> <p>21 <b>Q.</b> Okay. Specifically, were there any other</p> <p>22 meetings with any Burleigh County officials?</p> <p>23 <b>A. Between me and them?</b></p> <p>24 <b>Q.</b> Well, you said that there were others that met.</p> <p>25 I'm assuming you mean others from Summit.</p> <p>PAGE 133</p>	<p>1 <b>Q.</b> Okay.</p> <p>2 <b>A. What I can tell you is the follow-up meetings, I</b></p> <p>3 <b>was not at the meetings.</b></p> <p>4 <b>Q.</b> Okay. And so you believe the log will bear out</p> <p>5 that there were additional meetings with Burleigh County</p> <p>6 officials after November 27th?</p> <p>7 <b>A. Again, as I said earlier, I'm not sure if that</b></p> <p>8 <b>was -- those meetings are in the log, but I do know that</b></p> <p>9 <b>they occurred because the people were in our office</b></p> <p>10 <b>afterwards.</b></p> <p>11 <b>Q.</b> Which people? People from Burleigh County?</p> <p>12 <b>A. People from Summit.</b></p> <p>13 <b>Q.</b> Okay. Well, can you name any names of people</p> <p>14 from Summit who claim to have met with anyone from</p> <p>15 Burleigh County after November 27, 2023?</p> <p>16 <b>A. Yes. I know that Dave Daum met with them.</b></p> <p>17 <b>Q.</b> Anyone else?</p> <p>18 <b>A. I believe Rod Dillon as well was part of those</b></p> <p>19 <b>meetings.</b></p> <p>20 <b>Q.</b> And who did they meet with at Burleigh County?</p> <p>21 <b>A. Again, I don't recall. My recollection is that</b></p> <p>22 <b>it was the fire chief, but I didn't see specifically the</b></p> <p>23 <b>agenda or itinerary of the meeting and who all attended.</b></p> <p>24 <b>Q.</b> You testified about landowners that were met</p> <p>25 with regarding the Summit proposed reroute. Who</p> <p>PAGE 135</p>
<p>1 <b>A. Correct.</b></p> <p>2 <b>Q.</b> Okay. So were there others from Summit, after</p> <p>3 November 27, 2023, that met with any of the Burleigh</p> <p>4 County officials, emergency managers, first responders?</p> <p>5 <b>A. Yes.</b></p> <p>6 <b>Q.</b> Okay. And when did that occur and who from</p> <p>7 Summit met with them?</p> <p>8 <b>A. I don't recall specifically the dates or who was</b></p> <p>9 <b>in attendance. I believe it's part of the log that was</b></p> <p>10 <b>submitted. I would have to refer to that.</b></p> <p>11 <b>Q.</b> Well, I understand, based on the log, there were</p> <p>12 meetings with other county officials in other counties.</p> <p>13 I'm being specific to Burleigh County. Are you saying</p> <p>14 the log will verify that there were additional meetings</p> <p>15 with Burleigh County officials after November 27, 2023?</p> <p>16 <b>A. Again, I would have to see the log, but I do</b></p> <p>17 <b>know that there were follow-up meetings with members of</b></p> <p>18 <b>Burleigh County after November 27th.</b></p> <p>19 <b>Q.</b> And the reason I'm asking these questions is, at</p> <p>20 your initial testimony, you said, quote, "There were</p> <p>21 numerous meetings with emergency managers and first</p> <p>22 responders in both Burleigh County and City of</p> <p>23 Bismarck," end quote.</p> <p>24 Is that accurate testimony?</p> <p>25 <b>A. It is.</b></p> <p>PAGE 134</p>	<p>1 specifically did you meet of any landowners in Burleigh</p> <p>2 County who were asked about securing easements for their</p> <p>3 land for the reroute?</p> <p>4 <b>A. So you're asking me, of all of the landowners on</b></p> <p>5 <b>the reroute, which ones I met with?</b></p> <p>6 <b>Q.</b> In Burleigh County.</p> <p>7 <b>A. In Burleigh County. I met with a lot of</b></p> <p>8 <b>different landowners.</b></p> <p>9 <b>Q.</b> Well, can you give me some names?</p> <p>10 <b>A. Yes. I -- like I said, I met with --</b></p> <p>11 <b>MR. GLUDT:</b> Your Honor, I'm going to go ahead</p> <p>12 and object. I don't think the names of the folks are</p> <p>13 relevant nor should Mr. Boeshans be under an obligation</p> <p>14 to start disclosing individuals he's met with and</p> <p>15 negotiated easements with. I think we're a little bit</p> <p>16 outside the scope.</p> <p>17 <b>ALJ HOGAN:</b> Can you address relevance?</p> <p>18 <b>MR. BAKKE:</b> Well, the easements are part of</p> <p>19 public record. There should be easements on file</p> <p>20 identifying the landowners. So the landowners that</p> <p>21 signed easements is not secret --</p> <p>22 <b>MR. GLUDT:</b> You have the same access to them as</p> <p>23 we do and you can find them, those names.</p> <p>24 <b>ALJ HOGAN:</b> Hang on.</p> <p>25 What's the relevance of Mr. Boeshans disclosing</p> <p>PAGE 136</p>

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<p>1 who he met with?</p> <p>2 MR. BAKKE: I'm following up on who he met with,</p> <p>3 and the next step I'm going to get to is which of those</p> <p>4 people signed easements and which did not.</p> <p>5 ALJ HOGAN: And the relevance of that?</p> <p>6 MR. BAKKE: The relevance of that is that it</p> <p>7 shows that there's a lot of resistance to the Summit</p> <p>8 pipeline in Burleigh County.</p> <p>9 ALJ HOGAN: How does that show relevance of that</p> <p>10 if we're talking about who he met with and the ones that</p> <p>11 signed easements?</p> <p>12 MR. BAKKE: He can tell me whether they did or</p> <p>13 did not sign easements. I think it's relevant if he's</p> <p>14 meeting with people and they're not signing easements in</p> <p>15 Burleigh County.</p> <p>16 ALJ HOGAN: Well, just for the sake of time, can</p> <p>17 we ask in a general fashion rather than trying to have</p> <p>18 Mr. Boeshans recall specifics of who he met with?</p> <p>19 MR. BAKKE: Sure, I can do that.</p> <p>20 My dilemma here is each and every time I get</p> <p>21 into a topic I'm meeting objections so I'm trying to be</p> <p>22 careful to walk through the process to establish the</p> <p>23 foundation for my questions. I'd just as soon move</p> <p>24 along more quickly, but I'm encountering -- I mean, I</p> <p>25 can see that he's got his finger on the button to object</p> <p>PAGE 137</p>	<p>1 <b>A. I'm not.</b></p> <p>2 <b>Q.</b> Because Exhibit 113 is just a general statement</p> <p>3 in relation to percentages of easements secured in</p> <p>4 Burleigh County which could include people under the</p> <p>5 original route --</p> <p>6 <b>A. Yep.</b></p> <p>7 <b>Q.</b> -- and also under the reroute?</p> <p>8 <b>A. Yeah, that's correct.</b></p> <p>9 <b>Q.</b> Okay. My assumption is Summit has information</p> <p>10 they could provide the PSC in regards to what percentage</p> <p>11 of the people on the reroute location in Burleigh County</p> <p>12 have or have not agreed to easements on their property.</p> <p>13 Correct?</p> <p>14 <b>A. Correct. And that's the information I provided</b></p> <p>15 <b>at the hearing in Mandan and just stated here. We have</b></p> <p>16 <b>-- we've acquired 46 percent of the miles of -- on the</b></p> <p>17 <b>reroute.</b></p> <p>18 <b>Q.</b> And is that just for Burleigh County, that</p> <p>19 percentage is 46 percent?</p> <p>20 <b>A. That's -- that's just the reroute, the new</b></p> <p>21 <b>route. So we'd have to go to the map so you could see</b></p> <p>22 <b>exactly what that is, but the reroute is about 25 or</b></p> <p>23 <b>just over 25 miles. From where we left the old route,</b></p> <p>24 <b>went further north and east of Bismarck and reattached</b></p> <p>25 <b>to where the river crossing is.</b></p> <p>PAGE 139</p>
<p>1 on a frequent basis, as is happening, but I can try to</p> <p>2 speed this up, but I'm afraid I'm going to have to then</p> <p>3 go backwards and lay foundation for the questions. But</p> <p>4 I can do that in this situation.</p> <p>5 <b>Q.</b> (BY MR. BAKKE) Mr. Boeshans, in relation to</p> <p>6 these meetings, did some of these people you met with</p> <p>7 not agree to provide easements to Summit along the</p> <p>8 reroute?</p> <p>9 <b>A. So as of today, we've signed easements on</b></p> <p>10 <b>46 percent of the route. So, yes, we have not secured</b></p> <p>11 <b>all the easements.</b></p> <p>12 <b>Q.</b> Right. But my question is some of the people</p> <p>13 you met with, did they tell you they would not be</p> <p>14 signing easements for the reroute?</p> <p>15 <b>A. I'm trying to recall if they used those specific</b></p> <p>16 <b>words. What I do know is we haven't signed all the</b></p> <p>17 <b>easements.</b></p> <p>18 <b>Q.</b> Take a look at Exhibit 113 again, the one you</p> <p>19 have open in front of you, the right of way progress in</p> <p>20 terms of percentages of easements obtained in Burleigh</p> <p>21 County.</p> <p>22 <b>A. Yeah.</b></p> <p>23 <b>Q.</b> Are you able to identify for us how many people</p> <p>24 along the reroute in Burleigh County, what percentage</p> <p>25 have refused to provide easements?</p> <p>PAGE 138</p>	<p>1 <b>Q.</b> Right. But what I'm trying to focus on, is all</p> <p>2 of that in Burleigh County?</p> <p>3 <b>A. Is all of that reroute? Yes.</b></p> <p>4 <b>Q.</b> Okay.</p> <p>5 <b>A. But there are other tracts in Burleigh County as</b></p> <p>6 <b>well, which is why the numbers are different here. The</b></p> <p>7 <b>number that you see in your Exhibit 113 is all of</b></p> <p>8 <b>Burleigh County. I'm talking to you about numbers</b></p> <p>9 <b>related to the Bismarck reroute.</b></p> <p>10 <b>Q.</b> And then in terms of the reroute locations, does</p> <p>11 Summit offer to pay only 20 percent down or less than</p> <p>12 the full amount of the easement amount that might be</p> <p>13 negotiated with those landowners that are willing to do</p> <p>14 so?</p> <p>15 MR. GLUDT: Objection, Your Honor. This goes to</p> <p>16 private easement negotiations.</p> <p>17 ALJ HOGAN: Can you discuss relevance of that?</p> <p>18 MR. BAKKE: Yeah. The relevance of it is that</p> <p>19 might help explain why they're not getting easement or</p> <p>20 it may not. If they're offering a full price and</p> <p>21 they're turning them down, I think that's more important</p> <p>22 than if they're just offering them 20 percent.</p> <p>23 ALJ HOGAN: Can we just get to that in a general</p> <p>24 fashion of what his understanding is of why the</p> <p>25 easements aren't being acquired?</p> <p>PAGE 140</p>

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May 28, 2024, Formal hearing

## ND PUBLIC SERVICE COMMISSION

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

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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.

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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

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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.

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<p>1 Q. And where were these meetings at?</p> <p>2 A. Once was at -- once was at the Petroleum Council</p> <p>3 office in Bismarck and another time was at the</p> <p>4 University of Mary.</p> <p>5 Q. And you mentioned there was a third time. Where</p> <p>6 was that at?</p> <p>7 A. I mentioned I met with him three times. The</p> <p>8 first time, we met at Kroll's Diner downtown.</p> <p>9 Q. And the meeting at the Petroleum Council when</p> <p>10 you met with Mr. Wachter, what was the purpose of that</p> <p>11 meeting?</p> <p>12 A. So, you know, as I indicated in my testimony, we</p> <p>13 -- in my written and -- and verbal testimony this past</p> <p>14 time, I met with -- the very first of these meetings was</p> <p>15 to understand their concerns and, you know, include them</p> <p>16 in -- you know, as we moved forward and developed the</p> <p>17 project, developed the route, to, as best we could,</p> <p>18 address the concerns of various stakeholders, which is,</p> <p>19 you know, why I reached out to the intervenors</p> <p>20 specifically, to make sure I fully understood what their</p> <p>21 concerns were and could, you know, do my best to address</p> <p>22 them as we rerouted the project.</p> <p>23 Q. Did you indicate to Mr. Wachter when you met</p> <p>24 with him on any of these three occasions that under the</p> <p>25 proposed reroute by Summit there was any change in the</p> <p>PAGE 145</p>	<p>1 received.</p> <p>2 Q. (BY MR. BAKKE) And then Figure 1 on page 8 of</p> <p>3 BC-100, that shows the reroute being proposed by Summit</p> <p>4 in Burleigh County; correct?</p> <p>5 A. Yeah. I would say this looks to be conceptual</p> <p>6 in nature. This -- this looks like what was filed in --</p> <p>7 as part of the reconsideration; is that correct?</p> <p>8 Q. Right. By Summit.</p> <p>9 A. Yeah, that's correct.</p> <p>10 Q. Okay.</p> <p>11 A. But that's not the route today exactly. I mean,</p> <p>12 there was -- this was the preliminary route. There's</p> <p>13 been lots of changes to the exact route location and</p> <p>14 through the engagement with landowners and determining</p> <p>15 of the route that's actually filed in the -- in the</p> <p>16 docket today.</p> <p>17 Q. But no changes on the original route to the east</p> <p>18 of Bismarck near Silver Ranch; correct?</p> <p>19 A. Yeah, that's correct.</p> <p>20 Q. Okay. That's remained the same?</p> <p>21 A. That's correct.</p> <p>22 Q. Okay. And if we look at the blue, that's the</p> <p>23 original route, and then the reroute is the pinkish or</p> <p>24 reddish color on Figure 1; correct?</p> <p>25 A. Yeah. That's the approximate reroute. Again,</p> <p>PAGE 147</p>
<p>1 location of the Summit pipeline from the original route</p> <p>2 on the east side of Bismarck near Silver Ranch?</p> <p>3 A. No. What I indicated to him was that there was</p> <p>4 no change to the route directly to the east. We didn't</p> <p>5 change the crossing of, you know, I-94 and, roughly, the</p> <p>6 first four, five miles going north thereabouts as is</p> <p>7 shown on -- on the exhibit that's in the map book here.</p> <p>8 Q. Okay. And if you would look at Exhibit 100,</p> <p>9 Burleigh County 100 --</p> <p>10 A. That's in this -- this book?</p> <p>11 Q. Should be the first one.</p> <p>12 Burleigh County 100 is the first page of the</p> <p>13 Petition for Reconsideration Notice of Route Adjustment</p> <p>14 and Request for Limited Rehearing from Summit. And then</p> <p>15 the second page is page 8 of that Petition For</p> <p>16 Reconsideration, which has a map on the top called</p> <p>17 Figure 1 in Summit's Petition For Reconsideration.</p> <p>18 A. Yeah. I see the figure.</p> <p>19 Q. Okay.</p> <p>20 MR. BAKKE: We'll offer Burleigh County 100.</p> <p>21 ALJ HOGAN: Any objection, Mr. Gludt?</p> <p>22 MR. GLUDT: No objection.</p> <p>23 ALJ HOGAN: Mr. Pelham.</p> <p>24 MR. PELHAM: No.</p> <p>25 ALJ HOGAN: All right. Burleigh County 100 is</p> <p>PAGE 146</p>	<p>1 as I mentioned, there was numerous changes between the</p> <p>2 filing of this and the filing of the updated route in, I</p> <p>3 believe it was the 1st -- around about the 1st of</p> <p>4 November.</p> <p>5 Q. We'll talk a little bit more about this in a few</p> <p>6 minutes, but, first of all, at your prior testimony, you</p> <p>7 talked about landowners who had been, quote, "pressured</p> <p>8 by others," unquote. And when you say "pressured by</p> <p>9 others," who are you talking about?</p> <p>10 A. I'm talking about they were pressured by other</p> <p>11 people. You know, as we filed in the docket, they'd</p> <p>12 all, you know, received a letter from the North Dakota</p> <p>13 Easement Team, had received follow-ups on that letter</p> <p>14 and -- yeah, so that's what I'm talking about.</p> <p>15 Q. Well, have you talked or have you been present</p> <p>16 when any -- you've overheard some landowners say, "Gee,</p> <p>17 I got pressured by someone not to enter into an easement</p> <p>18 with Summit"?</p> <p>19 A. Yeah, I've had landowners tell me that.</p> <p>20 Q. Pardon?</p> <p>21 A. Yes, I've had landowners say "I've been</p> <p>22 pressured not to talk to you."</p> <p>23 Q. Okay. No. That's -- that's not my question.</p> <p>24 My question was were you personally present when the</p> <p>25 pressuring occurred?</p> <p>PAGE 148</p>

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<p>1 <b>A. I was not.</b></p> <p>2 <b>Q.</b> Okay. So anything you would know on that topic</p> <p>3 is hearsay from somebody else because you weren't there?</p> <p>4 <b>A. It's just what the landowners had told me.</b></p> <p>5 <b>Q.</b> And so is there anybody who's going to come and</p> <p>6 testify for Summit that they were pressured by others</p> <p>7 not to enter into easements with Summit, to your</p> <p>8 knowledge?</p> <p>9 <b>A. Not that I'm aware of.</b></p> <p>10 <b>Q.</b> I want to talk about the alternative southern</p> <p>11 route around Bismarck. And that's something you</p> <p>12 provided some testimony about, but so did Mr. Powell.</p> <p>13 What knowledge do you have about the possible southern</p> <p>14 alternative route around Bismarck?</p> <p>15 <b>A. Yeah, just -- my -- my knowledge is that the</b></p> <p>16 <b>southern route analysis was completed and it was filed</b></p> <p>17 <b>into the docket. I was not involved in the analysis so</b></p> <p>18 <b>I can't speak to the detail or the specifics of the</b></p> <p>19 <b>southern route analysis.</b></p> <p>20 <b>Q.</b> Okay. So you didn't make any personal contacts</p> <p>21 yourself in regards to the viability of a southern route</p> <p>22 around Bismarck for the Summit pipeline?</p> <p>23 <b>A. I did not.</b></p> <p>24 <b>Q.</b> Would that have been Mr. Powell?</p> <p>25 <b>A. Yes, that would have been Mr. Powell or it was</b></p> <p>PAGE 149</p>	<p>1 to the proposed reroute location?</p> <p>2 <b>A. Like I said, I think it's always good business</b></p> <p>3 <b>practice, if you will, to be transparent. I'm not sure</b></p> <p>4 <b>who you're referring to as the parties but certainly</b></p> <p>5 <b>want to be transparent, and I believe we have been.</b></p> <p>6 <b>Q.</b> Well, should Summit be transparent on</p> <p>7 information regarding the reroute to my client, Burleigh</p> <p>8 County?</p> <p>9 <b>A. Well, yes.</b></p> <p>10 <b>Q.</b> Okay. And to the public in Burleigh County as</p> <p>11 well?</p> <p>12 <b>A. Yes.</b></p> <p>13 <b>Q.</b> Okay. And to landowners in Burleigh County as</p> <p>14 well?</p> <p>15 <b>A. Yes.</b></p> <p>16 <b>Q.</b> And do they have a responsibility to be honest</p> <p>17 and forthcoming regarding information on the proposed</p> <p>18 reroute around Bismarck?</p> <p>19 <b>A. Yes.</b></p> <p>20 <b>Q.</b> Okay. Take a look at the map we've been talking</p> <p>21 about on page 8 of BC-100.</p> <p>22 <b>A. Sure.</b></p> <p>23 <b>Q.</b> Who prepared --</p> <p>24 <b>A. On page 8?</b></p> <p>25 <b>Q.</b> Page 8, Figure 1. Second page of BC-100.</p> <p>PAGE 151</p>
<p>1 <b>under his direction.</b></p> <p>2 <b>Q.</b> But you did talk about -- in your prior</p> <p>3 testimony, about the proximity to Bismarck of the</p> <p>4 alternative southern route that shows on another map</p> <p>5 Summit provided. Were you involved in communications in</p> <p>6 regards to the proximity to Bismarck on -- for any</p> <p>7 southern route?</p> <p>8 <b>A. I don't recall testifying as to the proximity of</b></p> <p>9 <b>the southern route analysis previously so could you</b></p> <p>10 <b>point me to where that's at?</b></p> <p>11 <b>Q.</b> Well, it's on page -- page 80. And what you</p> <p>12 said is that Summit considered the proximity to Bismarck</p> <p>13 for the southern alternative route. But I'm just asking</p> <p>14 what do you remember about that and did you have any</p> <p>15 involvement or are you just repeating something that</p> <p>16 Mr. Powell or somebody else at Summit told you?</p> <p>17 <b>A. Yes, I was -- like I said, I was not involved in</b></p> <p>18 <b>the southern route analysis.</b></p> <p>19 <b>Q.</b> Does Summit, in relation to the reroute around</p> <p>20 Bismarck, have a responsibility to be transparent with</p> <p>21 the PSC in regards to that reroute location?</p> <p>22 <b>A. Well, absolutely. We always want to be</b></p> <p>23 <b>transparent.</b></p> <p>24 <b>Q.</b> And do you agree Summit has a responsibility to</p> <p>25 be transparent to the parties to this matter in regards</p> <p>PAGE 150</p>	<p>1 <b>A. Okay.</b></p> <p>2 <b>Q.</b> Okay. Do you have that in front of you?</p> <p>3 <b>A. I do.</b></p> <p>4 <b>Q.</b> Okay. Who prepared that?</p> <p>5 <b>A. I'm not sure.</b></p> <p>6 <b>Q.</b> Someone prepared it at Summit or on Summit's</p> <p>7 behalf?</p> <p>8 <b>A. Yeah. Somebody at Summit prepared this.</b></p> <p>9 <b>Q.</b> And is it your understanding that the purpose of</p> <p>10 this reroute figure and diagram is to show how the</p> <p>11 reroute location has changed from the original route</p> <p>12 requested by Summit?</p> <p>13 <b>A. Yeah. The purpose of this figure is to, I</b></p> <p>14 <b>guess, provide an indication of the reroute or the</b></p> <p>15 <b>change in the route that we would propose to pursue when</b></p> <p>16 <b>granted, you know, reconsideration. This was prior to</b></p> <p>17 <b>the granting of reconsideration and this rehearing.</b></p> <p>18 <b>Q.</b> Sure. And formed the basis for the request for</p> <p>19 the reroute location after the original application of</p> <p>20 Summit was denied?</p> <p>21 <b>A. Yeah. It was part of -- you know, part of the</b></p> <p>22 <b>basis for reconsideration. That's correct.</b></p> <p>23 <b>Q.</b> And Summit understood and believed that the PSC</p> <p>24 and the parties to this matter and the public would rely</p> <p>25 on this information in the reroute as being accurate;</p> <p>PAGE 152</p>

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<p>1 correct?</p> <p>2 <b>A. "Accurate" in terms of "exactly"? I don't think</b></p> <p>3 <b>that's correct. I wouldn't agree with that. This was</b></p> <p>4 <b>showing a -- it wouldn't be possible for us do a</b></p> <p>5 <b>complete reroute in two weeks and have done all of the</b></p> <p>6 <b>things that we -- steps we've since gone through to</b></p> <p>7 <b>engage with landowners, survey properties, define the</b></p> <p>8 <b>route, all those things, considerations, that go into</b></p> <p>9 <b>routing a pipeline. Couldn't possibly be done in just</b></p> <p>10 <b>two weeks around any significant reroute such as this.</b></p> <p>11 <b>And so this was informing, hey, here's what</b></p> <p>12 <b>we're proposing to do, is to move this line out to the</b></p> <p>13 <b>north an additional, you know, five to six miles and --</b></p> <p>14 <b>or four to six miles, whatever the dimensions are here</b></p> <p>15 <b>exactly, but here's an approximate reroute to move the</b></p> <p>16 <b>line further away from Bismarck to address the concerns</b></p> <p>17 <b>that were identified in the order.</b></p> <p>18 <b>Q. But Summit wasn't trying to be inaccurate in the</b></p> <p>19 <b>location of the reroute, was it?</b></p> <p>20 <b>A. No. It was a best estimate of here's what we</b></p> <p>21 <b>think is maybe a suitable location.</b></p> <p>22 <b>Q. Would you agree with me that this map which</b></p> <p>23 <b>would then be available to the public is not transparent</b></p> <p>24 <b>at all?</b></p> <p>25 <b>A. I wouldn't agree with that.</b></p> <p>PAGE 153</p>	<p>1 <b>Q. (BY MR. BAKKE) And there's no structures shown</b></p> <p>2 <b>on this; is that correct?</b></p> <p>3 <b>A. Like I said, you can see the map. It's -- it</b></p> <p>4 <b>just has the city limits and the ETA and the previous</b></p> <p>5 <b>route and a potential new route.</b></p> <p>6 <b>Q. Okay. And would you agree that the only way</b></p> <p>7 <b>landowners in Burleigh County would know whether their</b></p> <p>8 <b>land was affected based on seeing this map is if Summit</b></p> <p>9 <b>contacted them and indicated "We're interested in an</b></p> <p>10 <b>easement across your property"?</b></p> <p>11 <b>A. Yeah, I would say that's reasonably accurate if</b></p> <p>12 <b>-- if -- I mean, other than, you know, kind of the</b></p> <p>13 <b>approximate route north of -- of Bismarck, and depending</b></p> <p>14 <b>on how much land they owned, they may or may not be able</b></p> <p>15 <b>to determine, you know, if the route was crossing their</b></p> <p>16 <b>property.</b></p> <p>17 <b>Q. Okay. So let's talk about the map book that was</b></p> <p>18 <b>referenced by Summit's counsel just a moment ago. And</b></p> <p>19 <b>for Burleigh County -- and understand there's other</b></p> <p>20 <b>counties in there, but for -- for Burleigh County, is</b></p> <p>21 <b>that pages 33 through 46, which is part of Summit's</b></p> <p>22 <b>Exhibit R-1?</b></p> <p>23 <b>A. That's 33 in this book?</b></p> <p>24 <b>Q. Starts at -- starts at 33 for Burleigh County</b></p> <p>25 <b>and ends at 46. The other pages would relate -- of the</b></p> <p>PAGE 155</p>
<p>1 <b>Q. Okay. Well, as an example, does it show the</b></p> <p>2 <b>location of Interstate I-94?</b></p> <p>3 <b>A. It does not.</b></p> <p>4 <b>Q. Does it show Highway 83?</b></p> <p>5 <b>A. It does not.</b></p> <p>6 <b>Q. Does it show any section lines on here so</b></p> <p>7 <b>landowners could try to determine whether their land is</b></p> <p>8 <b>or is not affected?</b></p> <p>9 <b>A. It doesn't include those things.</b></p> <p>10 <b>Q. Does it have any landmarks?</b></p> <p>11 <b>A. It has the city -- city limits and ETA.</b></p> <p>12 <b>Q. Have any roads?</b></p> <p>13 <b>A. Doesn't have any roads.</b></p> <p>14 <b>MR. GLUDT: Your Honor, I'm going to object.</b></p> <p>15 <b>The witness has testified this was a preliminary route.</b></p> <p>16 <b>We have since filed a map book that provides great</b></p> <p>17 <b>detail on the route. I think we can move past this line</b></p> <p>18 <b>of questioning. It's been asked and answered.</b></p> <p>19 <b>MR. BAKKE: Well, I'll get to the map books in a</b></p> <p>20 <b>few minutes. That's not transparent either. But this</b></p> <p>21 <b>is what the public would have seen initially in regards</b></p> <p>22 <b>to the reroute so that's why I'm asking these questions.</b></p> <p>23 <b>ALJ HOGAN: Yep. And I think the point's been</b></p> <p>24 <b>made that this is a pretty generic map.</b></p> <p>25 <b>MR. BAKKE: Right.</b></p> <p>PAGE 154</p>	<p>1 <b>-- what your counsel is calling the map book, the other</b></p> <p>2 <b>pages would be for other counties. I just am interested</b></p> <p>3 <b>in Burleigh County.</b></p> <p>4 <b>A. Looks like Burleigh County goes up to page 57 in</b></p> <p>5 <b>the map book.</b></p> <p>6 <b>Q. 57? Okay. My apologies.</b></p> <p>7 <b>And if we look at page 33 of the map book, it</b></p> <p>8 <b>doesn't identify who the landowners are for any of the</b></p> <p>9 <b>land identified; correct?</b></p> <p>10 <b>A. Looks like it identifies, you know, section,</b></p> <p>11 <b>township, range, but no landowners, no land ownership on</b></p> <p>12 <b>the map, if that's your question.</b></p> <p>13 <b>Q. Which would be something that Summit could have</b></p> <p>14 <b>secured. That's a matter of public records, who the</b></p> <p>15 <b>landowners are, isn't it?</b></p> <p>16 <b>A. Yeah, it's -- it's public record.</b></p> <p>17 <b>Q. So if someone was looking at this or perhaps</b></p> <p>18 <b>they knew they had a neighbor who lived out of state or</b></p> <p>19 <b>lived in Fargo or someplace else and didn't know their</b></p> <p>20 <b>specific section or range number, there would be no way</b></p> <p>21 <b>for that person to identify whether their land was</b></p> <p>22 <b>affected by the map book documents where Summit's</b></p> <p>23 <b>identifying locations for the reroute; correct?</b></p> <p>24 <b>A. Well, I -- I would say no, not correct. Most</b></p> <p>25 <b>landowners --</b></p> <p>PAGE 156</p>

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<p>1 Q. Are the landowner names on here somewhere? Did</p> <p>2 I miss --</p> <p>3 A. No. I would say most landowners would know what</p> <p>4 property they own, section, township, range, etcetera.</p> <p>5 If I owned property, I would know where it's at.</p> <p>6 Q. Well, you may or may not.</p> <p>7 A. Without somebody putting it on a map is my</p> <p>8 point.</p> <p>9 Q. Well, you may or may not; correct? Can we agree</p> <p>10 to that?</p> <p>11 A. Well, I would say it would be unusual for a</p> <p>12 landowner not to know that they own section 1, 2, or 3,</p> <p>13 or whatever, what properties they own.</p> <p>14 Q. My --</p> <p>15 A. I guess it's possible.</p> <p>16 Q. Yeah. Might depend on if they lived there;</p> <p>17 correct?</p> <p>18 A. Depend on if they lived on the property?</p> <p>19 Q. On the property.</p> <p>20 A. I guess it could.</p> <p>21 Q. Okay. Might depend if they lived nearby;</p> <p>22 correct?</p> <p>23 A. I don't really understand the question in terms</p> <p>24 of --</p> <p>25 Q. Well, my point here is you're telling us Summit</p> <p>PAGE 157</p>	<p>1 readily recognize whether their land was affected by the</p> <p>2 Summit pipeline?</p> <p>3 A. No, I can't. It wasn't intentional.</p> <p>4 Q. Did Summit do anything to alert adjacent</p> <p>5 landowners to the reroute location that Summit was</p> <p>6 proposing that the reroute would be located close to</p> <p>7 their land?</p> <p>8 A. We did not take steps to notify adjacent</p> <p>9 landowners of the planned reroute on adjacent</p> <p>10 properties.</p> <p>11 Q. Okay. And you would agree with me, based on</p> <p>12 Figure 1 on page 8 of BC-100, those nearby landowners</p> <p>13 wouldn't be able to figure it out based on that map with</p> <p>14 -- with no landmarks around the reroute; correct?</p> <p>15 A. Yeah, I would say it's likely that they, yeah,</p> <p>16 wouldn't be able to pick out the exact parcel that the</p> <p>17 line was crossing or may not be able to.</p> <p>18 Q. At your prior testimony, you talked about a</p> <p>19 preliminary study of anticipated power with Minnkota.</p> <p>20 Has that been provided by Summit?</p> <p>21 A. Say this again. I'm not sure what you're</p> <p>22 referring to.</p> <p>23 Q. Well, I'm looking at page 60. And you</p> <p>24 indicated, as of April 22nd, Summit had completed a</p> <p>25 preliminary study of an anticipated power agreement with</p> <p>PAGE 159</p>
<p>1 has got a responsibility to be transparent?</p> <p>2 A. Uh-huh.</p> <p>3 Q. And we're seeing information that doesn't even</p> <p>4 identify the names of the landowners whose property is</p> <p>5 affected; correct?</p> <p>6 A. It does not identify the names of the landowners</p> <p>7 or who owns these parcels.</p> <p>8 Q. Okay.</p> <p>9 A. But as a landowner, I would tell you that I know</p> <p>10 what section, township, range I own property at.</p> <p>11 Q. Well, I think that's commendable that you do,</p> <p>12 but there are many landowners who don't live near their</p> <p>13 land; correct?</p> <p>14 A. Yeah, there may be.</p> <p>15 Q. Okay. There's landowners who live out of state?</p> <p>16 A. Sure, yeah.</p> <p>17 Q. Much of this land has turned over so that now</p> <p>18 another generation owns this land; correct?</p> <p>19 A. I would say certainly other generations own</p> <p>20 land, but I'll tell you, working on this reroute, most</p> <p>21 of the people that -- whose property we're on lived</p> <p>22 here, not all of them but most of them.</p> <p>23 Q. Can you explain to me why Summit, when it was</p> <p>24 publicly available information, didn't just put the</p> <p>25 landowners' names on the property so people could more</p> <p>PAGE 158</p>	<p>1 Minnkota and you and Summit were asked to submit a copy,</p> <p>2 and I believe it was Mr. Bender said there would be no</p> <p>3 problem in doing so.</p> <p>4 My question is was that done? Was it provided</p> <p>5 to the PSC and to the parties in this matter?</p> <p>6 A. Yeah, so what I was indicating was not with</p> <p>7 Minnkota Power. It was with Roughrider Electric who is</p> <p>8 the electric cooperative that would serve the power to</p> <p>9 the sequestration area. In Oliver and Mercer County,</p> <p>10 that's their service territory.</p> <p>11 Q. So there was no anticipated power agreement with</p> <p>12 Minnkota?</p> <p>13 A. No, not with Minnkota.</p> <p>14 Q. And if I'm recalling correctly, Roughrider</p> <p>15 Electric is in Stark County?</p> <p>16 A. No. It's in -- well, it's in Oliver and Mercer</p> <p>17 County. I think it combined with -- a number of</p> <p>18 different -- of the co-ops combined and formed</p> <p>19 Roughrider Electric so I don't know exactly their</p> <p>20 footprint, but I know that they are the cooperative that</p> <p>21 serves Oliver and Mercer County.</p> <p>22 Q. Okay. Is that just going to be electric power</p> <p>23 for the sequestration area only in Oliver County?</p> <p>24 A. That's correct.</p> <p>25 Q. Okay. So getting back to any power agreement,</p> <p>PAGE 160</p>



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<p>1 is there any power agreement with Summit in Burleigh</p> <p>2 County to provide electricity to the Summit pipeline</p> <p>3 here in Burleigh County?</p> <p>4 <b>A. So I'm not aware of a specific, you know, power</b></p> <p>5 <b>purchase agreement. You know, Jimmy may be able to</b></p> <p>6 <b>testify to that.</b></p> <p>7 <b>What I can tell you is that, you know, we've</b></p> <p>8 <b>reached out to all of the cooperatives. They've, you</b></p> <p>9 <b>know, done their load studies. And, you know, we filed</b></p> <p>10 <b>the -- the response in the docket of that information</b></p> <p>11 <b>that, you know, basically indicated that the -- we'd</b></p> <p>12 <b>engaged with the cooperatives, we -- they'd affirm that</b></p> <p>13 <b>they could serve the load, they'd done the system</b></p> <p>14 <b>analysis to determine what system improvements are</b></p> <p>15 <b>required. I believe they're itemized in that filing. I</b></p> <p>16 <b>don't have it in front of me. And, you know, itemizes</b></p> <p>17 <b>out, you know, these are the system improvements and the</b></p> <p>18 <b>cost of those improvements and the amount of load that</b></p> <p>19 <b>they would be serving, etcetera.</b></p> <p>20 <b>Q.</b> Well, except for I thought you told me earlier</p> <p>21 today in your testimony that you can't tell me the</p> <p>22 details of where the power is going to come from for the</p> <p>23 Summit pipeline in Burleigh County, what happens if it</p> <p>24 gets interrupted, what happens if the pipeline were to</p> <p>25 shut down due to lack of power. You can't address any</p> <p>PAGE 161</p>	<p>1 <b>A. Yeah, those would be better questions for Jimmy.</b></p> <p>2 <b>Q.</b> Okay. Okay. So, briefly, let's turn back to</p> <p>3 that November 27, 2023, meeting with the emergency</p> <p>4 planning people in Burleigh County. And then in terms</p> <p>5 of this two-dimensional presentation, the PowerPoint, in</p> <p>6 relation to the dispersion modeling, was that</p> <p>7 two-dimensional -- to the extent you can do that in a</p> <p>8 two-dimensional fashion, was that specific to Burleigh</p> <p>9 County or was that just generic information about the</p> <p>10 Summit pipeline in general?</p> <p>11 MR. GLUDT: Objection, Your Honor. The</p> <p>12 PowerPoint presentation that Mr. Bakke is referencing</p> <p>13 has been filed under the protective order with the</p> <p>14 Commission for their review. I think he's getting into</p> <p>15 the details of what this PowerPoint does or does not</p> <p>16 show, which is subject to our protective order.</p> <p>17 ALJ HOGAN: Can you repeat your question?</p> <p>18 MR. BAKKE: Sure. What I'm asking about is the</p> <p>19 two-dimensional presentation, which, incidentally, was</p> <p>20 not a dispersion model or plume model. He's already</p> <p>21 said it wasn't a video, it wasn't a simulation, it</p> <p>22 wasn't real time. It was just --</p> <p>23 ALJ HOGAN: I think he's already answered that</p> <p>24 question.</p> <p>25 MR. BAKKE: He said it was just a PowerPoint</p> <p>PAGE 163</p>
<p>1 of those issues; correct?</p> <p>2 <b>A. Yeah, that's correct. I could address them</b></p> <p>3 <b>generically, but specifically, you know, Jimmy's going</b></p> <p>4 <b>to be in a better position to answer that question</b></p> <p>5 <b>because that's under his, you know, area of</b></p> <p>6 <b>responsibility and his team has been working on those</b></p> <p>7 <b>things.</b></p> <p>8 <b>Q.</b> Mr. Powell?</p> <p>9 <b>A.</b> Mr. Powell.</p> <p>10 <b>Q.</b> Okay.</p> <p>11 <b>A.</b> What I can tell you is, you know, I know what's</p> <p>12 been filed in the docket, I saw it, you know, reviewed</p> <p>13 it --</p> <p>14 <b>Q.</b> Sure.</p> <p>15 <b>A.</b> -- it was filed, those kinds of things, which,</p> <p>16 again, the specific loads and the specific cooperatives</p> <p>17 are identified, you know, in that table and in that</p> <p>18 filing.</p> <p>19 <b>Q.</b> But that's something different than what I'm</p> <p>20 asking about. I'm asking about what happens if there</p> <p>21 isn't power, what happens to the pipeline if it goes</p> <p>22 without power, what's required to start it back up, what</p> <p>23 happens to the volume, what happens to the pressure in</p> <p>24 the pipeline. You can't answer any of those questions;</p> <p>25 correct? That's not in the filings.</p> <p>PAGE 162</p>	<p>1 presentation. And what I'm asking about, whether it</p> <p>2 accounted for -- whether it related specifically to</p> <p>3 Burleigh County or was it just two-dimensional</p> <p>4 information generic about -- could be a location</p> <p>5 anywhere on the pipeline.</p> <p>6 ALJ HOGAN: I'll allow him to answer that</p> <p>7 question.</p> <p>8 <b>A. Yes, I would say that it was both. There was</b></p> <p>9 <b>portions that were specific to Burleigh County and there</b></p> <p>10 <b>were portions that were more general or generic in</b></p> <p>11 <b>nature.</b></p> <p>12 <b>Q.</b> (BY MR. BAKKE) Okay. And when you say</p> <p>13 "specific to Burleigh County," what components were</p> <p>14 specific to Burleigh County? And let me -- and just a</p> <p>15 few to speed this up. Was it specific as to certain</p> <p>16 topography in Burleigh County?</p> <p>17 <b>A. Yes. I believe topography was part of it, of</b></p> <p>18 <b>the specific nature.</b></p> <p>19 <b>Q.</b> When you say "topography was part of it," what</p> <p>20 do you mean by that?</p> <p>21 <b>A. What I mean is there's lots of different</b></p> <p>22 <b>variables that go into developing dispersion modeling,</b></p> <p>23 <b>and one of them is topography. You know, so you have</b></p> <p>24 <b>the actual X, Y, Z location, which the Z is the</b></p> <p>25 <b>topography element of it. And so there were parts of</b></p> <p>PAGE 164</p>

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<p>1 <b>that that were specific to Burleigh County.</b></p> <p>2 <b>Q.</b> Okay.</p> <p>3 ALJ HOGAN: Mr. Boeshans, can you pull your mic</p> <p>4 closer to you?</p> <p>5 THE WITNESS: Sure.</p> <p>6 ALJ HOGAN: Thank you.</p> <p>7 <b>Q.</b> (BY MR. BAKKE) So it wasn't just a</p> <p>8 two-dimensional model that presumed the -- it was flat</p> <p>9 where the dispersion modeling took place, the ground was</p> <p>10 flat?</p> <p>11 <b>A.</b> So what I would say is the -- you asked me</p> <p>12 earlier, was this a two-dimensional presentation. Well,</p> <p>13 it was two-dimensional in the fact that it was on a</p> <p>14 screen, right, and we showed slides. But in terms of,</p> <p>15 you know, the output specifically that we were looking</p> <p>16 at, you know, they contemplated lots of different input</p> <p>17 variables. And so that's the best way for me to</p> <p>18 describe it to you.</p> <p>19 <b>Q.</b> Okay. But --</p> <p>20 <b>A.</b> To make it, a flat piece of paper,</p> <p>21 three-dimensional was not easy so it's on a screen.</p> <p>22 That's what I was trying to respond to you with.</p> <p>23 <b>Q.</b> Right. But my point is, if it's not</p> <p>24 three-dimensional, it can't account for changes in</p> <p>25 elevations or topography; correct?</p> <p>PAGE 165</p>	<p>1 <b>was showing or predicting an output in any direction of</b></p> <p>2 <b>wind at the same speed, right. So regardless of what</b></p> <p>3 <b>the wind direction would be, it would influence the --</b></p> <p>4 <b>you know, the dispersion, but the -- the outputs that we</b></p> <p>5 <b>were looking at were referencing, well, if -- if -- the</b></p> <p>6 <b>wind could be any direction. So it was like looking at</b></p> <p>7 <b>a 360 around a point and said, well, if the wind was</b></p> <p>8 <b>from the south it would be up, if it was from the north</b></p> <p>9 <b>it would be down, those kinds of things.</b></p> <p>10 <b>Q.</b> Do you know what a real-time video or real-time</p> <p>11 presentation is?</p> <p>12 <b>A.</b> No, I don't.</p> <p>13 <b>Q.</b> Okay. So let's say, hypothetically, you say,</p> <p>14 okay, this is going to show you simulated conditions</p> <p>15 where the wind speed is one mile an hour and then we're</p> <p>16 going to gradually progress it on the video or the</p> <p>17 real-time presentation up to 45 miles per hour.</p> <p>18 <b>A.</b> Sure.</p> <p>19 <b>Q.</b> This wasn't that type of presentation?</p> <p>20 <b>A.</b> It was not.</p> <p>21 <b>Q.</b> Okay. It was certain static conditions,</p> <p>22 correct, an assumed wind speed at X miles an hour?</p> <p>23 <b>A.</b> That's correct.</p> <p>24 <b>Q.</b> Okay. It didn't account for if the wind speed</p> <p>25 or direction changed?</p> <p>PAGE 167</p>
<p>1 <b>A.</b> Yeah, I think that's correct.</p> <p>2 <b>Q.</b> Okay. And then did it account for any</p> <p>3 particular wind speed and wind direction?</p> <p>4 <b>A.</b> Yes. There -- we were looking at a scenario</p> <p>5 with a set of assumptions, one of -- included in those</p> <p>6 assumptions would be wind speed.</p> <p>7 <b>Q.</b> Okay. And did it assume a certain wind</p> <p>8 direction?</p> <p>9 <b>A.</b> It did not.</p> <p>10 <b>Q.</b> Okay. Versus in Burleigh County or Bismarck,</p> <p>11 north of Bismarck, there would be a certain typical</p> <p>12 prevailing wind direction; correct?</p> <p>13 <b>A.</b> Yeah, there's -- I'm guessing there's a</p> <p>14 prevailing wind direction. It's probably the same as it</p> <p>15 is at my house. It's northwest.</p> <p>16 <b>Q.</b> Okay. And then the same if -- if it was</p> <p>17 determining wind direction from east of Bismarck, that</p> <p>18 would -- there would be a prevailing wind direction for</p> <p>19 that as well; correct?</p> <p>20 <b>A.</b> Yeah. Wind direction, wind speed are all inputs</p> <p>21 into -- into a model.</p> <p>22 <b>Q.</b> Okay. But the model did not account for wind</p> <p>23 direction, just an assumed wind speed; correct?</p> <p>24 <b>A.</b> Yeah, that's -- that's correct. As I recall,</p> <p>25 the model contemplated all wind directions, right. It</p> <p>PAGE 166</p>	<p>1 <b>A.</b> It accounted for direction change, but not for</p> <p>2 speed change. It was assuming an input of a certain</p> <p>3 speed.</p> <p>4 <b>Q.</b> Did it account for variable humidity?</p> <p>5 <b>A.</b> I don't recall what the humidity was, but I</p> <p>6 don't believe it was variable.</p> <p>7 <b>Q.</b> Did it consider or account for the</p> <p>8 Pasquill-Gifford atmospheric stability class rating?</p> <p>9 <b>A.</b> So now you're getting far enough into the</p> <p>10 details of the dispersion modeling and the presentation</p> <p>11 that I can't answer that specifically. You'd have to</p> <p>12 have one of the experts talk to that.</p> <p>13 <b>Q.</b> Did it account for the pressure inside the CO2</p> <p>14 pipeline?</p> <p>15 <b>A.</b> I believe so, yes.</p> <p>16 <b>Q.</b> What was the assumed pressure?</p> <p>17 <b>A.</b> I don't recall specifically. I believe it was</p> <p>18 maximum operating pressure.</p> <p>19 <b>Q.</b> Which would be what?</p> <p>20 <b>A.</b> 2,180 or 2,183.</p> <p>21 <b>Q.</b> What volume of CO2 did it account for as being</p> <p>22 in the pipeline?</p> <p>23 <b>A.</b> I don't recall.</p> <p>24 <b>Q.</b> Was it a single volume or did it have the</p> <p>25 ability to fluctuate the volume so that under this</p> <p>PAGE 168</p>

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<p>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?</p> <p>4 <b>A. So I don't think that matters, but again that --</b> 5 <b>because you're simulating what is the -- if it's</b> 6 <b>operating at maximum pressure, it's, you know, at</b> 7 <b>maximum pressure. And so the line is full and pressured</b> 8 <b>to that amount, to that -- to that -- I guess to that</b> 9 <b>pressure. So I don't know that it necessarily would</b> 10 <b>have an impact but -- again, on the dispersion output,</b> 11 <b>because the amount of volume that's in the line and the</b> 12 <b>pressure that's on the line, I believe, would give you</b> 13 <b>the same result. But, again, you'd have to have the</b> 14 <b>people that actually drove the model to answer that</b> 15 <b>question with more detail than I just did.</b></p> <p>16 <b>Q.</b> And do you know, did it account for how long the 17 leak would last?</p> <p>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.</p> <p>PAGE 169</p>	<p>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.</p> <p>7 ALJ HOGAN: Mr. Pelham, does the Commission have 8 a position on this?</p> <p>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.</p> <p>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.</p> <p>25 As to the specifics of federal law that this</p> <p>PAGE 171</p>
<p>1 ALJ HOGAN: Would you like to respond, 2 Mr. Bakke?</p> <p>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.</p> <p>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.</p> <p>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,</p> <p>PAGE 170</p>	<p>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.</p> <p>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.</p> <p>13 Thank you.</p> <p>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.</p> <p>24 MR. BAKKE: And, Your Honor, I'll just note for 25 the record there's also been some subsequent events</p> <p>PAGE 172</p>

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<p>1 since the initial order on August 4, 2023, including on</p> <p>2 January 11, 2024, when Summit submitted its plume model</p> <p>3 to the State of Minnesota, which I think in some</p> <p>4 respects was a plume model. That involved a 4-inch</p> <p>5 feeder line into the Summit pipeline or proposed 4-inch</p> <p>6 feeder line in Otter Tail County.</p> <p>7 And then subsequent to that in this case Summit</p> <p>8 filed, on May 10, 2024, with the PSC information</p> <p>9 identifying the emergency and first responders by county</p> <p>10 and other county officials who attended the SCS meetings</p> <p>11 from November 7, 2023, through May 16, 2023, and then</p> <p>12 they go on to say Summit shared Summit's dispersion</p> <p>13 modeling methodology, generic model inputs, pipeline</p> <p>14 hazardous materials, PHMSA requirements, relative</p> <p>15 toxicity, potential CO2 release scenarios,</p> <p>16 shelter-in-place studies, emergency response plans and</p> <p>17 guidelines, and discussed specific training and</p> <p>18 equipment needs. We also invited emergency managers to</p> <p>19 CO2 emergency responders training at Texas A&amp;M</p> <p>20 University. That's Docket 530.</p> <p>21 And that's specifically what I'm exploring, is</p> <p>22 something they're relying on for their reapplication is</p> <p>23 that specific training, they're relying on potential CO2</p> <p>24 release scenarios, they're relying on generic model</p> <p>25 outputs, they're relying on Summit's dispersion modeling</p> <p>PAGE 173</p>	<p>1 states from enacting or enforcing pipeline safety</p> <p>2 standards with respect to interstate pipelines."</p> <p>3 The Commission doesn't have any issue with</p> <p>4 questions being asked specific as to safety as to the</p> <p>5 application of the proposed line, Judge. I think the</p> <p>6 issue, and as I understand the objection, is -- is</p> <p>7 getting into the specifics as to the modeling and</p> <p>8 aspects in which the Commission simply does not have the</p> <p>9 jurisdiction to determine whether or not that meets the</p> <p>10 federal law. Federal law is what federal law is. And</p> <p>11 the State, through the Public Service Commission, is</p> <p>12 permitting the potential siting of a pipeline here.</p> <p>13 So to the extent that we're going outside of --</p> <p>14 of the Commission's jurisdiction, that's my concern. I</p> <p>15 don't so much have a concern of Burleigh County and the</p> <p>16 landowners intervenors' ability to question as to what</p> <p>17 is being done for safety to ensure that the Commission</p> <p>18 knows that something is being done for safety so that</p> <p>19 there is compliance with federal law. I think the</p> <p>20 Commission does have a responsibility to do that. But</p> <p>21 as to the specific and the intricacies of that, that's</p> <p>22 where I question. Thank you.</p> <p>23 ALJ HOGAN: I concur with that and I -- I can</p> <p>24 recall now the last question that was asked before all</p> <p>25 this discussion, I do think that crossed the line. And</p> <p>PAGE 175</p>
<p>1 methodology. And here we are at the point where I'm --</p> <p>2 should have ability, we believe, to ask these types of</p> <p>3 questions that they're relying on in support of their</p> <p>4 application and now I can't even ask questions about it</p> <p>5 for my client or for the benefit of the public and</p> <p>6 landowners affected by the Summit pipeline.</p> <p>7 MR. JORDE: Landowners join for the record.</p> <p>8 Thank you.</p> <p>9 ALJ HOGAN: Mr. Pelham, maybe you could address</p> <p>10 this, but previous discussions about conversations with</p> <p>11 local management, emergency management services, in my</p> <p>12 take, have been more general in nature and to address</p> <p>13 whether or not those conversations were happening rather</p> <p>14 than the full substance of the issues and specifics</p> <p>15 being discussed?</p> <p>16 MR. PELHAM: Thank you, Your Honor.</p> <p>17 Landowners Intervenor Exhibit 33 is a letter</p> <p>18 dated September 15, 2023, from PHMSA to Mr. Lee Blank,</p> <p>19 CEO of Summit Carbon Solutions, and on the second page</p> <p>20 summarize effectively what the Commission's limitations</p> <p>21 are.</p> <p>22 "Federal safety standards apply to both</p> <p>23 interstate and intrastate pipeline facilities. Only</p> <p>24 PHMSA can regulate the safety of interstate pipelines,</p> <p>25 and federal pipeline safety laws expressly prohibit</p> <p>PAGE 174</p>	<p>1 I would also note that the Commission did make that</p> <p>2 statement in its August 4th order, saying that safety</p> <p>3 compliance with PHMSA construction and operation is</p> <p>4 outside of its jurisdiction so...</p> <p>5 MR. BAKKE: Okay. And just to the note for the</p> <p>6 record the topics that I -- I would have addressed with</p> <p>7 this witness or other Summit witnesses on this would</p> <p>8 include but are not limited to the bullet points on page</p> <p>9 5 of our -- Burleigh County's Motion for Reconsideration</p> <p>10 of Order on Protect -- Protection of Information, Docket</p> <p>11 No. 364 or, in the alternative, for me to question</p> <p>12 regarding dispersion model.</p> <p>13 MR. JORDE: Landowners join.</p> <p>14 ALJ HOGAN: All right. Well, I've already</p> <p>15 addressed the objection.</p> <p>16 MR. BAKKE: Okay. That's all the questions I</p> <p>17 have for this witness.</p> <p>18 ALJ HOGAN: All right. Mr. Jorde, did you have</p> <p>19 any questions for Mr. Boeshans?</p> <p>20 MR. JORDE: Believe it or not, I do. Let's see.</p> <p>21 CROSS EXAMINATION</p> <p>22 BY MR. JORDE:</p> <p>23 Q. Okay. In your initial testimony on April 22nd,</p> <p>24 there was some discussion while you were testifying</p> <p>25 about shapefiles, and Mr. Braaten, I believe, was going</p> <p>PAGE 176</p>

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<p>1 to speak or something with Mr. Bender. Are you aware,</p> <p>2 sir, if the shapefiles for the maps, your proposed route</p> <p>3 maps, have been shared with any other parties -- party</p> <p>4 in these proceedings other than the PSC itself?</p> <p>5 <b>A. I'm not aware.</b></p> <p>6 <b>Q.</b> You previously testified there were three</p> <p>7 landowners who had not give permission for survey</p> <p>8 relative to the Bismarck reroute. What are the names of</p> <p>9 those three landowners?</p> <p>10 <b>A. They are Ray Wald, Jay Pahlke, and Brent</b></p> <p>11 <b>Earsley.</b></p> <p>12 <b>Q.</b> You mentioned that Summit doesn't have any plans</p> <p>13 to condemn, but then I think you conceded that if the</p> <p>14 PSC were to grant both your applications and there were</p> <p>15 landowner holdouts on land where you wish to place your</p> <p>16 hazardous pipeline, you would use the power of eminent</p> <p>17 domain against them; correct?</p> <p>18 MR. GLUDT: Objection. Asked and answered.</p> <p>19 ALJ HOGAN: Yeah, he already answered that.</p> <p>20 MR. JORDE: Well, he --</p> <p>21 <b>Q.</b> (BY MR. JORDE) Mr. Bakke's questions were</p> <p>22 premised specific to Burleigh County so I want to be</p> <p>23 sure that the record is clear that your -- your use of</p> <p>24 eminent domain would not be limited to Burleigh County;</p> <p>25 right? It would be anywhere on the line where Summit</p> <p>PAGE 177</p>	<p>1 <b>Q.</b> Now Mr. Bakke asked a little bit about a</p> <p>2 Minnkota-Summit relationship. I thought you previously</p> <p>3 testified you had an agreement, that you signed a joint</p> <p>4 development agreement with Minnkota in April 2022. Is</p> <p>5 that true?</p> <p>6 <b>A. Yeah, that's correct.</b></p> <p>7 <b>Q.</b> Okay. And has a copy of that agreement been</p> <p>8 provided to the parties in this case?</p> <p>9 <b>A. It has not.</b></p> <p>10 <b>Q.</b> Okay. Has a copy of that agreement been</p> <p>11 provided to the PSC?</p> <p>12 <b>A. It has not.</b></p> <p>13 <b>Q.</b> Now back to this meeting, I think you testified</p> <p>14 you attended five emergency management-type meetings</p> <p>15 where the PowerPoint that we discussed was shared with</p> <p>16 those who participated and attended; is that right?</p> <p>17 <b>A. Yeah, that's correct.</b></p> <p>18 <b>Q.</b> And the meeting that you were recalling, the</p> <p>19 November 2023 meeting in Burleigh County, did you say</p> <p>20 Commissioner Bitner was the only Burleigh County</p> <p>21 commissioner who attended?</p> <p>22 <b>A. I don't recall who -- who else from the</b></p> <p>23 <b>commission was there. I recall Commissioner Bitner</b></p> <p>24 <b>being there. There may have been another, but, again,</b></p> <p>25 <b>I'd have to go back to the sign-in sheet to know.</b></p> <p>PAGE 179</p>
<p>1 saw that necessary; correct?</p> <p>2 <b>A. Yeah, I would say my -- my answer is the same</b></p> <p>3 <b>regardless if it's Burleigh County or any other county.</b></p> <p>4 <b>You know, I can't make a commitment or won't be the one</b></p> <p>5 <b>to make a decision on will we use eminent domain or not</b></p> <p>6 <b>use eminent domain.</b></p> <p>7 <b>Q.</b> You stated that if a landowner signs a lease</p> <p>8 for, I believe it was the pore space, that that's</p> <p>9 exclusive, meaning only -- the landowner could only work</p> <p>10 with or allow Summit to occupy their pore space; is that</p> <p>11 correct?</p> <p>12 <b>A. Yeah, that's correct.</b></p> <p>13 <b>Q.</b> You talked about --</p> <p>14 <b>A. We have an exclusive option.</b></p> <p>15 <b>Q.</b> I'm sorry?</p> <p>16 <b>A. I said we have an exclusive option to use the</b></p> <p>17 <b>pore space within our options agreements.</b></p> <p>18 <b>Q.</b> Understood. And you have an option agreement</p> <p>19 because, if you don't get the permit, then obviously you</p> <p>20 don't need the pore space; right?</p> <p>21 <b>A. Yeah, correct. And when we signed many of these</b></p> <p>22 <b>option agreements, it was, you know, prior to having</b></p> <p>23 <b>completed the site characterization so we were, you</b></p> <p>24 <b>know, not at the point of having a permitted operation</b></p> <p>25 <b>and a need to use pore space.</b></p> <p>PAGE 178</p>	<p>1 <b>Q.</b> And that was my question. Has the sign-in sheet</p> <p>2 been produced to the parties in this case?</p> <p>3 <b>A. I'm not sure.</b></p> <p>4 <b>Q.</b> Do you know if it's been produced or uploaded to</p> <p>5 the PSC's docket?</p> <p>6 <b>A. I do not know that.</b></p> <p>7 <b>Q.</b> And without the sign-in sheet, you couldn't</p> <p>8 identify then who the emergency managers or first</p> <p>9 responders or other personnel who may have been in</p> <p>10 attendance; is that correct?</p> <p>11 <b>A. I could not.</b></p> <p>12 <b>Q.</b> And did you mention a Boespflug -- I didn't hear</p> <p>13 you -- from the City of Bismarck? Who was that person?</p> <p>14 <b>A. The fire chief for the City of Bismarck.</b></p> <p>15 <b>Q.</b> Okay. Thank you very much.</p> <p>16 <b>A. I recall meeting him at that meeting.</b></p> <p>17 <b>Q.</b> Very good.</p> <p>18 Now, I don't want to go over everything we've</p> <p>19 just kind of been through here, but there was a</p> <p>20 PowerPoint; Mr. Bakke got into that a little bit. Do</p> <p>21 you, sir, consider all of the information on each and</p> <p>22 every one of the PowerPoint slides to be confidential</p> <p>23 and under the Public Service Commission protective order</p> <p>24 in this case?</p> <p>25 MR. GLUDT: Objection. Calls for a legal</p> <p>PAGE 180</p>

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<p>1 conclusion. And the Commission has determined that the</p> <p>2 entirety of the PowerPoint is subject to the protective</p> <p>3 order. If we're here to relitigate, Mr. Bakke's got a</p> <p>4 Petition for Reconsideration, but this is not the venue</p> <p>5 to relitigate the protective order.</p> <p>6 ALJ HOGAN: Any response?</p> <p>7 MR. JORDE: Well, yeah. That doesn't, I guess,</p> <p>8 change the importance of my question. It's -- it's</p> <p>9 Summit's privilege, and I'd like an answer from him if</p> <p>10 Summit believes that all of the content of the</p> <p>11 PowerPoint slides is confidential.</p> <p>12 ALJ HOGAN: I agree that he can't offer a legal</p> <p>13 conclusion or determination whether it falls under the</p> <p>14 protective order, but I will allow him to answer as a</p> <p>15 representative of Summit, in Summit's opinion, whether</p> <p>16 or not they believe that slideshow falls under the</p> <p>17 protected information.</p> <p>18 <b>A. I would say yes, the slideshow does fall under</b></p> <p>19 <b>protective information, which is, you know, why we asked</b></p> <p>20 <b>it to be protected.</b></p> <p>21 <b>Q.</b> (BY MR. JORDE) And you believe then that each</p> <p>22 and every person that attended each and every one of the</p> <p>23 meetings, not just in Burleigh County but across the</p> <p>24 project in North Dakota, that all of those persons are</p> <p>25 also protected persons or, in other words, sir, persons</p> <p>PAGE 181</p>	<p>1 <b>Q.</b> All right. But you didn't share any of this</p> <p>2 information directly with affected landowners; correct?</p> <p>3 <b>A. I would have to go back and look at what we</b></p> <p>4 <b>shared with the landowners to confirm that. There may</b></p> <p>5 <b>have been some overlap between these -- between what we</b></p> <p>6 <b>shared with the landowners and what we shared with the</b></p> <p>7 <b>emergency managers.</b></p> <p>8 <b>Q.</b> And, sir, where would you go or what type of --</p> <p>9 would you go to a filing cabinet or a computer file?</p> <p>10 Where would you go to find that information?</p> <p>11 MR. GLUDT: I'm going to object, Your Honor.</p> <p>12 Mr. Jorde's on a discovery expedition right now. He's</p> <p>13 had the opportunity to conduct discovery. I think the</p> <p>14 Petition for Reconsideration was granted September 15,</p> <p>15 2023, and here we are now on a discovery expedition.</p> <p>16 MR. JORDE: Well, the surprising fact is we've</p> <p>17 asked for numerous discovery that hasn't been provided.</p> <p>18 The witness just said he has a place where he can find</p> <p>19 this information out. My question simply is where would</p> <p>20 that be.</p> <p>21 ALJ HOGAN: I'll tell you what my concern is.</p> <p>22 I'm curious about the relevance. And I'll just note</p> <p>23 it's already 2:30 and we still have Mr. Powell to get</p> <p>24 through today. So my concern is the relevance of these</p> <p>25 type of questions and multiple questions that are on the</p> <p>PAGE 183</p>
<p>1 that fall under some type of exception so that this data</p> <p>2 can remain confidential?</p> <p>3 <b>A. That's my understanding.</b></p> <p>4 <b>Q.</b> And in order to test that and see if there was</p> <p>5 any person who participated that doesn't, in fact, and</p> <p>6 if it was a waiver of any claimed privilege, we would</p> <p>7 need the sign-in sheets from each and every meeting; is</p> <p>8 that correct?</p> <p>9 <b>A. Yeah, I -- I guess I can't testify as to what</b></p> <p>10 <b>you would need.</b></p> <p>11 <b>Q.</b> Okay.</p> <p>12 <b>A. I just don't have an answer for you.</b></p> <p>13 <b>Q.</b> Sure. But you required anyone who attended to</p> <p>14 sign in. Is that true?</p> <p>15 <b>A. My recollection is there was sign-in sheets at</b></p> <p>16 <b>these meetings.</b></p> <p>17 <b>Q.</b> But it wasn't mandatory to sign in?</p> <p>18 <b>A. I don't -- I can't recall that everybody did or</b></p> <p>19 <b>didn't sign in, is my point.</b></p> <p>20 <b>Q.</b> All right. Did you maintain -- did you or did</p> <p>21 you notice if Mr. Daum or Mr. Powell maintained any</p> <p>22 handwritten notes as a part of these meetings?</p> <p>23 <b>A. I didn't notice that.</b></p> <p>24 <b>Q.</b> Did you maintain any?</p> <p>25 <b>A. I did not.</b></p> <p>PAGE 182</p>	<p>1 same issue or asking the same thing. So I guess maybe</p> <p>2 if you want to address relevance.</p> <p>3 MR. JORDE: Certainly. If they showed -- he</p> <p>4 said there may have been overlap. If there's overlap</p> <p>5 with a landowner, there's a waiver. No landowner is</p> <p>6 under this protected -- alleged protected persons under</p> <p>7 whatever they're claiming it is. So that would be</p> <p>8 waiver of any confidentiality and we would have the</p> <p>9 right to see whatever was provided.</p> <p>10 ALJ HOGAN: And, again, for the purpose of this</p> <p>11 hearing, I -- doesn't seem like this is an efficient use</p> <p>12 of our time.</p> <p>13 I guess, Mr. Boeshans, if you know the answer,</p> <p>14 you can answer.</p> <p>15 <b>A. Yeah, as I said, I don't believe there's</b></p> <p>16 <b>overlap, but, again, I don't want to testify to that</b></p> <p>17 <b>without confirming.</b></p> <p>18 <b>Q.</b> (BY MR. JORDE) I know. And I can move on. I</p> <p>19 just want to know what would you look at to confirm.</p> <p>20 That's all I want to know.</p> <p>21 <b>A. I would look at the presentation that we used</b></p> <p>22 <b>with the landowners and compare it to the presentation</b></p> <p>23 <b>we used with the emergency managers.</b></p> <p>24 <b>Q.</b> Okay. And the presentation used with landowners</p> <p>25 specifically, is that something that Summit has provided</p> <p>PAGE 184</p>

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<p>1 to the PSC?</p> <p>2 <b>A. It is not.</b></p> <p>3 <b>Q.</b> All right. You had stated that you met with</p> <p>4 landowners because you wanted to understand their</p> <p>5 concerns. Is there any reason you haven't met with, in</p> <p>6 the last year, any of my clients relative to their</p> <p>7 concerns?</p> <p>8 <b>A. Yeah. Because to the best of my knowledge,</b></p> <p>9 <b>they're not on the reroute around Bismarck and that was</b></p> <p>10 <b>the portion of the route that I was focused on or</b></p> <p>11 <b>working on.</b></p> <p>12 <b>Q.</b> Okay. So if for anyone else, I should direct</p> <p>13 that to Mr. Powell, correct, any non-Burleigh County</p> <p>14 reroute landowners. Is that your testimony?</p> <p>15 <b>A. Yeah. For -- for the most part, I've met with</b></p> <p>16 <b>landowners outside of Burleigh County. You know, we've</b></p> <p>17 <b>been working on this project since 2021 and so there's,</b></p> <p>18 <b>you know, many landowners outside of Burleigh County, or</b></p> <p>19 <b>several -- I don't want to be too liberal with my</b></p> <p>20 <b>language there but -- I've met many landowners over the</b></p> <p>21 <b>course of the last close to three years now as I was</b></p> <p>22 <b>across the footprint of the state providing project</b></p> <p>23 <b>overviews and introductions, going all the way back</b></p> <p>24 <b>to 2021.</b></p> <p>25 <b>And in the course of that time, you know, I met</b></p> <p>PAGE 185</p>	<p>1 those 500-foot waivers, did you share -- did Summit</p> <p>2 share dispersion or risk modeling with the person who</p> <p>3 provided the waivers?</p> <p>4 <b>A. Did we share dispersion or risk modeling with --</b></p> <p>5 <b>Q.</b> Yeah. In other words --</p> <p>6 <b>A. Who's --</b></p> <p>7 <b>Q.</b> Yeah. You approached someone -- you testified</p> <p>8 that you have a -- there's a setback waiver on the</p> <p>9 Bismarck reroute. Do you recall that?</p> <p>10 <b>A. Yes.</b></p> <p>11 <b>Q.</b> All right. And you said you have it. And I</p> <p>12 assume you approached them, and in order to get it,</p> <p>13 you're trying to persuade them to give you something.</p> <p>14 Did you share with that person dispersion modeling or</p> <p>15 risk analysis during your conversations to try to obtain</p> <p>16 their waiver?</p> <p>17 <b>A. No. We did not share dispersion modeling. I'm</b></p> <p>18 <b>sure we talked about, you know, risks. That was a</b></p> <p>19 <b>common topic of conversation with landowners, is what</b></p> <p>20 <b>are the risks and potential leakage scenarios, and that</b></p> <p>21 <b>type of information was frequently discussed. But if</b></p> <p>22 <b>you're referring to sharing dispersion model outputs</b></p> <p>23 <b>like we did with emergency managers, no, we did not.</b></p> <p>24 <b>Q.</b> Okay. So the information on the emergency</p> <p>25 manager-type PowerPoint where you got into any details,</p> <p>PAGE 187</p>
<p>1 <b>many landowners. I assisted them in making connections</b></p> <p>2 <b>with the right people within our pipeline right-of-way</b></p> <p>3 <b>team to, you know, get their questions answered and in</b></p> <p>4 <b>some cases facilitated conversations around reroutes,</b></p> <p>5 <b>etcetera. But my engagement with landowners was never</b></p> <p>6 <b>specific to, you know, an attorney or whether they were</b></p> <p>7 <b>represented. It was whoever would come and approach me</b></p> <p>8 <b>and ask for my help, I would help them. And that's what</b></p> <p>9 <b>I did. And some of them, I think, did end up being your</b></p> <p>10 <b>clients. I met, you know, prior to you being their</b></p> <p>11 <b>clients, quite frankly.</b></p> <p>12 <b>But there was no reason to segregate one -- a</b></p> <p>13 <b>landowner based on who -- what attorney represented</b></p> <p>14 <b>them. It was just whoever reached out to me. And my</b></p> <p>15 <b>standard was I'll take a meeting with anybody. And, you</b></p> <p>16 <b>know, I found across the footprint of this project these</b></p> <p>17 <b>are good North Dakota people and they like dealing with</b></p> <p>18 <b>North Dakotans, and I'm a North Dakotan and I try to</b></p> <p>19 <b>help them every chance I got.</b></p> <p>20 <b>Q.</b> Since the Wahpeton hearing a few days ago, have</p> <p>21 you reached out to sit down with any of my clients or</p> <p>22 reached out to me to do that?</p> <p>23 <b>A. I have not.</b></p> <p>24 <b>Q.</b> For the person -- for any setback waivers that</p> <p>25 you were a part of obtaining or you have knowledge of,</p> <p>PAGE 186</p>	<p>1 if you did, specific to North Dakota and dispersion</p> <p>2 modeling, that would not have been shared with any of</p> <p>3 the landowners to whom you received waivers; correct?</p> <p>4 <b>A. Not to my knowledge.</b></p> <p>5 <b>Q.</b> All right. Then on the -- you mentioned about</p> <p>6 -- there was some discussion about the ten-year tax</p> <p>7 incentive, that the county still gets the tax revenue,</p> <p>8 but you understand the State provides the money to the</p> <p>9 county. And would you agree -- to the counties. And</p> <p>10 would you agree that's, therefore, a cost to the citizen</p> <p>11 taxpayers of North Dakota?</p> <p>12 <b>A. I would agree that the State of North Dakota is</b></p> <p>13 <b>reimbursing the county with, you know -- with state</b></p> <p>14 <b>revenues, which are in the form of taxes.</b></p> <p>15 <b>Q.</b> Now, sir, do you or your family own any lands or</p> <p>16 have interest in any land where the CO2 is planned to be</p> <p>17 sequestered or stored?</p> <p>18 MR. GLUDT: Objection. Relevance.</p> <p>19 ALJ HOGAN: I'll allow him to answer.</p> <p>20 <b>A. I do not own any land in the sequestration area.</b></p> <p>21 <b>I'm from Mercer County. My wife is from Mercer County.</b></p> <p>22 <b>We're both fourth generation so we have lots of</b></p> <p>23 <b>relatives in that area. And so my wife's family is from</b></p> <p>24 <b>-- from south of Beulah, which is in the area of the</b></p> <p>25 <b>sequestration. And so my wife's family members or my</b></p> <p>PAGE 188</p>

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<p>1 <b>extended family members do have ownership in the</b></p> <p>2 <b>sequestration areas.</b></p> <p>3 <b>Q.</b> And, sir, in your written testimony, on page 9</p> <p>4 it says that -- well, you were asked a question, what</p> <p>5 has Summit done to address the items on the order</p> <p>6 denying the permit last August? And you said that "We</p> <p>7 reviewed the order and discussed internally how best to</p> <p>8 address the deficiencies identified therein."</p> <p>9 Who -- who was a part of that team that did that</p> <p>10 review? Yourself and who else?</p> <p>11 <b>A. I don't at all recall everybody that was part of</b></p> <p>12 <b>that without going back to -- but what I recall is that</b></p> <p>13 <b>included Jimmy Powell and Erik Schovanec, members of our</b></p> <p>14 <b>environmental permitting team, safety team. It would</b></p> <p>15 <b>just be the project -- I would describe it as the</b></p> <p>16 <b>project leadership team that was reviewing and deciding</b></p> <p>17 <b>next steps.</b></p> <p>18 <b>Q.</b> All right. Thank you.</p> <p>19 MR. JORDE: I don't have anything further.</p> <p>20 ALJ HOGAN: Mr. Pelham, any questions?</p> <p>21 MR. PELHAM: No questions.</p> <p>22 ALJ HOGAN: Commissioner Christmann.</p> <p>23 COMMISSIONER CHRISTMANN: I do not.</p> <p>24 ALJ HOGAN: Commissioner Haugen-Hoffart.</p> <p>25 COMMISSIONER HAUGEN-HOFFART: Yes. This morning</p> <p>PAGE 189</p>	<p>1 were meeting with Roughrider Electric to determine</p> <p>2 electric loads and electric supply and working directly</p> <p>3 with Roughrider Electric.</p> <p>4 COMMISSIONER HAUGEN-HOFFART: Regarding the</p> <p>5 sequestration.</p> <p>6 THE WITNESS: Yeah.</p> <p>7 COMMISSIONER HAUGEN-HOFFART: Then on page 7,</p> <p>8 that table I'm going to refer you to --</p> <p>9 THE WITNESS: Yes.</p> <p>10 COMMISSIONER HAUGEN-HOFFART: -- who prepared</p> <p>11 that table?</p> <p>12 THE WITNESS: I believe it was -- I believe it</p> <p>13 was Dave. I'm trying to remember Dave's last name but</p> <p>14 -- it was Dan Wood and Dave from Jimmy's team that lead</p> <p>15 the electrical side of the pipeline. So they deal with</p> <p>16 pump sizings and electric loads and all of that.</p> <p>17 COMMISSIONER HAUGEN-HOFFART: Okay. So it's</p> <p>18 fair to say that a lot of -- some of the information in</p> <p>19 your testimony is given to you by members or employees</p> <p>20 of Summit Carbon Solutions so you can --</p> <p>21 THE WITNESS: Yeah. This table specifically was</p> <p>22 given to me by others.</p> <p>23 COMMISSIONER HAUGEN-HOFFART: Okay. Just one</p> <p>24 more follow-up question. There was a question asked of</p> <p>25 you since Wahpeton's meeting, which was just on Friday,</p> <p>PAGE 191</p>
<p>1 you testified "not part of the discussion with the</p> <p>2 electrical suppliers"; is that correct?</p> <p>3 THE WITNESS: That's correct.</p> <p>4 COMMISSIONER HAUGEN-HOFFART: So I go to your</p> <p>5 testimony, on page 6, your question is "How does this</p> <p>6 project benefit North Dakota's energy industry?" And</p> <p>7 you referred to, in your response, "we." Who's "we"?</p> <p>8 I'll go to, like, line 16.</p> <p>9 THE WITNESS: "We" is the company, Summit</p> <p>10 Carbon.</p> <p>11 COMMISSIONER HAUGEN-HOFFART: Okay. So you're</p> <p>12 not included -- you're not included in the "we"?</p> <p>13 THE WITNESS: No. I am included in the "we."</p> <p>14 COMMISSIONER HAUGEN-HOFFART: Okay.</p> <p>15 THE WITNESS: We also have three sequestration</p> <p>16 injection wells, "we" being Summit Carbon.</p> <p>17 COMMISSIONER HAUGEN-HOFFART: Okay. So at that</p> <p>18 point in time you're not part of any discussion with the</p> <p>19 electrical suppliers; correct?</p> <p>20 THE WITNESS: No. I was part of the discussion</p> <p>21 with electrical suppliers related to the sequestration</p> <p>22 facilities.</p> <p>23 COMMISSIONER HAUGEN-HOFFART: Okay.</p> <p>24 THE WITNESS: So my team members -- not me</p> <p>25 specifically, but my team was -- under my leadership,</p> <p>PAGE 190</p>	<p>1 we had a weekend and a holiday, you haven't had any</p> <p>2 communication with any of the landowners that testified;</p> <p>3 correct?</p> <p>4 THE WITNESS: I have not.</p> <p>5 COMMISSIONER HAUGEN-HOFFART: Okay. That makes</p> <p>6 sense. Everybody deserves a weekend and a holiday.</p> <p>7 Is Summit willing -- and let me preface this.</p> <p>8 In Wahpeton we talked about landowners and measures</p> <p>9 taken to address the need of landowners. So my question</p> <p>10 is, is Summit willing to take measures to address all</p> <p>11 landowners' needs who testified during hearings?</p> <p>12 THE WITNESS: We're --</p> <p>13 COMMISSIONER HAUGEN-HOFFART: To -- to have</p> <p>14 communication and -- and work with them on --</p> <p>15 landowners?</p> <p>16 THE WITNESS: You know, I would say we're -- or</p> <p>17 I can say affirmatively, yes, we're absolutely willing</p> <p>18 to meet with landowners and to work with them. You</p> <p>19 know, whether or not we can address all of their</p> <p>20 concerns is another question. But absolutely we would</p> <p>21 attempt to do that and welcome the opportunity to meet</p> <p>22 with them to -- to accomplish that.</p> <p>23 COMMISSIONER HAUGEN-HOFFART: Okay. I have no</p> <p>24 further questions. Thank you.</p> <p>25 THE WITNESS: Yeah.</p> <p>PAGE 192</p>



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<p>1 ALJ HOGAN: Mr. Dawson, any questions?</p> <p>2 SUBSTITUTE DECISIONMAKER DAWSON: No.</p> <p>3 ALJ HOGAN: Commissioner Christmann.</p> <p>4 COMMISSIONER CHRISTMANN: Sorry, Judge, but I</p> <p>5 got so bogged down in all the safety discussion, I'm</p> <p>6 glad Commissioner Haugen-Hoffart asked the question</p> <p>7 about the electrical supply because I did have one in</p> <p>8 that regard.</p> <p>9 I was surprised on -- at Wahpeton and again so</p> <p>10 much today that -- the level of alarm about that we're</p> <p>11 just no longer able to supply electricity for new loads</p> <p>12 in North Dakota. I believe from April you mentioned</p> <p>13 Roughrider Electric, Capital Electric, and maybe it was</p> <p>14 Dakota Valley Electric, the third one where there would</p> <p>15 be pump stations. Regardless, two, three. Did any of</p> <p>16 those --</p> <p>17 THE WITNESS: That's correct.</p> <p>18 COMMISSIONER CHRISTMANN: -- cooperatives</p> <p>19 express any concern about their ability to serve the</p> <p>20 load?</p> <p>21 THE WITNESS: No, not to my -- not to my</p> <p>22 knowledge. Actually, when it was early in the project,</p> <p>23 they were reaching out to me because of my North Dakota</p> <p>24 presence, saying, "Hey, can you site the pump stations</p> <p>25 in my service territory?" They were competing for it.</p> <p>PAGE 193</p>	<p>1 to joining Summit, most of the previous decade trying to</p> <p>2 figure out how do we stay competitive in a over-supplied</p> <p>3 market.</p> <p>4 COMMISSIONER CHRISTMANN: Okay. No other</p> <p>5 questions. Thank you.</p> <p>6 ALJ HOGAN: Mr. Gludt, any redirect?</p> <p>7 MR. GLUDT: No, Your Honor.</p> <p>8 ALJ HOGAN: All right. Well, thank you,</p> <p>9 Mr. Boeshans.</p> <p>10 THE WITNESS: You're welcome.</p> <p>11 ALJ HOGAN: I think we'll take our afternoon</p> <p>12 break now so that we don't have to stop in the middle of</p> <p>13 Mr. Powell's testimony. So why don't we take a short</p> <p>14 break until 3:00.</p> <p>15 And then if you want to get Mr. Powell ready to</p> <p>16 go, we'll start with him at 3:00.</p> <p>17 (Recess)</p> <p>18 ALJ HOGAN: All right. And I see we have</p> <p>19 Mr. Powell.</p> <p>20 Mr. Powell, I'll have you start by stating your</p> <p>21 full name for the record.</p> <p>22 JAMES POWELL: Good afternoon. James Powell.</p> <p>23 ALJ HOGAN: And, Mr. Powell, I don't know if</p> <p>24 you've been part of our hearing up to this point, but</p> <p>25 have you heard me go through the penalties for perjury</p> <p>PAGE 195</p>
<p>1 Because, generally speaking, new load is a good thing</p> <p>2 for an electric utility or a cooperative.</p> <p>3 You know, in our case, as is outlined in what we</p> <p>4 submitted here, you know, there's system upgrades that</p> <p>5 are required to serve this load, which the company would</p> <p>6 pay for, and makes the system more resilient, plus you</p> <p>7 get the additional benefit -- you -- I say the</p> <p>8 cooperative gets the additional benefit of serving that</p> <p>9 additional load so they're going to have a higher volume</p> <p>10 of sales over, you know, the same amount of fixed costs.</p> <p>11 And so I'm presuming that's why they're reaching out to</p> <p>12 me and saying, "Hey, how about putting your -- your pump</p> <p>13 stations in our service territory versus across the</p> <p>14 border." And so that's been my experience.</p> <p>15 And, you know, kind of beyond that, as you know,</p> <p>16 I led the Lignite Council for many years and was part of</p> <p>17 the lignite industry. And our biggest challenge is we</p> <p>18 had more generation than we had demand for that</p> <p>19 generation and so we were curtailing our power</p> <p>20 generation. And our coal plants were running at less</p> <p>21 than full capacity because there wasn't enough market or</p> <p>22 enough market demand.</p> <p>23 And so I've been equally surprised by the level</p> <p>24 of concern and attention to we don't have enough power</p> <p>25 to serve the load when I spent the last or most -- prior</p> <p>PAGE 194</p>	<p>1 today?</p> <p>2 JAMES POWELL: I have.</p> <p>3 ALJ HOGAN: And do you understand what perjury</p> <p>4 is?</p> <p>5 JAMES POWELL: I do.</p> <p>6 ALJ HOGAN: And being advised of the potential</p> <p>7 penalties for perjury, do you promise to tell the truth</p> <p>8 in this case today?</p> <p>9 JAMES POWELL: I do.</p> <p>10 ALJ HOGAN: All right. Thank you.</p> <p>11 And who's going first? Mr. Bakke?</p> <p>12 MR. JORDE: I will, Your Honor.</p> <p>13 ALJ HOGAN: Okay. Go ahead.</p> <p>14 MR. JORDE: All right. Thanks.</p> <p>15 <b><u>JAMES POWELL</u></b></p> <p>16 being first duly sworn, was examined and testified as</p> <p>17 follows:</p> <p>18 CROSS EXAMINATION</p> <p>19 BY MR. JORDE:</p> <p>20 Q. I see you're there with Mr. Leonard. Are you in</p> <p>21 Des Moines today?</p> <p>22 A. I am.</p> <p>23 Q. All right. Is there anyone else present in the</p> <p>24 room with you, sir?</p> <p>25 A. There is. Jon Schmidt is in the room as well.</p> <p>PAGE 196</p>

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<p>1 Q. Okay. The same -- the same Jon Schmidt that</p> <p>2 provided prefiled written testimony in this matter;</p> <p>3 correct?</p> <p>4 A. Correct.</p> <p>5 MR. JORDE: And I don't know, Brant, if you have</p> <p>6 access to our exhibits there.</p> <p>7 Q. (BY MR. JORDE) But I was going to ask you,</p> <p>8 sir, to pull up exhibit -- Landowner Exhibit 34, if you</p> <p>9 can. It's the organizational chart that you submitted</p> <p>10 to us in the Iowa proceedings. And just let me know</p> <p>11 when you have that in front of you, please.</p> <p>12 And, actually, while Mr. Leonard is searching</p> <p>13 for that, I -- my question is fairly simple. In the</p> <p>14 North Dakota proceedings, you submitted a new</p> <p>15 organizational chart, and in the North Dakota</p> <p>16 proceedings, in discovery, there's a new entity added</p> <p>17 under the parent tree from Summit Carbon Solutions and</p> <p>18 that's SCS Farm Carbon LLC. The question, sir, is does</p> <p>19 that entity -- what is the role of that entity in North</p> <p>20 Dakota, if any?</p> <p>21 A. Mr. Jorde, I'd have to see the org chart because</p> <p>22 the name does not ring a bell.</p> <p>23 Q. Okay. And I agree. That's why I had the</p> <p>24 question. So I'll wait for Mr. Leonard to pull up 34</p> <p>25 and 35, please.</p> <p>PAGE 197</p>	<p>1 I was referencing, is it's evolved based on questions</p> <p>2 from emergency managers and first responders. So the</p> <p>3 first most recent presentations include toxicity tables,</p> <p>4 the API guidance on tactical response for CO2 that was</p> <p>5 published since we began these -- these conversations</p> <p>6 with the emergency managers, etcetera. So it's as new</p> <p>7 information becomes available or we're responding to</p> <p>8 inquiries in meetings, we update the slide deck</p> <p>9 accordingly.</p> <p>10 Q. All right. And I appreciate that. And I'm</p> <p>11 trying to just get specific. Of the types of</p> <p>12 information you just listed off, have those -- all of</p> <p>13 those that you've listed off, sir, been provided to the</p> <p>14 North Dakota PSC?</p> <p>15 A. I -- I think what we've covered has been. So</p> <p>16 the API document, the CTEH study, and a slide deck. I</p> <p>17 may be leaving one out. That's from memory.</p> <p>18 Q. All right. And then you talk about Texas A&amp;M</p> <p>19 University, a new program. Did Summit provide Texas A&amp;M</p> <p>20 its dispersion modeling and any type of risk analysis</p> <p>21 for the benefits of that Texas A&amp;M program?</p> <p>22 A. No.</p> <p>23 Q. All right. Do you have a copy of the program or</p> <p>24 lesson plan? I understand it's relatively new.</p> <p>25 A. I do not. The program was developed -- it was a</p> <p>PAGE 199</p>
<p>1 MR. LEONARD: Brian, I'm looking at prefiled</p> <p>2 hearing exhibits Part 1 and Part 2. They don't go up to</p> <p>3 34 and 35. Is there another place I'd find those?</p> <p>4 MR. JORDE: Well, I would -- let's see. I guess</p> <p>5 I'd ask a question to Roseanne there, if that email went</p> <p>6 out, Roseanne, to all the parties. I'm not sure if</p> <p>7 Mr. Leonard specifically got the email with the</p> <p>8 exhibits.</p> <p>9 MR. DUBLINSKE: I have that pulled up. I can</p> <p>10 forward that to Mr. Leonard right now.</p> <p>11 MR. JORDE: I'd appreciate that, Bret. And then</p> <p>12 maybe if you could forward all of them and that will go</p> <p>13 a little faster.</p> <p>14 Q. (BY MR. JORDE) While we're doing that, sir,</p> <p>15 let me just get in a few other questions to save time</p> <p>16 here.</p> <p>17 When you gave your live testimony on April 22nd,</p> <p>18 you had stated that you updated dispersion modeling and</p> <p>19 then met with the emergency and first responders. My</p> <p>20 question is the -- is it the updated dispersion modeling</p> <p>21 you referenced since the late fall of 2021 that was</p> <p>22 provided to the PSC or does the PSC have an older</p> <p>23 version of your dispersion modeling?</p> <p>24 A. Our dispersion model is updated on a regular</p> <p>25 basis, but what was shared with emergency managers, what</p> <p>PAGE 198</p>	<p>1 joint effort between ExxonMobil and Texas A&amp;M, but</p> <p>2 Mr. Daum and Mr. Dillon have both attended that training</p> <p>3 and have been part of that conversation.</p> <p>4 Q. And you testified that you routed off landowners</p> <p>5 following the August 2023 denial, and the PSC order</p> <p>6 specifically named, for instance, Dotzenrod, Bernhards,</p> <p>7 of my clients, but you -- you still are targeting</p> <p>8 approximately 14 or 15 of my clients; is that correct?</p> <p>9 A. Well, I'm not sure of the term "targeting," but</p> <p>10 we still may cross a number of your clients, Mr. Jorde,</p> <p>11 but I don't remember the number.</p> <p>12 Q. All right. And in order to reroute exclusively</p> <p>13 off the multiple Bernhardt properties and onto other</p> <p>14 non-Bernhardt-owned land, did you speak with the</p> <p>15 Bernhards to do that?</p> <p>16 A. Bruce -- I'm sorry, Mr. Bernhardt, I believe</p> <p>17 it's Kevin Bernhardt, the gentleman whose property we</p> <p>18 originally routed on? Are you talking about -- are you</p> <p>19 talking about --</p> <p>20 Q. Yeah.</p> <p>21 A. -- Mr. Bernhardt that we routed off of?</p> <p>22 Q. Routed off of.</p> <p>23 A. Because we routed onto -- because when we routed</p> <p>24 off of Mr. Bernhardt, we also routed onto other</p> <p>25 Bernhards. I'm not sure if they're related, but they</p> <p>PAGE 200</p>

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<p>1 were receptive.</p> <p>2 Q. Okay.</p> <p>3 A. We did not get permission or talk to Mr.</p> <p>4 Bernhardt that we routed off of about routing onto</p> <p>5 adjacent property owners.</p> <p>6 Q. Okay. Correct.</p> <p>7 And so for my clients who for well over a year</p> <p>8 now who have expressed numerous issues, problems,</p> <p>9 concerns, and who would like to see a reroute off their</p> <p>10 property, you wouldn't need to sit down and talk to them</p> <p>11 in order to look at potential reroutes off their</p> <p>12 property, would you?</p> <p>13 A. Well, as I think Mr. Boeshans testified to, we</p> <p>14 welcomed an opportunity to talk with your clients and</p> <p>15 others. Been some discussion between your -- yourself</p> <p>16 and Mr. Bender about providing survey access, etcetera,</p> <p>17 to see what we could do to accommodate your landowners.</p> <p>18 Q. Okay. And I think the question there was that</p> <p>19 you wouldn't need to discuss anything with landowners if</p> <p>20 you are routing off of them. Those discussions would</p> <p>21 have to be held with the adjacent or nearby landowners;</p> <p>22 correct?</p> <p>23 A. That's correct.</p> <p>24 Q. And you made the statement that your</p> <p>25 right-of-way team feels like they can obtain easements</p> <p>PAGE 201</p>	<p>1 responders and emergency managers that we will provide</p> <p>2 gas detectors, and nobody has requested any equipment or</p> <p>3 resources beyond that.</p> <p>4 Q. And I have it that you testified that there were</p> <p>5 requests about documentation. What documentation was</p> <p>6 requested?</p> <p>7 A. I'm not sure what you're referring to.</p> <p>8 Q. These are in regards to the emergency manager</p> <p>9 meetings. You had testified that Mr. Dillon has a list</p> <p>10 from some of the emergency response managers, and then</p> <p>11 you said there were requests about documentation. And I</p> <p>12 just wanted to know if you know what documentation</p> <p>13 requests had been made relative to emergency management</p> <p>14 personnel?</p> <p>15 A. The only one that I remember is Ms. Senger --</p> <p>16 well, I had that -- her last name correct, the emergency</p> <p>17 manager for, I believe, both Burleigh and Emmons, had</p> <p>18 requested from Dave Daum a copy of our emergency</p> <p>19 response plan and, I believe, the presentation. And</p> <p>20 Mr. Daum immediately responded by providing -- I believe</p> <p>21 he provided a draft emergency response. I'd have to</p> <p>22 verify. But, of course, we told Ms. Senger that the</p> <p>23 presentation was confidential.</p> <p>24 Q. And to clarify, the presentation, sir, is that</p> <p>25 PowerPoint presentation we've spent some time on?</p> <p>PAGE 203</p>
<p>1 voluntarily. Who is on your right-of-way team?</p> <p>2 A. Well, the right-of-way team in North Dakota has</p> <p>3 obtained agreements with about 400 North Dakota</p> <p>4 landowners up to this point to get voluntary easements</p> <p>5 executed. And Mr. Boeshans mentioned it earlier, but on</p> <p>6 the northern reroute, it's some of his team that's North</p> <p>7 Dakota-based. And then the right-of-way team that's</p> <p>8 handling the rest of North Dakota are also North</p> <p>9 Dakotans. That's led by a lady named Julie DiMeo, who</p> <p>10 is a North Dakota native.</p> <p>11 Q. Okay. And I just -- I don't particularly care</p> <p>12 where they're from, but I just wanted to know if -- who</p> <p>13 the right-of-way team is in North Dakota. So it's led</p> <p>14 by Ms. DiMeo. Is Mr. Rorie, Micah Rorie, still</p> <p>15 involved? Is he part of the right-of-way team?</p> <p>16 A. Well, Mr. Rorie, he leads the overall land group</p> <p>17 so that's for the entire project. Ms. DiMeo reports up</p> <p>18 to Micah Rorie.</p> <p>19 Q. All right. You stated that Rod Dillon maintains</p> <p>20 a list of requests for equipment from first responders</p> <p>21 and other -- other folks or entities. Is that a list</p> <p>22 that's been filed with the PSC?</p> <p>23 A. It has not. In North Dakota, per my</p> <p>24 conversations with Mr. Dillon, that there have not been</p> <p>25 any requests for equipment. We have told first</p> <p>PAGE 202</p>	<p>1 A. That's correct.</p> <p>2 Q. You were asked about conditional use permits and</p> <p>3 said none have applied for. And is that because you</p> <p>4 don't have specific locations on where you might need</p> <p>5 the conditional use permits for the pump stations or why</p> <p>6 haven't you applied for them?</p> <p>7 A. Well, of the four pump stations, only Burleigh</p> <p>8 and Morton counties require conditional use permits.</p> <p>9 And there is a township in --</p> <p>10 Q. Logan --</p> <p>11 A. -- I believe it's in Richland -- yeah, Logan</p> <p>12 Township that requires a conditional use permit. The</p> <p>13 township will not -- they will not accept an application</p> <p>14 until we have a permit from the PSC. And the other two</p> <p>15 counties we have not submitted yet because, yes, until</p> <p>16 we get more mature in especially Burleigh County with</p> <p>17 the pipeline route, believe it or not, the hydraulics</p> <p>18 are so sensitive that the pump station could move a</p> <p>19 parcel or two or three, and we want to make sure that</p> <p>20 we've got it exactly right before we approach a</p> <p>21 landowner about an easement for -- or a lease for the</p> <p>22 pump station.</p> <p>23 Q. And in terms of the pump stations moving, are</p> <p>24 you aware of any area where the pump station could</p> <p>25 potentially move from one county to another such that</p> <p>PAGE 204</p>

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<p>1 it's already close to a county line?</p> <p>2 <b>A. No.</b></p> <p>3 <b>Q.</b> You were asked what percentage of landowners</p> <p>4 have you received permission to survey on where you</p> <p>5 still need survey access. You had told Mr. Schock that</p> <p>6 you didn't know that answer. Have you come to learn of</p> <p>7 that answer?</p> <p>8 <b>A. We're about 94 percent surveyed along the route.</b></p> <p>9 <b>And it's my understanding that there are about 15</b></p> <p>10 <b>landowners that have denied survey access at this point.</b></p> <p>11 <b>Q.</b> You'd stated that you haven't done all the</p> <p>12 surveys but, quote, "We know where the cultural risks</p> <p>13 are." Is that a true statement?</p> <p>14 <b>A. I think it's a relatively accurate statement.</b></p> <p>15 <b>Most of the cultural risk are on the west side of our</b></p> <p>16 <b>system versus the east side of the system. But that's</b></p> <p>17 <b>cultural. There are also paleontological and</b></p> <p>18 <b>architectural. So I think it's a generally correct</b></p> <p>19 <b>statement.</b></p> <p>20 <b>Q.</b> You were asked some questions relative, I think,</p> <p>21 to your statement that SCS has not filed eminent domain</p> <p>22 suits on any North Dakota landowner, and your answer was</p> <p>23 that there's been a limited -- or then you moved to a</p> <p>24 survey question and said there's a limited number of</p> <p>25 instances where state law has been invoked. And does</p> <p>PAGE 205</p>	<p>1 companies such as Summit Carbon Solutions from sharing</p> <p>2 plume modeling that they may have conducted, that that's</p> <p>3 a company-based decision; correct?</p> <p>4 MR. DUBLINSKE: Objection, Your Honor. Calls</p> <p>5 for a legal conclusion.</p> <p>6 ALJ HOGAN: Will you repeat the question?</p> <p>7 MR. JORDE: Yes. Just first for foundational</p> <p>8 purposes, this gentleman has testified many times</p> <p>9 related to PHMSA, and in his prefiled testimony he</p> <p>10 addresses PHMSA and talks about different items related</p> <p>11 to PHMSA. So the specific question is does he agree</p> <p>12 that PHMSA does not instruct companies on what they can</p> <p>13 and cannot share with the public, and if a company such</p> <p>14 as Summit wanted to share CO2 plume modeling, they could</p> <p>15 do so.</p> <p>16 MR. DUBLINSKE: And the objection was calls for</p> <p>17 a legal conclusion.</p> <p>18 ALJ HOGAN: I agree but I'll -- I agree it's</p> <p>19 ultimately a legal conclusion, but I'll allow Mr. Powell</p> <p>20 to testify what his understanding of that requirement</p> <p>21 is.</p> <p>22 <b>A. In my experience, that is sensitive security</b></p> <p>23 <b>information and it is not shared other than in</b></p> <p>24 <b>confidentiality.</b></p> <p>25 <b>Q.</b> (BY MR. JORDE) And I appreciate that response,</p> <p>PAGE 207</p>
<p>1 that mean where Summit has sued landowners for survey</p> <p>2 access?</p> <p>3 <b>A. Correct.</b></p> <p>4 <b>Q.</b> All right. Now maybe if Mr. Leonard is</p> <p>5 available with those exhibits, if I could go back to</p> <p>6 Exhibit 34, sir.</p> <p>7 <b>A. I have it.</b></p> <p>8 <b>Q.</b> Okay. Very good. And I'll just represent</p> <p>9 that's what was already in evidence in Iowa of your org</p> <p>10 chart at that time in July of 2023. And then if you</p> <p>11 want to toggle over to Exhibit 35, you'll -- you'll</p> <p>12 notice on the right-hand side there's a new entity, SCS</p> <p>13 Farm Carbon LLC. And I'd like you to tell me if that</p> <p>14 has any function in North Dakota or with your proposed</p> <p>15 North Dakota operations.</p> <p>16 <b>A. I can't tell you, Mr. Jorde.</b></p> <p>17 <b>Q.</b> All right.</p> <p>18 <b>A. I mean, I don't know. I don't know. Not that I</b></p> <p>19 <b>can't tell you. I don't know.</b></p> <p>20 <b>Q.</b> All right. And you wouldn't know why that</p> <p>21 structure was changed from your previous corporate</p> <p>22 structure, would you?</p> <p>23 <b>A. I would not.</b></p> <p>24 <b>Q.</b> Would you agree that PHMSA does not have a</p> <p>25 restriction or does not have a rule that prohibits</p> <p>PAGE 206</p>	<p>1 but is that another way of saying that that's a company</p> <p>2 decision and you're not aware of any federal or PHMSA</p> <p>3 requirements saying or preventing Summit from sharing</p> <p>4 your plume modeling; correct?</p> <p>5 MR. DUBLINSKE: Same objection.</p> <p>6 ALJ HOGAN: And, again, I agree that it's a</p> <p>7 legal conclusion, but I'll allow Mr. Powell to testify</p> <p>8 what his understanding is.</p> <p>9 <b>A. I -- I don't know whether or not PHMSA would</b></p> <p>10 <b>prevent someone from sharing that information, but I do</b></p> <p>11 <b>know that it's -- it's -- it's defined as sensitive</b></p> <p>12 <b>security information and, in some cases, as someone</b></p> <p>13 <b>mentioned earlier today, it's -- it's not open to FOIA</b></p> <p>14 <b>requests and that it's -- in some cases you have to have</b></p> <p>15 <b>permission from the TSA to share information.</b></p> <p>16 <b>Q.</b> (BY MR. JORDE) All right. If I could have</p> <p>17 Mr. Leonard pull up Landowner Exhibit 32, please.</p> <p>18 And if you can just to yourself, sir, just look</p> <p>19 at that and read the first two sentences, not out loud,</p> <p>20 just to yourself, and tell me when you're done.</p> <p>21 (Pause)</p> <p>22 <b>A. Okay.</b></p> <p>23 <b>Q.</b> All right. So would you agree with me that it</p> <p>24 is a company-based decision relative to sharing plume</p> <p>25 modeling?</p> <p>PAGE 208</p>

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<p>1 MR. DUBLINSKE: Same objection, Your Honor.</p> <p>2 Again, this -- the fact that he's asking the witness to</p> <p>3 read from a third-party communication doesn't change the</p> <p>4 fact that it's ultimately a legal conclusion and, in</p> <p>5 fact, if you read beyond those first two sentences, it's</p> <p>6 clear this is a little more complicated. That same</p> <p>7 communication notes that this is not subject to FOIA,</p> <p>8 which certainly tells you something about the</p> <p>9 confidentiality protections of the document. This is a</p> <p>10 complicated area that's been a matter of dispute, which</p> <p>11 is why we probably shouldn't have non-lawyers opining</p> <p>12 about what's ultimately a legal conclusion.</p> <p>13 ALJ HOGAN: I agree. I'm going to sustain the</p> <p>14 objection.</p> <p>15 MR. JORDE: Okay. Well, I'm going to offer</p> <p>16 Exhibit 32.</p> <p>17 ALJ HOGAN: Any objection to Landowner</p> <p>18 Exhibit 32?</p> <p>19 MR. DUBLINSKE: No, Your Honor.</p> <p>20 ALJ HOGAN: Mr. Pelham.</p> <p>21 MR. PELHAM: No objection.</p> <p>22 ALJ HOGAN: All right. Landowner Exhibit 32 is</p> <p>23 received.</p> <p>24 MR. JORDE: And I'm sorry, I forgot to offer 34</p> <p>25 and 35. Those are the organizational charts.</p> <p>PAGE 209</p>	<p>1 MR. PELHAM: No objection.</p> <p>2 ALJ HOGAN: All right. 33 is received.</p> <p>3 MR. JORDE: Thank you.</p> <p>4 Q. (BY MR. JORDE) Now I'd like to ask you a</p> <p>5 little bit about sequestration and the CI scores --</p> <p>6 you've talked about that in the past -- and projections</p> <p>7 of what carbon capture, storage might do and CI</p> <p>8 reduction. And I'd like you to take a look at</p> <p>9 Exhibit 41, sir. And my questions are simply do you</p> <p>10 agree that certain farming practices can have</p> <p>11 significant impacts on reducing carbon intensity scores?</p> <p>12 A. From what I understand, farming practices, like</p> <p>13 cover crops, for example, can have an impact on the CI</p> <p>14 score, but I believe as the COO of Tharaldson may have</p> <p>15 testified to on Friday, that only carbon capture and</p> <p>16 sequestration can reduce that CI score below the</p> <p>17 threshold required to participate in the sustainable</p> <p>18 aviation fuel market.</p> <p>19 Q. And I appreciate that. And -- and that CEO of</p> <p>20 Tharaldson also said that their baseline, I think, was</p> <p>21 like 69 or something, a fair amount higher than your</p> <p>22 standard baseline dry mill ethanol plant CI score.</p> <p>23 Would you agree with that?</p> <p>24 A. I'm not an expert on where the CI scores, where</p> <p>25 their baselines are for the 57 plants that we partnered</p> <p>PAGE 211</p>
<p>1 ALJ HOGAN: Any objection to 34 or 35,</p> <p>2 Mr. Dublinske?</p> <p>3 MR. DUBLINSKE: I think relevance is</p> <p>4 questionable, but no objection.</p> <p>5 ALJ HOGAN: All right. Mr. Pelham.</p> <p>6 MR. PELHAM: No objection.</p> <p>7 ALJ HOGAN: All right. 34 and 35 are received.</p> <p>8 Q. (BY MR. JORDE) And then, sir, if we could look</p> <p>9 at Exhibit 33. That's a letter from PHMSA to Mr. Lee</p> <p>10 Blank, dated September 15th, 2023, which would have been</p> <p>11 after the North Dakota decision of last year. Are you</p> <p>12 familiar with that letter?</p> <p>13 A. I am not, but I'm reading it.</p> <p>14 Q. All right. But you're aware that that was a</p> <p>15 letter received by the CEO of Summit, Mr. Lee Blank,</p> <p>16 from PHMSA? You don't dispute that, do you?</p> <p>17 A. It's addressed to him. Correct.</p> <p>18 MR. JORDE: All right. And I can save us a lot</p> <p>19 of time, because I don't think it does any good arguing</p> <p>20 about the meaning of this letter so I'm just going to</p> <p>21 offer this letter into evidence, and if it comes in, I'm</p> <p>22 going to move on from it. So I offer 33.</p> <p>23 ALJ HOGAN: Any objection to 33, Mr. Dublinske?</p> <p>24 MR. DUBLINSKE: No objection.</p> <p>25 ALJ HOGAN: Mr. Pelham.</p> <p>PAGE 210</p>	<p>1 with, but it's my understanding most of them are in that</p> <p>2 65 to 75 range.</p> <p>3 Q. All right.</p> <p>4 MR. JORDE: I would offer Exhibit 41.</p> <p>5 ALJ HOGAN: Any objection to 41?</p> <p>6 MR. DUBLINSKE: No objection.</p> <p>7 ALJ HOGAN: Mr. Pelham.</p> <p>8 MR. PELHAM: No.</p> <p>9 ALJ HOGAN: All right. 41 is received.</p> <p>10 Q. (BY MR. JORDE) Now, sir, you're aware</p> <p>11 certainly of the Navigator pipeline that is now not</p> <p>12 operational and, in fact, Summit has been obtaining in</p> <p>13 various states certain Navigator easements, namely in</p> <p>14 Iowa; is that correct?</p> <p>15 A. I'm aware that the Navigator project has</p> <p>16 disbanded and we have obtained survey permission --</p> <p>17 limited survey permission and easement options.</p> <p>18 Q. And relative to the Navigator pipeline and plume</p> <p>19 analysis that they either decided to make public or were</p> <p>20 forced to make public -- I don't recall -- in various</p> <p>21 states, are you familiar with the findings of their</p> <p>22 plume analysis?</p> <p>23 A. I -- I saw what they published in South Dakota</p> <p>24 and I listened to that hearing and their testimony in</p> <p>25 South Dakota, the South Dakota evidentiary hearings.</p> <p>PAGE 212</p>

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<p>1 Q. All right. And do you recall that in the Iowa</p> <p>2 IUB hearings certain of that information, the public</p> <p>3 information, was offered and received in the IUB hearing</p> <p>4 relative to their plume and dispersion findings?</p> <p>5 A. I believe you introduced that, yes.</p> <p>6 Q. If I could have you take a look at Landowner</p> <p>7 Exhibit 42, and if you look on the bottom right of</p> <p>8 the first page, you might recognize our Iowa exhibit</p> <p>9 sticker. And so, sir, my question to you then is do you</p> <p>10 dispute that an 8-inch diameter pipeline, if there was a</p> <p>11 rupture, a guillotine rupture, that a cloud of CO2 at</p> <p>12 concentration 40,000 parts per million could travel as</p> <p>13 far as 1,855 feet?</p> <p>14 MR. DUBLINSKE: Objection, Your Honor. That is</p> <p>15 a backdoor way of getting behind the protective</p> <p>16 agreement that covers SCS's dispersion.</p> <p>17 MR. JORDE: Your Honor, it's not. I'm asking</p> <p>18 him about the publicly-available findings related to an</p> <p>19 8-inch diameter pipeline. I'm not asking him if that --</p> <p>20 if that is what his analysis says.</p> <p>21 MR. DUBLINSKE: Your Honor, that assumes that</p> <p>22 every 8-inch pipeline is subject to all the same</p> <p>23 conditions and all the same assumptions. If he wants to</p> <p>24 ask whether Mr. Powell has reason to question what</p> <p>25 Navigator's data shows about Navigator's then-proposed</p> <p>PAGE 213</p>	<p>1 a pending motion that we haven't had a chance to resist</p> <p>2 yet. This, again trying to litigate the status of the</p> <p>3 protective order based on what states other than North</p> <p>4 Dakota did, seems both inappropriate legally and not a</p> <p>5 good use of time.</p> <p>6 MR. JORDE: Well, I'm not litigating anything</p> <p>7 and I'm not asking about anything covered by the</p> <p>8 protective order. I'm asking him about</p> <p>9 publicly-available information that I believe is</p> <p>10 relevant to these proceedings.</p> <p>11 MR. DUBLINSKE: And the objection was relevance.</p> <p>12 ALJ HOGAN: Can you explain why it's relevant?</p> <p>13 I mean, this Commission has already granted the</p> <p>14 protective order on that information.</p> <p>15 MR. JORDE: Sure. So the Commission has granted</p> <p>16 the protective order relative to Summit contracted, paid</p> <p>17 for, generated analysis. And I'm not talking about that</p> <p>18 at all. I'm saying I believe it's relevant to get this</p> <p>19 other publicly-available data that's not covered by a</p> <p>20 protective order in front of the PSC to consider when</p> <p>21 they're vetting Summit's data. Otherwise, the PSC has</p> <p>22 no possible way to vet Summit's data as there hasn't</p> <p>23 been cross-examination or development of expert</p> <p>24 witnesses by the parties around Summit's protected data.</p> <p>25 MR. BAKKE: And I'll join in their position.</p> <p>PAGE 215</p>
<p>1 project, I think that's fine, but the generic statement</p> <p>2 is simply a way to get behind the protective agreement</p> <p>3 for Summit's information.</p> <p>4 ALJ HOGAN: Can you rephrase?</p> <p>5 MR. JORDE: I can try.</p> <p>6 Q. (BY MR. JORDE) Sir, are you aware that in</p> <p>7 South Dakota and Illinois, at various carbon dioxide</p> <p>8 hearings, that those agencies have required that the</p> <p>9 plume analysis and even the input and outputs have to be</p> <p>10 made public to the participants in those proceedings?</p> <p>11 A. The only proceeding that I'm aware of where it</p> <p>12 was made public is in Minnesota, in our application,</p> <p>13 where -- where they performed -- Minnesota PUC and their</p> <p>14 sub-entity performed an EIS -- or had an EIS prepared,</p> <p>15 and there was a subject matter expert that actually</p> <p>16 modeled dispersement potential outcomes on that line</p> <p>17 segment and compared it to the information that Summit</p> <p>18 had submitted.</p> <p>19 Q. All right. And you're aware that that Minnesota</p> <p>20 data is publicly available on the Minnesota Public</p> <p>21 Service Commission docket?</p> <p>22 MR. DUBLINSKE: Objection, Your Honor.</p> <p>23 Relevance. Some states have. North Dakota has not.</p> <p>24 Iowa has not made it public. This Commission has made</p> <p>25 its ruling with regard to the protective order. There's</p> <p>PAGE 214</p>	<p>1 And I would also note this is a</p> <p>2 publicly-available document. So any protective order in</p> <p>3 North Dakota never addressed a publicly-available</p> <p>4 document. It wouldn't have any application to a</p> <p>5 document that is publicly available as a matter of law.</p> <p>6 And these plume study models, both on a 4-inch in</p> <p>7 Minnesota for Summit's feeder pipeline and an 8-inch</p> <p>8 pipeline are clearly relevant to a determination as to</p> <p>9 what effect a smaller plume of CO2 that leaked under</p> <p>10 certain scenarios would have on Burleigh County and on</p> <p>11 Bismarck because it's simple logic that, if you have a</p> <p>12 24-inch pipeline that leaks, it's going to be much more</p> <p>13 catastrophic than a 4-inch line or 8-inch line. So I</p> <p>14 think it's highly relevant to the issue being addressed</p> <p>15 as to the welfare and health and safety of the public</p> <p>16 citizens here in Burleigh County and in Bismarck.</p> <p>17 ALJ HOGAN: Mr. Pelham, Commission's position on</p> <p>18 relevance of this topic or this line of questioning?</p> <p>19 MR. PELHAM: Well, it certainly may be relevant</p> <p>20 to the Navigator project. Whether or not it's relevant</p> <p>21 to this project as to this proposed line is, I think,</p> <p>22 the question.</p> <p>23 It certainly is not a protected piece of</p> <p>24 information. It is apparently public. It apparently</p> <p>25 has been made an exhibit in this particular case in</p> <p>PAGE 216</p>

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<p>1 Iowa.</p> <p>2 But as to the relevance, I think the question</p> <p>3 that was asked of the witness is whether or not he</p> <p>4 agrees with it, as to what it found. So the question</p> <p>5 then is, is it relevant for these proceedings? And I'm</p> <p>6 not sure that it is, but I don't have -- I don't have a</p> <p>7 position on the objection.</p> <p>8 ALJ HOGAN: Mr. Jorde, can you restate your</p> <p>9 question?</p> <p>10 MR. JORDE: I've forgotten my question.</p> <p>11 ALJ HOGAN: And I'll tell you what my problem</p> <p>12 is. I think Mr. Powell has said he's seen perhaps these</p> <p>13 maps in 42, Exhibit 42, and he apparently is aware of</p> <p>14 Minnesota, but he's not aware of South Dakota and the</p> <p>15 other states. So I don't know that this is a great</p> <p>16 witness to get this information in.</p> <p>17 MR. JORDE: Well -- and, look, I can easily get</p> <p>18 this in through other witnesses and I'm, frankly, trying</p> <p>19 to save some time here. And I don't have any more</p> <p>20 questions about either Exhibit 42 or 46 so I'm just</p> <p>21 going to -- I'm going to offer Exhibit 42 and Exhibit 46</p> <p>22 and Exhibit 45.</p> <p>23 UNIDENTIFIED SPEAKER: (Inaudible).</p> <p>24 ALJ HOGAN: Okay.</p> <p>25 UNIDENTIFIED SPEAKER: (Inaudible).</p> <p>PAGE 217</p>	<p>1 that time, there were still approximately 201 parcels</p> <p>2 yet to be -- yet to have leases or easements acquired.</p> <p>3 Is that still true today?</p> <p>4 <b>A. From April 22nd, I believe there has been one</b></p> <p>5 <b>or two -- it's generally correct -- one or two other</b></p> <p>6 <b>parcels that agreements have been executed with that</b></p> <p>7 <b>landowner. So it's generally correct.</b></p> <p>8 <b>Q.</b> And the 201 or so parcels, does that represent</p> <p>9 approximately 110 or so landowners?</p> <p>10 <b>A. That is generally correct.</b></p> <p>11 <b>Q.</b> All right. Okay.</p> <p>12 Now, the matter about this corridor, in your</p> <p>13 application you -- reapplication, reconsideration --</p> <p>14 requested a 200-foot-wide corridor which, I believe, was</p> <p>15 a reduction of a hundred foot, but then you're now</p> <p>16 asking for, what is it, a hundred or 150-foot deviation</p> <p>17 outside of that 200 feet? Or can you explain that? I</p> <p>18 was a little confused from your testimony last time.</p> <p>19 <b>A. The original application had a deviation buffer</b></p> <p>20 <b>of 150 feet on either side of the pipeline, which would</b></p> <p>21 <b>be 300 foot. And in the petition for reconsideration,</b></p> <p>22 <b>at least in response to the commissioner's question, we</b></p> <p>23 <b>reduced that to a hundred foot on either side or 200.</b></p> <p>24 <b>Q.</b> Okay. But help me out. If the corridor is</p> <p>25 200 feet and the deviation is a hundred foot, does that</p> <p>PAGE 219</p>
<p>1 ALJ HOGAN: Mr. Dublinske, any objection to 42,</p> <p>2 45, and 46?</p> <p>3 MR. DUBLINSKE: I do not.</p> <p>4 ALJ HOGAN: Mr. Pelham.</p> <p>5 MR. PELHAM: I'm not sure which one is 45 and 46</p> <p>6 so...</p> <p>7 ALJ HOGAN: You're getting 45 and 46. They're</p> <p>8 coming around.</p> <p>9 MR. PELHAM: Is it just one -- oh, here's --</p> <p>10 ALJ HOGAN: There's two.</p> <p>11 MR. PELHAM: Gotcha. Okay.</p> <p>12 MR. BAKKE: 45 is what you've just got handed.</p> <p>13 MR. PELHAM: Thanks.</p> <p>14 I'm not sure if they have any relevance to these</p> <p>15 proceedings, but I don't have an objection.</p> <p>16 ALJ HOGAN: All right. Those exhibits will be</p> <p>17 received and the Commission can give it the relevance it</p> <p>18 determines appropriate, if any.</p> <p>19 Go ahead, Mr. Jorde.</p> <p>20 MR. JORDE: Yep. Appreciate that. And like I</p> <p>21 said, now that those are in, I'm going to spare all of</p> <p>22 us any questions related to that.</p> <p>23 <b>Q.</b> (BY MR. JORDE) Sir, in your prefiled testimony</p> <p>24 of April 22nd, you had a right-of-way progress chart as</p> <p>25 of April 8th, and it looks like, by my math, sir, as of</p> <p>PAGE 218</p>	<p>1 mean you can -- you are seeking to go a hundred foot</p> <p>2 outside of that 200-foot-band if necessary?</p> <p>3 <b>A. No. That's not the intent.</b></p> <p>4 <b>Q.</b> Okay. So if you're asking for a hundred -- and</p> <p>5 I'm sorry, did you say a hundred or 150-foot deviation?</p> <p>6 <b>A. A hundred foot.</b></p> <p>7 <b>Q.</b> A hundred foot. So if you're asking for a</p> <p>8 hundred-foot deviation, where do we measure that</p> <p>9 deviation start point from?</p> <p>10 <b>A. At least from my perspective, it's from the</b></p> <p>11 <b>centerline of the pipeline.</b></p> <p>12 <b>Q.</b> Okay. But if the centerline could be located</p> <p>13 anywhere within the 200 foot, if, let's say, it's on the</p> <p>14 very bottom of that band, then could you go another</p> <p>15 hundred foot outside of that corridor?</p> <p>16 <b>A. At least from my perspective, Mr. Jorde, it's a</b></p> <p>17 <b>200-foot wide corridor. Regardless of where the</b></p> <p>18 <b>pipeline is, it's 200 foot wide. So if it's narrower on</b></p> <p>19 <b>the bottom, it's -- it's wider on the top, but it's</b></p> <p>20 <b>still 200 from boundary to boundary.</b></p> <p>21 <b>Q.</b> All right. Did you make any notes, sir, at any</p> <p>22 of these emergency responder or safety-kind-of-based</p> <p>23 meetings that you attended across North Dakota?</p> <p>24 <b>A. I did not.</b></p> <p>25 <b>Q.</b> And would the sign-in sheets of the attendees --</p> <p>PAGE 220</p>

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<p>1 strike that.</p> <p>2 Would the sign-in sheets be the best evidence of</p> <p>3 who exactly attended each of those meetings?</p> <p>4 <b>A. I would agree with you that that would be -- and</b></p> <p>5 <b>I know we had sign-in sheets for the majority of the</b></p> <p>6 <b>meetings. I'm not sure if we had sign-in sheets for all</b></p> <p>7 <b>of the meetings. But I agree that would be the best</b></p> <p>8 <b>identification of who actually attended.</b></p> <p>9 <b>Q.</b> And so on your April 22nd testimony, on page 8,</p> <p>10 at the bottom, you list out when, the date, where the</p> <p>11 meetings took place, the county, the date, the time they</p> <p>12 started, and then you have, like, 11 attendees. In</p> <p>13 order for you to put that together, were you using the</p> <p>14 sign-in sheets, sir?</p> <p>15 <b>A. The -- our -- our team that presented that</b></p> <p>16 <b>information compiled that. And, yes, I believe that was</b></p> <p>17 <b>the primary source. Whether or not they used -- they</b></p> <p>18 <b>had their own notes or checked the attendee or the</b></p> <p>19 <b>invitation list, I'm not sure how that was recorded,</b></p> <p>20 <b>Mr. Jorde, but they were the source of that information.</b></p> <p>21 <b>Q.</b> And would you, sir, in your role as an executive</p> <p>22 at Summit be willing to publicly file the names of the</p> <p>23 attendees at each one of those meetings you reference on</p> <p>24 page 8 and page 9 of your April 22nd, 2024, prefiled</p> <p>25 testimony?</p> <p>PAGE 221</p>	<p>1 personally at, Mr. Boeshans wasn't at, would -- would</p> <p>2 David Daum or Rich Dillon, who -- who would have been</p> <p>3 the person attending those for Summit, the other</p> <p>4 meetings?</p> <p>5 <b>A. Alex Lange, I believe, attended all of those</b></p> <p>6 <b>meetings. And Dave Daum and/or Rod Dillon typically</b></p> <p>7 <b>attended those meetings. If -- if they did not have a</b></p> <p>8 <b>scheduling conflict, they always try to attend those</b></p> <p>9 <b>meetings.</b></p> <p>10 <b>Q.</b> And forgive me, but I think it's your intent to</p> <p>11 make Mr. Daum and Mr. Dillon available for -- or maybe</p> <p>12 it's rebuttal. Are those gentlemen going to be</p> <p>13 testifying, to the best of your knowledge, Mr. Daum and</p> <p>14 Mr. Dillon?</p> <p>15 <b>A. I'm aware Mr. Daum is scheduled to testify. I'm</b></p> <p>16 <b>not aware that Mr. Dillon is.</b></p> <p>17 <b>Q.</b> And what about Mr. Lange, will we be hearing</p> <p>18 from him?</p> <p>19 <b>A. I believe he's scheduled to testify in rebuttal,</b></p> <p>20 <b>but Mr. Dublinske would -- and Mr. Bender would have a</b></p> <p>21 <b>better idea of who's scheduled when.</b></p> <p>22 <b>Q.</b> That's fine.</p> <p>23 MR. DUBLINSKE: Mr. Jorde, I can confirm that we</p> <p>24 intend to call Lange and Daum as part of the rebuttal</p> <p>25 case and therefore make them available for</p> <p>PAGE 223</p>
<p>1 <b>A. I don't have an issue with that. We filed in</b></p> <p>2 <b>the docket those who were invited so I -- I don't think</b></p> <p>3 <b>there would be any issue with confirming who attended.</b></p> <p>4 <b>Q.</b> And I don't want to go over all of the ground</p> <p>5 with Mr. Boeshans, but it seemed like he was only in</p> <p>6 attendance at five of the Burleigh County-specific</p> <p>7 emergency response type meetings we're discussing. How</p> <p>8 many were you personally in attendance with anywhere in</p> <p>9 North Dakota?</p> <p>10 <b>A. In North Dakota, I was only -- I only attended</b></p> <p>11 <b>the Burleigh County meeting.</b></p> <p>12 <b>Q.</b> Okay. So as Mr. Boeshans walked through that</p> <p>13 and recounted, without getting into the detail, kind of</p> <p>14 the category of information shared, did that comport</p> <p>15 with your recollection of what Summit shared that day?</p> <p>16 <b>A. Generally, yes, general information. And just</b></p> <p>17 <b>for context, as I think I mentioned in April, this is an</b></p> <p>18 <b>iterative process. So we began talking -- the team</b></p> <p>19 <b>began talking with emergency management, first</b></p> <p>20 <b>responders a couple years ago. I personally have met</b></p> <p>21 <b>with first responders in North Dakota outside of those</b></p> <p>22 <b>emergency manager meetings. And that will continue up</b></p> <p>23 <b>until two and a half years from now when the pipeline</b></p> <p>24 <b>is, hopefully, permitted, constructed, and in operation.</b></p> <p>25 <b>Q.</b> And then for, sir, the meetings that you weren't</p> <p>PAGE 222</p>	<p>1 cross-examination.</p> <p>2 MR. JORDE: Thank you.</p> <p>3 <b>Q.</b> (BY MR. JORDE) All right. Believe it or not,</p> <p>4 I'm getting close to being finished.</p> <p>5 On the bottom of page 9, just to kind of put a</p> <p>6 bow on this, you talk about the areas that were covered</p> <p>7 at the meeting, and I'm going to list them off and then</p> <p>8 ask you if those, to your knowledge, those same areas of</p> <p>9 information were shared at all the meetings. That's</p> <p>10 dispersion modeling methodology, generic model outputs,</p> <p>11 the PHMSA requirements, relative toxicity, potential CO2</p> <p>12 release scenarios, shelter-in-place studies, emergency</p> <p>13 response plan guidelines, and discuss specific training</p> <p>14 and equipment needs.</p> <p>15 Is that kind of the consistent checklist of</p> <p>16 information or data that was discussed at these</p> <p>17 meetings?</p> <p>18 <b>A. Yes. And, Mr. Jorde, Alex Lange, who was at</b></p> <p>19 <b>every one of those meetings, can confirm. As I</b></p> <p>20 <b>mentioned earlier, these meetings evolved so this</b></p> <p>21 <b>shelter-in-place study and the toxicity levels -- or</b></p> <p>22 <b>toxicity tables and thresholds, I can't confirm if they</b></p> <p>23 <b>were presented in the first couple of meetings that were</b></p> <p>24 <b>conducted. Mr. Lange can tell you --</b></p> <p>25 <b>Q.</b> And, sir -- I'm sorry. Sir, is it your</p> <p>PAGE 224</p>



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<p>1 understanding that those categories of data that I read</p> <p>2 off, would those have been embedded in or part of a</p> <p>3 PowerPoint or was there a PowerPoint and then maybe</p> <p>4 there was additional handouts relative to those</p> <p>5 categories?</p> <p>6 <b>A. The latter. So I know the API document, the</b></p> <p>7 <b>shelter-in-place document, and, if requested, the draft</b></p> <p>8 <b>emergency response plan, which I believe is already in</b></p> <p>9 <b>the docket, those were available. They were not</b></p> <p>10 <b>embedded in the PowerPoint.</b></p> <p>11 <b>Q.</b> So of those items that I read off on the bottom</p> <p>12 of page 9 of your April 22nd, '24, prefiled testimony,</p> <p>13 so I'm clear, the ones that are -- that you claim</p> <p>14 confidentiality and have been determined to be</p> <p>15 confidential that the PSC has in their possession, does</p> <p>16 that include dispersion modeling methodology, generic</p> <p>17 model outputs, and relative toxicity, and potential CO2</p> <p>18 release scenarios?</p> <p>19 <b>A. It's my understanding the slide deck is</b></p> <p>20 <b>maintained as confidential. The other ancillary</b></p> <p>21 <b>documents have been provided.</b></p> <p>22 <b>Q.</b> All right. And that's probably a better way.</p> <p>23 Would -- rather than me asking, so the auxiliary</p> <p>24 non-confidential documents, of those listed that are</p> <p>25 found on page 9, which of those are the non-confidential</p> <p>PAGE 225</p>	<p>1 <b>non-confidential documents in that slide deck, but</b></p> <p>2 <b>they're standalone.</b></p> <p>3 <b>Q.</b> Okay. Thank you for that clarification.</p> <p>4 So if we're talking about PowerPoint or slide</p> <p>5 deck, that's synonymous? Can we agree on that?</p> <p>6 <b>A. Yes.</b></p> <p>7 <b>Q.</b> And so there might be references to other</p> <p>8 documents in the slide deck, but then you're saying</p> <p>9 there could have been also separate handouts that are</p> <p>10 also confidential in addition to the slide deck; right?</p> <p>11 <b>A. I'm sorry if I'm not being clear, Mr. Jorde.</b></p> <p>12 <b>The only confidential information is the PowerPoint or</b></p> <p>13 <b>slide deck. The other information that was referenced</b></p> <p>14 <b>is not confidential and was either provided or was</b></p> <p>15 <b>indicated would be made available upon request. But the</b></p> <p>16 <b>links where people could find that information was</b></p> <p>17 <b>provided.</b></p> <p>18 <b>Q.</b> But the -- the modeling and the outputs and the</p> <p>19 potential release, that data, that confidential data,</p> <p>20 was included to or referenced in the slide deck; is that</p> <p>21 right?</p> <p>22 <b>A. Generally, yes.</b></p> <p>23 <b>Q.</b> All right. Okay. Good. Because you're not</p> <p>24 saying if someone requested the dispersion modeling</p> <p>25 methodology or the generic model outputs or the</p> <p>PAGE 227</p>
<p>1 documents, in your view?</p> <p>2 <b>A. The only confidential document is the slide deck</b></p> <p>3 <b>which walks through the dispersion methodology and</b></p> <p>4 <b>general output.</b></p> <p>5 <b>Q.</b> Okay. So the relative toxicity and the</p> <p>6 potential CO2 release scenarios, is that -- are the</p> <p>7 potential CO2 release scenarios something that's not</p> <p>8 confidential, in your view?</p> <p>9 <b>A. No. It is confidential.</b></p> <p>10 <b>Q.</b> Okay. All right. And, again, I'm not trying to</p> <p>11 be difficult. I just -- for the record, I have to be</p> <p>12 clear. So the confidential items are the dispersion</p> <p>13 modeling methodology, the generic model outputs, and the</p> <p>14 potential CO2 release scenarios; correct?</p> <p>15 <b>A. I believe that's correct. I don't want to</b></p> <p>16 <b>misspeak, Mr. Jorde, but I know we filed with the PSC</b></p> <p>17 <b>information that was provided to the emergency managers</b></p> <p>18 <b>in those meetings and other attendees. And it's my</b></p> <p>19 <b>recollection only the slide deck was categorized as</b></p> <p>20 <b>confidential. So the other documents that were</b></p> <p>21 <b>submitted to the PSC in the docket, those were not.</b></p> <p>22 <b>Q.</b> But the -- but the slide deck would have been</p> <p>23 the information or the document that contains those</p> <p>24 three categories that are confidential; right?</p> <p>25 <b>A. Well, there are references to those</b></p> <p>PAGE 226</p>	<p>1 potential CO2 release scenarios, you're not saying you</p> <p>2 would produce it, for instance, if I requested that,</p> <p>3 would you?</p> <p>4 <b>A. No. And even in the -- the PowerPoint itself,</b></p> <p>5 <b>there's -- the first couple of slides talk about the</b></p> <p>6 <b>FOIA exemption, talk about the sensitive security</b></p> <p>7 <b>information, defines it, why we consider that, we think</b></p> <p>8 <b>PHMSA considers that security sensitive information.</b></p> <p>9 <b>And so it was very clear that it would not be provided.</b></p> <p>10 <b>Q.</b> You make the statement on -- in your prefiled</p> <p>11 testimony as part of that March 1st, 2024, letter, at</p> <p>12 the bottom of page 3, which is an attachment, that</p> <p>13 "Neither PHMSA nor Congress are currently contemplating</p> <p>14 changes that would affect actual construction of the SCS</p> <p>15 pipeline system."</p> <p>16 And I'm just curious. I mean, you're not in</p> <p>17 touch with Congress on a daily basis, are you, sir? You</p> <p>18 don't know what bills or laws or, you know, potential</p> <p>19 laws might be put out there, do you?</p> <p>20 <b>A. Well, no, I'm not, Mr. Jorde, but I know that</b></p> <p>21 <b>API and LEPA provide us with updates. And I know that</b></p> <p>22 <b>the Office of Management and Budget for the Federal</b></p> <p>23 <b>Government has released a draft of the PIPES Act. And I</b></p> <p>24 <b>believe even Tristan Brown, the director of PHMSA,</b></p> <p>25 <b>testified recently to Congress about what would</b></p> <p>PAGE 228</p>

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<p>1 <b>essentially be in that -- in that bill or what he</b></p> <p>2 <b>believed would be in that bill.</b></p> <p>3 <b>Q.</b> On page 4 of that March 1st letter attachment,</p> <p>4 at the bottom, you say, quote, "Each easement agreement</p> <p>5 includes a clause that indemnifies a landowner from this</p> <p>6 responsibility," end quote. And that's relative to the</p> <p>7 liability insurance discussion.</p> <p>8 Sir, what about the instance where you have to</p> <p>9 condemn or you choose to condemn, how would that term be</p> <p>10 provided to a landowner if there is no written easement</p> <p>11 and you obtain the easement via condemnation?</p> <p>12 <b>A. Well, Mr. Jorde, if we had to go through the</b></p> <p>13 <b>process of condemnation, it's not my intent or anyone</b></p> <p>14 <b>else's intent with Summit to penalize a landowner</b></p> <p>15 <b>because we had to go through condemnation. I would</b></p> <p>16 <b>offer that landowner the same terms and conditions of</b></p> <p>17 <b>any other landowner that signed a voluntary easement.</b></p> <p>18 <b>Q.</b> Would you agree that your liability insurance</p> <p>19 indemnification does not cover your insurer and does not</p> <p>20 prevent your insurer of suing a landowner if you make a</p> <p>21 claim to your insurer?</p> <p>22 <b>A. Could you restate the question, please?</b></p> <p>23 <b>Q.</b> Yep. For instance, you state that Summit --</p> <p>24 let's see here. "Regarding liability insurance --" you</p> <p>25 state "-- there is no need for landowners to secure</p> <p>PAGE 229</p>	<p>1 <b>could be a potential outcome. I'm not aware that that</b></p> <p>2 <b>would apply to a landowner.</b></p> <p>3 <b>Q.</b> What about a tenant? Are the tenants of the</p> <p>4 landowners covered in your indemnification language?</p> <p>5 MR. DUBLINSKE: I'm going to object, Your Honor.</p> <p>6 I think Mr. Powell has probably answered this to the</p> <p>7 best of his ability, but also the Commission, in the</p> <p>8 August 4th order, made a determination on the liability</p> <p>9 issue and it found that that issue had been resolved for</p> <p>10 purposes of this hearing.</p> <p>11 MR. JORDE: Well, the problem is that they bring</p> <p>12 it back up. And now we have an exhibit, Mr. Powell's</p> <p>13 testimony, where they're attaching documents</p> <p>14 specifically putting this back in play. We didn't do</p> <p>15 it. So that's -- that's my last question, by the way,</p> <p>16 and then I'm done with this so I'd appreciate an answer.</p> <p>17 ALJ HOGAN: I'll allow him to answer.</p> <p>18 <b>A. I'm not aware that that -- that is an option for</b></p> <p>19 <b>the insurer, Mr. Jorde.</b></p> <p>20 <b>Q.</b> (BY MR. JORDE) Okay. And, I'm sorry, my</p> <p>21 question was as to the tenant. Are you aware that your</p> <p>22 language doesn't indemnify the tenant if the tenant is</p> <p>23 alleged to have struck the pipeline or caused damage?</p> <p>24 <b>A. I'm not aware.</b></p> <p>25 <b>Q.</b> All right. Okay.</p> <p>PAGE 231</p>
<p>1 insurance due to the pipeline's presence." And then</p> <p>2 previously you talked about indemnification for certain</p> <p>3 types of releases.</p> <p>4 My question is: would you agree that if you</p> <p>5 make a claim, for instance, lost profits, if there's</p> <p>6 damage to the pipeline, and your insurance company pays</p> <p>7 you out on your policy with your insurer, that your</p> <p>8 insurer could go turn around and sue the landowner to</p> <p>9 collect what they paid you? Are you aware that's a</p> <p>10 possible legal action?</p> <p>11 <b>A. I am not aware that that's a possible legal</b></p> <p>12 <b>conclusion.</b></p> <p>13 <b>Q.</b> Okay. Would you agree that nothing in your</p> <p>14 easement prevents your insurer from exercising their</p> <p>15 subrogation rights or their rights to be made whole if</p> <p>16 they pay out on the insurance policy you have with them?</p> <p>17 <b>A. I'm sorry, can you repeat the question again?</b></p> <p>18 <b>Q.</b> Yes. Are you aware that -- well, do you</p> <p>19 believe, I should say, that your indemnification</p> <p>20 language doesn't prevent your insurer from exercising</p> <p>21 their subrogation rights to collect from any other third</p> <p>22 party if they pay out to you?</p> <p>23 <b>A. I don't know that to be true with the landowner.</b></p> <p>24 <b>If a third party is excavating without permission and</b></p> <p>25 <b>strikes the pipeline, then, yes, I could see where that</b></p> <p>PAGE 230</p>	<p>1 Oh, I do have one other question. In terms of</p> <p>2 raising funds and funding ongoing business activities</p> <p>3 across what is a multi-state project, is it true that</p> <p>4 there was a recent cash call looking for more capital</p> <p>5 contributions to fund your company as an ongoing</p> <p>6 concern?</p> <p>7 <b>A. Well, there was a certain equity raise that was</b></p> <p>8 <b>completed two years ago and -- and there's ongoing cash</b></p> <p>9 <b>calls to -- to draw from that equity pool.</b></p> <p>10 <b>Q.</b> Understood. So you haven't raised --</p> <p>11 <b>A. So we don't get the full -- we don't get the</b></p> <p>12 <b>full capital on day one. That's provided incrementally</b></p> <p>13 <b>as we need it to fund the business.</b></p> <p>14 <b>Q.</b> Understood. So there's a commitment made, which</p> <p>15 doesn't necessarily mean cash deposited, and then you go</p> <p>16 back and say you've committed this capital, we need it,</p> <p>17 and then you try to go collect it? Is that generally</p> <p>18 correct?</p> <p>19 <b>A. Correct.</b></p> <p>20 <b>Q.</b> All right. Okay. Thank you, sir. I don't have</p> <p>21 anything more for you.</p> <p>22 ALJ HOGAN: All right. Before I turn to you,</p> <p>23 Mr. Bakke, I'll just note it's 4:00 so you have an hour.</p> <p>24 And like I mentioned before, I reserved today to</p> <p>25 cross-examine the Summit witnesses and we didn't get to</p> <p>PAGE 232</p>

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<p>1 Mr. Schmidt, so the parties are going to have to</p> <p>2 probably have a discussion when we're done today whether</p> <p>3 or not he's going to be available if -- if there's</p> <p>4 cross-examination requested of him.</p> <p>5 So, again, we have a hard stop at 5:00 so I will</p> <p>6 interrupt you and stop you at 5:00, Mr. Bakke, but you</p> <p>7 can go ahead.</p> <p>8 MR. BAKKE: Okay. Thank you, Your Honor.</p> <p>9 CROSS EXAMINATION</p> <p>10 BY MR. BAKKE:</p> <p>11 Q. First of all, I want to make sure, Mr. Powell,</p> <p>12 you have available to you now the Burleigh County</p> <p>13 exhibits that were provided to your counsel?</p> <p>14 MR. LEONARD: I do have the exhibits in that</p> <p>15 Dropbox link from your assistant this morning,</p> <p>16 Mr. Bakke.</p> <p>17 MR. BAKKE: Okay.</p> <p>18 ALJ HOGAN: And, Mr. Bakke, can you move your</p> <p>19 mic a little closer?</p> <p>20 MR. BAKKE: Sure. Sorry about that.</p> <p>21 ALJ HOGAN: Thank you.</p> <p>22 Q. (BY MR. BAKKE) The first one I'm going to ask</p> <p>23 about is Burleigh County 106 so if you could have that</p> <p>24 available.</p> <p>25 But, first of all, Mr. Powell, you used the term</p> <p>PAGE 233</p>	<p>1 Q. Okay. Were you aware he worked for the North</p> <p>2 Dakota Petroleum Council, which is a non-profit</p> <p>3 corporation?</p> <p>4 A. I am aware of that, yes.</p> <p>5 Q. Okay. And if Mr. Wachter testified that he was</p> <p>6 shown this PowerPoint presentation, that would mean that</p> <p>7 Summit was showing the PowerPoint presentation it's</p> <p>8 claiming confidential to select members of the public;</p> <p>9 correct?</p> <p>10 A. Correct.</p> <p>11 Q. Okay. And Mr. Ness isn't an emergency manager,</p> <p>12 to your knowledge?</p> <p>13 A. Not to my knowledge.</p> <p>14 Q. He's not a first responder?</p> <p>15 A. Again, not to my knowledge.</p> <p>16 Q. And Mr. Wachter is not an emergency manager</p> <p>17 or first responder, to your knowledge?</p> <p>18 A. Correct.</p> <p>19 MR. BAKKE: And, Your Honor, I'll just note for</p> <p>20 the record I'm not asking for a ruling or anything else,</p> <p>21 but once Mr. Wachter testifies about this PowerPoint, I</p> <p>22 think there's been a complete waiver of their position</p> <p>23 that this is confidential if they're selectively showing</p> <p>24 it to members of the public, but I'll move on to my next</p> <p>25 topic.</p> <p>PAGE 235</p>
<p>1 "slide deck" and then you also used the term</p> <p>2 "PowerPoint," and it sounded like you used those to mean</p> <p>3 the same thing; correct?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Were you at the meeting at the Petroleum</p> <p>6 Council that Chad Wachter attended?</p> <p>7 A. I have not been -- I've not attended a meeting</p> <p>8 with the Petroleum Council.</p> <p>9 Q. Or at the Petroleum Council?</p> <p>10 A. No.</p> <p>11 Q. Okay. You weren't present at a meeting with Ron</p> <p>12 Ness and Chad Wachter?</p> <p>13 A. I was not.</p> <p>14 Q. Okay. Were you aware there was such a meeting</p> <p>15 that took place with Summit representatives?</p> <p>16 A. If you're speaking of the meeting with Mr. Ness,</p> <p>17 Mr. Wachter, and Mr. Boeshans, I was aware of that</p> <p>18 meeting. And I believe Mr. Lange was there as well.</p> <p>19 Q. And were you aware that at that meeting</p> <p>20 Mr. Wachter was shown and Mr. Ness was shown this</p> <p>21 PowerPoint presentation?</p> <p>22 A. I'm not aware of that.</p> <p>23 Q. Okay. And Mr. Ness, he's not employed by</p> <p>24 Summit, is he?</p> <p>25 A. He is not.</p> <p>PAGE 234</p>	<p>1 Q. (BY MR. BAKKE) I want to talk to you about the</p> <p>2 evaluation of a southern alternative route around</p> <p>3 Bismarck. And you have Burleigh County 106 in front of</p> <p>4 you?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And is that part of the submission that</p> <p>7 Summit presented to the PSC showing the proposed</p> <p>8 alternative southern route that Summit considered in</p> <p>9 relation to a different route around the city of</p> <p>10 Bismarck after the August 4, 2023, order?</p> <p>11 A. Yes. I can't see the whole document, but it</p> <p>12 looks like it's part of the southern route analysis</p> <p>13 document that was submitted to the PSC. So if it is,</p> <p>14 then, yes, I agree.</p> <p>15 Q. Okay. And it's entitled "Figure 4"; is that</p> <p>16 correct?</p> <p>17 A. That's correct.</p> <p>18 Q. Okay. And it doesn't identify any roads or</p> <p>19 landmarks or section numbers or landowners or any of</p> <p>20 that information; is that correct?</p> <p>21 A. Yes. As you discussed with Mr. Boeshans this</p> <p>22 morning, this was intended to be conceptual in nature.</p> <p>23 Q. Well, this is a different map. What we looked</p> <p>24 at with Mr. Boeshans today was Figure 1 on page 8. This</p> <p>25 is page 12, which is Figure 4.</p> <p>PAGE 236</p>

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<p>1 <b>A. Again, this is intended to be conceptual in</b></p> <p>2 <b>nature and shows that there's a -- there's a distance</b></p> <p>3 <b>between the ETA of the city of Bismarck and the -- and</b></p> <p>4 <b>the proposed route --</b></p> <p>5 <b>Q.</b> Or actually --</p> <p>6 <b>A.</b> -- route.</p> <p>7 <b>Q.</b> Actually, that's -- that answer is not accurate.</p> <p>8 If you look at the map, in Figure 4 on the bottom, you</p> <p>9 can see the red line for the southern alternative route</p> <p>10 appears to intersect with the existing city of Bismarck</p> <p>11 ETA, doesn't it?</p> <p>12 <b>A. Yeah, I didn't -- I wasn't speaking about the</b></p> <p>13 <b>southern route. I was speaking about the northern</b></p> <p>14 <b>route.</b></p> <p>15 <b>Q.</b> Okay. I'm asking about the southern route. Do</p> <p>16 you agree with me that the southern alternative route</p> <p>17 that Summit considered looks like, on the map presented</p> <p>18 to the PSC, was actually an alternative route that would</p> <p>19 have been either on the intersection of the southern ETA</p> <p>20 for the city of Bismarck or inside the ETA?</p> <p>21 <b>A. Yes. It actually intersects the ETA for about</b></p> <p>22 <b>seven-tenths of a mile on the southern side. But as we</b></p> <p>23 <b>also stated in the southern route analysis or the</b></p> <p>24 <b>Bismarck route analysis, that there were many different</b></p> <p>25 <b>factors. In fact, there were dozens of factors that can</b></p> <p>PAGE 237</p>	<p>1 by Summit to talk about this southern alternative route.</p> <p>2 And why is it that Summit considered only a southern</p> <p>3 alternative route that was contiguous with the existing</p> <p>4 city of Bismarck extraterritorial limits?</p> <p>5 <b>A. Because of the constraints on the southern side</b></p> <p>6 <b>of Bismarck with Apple Creek and the ETA and the</b></p> <p>7 <b>floodplains and proximity to residences and businesses,</b></p> <p>8 <b>there was very limited option on where you could route</b></p> <p>9 <b>the pipeline to the south side of Bismarck. And that's</b></p> <p>10 <b>why in the -- in the draft environmental statement</b></p> <p>11 <b>that's been released now for Energy Transfer, in that</b></p> <p>12 <b>the government says the only viable option if Energy</b></p> <p>13 <b>Transfer would have to relocate the pipeline, Dakota</b></p> <p>14 <b>Access, would be on the north side of the city of</b></p> <p>15 <b>Bismarck.</b></p> <p>16 <b>Q.</b> Okay. So what I want to talk about now is what</p> <p>17 Summit did to explore what you've called those</p> <p>18 constraints. So did you contact any landowners who gave</p> <p>19 easements for the DAPL pipeline?</p> <p>20 <b>A. No.</b></p> <p>21 <b>Q.</b> Did you contact anyone from the Standing Rock</p> <p>22 Sioux Tribe?</p> <p>23 <b>A. Well, we heard very clearly in the initial</b></p> <p>24 <b>hearing in Bismarck that if -- from the Standing Rock</b></p> <p>25 <b>Tribe representative, that if the pipeline were routed</b></p> <p>PAGE 239</p>
<p>1 <b>be bucketed really into safety, environmental risk,</b></p> <p>2 <b>cultural risk, tribal impacts, etcetera --</b></p> <p>3 <b>Q.</b> Mr. Powell, I just -- I've got limited time here</p> <p>4 so I just want you to answer my question, not talk</p> <p>5 about --</p> <p>6 <b>A. Yes, it intersects --</b></p> <p>7 <b>Q.</b> -- other topics.</p> <p>8 <b>A. It intersects for seven-tenths of a mile.</b></p> <p>9 <b>That's correct.</b></p> <p>10 <b>Q.</b> That was my only question.</p> <p>11 Okay. So Summit was the one who made the</p> <p>12 determination of what southern alternative route to</p> <p>13 consider in Burleigh County; correct?</p> <p>14 <b>A. Yes.</b></p> <p>15 <b>Q.</b> Okay. Summit didn't contact Burleigh County and</p> <p>16 ask for their input in regards to where an appropriate</p> <p>17 southern route south of Bismarck could or should be, did</p> <p>18 they?</p> <p>19 <b>A. The answer is no.</b></p> <p>20 <b>Q.</b> Okay. And Summit similarly did not contact the</p> <p>21 City of Bismarck and ask for their input where an</p> <p>22 appropriate southern route could or should be south of</p> <p>23 Bismarck; correct?</p> <p>24 <b>A. Correct.</b></p> <p>25 <b>Q.</b> Okay. And so you're the witness that's offered</p> <p>PAGE 238</p>	<p>1 <b>on the southern side, I believe it was -- I'm taking it</b></p> <p>2 <b>out of context and I'm not quoting directly but if the</b></p> <p>3 <b>pipeline --</b></p> <p>4 <b>Q.</b> I'm not asking what the testimony --</p> <p>5 <b>A. -- were moved further south, they would not --</b></p> <p>6 <b>Q.</b> -- was --</p> <p>7 <b>A. -- support it.</b></p> <p>8 <b>Q.</b> I'm asking -- Mr. Powell, I'm asking, after</p> <p>9 August 4, 2023, when Summit was told they needed to</p> <p>10 determine or consider an alternative southern route, did</p> <p>11 Summit contact anyone from the Standing Rock Sioux</p> <p>12 Tribe?</p> <p>13 MR. DUBLINSKE: Your Honor, I think Mr. Powell</p> <p>14 is entitled to finish his answer which was about what</p> <p>15 communications they had had with Standing Rock and it's</p> <p>16 in context of the prior line of questioning about</p> <p>17 constraints. I think there's a good reason why we</p> <p>18 didn't talk to Standing Rock at that time, because we</p> <p>19 already knew the answer, and Mr. Powell should get to</p> <p>20 explain that.</p> <p>21 ALJ HOGAN: I'll agree he didn't initially</p> <p>22 answer the question.</p> <p>23 So, Mr. Powell, if you could answer the specific</p> <p>24 question, and then if you want to explain, I'll allow</p> <p>25 you to do that.</p> <p>PAGE 240</p>

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<p>1 Q. (BY MR. BAKKE) Okay. Did you contact anyone</p> <p>2 from the Standing Rock Sioux Tribe after August 4, 2023,</p> <p>3 when the PSC, as part of its order, said Summit should</p> <p>4 analyze or evaluate a southern route?</p> <p>5 A. As Mr. Dublinske correctly stated, we were very</p> <p>6 aware of the Standing Rock's position about a pipeline</p> <p>7 on the southern side of the city of Bismarck so we did</p> <p>8 not contact them again about that option.</p> <p>9 Q. Okay. Well, that individual who came and</p> <p>10 testified at the PSC hearings also indicated that the</p> <p>11 entire state of North Dakota was tribal land, didn't he?</p> <p>12 A. He did.</p> <p>13 Q. Yeah. So you're already at that point in</p> <p>14 violation of what -- what that individual from the tribe</p> <p>15 has testified to by having the northern crossing;</p> <p>16 correct?</p> <p>17 A. Well, but it's my understanding from -- from</p> <p>18 what I recollect from his testimony in Bismarck that --</p> <p>19 not that he accepted the northern route, but that they</p> <p>20 would not accept a southern route.</p> <p>21 Q. Well, I don't know that that's accurate, but the</p> <p>22 record is what it is.</p> <p>23 Did you contact the Army Corps of Engineers</p> <p>24 about a crossing of the Missouri River south of Bismarck</p> <p>25 after August 4, 2023?</p> <p>PAGE 241</p>	<p>1 Pipeline?</p> <p>2 A. Not that I'm aware of.</p> <p>3 Q. Who was it that drew out or plotted out the</p> <p>4 alternative southern route?</p> <p>5 A. Well, we used the same GIS program and</p> <p>6 methodology that we used for the entire pipeline system,</p> <p>7 which, as we've testified to, is a broad database with</p> <p>8 publicly and -- and available information and some</p> <p>9 information that you have to purchase that has things</p> <p>10 like federal grasslands and other avoidance areas,</p> <p>11 etcetera. And that's what we used to plot a route on</p> <p>12 the southern side of Bismarck.</p> <p>13 Q. And the location of the southern alternative</p> <p>14 route, isn't that actually in an existing floodplain</p> <p>15 area?</p> <p>16 A. The floodplain in that area is about 4.28 miles,</p> <p>17 if I remember correctly, wide. Significantly wider than</p> <p>18 on the north side.</p> <p>19 Q. So in response to my question, did Summit show</p> <p>20 us a southern alternative route that was in the existing</p> <p>21 floodplain?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And were you aware --</p> <p>24 A. Both routes were in the existing floodplain.</p> <p>25 The floodplain on the southern route is just much wider</p> <p>PAGE 243</p>
<p>1 A. We did not because of the constructability</p> <p>2 issues on the southern side of Bismarck, the</p> <p>3 floodplains, the topography --</p> <p>4 Q. I'm just asking whether you contacted them or</p> <p>5 not, not what the reasons were.</p> <p>6 A. We did not.</p> <p>7 Q. Okay. Did you contact anyone from any of the</p> <p>8 township boards in Burleigh County?</p> <p>9 A. Not that I'm aware of.</p> <p>10 Q. Okay. Did you contact anyone from Emmons County</p> <p>11 about a possible southern route?</p> <p>12 A. Again, not that I'm aware of.</p> <p>13 Q. Okay. Did you contact anyone from the North</p> <p>14 Dakota State Water Commission?</p> <p>15 A. Not that I'm aware of.</p> <p>16 Q. Did you contact anyone from the City of Mandan?</p> <p>17 A. Not that I'm aware of.</p> <p>18 Q. And you contacted no landowners whatsoever; is</p> <p>19 that correct?</p> <p>20 A. Again, not that I'm aware of.</p> <p>21 Q. Okay. Did you contact anyone from Energy</p> <p>22 Transfer Partners?</p> <p>23 A. I don't understand why we would contact someone</p> <p>24 from Energy Transfer, but not that I'm aware of.</p> <p>25 Q. Okay. Did you contact anyone from Dakota Access</p> <p>PAGE 242</p>	<p>1 than on the northern route.</p> <p>2 Q. Okay. And in the location where Summit</p> <p>3 considered a southern alternative route, did you know</p> <p>4 going into it that that was a location that would be</p> <p>5 unlikely to be approved?</p> <p>6 A. Well, we knew that going into it -- and I think</p> <p>7 it's been discussed previously, but when we initially</p> <p>8 conceptually laid out the route almost three years ago,</p> <p>9 we were well aware of the issues that Dakota Access or</p> <p>10 Energy Transfer had on the southern side of Bismarck and</p> <p>11 so we were keenly aware of that and tried to -- tried to</p> <p>12 avoid that.</p> <p>13 Q. Well, except for the -- the Dakota Access</p> <p>14 Pipeline did, in fact, get built and is in operation;</p> <p>15 correct?</p> <p>16 A. It is. It's still in litigation.</p> <p>17 Q. Okay. As is this case.</p> <p>18 But in relation to the Dakota Access Pipeline,</p> <p>19 they were able to secure voluntary easements for that</p> <p>20 pipeline; correct?</p> <p>21 A. They had to secure voluntary easements to</p> <p>22 receive a certificate to construct, yes -- or a permit</p> <p>23 to construct.</p> <p>24 Q. In other words, they didn't threaten or pursue</p> <p>25 eminent domain or request permission from any</p> <p>PAGE 244</p>

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<p>1 governmental agency to use eminent domain. They were</p> <p>2 able to get through the property involved, they were</p> <p>3 able to get voluntary easements from those landowners;</p> <p>4 correct?</p> <p>5 MR. DUBLINSKE: Objection. I don't know that</p> <p>6 there's any foundation that Mr. Powell is aware of what</p> <p>7 Dakota Access did and whether or not those were disputed</p> <p>8 and whether or not or when those were obtained, on the</p> <p>9 courthouse steps or otherwise.</p> <p>10 ALJ HOGAN: I agree. Foundation hasn't been</p> <p>11 laid for him to answer those -- that particular question</p> <p>12 or those type of questions about easements for Dakota</p> <p>13 Access.</p> <p>14 Q. (BY MR. BAKKE) Well, are you aware of any</p> <p>15 situation where, for the Dakota Access Pipeline, eminent</p> <p>16 domain was exercised to obtain an easement for the</p> <p>17 pipeline?</p> <p>18 A. Well, I am aware, since we -- members of our</p> <p>19 right-of-way acquisition team also were part of that</p> <p>20 Energy Transport, Dakota Access project, I am aware that</p> <p>21 condemnation suits were filed.</p> <p>22 Q. Take a look at Burleigh County Exhibit 133. Do</p> <p>23 you have that available to you?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And it shows Bismarck on there and it</p> <p>PAGE 245</p>	<p>1 Bismarck?</p> <p>2 A. Along the proposed southern route.</p> <p>3 Q. I'm sorry?</p> <p>4 A. Along the proposed southern route.</p> <p>5 Q. Well, that's because it's right next to the</p> <p>6 city. I'm talking about further south than that. Is it</p> <p>7 your testimony there's more rural subdivision and</p> <p>8 population south of Bismarck where there is some</p> <p>9 floodplain issues than there is north of Bismarck?</p> <p>10 A. My testimony is, Mr. Bakke, that there are</p> <p>11 numerous constraints that prevented a pipeline in this</p> <p>12 general area on the south side of Bismarck. And the</p> <p>13 route that we're showing or that we included in the</p> <p>14 analysis in our estimation was the least impactful route</p> <p>15 on the southern side of Bismarck but still very much</p> <p>16 more impactful to residents and the environment and the</p> <p>17 area, including the Standing Rock Tribe, than the</p> <p>18 northern route.</p> <p>19 Q. Well, did you have any other surveys done in</p> <p>20 other locations south of Bismarck for an alternative</p> <p>21 route?</p> <p>22 A. Well, Mr. Bakke, we did not want to disturb</p> <p>23 landowners and request survey permission when we didn't</p> <p>24 think it was a viable alternative to construct the</p> <p>25 pipeline on the southern side of Bismarck.</p> <p>PAGE 247</p>
<p>1 shows the Missouri River and it shows Emmons County and</p> <p>2 Morton County. Is it your understanding the Dakota</p> <p>3 Access Pipeline crosses a few miles directly north of</p> <p>4 Sioux County?</p> <p>5 A. I can't discern from this map exactly where it</p> <p>6 crosses.</p> <p>7 Q. Well, are you aware that the Dakota Access</p> <p>8 Pipeline does not go onto the Standing Rock Sioux</p> <p>9 Reservation in any location?</p> <p>10 A. That is not my understanding.</p> <p>11 Q. Okay. Well, let's assume that's the case, that</p> <p>12 it doesn't cross any tribal land on the existing</p> <p>13 reservation boundaries. Is it your testimony that even</p> <p>14 though you did nothing to determine whether or not</p> <p>15 landowners would give easements, that there's no -- no</p> <p>16 landowner easement possibility in that location, or do</p> <p>17 you simply not know because you never explored it?</p> <p>18 A. Well, I do know that it's more populated on that</p> <p>19 southern route than it is on the northern route. And I</p> <p>20 do know that there would have been several instances,</p> <p>21 and I believe we cite at least 26, where we would be</p> <p>22 within close proximity to a business or a residence</p> <p>23 where we'd have to secure a waiver. So that introduced</p> <p>24 an element of difficulty.</p> <p>25 Q. Where's it more populated in the south of</p> <p>PAGE 246</p>	<p>1 Q. So is the answer "no"?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Did you do any geological studies or</p> <p>4 surveys south of Bismarck?</p> <p>5 A. No.</p> <p>6 Q. Did you contact any wetlands organizations or</p> <p>7 governmental entities to determine whether there were</p> <p>8 any concerns or whether there was a way to avoid those</p> <p>9 through a southern route?</p> <p>10 A. Well, what was publicly available in the U.S.</p> <p>11 Fish and Wildlife database, etcetera.</p> <p>12 Q. Okay. But didn't make any contacts of those</p> <p>13 entities whatsoever?</p> <p>14 A. Correct.</p> <p>15 Q. You provided testimony -- well, let me ask you</p> <p>16 this in relation to a southern alternative route. Would</p> <p>17 you agree that Summit really made no good faith effort</p> <p>18 to try to explore the possibility of an alternative</p> <p>19 southern route for the Summit pipeline?</p> <p>20 A. I would not agree. As I stated earlier, we --</p> <p>21 we used the same methodology that we did to route the</p> <p>22 entire pipeline system up to and including having a</p> <p>23 construction expert actually drive the location on that</p> <p>24 southern corridor where we could potentially route the</p> <p>25 pipeline and minimize risk to property owners, make sure</p> <p>PAGE 248</p>

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<p>1 <b>that we addressed constructability risk, maintenance and</b></p> <p>2 <b>integrity risk, etcetera.</b></p> <p>3 <b>Q.</b> So how can you make a good faith effort if you</p> <p>4 don't contact any of the landowners, you don't contact</p> <p>5 the Corps of Engineers about an alternative crossing</p> <p>6 over the Missouri River, you don't -- you don't contact</p> <p>7 the Standing Rock Sioux Tribe, you don't contact any</p> <p>8 township boards, you don't contact Burleigh County, you</p> <p>9 don't contact the City of Bismarck, you don't contact</p> <p>10 the City of Mandan, you don't contact any governmental</p> <p>11 entities whatsoever? You would call that a good faith</p> <p>12 effort to explore the possibility of a southern</p> <p>13 alternative route?</p> <p>14 MR. DUBLINSKE: Objection, Your Honor.</p> <p>15 <b>Q.</b> Is that your testimony?</p> <p>16 MR. DUBLINSKE: First of all, asked and</p> <p>17 answered. Second, badgering the witness. Third,</p> <p>18 they're not going to get a lot of sympathy on</p> <p>19 rescheduling Mr. Schmidt if this sort of badgering and</p> <p>20 "Well, don't you think this is good -- isn't good faith"</p> <p>21 is how we're spending our time in this limited time we</p> <p>22 have left.</p> <p>23 ALJ HOGAN: I agree. I think he's already</p> <p>24 answered those questions and I think the point has been</p> <p>25 made about the efforts made to explore the route around</p> <p>PAGE 249</p>	<p>1 <b>obviously referenced on the map -- on the route maps</b></p> <p>2 <b>that were submitted, our current route in the docket,</b></p> <p>3 <b>but I don't know off the top of my head how many of</b></p> <p>4 <b>the 18 are in Burleigh County.</b></p> <p>5 <b>Q.</b> Okay. And who would know about that and what</p> <p>6 the -- the geologic risks are that were identified in</p> <p>7 Burleigh County?</p> <p>8 <b>A. Well, Mr. -- Mr. Lange would have the detail.</b></p> <p>9 <b>But as we've submitted in our geotechnical report, you</b></p> <p>10 <b>know, of the 18, five are being -- the risk is being</b></p> <p>11 <b>mitigated by directionally drilling those. 11 were</b></p> <p>12 <b>actually Class II. Field reconnaissance was conducted</b></p> <p>13 <b>to make sure that moving a route or the pipeline away</b></p> <p>14 <b>from those -- those geohazards was -- was adequate. And</b></p> <p>15 <b>the remainder we can resolve via construction practices:</b></p> <p>16 <b>how we ditch, how we store the soil, etcetera.</b></p> <p>17 <b>Q.</b> Earlier today Summit's counsel indicated Summit</p> <p>18 is strictly a private company. Is that accurate?</p> <p>19 <b>A. We're not a publicly-traded company.</b></p> <p>20 <b>Q.</b> You're a private company; correct?</p> <p>21 <b>A. Yes.</b></p> <p>22 <b>Q.</b> Okay. Summit is not in any way a governmental</p> <p>23 entity?</p> <p>24 <b>A. Not to my knowledge.</b></p> <p>25 <b>Q.</b> Okay. And did you hear Mr. Boeshans' testimony</p> <p>PAGE 251</p>
<p>1 south Bismarck.</p> <p>2 <b>Q.</b> (BY MR. BAKKE) You provided testimony about</p> <p>3 locations that presented geologic risk at the prior</p> <p>4 hearing. You said there were 18 locations; is that</p> <p>5 correct?</p> <p>6 <b>A. That's correct.</b></p> <p>7 <b>Q.</b> Okay. And previously Summit had provided</p> <p>8 testimony there were 14 known geologic risks in North</p> <p>9 Dakota. How many of these 18 locations are in Burleigh</p> <p>10 County?</p> <p>11 <b>A. I don't remember off the top of my head,</b></p> <p>12 <b>Mr. Bakke.</b></p> <p>13 <b>Q.</b> Okay. Well, 11 before out of the 14 were --</p> <p>14 were 14. Are any of the new four geologic risks that</p> <p>15 were identified by Summit in Burleigh County, and if so,</p> <p>16 why were they missed previously?</p> <p>17 <b>A. Well, the -- the number missed so the -- the</b></p> <p>18 <b>change was associated with the change in route. And the</b></p> <p>19 <b>North Dakota Geological Survey has reviewed our</b></p> <p>20 <b>geotechnical analysis and concurred that we've</b></p> <p>21 <b>satisfactorily addressed these risks.</b></p> <p>22 <b>Q.</b> So you don't know if any of those are in</p> <p>23 Burleigh County?</p> <p>24 <b>A. I don't -- I don't know which ones were in</b></p> <p>25 <b>Burleigh County off the top of my head. They're</b></p> <p>PAGE 250</p>	<p>1 when I asked him the questions about whether he can</p> <p>2 commit on behalf of Summit not to use eminent domain or</p> <p>3 condemnation proceedings in the event landowners will</p> <p>4 not agree to a voluntary easement for the Summit</p> <p>5 pipeline? Did you hear that testimony?</p> <p>6 <b>A. I did.</b></p> <p>7 <b>Q.</b> Okay. And as the chief operating officer of</p> <p>8 Summit, can you commit that Summit will not use eminent</p> <p>9 domain or condemnation proceedings against landowners</p> <p>10 who will not provide an easement to Summit pipeline in</p> <p>11 North Dakota?</p> <p>12 <b>A. I cannot. I cannot.</b></p> <p>13 <b>Q.</b> Okay. And, in fact, if these 42 percent of</p> <p>14 Burleigh County landowners will not agree to provide</p> <p>15 Summit with a voluntary easement, Summit's plan, in</p> <p>16 fact, is to pursue eminent domain or condemnation</p> <p>17 against those landowners; correct?</p> <p>18 <b>A. Well, I can tell you that we spent more than two</b></p> <p>19 <b>years negotiating with landowners and we plan to</b></p> <p>20 <b>continue doing that.</b></p> <p>21 <b>Q.</b> That's not my question.</p> <p>22 <b>A. And condemnation -- condemnation is the last</b></p> <p>23 <b>option. So we're going to try to negotiate with</b></p> <p>24 <b>landowners and reach a voluntary agreement.</b></p> <p>25 <b>Q.</b> And that wasn't my question. My question wasn't</p> <p>PAGE 252</p>

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<p>1 are you going to wear them down. My question is if they</p> <p>2 keep saying no and say to you "Summit, we will not allow</p> <p>3 an easement on our private land," does Summit intend to</p> <p>4 pursue eminent domain or condemnation proceedings</p> <p>5 against private landowners in Burleigh County who will</p> <p>6 not voluntarily provide an easement to Summit?</p> <p>7 <b>A. And I'll restate what I said, Mr. Bakke. That</b></p> <p>8 <b>is the very last option.</b></p> <p>9 <b>Q.</b> But it's an option Summit intends to pursue if</p> <p>10 necessary?</p> <p>11 <b>A. Again, that is the very last option.</b></p> <p>12 <b>Q.</b> Right. But I'd like an answer to my question.</p> <p>13 Does Summit intend to pursue that option if the</p> <p>14 landowners will not voluntarily provide an easement for</p> <p>15 the Summit pipeline?</p> <p>16 <b>A. I think I've answered it twice, Mr. Bakke, but</b></p> <p>17 <b>I'll tell you it's premature. We have a long runway to</b></p> <p>18 <b>continue to negotiate and if -- that would be a last</b></p> <p>19 <b>option.</b></p> <p>20 <b>Q.</b> Okay. So that's all you're going to tell me,</p> <p>21 it's a last option, you won't -- you won't concede that</p> <p>22 Summit will pursue eminent domain or condemnation</p> <p>23 proceedings against private landowners if they don't get</p> <p>24 the easement at the end of the process, you won't make</p> <p>25 that --</p> <p>PAGE 253</p>	<p>1 objection.</p> <p>2 MR. BAKKE: And I'll point out for the record</p> <p>3 they've raised this at the April 22nd hearing and have</p> <p>4 offered specific testimony on it so I'm just following</p> <p>5 up on that.</p> <p>6 <b>Q.</b> (BY MR. BAKKE) Let's turn to another topic now</p> <p>7 and I'd ask you to turn to Burleigh County Exhibit 112.</p> <p>8 Do you have that available to you, Mr. Powell?</p> <p>9 <b>A. (Indiscernible).</b></p> <p>10 <b>Q.</b> Okay. And that's a memorandum of easement.</p> <p>11 It's dated February 6, 2024. It's on file in Burleigh</p> <p>12 County. It identifies the landowners involved as the</p> <p>13 Hansens and Kathleen Mills. And it's what's called a</p> <p>14 "Memorandum of Easement"; correct?</p> <p>15 <b>A. That is correct.</b></p> <p>16 <b>Q.</b> Okay. And that does not -- unlike before the</p> <p>17 prior application before the August 4, 2023, order, what</p> <p>18 Summit would do when they obtained an easement is they</p> <p>19 would actually file that easement at the Burleigh County</p> <p>20 courthouse and they would have a map attached which</p> <p>21 would identify the specific location on the property</p> <p>22 where the Summit pipeline easement was; correct?</p> <p>23 <b>A. That's correct, to my understanding.</b></p> <p>24 <b>Q.</b> Yeah. And Summit no longer does that, because</p> <p>25 we look at the attachment to this memorandum of</p> <p>PAGE 255</p>
<p>1 <b>A. I said yes. I said yes, that's an option.</b></p> <p>2 <b>Q.</b> Are you aware of any situation ever in North</p> <p>3 Dakota's history where a private company has pursued</p> <p>4 eminent domain or had the ability to pursue eminent</p> <p>5 domain against private landowners in North Dakota?</p> <p>6 <b>A. I'm not familiar with the history of North</b></p> <p>7 <b>Dakota, private versus public, but condemnation is</b></p> <p>8 <b>condemnation. So whether it's a public company or a</b></p> <p>9 <b>private company, it's still condemnation.</b></p> <p>10 <b>Q.</b> Except for you've conceded Summit is a private</p> <p>11 company. So my question to you is can you name any</p> <p>12 situation before in North Dakota's history where a</p> <p>13 strictly private company has been permitted and has</p> <p>14 exercised eminent domain or condemnation proceedings to</p> <p>15 take an easement or a property from a private landowner?</p> <p>16 MR. DUBLINSKE: Objection, Your Honor. Not</p> <p>17 relevant to any issue in front of the Commission.</p> <p>18 Eminent domain is a separate matter outside the</p> <p>19 Commission's jurisdiction. And in any event, this</p> <p>20 distinction between public and private is not one that</p> <p>21 matters under the law.</p> <p>22 ALJ HOGAN: I agree. The Commission</p> <p>23 specifically said in its August 4th, 2023, order that it</p> <p>24 did not have any jurisdiction over eminent domain</p> <p>25 associated with this project. So I will sustain that</p> <p>PAGE 254</p>	<p>1 easement, the only thing it identifies is Exhibit A,</p> <p>2 which is a description there, township 141 north, range</p> <p>3 80 west, fifth prime meridian, section 27, the northeast</p> <p>4 (sic) half of the northeast quarter; correct?</p> <p>5 <b>A. Yes. And this says it's an amendment so I'm not</b></p> <p>6 <b>sure if this is an amendment to an existing easement. I</b></p> <p>7 <b>don't know what the context is here.</b></p> <p>8 <b>Q.</b> Well, but if someone reads this easement, what</p> <p>9 it's telling them is somewhere on those 80 acres</p> <p>10 described on Exhibit A the Summit pipeline is proposed</p> <p>11 to be installed and is going to go somewhere on those</p> <p>12 80 acres; correct?</p> <p>13 <b>A. I'm -- I'm trying to scroll down to see what</b></p> <p>14 <b>Exhibit A says. Here it is. I see a legal description</b></p> <p>15 <b>on Exhibit A.</b></p> <p>16 <b>Q.</b> Right. And the area it describes consists of</p> <p>17 80 acres; correct? Because it says the north half of</p> <p>18 the northeast quarter. So a quarter is 160 acres. If</p> <p>19 you take half of that, that's 80 acres, isn't it?</p> <p>20 <b>A. I believe that's correct.</b></p> <p>21 <b>Q.</b> Okay. And so if you're an adjacent landowner</p> <p>22 that has a residence or some structures that are located</p> <p>23 close to the section line that adjoins that -- that</p> <p>24 quarter, you don't know whether that easement is for</p> <p>25 right next to the section line, right next to your home,</p> <p>PAGE 256</p>



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<p>1 could be 50 feet away, could be a hundred feet away, you</p> <p>2 just don't know where the easement is for based on the</p> <p>3 public filing by Summit; correct?</p> <p>4 <b>A. Well, again, I don't understand the context of</b></p> <p>5 <b>this document. Mr. Rorie signed it. But I do know that</b></p> <p>6 <b>typically there's always an agreement on where the</b></p> <p>7 <b>corridor of a pipeline would be across a particular</b></p> <p>8 <b>tract. And then if we think that that would encroach</b></p> <p>9 <b>within 500 feet of a residence or business, then we</b></p> <p>10 <b>would also seek a waiver. And since, to my knowledge,</b></p> <p>11 <b>we haven't sought one in this instance -- again, I'm not</b></p> <p>12 <b>sure what the context of this is.</b></p> <p>13 <b>Q.</b> And I don't think anybody in the public or an</p> <p>14 adjacent landowner does either because Summit has now</p> <p>15 switched how it records these easements so it's not</p> <p>16 transparent with the public or adjacent landowners where</p> <p>17 the easement is that Summit has secured from an adjacent</p> <p>18 landowner; correct?</p> <p>19 MR. DUBLINSKE: Your Honor, I'm going to object.</p> <p>20 First of all, Mr. Bakke is clearly testifying here as</p> <p>21 opposed to asking the witness a question. Secondly, how</p> <p>22 a private agreement between a private entity and a</p> <p>23 private citizen is structured -- and Mr. Bakke certainly</p> <p>24 isn't suggesting that there's anything legally wrong</p> <p>25 about filing the memorandum of easement -- is of dubious</p> <p>PAGE 257</p>	<p>1 <b>Q.</b> (BY MR. BAKKE) Mr. Powell, let me ask you</p> <p>2 this. Mr. Boeshans testified earlier today that the</p> <p>3 route map that was provided has changed in some</p> <p>4 locations. Is that accurate?</p> <p>5 <b>A. Not to my knowledge. So the route maps as -- as</b></p> <p>6 <b>issued as part of this petition for reconsideration has</b></p> <p>7 <b>not changed. As we survey, there may be some -- and as</b></p> <p>8 <b>we talk to landowners about potentially signing an</b></p> <p>9 <b>easement, there may be some micro changes, but they will</b></p> <p>10 <b>all be made within the laws or the guidance of the PSC</b></p> <p>11 <b>on -- on what the limitations are. And if notification</b></p> <p>12 <b>has to be made to the PSC, it will be done.</b></p> <p>13 <b>Q.</b> In relation to this memorandum of easement that</p> <p>14 is filed, there would be no ability from an adjacent</p> <p>15 landowner to determine whether the location described on</p> <p>16 Exhibit A is the same location shown on the maps -- the</p> <p>17 map log submitted to the PSC. Is that correct?</p> <p>18 <b>A. If this is an amendment to an easement, yes, the</b></p> <p>19 <b>-- the route on the property or properties is -- is</b></p> <p>20 <b>specific.</b></p> <p>21 <b>Q.</b> Well, but there's no way for the public or an</p> <p>22 adjacent landowner to determine whether it's the same</p> <p>23 one because Exhibit A only describes 80 acres. They</p> <p>24 don't know whether, subsequent to that map log being</p> <p>25 prepared by Summit, there was some change due to</p> <p>PAGE 259</p>
<p>1 relevance to this proceeding. This is just a completely</p> <p>2 inappropriate line of questioning and Mr. Bakke is just</p> <p>3 testifying.</p> <p>4 ALJ HOGAN: Can you address relevance?</p> <p>5 MR. BAKKE: Sure. The relevance is, as an</p> <p>6 example, an adjacent landowner cannot determine, based</p> <p>7 on going to the courthouse or otherwise, where a Summit</p> <p>8 easement is on an adjacent landowner, which could be</p> <p>9 very close to their home. The only word we have that</p> <p>10 it's 500 feet away is Mr. Dublinske saying that and</p> <p>11 Mr. Powell saying that. But this doesn't do that.</p> <p>12 And it's also relevant that Summit is not being</p> <p>13 transparent with the public as to where this pipeline</p> <p>14 may be installed and there could have been a whole lot</p> <p>15 of other interested parties who either may have</p> <p>16 intervened in this matter or may have appeared before</p> <p>17 this Commission and offered testimony that that pipeline</p> <p>18 is simply too close to their property but they don't</p> <p>19 have any ability to do that because Summit now hides</p> <p>20 that information.</p> <p>21 MR. DUBLINSKE: Your Honor, we filed very</p> <p>22 detailed route maps. And this whole issue about</p> <p>23 transparency is just Mr. Bakke's opinion that he</p> <p>24 continues to testify about as if he were a witness.</p> <p>25 MR. BAKKE: Well, Mr. Powell -- I can move on.</p> <p>PAGE 258</p>	<p>1 negotiations with the landowner involved; correct?</p> <p>2 <b>A. Well, the change would be -- would be -- and</b></p> <p>3 <b>ultimately in the easement the change would be reflected</b></p> <p>4 <b>and recorded.</b></p> <p>5 <b>Q.</b> But that hasn't happened because the -- nobody</p> <p>6 can see the easement. All you file now is a memorandum</p> <p>7 of easement; correct?</p> <p>8 <b>A. The only change in strategy is because of the</b></p> <p>9 <b>change in schedule we are now negotiating options with</b></p> <p>10 <b>landowners versus executing the easement and paying</b></p> <p>11 <b>upfront.</b></p> <p>12 <b>Mr. Rorie will have -- Mr. Rorie would have to</b></p> <p>13 <b>add further clarification around this specific document.</b></p> <p>14 <b>He signed it.</b></p> <p>15 <b>Q.</b> Well, I'm sure he would, but he isn't here</p> <p>16 today.</p> <p>17 And in terms of the public's ability to respond</p> <p>18 to the reroute, this is their opportunity, not some</p> <p>19 later date when there's a more detailed easement filed</p> <p>20 with the Burleigh County courthouse. You understand</p> <p>21 that, don't you?</p> <p>22 <b>A. Well, I can tell you that the landowner that</b></p> <p>23 <b>signs -- any landowner that signs, whether it's an</b></p> <p>24 <b>option or an easement, knows where the pipeline is</b></p> <p>25 <b>intended to traverse their property or properties. And</b></p> <p>PAGE 260</p>

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<p>1 if that encroached on another business or residence off</p> <p>2 of that property and it fell within 500 feet, we would</p> <p>3 notify that landowner and secure a waiver and notify the</p> <p>4 PSC.</p> <p>5 Q. Switching topics, is Summit aware of the latest</p> <p>6 CO2 pipeline leak that occurred in Sulphur, Louisiana,</p> <p>7 on April 3, 2024?</p> <p>8 A. Yes. And actually, in the most recent emergency</p> <p>9 management meetings, that PowerPoint has been updated to</p> <p>10 include that release.</p> <p>11 Q. And has Summit contacted Denbury or the</p> <p>12 government officials or others about this leak in</p> <p>13 Sulphur, Louisiana?</p> <p>14 A. Well, Denbury has now been acquired by</p> <p>15 ExxonMobil and so there have been general conversations</p> <p>16 with ExxonMobil about that leak. But we do -- we do</p> <p>17 have a good understanding of what happened.</p> <p>18 Q. Okay. And who spoke to ExxonMobil?</p> <p>19 A. Either Mr. Daum or Mr. Dillon. I can't remember</p> <p>20 specifically who he spoke with.</p> <p>21 Q. Okay. How many barrels of CO2 leaked in</p> <p>22 Sulphur, Louisiana?</p> <p>23 A. Well, it was an atmospheric release. The</p> <p>24 quantity or the volume, I don't remember. I do -- I do</p> <p>25 know that, according to the reports, that the</p> <p>PAGE 261</p>	<p>1 there were homes nearby?</p> <p>2 A. I am aware that a shelter-in-place order was</p> <p>3 issued.</p> <p>4 Q. And were you aware it was approximately two and</p> <p>5 a half hours after the leak occurred before the leak was</p> <p>6 stopped?</p> <p>7 A. I -- I do not believe that's correct.</p> <p>8 Q. Who did you speak to from the local community or</p> <p>9 from ExxonMobil about how long it was after the leak</p> <p>10 occurred before it was stopped?</p> <p>11 A. Again, it wasn't me that spoke to anyone from</p> <p>12 ExxonMobil, but I believe that some -- a Summit</p> <p>13 representative spoke to someone that's in their</p> <p>14 emergency organization.</p> <p>15 Q. Let's assume hypothetically, Mr. Powell, you</p> <p>16 didn't live in Houston, Texas, that you lived here, and</p> <p>17 that someone wanted to build a CO2 pipeline, 24-inch</p> <p>18 pipeline, 500 feet away from your residence or even a</p> <p>19 bit further. Would you want to be fully informed and</p> <p>20 aware of the risk to you and your family posed by that</p> <p>21 CO2 pipeline in the event there was a leak?</p> <p>22 A. Well, there's -- there are actually requirements</p> <p>23 that you have to inform folks. And part of that is</p> <p>24 through the conversations we're having with emergency</p> <p>25 management, first responders, but there's a public</p> <p>PAGE 263</p>
<p>1 atmospheric cloud did not leave the property that the</p> <p>2 receiver -- launcher, receiver barrel was actually</p> <p>3 located on.</p> <p>4 Q. Were you aware it was in excess of 2,500 barrels</p> <p>5 of CO2 that leaked?</p> <p>6 A. I am not aware of that.</p> <p>7 Q. Okay. Were you aware that the pipeline company</p> <p>8 itself, Denbury, did not detect the leak but, rather, a</p> <p>9 nearby resident reported the leak to the sheriff's</p> <p>10 department?</p> <p>11 A. I am not aware of that. I know what the cause</p> <p>12 of the leak was, but I'm not aware that what you just</p> <p>13 stated is accurate.</p> <p>14 Q. Okay. And were you aware there were calls to</p> <p>15 the company that operated the pipeline and those calls</p> <p>16 were not answered?</p> <p>17 A. I'm not aware of that. Again, I am aware of the</p> <p>18 fact that the atmospheric -- the gas cloud did not leave</p> <p>19 the property.</p> <p>20 Q. Okay. Were you aware that the way that</p> <p>21 ExxonMobil learned about the leak was from the emergency</p> <p>22 services department in the local community?</p> <p>23 A. I'm not aware of that.</p> <p>24 Q. Okay. And were you aware that the local parish</p> <p>25 police jury received a shelter-in-place order because</p> <p>PAGE 262</p>	<p>1 awareness program that we have to employ before the</p> <p>2 pipeline goes into operation. And that means anyone in</p> <p>3 proximity to the pipeline that could be affected has to</p> <p>4 be informed.</p> <p>5 Q. Well, I'm not talking after it's constructed.</p> <p>6 I'm talking about when it's proposed to be constructed,</p> <p>7 easements obtained. Wouldn't you as a -- someone with a</p> <p>8 home very nearby and your family lived there with you</p> <p>9 too, wouldn't you want to see a plume dispersion model</p> <p>10 and the results of that to verify whether it was</p> <p>11 properly done and perhaps hire an engineer or perhaps</p> <p>12 not to make sure it was safe for that pipeline to go</p> <p>13 near your residence?</p> <p>14 A. Well, I do live in Houston, Texas, so maybe I</p> <p>15 have a different perspective, but I can tell you that I</p> <p>16 -- I trust in the professionals and the subject matter</p> <p>17 experts such as the staff at the Public Service</p> <p>18 Commission and others, emergency managers, first</p> <p>19 responders, to evaluate information provided by Summit</p> <p>20 or Energy Transfer or any other operator that intends to</p> <p>21 conduct and operate a pipeline to ensure that it's being</p> <p>22 designed, constructed, and ultimately operated according</p> <p>23 to state and federal requirements.</p> <p>24 Q. So is it your testimony it's unreasonable for</p> <p>25 members of the public who believe they may be affected</p> <p>PAGE 264</p>

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<p>1 by a leak in the Summit pipeline to want to be fully</p> <p>2 informed in advance of the dangers posed should the</p> <p>3 pipeline leak, including viewing a dispersion model?</p> <p>4 <b>A. What I am saying is that there are subject</b></p> <p>5 <b>matter experts and stakeholders in these communities</b></p> <p>6 <b>that will have access to information that can share</b></p> <p>7 <b>information to the extent they think it's necessary with</b></p> <p>8 <b>-- with landowners or potentially impacted parties.</b></p> <p>9 <b>Q.</b> Okay. So you think that's unreasonable for</p> <p>10 nearby homeowners to want to view and understand the</p> <p>11 dispersion model information. That's your testimony?</p> <p>12 MR. DUBLINSKE: Your Honor, asked and answered.</p> <p>13 I would also ask, are we intending to reserve</p> <p>14 any time yet today for Commission and for redirect?</p> <p>15 ALJ HOGAN: I was not intending so -- there</p> <p>16 hasn't been redirect on the other Summit witnesses so I</p> <p>17 presumed, maybe incorrectly, that there would not be for</p> <p>18 this one as well.</p> <p>19 Yeah, I think he did answer the question.</p> <p>20 MR. BAKKE: Okay.</p> <p>21 <b>Q.</b> (BY MR. BAKKE) So what you're saying, just so</p> <p>22 I understand your answer, Mr. Powell, is people in the</p> <p>23 public should just rely on the so-called expert to tell</p> <p>24 them whether or not there is a danger or a risk to their</p> <p>25 health, life, or safety, including their family members?</p> <p>PAGE 265</p>	<p>1 <b>Q.</b> Well, it may not be applicable to North Dakota</p> <p>2 law, but doesn't -- once they sign the waiver, can't</p> <p>3 Summit argue it would apply to a second pipeline</p> <p>4 installed in the same easement location?</p> <p>5 <b>A. No. Because the easement is very specific. It</b></p> <p>6 <b>will stipulate a single pipeline of either 24-inch</b></p> <p>7 <b>or 12-inch or 8-inch or 4-inch in diameter, depending on</b></p> <p>8 <b>what segment of pipeline it is in North Dakota.</b></p> <p>9 <b>Q.</b> Okay. Will the Summit CO2 pipeline and the CO2</p> <p>10 have any impurities in it, and if so, what will those</p> <p>11 impurities be?</p> <p>12 <b>A. It will in --</b></p> <p>13 MR. DUBLINSKE: Objection.</p> <p>14 Hang on, Jimmy. Hang on, Jimmy.</p> <p>15 That -- I'm going to object on scope. That</p> <p>16 question is clearly one that could have been discussed</p> <p>17 and, frankly, surely was discussed in the original</p> <p>18 proceeding. That has nothing to do with anything</p> <p>19 specific to the reconsideration.</p> <p>20 MR. BAKKE: It has to do with the safety of the</p> <p>21 CO2 and the health effects. The impurities will, in</p> <p>22 fact, have an effect on health considerations as with</p> <p>23 any other gaseous liquid on their -- on their health.</p> <p>24 So it's -- it's relevant to the issue being addressed by</p> <p>25 the PSC at this hearing.</p> <p>PAGE 267</p>
<p>1 That's your testimony?</p> <p>2 MR. DUBLINSKE: Your Honor, that's just a</p> <p>3 restatement of the question that you just sustained an</p> <p>4 objection on.</p> <p>5 ALJ HOGAN: Correct. He already answered that.</p> <p>6 MR. BAKKE: I think that's the first time I</p> <p>7 asked it, but anyway.</p> <p>8 <b>Q.</b> (BY MR. BAKKE) There's been testimony about</p> <p>9 the waiver agreement, Exhibit A. And the waiver</p> <p>10 agreement indicates that parties who are signing that</p> <p>11 waiver or agreement in relation to an inhabited</p> <p>12 residence acknowledge and do not object to the pipe or</p> <p>13 the placement of one or both Summit Carbon Solutions LLC</p> <p>14 pipelines within 500 feet.</p> <p>15 And this came up at the last hearing and there</p> <p>16 was no answer provided. What are one or both of the</p> <p>17 Summit pipelines that these people are providing a</p> <p>18 waiver for?</p> <p>19 <b>A. Well, that's -- the word "both" is not</b></p> <p>20 <b>applicable in North Dakota. It is applicable in other</b></p> <p>21 <b>states. But individual easements and the waivers that</b></p> <p>22 <b>have been signed are, to my knowledge, landowners that</b></p> <p>23 <b>we have executed easements with, they are aware that in</b></p> <p>24 <b>their specific easement it is very specific to a single</b></p> <p>25 <b>pipeline.</b></p> <p>PAGE 266</p>	<p>1 MR. DUBLINSKE: But general safety is not -- I</p> <p>2 mean, that was the first hearing, right. There's</p> <p>3 nothing that's changed about the composition or the</p> <p>4 impact of impurities because of the reconsideration</p> <p>5 issues.</p> <p>6 ALJ HOGAN: I agree it was discussed in the</p> <p>7 first round of hearings and I also believe it is outside</p> <p>8 the scope of what the rehearing was issued for so I will</p> <p>9 sustain the objection.</p> <p>10 And I'll just also note that it's 4:51,</p> <p>11 Mr. Bakke, so you can plan accordingly.</p> <p>12 MR. BAKKE: Yes.</p> <p>13 And my understanding, Your Honor, is the issue</p> <p>14 to be addressed -- one of the issues is the requirement</p> <p>15 that the Summit pipeline produce minimal adverse effects</p> <p>16 on the welfare of the citizens of North Dakota,</p> <p>17 irrespective of whether that was a topic covered by</p> <p>18 Summit in their questioning, it is something we're</p> <p>19 entitled to ask about, but I understand you're not going</p> <p>20 to permit me to do so.</p> <p>21 <b>Q.</b> (BY MR. BAKKE) Is there any certification</p> <p>22 process, Mr. Powell, for the CO2 in the Summit pipeline?</p> <p>23 <b>A. There -- there is a quality specification.</b></p> <p>24 <b>Q.</b> Okay. Let's turn to the topic of electricity.</p> <p>25 What happens if this Summit pipeline loses electrical</p> <p>PAGE 268</p>

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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**

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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?

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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.**

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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**

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<p>1 <b>totally -- it was totally their obligation. They tried</b></p> <p>2 <b>to take advantage of a market condition. Our schedule</b></p> <p>3 <b>changed and we told them we weren't going to reimburse</b></p> <p>4 <b>them for that. And so if we can satisfactorily resolve</b></p> <p>5 <b>that issue, we'd love to have Welspun be part of the --</b></p> <p>6 <b>the group of steel mills that -- of pipe mills that</b></p> <p>7 <b>manufacture our pipe. But there are other alternatives</b></p> <p>8 <b>so we're not solely dependent on Welspun.</b></p> <p>9 <b>Q.</b> Okay. But presently Welspun will not be</p> <p>10 providing the carbon steel pipeline; is that correct?</p> <p>11 <b>A. That's not correct. It's pending the outcome of</b></p> <p>12 <b>this suit.</b></p> <p>13 <b>Q.</b> Okay. So if it's -- if it's resolved to both</p> <p>14 parties' satisfaction, they may be producing the carbon</p> <p>15 steel pipeline, if it isn't, they won't; is that</p> <p>16 correct?</p> <p>17 <b>A. Yes. But, again, they would produce some of the</b></p> <p>18 <b>steel, some of the pipe, not all of the pipe in any</b></p> <p>19 <b>situation.</b></p> <p>20 <b>Q.</b> Okay. And has Summit entered into another</p> <p>21 contract with another American carbon steel manufacturer</p> <p>22 to replace the steel pipeline that was to be provided by</p> <p>23 Welspun?</p> <p>24 <b>A. Well, we are under contract with four different</b></p> <p>25 <b>pipe manufacturers in the U.S., Welspun being one of</b></p> <p>PAGE 273</p>	<p>1 <b>testing.</b></p> <p>2 <b>Q.</b> Does Summit --</p> <p>3 ALJ HOGAN: All right. My clock shows that it's</p> <p>4 5:01. And as I indicated before, we do have a hard end</p> <p>5 at 5:00 so we are going to break now and we will</p> <p>6 reconvene tomorrow morning at 8:30.</p> <p>7 MR. DUBLINSKE: Your Honor, could I just ask, to</p> <p>8 try to make tomorrow go a little more smoothly, if</p> <p>9 Mr. Jorde and Mr. Leibel can let us know what witnesses</p> <p>10 they're calling tomorrow?</p> <p>11 ALJ HOGAN: Yep. And it was my understanding</p> <p>12 Mr. Jorde intended to file something -- I would ask</p> <p>13 tonight or as soon as possible -- with the list of</p> <p>14 planned witnesses for tomorrow.</p> <p>15 MR. JORDE: So I -- let me just jump in quickly.</p> <p>16 I don't know if we're going to have Mr. Powell or Jon</p> <p>17 Schmidt in the morning, but Howard Malloy, a landowner,</p> <p>18 we plan to get him on tomorrow. And then Mr. Bakke, I</p> <p>19 believe, has Mr. Flanagan and then Mary Senger and then</p> <p>20 Brian Bitner and Jeff Steinbronn. And that will take us</p> <p>21 through after lunch. Then I'm working on trying to</p> <p>22 juggle people around for after lunch.</p> <p>23 ALJ HOGAN: Well, it might be helpful,</p> <p>24 Mr. Jorde, if you could provide a list of all the</p> <p>25 witnesses you intend to call. I mean, I just -- I feel</p> <p>PAGE 275</p>
<p>1 <b>those four. The other three could -- could actually</b></p> <p>2 <b>produce all of the line pipe that's needed. So Welspun</b></p> <p>3 <b>-- if we can resolve this issue, then Welspun will</b></p> <p>4 <b>remain part of the mix. If we can't, then we'll utilize</b></p> <p>5 <b>the other three mills to supply the line pipe.</b></p> <p>6 <b>Q.</b> When the Summit pipeline is being constructed,</p> <p>7 who will be inspecting the pipeline?</p> <p>8 <b>A. We'll have third-party inspection companies that</b></p> <p>9 <b>actually provide the -- the craft inspection. And then</b></p> <p>10 <b>we will have our in-house construction managers and</b></p> <p>11 <b>project engineers and third-party subject matter</b></p> <p>12 <b>metallurgists that will also inspect the quality of the</b></p> <p>13 <b>work.</b></p> <p>14 <b>Q.</b> Are these third-party inspectors paid by Summit?</p> <p>15 <b>A. They are.</b></p> <p>16 <b>Q.</b> Okay. Will there be any governmental agencies</p> <p>17 that will be inspecting the construction of the Summit</p> <p>18 pipeline?</p> <p>19 <b>A. Well, it's my experience, especially a project</b></p> <p>20 <b>of this size, PHMSA will have third-party subject matter</b></p> <p>21 <b>experts that are inspecting the welding procedures.</b></p> <p>22 <b>They'll be on-site in the field during construction.</b></p> <p>23 <b>And they'll most likely evaluate our mill test reports</b></p> <p>24 <b>from the pipe manufacturer and our X-ray or radiographic</b></p> <p>25 <b>information from -- from welds and other non-destructive</b></p> <p>PAGE 274</p>	<p>1 like the prehearing filings were maybe not realistic of</p> <p>2 the number of witnesses that were actually going to be</p> <p>3 called during the hearing.</p> <p>4 MR. JORDE: I can tighten that up. I just can't</p> <p>5 tell you a specific order at this time.</p> <p>6 ALJ HOGAN: Okay. Well, as much as you can give</p> <p>7 us would be helpful.</p> <p>8 MR. DUBLINSKE: And just to be clear, today had</p> <p>9 been set. Is Mr. Powell no longer on the stand when we</p> <p>10 start tomorrow morning? And is Mr. Schmidt -- and</p> <p>11 Mr. Schmidt is going to have to change some plans.</p> <p>12 Frankly, I don't think he should be expected to be</p> <p>13 inconvenienced given how the afternoon's time was spent,</p> <p>14 but if it's important to the Commission, we will make</p> <p>15 him available.</p> <p>16 ALJ HOGAN: I don't think -- I think the purpose</p> <p>17 of the cross-examination of these witnesses were for the</p> <p>18 benefit of the intervenors and not for the Commission</p> <p>19 itself. So if intervenors want to call Mr. Schmidt</p> <p>20 during the two and a half days they've been allowed or</p> <p>21 allotted time and Summit's willing to accommodate, I'll</p> <p>22 allow it. But I think that's up to the parties to work</p> <p>23 out. And same with further testimony from Mr. Powell.</p> <p>24 MR. DUBLINSKE: Thank you, Your Honor.</p> <p>25 MR. BAKKE: And, Your Honor, I'll just note for</p> <p>PAGE 276</p>

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<p>1 the record, you know, originally my understanding was</p> <p>2 this day was set aside for the intervenors to conduct</p> <p>3 cross-examination of Summit's witnesses. They added a</p> <p>4 witness, Mr. Olson, this morning in their case. So they</p> <p>5 ate up part of our time with Mr. Olson, which included</p> <p>6 cross-examination, but they threw in a new witness. So</p> <p>7 to suggest we weren't efficient with our time I don't</p> <p>8 think is -- is accurate. But at any rate, we didn't get</p> <p>9 a full day and I'll just note our objection to that.</p> <p>10 And in relation to tomorrow, the witnesses that</p> <p>11 Mr. Jorde described that we'll be calling is accurate.</p> <p>12 I can't state that we'll get them in in the morning,</p> <p>13 because there is one witness of theirs that I understand</p> <p>14 they want to go on first, Mr. Malloy, which is fine, but</p> <p>15 I'm just saying those other witnesses could be</p> <p>16 throughout the day tomorrow.</p> <p>17 ALJ HOGAN: Well, and I'll just note that the</p> <p>18 time allocations -- because I was told by the</p> <p>19 intervenors at the prehearing conference that no</p> <p>20 schedule was necessary and that the intervenors were</p> <p>21 working together to develop a schedule. And I'm not</p> <p>22 saying that didn't happen, but I sent an email last week</p> <p>23 asking for that schedule because it was my understanding</p> <p>24 the two parties were working together to schedule</p> <p>25 witnesses. That's not what I received.</p> <p>PAGE 277</p>	<p>1 ALJ HOGAN: That's correct, Mr. Bakke. And I</p> <p>2 appreciate that. And you gave me time estimates. So I</p> <p>3 do appreciate that.</p> <p>4 -----</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>PAGE 279</p>
<p>1 I would also note that the letter I sent out</p> <p>2 regarding a schedule for this hearing did acknowledge</p> <p>3 that Summit requested and was granted permission to call</p> <p>4 one additional witness which they estimated would take</p> <p>5 15 minutes for their direct. I think they complied with</p> <p>6 that. They also prefiled testimony for that witness.</p> <p>7 And, again, at numerous rehearing conferences</p> <p>8 the parties were advised that you could prefile</p> <p>9 testimony to save hearing time, and I believe, to date,</p> <p>10 Summit is the only party that's taken advantage of that</p> <p>11 option. So that's my thoughts on the schedule.</p> <p>12 And I think I was clear in providing just</p> <p>13 minimum guidelines on use of time. So I'm doing the</p> <p>14 best I can in managing time. We only have so much time</p> <p>15 to get through lots of witnesses. So that's where we're</p> <p>16 at.</p> <p>17 And like I said, if you want to call Mr. Schmidt</p> <p>18 or recall Mr. Powell, those arrangements are going to</p> <p>19 have to be made with Summit's counsel.</p> <p>20 MR. BAKKE: Just for the record, we did submit</p> <p>21 our list of witnesses to --</p> <p>22 ALJ HOGAN: Yes, you did. Thank you.</p> <p>23 MR. BAKKE: -- call today --</p> <p>24 ALJ HOGAN: Yes.</p> <p>25 MR. BAKKE: -- yesterday so I --</p> <p>PAGE 278</p>	<p><b><u>CERTIFICATE OF TRANSCRIPTIONIST</u></b></p> <p>STATE OF NORTH DAKOTA ) ss.</p> <p>I, Lisa A. Hulm, CET-783, a certified electronic transcriber, do hereby certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter, to the best of my professional skills and abilities. I further state that I was not present during these recorded proceedings, and I am only the transcriber of the recorded proceedings.</p> <p>I further certify that I am not a relative or employee or attorney or counsel of any of the parties hereto, nor a relative or employee of such attorney or counsel; nor do I have any interest in the outcome or events of the action.</p> <p>Dated this date of October 28, 2025.</p> <p>----- LISA A. HULM, CET-783</p> <p>The foregoing certification of this transcript does not apply to the reproduction of the same by any means, unless under the direct control and/or direction of the certifying transcriber.</p> <p>PAGE 280</p>

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