

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

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

Case No.
PU-22-391

TRANSCRIPT OF FORMAL HEARING

May 29, 2024

Bismarck, North Dakota

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1 ALJ HOGAN: All right. Good morning. My clock
2 shows 8:30 so we are going to get started.

3 Today is May 29th, 2024. We are reconvening in
4 PSC Case No. PU-22-391. This is a siting application
5 for SCS Carbon Transport LLC for the Midwest Carbon
6 Express CO2 pipeline project. This is our second day of
7 hearings noted in the notice of technical hearing,
8 issued by the PSC on April 25th, 2024, and we are
9 convening today in the Pioneer Room in the State Capitol
10 Judicial Wing.

11 Before we start with testimony today, we are
12 going to take some opening remarks from the
13 commissioners.

14 Commissioner Christmann.

15 COMMISSIONER CHRISTMANN: Thank you, Your Honor.

16 I'm not going to cover things that we've
17 generally covered all the other times. I feel like the
18 hearing is going along well, although I do see some
19 slippage. I know that this is a case that has a lot of
20 very strong opinions on both sides, and sometimes during
21 the course of our hearings, especially the last couple
22 of days, I feel that some of the maybe tempers are
23 flaring or emotions boiling over a little bit. I just
24 want to ask everybody involved here to show respect for
25 our judge, show respect for the Commission, show respect

1 for this process, and show respect for each other.
2 Because the way that respect is earned, a big part of
3 it, is by showing respect for others. And so I just
4 wanted to throw that out there this morning.

5 ALJ HOGAN: Commissioner Haugen-Hoffart.

6 COMMISSIONER HAUGEN-HOFFART: I have no opening
7 comments.

8 ALJ HOGAN: Mr. Dawson.

9 SUBSTITUTE DECISIONMAKER DAWSON: Well said.

10 ALJ HOGAN: All right. Where we left off
11 yesterday, I kind of left it up to the parties to figure
12 out the next witness and how we were going to proceed
13 from witnesses. So I'm not even sure who to direct the
14 question to, who's going to be called next.

15 MR. DUBLINSKE: Your Honor, I apologize there.
16 We had left it with Mr. Powell on the stand and still
17 had Mr. Schmidt on the list. My understanding from
18 Mr. Jorde and Mr. Bakke is that there are no remaining
19 questions for Mr. Powell. Mr. Bakke did request an
20 opportunity to examine Mr. Schmidt. We did hold him
21 overnight and he is available to be the first witness
22 this morning and pick up where we left off with
23 Mr. Schmidt.

24 ALJ HOGAN: All right. And is he -- has he
25 joined?

1 MR. BAKKE: Just one item for the record, Your
2 Honor. We asked for Mr. Schmidt tomorrow afternoon and
3 they indicated no and that they could only produce him
4 this morning. In relation to Mr. Powell, I did have
5 additional questions, but because we're short on time, I
6 don't expect I'm going to have time to ask Mr. Powell
7 additional questions, but we reserve the right, if there
8 is time, and that would probably come later in the
9 hearings.

10 ALJ HOGAN: And I will just note -- and thank
11 you, Mr. Jorde, for sending a witness list last night.
12 I appreciate that. But given the pace we've been
13 proceeding with, this is a pretty ambitious witness list
14 for today. I think there's nine witnesses. So I highly
15 doubt we're getting through nine witnesses today so I
16 just want the parties to plan accordingly as we proceed.

17 So I see Mr. Schmidt. Mr. Schmidt, I'll have
18 you start by stating your full name for the record.

19 JON SCHMIDT: Jon Schmidt.

20 ALJ HOGAN: And, Mr. Schmidt, before you testify
21 this morning, I am required by law to advise you on the
22 penalties for perjury in the state of North Dakota.

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

1 Do you understand what perjury is?

2 JON SCHMIDT: Yes.

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

6 JON SCHMIDT: I do.

7 ALJ HOGAN: All right. Thank you.

8 And, Mr. Bakke, are you going first?

9 MR. BAKKE: Yes.

10 ALJ HOGAN: Go ahead.

11 MR. BAKKE: Okay.

12 JON SCHMIDT,

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

15 CROSS EXAMINATION

16 BY MR. BAKKE:

17 Q. Okay. Mr. Schmidt, I kind of want to work
18 through these topics quickly if we can. First of all,
19 at the April 22nd hearing, you indicated, quote, "We
20 updated the weed management plan for additional
21 consultations we had with the weed boards in each
22 county," end quote.

23 And so my question to you is did that include
24 the Burleigh County Weed Board?

25 A. There's a table in the weed plan, and I can't

1 remember which ones provided updated information, but
2 it's indicated in that table in the weed plan.

3 Q. Did you contact anyone from the Burleigh County
4 Weed Board at any time?

5 A. My staff did.

6 Q. Okay. And I'm asking about you personally.

7 A. No. I had -- I managed the PST application, and
8 there was probably -- not including Summit, there was
9 probably 20 people that worked on that application.

10 Q. Okay. And Mr. Bitner, one of the county
11 commissioners for Burleigh County, has checked all the
12 Burleigh County Weed Board minutes and agendas going
13 back to 2021 and there's no record of any meeting with
14 Summit and the Burleigh County Weed Board. Do you have
15 any reason to dispute that?

16 A. Yeah. They were not formal meetings. These
17 were phone calls to the weed board to solicit their best
18 management practices and weed lists and to confirm it
19 against the state information that we received and then
20 that was compiled into the weed plan. We didn't do
21 formal meetings or get on the agenda or anything of that
22 nature. This was just basically calls to solicit their
23 technical information to make sure it was included in
24 the weed plan.

25 Q. Okay. And whether or not that call from Summit,

1 by somebody at Summit, occurred with the Burleigh County
2 Weed Board or not, you don't know?

3 A. It's recorded in -- in the weed plan, yes. All
4 the counties were contacted.

5 Q. Okay. By a phone call?

6 A. Yes.

7 Q. Okay. I want to turn now to the southern route
8 considered by Summit south of Bismarck. And you are the
9 vice president of environmental and regulatory services
10 for Summit; correct?

11 A. No.

12 Q. Okay. Did you previously have that title?

13 A. No. I work for -- I work for a third-party
14 consulting firm, EXP Energy Services.

15 Q. Okay.

16 A. I'm the vice president of environment and
17 regulatory for them.

18 Q. Okay. Sorry about that.

19 So what assessment did you do in terms of any
20 environmental concerns for a southern route for Summit
21 south of Bismarck?

22 A. All our firm was responsible for is helping to
23 collect the data, publicly-available data and
24 agency-supplied data, to put into Summit's GIS
25 information system. That work was completed by others

1 at Summit, not us.

2 Q. Okay. And so did you or your group do anything
3 to conduct any environmental studies for any alternative
4 route south of Bismarck?

5 A. No. The only thing we provided, as I indicated,
6 is information that came from the agencies. So our --
7 our archaeologists provided information from the SHPO's
8 office. As you're aware, Summit engaged tribes to
9 participate in surveys and those tribes provided just
10 anecdotal information about where sites were most likely
11 to be found along the major river systems. And so that
12 input was provided to Summit. But we didn't do any
13 analysis or talk to any agencies in that regard.

14 Q. Okay. So, for instance, there wasn't, to your
15 knowledge, any wetland delineation study done south of
16 Bismarck in relation to an alternative southern route?

17 A. No. They would have used the desktop
18 information that comes from the U.S. Fish and Wildlife
19 Service. That's how all wetland delineations are
20 started, is using the NWI maps, or National Wetland
21 Inventory maps.

22 Q. Well, and you said "they." Are you referring to
23 Summit?

24 A. Correct. That information was provided into
25 their GIS database for them to use.

1 Q. Okay. But whether Summit used it or not, you
2 don't know, in relation to a southern route?

3 A. I -- I don't have firsthand knowledge.

4 Q. Okay. And then how about an endangered species
5 report, are you aware of anyone conducting an endangered
6 species report in relation to a possible southern
7 alternative route south of Bismarck?

8 A. So that information was also provided to them
9 and is in the GIS database and is one of the constraints
10 they use for routing.

11 Q. Okay. And whether they considered it in
12 relation to a southern route, you don't know?

13 A. I would assume they did, just like they did all
14 the other routing we've done.

15 Q. Okay. But that's an assumption. You don't
16 know?

17 A. It's just --

18 Q. Correct?

19 A. -- based on what I've seen. Correct.

20 Q. Okay. And if I were to ask you the same
21 questions in regards to the southern alternative route
22 in regards to other entities and reports and surveys
23 such as U.S. Fish and Wildlife, you wouldn't have any
24 firsthand knowledge on that; correct?

25 A. I'm not sure what other things you're talking

1 about, but I would assume so.

2 Q. Okay. And so as an example, SHPO, did you
3 contact or did anyone from your organization contact
4 them in relation to a southern alternative route south
5 of Bismarck?

6 A. So our firm collected, as I indicated earlier,
7 data from the SHPO's office, because only archaeologists
8 can access that data, and provided that data into
9 Summit's GIS database for them to use. And it included
10 lots of data for lots of places all across North Dakota,
11 because there was a lot of routing done over the last
12 several years. So every time the route changed, we had
13 to pull new data. So that -- and all that information
14 was provided to them, yes.

15 Q. Okay. And yesterday we had testimony from
16 Mr. Powell in relation to what he did and did not do,
17 including Summit, in relation to analyzing a southern
18 route around Bismarck. You don't have any reason to
19 refute any of his testimony as to what they did not do;
20 correct?

21 A. I'm not sure I understand your question.

22 Q. Well, are you -- as an example, are you aware of
23 anyone -- after the initial application of Summit was
24 denied on August 4, 2023, are you aware of anyone from
25 Summit contacting SHPO in regards to a possible southern

1 route for the pipeline south of Bismarck?

2 A. As I indicated, we were asked to collect data,
3 which we did, from the agencies, but you don't have to
4 have a meeting for that. Like I said, archaeologists
5 have access to the SHPO's data and they pulled all the
6 data that was required.

7 Q. But that wasn't my question. My question is are
8 you personally aware of anyone from Summit contacting
9 SHPO after August 4, 2023, about a possible southern
10 alternative route?

11 A. I am not aware.

12 Q. Okay. Am I correct that Summit has not received
13 approval from the U.S. Corps of Engineers for the
14 proposed northern crossing of the Missouri River?

15 A. We haven't filed an application so we wouldn't
16 have approval yet.

17 Q. Okay. And am I correct that the scope of your
18 work for Summit did not include geologic and stability
19 field studies for landslides along the Summit route?

20 A. Our scope of work included management of the PSC
21 application process. And the applications I've done in
22 the past, we've not had to do fieldwork so we used
23 state-supplied and USGS-supplied information to complete
24 that analysis. And then when the State Geological
25 Survey requested additional information about areas that

1 they had questions about, Summit hired two firms to
2 investigate those areas and a report was provided to the
3 State Geological Survey and they agreed with the
4 conclusions. But in the other applications I've done,
5 we've never had to do fieldwork for geological features.

6 Q. And I'm not asking about the other projects that
7 you've worked on. I'm asking about the Summit-proposed
8 pipeline route. Am I correct in understanding that the
9 scope of your work by your company did not include
10 geologic or stability field studies for landslides?

11 A. No. Because it wasn't required.

12 MR. BAKKE: That's all the questions I have.

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

15 MR. JORDE: Just a couple, Your Honor.

16 ALJ HOGAN: Hang on, Mr. Jorde.

17 MR. JORDE: Can you hear me now?

18 ALJ HOGAN: Yeah, that's better.

19 MR. JORDE: Okay. Just -- yeah, just a couple
20 here.

21 CROSS EXAMINATION

22 BY MR. JORDE:

23 Q. Mr. Schmidt, on page 3 of your testimony you
24 discuss a study area for route adjustments consisting of
25 a one-mile corridor along the pipeline route. Is that

1 exclusively related to the Burleigh County reroute or is
2 that any area where route adjustments were made?

3 A. For the whole state.

4 Q. Okay. And so --

5 A. All the route.

6 Q. Thank you, sir.

7 And so based on a one-mile-wide corridor for the
8 entire route, do you have any information based on that
9 one-mile-wide study corridor of why Summit cannot route
10 around my clients?

11 A. Well, I -- I can't answer that question about
12 your clients. I mean, the application that the PSC
13 requires us to address exclusion and avoidance areas.
14 So the survey -- the desktop study includes all those
15 features that they ask us to analyze that are avoidance
16 or exclusion areas, and landowner properties aren't on
17 that list. So I don't -- I don't have that information
18 to put in the application.

19 Q. And then on page 5 you were asked if Summit has
20 evaluated the route for residences, schools, places of
21 business located within 500 feet of the pipeline, which,
22 of course, is the proposed route, and you say "yes." So
23 my question is do you understand, sir, that that
24 500 feet is an arbitrary distance, not specifically tied
25 or based on any type of CO2 dispersion analysis? Do you

1 know that?

2 A. I just follow what the regulations require which
3 is 500 feet.

4 Q. And you don't have any understanding of the
5 basis of if that 500 feet was selected specifically in
6 relation to CO2 pipelines, do you?

7 A. I -- you'd have to ask someone with the State.

8 Q. And then on page 6, the question was "Is the
9 project route located within 500 feet of any of those
10 structures," again, residences, schools, or places of
11 business. The question is do you have any information
12 regarding how many of those types of structures are
13 located between 500 or a thousand feet or did you not do
14 that analysis?

15 A. No. The analysis -- the analysis did go out
16 further, but all we had access to was the data that was
17 within 500 feet and it was tabulated, put into tables.

18 Q. And so when you say the analysis went out
19 further, did you produce a report anywhere, for
20 instance, of those structures located between 500 and
21 1,000 feet or 1,000 and 1,500 feet or 1,500 to
22 2,000 feet, for instance, from the proposed route?

23 A. No.

24 MR. JORDE: I don't have anything further.
25 Thank you.

1 ALJ HOGAN: Mr. Pelham, any questions?

2 MR. PELHAM: Thank you.

3 CROSS EXAMINATION

4 BY MR. PELHAM:

5 Q. Good morning, Mr. Schmidt. I'm wondering if you
6 can provide the Commission with an update on the status
7 of the communication between Summit and SHPO. Your
8 testimony at the April hearing indicated that that was
9 still in progress. Have there been updates since then?
10 Thank you.

11 A. Yes. On May 23rd the SHPO's office sent a
12 letter accepting Volume 1, which was the subject of the
13 original March 2023 letter, so they have accepted that
14 report. They're reviewing Volume 2. Volume 3 is in the
15 works and once they receive that. So things are
16 progressing. I think we've resolved all the initial
17 issues that they've had and we should get Volume 2
18 accepted as well soon.

19 Q. Can you be more specific when you refer to
20 Volume 1, Volume 2, and Volume 3?

21 A. Volume 1 was the first report.

22 So let me back up. When you do field -- Class
23 III field surveys for cultural resources, each state's a
24 little different, but you do a report per field season.
25 So Volume 1 covered the first field season of '21 and a

1 little bit of '22. Volume 2 is '22-'23. And Volume 3
2 is the methodology to do deep testing and the results of
3 the deep testing. So the reports are covering different
4 spans of time and different data accordingly.

5 But Volume 1 was the first report that solicited
6 the letter from them in March of 2023 asking it to be
7 revised. And so they've accepted it now.

8 Q. Volume 1?

9 A. Correct.

10 Q. And Volume 2 is being currently reviewed?

11 A. Correct.

12 Q. And Volume 3 --

13 A. Volume 3 --

14 Q. Go ahead.

15 A. Volume 3 isn't finished yet, but it will be
16 filed soon.

17 Q. What do you mean by "soon"? Can you give an
18 estimate?

19 A. I'd have to ask the archaeologist. That one's
20 probably the most complicated with deep testing. Let's
21 see, it's May. Hopefully, it would be filed by the
22 summer.

23 Q. And as far as completion of surveys on the
24 remainder of the proposed route, are you able to provide
25 any update since the April hearing?

1 A. Nothing's changed since there's no fieldwork
2 underway in North Dakota at the moment, but our intent
3 is to complete it prior to construction.

4 Q. Thank you, sir. I don't have any other
5 questions for you.

6 ALJ HOGAN: Commissioner Christmann, any
7 questions?

8 COMMISSIONER CHRISTMANN: No, Your Honor.

9 ALJ HOGAN: Commissioner Haugen-Hoffart.

10 COMMISSIONER HAUGEN-HOFFART: No.

11 ALJ HOGAN: Mr. Dawson.

12 SUBSTITUTE DECISIONMAKER DAWSON: None. Thank
13 you.

14 ALJ HOGAN: Any redirect, Mr. Dublinske?

15 MR. DUBLINSKE: No, Your Honor.

16 ALJ HOGAN: All right. Well, thank you,
17 Mr. Schmidt.

18 Next witness to be called.

19 MR. LEIBEL: Yeah. The landowner intervenors,
20 Judge, would call Bismarck resident Howard Malloy.

21 ALJ HOGAN: Good morning, Mr. Malloy. Do you
22 want to turn your microphone on? Just press the gray
23 button. You should get a blue light. That looks good.

24 All right. I'll have you start by stating your
25 full name for the record and spelling your last name.

1 want to make sure we lay the foundation. Now we're
2 talking about a particular piece of land located in
3 Morton County; right?

4 A. Correct.

5 Q. And for the Commission, the land is township 140
6 north, range 81 west, section 6 and 7 in Morton County.
7 And, Mr. Malloy, if you could pull -- to your right hand
8 is a map book. And if you could look at pages 57 and 58
9 of that map book and let me know if that is your
10 property.

11 A. Yeah. It starts on -- this looks like part of
12 it. Is it 57 and 58?

13 Q. I believe so, unless that book is not a current
14 -- or is not the map book I'm thinking of. But, anyway,
15 I'm sure the Commission is more familiar with it. So
16 let me ask it this way. To the right of your binder I
17 handed you a --

18 A. Yeah, it's here. It's just not bounded
19 completely. It's on the next page. It isn't completely
20 bounded, but I see it.

21 Q. Okay. And also I've handed to you a document
22 that's been marked as Landowners Exhibit 49 with some
23 photographs on it.

24 A. Okay. Yes.

25 Q. Can you please tell me what Landowners Exhibit

1 49 represents?

2 A. These are some pictures of the property in
3 question, my property in Morton County.

4 Q. And are you the one that took those pictures?

5 A. I did.

6 Q. And when did you take them?

7 A. A couple days ago.

8 Q. Okay.

9 MR. LEIBEL: Landowners would move the admission
10 of Landowners Exhibit 49.

11 ALJ HOGAN: Any objection, Mr. Gludt?

12 MR. GLUDT: No objection, Your Honor.

13 ALJ HOGAN: Mr. Pelham.

14 MR. PELHAM: No objection.

15 ALJ HOGAN: Landowner 49 is received.

16 Q. (BY MR. LEIBEL) So could you please describe
17 your property for the Commission.

18 A. Well, it's a -- it's a beautiful piece of
19 ground. It's bordered on the north and the east by
20 Square Butte Creek. It's got bluffs to the north and
21 the south and higher ground to the west. It's kind of
22 rolly. It's -- you know, it's a beautiful piece of
23 ground.

24 Q. And can you give us the relationship of that
25 property from Mandan?

1 A. About 10 miles north of Mandan. I'm not sure of
2 the exact city limits, but about 10 miles north of the
3 -- when you get onto 1806.

4 Q. Okay. When did you acquire this property?

5 A. Well, actually my dad acquired it. I was buying
6 -- in the process of negotiating to buy some farmland
7 and it was about 1,400 acres. I couldn't afford it all.
8 My dad bought this parcel, about 175 acres, in December
9 of 2003.

10 Q. Okay.

11 MR. LEIBEL: And, Judge, I'm going to ask Mr.
12 Malloy about eight or nine questions addressing the
13 issue of insurance. I know the court -- or the judge
14 has made some rulings earlier excluding insurance.
15 We've had some testimony about insurance. And the
16 specific purpose of my questions is to demonstrate a
17 distinction between an easement and an eminent domain
18 judgment, which I believe distinguishes the Commission's
19 August 4 findings.

20 Q. (BY MR. LEIBEL) So, Mr. Malloy, have you ever
21 asked your insurance carrier whether your farm policy
22 provides coverage for a CO2 leak?

23 A. Yes, I did.

24 MR. GLUDET: Your Honor, I'm just going to note
25 our objection for the record and we'll allow him to

1 proceed here.

2 ALJ HOGAN: All right. So noted.

3 Q. (BY MR. LEIBEL) And could you please turn to
4 Landowners Exhibit 44?

5 A. Where might that be?

6 Q. I believe it is right to the -- yeah, the big
7 white -- that's it. No. 44.

8 A. Okay.

9 Q. And did you receive a response from Starion
10 Insurance regarding your request whether your farm
11 policy provides coverage?

12 A. I did.

13 Q. And Exhibit 44 is a document dated April 17,
14 2023, and addressed to the Trustee of Harry Malloy Trust
15 No. 2. Do you see that on the first page?

16 A. Yes.

17 Q. Are you familiar with Exhibit 44?

18 A. Yes.

19 Q. Is this the response of Starion Insurance?

20 A. Yes.

21 MR. LEIBEL: Landowners would move the admission
22 of Exhibit 44.

23 ALJ HOGAN: Other than your general objection,
24 any further objections, Mr. Gludt?

25 MR. GLUDT: Yeah. I would just object on the

1 basis that this is areas that have been deemed
2 sufficient by the Commission and we still haven't gotten
3 to Mr. Leibel's ultimate point yet so I would still
4 object, wait until we get to that point.

5 ALJ HOGAN: Mr. Pelham, any objection?

6 MR. PELHAM: No objection.

7 ALJ HOGAN: All right. The objections are
8 noted. I will receive Landowner 44.

9 Q. (BY MR. LEIBEL) What is your understanding of
10 the conclusions of Starion Insurance regarding your
11 policy of insurance?

12 A. In regard to the pollutants which have been the
13 items that would be defined from the CO2 line, that
14 they're not covered. I mean, there's no coverage at all
15 under the policy for those pollutants.

16 Q. Okay. Summit, through Mr. Rorie, has submitted
17 testimony that their voluntary easement language
18 includes an indemnity provision. Do you have any
19 experience in reviewing property -- real property
20 records in a county recorder's office?

21 A. I do.

22 Q. What is your experience?

23 A. Well, I've been doing it since I was 18 and I'm
24 past that now. But I own the Bismarck Title Company.
25 We are in the business of researching and insuring

1 titles, closing real estate transactions.

2 Q. So based on your experience, is there a
3 difference between an easement recorded against a piece
4 of property and an eminent domain judgment recorded
5 against a piece of property?

6 A. Yeah.

7 Q. What is an easement?

8 A. Well, an easement is a grant, voluntary grant,
9 usually for compensation of some interest in real
10 property.

11 Q. Okay. So essentially it's a contract between
12 two parties. Is an eminent domain judgment a contract?

13 A. No.

14 Q. I mean, it's not a voluntary agreement?

15 A. No.

16 Q. Would -- is it fair to characterize that as a
17 decision from a judge?

18 A. Yes.

19 Q. And the scope of that decision is limited by the
20 jurisdiction of that court. Is that accurate?

21 A. I believe so.

22 Q. Has Summit promised you that it would
23 voluntarily agree to indemnify you if it takes your
24 property by eminent domain?

25 A. No.

1 Q. Were you listening or were you here when
2 Mr. Powell testified yesterday that Summit would
3 voluntarily ask a trial court to give the same rights to
4 -- that it grants by a voluntary easement to a party
5 whose property is taken by eminent domain?

6 MR. GLUDET: Objection, Your Honor. That's a
7 mischaracterization of the testimony. Mr. Powell
8 testified that they would offer individual landowners
9 the same indemnity, not request that a judge provide
10 that indemnity.

11 ALJ HOGAN: That's kind of what I understood.
12 Maybe that's -- I think there were general questions
13 about it so I don't know that it was totally fleshed
14 out. But my understanding was there was a commitment
15 from Summit to give the same type of rights. So I don't
16 know that he specified one way or the other. So I think
17 the record speaks for itself what his testimony was.

18 MR. LEIBEL: And maybe I misunderstood that, but
19 I mean, the point obviously I'm getting at is there's a
20 hole in that coverage but I'll move on.

21 Q. (BY MR. LEIBEL) Do you have any experience in
22 land development?

23 A. Yes.

24 Q. Have you ever been a party to any companies that
25 develop land?

1 A. Yes.

2 Q. What companies are that?

3 A. Let's see. The -- I did some financing for a
4 development, and the name of that development -- the
5 name of the company was Savage Investments, and we did
6 some financing and were paid when lot sales occurred. I
7 was a member of an LLC that acquired property and we
8 were paid when --

9 UNIDENTIFIED SPEAKER: Excuse me. Can you try
10 pulling your microphone a bit closer?

11 THE WITNESS: I'm sorry.

12 A. And we were paid by -- when we -- when lots sold
13 and then we participated in the profits of the
14 construction on the project.

15 And I'm currently the primary -- the majority
16 managing member of an LLC that owns property in Bismarck
17 and we're selling it -- we're developing it for
18 commercial lots, currently doing that.

19 And I actually was involved in two other
20 residential projects in Burleigh County which would have
21 been residential subdivision developments that both --
22 we ran into some zoning issues with the first one and we
23 didn't complete it and we ran into some infrastructure
24 problems with the second one. So I was involved in
25 those projects as well that didn't come to fruition.

1 Q. And are you familiar with and have worked with
2 developers in the Bismarck community?

3 A. Yes.

4 Q. How have you -- what's the nature of your
5 relationship with some of the developers?

6 A. Well, as the owner of a title company, when
7 developers acquire property we work with them on the
8 acquisition, we handle the title work, the closing.
9 When they finance it, we are involved. When they plat
10 it, we work with the engineers from the engineering
11 company, the surveyors, we review the plats. And when
12 they sell the lots, we're involved in the title and the
13 sale of those lots.

14 Q. So the particular piece of property that we're
15 -- that we've been talking about north of Mandan, can
16 you tell the Commission a little bit about, you know,
17 when you first had -- or when you first made the
18 decision that that would be some good development
19 property?

20 A. Well, it actually occurred from the very
21 beginning when I approached my dad about participating.
22 And he didn't want to be a partner in the farm project.
23 I didn't really want him to be a partner either. So he
24 bought the land. I said, "Well, dad, this isn't the
25 greatest potato --" this was a potato farm and there's

1 soil conditions and drainage conditions that you strive
2 for in potatoes, and it didn't have it. And so I said
3 it's not the best piece of ground for farming, for
4 potato farming. It's a very fertile piece of ground but
5 -- I said, but it's perfect development land. And if we
6 ever quit farming, this is the property we develop for
7 subdivisions. It would be the first parcel anyway.

8 Q. Are there any developments to the south of this
9 property?

10 A. Yeah. There's Harmon Lake, has got subdivisions
11 around just south of it, joining it. To the east is
12 River Place. To the north High Country Estates, I
13 believe is the name of the subdivision up there. So,
14 yeah. And there's subdivisions all the way down to
15 Mandan. I mean, they're spotted all the way from Mandan
16 all the way up to this property.

17 Q. And is there anything unique about the property
18 with relation to its proximity to Harmon Lake?

19 A. Well, it's below it. You know, it's part of the
20 -- that's part of the bluff that surrounds it. It's
21 right on 1806, which made it ideal really for
22 development because we didn't have to build a road to
23 it. I have paved road and good access. I'm not sure
24 what other considerations there are for Harmon Lake --

25 Q. Well.

1 A. -- besides the inundation zone. Are you
2 referring to the inundation zone?

3 Q. Yeah.

4 A. Morton County discovered a couple years ago
5 that, after building Harmon Dam, that it put all the
6 parties and property below Harmon Dam at risk and
7 they -- they wanted to pass an inundation zone which
8 would restrict development of all those acres, a couple,
9 2 to 3,000 acres below, which would in my -- the farm I
10 used to own and a lot of other property below Harmon
11 Dam.

12 There's a moratorium at this point because they
13 can't decide what to do. And, you know, who's going to
14 sue them? But at -- if, in fact, the inundation zone
15 becomes ordinance in Morton County, it would eliminate
16 from development thousands of acres next to this
17 property and to the south of it, all good development
18 property, which would further enhance the value of this
19 because this property, fortunately, is out of the
20 inundation zone.

21 Q. So if the Commission approves the route through
22 your property, do you believe that the city of Mandan
23 will suffer any adverse effects?

24 A. Well, it would eliminate it from development.
25 And it -- assuming Morton County passes the ordinances

1 that would restrict, you know, setback -- setback
2 restrictions -- and it might not be feasible to sell
3 lots with a CO2 line through the property anyway. And
4 that would -- the fact that you lose 81 -- this would be
5 prime real estate, high-value homes would go on it, and
6 it would be hundreds of thousands of dollars in lost tax
7 revenue annually.

8 Q. So have you disclosed your development plans and
9 these adverse effects on this property at any time to
10 Summit?

11 A. Yeah. I got a call last summer from Mr. Powell,
12 July 24th, I think, and I returned his call on
13 July 25th. I think his call was prompted in my
14 conversations with Bill Price, and Bill suggested that
15 Jimmy give me a call, and he did.

16 And we talked about it. And I told him exactly
17 that, that this is prime development property. I had
18 planned to do it. I know how much money I'll make when
19 I do it. And the only way I would acquiesce to a
20 pipeline going through it would be for compensation for
21 that loss.

22 Q. Okay. Did you explain to him, you know, provide
23 some explanation for how your -- you arrived at your
24 number, who you had talked with?

25 A. I did. I talked to Robb Sattler, who's a

1 developer friend of mine, and I said how -- you know, I
2 showed him the plat. I -- Swenson Hagen had done a plat
3 for me in 2022. And I showed that to Robb, kind of told
4 him about it. And he came up -- he did some math and
5 came up with what he -- and he does -- he's done more
6 residential development in Bismarck than anybody so he
7 -- he thoroughly understands the concept. And he shared
8 with me what he thought it would bring as a profit.

9 Q. And did you disclose that profit to Summit?

10 A. I did.

11 Q. What was Summit's response?

12 A. Mr. Powell said -- he took it under
13 consideration. He didn't argue with me. We had a good
14 conversation. He said he would talk to his staff, his
15 guys, whoever they were, I don't know, and get back to
16 me.

17 Q. Did you receive any response from Summit to that
18 discussion with Mr. Powell?

19 A. No.

20 Q. Did you recently authorize Mr. Jorde to reach
21 out to Summit regarding your development plans and to
22 propose an alternative?

23 A. Yes.

24 Q. Could you please turn in the landowner exhibits
25 to Document 36? And now this April 30th, 2024, letter

1 is addressed to Mr. Bender. Have you seen this letter
2 before?

3 A. Yes.

4 Q. And is this the letter that you authorized to be
5 sent to Mr. Bender?

6 A. Yes.

7 MR. LEIBEL: The landowners would move the
8 admission of Exhibit 36.

9 ALJ HOGAN: Any objection, Mr. Gludt?

10 MR. GLUDT: No, Your Honor.

11 ALJ HOGAN: Mr. Pelham.

12 MR. PELHAM: No objection.

13 ALJ HOGAN: 36 is received.

14 Q. (BY MR. LEIBEL) And if you could turn to the
15 third page of Exhibit 36, can you please tell the
16 Commission what that third page represents?

17 A. That's a preliminary plat of the land for
18 subdivision purposes.

19 Q. Now, as part of this letter you had essentially
20 proposed two alternatives. The first alternative, as
21 demonstrated in Exhibit 36, is that Summit move this
22 pipeline off your property completely. Can you explain
23 to the Commission why you believe that is the best
24 alternative?

25 A. Well, I -- I don't know why they would go

1 through development property. There's subdivisions both
2 sides of the line. I would think there's a better
3 course than going -- you know, a few miles north in
4 Oliver County there is no residential subdivisions. So
5 it seems -- I would prefer they go elsewhere.

6 Q. And is your understanding that the proposed
7 route essentially cuts your property in half?

8 A. It does.

9 Q. And your property is 175 acres; is that correct?

10 A. Correct.

11 Q. And so it's about 2,000 feet, give or take a
12 hundred, throughout the length of your property. Is
13 that accurate?

14 A. Yeah. Yes.

15 Q. And so putting the pipeline down the middle
16 essentially leaves a thousand feet on each side?

17 A. Correct.

18 Q. Did you also provide to Summit what's
19 essentially the least-worst option?

20 A. Yes.

21 Q. And what was the least-worst option you
22 proposed?

23 A. I proposed if the line was to cross my property,
24 to run along the south border.

25 Q. And would running along the south border still

1 provide you with -- would still cause adverse effects to
2 your financial interest in this property?

3 A. Yes.

4 Q. Why?

5 A. Well, two reasons. We don't know what ordinance
6 that Morton County will apply to the pipeline so there
7 certainly is going to be a setback limitation which will
8 reduce the amount of land that could be developed,
9 number one, no matter where we put it so that's a loss.
10 And, number two, you know, there's a CO2 pipeline in the
11 property, which there's a liability issue and a concern
12 whether I'd want to sell for residential purposes
13 property here. So I'm not sure I would proceed or not.
14 And, three, if I did, that pipeline might devalue the
15 property even further just because it's there.

16 Q. Do you personally have reservations about
17 selling to other people a lot within 500 or a thousand
18 feet of an established 24-inch highly-pressurized
19 pipeline?

20 A. Yes.

21 Q. What is your personal reservation?

22 A. Well, I'd be concerned about if there was an
23 issue, the effect it would have on the people that I
24 sold the property to. I wouldn't want to be the guy
25 that sold the property to the people if they had some

1 sort of loss due to this pipeline.

2 Q. Is it your understanding that Summit has
3 responded to your -- the April 24th letter with a couple
4 of alternatives?

5 A. No.

6 Q. Did they provide a -- send a letter back to
7 Mr. Jorde saying they would consider your alternatives
8 if you agreed to a survey?

9 A. No. Is that what that letter said?

10 Q. Well, okay. Are you the named -- essentially,
11 the named defendant in the conglomerate case that's
12 currently pending before the North Dakota Supreme Court?

13 A. I am.

14 Q. Is it your understanding that at this point
15 voluntarily consenting to a survey may affect the
16 appellate rights of both you and other individuals?

17 A. That's my understanding, yes.

18 Q. Now one last question I want to ask you. Did
19 you essentially manufacture this development plan as a
20 ruse, just a way to kill Summit's pipeline?

21 A. No, I did not. I mean, I -- I -- obviously, as
22 my testimony would indicate, I've been planning this for
23 years. And I wouldn't be the one to kill the pipeline.
24 You know, I don't have any desire to kill the pipeline.
25 It's not my position.

1 Q. Okay.

2 MR. LEIBEL: I have no further questions.

3 ALJ HOGAN: Mr. Gludt, any questions?

4 MR. GLUDT: Yes, Your Honor.

5 CROSS EXAMINATION

6 BY MR. GLUDT:

7 Q. Mr. Malloy, just to touch on that last topic, so
8 you -- your counsel did not share with you Mr. Bender's
9 May 21st, 2024, response letter?

10 A. I did see it. I did see it. Yes, I --

11 Q. But you didn't read it? You saw it?

12 A. I must have misunderstood the tenor of the
13 letter.

14 Q. But your counsel did share it with you?

15 A. Yes.

16 Q. Was that just today?

17 A. No. No.

18 Q. Okay. Mr. Malloy, you became an intervenor in
19 this case around February of last year; is that correct?

20 A. I couldn't tell you the exact dates.

21 Q. Would you take my word that you petitioned to
22 intervene on February 28th, 2023?

23 A. Okay.

24 Q. And that was granted. And has there -- we went
25 through February, went through the whole first round of

1 hearings. Did you testify at any of those hearings?

2 A. No, sir.

3 Q. And on August 4th Summit's application was
4 denied and then there was some reroutes made. Were
5 there any reroutes on your property?

6 A. No.

7 Q. It's the same as it was pre denial; correct?

8 A. Correct.

9 Q. So why are you here today, now today, on
10 reconsideration expressing your concerns to the
11 Commission?

12 A. This was the first I was asked to testify.

13 Q. So you were asked to testify?

14 A. I was asked by counsel to testify, yeah.

15 Q. Okay. Would you be willing to grant survey
16 access to Summit to see if any of your reroutes are
17 feasible?

18 A. I'd have to consider the actual -- what are you
19 asking me?

20 Q. Would you consider granting survey access to
21 Summit in order for Summit to determine if any of your
22 reroutes are feasible on your property?

23 A. I cannot grant survey access today, no.

24 MR. GLUDT: That's all I have, Your Honor.

25 ALJ HOGAN: Mr. Pelham, any questions?

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CROSS EXAMINATION

BY MR. PELHAM:

Q. Good morning, Mr. Malloy. Prior to the Swenson Hagen survey done in 2022, what active steps had you taken to develop the property?

A. Could you repeat, please?

Q. Prior to the 2022 survey that was done by Swenson Hagen, what active steps did you take to develop the property?

A. No active steps.

Q. Why 2022?

A. Well, the -- obviously the Summit pipeline was coming through and I needed to know, you know, what my property was worth. Really that's --

Q. Have you inquired of Morton County zoning requirements?

A. Yes.

Q. And have you applied for any permits at this time?

A. Yeah.

Q. What permits have you applied for?

A. Well, I'd have to talk to Swenson Hagen. They were the engineering firm. But I did -- I did sign an application.

Q. Do you know the status of those permits?

1 A. I think they're on hold.

2 Q. All right. Thank you, sir. I don't have any
3 other questions for you.

4 ALJ HOGAN: Mr. Bakke, any questions?

5 MR. BAKKE: Yes, just a few, Your Honor.

6 CROSS EXAMINATION

7 BY MR. BAKKE:

8 Q. In terms of this property, how far is it to the
9 west of the Missouri River?

10 A. Oh, about a mile, I guess. I don't know
11 exactly.

12 Q. Okay.

13 A. But not -- maybe not quite that far.

14 Q. Okay. Do any of the lots or the property have
15 views of the river?

16 A. Yeah.

17 Q. Do you believe that enhances the value of the
18 land?

19 A. Well, the general area is just a beautiful --
20 it's river bottom area so my property is surrounded by
21 trees and Square Butte Creek, but it is in close
22 proximity to the Missouri River. And the whole valley
23 is a -- it's just a -- it's part of a big valley.

24 Q. Okay. As part of Exhibit 36 there is some maps.
25 And what I'm wondering about is do those maps, one or

1 more of those maps, show any of the nearby existing
2 rural developments?

3 A. Where am I looking?

4 Q. 33 -- I'm sorry. 36. It's the letter from
5 Mr. Jorde with the attached maps.

6 A. I mean, they certainly do depict residents on
7 some of these maps.

8 Q. Well, I see on page 6, it looks like there's
9 what appears possibly to be a lake and then some housing
10 developments, looks like three.

11 A. Yeah. Harmon -- Harmon Lake, Harmon Village, I
12 think they're called. There's quite a few, you know,
13 dozens and dozens, I would guess, homes.

14 Q. And how far away are they from your southern or
15 northern or western border to these housing
16 developments?

17 A. They border on the south.

18 Q. And what was the projected profit amount should
19 these lots be developed and the Summit pipeline does not
20 go on your property?

21 A. Well, the gross profit was about 5.9 million
22 less -- and then I -- but I deducted the ag value of the
23 land. Because if I couldn't sell it for development
24 purpose, I'd have to sell it for ag purposes. And that
25 was -- so there is value in the land. That's about

1 570-some thousand. So I came up with about 5.3 plus
2 million.

3 Q. Okay.

4 A. Robb Sattler actually came up with those
5 numbers.

6 MR. BAKKE: That's all the questions I have.

7 ALJ HOGAN: Commissioner Christmann, any
8 questions?

9 COMMISSIONER CHRISTMANN: Your Honor, could we
10 take about two minutes for me to consult with
11 Mr. Schock?

12 ALJ HOGAN: Yes. Absolutely.

13 (Pause)

14 ALJ HOGAN: All right. Go ahead.

15 COMMISSIONER CHRISTMANN: Thank you, Your Honor.
16 And thank you, Mr. Malloy, for the little pause.
17 Did you ever find this map book, like we look at on
18 pages 57 --

19 THE WITNESS: Yeah --

20 COMMISSIONER CHRISTMANN: -- and 58?

21 THE WITNESS: Yeah. It's on two pages, which --

22 COMMISSIONER CHRISTMANN: Correct.

23 THE WITNESS: -- is kind of hard to see.

24 COMMISSIONER CHRISTMANN: I need to bounce back
25 and forth. I'm trying to understand your property.

1 THE WITNESS: Well, I think we have better maps
2 than these but --

3 COMMISSIONER CHRISTMANN: Actually, other than
4 that yours is split, it's kind of good. And the page
5 numbers are tiny. They're down in --

6 THE WITNESS: Yeah.

7 COMMISSIONER CHRISTMANN: -- the bottom right.

8 THE WITNESS: I mean, the map shows it on -- on
9 two different pages. So you look at the left side of
10 57, there's a railroad crossing there. And that is the
11 eastern-most parcel -- side of this. It's one parcel.
12 And then if you flip it to page 58, you know, that pink
13 line that starts up -- which is a road, I guess, and
14 then it goes over to Highway 1806. So it's on the very
15 right edge of the page 58 and the left edge of page 57.

16 COMMISSIONER CHRISTMANN: But your property is
17 basically south of that access road?

18 THE WITNESS: Yeah. It's just -- it's just a
19 dirt trail. It's --

20 COMMISSIONER CHRISTMANN: From --

21 THE WITNESS: There's an easement on it.

22 COMMISSIONER CHRISTMANN: From the highway over
23 to the railroad.

24 THE WITNESS: Yep.

25 COMMISSIONER CHRISTMANN: And then the south

1 boundary is up there toward -- what is that? Harmon
2 estates or --

3 THE WITNESS: Harmon -- yeah, Harmon Village.
4 One of the Harmon Villages.

5 COMMISSIONER CHRISTMANN: The dark green area,
6 kind of?

7 THE WITNESS: Yeah, yeah.

8 COMMISSIONER CHRISTMANN: Okay. And so in
9 response to Mr. Bakke's question and the view of the
10 river, the initial view from the eastern edge of your
11 property is the railroad and then it's almost a half a
12 mile to the river; correct?

13 THE WITNESS: Yeah. Yep.

14 COMMISSIONER CHRISTMANN: I was trying to
15 remember the lay of that land. I used -- it used to be
16 in my legislative district, just the dark green coloring
17 and my recollection when I used to drive there all the
18 time. Is there any wetlands in that 75 acres?

19 THE WITNESS: No -- well, not that I know of it.
20 There's a low spot. I mean, it's irrigated farmland so
21 it's being --

22 COMMISSIONER CHRISTMANN: But I mean anything
23 like through the -- got Farm Service Agency-declared
24 wetlands --

25 THE WITNESS: Not that I'm aware of, no.

1 COMMISSIONER CHRISTMANN: Okay. As far as like
2 housing development, is it in a flood zone?

3 THE WITNESS: No. Well, I don't know if it's in
4 a -- I suppose it's in a flood zone. It's near the -- I
5 mean, my house in south Bismarck is in a flood zone. So
6 I would guess it must be. It's not in a restricted
7 flood zone, you know, you have to get flood insurance if
8 you want financing, that kind of thing. I assume. I
9 haven't checked into that, but --

10 COMMISSIONER CHRISTMANN: Okay.

11 THE WITNESS: -- I assume so, yeah.

12 COMMISSIONER CHRISTMANN: I think I understand
13 the property now.

14 I have no other questions, Your Honor. Thank
15 you.

16 ALJ HOGAN: Commissioner Haugen-Hoffart.

17 COMMISSIONER HAUGEN-HOFFART: No questions.

18 ALJ HOGAN: Mr. Dawson.

19 SUBSTITUTE DECISIONMAKER DAWSON: No questions.

20 ALJ HOGAN: Any redirect, Mr. Leibel?

21 MR. LEIBEL: No, I don't have anything. Thank
22 you.

23 ALJ HOGAN: All right. Thank you, Mr. Malloy.

24 THE WITNESS: Thank you.

25 ALJ HOGAN: Next witness.

1 MR. BAKKE: Your Honor, at this time we'll call
2 Mitch Flanagan.

3 ALJ HOGAN: All right.

4 MR. LEIBEL: I'm sorry, Judge, before we start,
5 I -- in my notes, I can't see if Exhibit 44 was
6 accepted.

7 ALJ HOGAN: Yes.

8 MR. LEIBEL: Okay. Thank you.

9 ALJ HOGAN: Thank you.

10 Good morning. I'll have you start by stating
11 your full name and spelling your last name for the
12 record.

13 MITCHELL FLANAGAN: Mitchell Flanagan,
14 F-L-A-N-A-G-A-N.

15 ALJ HOGAN: And, Mr. Flanagan, were you in the
16 room this morning when I went through the penalties for
17 perjury?

18 MITCHELL FLANAGAN: Yes, ma'am.

19 ALJ HOGAN: And do you understand what perjury
20 is?

21 MITCHELL FLANAGAN: Yes.

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

25 MITCHELL FLANAGAN: Yes, I do.

1 ALJ HOGAN: All right. Thank you.

2 Go ahead, Mr. Bakke.

3 MR. BAKKE: Thank you.

4 **MITCHELL FLANAGAN,**

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

7 DIRECT EXAMINATION

8 BY MR. BAKKE:

9 Q. Could you state your name for the record?

10 A. Mitchell Flanagan.

11 Q. Okay. And you work for Burleigh County?

12 A. I do.

13 Q. Okay. And what is your job position at Burleigh
14 County?

15 A. Planning director for the Burleigh County
16 Building, Planning, and Zoning Department.

17 Q. And you previously testified in the initial
18 round of hearings including regarding a map that your
19 department prepared showing the -- some precise
20 information regarding the original proposed route by
21 Summit through Burleigh County?

22 A. Yes.

23 Q. Okay. And since the PSC's decision on August 4,
24 2023, there's been a reroute proposed for part of
25 Summit's route through Burleigh County. You understand

1 that; correct?

2 A. Yes.

3 Q. Okay. And take a look in the binder, or perhaps
4 in front of you, to BC100. And that is the first page
5 of the petition for reconsideration by Summit with page
6 8 out of that document which is a document submitted to
7 the PSC by Summit showing the original route and then
8 the proposed reroute as identified in red or pink on
9 Figure 1 on page 2. Do you see that?

10 A. Yes.

11 Q. Okay. And did your department and you review
12 that sometime shortly after that petition for
13 reconsideration was filed by Summit?

14 A. Yes. We forwarded it to the GIS coordinator for
15 Burleigh County.

16 Q. Okay. And based on looking at Figure 1, was
17 that map that Summit provided detailed enough to allow
18 Burleigh County to specifically identify the proposed
19 reroute location based on this map that was provided by
20 Summit?

21 A. There are no references to streets or address
22 or 911 points, nothing on it. We had to remap it so
23 that we could -- we had hundreds of calls for this, or
24 the location of this pipeline, and people were asking
25 where it was going. And so we had to remap it according

1 to what they submitted.

2 Q. Okay. And without Burleigh County remapping it
3 based on what Summit provided, was there any way for the
4 individuals that were calling in for -- for Burleigh
5 County to give them any meaningful information as to
6 where this proposed reroute was?

7 A. No.

8 Q. Okay. What is shapefile information?

9 A. Shapefiles are a collection of geospatial data
10 that are used to create maps. They're in reference to
11 the GIS software. You have to have GIS to -- to read
12 the maps. They basically contain lines that are
13 digitized roads, points, vectors that are related to
14 tables that can be referenced on the GIS software. They
15 help create maps.

16 Q. And did Summit ever provide to Burleigh County
17 any shapefile information to assist Burleigh County in
18 trying to determine the precise location of the proposed
19 Summit reroute?

20 A. No.

21 Q. And in terms of the GIS data, how is GIS data
22 used to prepare a map based on something like Figure 1
23 of Exhibit BC100 by Burleigh County?

24 A. Well, references geographical locations for a
25 variety of sources, but, you know, it analyzes these --

1 these vectors and these lines and these points on a
2 point and they digitize that. We transfer it as best we
3 can.

4 Q. So let's then turn to Exhibit BC101. And is
5 that a map that was prepared by your office based off of
6 GIS data?

7 A. It was created by the GIS coordinator who works
8 for Burleigh County.

9 Q. Okay. And does it show various locations for,
10 for instance, the original route of the Summit pipeline
11 starting at approximately I-94 and then continuing
12 north, northwest from there to the Missouri River?

13 A. Yes.

14 Q. And is that shown in a green color?

15 A. Yes.

16 Q. Okay. And then does it show the route proposed
17 by Summit as part of the reroute that shows in red?

18 A. Yes.

19 Q. Okay. And then does it also show the city
20 limits for Bismarck?

21 A. It shows the city limits, yes.

22 Q. Okay. And various other references and
23 distances?

24 A. Yes.

25 Q. Okay.

1 MR. BAKKE: Your Honor, we'll offer BC101.

2 ALJ HOGAN: Any objection, Mr. Mahlberg?

3 MR. MAHLBERG: No objection, Your Honor. Thank
4 you.

5 ALJ HOGAN: Mr. Pelham.

6 MR. PELHAM: No objection.

7 ALJ HOGAN: All right. BC102 is received --
8 or 102; correct?

9 UNIDENTIFIED SPEAKER: 101.

10 ALJ HOGAN: 101. Sorry. I'm looking at the
11 wrong map. 101. It's received.

12 MR. BAKKE: Okay.

13 Q. (BY MR. BAKKE) And so on BC101, has Burleigh
14 County included a legend for these various colored lines
15 and other items on the map?

16 A. Yes.

17 Q. Okay. And then, for instance, there is what's
18 identified in brown as the Bismarck ETA. What is that?

19 A. It's a extraterritorial area that the city of
20 Bismarck can extend their -- their -- basically, they're
21 -- not their -- well, their jurisdiction but it's --
22 it's -- they allow that area to be used for development
23 according to regulations of -- of the City of Bismarck.

24 Q. So, for instance --

25 A. Not in the city limits.

1 Q. Okay. So, for instance, in the ETA -- and is
2 that the extraterritorial limits for the city of
3 Bismarck?

4 A. Yes.

5 Q. Okay. So if someone wanted to build a house
6 within the area inside the brown, would they then have
7 to apply with the City of Bismarck Building Inspections
8 Department for a permit and go through that process?

9 A. Yes. And then follow their zoning regulations
10 and their building permitting.

11 Q. And so is that the -- the ETA land which the
12 City of Bismarck believes will ultimately at some point
13 be within the city limits?

14 A. That is their projection, yes.

15 Q. Okay. And then there's also a black line on
16 there which shows a four-mile buffer around the city of
17 Bismarck; correct?

18 A. Correct.

19 Q. And is that the four-mile distance from the gray
20 area showing the actual city limits for the city of
21 Bismarck?

22 A. Yes.

23 Q. Okay. And so if we look at the area between the
24 brown ETA and the black, which is the four-mile buffer,
25 in -- in between there, in between the brown and the

1 black, who would have jurisdiction over that? The City
2 or Burleigh County?

3 A. It's a joint jurisdictional agreement between
4 the City and Burleigh County. Burleigh County uses the
5 county's sheriff department to patrol that area. The
6 City of Bismarck enforces it with their regulations of
7 zoning and permitting also.

8 Q. Okay. And the four-mile buffer, in terms of
9 development, are there already existing developments
10 within that area? In other words, between the two-mile
11 ETA and the four-mile buffer?

12 A. Yes.

13 Q. Okay. And if we look, for instance, close to --
14 on the north side of I-94, between the black to where
15 the proposed reroute location is for Summit which shows
16 in the red, does that show a distance of just a little
17 less than a mile, 0.99 miles?

18 A. Yes.

19 Q. Okay. Is it Burleigh County's -- let me ask it
20 to you this way. Is part of the reason that Burleigh
21 County has this four-mile buffer around the city is
22 Burleigh County believes there will continue to be
23 housing development and other development within the
24 four-mile buffer?

25 A. Yes.

1 Q. Okay. I'd like to focus for a few moments on
2 the proposed reroute location and talk about the
3 location along I-94 on the east side of Bismarck and
4 then just directly north of that. On there we can see
5 the green line which is located just a little bit west
6 of 145th Street Northeast. Do you see where I'm
7 referring to? Just north of I-94.

8 A. Yes.

9 Q. Do you see where it says 145th Street Northeast?

10 A. I do.

11 Q. Okay. And that was where the original Summit
12 pipeline was proposed to go, is the green, as it
13 continues northwest from there; correct?

14 A. Correct.

15 Q. And under the reroute, Summit -- has Summit
16 moved the proposed reroute location on the east side of
17 Bismarck further west towards Bismarck?

18 A. It has.

19 Q. Okay. And that's by what distance? How much?

20 A. It looks like .15 miles.

21 Q. Okay. .15 miles?

22 A. Yeah.

23 Q. Okay. And then they also have moved it on the
24 north-south axis from that point just north of I-94 up
25 to the point where the red line intersects with the

1 green?

2 A. Correct.

3 Q. Okay. Would this be a location that would be to
4 the east of Silver Ranch development?

5 A. Yes.

6 Q. Okay. So would it be accurate to state that
7 Summit is actually, under the reroute, proposing to move
8 the original route closer to Bismarck to the east of
9 Silver Ranch?

10 A. Correct.

11 Q. Okay. I know you weren't here yesterday, but
12 Mr. Boeshans testified yesterday, based on the map we
13 saw then which is Figure 4, that Summit was not moving
14 the pipeline any closer to Bismarck under the reroute to
15 the east than under the original route. Does this GIS
16 map show that is false?

17 A. I guess. That's accurate.

18 Q. Yeah, okay. In other words, Summit is, in fact,
19 under the reroute proposing to move the eastern border
20 of the Summit pipeline under the reroute closer to
21 Bismarck than the original route; correct?

22 A. Correct.

23 Q. And then the location where they're proposing to
24 move the reroute location for the Summit pipeline to the
25 -- to the west, you can see on there, in kind of a

1 greenish color, what appears to be some people. Do you
2 see that?

3 A. Which -- are we still on the same map?

4 Q. We are. If you look where it says 0.15 --

5 A. Yes.

6 Q. -- if you look directly above that, there's a
7 little icon --

8 A. Right.

9 Q. -- that looks like a man and a woman.

10 A. I'm sorry, I don't see that on this map. I see
11 a circle, a green circle, right above that 1.5 mile.

12 Q. Okay. Let me just show you my copy.

13 MR. BAKKE: May I approach, Your Honor?

14 ALJ HOGAN: Yes.

15 MR. BAKKE: Okay.

16 Q. (BY MR. BAKKE) It's not on yours -- yes, it is
17 on. Right there.

18 A. Okay. Yes.

19 Q. What is that green icon that looks like a man
20 and a woman figure?

21 A. The location of the I-94 rest stop, rest area.

22 Q. Okay. And so under Summit's proposed reroute,
23 are they proposing to have the Summit pipeline go under
24 Interstate 94 close to the existing rest stop?

25 A. Correct.

1 Q. And is there a rest stop on both the north and
2 south side of I-94?

3 A. Correct.

4 Q. And is -- I'm assuming you're familiar with
5 those rest stops?

6 A. Yes.

7 Q. Probably stopped there on occasion?

8 A. I haven't, but I drive by them.

9 Q. Okay. Because you're just about home already;
10 right?

11 A. Yeah.

12 Q. And is there typically people at those rest
13 stops, to your understanding?

14 A. Yes.

15 Q. Okay. If there was a CO2 leak in the area of
16 either one of these rest stops, would that be of concern
17 to Burleigh County?

18 A. It would be, yes.

19 Q. And the previous location where they had the
20 proposed Summit pipeline further to the east near 145th
21 Street where they proposed to go under I-94 in that
22 area, were there -- are there any structures or homes or
23 residences in the original location Summit had proposed
24 there?

25 A. There's farms there. There's still some farms

1 in that area before you get to the rest area.

2 Q. Okay. Would there be the amount of people you
3 would expect to be at these two rest stops where they're
4 proposing the pipeline to be rerouted?

5 A. Correct.

6 Q. There would be people there?

7 A. Yeah.

8 Q. Okay. And what type of residences there?

9 A. Well, there's -- I know there's farmsteads,
10 there's homes there, there's residential homes there on
11 the north and south side of the interstate.

12 Q. So would that also be a concern in relation to a
13 CO2 leak?

14 A. That's where people live. Yes.

15 Q. Okay. And then on the map we can see some other
16 residential housing developments that are identified.
17 We see Apple Valley. We see Country Meadows. We see
18 Apple Creek Ridge. Are those all existing housing
19 developments?

20 A. Correct.

21 Q. Okay. And if we take Country Meadows, is the
22 distance from the proposed Summit pipeline route to
23 Country Meadows 1.49 miles?

24 A. Correct.

25 Q. Okay. And from Apple Valley, 1.4 miles to an

1 existing development, Apple Valley?

2 A. Correct.

3 Q. Okay. And McDowell Dam would be 2.55 miles away
4 from the proposed Summit reroute moving it further west,
5 closer to Bismarck?

6 A. Correct.

7 Q. Okay. And in terms of McDowell Dam, how active
8 is that, to your understanding, during the summer
9 months?

10 A. It can be quite active. It's -- especially
11 during cross country. I've seen over a thousand people
12 out there for a full-day event for cross country kids
13 from all over the state running events there. I'm not
14 sure about other events. I know I've attended those
15 because my kids are in cross country.

16 Q. And is it of concern to Burleigh County that
17 Summit is proposing to route the Summit pipeline close
18 to these existing developments, Apple Valley, Country
19 Meadows, Apple Creek Ridge, and the McDowell Dam?

20 A. Correct.

21 Q. And then if you look at Exhibit Burleigh County
22 106, that is Figure 4 that shows the southern
23 alternative that Summit provided to the PSC in relation
24 to a southern alternative route they mapped out for
25 consideration as an alternative route. Is that your

1 understanding?

2 A. Yes.

3 Q. Okay. And then based on that, did Burleigh
4 County follow a similar process using GIS data to try to
5 identify the precise location of the southern route?

6 A. Yes.

7 Q. Okay. Did that southern route information in
8 Figure 4, did that provide any shapefile information to
9 Burleigh County to assist them in trying to determine
10 the precise location of the southern alternative route?

11 A. No.

12 Q. Okay. Did it provide any streets or section
13 numbers or other typical information that would be
14 provided to allow people to identify where the proposed
15 southern alternative route was?

16 A. No.

17 Q. Okay. Did Burleigh County use that map to
18 identify the precise location using GIS data?

19 A. Yes.

20 Q. Okay. And is that what has been marked as
21 Burleigh County 102?

22 A. Correct.

23 Q. Okay. And on Burleigh County 102, is the red
24 line drawn on there the proposed reroute by Summit?

25 A. Correct.

1 Q. And then is the proposed Summit southern
2 alternative route identified in the orange color?

3 A. Correct.

4 Q. Okay. And there's various other locations
5 identified on that map as well?

6 A. Correct.

7 Q. Okay.

8 MR. BAKKE: Your Honor, we'll offer BC102.

9 ALJ HOGAN: I would also note, based on my
10 records from yesterday, Mr. Bakke, I don't think BC106
11 was offered so I don't know if you want to offer that
12 one. I know we referenced it a few times.

13 MR. BAKKE: Okay. Yes, thank you for reminding
14 me. Yes, we would offer 106 as well.

15 ALJ HOGAN: Mr. Mahlberg, any objection to
16 either of those exhibits?

17 MR. MAHLBERG: No objections, Your Honor. Thank
18 you.

19 ALJ HOGAN: Mr. Pelham.

20 MR. PELHAM: No objection.

21 ALJ HOGAN: All right. 102 and 106 are
22 received.

23 Q. (BY MR. BAKKE) So BC102 was a GIS map your
24 department prepared based on BC106 provided by Summit as
25 part of their submission to the PSC?

1 A. Correct.

2 Q. Okay. And did you -- did Burleigh County
3 identify on there various existing housing developments
4 that are already in existence?

5 A. Correct.

6 Q. Okay. And under the proposed southern
7 alternative by Summit, would that proposed southern
8 alternative route go through or directly next to a
9 number of housing developments that already exist in
10 Burleigh County?

11 A. Correct.

12 Q. Okay. And are those identified by the legend on
13 the left-hand side about midway down the map starting
14 with Armans 2nd Subdivision Replat, and there's 16
15 housing subdivisions identified with the last one being
16 Wingenbach Terrace?

17 A. Yes.

18 Q. Okay. So would this be an appropriate southern
19 route for the Summit pipeline?

20 A. Well, it would go through hundreds of people's
21 homes so there -- the middle of their subdivisions down
22 there. It's .7 miles to the University of Mary. It --
23 I -- I don't know. The logistics of running that
24 pipeline through all those property and through those
25 subdivisions would be -- I couldn't imagine it myself.

1 These are existing homes. They've been there for over
2 20 years.

3 Q. And then University of Mary, you said, is .7 of
4 a mile away from where Summit plotted out a possible
5 southern alternative route?

6 A. Correct.

7 Q. Okay. We see in blue identification on
8 Exhibit 102 of the Bismarck ETA; correct?

9 A. Correct.

10 Q. And where did Summit plot out a southern
11 alternative route in relation to the southern Bismarck
12 extraterritorial limits?

13 A. It's within the southern border on -- it's
14 within their ETA.

15 Q. Okay. So it's actually to the north of the
16 existing city jurisdictional area where Summit plotted
17 out a possible southern alternative route?

18 A. Correct.

19 Q. And we can see the orange line which would be
20 the southern alternative route is north of the blue
21 line. How far north approximately did Summit propose
22 for a southern alternative route inside the city ETA?

23 A. Well, there's two references. One to the U of
24 Mary and the other one is .91 miles to the west side of
25 U of Mary. Is that the question?

1 Q. No. Look at the blue line on the bottom close
2 to the housing development labeled number one, which is
3 Armans 2nd Subdivision.

4 A. Okay.

5 Q. Just south of the orange line and the blue
6 line --

7 A. Yes.

8 Q. -- where it says number one.

9 A. Yes.

10 Q. My question is how far -- how many feet is it,
11 roughly, if you know, from that blue line to the south
12 where number one is to where the pipeline is located in
13 the southern alternative route to the north?

14 A. I --

15 Q. Into the ETA, is what I am asking.

16 A. Looks like feet. I wouldn't know the distance,
17 though, by looking at the map. My guess, it would be
18 within feet.

19 Q. Okay. And this map shows, based on GIS data,
20 that there are 16 existing housing subdivisions in
21 Burleigh County within .25 miles of the Summit proposed
22 southern alternative route; correct?

23 MR. MAHLBERG: Your Honor, I'm going to object
24 at this point. I question the relevance. The proposed
25 route is not the southern route. I understand that

1 Burleigh County is inquiring of this witness as to the
2 southern route and its efficacy, but I think we've gone
3 beyond that scope at this point. Thank you.

4 MR. BAKKE: That was my last question on that.

5 ALJ HOGAN: All right. He can answer the last
6 question.

7 A. Correct.

8 Q. (BY MR. BAKKE) Okay. Then let's turn to
9 BC103. What is BC103?

10 A. I believe that's the MDU and the Capital
11 Electric, their -- not jurisdiction but their operations
12 areas.

13 Q. Okay.

14 A. Areas of operation.

15 Q. Okay. And it's got a legend on the right-hand
16 side that describes what the various colors identify?

17 A. Correct.

18 Q. And so it provides information on which areas
19 outside the city and within the city limits are serviced
20 with electricity either by MDU or by Capital Electric?

21 A. Correct.

22 Q. Okay. And is this, to your understanding, a
23 document that Burleigh County uses from time to time for
24 planning and zoning and other purposes? Consults?

25 A. I'm not sure if they would use it for zoning.

1 This is a copy of a photograph provided by Capital
2 Electric of their jurisdiction.

3 Q. Okay.

4 A. Of their -- not jurisdiction but their areas of
5 operation.

6 Q. Meaning it would identify which specific areas
7 that they provide electrical service for?

8 A. Correct.

9 Q. Okay. And so it's kind of a -- if you will,
10 kind of a hodgepodge of areas where MDU has electrical
11 service and where Capital Electric has electrical
12 services?

13 A. Correct.

14 Q. Okay. And would the proposed Summit pipeline
15 route go through areas serviced both by MDU and by
16 Capital Electric?

17 A. Correct.

18 Q. Okay.

19 MR. BAKKE: Your Honor, we'll offer BC103.

20 ALJ HOGAN: Any objection, Mr. Mahlberg?

21 MR. MAHLBERG: A foundation and relevance
22 objection, but subject to those, no problem.

23 ALJ HOGAN: All right. And Mr. Pelham.

24 MR. PELHAM: No objection.

25 ALJ HOGAN: All right. The objection is noted

1 but I will receive BC103.

2 Q. (BY MR. BAKKE) And then BC104, can you
3 describe what that map is?

4 A. It's a jurisdictional map of Burleigh County.

5 Q. And does it plot out the proposed reroute of
6 Summit as shown by the red line?

7 A. Correct.

8 Q. Okay. And then does it show different townships
9 that are and are not under the jurisdiction of Burleigh
10 County?

11 A. Correct.

12 Q. Okay. The white ones are not under Burleigh
13 County zoning jurisdiction?

14 A. No. They're organized townships.

15 Q. And the pink ones, townships, are under Burleigh
16 County's zoning jurisdiction?

17 A. Correct.

18 Q. Okay.

19 MR. BAKKE: Your Honor, we'll offer BC104.

20 ALJ HOGAN: Any objection to BC104,
21 Mr. Mahlberg?

22 MR. MAHLBERG: No, Your Honor.

23 ALJ HOGAN: And Mr. Pelham.

24 MR. PELHAM: No.

25 ALJ HOGAN: All right. 104 is received.

1 Q. (BY MR. BAKKE) And then BC105, can you
2 describe what BC105 is?

3 A. This is the 911 address points for Burleigh
4 County.

5 Q. And does this show in red the reroute location
6 for the proposed Summit pipeline?

7 A. Correct.

8 Q. Okay. And the 911 points, would that be
9 identifying a structure or a residence?

10 A. Yes.

11 Q. And would show their proximity to the reroute
12 location?

13 A. Yes.

14 Q. Okay.

15 MR. BAKKE: We'll offer BC105.

16 ALJ HOGAN: Any objection to 105, Mr. Mahlberg?

17 MR. MAHLBERG: No, Your Honor.

18 ALJ HOGAN: Mr. Pelham.

19 MR. PELHAM: No objection.

20 ALJ HOGAN: All right. 105 is received.

21 MR. BAKKE: Okay.

22 Q. (BY MR. BAKKE) Then let's turn to BC107. Is
23 this a map that your office prepared based on GIS data?

24 A. Correct.

25 Q. Okay. And it shows the distance between the

1 South Central Regional Water District intake on the
2 Missouri River and the location to the north of the
3 Summit pipeline near where it crosses the -- or is
4 proposed to cross the Missouri River?

5 A. Correct.

6 Q. Okay. And is the South Central Regional Water
7 District intake a facility that intakes water from the
8 Missouri River?

9 A. Yes.

10 Q. And is this for drinking water purposes?

11 A. Yes.

12 Q. Okay. And, for instance, does the South Central
13 Regional Water District provide drinking water for
14 various areas to the east of that including areas in
15 rural Burleigh County, city of Menoken, and other
16 locations?

17 A. Yes.

18 Q. Okay.

19 MR. BAKKE: We'll offer BC107.

20 ALJ HOGAN: Any objection, Mr. Mahlberg?

21 MR. MAHLBERG: No, Your Honor.

22 ALJ HOGAN: Mr. Pelham.

23 MR. PELHAM: No, Your Honor.

24 ALJ HOGAN: 107 is received.

25 Q. (BY MR. BAKKE) And it shows the distance from

1 the South Central Regional Water District intake to the
2 closest point on the Summit pipeline being 2.69 miles;
3 correct?

4 A. Correct.

5 Q. And then the final map I want to ask you about
6 is BC108. And is this a map prepared by your office
7 based on GIS data?

8 A. Yes.

9 Q. Okay. And does it show the location of the
10 proposed southern alternative route by Summit?

11 A. Yes.

12 Q. And then various distances to where the Dakota
13 Access pipeline is currently installed and operating?

14 A. Yes.

15 Q. Okay.

16 MR. BAKKE: We'll offer BC108.

17 ALJ HOGAN: Any objection, Mr. Mahlberg?

18 MR. MAHLBERG: No, Your Honor.

19 ALJ HOGAN: Mr. Pelham.

20 MR. PELHAM: No objection.

21 ALJ HOGAN: All right. 108 is received.

22 Q. (BY MR. BAKKE) And it shows the distance to
23 the -- on the western-most point that's been depicted on
24 this map from the southern alternative route to the DAPL
25 pipeline being 7.6 miles?

1 A. Yes.

2 Q. In Morton County; correct?

3 A. Correct.

4 Q. And then it shows a distance about a little over
5 midway from the 7.6 miles to the Missouri River as being
6 13.9 miles in that location in Morton County?

7 A. Yes.

8 Q. Okay. And it shows the DAPL pipeline as it
9 crosses the Missouri River and then goes through part of
10 Emmons County to the southeast and then south?

11 A. Yes.

12 MR. BAKKE: Your Honor, that's all the questions
13 I have for this witness.

14 ALJ HOGAN: I think we'll take our morning break
15 before we start cross-examination. Let's take a
16 15-minute break and we will reconvene at 10:15.

17 (Recess)

18 ALJ HOGAN: -- started again.

19 Mr. Flanagan, if you want to come back up to the
20 witness chair.

21 All right. Mr. Mahlberg, any questions for
22 Mr. Flanagan?

23 MR. MAHLBERG: Just very briefly, Your Honor.
24 Thank you.

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CROSS EXAMINATION

BY MR. MAHLBERG:

Q. Good morning, Mr. Flanagan.

A. Morning.

Q. I have just a couple of questions about the generation of some of these maps, just really a point of clarification on these. In the legend of a number of these exhibits, BC101 as an example, if you want to pull it up. Down at the bottom, in the first asterisk explaining there, it says that these are digitized from -- it gives a title and then "Document 432." Is that Document 432 a reference to the PSC docket number?

A. Well, then the PDF map was titled "Figure 4: Overview of a Map of Preferred Route and Southern Alternative Route" from Summit Carbon Solution's Bismarck route analysis, Document 432.

I can't -- sir, on the Document 432 is just the map entitled "Figure 4."

Q. And I guess that's the same Doc. 432 label as is at the top of BC106.

A. Figure 4 --

Q. Go to the cover -- Mr. Flanagan, turn back one page, go to the cover page.

A. Oh, Doc. 430 --

Q. Yes. Okay. All of these maps were prepared at

1 your direction by the GIS department; right?

2 A. Yes. I requested Greg Carlson to produce these
3 maps based on these -- the only information that was
4 available.

5 Q. So you selected the generic map that would be
6 used by GIS -- your GIS department to come up with this
7 whole series of maps; right?

8 A. Correct.

9 Q. And you -- you chose this generic map that was
10 from January of 2024, you chose not to use more detailed
11 map pages that do have things like landowner names and a
12 route and -- that were filed, some all the way back in
13 October of 2023; right?

14 A. We referenced what was the only map that was
15 provided by Summit Carbon Solutions. But we also
16 referenced the easements that were recorded to document
17 -- further document the location of the pipeline.

18 Q. Mr. Flanagan, when you say "the only map that
19 was provided by Summit Carbon Solutions," as I
20 understand it, you're monitoring the docket and deciding
21 which map to send to your GIS department; right?

22 A. This is the only map that I -- I had -- had
23 available, that was made available to Burleigh County.

24 Q. So if there were other -- let me back up. Where
25 did you get the map from?

1 A. The -- the map was from -- I believe we got it
2 from the -- from the -- one of the hearings, one of the
3 hearings that -- it was submitted to the PSC for -- as a
4 document.

5 Q. So to the extent that there were more detailed
6 documents available such as on the PSC's docket at any
7 point in time, you weren't looking for that level of
8 detail in your maps?

9 MR. BAKKE: Object for lack of foundation,
10 compound.

11 ALJ HOGAN: I don't know that it was, but maybe
12 you could rephrase your question.

13 Q. (BY MR. MAHLBERG) Mr. Flanagan, not trying to
14 trick you up. I'm trying to find the source of where
15 you went looking to get the most detailed maps possible.
16 Because that would be helpful, I think, when you're
17 producing your maps. So where did you go to look for
18 your maps?

19 A. We looked at what was provided by Summit Carbon
20 Solutions to this council here. We also looked at the
21 recorded easements that were signed by the landowners.

22 Q. So you looked at the entirety of the Public
23 Service Commission's publicly-available docket?

24 A. Yes.

25 Q. And you didn't find any more detailed than this

1 one Figure 4 that you chose to use to have these maps
2 made?

3 A. Correct.

4 Q. Do you control the content of what goes up on
5 the Burleigh County Planning and Zoning Commission's
6 website?

7 A. Yes.

8 Q. So where there is, for example, a post from a
9 filing made by Summit Carbon Solutions to route
10 modifications including maps at the end of the document
11 that was filed with the PSC months ahead of this generic
12 document, you were the one who had that posted on the
13 website; right?

14 A. I'd have to look at the posting on the website,
15 but yeah.

16 Q. Sure. And maybe it's a good idea to do that.
17 You'll find the maps, including Bismarck reroute maps,
18 with things like the parcels, the routes, the landowner
19 names, the section, township, range, all the sorts of
20 information that, if I understood some of the
21 questioning, you said was lacking?

22 A. At the very beginning, yes.

23 Q. Well --

24 A. We feel that these maps are accurate. We feel
25 that they're backed up by the easements, the

1 documentation of those easements and the recording of
2 them, and also the information that we have.

3 Q. But you were able to, with the information that
4 you had and the easements that you found, to determine
5 where the route was to your satisfaction?

6 A. Right.

7 Q. So the public was aware of where the route was;
8 right?

9 A. Correct.

10 Q. Okay. I don't have anything else. Thank you.

11 ALJ HOGAN: Mr. Pelham, any questions?

12 MR. PELHAM: No questions. Thank you.

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

15 MR. JORDE: I do not. Thank you.

16 ALJ HOGAN: Commissioner Christmann.

17 COMMISSIONER CHRISTMANN: Thank you.

18 Would you go to BC101, please? Okay. And as we
19 go, I just want to make sure that I understand what
20 these various areas mean and how they come to be and --
21 for the whole rest of this case.

22 So when we look at the Bismarck ETA, I
23 understand what a city limit is. Who gets to vote in
24 the city elections? Just people in the city limits;
25 correct?

1 THE WITNESS: Correct.

2 COMMISSIONER CHRISTMANN: People in the ETA do
3 not get to vote for mayor and city commissioners;
4 correct?

5 THE WITNESS: Correct.

6 COMMISSIONER CHRISTMANN: Okay. And if I were
7 an ag producer outside of city limits but inside of the
8 ETA, do I have any say over whether I get into the ETA
9 or not?

10 THE WITNESS: No.

11 COMMISSIONER CHRISTMANN: So that's a city
12 commission decision to set the ETA line or a county
13 commission decision?

14 THE WITNESS: It's the city's decision to extend
15 their ETA line based on their population.

16 COMMISSIONER CHRISTMANN: Can you give me an
17 example or two? Again, if I were an ag producer outside
18 of city limits but inside the ETA, what might be some
19 things that I can -- that I have to do or that I can no
20 longer do that I could if I was not in the ETA?

21 THE WITNESS: Not much difference. Our zoning
22 -- you're under the zoning jurisdiction of the City of
23 Bismarck. Our zoning regulations are very similar to
24 the City of Bismarck so there's not much difference that
25 you could do within the ETA and within the county.

1 COMMISSIONER CHRISTMANN: If I wanted to build a
2 new house on my farm, I'd need zoning approval from
3 Bismarck?

4 THE WITNESS: Correct.

5 ALJ HOGAN: Okay. Then when we jump to the
6 four-mile buffer, who sets that?

7 THE WITNESS: That is also set by -- by the
8 population in the city. The city -- the city does not
9 choose to extend out to the four-mile at this time.
10 They have no intention of doing -- according to their
11 planning department and their future land use maps.

12 COMMISSIONER CHRISTMANN: But the buffer --
13 because, I mean, the city limits are not a perfect
14 circle.

15 THE WITNESS: Right.

16 COMMISSIONER CHRISTMANN: So I see sometimes on
17 the map here where it's .99 miles to the ETA and then
18 it's 1.19 and then it's 1.9. So that line on the map,
19 that's drawn by the City of Bismarck or the county?

20 THE WITNESS: Well, we produced this to show
21 that four-mile buffer of where the city could, if they
22 wanted to, extend their ETA. They choose not to.

23 COMMISSIONER CHRISTMANN: Is there a law that
24 only allows them to do the ETA up to four miles?

25 THE WITNESS: Yes.

1 COMMISSIONER CHRISTMANN: Okay.

2 THE WITNESS: It's by Century Code.

3 COMMISSIONER CHRISTMANN: Okay. And so then the
4 four-mile buffer would be where they could put it if
5 they wanted to max it out?

6 THE WITNESS: That's their -- yes.

7 COMMISSIONER CHRISTMANN: And there's -- the
8 people that live outside of the ETA but inside the
9 four-mile buffer, do they fall under city zoning rules?

10 THE WITNESS: No.

11 COMMISSIONER CHRISTMANN: Okay. And either one
12 of those, either specific to the people in the ETA or
13 all the way to the four-mile buffer, I think you said
14 something real early on about either fire or police
15 protection or both. Do they get those services but
16 people further out do not?

17 THE WITNESS: No. The city's -- the city police
18 and the fire stops at the city limits.

19 COMMISSIONER CHRISTMANN: Okay.

20 THE WITNESS: The joint jurisdictional agreement
21 allows the sheriff department to -- to -- and rural fire
22 to protect the ETA in that four-mile buffer area.

23 COMMISSIONER CHRISTMANN: Okay. Thanks for
24 explaining all this.

25 ALJ HOGAN: Commissioner Haugen-Hoffart.

1 COMMISSIONER HAUGEN-HOFFART: I was just looking
2 at that, where I can have the best shenanigans at and
3 not get caught.

4 My question -- Mitch, thank you for explaining
5 how the maps were developed. Have you done any
6 comparison in our docket on the maps that have been
7 submitted by Summit Carbon to your maps that you
8 developed?

9 THE WITNESS: I'd have to talk with Greg on
10 that.

11 COMMISSIONER HAUGEN-HOFFART: Okay.

12 THE WITNESS: I'd have to ask Greg.

13 COMMISSIONER HAUGEN-HOFFART: Okay. I have no
14 further questions. Thank you.

15 ALJ HOGAN: Mr. Dawson.

16 SUBSTITUTE DECISIONMAKER DAWSON: One question.
17 Are you here today under some official action of the
18 county commission? Or a couple times you said that you
19 were saying the county is concerned, and I'm just trying
20 to figure out is that your own personal concern or is
21 that concern based upon common sense or is that concern
22 based upon direction from the county commission?

23 THE WITNESS: It's based on the last two years
24 of creating ordinances and resolutions to protect the
25 people of Burleigh County. Way back at -- in 2022 they

1 created a resolution; they adopted a resolution opposing
2 eminent domain. And we've been -- they've adopted
3 several ordinances on the pipeline, trying to protect
4 the people of Burleigh County that was unanimously
5 adopted. It was attended by many hundreds of people
6 over the years. So it's -- there are concerns for the
7 Burleigh County Commission because they're in front of
8 them. They're the ones that were in front of them. And
9 they're at the hearings, they're at the -- during the
10 adoptions, the whole thing. I'm not representing those
11 people. I just -- I was the one that wrote those
12 ordinances and we held the public hearings for them.

13 SUBSTITUTE DECISIONMAKER DAWSON: Thank you. No
14 further questions.

15 ALJ HOGAN: Any redirect, Mr. Bakke?

16 MR. BAKKE: Just briefly, Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. BAKKE:

19 Q. In relation to the map, for instance, BC101
20 where you show that original pipeline route, that is
21 something that your department had prepared previously;
22 in other words, the precise location of the original
23 route and you had provided a map which was Exhibit
24 Warford 139. So that portion showing the original route
25 had previously been done by your department and

1 discussed by you at the prior hearings; correct?

2 A. Correct.

3 Q. Okay. And so in terms of the original route
4 versus the reroute location, you already had the precise
5 location of the original route available to you already;
6 correct?

7 A. Correct.

8 Q. And what you had to plot in there was the
9 reroute location based on GIS including the easement
10 data that you were able to locate?

11 A. Yes.

12 Q. Okay. And that's part -- one of the ways you
13 determined that the location shown on Exhibit BC101 and
14 the other maps that you testified about here today are
15 accurate and reliable; correct?

16 A. Correct.

17 Q. Okay. Then in terms of this ETA limit issue,
18 you mentioned the North Dakota Century Code. And does
19 the Century Code define the buffer location based upon
20 the population size of a city in North Dakota? Is that
21 your understanding?

22 A. Correct.

23 Q. In other words, if you have a population of
24 10,000 people, it's going to be a shorter buffer zone
25 than if you have 100,000 people?

1 A. Yes. Correct.

2 Q. Okay. And so if the population grows for the
3 Bismarck area, as it has been, that ETA could get
4 extended further in each direction, north, south, east,
5 depending upon population growth?

6 A. Correct. They could extend their ETA, their
7 current ETA, out to that four-mile buffer line right now
8 if they wanted to. They choose not to.

9 MR. BAKKE: That's all I have. Thank you.

10 ALJ HOGAN: Mr. Mahlberg, any other questions?

11 MR. MAHLBERG: No, Your Honor. Thank you.

12 ALJ HOGAN: Mr. Pelham.

13 MR. PELHAM: No, Your Honor.

14 ALJ HOGAN: Mr. Jorde.

15 MR. JORDE: No. Thank you.

16 ALJ HOGAN: Any other commissioner --
17 Commissioner Christmann.

18 COMMISSIONER CHRISTMANN: In response to
19 Mr. Dawson's question, did you say Burleigh County or
20 Bismarck has the proclamation or whatever opposing
21 eminent domain?

22 THE WITNESS: Burleigh County adopted that
23 resolution.

24 COMMISSIONER CHRISTMANN: Burleigh County. How
25 long have you been with Burleigh County?

1 THE WITNESS: I started in 2019.

2 COMMISSIONER CHRISTMANN: So are you aware of --
3 you know, maybe even something that you've heard of
4 beforehand -- ever historically where Burleigh County or
5 Bismarck has used eminent domain?

6 THE WITNESS: I'm not aware of it except for in
7 right of ways, your section line right of ways and that
8 sort of thing.

9 COMMISSIONER CHRISTMANN: Well, that would be
10 eminent domain, wouldn't it, if you needed more to widen
11 a road or a street and the landowners refused?

12 THE WITNESS: It's established by -- that
13 statutory right of way has already been already
14 established. The extra 42 feet, I'm not sure that would
15 be called eminent domain, but it's -- yeah, I'm not sure
16 if it would be called eminent domain. It's for
17 development of those roads.

18 COMMISSIONER CHRISTMANN: Refresh me. I'm not
19 sure where 42 feet comes from. I thought like a section
20 line, there's an axis, 33 feet on each side of the
21 center of the section line.

22 THE WITNESS: Correct.

23 COMMISSIONER CHRISTMANN: But if you want to
24 upgrade the road and need more right of way, you have to
25 acquire that property, either an easement or ownership;

1 correct?

2 THE WITNESS: Correct.

3 COMMISSIONER CHRISTMANN: And if the landowner
4 refuses to sell it --

5 THE WITNESS: We have to pay them for it.

6 COMMISSIONER CHRISTMANN: But if they refuse to
7 sell it at any price, that would require eminent domain,
8 wouldn't it?

9 THE WITNESS: Correct. I believe it wasn't
10 opposed to all eminent domain. I think it was used --
11 eminent domain used for hazardous liquid pipelines.

12 COMMISSIONER CHRISTMANN: Okay. Thank you for
13 clarifying that.

14 ALJ HOGAN: Commissioner Haugen-Hoffart.

15 COMMISSIONER HAUGEN-HOFFART: No further
16 questions.

17 ALJ HOGAN: Mr. Dawson.

18 SUBSTITUTE DECISIONMAKER DAWSON: No more.

19 ALJ HOGAN: All right. Thank you, Mr. Flanagan.
20 Next witness.

21 MR. BAKKE: Your Honor, we'll call Mary Senger.

22 ALJ HOGAN: Good morning. I'll have you start
23 by stating your full name for the record and spelling
24 your last name.

25 MARY SENGER: Sure. Mary Senger, S-E-N-G-E-R.

1 ALJ HOGAN: And, Ms. Senger, were you in the
2 room this morning when I went through the penalties for
3 perjury?

4 MARY SENGER: I was not.

5 ALJ HOGAN: All right. I'm required by law to
6 advise you on the penalties for perjury. Perjury is a
7 Class C felony, punishable by a maximum fine of \$10,000,
8 a maximum five years' imprisonment, or both.

9 Do you understand what perjury is?

10 MARY SENGER: Yes.

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

14 MARY SENGER: Yes.

15 ALJ HOGAN: All right. Thank you.

16 Go ahead, Mr. Bakke.

17 MR. BAKKE: Thank you, Your Honor.

18 **MARY SENGER,**

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

21 DIRECT EXAMINATION

22 BY MR. BAKKE:

23 Q. Could you state your full name for the record,
24 please?

25 A. Mary Senger.

1 Q. And are you employed by Burleigh County?

2 A. Yes.

3 Q. Okay. And what is your job position with
4 Burleigh County?

5 A. Emergency management director.

6 Q. Okay. I know this is a bit awkward because
7 you're looking to your left at me, but is there a way to
8 pull the microphone --

9 A. Oh, sure.

10 Q. -- a little bit closer to you? Thank you.

11 ALJ HOGAN: If you want to turn towards him too,
12 that would -- I think that would be fine.

13 Q. And how long have you been the emergency
14 management director?

15 A. 2000.

16 Q. 24 years. How long have you worked for Burleigh
17 County?

18 A. February of '91.

19 Q. And are you also the emergency manager director
20 for Emmons County?

21 A. Yes.

22 Q. Okay. And how long have you held that position?

23 A. Winter of '99.

24 Q. And continuously since that time?

25 A. Yes.

1 Q. Okay. And I want to talk to you about some
2 meetings where Summit presented information to Burleigh
3 County. Were you present at one or more meetings where
4 Summit presented information in relation to the Summit
5 pipeline to Burleigh County?

6 A. Yes.

7 Q. How did those meetings come about?

8 A. Usually a phone call conversation and followed
9 up by an email.

10 Q. And how many meetings did you attend with
11 Summit?

12 A. Three.

13 Q. Okay. So let's approach them one by one and
14 start with the first meeting, the earliest meeting.
15 When did you attend the first meeting?

16 A. June of '22.

17 Q. And where was that meeting at?

18 A. That was at my workplace.

19 Q. At Burleigh County?

20 A. Yep.

21 Q. And which location at Burleigh County?

22 A. 4200 Coleman Street.

23 Q. Where the Burleigh County office is?

24 A. Yes.

25 Q. And who was present at that meeting for Summit?

1 A. Rod Dillon, Jay Volk, and Cody Mattson, the
2 former Morton County emergency manager.

3 Q. And how long did -- how long did that meeting
4 last?

5 A. I believe an hour and a half.

6 Q. And did anyone else attend the meeting other
7 than the three individuals you identified from Summit
8 and you?

9 A. No.

10 Q. And did Summit request that meeting?

11 A. Yes.

12 Q. And did you receive an invite to that meeting?

13 A. That was, I believe, all arranged through phone
14 conversations.

15 Q. And I'm going to direct your attention to the
16 Burleigh County exhibit that's the binder in front of
17 you, the black one. If you could look at Exhibit BC114.
18 Is that an email you received with some attached maps
19 provided by Mr. Dillon of Summit on June 14, 2022?

20 A. Yes. This was after our meeting.

21 Q. Okay.

22 MR. BAKKE: Your Honor, we'll offer BC114.

23 ALJ HOGAN: Any objection to 114?

24 MR. GLUDT: No objection, Your Honor.

25 ALJ HOGAN: Mr. Pelham.

1 MR. PELHAM: No objection.

2 ALJ HOGAN: BC114 is received.

3 Q. (BY MR. BAKKE) So turning back to the meeting
4 in June of 2022, what was discussed at that meeting by
5 Summit?

6 A. It was just very introductory. They talked
7 about the project, future training and exercises with
8 our responders, and potential equipment needs like gas
9 monitors that the fire departments might need.

10 Q. Did they provide any specific details regarding
11 the proposed Summit pipeline?

12 A. They did explain it would be a 24-inch pipe,
13 four feet -- buried four feet, 2,000 PSI. That's all I
14 recall.

15 Q. Okay. Did they provide any either written or
16 oral information regarding the safety or health risks
17 related to CO2 exposure?

18 A. That, I don't recall.

19 Q. Okay. Did they provide anything to Burleigh
20 County at that time in relation to how a CO2 leak should
21 be responded to or handled by emergency personnel?

22 A. No.

23 Q. Okay. They provide any information that was
24 specific to Burleigh County in relation to how a leak
25 might affect Burleigh County or the city of Bismarck in

1 terms of wind conditions or plumes of CO2 or any
2 information in that regard?

3 A. No.

4 Q. Okay. And was there any discussion at that
5 meeting as to any specific first responder or emergency
6 management procedures that should be followed in
7 relation to a CO2 leak from the Summit pipeline?

8 A. The only procedures discussed was that they
9 would be providing us with a specific emergency response
10 plan after the project had started.

11 Q. And then was there any time after that in June
12 of 2022 when Summit followed up with you in relation to
13 emergency management procedures or first responder
14 procedures, other than the letter with the maps which
15 has been identified as BC114?

16 A. No.

17 Q. Okay. So prior to August 4, 2023, were there
18 any communications of any type by Summit with you as the
19 emergency management director for Burleigh County in
20 relation to the Summit pipeline?

21 A. Aside from the phone calls to set up this
22 meeting, that was my only interaction with Summit.

23 Q. Okay. So let's fast forward then to after
24 August 4, 2023, when the PSC decision was issued. When
25 was your next contact with Summit?

1 A. That was to set up a first responder information
2 meeting. Discussions were started, I believe, in
3 November.

4 Q. Okay. And how did that come about?

5 A. That was some phone conversations and emails
6 with Dave Nehring.

7 Q. Okay. And would you look at B -- Burleigh
8 County 115, please? Do you have that in front of you?

9 A. Yes.

10 Q. Is this a series of emails or an email string
11 with Rod Dillon, the director of regulatory compliance
12 with Summit?

13 A. Yes.

14 Q. Okay. So were those communications actually
15 with Mr. Dillon as opposed to Mr. Nehring leading up to
16 that meeting?

17 A. Yes.

18 Q. Or at least these -- the ones I've shown you?
19 Okay.

20 MR. BAKKE: We'll offer BC115.

21 ALJ HOGAN: Any objection to 115, Mr. Gludt?

22 MR. GLUDT: No, Your Honor.

23 ALJ HOGAN: Mr. Pelham.

24 MR. PELHAM: No objection.

25 ALJ HOGAN: 115 is received.

1 MR. BAKKE: Okay.

2 Q. (BY MR. BAKKE) So let's turn to the back of
3 that email, which would be the earliest email, and
4 that's an email from Mr. Dillon to you, dated
5 October 31, 2023, and he's asking about the LEPC meeting
6 schedule. What is LEPC?

7 A. Local emergency planning committee.

8 Q. Says "Please advise when the next LEPC meeting
9 will be for Burleigh and Emmons County. I would like an
10 invite to update you and first responder on the
11 dispersion modeling, grants, training plans"; correct?

12 A. Yes.

13 Q. And then the email string progresses from there
14 where you're talking about times and some of the
15 mechanical procedures in relation to that next local
16 emergency planning committee meeting for Burleigh and
17 Emmons County?

18 A. Correct.

19 Q. Okay. Okay. And then let's turn to
20 Exhibit 116. Is that a series of emails that you had in
21 regards to that proposed LEPC discussion or some other
22 discussion with Summit?

23 A. Yes. We -- the date of the LEPC meeting didn't
24 work out with them so we just worked on a time for first
25 responders.

1 Q. Okay. And is that what Burleigh County 116 is
2 as well as what appears to be some sort of a -- or is
3 identified as an agenda as the last page of that
4 document?

5 A. Yes.

6 Q. Okay.

7 MR. BAKKE: We'll offer BC116.

8 ALJ HOGAN: Any objection, Mr. Gludt?

9 MR. GLUDT: No objection, Your Honor.

10 ALJ HOGAN: Mr. Pelham.

11 MR. PELHAM: No objection.

12 ALJ HOGAN: 116 is received.

13 Q. (BY MR. BAKKE) Okay. And then in relation to
14 the last page of BC116, which is entitled "Pipeline
15 Information Session For First Responders," and it has a
16 time of 5 p.m., November 27, 2023, how did that agenda
17 come about?

18 A. This was back-and-forth dialogue, and I received
19 some topics or a rough agenda and so I put a more
20 formalized agenda together.

21 Q. Okay. Summit didn't do that, that was done by
22 you?

23 A. Correct.

24 Q. Okay. And then did they adopt it and publish it
25 or put it on their letterhead?

1 A. No. I grabbed the logo from one of the emails,
2 but I did get approval on the agenda, to send it to the
3 first responders from Summit.

4 Q. Okay. And that agenda that you sent out to the
5 first responders and that Summit approved does not
6 indicate that any of the information on that agenda or
7 to be discussed is in any way confidential or protected
8 security information or anything of that nature; is that
9 correct?

10 A. Correct.

11 Q. Okay. And Summit approved this?

12 A. Yes.

13 Q. Okay. Okay. So this talks about a meeting on
14 November 27, 2023. Did you attend that meeting?

15 A. Yes.

16 Q. Okay. And where was that meeting at?

17 A. It was at the Bismarck State College National
18 Energy Center of Excellence facility.

19 Q. Okay. And who selected that location?

20 A. Summit.

21 Q. Okay. And what happened at that meeting?

22 A. We, you know, followed the agenda. There was
23 some monitors set up. The meeting was set up in a
24 square like this and the monitors were in the middle.
25 And they went through their presentation for the first

1 responders.

2 Q. So when you say "monitors," are these like
3 computer monitors like we might see here in the
4 courtroom for the attorneys for Summit, computer
5 monitors so you could look at a small screen?

6 A. Yes, but they were not that big.

7 Q. Okay. And could you see very well what they
8 were trying to present?

9 A. There were a lot of slides that had narrative on
10 the slides that we couldn't read or you had to be
11 really, really close.

12 Q. And was this a slideshow type presentation?

13 A. All PowerPoint presentation.

14 Q. Okay. Was it a two-dimensional presentation?

15 A. From what I recall, yes.

16 Q. And then directing you to the information that
17 they were providing, did they have different individuals
18 who were talking about different topics at the
19 November 27 meeting?

20 A. Alex Lange was the primary presenter. And when
21 questions were asked, he deferred to other staff
22 members.

23 Q. And was Mr. Lange the individual talking about
24 the -- what they were calling "dispersion modeling"?

25 A. Yes.

1 Q. Was there any real-time presentation provided by
2 Summit in terms of dispersion modeling?

3 A. Not that I recall.

4 Q. Okay. Or any video that showed dispersion
5 modeling information such as a simulation or a test or
6 that type of thing to show what would happen if there
7 was a failure of the CO2 pipeline and a CO2 leak?

8 A. I don't believe there was real-time simulation.
9 I just recall pictures --

10 Q. Okay.

11 A. -- charts, graphs.

12 Q. As part of the PowerPoint presentation?

13 A. Yes.

14 Q. Okay. And did you take notes at that
15 presentation by Summit on November 27?

16 A. I did.

17 Q. Okay. Is that what has been marked as Burleigh
18 County 117?

19 A. Yes.

20 Q. Okay. And then did you actually type up those
21 notes after you got back to Burleigh County?

22 A. Yes, I did.

23 Q. Okay. And is that the second page of --

24 A. Yes.

25 Q. -- Burleigh County 117?

1 I'm sorry, I didn't hear your answer.

2 A. Yes.

3 Q. Okay. And is there a typo on the second page
4 where it says "November 7"? Should that be
5 "November 27" instead?

6 A. Yes.

7 Q. Okay.

8 MR. BAKKE: Your Honor, we'll offer Exhibit
9 BC117.

10 ALJ HOGAN: Any objection to 117, Mr. Gludt?

11 MR. GLUDT: Your Honor, may I just voir dire the
12 witness real quick to learn a little bit more about
13 these notes?

14 ALJ HOGAN: Sure.

15 MR. GLUDT: Ms. Senger, were these notes taken
16 based off the PowerPoint presentation that was being
17 spoken to and presented at that meeting?

18 THE WITNESS: PowerPoint and discussion.

19 MR. GLUDT: Okay. And at the beginning of that
20 meeting, did Alex Lange or anybody from Summit advise
21 you that this information was confidential?

22 THE WITNESS: I don't know if he said
23 confidential or secure, but these were my notes.

24 MR. GLUDT: And do you recall any information
25 within the PowerPoint itself noting or denoting

1 confidentiality?

2 THE WITNESS: That, I don't recall.

3 MR. GLUDT: Your Honor, we're going to maintain
4 our objection that this goes to the PowerPoint
5 presentation that was submitted to the PSC under the
6 protective order and this information should not be
7 discussed or alluded to based on that protective order.

8 ALJ HOGAN: Mr. Pelham.

9 MR. PELHAM: The protective order is a
10 protective order. And unless that changes, that's the
11 order of the Commission.

12 ALJ HOGAN: Do you agree that this falls -- the
13 information contained therein would fall under -- I
14 mean, the protective order is the modeling and what's
15 been submitted to the Commission.

16 MR. PELHAM: Quite frankly, we've heard a lot
17 about dispersion modeling already so -- without
18 objection, so I'm not sure what testimony that would be
19 received from this witness would differ from -- from
20 prior witnesses that have already been examined without
21 the objection. So I -- I don't -- I don't know because
22 there hasn't been a question asked as to this witness as
23 to the specifics on the dispersion modeling. But to the
24 extent that there would be questions that relate
25 specifics to the dispersion modeling, I would think that

1 that would probably fall within the protective order of
2 the Commission as to this specific case. But we haven't
3 heard those questions yet.

4 ALJ HOGAN: All right. I will note Summit's
5 objection, but I will admit 117.

6 Q. (BY MR. BAKKE) Okay. And while you were at
7 the Summit meeting, would it be correct to say that you
8 were taking these notes as the presentation progressed?

9 A. Correct.

10 Q. Nobody directed you not to take your own
11 personal notes, did they?

12 A. Correct.

13 Q. Okay. And if we look at the notes, it talks
14 about a number of topics, an emergency response plan
15 that we'll get to later. It talks about a high
16 consequence population, and then you have an
17 identification under PHMSA of what a high consequence
18 population is, the link to go to; correct?

19 A. Uh-huh. Correct.

20 Q. And then you talk about a UK study. Is that
21 something done in the United Kingdom as opposed to by
22 Summit?

23 A. Yes.

24 Q. Okay. So were they providing information on a
25 study in the United Kingdom --

1 A. Yes.

2 Q. -- involving a carbon dioxide pipeline --

3 MR. GLUDT: Your Honor, we're -- presumably,
4 this information came directly from the PowerPoint
5 presentation which is subject to our protective order
6 and now we are talking about the information in the
7 PowerPoint presentation. So we've reached the threshold
8 of the question being asked now.

9 MR. BAKKE: Your Honor, this is a dispersion
10 model from the United Kingdom, not something prepared by
11 Summit. I don't know how that could possibly be claimed
12 to be the work product or confidential to Summit when
13 it's from a completely different location and country.
14 I mean, it's -- I don't follow that objection at all.
15 None of these notes reflect any specific plume model or
16 dispersion modeling being done by Summit. They're
17 talking about one that was done in the United Kingdom.

18 MR. GLUDT: Your Honor, they reflect the content
19 of the PowerPoint presentation which is under the
20 protective order. We allowed a line of questioning
21 yesterday up to a certain point and it stopped when it
22 got a little too detailed, and we're at the same point
23 here today. We're just -- we're going into the details
24 of what was in that PowerPoint presentation.

25 And, you know, frankly, Summit's been asked and

1 is required to go around and have these meetings and
2 advises folks on the confidential nature of these
3 meetings, and we're expected to continue those meetings,
4 and now we have a witness up here that's going to openly
5 talk about it. And I think if you -- if there's trust
6 lost between Summit and Burleigh County, this is
7 certainly a reason why.

8 MR. BAKKE: Your Honor, could I suggest a
9 resolution and then I can move on?

10 ALJ HOGAN: Sure.

11 MR. BAKKE: If Summit will stipulate that what
12 happened at this meeting was that they presented some
13 information on a dispersion modeling from the United
14 Kingdom, not on the Summit pipeline, we can move on. I
15 don't need to ask any further questions about this
16 document.

17 MR. GLUDT: This information was from our slide
18 deck. It was presented to the Commission via an
19 application for a protective order. Presumably
20 Commission staff and the Commission got to see this and
21 ruled that this information was protected information.

22 ALJ HOGAN: So you're not willing to stipulate
23 that the UK modeling was discussed?

24 MR. GLUDT: Your Honor, no, it's out of context
25 and it's not complete.

1 ALJ HOGAN: Mr. Bakke, can you address the
2 relevance of going into the detail of what was discussed
3 at this meeting? I mean, I think we're circling back to
4 the discussion that we had yesterday that, you know, the
5 Commission's concern is that these conversations are
6 happening and that safety is being addressed, but
7 ultimately they don't have jurisdiction over the safety
8 guidelines themselves.

9 MR. BAKKE: Sure. I understand. I think this
10 is different than yesterday in the respect that this is
11 Burleigh County witnesses, not Summit. An agenda was
12 published for this meeting with the approval and after
13 review by Summit indicating that the agenda items were
14 not in any way confidential, was not subject to security
15 laws.

16 And the important point of this is her notes
17 establish that what they presented was not a dispersion
18 model for the Summit pipeline at all but, rather, was a
19 dispersion model from another country, the United
20 Kingdom and, therefore, they haven't done a dispersion
21 model for the Summit pipeline and specifically have not
22 done one that would be relevant to the concerns that
23 Burleigh County has, you know, in relation to being very
24 close to the city of Bismarck and very close to existing
25 rural housing developments and farms and ranches and

1 residences of people. And that whatever they did in
2 terms of a plume study was not what they're suggesting
3 it was because she was there and it related to the
4 United Kingdom. That's our point. That's the
5 relevance.

6 ALJ HOGAN: Mr. Pelham.

7 MR. PELHAM: I think that there's no question
8 that dispersion modeling has been done. It's been
9 provided to the Commission and it's subject to a
10 protective order. The relevance that we're getting into
11 and which has been established there's been meetings
12 between Summit Carbon Solutions and Burleigh County
13 emergency department, the specifics of which the
14 Commission does not have the jurisdiction to decide one
15 way or the other on. That it is being done is the
16 important relevant purpose.

17 There has been prior testimony from the company
18 in prior proceedings that it will provide an emergency
19 response plan. It's required to do that under PHMSA.
20 That is what the Commission is looking at. So the line
21 of inquiry going further down to the specifics and
22 nitty-gritty of it, in addition to the confidential
23 nature of the material that has already been determined
24 by the Commission to be protected information, I believe
25 goes beyond the scope at this point.

1 ALJ HOGAN: Mr. Bakke, she -- Ms. Senger can
2 testify about generally that the information they
3 received was not satisfactory to Burleigh County, but
4 we're not going to get into the details because of the
5 confidentiality order and the pending motion. So
6 generally she can testify that what was presented was
7 not sufficient for Burleigh County, but the details of
8 what was discussed, that we're not going to get into.

9 MR. BAKKE: Okay. I appreciate that
10 instruction. I'll follow my questions to comport with
11 that.

12 Q. (BY MR. BAKKE) So in relation to the
13 information that was provided to you at the meeting with
14 Summit on November 27, 2023, would it be accurate to say
15 that the information provided by Summit was not
16 sufficient, in your estimation, as the emergency
17 management director for Burleigh County and Emmons
18 County?

19 A. Correct.

20 Q. Okay. And how was it insufficient or not
21 sufficient?

22 A. We weren't provided the -- any handouts or the
23 specific locations of the route or a final route.

24 Q. Did they provide any written materials of any
25 type?

1 A. No.

2 Q. Okay. Were you interested in receiving written
3 materials that would talk about the best practices or
4 guidelines that should be followed in the event of a CO2
5 pipeline leak?

6 A. Yes. They did make reference to two guidelines
7 that we requested and then the emergency response plan.

8 Q. Okay. And the emergency response plan, that was
9 not provided at this meeting on November 27 by Summit?

10 A. Correct.

11 Q. Okay. Your notes reflect that you did request
12 an emergency response plan from Summit and Rod Dillon
13 said he would provide a draft version; correct?

14 A. Yes.

15 Q. Okay. And then following that meeting -- well,
16 let me ask you this. Was there a request made at the
17 November 27, 2023, meeting that Burleigh County be
18 allowed to have a copy of the slideshow presentation?

19 A. Yes.

20 Q. Okay. And did Summit refuse that request?

21 A. Yes.

22 Q. Okay. And who requested a copy of the slideshow
23 presentation?

24 A. Commissioner Bitner and I believe I did also.

25 Q. Okay. And then who do you recall being present

1 at that meeting, the November 27, 2023, meeting, from
2 Burleigh County other than yourself and Commissioner
3 Bitner?

4 A. Mitch Flanagan, the sheriff's department, and
5 that was all for Burleigh County government employees.
6 There were other first responder entities there.

7 Q. So following that, did Mr. Daum follow up and
8 provide a copy of written materials including
9 information on the guidelines?

10 A. Yes.

11 Q. And when did he follow up? Was it the day
12 following the presentation, on November 28?

13 A. Yes.

14 Q. Okay. Could you turn to Burleigh County 118?
15 Is that a copy of the email from Mr. Daum to you?

16 A. Yes.

17 Q. (Inaudible)?

18 A. Correct.

19 MR. BAKKE: We'll offer BC118.

20 ALJ HOGAN: Any objection to 118?

21 MR. GLUDT: No objection, Your Honor.

22 ALJ HOGAN: Mr. Pelham.

23 MR. PELHAM: Beyond what I've already stated as
24 to the relevance as to the Commission's limited
25 jurisdiction related to safety, but I do not object to

1 the admission of the exhibit. Thank you.

2 ALJ HOGAN: All right. 118 is received.

3 Q. (BY MR. BAKKE) (Inaudible) identify the things
4 that (inaudible)?

5 A. He provided the tactical guidance document,
6 indoor loading simulation, shelter-in-place, the link to
7 the UK study as well as a table and -- actually, two
8 tactical guidance documents, and then referenced the
9 high-level emergency response plan is forthcoming.

10 Q. (Inaudible) --

11 MR. DUBLINSKE: Your Honor, if I could just ask
12 Mr. Bakke to pull the microphone a little closer. We're
13 having some trouble hearing over here.

14 ALJ HOGAN: Sure.

15 MR. DUBLINSKE: Thank you.

16 Q. (BY MR. BAKKE) Okay. Do you have in front of
17 you Burleigh County 119?

18 A. Yes.

19 Q. Okay. And is that one of the documents that was
20 provided by Summit on November 28, 2023?

21 A. Yes.

22 Q. Okay. And then the second document I would
23 refer you to is Burleigh County 120. And is that also a
24 document you were provided by Mr. Daum of Summit on
25 November 28, 2023?

1 A. Yes.

2 Q. Okay. So let's turn back to Burleigh County
3 119, the Carbon Dioxide Emergency Response Tactical
4 Guidance Document. And it says "Guidelines For
5 Preparedness and Initial Response to a Pipeline Release
6 of Carbon Dioxide." It's dated August of 2023; correct?

7 A. Yes.

8 Q. And it identifies the authors of that document.
9 And who are those authors?

10 A. The American Petroleum Institute, the Liquid
11 Energy Pipeline Association, and National Association of
12 State Fire Marshals.

13 Q. And did Summit indicate whether it believes that
14 these guidelines, Exhibit 119, were guidelines that
15 should be followed by Summit in relation to an emergency
16 response to a carbon dioxide leak?

17 A. It was referenced in the presentation so I
18 believe the assumption was made that they were following
19 this guidance.

20 Q. Okay. And is that your understanding of why
21 they provided it to you, is to provide reassurance to
22 Burleigh County, including the -- to you as the
23 emergency management director, that they would, in fact,
24 follow guidelines in relation to being prepared to
25 address a carbon dioxide release from the Summit

1 pipeline?

2 A. Yes.

3 Q. Okay. And I don't want to go through this
4 entire document, but if you look at this, there's many
5 different topics addressed in here in relation to the
6 guidelines to be followed to prepare for and be able to
7 address a CO2 leak; is that correct?

8 A. Yes.

9 Q. Okay. And it's got a table of contents. This
10 isn't -- isn't paginated, but the table of contents, if
11 you could turn to that. It's about the fifth page in.
12 But it covers a number of topics in relation to a CO2
13 pipeline leak including emergency preparedness and
14 planning, gives information on exposure limits,
15 training, response drills and exercises, dispersion
16 modeling best practices, CO2 leak detection and
17 identification in terms of both physical identification,
18 remote identification, supplemental identification
19 methods, CO2 pipeline release response actions,
20 emergency responder safety, real-time plume predictions
21 and surveillance, air monitoring strategy, incident
22 management, and many other topics; correct?

23 A. Yes.

24 Q. Okay. And is it your understanding Summit was
25 representing it was going to follow all the guidelines

1 on the topics identified in the table of contents
2 including the ones we just described?

3 A. Yes.

4 Q. Okay. And then turning to Burleigh County 120,
5 which is the other guidelines they provided to you,
6 which is CTEH entitled "Indoor Carbon Dioxide Loading
7 Following a Simulated Carbon Dioxide Pipeline Release,"
8 also a document sponsored by American Petroleum
9 Institute and by Denbury Inc. and E3 Environmental;
10 correct?

11 A. Yes.

12 Q. And that's dated June 7, 2023?

13 A. Yes.

14 Q. And similarly, that has a table of contents
15 starting on Roman numeral iv and continuing on to vi; is
16 that correct?

17 A. Yes.

18 Q. Okay. And it also has some appendices
19 including --

20 UNIDENTIFIED SPEAKER: Your Honor, we're all
21 able to read the document. If Mr. Bakke has questions
22 for the witness specific to the document, I'd ask that
23 he ask them.

24 MR. BAKKE: I'm trying to speed it up. I'm just
25 asking -- identifying the sections and whether or not

1 they indicated and she understood that they would be
2 following those guidelines. It would take me a lot
3 longer to go through them item by item so I'd prefer to
4 do it very quickly, if I could.

5 ALJ HOGAN: I have similar concerns that we're
6 spending lots of time on these two documents when
7 they're written and in front of us. So whatever you can
8 do to speed this up I think would be appropriate,
9 Mr. Bakke.

10 MR. BAKKE: Sure.

11 Q. (BY MR. BAKKE) And in relation to Appendix A,
12 the "Health and Safety Measures and the Health and
13 Safety Plan," was it your understanding that the items
14 identified in the table of contents, including the ones
15 we discussed, were ones that Summit was representing it
16 would comply with and follow in relation to the Summit
17 pipeline?

18 A. Yes.

19 MR. BAKKE: We'll offer Exhibits 119 and 120.

20 ALJ HOGAN: Any objection, Mr. Gludt?

21 MR. GLUDT: No objection, Your Honor.

22 ALJ HOGAN: Mr. Pelham.

23 MR. PELHAM: Other than my prior stated as to
24 the relevance aspect, but no objection.

25 ALJ HOGAN: I will admit 119 and 120 and let the

1 Commission decide what relevance, if any, it gives to
2 this type of evidence given its limited jurisdiction as
3 has been previously noted.

4 Q. (BY MR. BAKKE) During the discussion on
5 November 27 at the Summit presentation, did anyone raise
6 the issue in relation to the Satartia, Mississippi, CO2
7 leak?

8 A. Yes.

9 Q. Okay. And what discussion was there in that
10 regard?

11 MR. GLUDET: Objection, Your Honor. I believe
12 this comes from the discussion and the presentation that
13 Summit made which was based off our PowerPoint. We've
14 discussed Satartia many, many times. We don't need this
15 witness to repeat the details and happenings of
16 Satartia.

17 MR. BAKKE: And I'm not asking her to. I'm just
18 asking what they said about it, Summit.

19 ALJ HOGAN: Again, what is the relevance? I
20 mean, I think what Mr. Pelham has stated regarding the
21 Commission's jurisdiction of this particular issue is my
22 understanding as well. So I feel like we're spending a
23 lot of time on -- which is outside of the type of
24 information the Commission takes or is concerned with on
25 this topic given they do not have jurisdiction over much

1 of this.

2 MR. BAKKE: And what I'm trying to focus on is
3 what the judge said we should focus on, is emergency
4 preparedness. But if you're telling me I can't ask
5 questions about emergency preparedness, I'll --

6 ALJ HOGAN: Well, I've asked that you do it in a
7 general nature, and I think we're way beyond that.

8 MR. BAKKE: Well, if you say I can't ask
9 about --

10 ALJ HOGAN: Yes. I'd ask that you please move
11 on.

12 MR. BAKKE: Okay.

13 Q. (BY MR. BAKKE) So then let's turn to the next
14 contact with Summit. When was your next contact with
15 Summit?

16 A. I believe I requested the emergency response
17 plan.

18 Q. Okay. And did you ultimately receive that?

19 A. Yes. I believe I got that in December.

20 Q. Okay. And is that email with the attached
21 draft, emergency response plan, what has been marked as
22 Burleigh County 121?

23 A. Yes.

24 Q. Okay. And is that an email to you from Mr. Daum
25 dated December 14, 2023?

1 A. Yes.

2 Q. With a template attached that Mr. Daum called
3 "Summit North Dakota Emergency Response Plan"?

4 A. Yes.

5 Q. Okay.

6 MR. BAKKE: Your Honor, we'll offer Exhibit
7 Burleigh County 121.

8 ALJ HOGAN: Any objection to 121, Mr. Gludt?

9 MR. GLUDT: No, Your Honor.

10 ALJ HOGAN: Mr. Pelham.

11 MR. PELHAM: No objection.

12 ALJ HOGAN: 121 is received.

13 Q. (BY MR. BAKKE) Okay. And the emergency
14 response plan, as part of BC121, if you turn to the page
15 of that document which is entitled "Emergency Response
16 Tactic," is that just a boilerplate form?

17 A. Yes.

18 Q. So, for instance, it says "Map of Area, Photo of
19 Building," and there's nothing there?

20 A. Correct.

21 Q. Okay. And then if you turn to the next page,
22 Summit Carbon Solutions Draft Emergency Response Plan,
23 that's dated August 28, 2023?

24 A. Yes.

25 Q. And does that document also have draft generic

1 information in it?

2 A. Yes.

3 Q. Okay. So is it your understanding this is a
4 draft only and it's not actually the emergency response
5 plan by Summit for the Summit pipeline?

6 A. Correct.

7 Q. Have you ever received anything other than a
8 draft of the emergency response plan from Summit?

9 A. No.

10 Q. And then turning back to the first page of
11 Burleigh County Exhibit 121, if you look at the middle
12 paragraph of the email to you from Mr. Daum, it says, as
13 follows: "As mentioned in the meeting, we are not
14 distributing the dispersion model presentation at this
15 time. Anything in this presentation that is not
16 discussed in the presence of a Summit employee could
17 result in misinformation being conveyed. We are always
18 happy to sit down and go through the presentation with
19 yourself or any of the commissioners if needed."

20 What was your reaction when you read that
21 comment by Mr. Daum?

22 A. That anyone outside of Summit couldn't properly
23 relay the information on the dispersion model.

24 Q. Okay. And why had you requested a copy of the
25 slideshow information including any dispersion model

1 information in the first instance?

2 A. To provide to the rest of the responders that
3 weren't present at the meeting.

4 Q. Okay. If you had the slideshow presentation,
5 would that be helpful so that Burleigh County did not
6 provide any, quote/unquote, "misinformation"?

7 A. Yes.

8 Q. In relation to the dispersion modeling
9 information, as the emergency management director for
10 Burleigh County, did you feel it was important for the
11 public to be aware of that information?

12 A. Yes, as far as preparedness activities they
13 would choose to do on their end.

14 Q. Okay. And why did you think that was important?

15 A. We try and give them as much information as we
16 can on the hazards in our area.

17 Q. And when you say emergency preparedness by the
18 public, do you mean prepare with whatever types of
19 things they felt they might need in the event they had
20 to confront a CO2 leak from the Summit pipeline?

21 A. Yes.

22 Q. Okay. As the emergency management director, do
23 you believe that it's important for the public to be as
24 prepared as possible and as knowledgeable as possible on
25 how to confront a CO2 leak?

1 A. Yes.

2 Q. In terms of training and equipment needed to
3 respond to any CO2 leak, has Summit provided any
4 training to date to Burleigh County, including first
5 responders, on how to respond to a CO2 leak?

6 A. No.

7 Q. Okay. Has Summit provided any equipment to the
8 emergency management department or first responders in
9 Burleigh County --

10 A. No.

11 Q. -- that would be needed to respond to a CO2
12 leak?

13 A. No.

14 Q. Let's take a look at Burleigh County
15 Exhibit 127. Can you tell us what that is?

16 A. This is an email from Rod Dillon providing some
17 information on a grant for Burleigh -- or Emmons County
18 and -- yeah, it's a digital copy of a letter announcing
19 a grant --

20 Q. Okay.

21 A. -- that was sent out to all emergency managers.

22 Q. And what would the grant entail?

23 A. The grant is \$50,000 per county plus an
24 additional \$1,000 per mile of pipeline in the county.

25 Q. And for what purpose, if you know?

1 A. To allocate funds based on the individual needs
2 of the first responders along the route.

3 Q. Okay. And then turning back to BC122, is that
4 an email to you from Mr. Dillon with an attached map?

5 A. Yes.

6 Q. And that's dated December 18, 2023, and it's a
7 revised Burleigh County route map to replace one
8 submitted in 2022?

9 A. Yes.

10 Q. Okay.

11 MR. BAKKE: We'll offer BC122.

12 ALJ HOGAN: Any objection to 122, Mr. Gludt?

13 MR. GLUDT: No, Your Honor.

14 ALJ HOGAN: Mr. Pelham.

15 MR. PELHAM: No objection.

16 ALJ HOGAN: 122 is received.

17 Q. (BY MR. BAKKE) And if we turn to the map there
18 on the legend, it has what I guess I could describe as
19 little red bow ties that are identified as the main line
20 valves; is that correct?

21 A. Yes.

22 Q. Okay. And what do you understand those to be?

23 A. The shut-off valves.

24 Q. And this shows the ones that would be located in
25 Burleigh County; is that correct?

1 A. Yes.

2 Q. Okay. And how many are there shown in Burleigh
3 County?

4 A. Five.

5 Q. Well, is that your understanding of the
6 approximate location and number of main line valves that
7 Summit has indicated they will provide on the portion of
8 the Summit pipeline in Burleigh County?

9 A. Yes.

10 Q. In relation to -- and also on that document, on
11 the map, on the bottom right, it says "Preliminary route
12 subject to change"; correct?

13 A. Yes.

14 Q. And in relation to main line valves, does -- or
15 pipeline valves, whether it be CO2 or natural gas or
16 oil, does Burleigh County have any policy in place in
17 regards to operation of main line valves for pipelines
18 in Burleigh County?

19 A. It's generally the operator policy that our
20 responders not touch the valves.

21 Q. And is that the policy of Burleigh County as
22 well?

23 A. We don't have that policy. It's training the
24 responders receive not to touch the valves.

25 Q. And why is that part of the training that first

1 responders receive not to touch the valve?

2 A. It's usually provided through an annual training
3 through the North Dakota Pipeline Association and they
4 -- the first responders don't have the training on the
5 specific valves for each operator.

6 Q. And so is the reason Burleigh County follows
7 that policy is they don't know the operation of those
8 valves and don't have knowledge on how touching or
9 adjusting or shutting on or off a valve might affect the
10 operation of that pipeline?

11 A. To my knowledge, yes.

12 Q. Okay. And does that mean that if there was a
13 valve that malfunctioned or started leaking, it would
14 have to be somebody from Summit who would need to
15 respond to that incident and that Burleigh County would
16 not be involved in that process?

17 A. Correct.

18 Q. Okay. So would that mean that Summit would have
19 to have someone very close by to where the leak occurred
20 at the time it occurred in order to shut off that valve
21 or stop a CO2 leak if it had to be shut off manually?

22 A. Yes.

23 Q. And to your understanding, if there was a leak
24 and it had to be shut off manually, is there anyone else
25 that could do that, who would be trained to do that and

1 authorized to do that, other than a Summit employee?

2 A. Not that I'm aware of.

3 Q. Turning to communications with Mr. Nehring and
4 you in January of 2024, could you turn to Exhibit 123?
5 Is this a series of emails between you and Mr. Nehring
6 in relation to a meeting involving dispersion modeling
7 in Emmons County?

8 A. Yes.

9 MR. BAKKE: We'll offer Burleigh County
10 Exhibit 123.

11 ALJ HOGAN: Any objection to 123, Mr. Gludt?

12 MR. GLUDT: No, Your Honor.

13 ALJ HOGAN: Mr. Pelham.

14 MR. PELHAM: No objection.

15 ALJ HOGAN: 123 is received.

16 Q. (BY MR. BAKKE) And the entry I want to ask you
17 about is on page 6 of that document, an email dated
18 January 17, 2024. There's an entry in there -- or an
19 email from Mr. Nehring to you, dated January 17, 2024,
20 and he says, in part: "I'm wondering if the courthouse
21 auditorium is the proper venue? We could also rent the
22 multi-purpose room at the city building. My only
23 concern is that we may end up with some agitators if we
24 hold it in the auditorium. We had invitees from
25 previous meetings that publicized our invite-only events

1 to the opposition folks, and had a significant number of
2 anti-pipeline people there. Your thoughts?"

3 And what did you understand Mr. Nehring to be
4 referring to there?

5 A. Just that he wanted to move the venue for -- to
6 make it a smaller place.

7 Q. So that there wouldn't be the possibility of
8 agitators or people opposed to the pipeline present?

9 A. Correct.

10 Q. Did you agree to that?

11 A. I did not.

12 Q. And why not?

13 A. Most of the meetings that I have with the
14 responders in Emmons County we do in the auditorium.
15 It's the basement of the courthouse. The sheriff's
16 department is on the main floor. And that's just where
17 we're used to having our meetings.

18 Q. Okay. Subsequent to that, did you have a
19 communication with Mr. James Powell of Summit? And
20 specifically I'm referring to Burleigh County 125.

21 A. Yes.

22 Q. Okay. And that's an email from Mr. Powell to
23 you and copying in Mr. Bitner and others, including Alex
24 Lange and Rod Dillon from Summit; correct?

25 A. Yes.

1 Q. Okay.

2 MR. BAKKE: We'll offer Burleigh County 125.

3 ALJ HOGAN: Any objection to 125?

4 MR. GLUDDT: No objection, Your Honor.

5 ALJ HOGAN: Mr. Pelham.

6 MR. PELHAM: I would object as far as relevance.

7 I think it's more of the same.

8 ALJ HOGAN: All right. Commission's objection
9 is noted. I will admit 125 and the Commission can weigh
10 and give this document -- or determine what weight to
11 give this document, if any.

12 Q. (BY MR. BAKKE) And moving through this
13 quickly, the point I want to get to here is the last
14 sentence of Mr. Powell's email to you where he says,
15 "The analysis performed by a consultant for the
16 Minnesota PUC is public as part of the draft EIS."

17 Do you see that there?

18 A. Yes.

19 Q. And is Exhibit Burleigh County 109, to your
20 understanding, a copy of that Minnesota dispersion model
21 Summit prepared and provided to the PUC in Minnesota?

22 A. Yes.

23 Q. Okay.

24 MR. BAKKE: And, Your Honor, I'm going to offer
25 Exhibit 109. I know yesterday Mr. Jorde offered certain

1 pages of this document, but I think the entire document
2 should be received.

3 ALJ HOGAN: Any objection to 109, Mr. Gludt?

4 MR. GLUDT: Your Honor, we're objecting on
5 relevance. This is something that was filed in
6 Minnesota. It has nothing to do with the line in North
7 Dakota or these proceedings in North Dakota.

8 ALJ HOGAN: Mr. Pelham.

9 MR. PELHAM: Echo my prior objection. Thank
10 you.

11 ALJ HOGAN: All right. I will note the
12 objections. I will admit Appendix G and, again, the PSC
13 can determine what weight, if any, to give this
14 evidence.

15 Q. (BY MR. BAKKE) And just one final topic I'd
16 like to discuss with you, Ms. Senger, and that is at
17 various points of these emails that we've marked between
18 you and Summit, there's been various requests to keep
19 information secret. There's been requests in there to
20 keep out agitators as described by Mr. Nehring at Summit
21 and other things.

22 In relation to your communications with Summit
23 as the emergency management director communicating with
24 them on the Summit pipeline issues, did you feel
25 threatened in any way?

1 A. Somewhat.

2 Q. Okay. And how so?

3 A. That essentially the information I'm provided I
4 can't use to plan and discuss.

5 Q. Including with the public?

6 A. Correct.

7 Q. Okay.

8 MR. BAKKE: That's all the questions I have.

9 ALJ HOGAN: All right. Mr. Gludt, any
10 questions?

11 MR. GLUDT: Yes, Your Honor, just briefly.

12 CROSS EXAMINATION

13 BY MR. GLUDT:

14 Q. Ms. Senger, I know that the words "agitators"
15 and "protestors" or whatever was thrown around, but you
16 were -- I believe in all these exhibits that were just
17 admitted, that the evidence demonstrates that each one
18 of these meetings were confidential and were limited to
19 certain invitees; correct?

20 A. I was told it was limited to certain invitees,
21 yes.

22 Q. So it was not open to the general public?

23 A. Correct.

24 Q. And that was because of the -- due to the
25 sensitive nature of these discussions?

1 MR. BAKKE: Object as calling for speculation
2 and no foundation.

3 MR. GLUDT: She can answer if she knows. I've
4 asked her if she's aware that Alex Lange gave
5 confidentiality admonishments prior to each meeting.

6 ALJ HOGAN: I'll allow her to answer.

7 A. It was at the request of Dave Nehring that it be
8 limited to certain people attending.

9 Q. (BY MR. GLUDT) Okay. And it's your
10 understanding that each one of these meetings was a
11 confidential meeting?

12 A. I still considered it a public meeting with
13 confidential information being provided.

14 Q. Okay. But none of the public was invited to
15 attend?

16 A. Correct.

17 Q. Okay. And just to recap the testimony, within
18 the last year you've had at least three meetings with
19 Summit?

20 A. Yes.

21 Q. You've had numerous correspondence, phone, and
22 email with Summit?

23 A. To set up the meetings, correct.

24 Q. And to request information?

25 A. Yes.

1 Q. And Summit has responded to your information?

2 A. Yes.

3 Q. And Summit has -- went so far as to update you
4 when they knew of a reroute? The map that was admitted
5 into evidence, they sent you a reroute map?

6 A. Will you reference which one that was?

7 ALJ HOGAN: I think it's 122.

8 MR. GLUDT: Yes, Your Honor.

9 A. I had requested that.

10 Q. (BY MR. GLUDT) Okay. And Summit has offered
11 you grants to buy -- purchase certain equipment?

12 A. Yes.

13 Q. And all that within about the last year?

14 A. The letter was dated May 14th or May 17th for
15 the grant.

16 Q. Okay. Do you expect there's going to be more
17 communication and involvement with Summit, interaction
18 with Summit, regarding emergency management and
19 preparedness?

20 A. Yes.

21 Q. Thank you. I have no further questions.

22 ALJ HOGAN: Mr. Pelham, any questions?

23 MR. PELHAM: Thank you.

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CROSS EXAMINATION

BY MR. PELHAM:

Q. Good morning, Ms. Senger. Thanks for being here today.

I'm just wondering, in terms of the relationship that your office has with Summit, how would you describe the relationship?

A. Informational.

Q. And informational in terms of the information that's being provided and requested? Can you elaborate on that?

A. I'm just trying to get information to provide to the responders who are the tactical proponent to do the overarching plan.

Q. And as emergency manager for both Burleigh and Emmons County, have you, in the past, interacted with companies similar in makeup as Summit related to hazardous pipelines?

A. Yes.

Q. And in comparison to those informational interactions with those companies, how would you compare the informational interaction and Burleigh County?

A. It was in Emmons County with Dakota Access Pipeline. We met with their safety manager frequently because they had their -- their logistics just south of

1 Linton. But everything we asked for we received.

2 Q. And in terms of confidential information, did
3 Energy Transfer, Dakota Access, provide that to Emmons
4 County when requested?

5 A. I don't believe we received anything that was
6 confidential or they told us we had to -- couldn't share
7 it.

8 Q. You were asked a little bit about the main line
9 valves in Burleigh County. I believe there are five.
10 Have you or to your knowledge has there been any
11 discussion as potential for increasing the amount of
12 main line valves in Burleigh County?

13 A. So initially we were told the valves would be up
14 to 20 miles apart. After that I haven't received any
15 other information other than through the maps we've
16 received.

17 Q. The meetings that you attended, Ms. Senger, were
18 there opportunities for question-and-answer time?

19 A. Yes.

20 Q. And did you ask any questions --

21 A. Yes.

22 Q. -- at those meetings?

23 What questions did you ask?

24 A. I asked about the effect on animals. And I
25 believe I asked on the parts per million that could cut

1 off engines.

2 Q. And did you receive responses to those
3 questions?

4 A. The one on the animals, they had never been
5 asked that before. And then the parts per million that
6 would cut off engines, I got a range of parts per
7 million.

8 Q. As far as the equipment, you were asked whether
9 or not -- equipment for responding in the event of the
10 line being built and the event of a -- of a leak, has
11 your department or have you compiled a list of equipment
12 that Burleigh County would -- believes it would need?

13 A. So early on, after the June meeting, I sent a
14 survey out to the fire departments and responders to see
15 what they would need. I mean, they had no interaction
16 with Summit at this point so the only thing I got back
17 were gas meters.

18 Q. And in terms -- since having the meetings with
19 Summit, between your office and Summit, are there any
20 more specific equipment needs that have been identified?

21 A. I have not received any.

22 Q. And in terms of training, prior testimony in
23 prior hearings, there's been testimony as to Summit
24 offering training, for emergency first responders to
25 attend training at, I think, Texas A&M. Are you

1 familiar with that at all?

2 A. Yes.

3 Q. What's your familiarity with that, ma'am?

4 A. So Texas A&M is part of a consortium that the
5 Federal Emergency Management Agency works with that
6 provides ongoing training throughout the United States
7 to first responders.

8 Q. And as far as the opportunity, has it been
9 presented to Burleigh County for first responders within
10 Burleigh County to --

11 A. Yes.

12 Q. -- attend training? Yes?

13 A. Yes.

14 Q. And when was that communicated to Burleigh
15 County or to you, roughly?

16 A. Maybe a month or two ago.

17 Q. And do you know whether or not there are plans
18 for -- the potential for first responders in Burleigh
19 County to attend that training?

20 A. I sent it to Bismarck Rural Fire and they
21 indicated they would not be attending.

22 Q. Did they give a reason?

23 A. No.

24 Q. Anyone within the sheriff's department provided
25 with that information by your office?

1 A. I believe I only sent it to the fire department
2 because it's more tactical on response.

3 Q. Fair enough.

4 As far as the grant by -- it's noted in the
5 notes, I think, from that November meeting that was
6 held, the first meeting, has there been any specifics as
7 far as the grant money, the \$50,000 plus \$1,000 per mile
8 of line, proposed line, in the county?

9 A. No. I just received the May letters indicating
10 that that will be available.

11 Q. As far as the information that's been provided
12 by the company, what additional information do you
13 believe as emergency management director of Burleigh
14 County and Emmons County is necessary to adequately
15 prepare first responders in Emmons and Burleigh County?

16 A. I'm not tactical again. That's the first
17 responders.

18 Q. Fair enough.

19 A. So whatever they need as far as the dispersion
20 modeling based on North Dakota temperatures, wind speed,
21 things like that, so they can develop their response
22 strategies.

23 Q. And I appreciate that response, ma'am.
24 Specific, though, what do you believe is lacking from
25 the company in providing to Burleigh County or Emmons

1 County at this time?

2 A. Well, certainly the final route, what the
3 shut-off valves mean, what we can provide to the public,
4 things of that nature.

5 Q. Anything else specifically?

6 A. If the responders want additional information as
7 far as the -- what they need for their tactical
8 response, that's what we would request.

9 Q. And as far as the responders specific, did the
10 communication between the company and the responders
11 come through your office or is that from the company to
12 the specific responders agency such as the sheriff's
13 department or rural fire department?

14 A. To my office, and then I filter it out.

15 Q. Okay. But as far as the equipment, my
16 understanding -- your testimony, you correct me if I'm
17 wrong, is breathing apparatuses. Is there anything else
18 equipment-wise?

19 A. The only response I got when I initially sent
20 the survey out in June was gas monitors. We haven't
21 surveyed again yet but --

22 Q. Fair enough.

23 A. -- with the grant availability, we certainly
24 would.

25 Q. Thank you for your testimony, ma'am. I don't

1 have any other questions for you.

2 ALJ HOGAN: All right. Mr. Jorde, I plan to
3 break for lunch around noon. Do you have questions for
4 Ms. Senger? If you do, can you finish before then?

5 MR. JORDE: Yes, yes, and yes.

6 CROSS EXAMINATION

7 BY MR. JORDE:

8 Q. Okay. Ma'am, I think you testified that first
9 responders don't touch valves. Is it your understanding
10 you have to wait for Summit to get there or hope their
11 remote system works properly?

12 A. Or their first response team, yes.

13 Q. And there was some discussion about PHMSA
14 requiring an emergency response plan. Do you understand
15 that the PHMSA regulations only apply to the company,
16 that the company has to have a company-developed
17 emergency response plan that it's going to utilize for
18 its employees and others? Are you aware of that?

19 A. Yes.

20 Q. So you understand that there's no PHMSA
21 restriction that prohibits Burleigh County from doing
22 its own emergency response plan? Are you aware of that?

23 A. Correct.

24 Q. And in order for you to do an emergency response
25 plan on the first-of-its-kind, highly-pressurized,

1 hazardous CO2 pipeline that could confront your citizens
2 and their safety, wouldn't you agree that it would be
3 important for you to have the very best and most
4 detailed information Summit has?

5 A. Correct.

6 Q. And so a county cannot properly discharge its
7 duties to protect the welfare and safety of its
8 citizens, the assets in the community without that
9 detailed information because, otherwise, you're
10 essentially just going on the internet and trying to
11 figure it out yourself; right?

12 A. The information is needed for the responders to
13 help develop the emergency response plan.

14 Q. Okay. There was a comment from Mr. Daum
15 apparently to you or in your presence about
16 misinformation, concerned about information. But would
17 you agree, ma'am, that if the Summit data that they're
18 refusing to provide publicly was simply just provided
19 out to the public, then there couldn't be misinformation
20 because we'd all have the same data? Correct?

21 A. Correct.

22 Q. And would you agree that the only thing that
23 occurs by keeping this sensitive and important
24 safety-related information out of the citizens' hands is
25 to reduce the likelihood that the citizens can criticize

1 the pipeline company and also thwarts emergency planning
2 efforts locally?

3 MR. GLUDT: Objection. Calls for speculation.

4 ALJ HOGAN: I agree. I'm going to sustain that
5 objection.

6 MR. JORDE: Okay. Well, in her personal
7 opinion, which obviously gets over a speculation
8 objection, that's -- that's my question. Does she
9 believe it.

10 A. It would seem so. I mean, knowledge is power,
11 whether you're a responder or a citizen.

12 Q. (BY MR. JORDE) And then you were asked what is
13 missing. But would you agree unless you have the very
14 best and most detailed data to understand the risk and
15 challenges, it's practically impossible for you or those
16 under your purview to know what is missing in terms of
17 what they might need in emergency response; right?

18 A. Correct.

19 Q. And are you aware, ma'am, that PHMSA has no
20 jurisdiction on the location, routing, or siting of a
21 CO2 pipeline? Are you aware of that?

22 A. Yes.

23 Q. And are you aware that safety concerns and
24 factors related to safety can be considered by the PSC
25 in making its ultimate decision here?

1 A. Yes.

2 MR. GLUDET: Objection. Calls for a legal
3 conclusion.

4 MR. JORDE: Thank you. I don't have anything
5 further.

6 ALJ HOGAN: I agree. That last answer will be
7 considered as Ms. Senger's opinion only.

8 Mr. Jorde, did you say no further questions?

9 MR. JORDE: Yes, I did.

10 ALJ HOGAN: Okay. Commissioner Christmann, any
11 questions?

12 COMMISSIONER CHRISTMANN: One of the exhibits
13 showed the number of the valves placement in Burleigh
14 County. Five, I believe it was. Is the point of that
15 -- should I take that to mean that you believe that's
16 too few or that they're improperly placed?

17 THE WITNESS: It depends on the topography, but
18 the valves don't -- when you close one valve, that
19 doesn't mean it closes the product. It's a sequential
20 closer -- closure of the valves.

21 COMMISSIONER CHRISTMANN: Okay. But Burleigh
22 County specifically and your topography, do you feel
23 that there needs to be more or that they're improperly
24 spaced?

25 THE WITNESS: I -- I think spacing would be a

1 little bit closer is preferred, of course.

2 COMMISSIONER CHRISTMANN: So it's not that
3 they're in the wrong spot. You believe that there's not
4 enough of them?

5 THE WITNESS: Correct.

6 COMMISSIONER CHRISTMANN: What do you think is
7 the right number or the right spacing?

8 THE WITNESS: I'm not tactical so I can't answer
9 that.

10 COMMISSIONER CHRISTMANN: But just that this is
11 too few?

12 THE WITNESS: Right.

13 COMMISSIONER CHRISTMANN: Okay. And when you
14 talk about emergency response plans, you're talking
15 about -- I presume it's not about what if one person at
16 this residence calls in and says they need an ambulance,
17 but you're talking about bigger things; correct?

18 THE WITNESS: Correct.

19 COMMISSIONER CHRISTMANN: And that would be
20 boats capsizing -- large boats capsizing, fires,
21 terrorism, all kinds of things; right?

22 THE WITNESS: Correct.

23 COMMISSIONER CHRISTMANN: And so the fire people
24 would make up emergency response plans for fire-related
25 equipment and ambulance people make up their ER plans

1 and like that, or do you oversee all of those?

2 THE WITNESS: I will tell you an emergency
3 operations plan says who does what, not how they do it.
4 That lies in the responder agency's specific operating
5 plans. That's their tactical information.

6 COMMISSIONER CHRISTMANN: Okay. And are any of
7 those things confidential?

8 THE WITNESS: Our flood annex is on the websites
9 and that says specific -- that's -- that plan is an
10 annex so it says specifically who does what when, and
11 that's on our website.

12 COMMISSIONER CHRISTMANN: What about with like
13 terrorism-related things, do you lay it all out exactly
14 how -- who would respond in what ways to large
15 facilities like this or a hospital or a school or the
16 civic center, or is some of that confidential?

17 THE WITNESS: That's all with the emergency
18 responders. That is not part of an emergency operations
19 plan.

20 COMMISSIONER CHRISTMANN: Do they make it
21 public?

22 THE WITNESS: That, I'm not sure.

23 COMMISSIONER CHRISTMANN: I thought I had one
24 more, but I can't think of it.

25 ALJ HOGAN: Commissioner Haugen-Hoffart.

1 COMMISSIONER HAUGEN-HOFFART: Hi, Mary.

2 THE WITNESS: Hi.

3 COMMISSIONER HAUGEN-HOFFART: I'm going to ask
4 some of the same questions just for clarification. As
5 Burleigh County emergency manager, do you feel you have
6 received the most current map of the new proposed route?

7 THE WITNESS: When I request it, I receive it.
8 So my last request and the last map I have I'm assuming
9 is the most recent map.

10 COMMISSIONER HAUGEN-HOFFART: Okay. And who
11 provided that to you?

12 THE WITNESS: I think I just got one in April or
13 May. I'm not sure who I got that from.

14 COMMISSIONER HAUGEN-HOFFART: So -- I'm just
15 going to move on. You feel like you have it right now.
16 But is it your expectation as Burleigh County emergency
17 manager that you will receive the most current
18 information so you can plan --

19 THE WITNESS: Correct.

20 COMMISSIONER HAUGEN-HOFFART: -- make plans?

21 Even though if the route is not approved, it's
22 -- anything that you do would be in draft form; correct?

23 THE WITNESS: Just so we can follow the process,
24 right.

25 COMMISSIONER HAUGEN-HOFFART: Okay. We talk

1 about emergency, that as emergency manager, I'm going to
2 do it like an umbrella. You're the emergency manager
3 and you have responders that provide tactical response
4 in case there is an incident. Are you receiving any
5 type of communication from the tactical responders that
6 they need some information as this process goes forward?

7 THE WITNESS: Just verbal phone discussions,
8 that they'd like to learn more about it.

9 COMMISSIONER HAUGEN-HOFFART: And what would
10 they like to learn? What are they expressing? Can you
11 provide more detail to that?

12 THE WITNESS: You know, what a break looks like,
13 who's responding, how far out the company's response
14 team is, what their defensive tactics are while they
15 wait for the emergency response team, and then just the
16 product itself and the nature of what it does.

17 COMMISSIONER HAUGEN-HOFFART: Okay. And when we
18 describe emergency responders or tactical, who are they?
19 Can you identify them?

20 THE WITNESS: So this is the fire departments,
21 emergency medical services, the ones responding to the
22 scene.

23 COMMISSIONER HAUGEN-HOFFART: So when developing
24 an emergency response plan, there's a lot of players,
25 there's a lot of different scenarios. In this situation

1 in which we're asked to make a decision on, can you name
2 some of the emergency responders that, as emergency
3 manager, that would have to be involved in developing
4 some type -- in developing an emergency response plan?

5 THE WITNESS: Certainly the fire departments
6 along the route as well as the ambulances along the
7 route and then law enforcement.

8 COMMISSIONER HAUGEN-HOFFART: What about
9 hospitals?

10 THE WITNESS: Hospitals would come in with
11 ambulances. So ambulance transport and then the
12 hospitals would need to know what they're working with.

13 COMMISSIONER HAUGEN-HOFFART: Do you foresee in
14 your emergency response planning that there would be
15 memorandums of understanding or mutual aid agreement
16 with other counties?

17 THE WITNESS: They already exist today.

18 COMMISSIONER HAUGEN-HOFFART: Okay. Can you
19 explain to those who might not know what that means?

20 THE WITNESS: So a memorandum of understanding
21 is -- or for mutual aid assistance is if something
22 happens in Burleigh County and we don't have enough
23 resources, whether it's medical, fire, police officers,
24 sheriff deputies, that we can seek assistance from
25 another county.

1 COMMISSIONER HAUGEN-HOFFART: Okay. That's all
2 the questions I have. Thank you.

3 ALJ HOGAN: Mr. Dawson, any questions?

4 SUBSTITUTE DECISIONMAKER DAWSON: Does the State
5 play a role in emergency response plans, especially
6 emergencies that would occur on borders between counties
7 or large scale? How do they fit in?

8 THE WITNESS: So along with, when we discuss
9 mutual aid, we use our own county assets, our mutual aid
10 agreements, and we -- if we still don't have enough
11 assets, we'll reach out to the State.

12 SUBSTITUTE DECISIONMAKER DAWSON: And when you,
13 say, reach out to the State, who would you reach out to?

14 THE WITNESS: The State -- the North Dakota
15 Department of Emergency Services under the Adjutant
16 General.

17 SUBSTITUTE DECISIONMAKER DAWSON: No further
18 questions.

19 COMMISSIONER CHRISTMANN: Your Honor, I thought
20 of the other two, if I could.

21 ALJ HOGAN: Yes, go ahead.

22 COMMISSIONER CHRISTMANN: Did the Emmons County
23 meeting eventually happen then and was it at the
24 courthouse or the other suggested location?

25 THE WITNESS: It did occur, and it was in the

1 auditorium, which is in the basement of the courthouse.

2 COMMISSIONER CHRISTMANN: Okay. And so you held
3 one at BSC; you held one there. Were those exclusive to
4 each county other than you as the leader for each
5 county's --

6 THE WITNESS: Yes.

7 COMMISSIONER CHRISTMANN: -- emergency response?

8 THE WITNESS: Yes.

9 COMMISSIONER CHRISTMANN: So Emmons County
10 people didn't come up to Burleigh and Burleigh didn't --

11 THE WITNESS: Correct.

12 COMMISSIONER CHRISTMANN: Okay. Thank you.

13 ALJ HOGAN: All right. It is noon but,
14 Mr. Bakke, did you have any redirect?

15 MR. BAKKE: I do not, Your Honor.

16 ALJ HOGAN: All right. Well, thank you, Ms.
17 Senger. I got you out of here before lunch so...

18 All right. We're going to break for lunch.
19 We'll reconvene at 1:00. And I just want to note before
20 we break that we will be ending again around 5. And the
21 way we've been going, I don't know that we're getting
22 through all the witnesses that have been listed for
23 today so I would just suggest that the parties or
24 intervenors make appropriate plans.

25 MR. BAKKE: And, Your Honor, just one change in

1 the scheduling due to a scheduling conflict. Our first
2 witness this afternoon is Dan McLean. We actually had
3 him planned for tomorrow but due to scheduling issues
4 and -- and in terms of the schedule, I think we're -- at
5 least from our perspective, I think we're doing pretty
6 -- pretty well in terms of the people that we've been
7 able to put on.

8 ALJ HOGAN: Well, the list I got from Mr. Jorde
9 has six witnesses listed for today yet so I don't know
10 that that's happening so...

11 All right. But thank you for clarifying.

12 MR. JORDE: Your Honor, I'll have two witnesses
13 ready to go at 3 p.m. so I think Mr. Bakke will take us
14 into that and I think we're going to be okay so...

15 ALJ HOGAN: Okay. But I'm cautioning you. We
16 want to end around 5 so...

17 MR. JORDE: Understood.

18 (Recess)

19 ALJ HOGAN: All right. Looks like it's 1:00 so
20 we're going to get going again.

21 And, Mr. Bakke, you want to call your next
22 witness?

23 MR. BAKKE: Yes, Your Honor. But just a
24 housekeeping detail. I think there are some exhibits I
25 may have neglected to offer that I'd like to offer at

1 this time that were discussed by witnesses, and those
2 would be Burleigh County Exhibit 112, 114, 127 --

3 ALJ HOGAN: Hang on. Burleigh County 112, 114,
4 you said?

5 MR. BAKKE: Correct.

6 ALJ HOGAN: 114 was offered and admitted.

7 MR. BAKKE: Okay. 112.

8 ALJ HOGAN: 112 has not.

9 MR. BAKKE: Okay. And 127.

10 ALJ HOGAN: 127 was not.

11 MR. BAKKE: And 133.

12 ALJ HOGAN: That one was not either.

13 I don't know who wants to respond, but any
14 objection on behalf of the Applicant?

15 MR. GLUDET: Your Honor, that was 112 --

16 ALJ HOGAN: 127 and 133.

17 MR. GLUDET: No objection, Your Honor.

18 ALJ HOGAN: And Mr. Pelham.

19 MR. PELHAM: No objections.

20 ALJ HOGAN: All right. 112, 127, and 133 are
21 received.

22 MR. BAKKE: Okay. Thank you, Your Honor. We'll
23 call Mr. Dan McLean.

24 ALJ HOGAN: Good afternoon, Mr. McLean. I'll
25 have you start by stating your full name for the record.

1 DAN MCLEAN: Dan McLean.

2 ALJ HOGAN: Is your microphone on? It should be
3 a blue --

4 DAN MCLEAN: A blue --

5 ALJ HOGAN: Okay. That sounds better. Okay.
6 Start again.

7 DAN MCLEAN: Dan McLean.

8 ALJ HOGAN: And can you spell your last name for
9 me?

10 DAN MCLEAN: M-C capital L-E-A-N.

11 ALJ HOGAN: And, Mr. McLean, were you in the
12 room earlier when I went through the penalties for
13 perjury?

14 DAN MCLEAN: No, I wasn't.

15 ALJ HOGAN: All right. Well, I'm required by
16 law to advise you on the penalties for perjury.

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

20 Do you understand what perjury is?

21 DAN MCLEAN: Yes, I do.

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

25 DAN MCLEAN: Yes, I do.

1 ALJ HOGAN: All right. Thank you.

2 Go ahead, Mr. Bakke.

3 MR. BAKKE: Thank you, Your Honor.

4 DAN MCLEAN,

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

7 DIRECT EXAMINATION

8 BY MR. BAKKE:

9 Q. Mr. McLean, be fair to say public speaking isn't
10 one of your favorite things?

11 A. Yes, it is. It's not -- no, it's not good.

12 Q. We'll get through this. And you attended some
13 -- one or more of the hearings before?

14 A. Yes, I have, yeah.

15 Q. And how is it that at those other ones you
16 didn't decide to come forward and testify during any
17 opportunities for the public to comment?

18 A. I do a whole lot better in the back of the room
19 than I do in the front.

20 Q. Okay. You were a little shy to be a person to
21 step forward; is that correct?

22 A. What's that?

23 Q. You were a little shy to step forward --

24 A. Yeah, I guess you'd call it that.

25 Q. Okay. And where do you reside?

1 A. At Menoken, on a farm.

2 Q. Okay. And are you married?

3 A. Yes, I am.

4 Q. Okay. And is your wife, Sue, with you here
5 today?

6 A. Yes, she is.

7 Q. Seated in the back row in the red jacket?

8 A. Yep.

9 Q. Okay. And you said you live near Menoken.
10 Which township is that?

11 A. Boyd.

12 Q. Okay. And if you look in the binder in front of
13 you at Exhibit Burleigh County 130. You can just turn
14 to the tab on the side that says "130."

15 A. Okay. It's a map.

16 Q. Yes. Is that a map showing Boyd Township?

17 A. Yeah, Boyd -- no. Let's see. I think I'm a
18 page too far here. Yeah, that's Boyd Township it says
19 on there, yeah.

20 Q. Okay. And then the second page of that, is that
21 a map showing Boyd Township in there as well and also
22 identifies the other townships that border Boyd
23 Township?

24 A. Yeah.

25 Q. Okay.

1 MR. BAKKE: Your Honor, we'll offer Burleigh
2 County Exhibit 130.

3 ALJ HOGAN: Any objection to 130?

4 MR. MAHLBERG: No, Your Honor.

5 ALJ HOGAN: Mr. Pelham.

6 MR. PELHAM: No objection.

7 ALJ HOGAN: 130 is received.

8 MR. BAKKE: Okay.

9 Q. (BY MR. BAKKE) So if we turn to the second
10 page of 130 and look in Boyd Township, there are section
11 numbers identified there. And where is the land that
12 your wife and you own in Boyd Township?

13 A. Section 5 southwest, south half of section 5.

14 Q. Okay. And any other land that you own?

15 A. We own three quarters south of that.

16 Q. And which section would that be in?

17 A. 17 and 18, I believe. Let's see, let me look
18 again here. Yeah, 17 and 18. No, 16 and 17, I should
19 say. I should know that but...

20 Q. And how many acres do you own in section 16 and
21 17?

22 A. We own three quarters.

23 Q. Okay. And then you own the south half so two
24 quarters in section 5?

25 A. Yes.

1 Q. Okay. And where do you live?

2 A. We live on 16.

3 Q. And then how long have you resided there?

4 A. My entire life.

5 Q. And if we look in reference to section 5, is
6 that an area where Summit has indicated to you that they
7 would like to construct a CO2 pipeline in that location?

8 A. Yes, it is.

9 Q. And how big of an area are they proposing?

10 A. It's from the southwest corner going angled to
11 the northeast. It's just a little over a quarter -- or
12 half mile.

13 Q. Okay. So would that essentially cut right
14 through the middle of your field?

15 A. Yes, it would.

16 Q. Okay. And is there someone currently farming
17 that land?

18 A. Yes. My neighbor is.

19 Q. Okay. Did you and your wife, Sue, for many
20 years, farm that land?

21 A. Yeah. We've had it for 30 years.

22 Q. Okay. And then at some point as you got older
23 did you decide to lease it out?

24 A. Yeah. The drought came along and we sold our
25 cattle and didn't need the hay anymore so we rented it

1 out.

2 Q. Okay. And are there crops that are planted or
3 will be planted this year in section 5?

4 A. Yeah. There's wheat planted on it right now.

5 Q. And in previous years what has been planted in
6 the field that Summit wants to construct the pipeline on
7 in section 5?

8 A. Well, last year it was corn. He grew corn for
9 his cattle. And before that it was hay. And we grew
10 other crops on it too over the years. Alfalfa, mostly.

11 Q. And how long have you and your wife been
12 retired?

13 A. We -- we -- we retired from our town jobs, I
14 think she's eight years and I think I'm six. She's
15 either eight or nine and I'm either six or seven.

16 Q. And you mentioned your town job. What was your
17 town job?

18 A. Well, the last job was Burleigh County Highway
19 Department. And before that I was a construction worker
20 and a service worker.

21 Q. Okay. Have you worked with pipelines in the
22 past?

23 A. I've been around pipelines in the past, yes.

24 Q. And in what type of job were you working in?

25 A. Well, mostly -- well, I laid pipe down just

1 ahead of the -- where they were laying on the ground
2 when they did the Northern Border Pipeline which is back
3 in the '80s. I did that for a week. That's about --
4 about the most I've been on pipelines.

5 Q. Okay.

6 A. And I've been around them when they've been
7 working on them otherwise.

8 Q. Did you work on some jobs at Dakota Gasification
9 Company?

10 A. Yes, I did.

11 Q. And what kind of work did you do there?

12 A. There we worked on conveyor belts and coal
13 chutes and that type of stuff. But, yeah, we worked
14 around the piping; around it, not with it.

15 Q. Okay. And were there, on occasion, leaks in
16 those pipes that you worked around?

17 A. There were -- there was one or two, but I --
18 they weren't close to us or didn't affect us but...

19 Q. Okay.

20 A. But they didn't clear the plant because of it or
21 anything.

22 Q. Okay. And how far away is your residence in
23 section 5 from -- or how far away is your section --
24 your home -- is it section 16 you live in?

25 A. Yeah.

1 Q. So how far is it from where your home is to the
2 section where they want to put -- Summit wants to put
3 the pipeline in the middle of the field? And that's
4 section 5; correct?

5 A. Yep. That would -- from our house to the pipe
6 would be about two miles or just barely over.

7 Q. Do you have any utility lines, gas lines, power
8 lines, or other pipelines or lines on your property?

9 A. Yeah. We got a waterline that runs across it,
10 both quarters, from east to west. And we have a
11 transmission line that runs from east to west across it.

12 Q. And did you provide easements for those utility
13 lines?

14 A. The transmission line was there when we bought
15 it. And the waterline, yeah, we did. We signed for
16 it --

17 Q. Okay.

18 A. -- to run across it.

19 Q. And have there ever -- before the Summit
20 pipeline, ever been a time where you refused to provide
21 a utility easement requested by a utility company or a
22 waterline?

23 A. No. No.

24 Q. Have you or your wife, Sue, ever served on the
25 Boyd Township board in the past?

1 A. Yeah. Sue's been on there 19 years and I've
2 been on there 16.

3 Q. And are you currently both on the board --

4 A. Yeah.

5 Q. -- the township board?

6 A. Yes, we are.

7 Q. Okay. When were you first contacted by Summit
8 in relation to them wanting to construct a pipeline on
9 your property?

10 A. Well, the fall of '22 I believe is when it was.

11 Q. And how did they contact you?

12 A. By phone.

13 Q. Okay. And did this introduce -- this individual
14 introduce themselves?

15 A. He never gave me a name.

16 Q. And how did he start the conversation?

17 A. He said he wanted to come out to my house and
18 talk to me about putting the pipeline across my
19 property.

20 Q. Did he tell you whether or not that was their
21 plan and that they were going to proceed with a pipeline
22 or did he inquire whether you were interested or how did
23 he approach it?

24 A. He said he was coming out to my house to talk
25 about putting a pipeline that was going across my

1 property.

2 Q. Okay. And how did you react to that?

3 A. I -- I told him I wasn't interested and that he
4 didn't need to come.

5 Q. Okay. And did he say anything else?

6 A. That's all I said --

7 Q. Okay.

8 A. -- at that point.

9 Q. Did he say anything about what would happen if
10 you didn't agree to Summit putting a pipeline on your
11 property?

12 A. Well, he said, "You might as well let me come
13 out and talk to you because we're going to put a
14 pipeline across your property and we'll take it by
15 eminent domain if you didn't want to so you might as
16 well get some money out of it."

17 Q. Okay. So from the very first phone
18 conversation, this representative from Summit threatened
19 you with eminent domain if you wouldn't agree to the
20 pipeline crossing your property?

21 A. Yeah. He -- he said it would -- they would take
22 it by eminent domain if I didn't agree to it.

23 Q. Okay. Did the conversation get a bit heated?

24 A. Yeah. I told him he couldn't do that, at that
25 time he couldn't do it and -- and that he wasn't going

1 to put it across there and -- yeah, it got quite heated.

2 Q. Okay. Did the Summit representative swear at
3 you?

4 A. I'm not sure who swore first, but, yes, he did.

5 Q. Okay. And did you feel like this individual
6 from Summit was trying to intimidate you?

7 A. Oh, yeah, he was trying.

8 Q. Okay. And then what happened next with Summit
9 after that initial call where they threatened eminent
10 domain?

11 A. Well, at that point I hung up on him and I
12 didn't hear from him for a little while.

13 Q. Okay. So was there a second call?

14 A. Yeah. It was the winter of '22-'23, somewhere
15 in there, I don't remember exactly what time.

16 Q. Okay.

17 MR. MAHLBERG: Your Honor, I'm going to -- I'm
18 going to just object because the purposes of this
19 hearing relate to the reconsideration. And with all due
20 respect to Mr. McLean here, he chose not to testify at
21 prior hearings, and we seem to be covering areas that
22 have been covered not on a reroute location, not related
23 to any of the items that were identified in the
24 reconsideration order from the Commission. So unless
25 there are some specific questions that are appropriate

1 for these proceedings, I don't know what additional
2 information this witness can offer on behalf of Burleigh
3 County for these proceedings.

4 ALJ HOGAN: Want to respond, Mr. Bakke?

5 MR. BAKKE: Sure, Your Honor. I don't think
6 there was any time frame involved that said before the
7 -- the PSC made a final decision on Summit's application
8 that other people couldn't come forward and express
9 concerns about the route across their property in
10 Burleigh County. I think -- my understanding, I could
11 be wrong, but I think the PSC is still assessing whether
12 affected landowners should be routed around for
13 meritorious reasons or if the route across someone's
14 property could be put in a location that was less
15 intrusive on their property and didn't devalue their
16 property unnecessarily or affect their farming
17 operations and other considerations.

18 It's not my intention to take a long time with
19 Mr. McLean, but I think, you know, these threats of
20 eminent domain, and he's going to talk about what
21 happened with the survey, are also impeachment of some
22 of the testimony we heard from Summit's witnesses
23 yesterday which contradict their testimony. And that's
24 relevant as well because it goes to the credibility of
25 the Summit witnesses as to whether they're going to

1 carry through with their promises that they're making to
2 the PSC and to the public and to the parties.

3 ALJ HOGAN: Just to clarify, Mr. McLean is not
4 on the reroute. Like he was on the initial route, the
5 part that has not changed.

6 MR. BAKKE: He's on the initial route.

7 ALJ HOGAN: Well, here's my concerns. On your
8 prefiled witness list, Mr. Bakke, you indicated that if
9 you called Mr. McLean, your examination would be 10
10 minutes and we're now at least 15 minutes in. And so,
11 again, I think -- the Commission has heard from multiple
12 landowners about Summit landmen, what they have
13 represented, that it's different than what Summit
14 employees or representatives have testified to in this
15 hearing room, so I don't believe this line of
16 questioning is anything new. It doesn't add anything to
17 the evidence that's already been received.

18 With that said, we've had public testimony come
19 from individuals that weren't just on the proposed
20 reroute so I'll allow you to do some very limited
21 evidence or testimony from Mr. McLean, but we don't need
22 to go into every phone call or every correspondence with
23 Summit because we've heard this type of testimony from
24 other landowners.

25 MR. BAKKE: Yeah. And I was just asking for the

1 same consideration that was provided to the landowner
2 intervenors this morning with Mr. Malloy who went
3 through kind of the same process of the contacts that he
4 had and his rationale, but if you're telling me I can't
5 do that, I'll certainly follow whatever order the judge
6 gives me in that regard.

7 I guess I need to know is the last objection
8 sustained or should he not answer the question or should
9 he --

10 ALJ HOGAN: Well, I guess my comment is it's --
11 my comments, I suppose. It's partially sustained. I'll
12 allow you to have Mr. McLean talk about his general
13 concerns relative to his property, but I am sustaining
14 it going down this road about talking about every
15 correspondence with Summit because we've heard this and
16 we -- the Commission has heard this already. They've
17 heard the type of representations that have been made
18 regarding eminent domain. And I've said throughout many
19 hearings and it was in the August 4th order that the
20 Commission has no jurisdiction over eminent domain. It
21 is what it is. So we need to move on from the eminent
22 domain.

23 MR. BAKKE: Okay. Well, I could tell you what
24 he would testify to as essentially an offer of proof,
25 that in relation to the survey, that contrary to

1 Mr. Powell's testimony yesterday that they worked with
2 landowners on surveys, they did not do that with
3 Mr. McLean. He received -- and we've marked it as
4 BC129, they threw an envelope in his backyard, not even
5 at the front door, in the dirt, on the ground.

6 Unfortunately, it was found by Mr. McLean's wife. And
7 when he saw it, his intention -- it arrived on a
8 Saturday afternoon. His intention was on Monday morning
9 to contact an attorney to resist that, and Summit showed
10 up and was already surveying his property when they had
11 thrown the envelope in the back on a Saturday afternoon
12 and approximately less than 48 hours later --

13 (No audio)

14 MR. PELHAM: I don't know if you folks can hear
15 me, but the video froze and there's no audio as of about
16 three minutes ago. And I can't hear anything if anyone
17 is speaking.

18 UNIDENTIFIED SPEAKER: Hey, Brian, I'm back up
19 in our hearing room. They're trying to resolve issues
20 down in the Pioneer Room.

21 MR. PELHAM: Very good. I can hear you. That's
22 great. I'll just sit tight.

23 UNIDENTIFIED SPEAKER: Okay.

24 (No audio)

25 ALJ HOGAN: I think we're good. Go ahead,

1 Mr. Bakke.

2 MR. BAKKE: Okay. And as part of the offer of
3 proof, in relation to the second phone call from Summit
4 in winter 2022-2023, he would testify that although the
5 caller from Summit did not identify himself, he
6 recognized Dave Nehring as the caller because he knew
7 him and lived fairly close by, and that Mr. Nehring told
8 him that he should enter into an easement with Summit
9 and at least try to get some money --

10 (No audio)

11 MR. BAKKE: -- that I described, and even though
12 it was a FedEx delivery envelope, it was not a FedEx
13 delivery person who dropped it off.

14 Q. (BY MR. BAKKE) Is that accurate, Mr. McLean?

15 A. Yes. It was somebody in a white car and a black
16 coat.

17 MR. BAKKE: And there was a fourth contact by
18 someone from Summit who wanted to come out to the
19 property and wanted to get an easement from the McLeans.
20 And Mr. McLean told him no, and he said, "I'll put you
21 down as a --"

22 UNIDENTIFIED SPEAKER: I don't have the video.

23 MR. BAKKE: "-- hard no."

24 Q. (BY MR. BAKKE) Is that correct?

25 UNIDENTIFIED SPEAKER: They can hear audio, but

1 not video.

2 A. (Inaudible).

3 MR. BAKKE: And his testimony --

4 UNIDENTIFIED SPEAKER: I've unplugged the video
5 cable and plugged it back in.

6 MR. BAKKE: -- (inaudible) contradict some of
7 the testimony --

8 UNIDENTIFIED SPEAKER: But I haven't touched it.

9 MR. BAKKE: -- yesterday by Mr. Powell and
10 Mr. Boeshans.

11 The final topic, and we've marked this as
12 Burleigh County Exhibit 135. You can pass that around.
13 Just received that from Mr. McLean today.

14 And this goes to the (inaudible) in relation
15 to -- not on insurance but kind of the same point as Mr.
16 Malloy in the respect that as (inaudible) we don't have
17 verification from his insurance agent (inaudible)
18 pipeline (inaudible) on his property, not only
19 (inaudible) no insurance (inaudible) strict liability.
20 There would be -- whether he's negligent or not, there
21 would be no insurance coverage for pollution from the
22 CO2 pipeline.

23 And that's a different aspect and I think goes
24 further than what other insurance representatives have
25 said. Not only would he not be covered, but it wouldn't

1 matter whether somebody else was negligent or not.

2 (Inaudible) essentially be strict liability on the

3 property owner (inaudible).

4 Q. (BY MR. BAKKE) Is that correct, Mr. McLean, is
5 your understanding?

6 A. Yes. That's my understanding.

7 MR. BAKKE: And I guess the final topic he would
8 have testified to is his concern for his wife and he on
9 having this pipeline near his property and that they
10 don't want the pipeline under any circumstances on their
11 land.

12 Q. (BY MR. BAKKE) Is that accurate, Mr. McLean?

13 A. Yes, it is.

14 MR. BAKKE: So with that understanding, I can't
15 ask him further questions on this topic so I don't have
16 anything further. I would offer Exhibits 129 and 135.

17 ALJ HOGAN: Any objection to 129 or 135?

18 MR. MAHLBERG: No objection to 129. On 135, I
19 guess the objection would be that the issue of insurance
20 has been previously addressed, but note that objection,
21 it's fine to come in.

22 ALJ HOGAN: Mr. Pelham.

23 MR. PELHAM: I don't have an objection to 129
24 insofar as it shows (inaudible) attempted delivery
25 issues, but the content of it relates to condemnation

1 proceedings, that the Commission simply does not have
2 jurisdiction over (inaudible) that that portion of it is
3 relevant. I don't have an objection to 135. Thank you.

4 ALJ HOGAN: All right. I will admit both
5 exhibits. I'll note the objections. And the Commission
6 can give both documents the weight it deems, if any.

7 Mr. Mahlberg, did you have any questions?

8 MR. MAHLBERG: Very briefly.

9 CROSS EXAMINATION

10 BY MR. MAHLBERG:

11 Q. Mr. McLean, if you'd look at the BC129 in your
12 book there. It's the -- it's the FedEx cover page.

13 A. Right here?

14 Q. It looks like this.

15 A. Okay. I got it.

16 Q. And I just want to make sure -- I wasn't sure
17 that I heard you correctly on this. This FedEx package,
18 you're saying that someone from Summit threw it in your
19 backyard or --

20 A. I didn't say -- no, I didn't say Summit did. I
21 said somebody drove in the yard in a white car. It was
22 the only vehicle in the yard. It was raining. It was
23 the only tracks in the yard other than our own vehicle
24 that hadn't been moved from the day before. It was in
25 the yard. That was the only tracks. This guy in a

1 black coat walked across the yard and he came right
2 back, went to his car, and he backed out of the yard
3 (inaudible).

4 Within five minutes my wife was picking this up
5 off the ground between the propane tank and the house in
6 the grass, thinking it was something the dog drug up.
7 It was soaking yet. I don't have it with me today
8 because (inaudible). And it was a FedEx package.

9 Q. Okay. And that -- I just wanted to make sure
10 you weren't saying that someone from Summit threw this
11 in your backyard.

12 A. I don't know --

13 Q. You don't know how it got in your backyard --

14 A. I have no idea who the person was.

15 Q. Okay. That's all. Thanks, Mr. McLean.

16 ALJ HOGAN: Mr. Pelham, any questions?

17 MR. PELHAM: No questions. Thank you.

18 ALJ HOGAN: Mr. Jorde, any questions?

19 MR. JORDE: Your Honor, I don't have any
20 questions. I would just note I -- I can't see anything
21 and I'm hearing the tech guys talking at the same time
22 I'm hearing you all talking, for reference, but I -- no
23 questions.

24 Thank you, sir, for coming.

25 UNIDENTIFIED SPEAKER: Sir, we're communicating

1 with Mr. (Inaudible) and he's having difficulties
2 (inaudible).

3 UNIDENTIFIED SPEAKER: We're trying to join back
4 in because he can't see us.

5 ALJ HOGAN: Is there any objection to proceeding
6 with Commission questions?

7 UNIDENTIFIED SPEAKER: No objection.

8 ALJ HOGAN: All right. And I'll just note for
9 the record, in case our recording didn't pick it up,
10 Mr. Jorde did not have any questions for Mr. McLean.

11 Commissioner Christmann, did you have any
12 questions?

13 COMMISSIONER CHRISTMANN: I don't think so, but
14 I'll tell you, Mr. McLean, I know you sat through a lot
15 of hours at these hearings. Thank you for your interest
16 and participation in the process.

17 THE WITNESS: Thank you.

18 ALJ HOGAN: Commissioner Haugen-Hoffart.

19 COMMISSIONER HAUGEN-HOFFART: Yeah. I just need
20 something clarified. You started answering the question
21 and then Mr. Bakke was directed to summarize so...

22 As I understood it, you had a first phone call
23 in the fall of 2022. And I'm going to summarize and you
24 can say if it's correct or not, and if it's not correct,
25 you can correct me. Okay?

1 THE WITNESS: Okay.

2 COMMISSIONER HAUGEN-HOFFART: Fall of 2022, you
3 didn't get a name, got a little heated, you don't know
4 who swore first, and the use of -- eminent domain was
5 used and it was, quote, "You should get some money out
6 of it," and then --

7 THE WITNESS: (Inaudible) summarizing it, yes.

8 COMMISSIONER HAUGEN-HOFFART: Okay. But then
9 there was another call and almost the same thing was
10 said, the use of eminent domain. And I believe that was
11 2022-2023?

12 THE WITNESS: Yeah, somewhere in there, yeah.

13 COMMISSIONER HAUGEN-HOFFART: Correct?
14 And that was with Dave Nehring?

15 THE WITNESS: Well, I wouldn't say for sure.

16 COMMISSIONER HAUGEN-HOFFART: Okay.

17 THE WITNESS: But the voice sounded like Dave.

18 COMMISSIONER HAUGEN-HOFFART: Okay. So you
19 can't say for sure, but it was someone from Summit?

20 THE WITNESS: No. It was from Summit. He said
21 he was from Summit. Never gave me a name.

22 COMMISSIONER HAUGEN-HOFFART: Okay.

23 THE WITNESS: None of them ever gave me a name.

24 COMMISSIONER HAUGEN-HOFFART: Okay. But it was
25 always the same type of conversation, the use of eminent

1 domain, and, again, I believe it was summarized, again,
2 get some money out of it; is that correct? I mean, was
3 there almost two conversations the same?

4 THE WITNESS: Well, they weren't really the same
5 because Dave's a happy buffoon and -- and it was kind of
6 that (inaudible).

7 COMMISSIONER HAUGEN-HOFFART: So did you have a
8 conversation with Dave?

9 THE WITNESS: It -- it sounded like Dave.

10 COMMISSIONER HAUGEN-HOFFART: Okay.

11 THE WITNESS: I don't know if it was Dave. I
12 can't say for sure. He never gave me a name. So I
13 wouldn't say for positive it was him.

14 COMMISSIONER HAUGEN-HOFFART: Okay.

15 THE WITNESS: There's a lot of people that sound
16 alike.

17 COMMISSIONER HAUGEN-HOFFART: That's true. I
18 have no other --

19 THE WITNESS: And I do have hearing problems.

20 COMMISSIONER HAUGEN-HOFFART: I just wanted
21 clarification on that. Thank you.

22 I have no further questions.

23 THE WITNESS: Okay.

24 ALJ HOGAN: Mr. Dawson, any questions?

25 SUBSTITUTE DECISIONMAKER DAWSON: No questions.

1 Thank you.

2 ALJ HOGAN: Mr. Bakke, any redirect?

3 MR. BAKKE: Just briefly.

4 REDIRECT EXAMINATION

5 BY MR. BAKKE:

6 Q. Mr. McLean, in terms of the FedEx envelope and
7 the delivery, this vehicle that arrived, the white car,
8 that was not a FedEx truck or vehicle, was it?

9 A. No. It was just a little white, probably mid
10 '90s. Looked like -- I was looking out the shop window.
11 I just saw it (inaudible). I would guess it was
12 (inaudible) 1995, is what it looked like.

13 Q. Okay. And this person didn't have a FedEx
14 uniform on?

15 A. No. Just had a black coat on.

16 Q. Okay. And you've had FedEx deliveries to your
17 residence before; correct?

18 A. Yeah. Lots of them.

19 Q. And it comes in a FedEx truck with a FedEx
20 driver in a uniform; correct?

21 A. Yeah.

22 Q. That's all I have.

23 A. And usually put it inside the door.

24 ALJ HOGAN: Mr. Mahlberg, any other questions?

25 MR. MAHLBERG: No.

1 ALJ HOGAN: Mr. Pelham.

2 MR. PELHAM: No questions.

3 ALJ HOGAN: Any other Commission questions?

4 All right. Thank you, Mr. McLean.

5 THE WITNESS: Thank you.

6 ALJ HOGAN: And next witness is --

7 MR. BAKKE: Brian Bitner.

8 ALJ HOGAN: -- Mr. Bitner?

9 I want to see if we can get the technology
10 figured out before Mr. Bitner's testimony.

11 COMMISSIONER CHRISTMANN: That's what I was
12 going to --

13 ALJ HOGAN: Yeah, okay. So we're going to take
14 a short pause until we figure out the video and audio
15 feed.

16 UNIDENTIFIED SPEAKER: Your Honor, for what it's
17 worth, Mr. Jorde's requesting that maybe it will help if
18 they just log out and log back in?

19 UNIDENTIFIED SPEAKER: It's more of a problem
20 than that, unfortunately, but we're --

21 UNIDENTIFIED SPEAKER: He's coming down with
22 another --

23 ALJ HOGAN: Okay.

24 (Recess)

25 ALJ HOGAN: So if everybody wants to get back to

1 their seats.

2 Mr. Bakke, you can formally call your next
3 witness.

4 MR. BAKKE: I'll call Mr. Brian Bitner.

5 ALJ HOGAN: Mr. Bitner, I'll have you start by
6 stating your full name for the record and spelling your
7 last name.

8 BRIAN BITNER: Brian Bitner, B-I-T-N-E-R.

9 ALJ HOGAN: And, Mr. Bitner, were you in the
10 room earlier when I went through the penalties for
11 perjury?

12 BRIAN BITNER: Yes, I was.

13 ALJ HOGAN: Do you understand what perjury is?

14 BRIAN BITNER: I do.

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

18 BRIAN BITNER: Yes.

19 ALJ HOGAN: All right. Thank you.

20 Go ahead, Mr. Bakke.

21 MR. BAKKE: Thank you.

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BRIAN BITNER,

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

DIRECT EXAMINATION

BY MR. BAKKE:

Q. Mr. Bitner, could you state your current position with Burleigh County?

A. I'm current chairman of the Burleigh County Commission.

Q. And just to refresh, how long have you been a Burleigh County commissioner?

A. Just short of 16 years. I'm on the tail end of my fourth term.

Q. And you testified previously regarding your concerns about the Summit pipeline under the original route being proposed by Summit in their application; correct?

A. Yes.

Q. Okay. And have you seen the information in regards to the proposed reroute by Summit and been listening to some of the testimony throughout these hearings today and yesterday?

A. Yes.

Q. Okay. And does Burleigh County have concerns regarding the proposed reroute location for the Summit

1 pipeline?

2 A. Yes.

3 Q. Okay. Could you tell the commissioners what
4 Burleigh County's concerns are?

5 A. Well, first of all, we don't think that the
6 pipeline should be in the location where it's at. We --
7 we think that it's entirely too close to a lot of our
8 Burleigh County residents. And based on conversations
9 we've had at the county commission, we think that this
10 reroute doesn't address some of our bigger concerns,
11 which would be, essentially, schools. There's a number
12 of schools along that particular path that is a big
13 concern.

14 And then the bigger concern would be the
15 proximity to the water supply for Burleigh County. We
16 rely on South Central Regional Water District to provide
17 water for basically all of Burleigh County, and that
18 particular location is super close to that, and then I
19 guess it's not too far upstream from the city of
20 Bismarck and the city of Mandan water supplies so...

21 I guess I could add a little bit more to that
22 too. It appears to me that a lot of this reroute was
23 because of -- this pipeline was running into some more
24 of the wealthy developers in our area. You had John
25 Warford, Chad Wachter, and Chad Moldenhauer, and they've

1 been doing real well for themselves over the years, but
2 it concerns me as a Burleigh County commissioner that
3 now this reroute seems to be directed towards folks that
4 maybe don't have the same kind of wherewithal that they
5 did as far as hiring attorneys and representing them in
6 that regard, and that's probably one of the biggest
7 reasons why I support Burleigh County hiring counsel to
8 represent Burleigh County.

9 Q. You mentioned schools. What schools are you
10 concerned about where you believe the Summit pipeline
11 would still be too close?

12 A. I'd say every one of them. I don't necessarily
13 know the names of each and every one, but there's
14 Menoken, there's Apple Creek, there's -- I think we have
15 six or seven rural schools in Burleigh County that I
16 think are all too close to this pipeline.

17 Q. Okay. And the proximity to the water supply, I
18 believe you were here earlier today when you saw the map
19 showing the distance from the South Central Regional
20 Water resource intake, which was not quite 2.7 miles.
21 Why is that a concern to Burleigh County?

22 A. Well, I think it's a concern based on my -- my
23 understanding of a source water protection area. In the
24 state of North Dakota, we take great efforts at
25 protecting our source water. And I understand that

1 there's a source water protection area upstream of that
2 water intake and we're supposed to look out for the
3 safety of that.

4 Q. And which areas within Burleigh County does the
5 South Central Water Resource District serve?

6 A. I don't know about the limits of their service
7 area, but I would -- I would just have to guess that
8 it's all of it.

9 Q. Okay. And there's been testimony by
10 Mr. Boeshans in the April 22nd hearing that the proposed
11 reroute does not impact any future growth plans in
12 Burleigh County. Is that testimony accurate?

13 A. I don't think so, no.

14 Q. Okay. And why not?

15 A. Well, for a couple of reasons. First of all,
16 Burleigh County government is not in the business of
17 planning developments or planning where landowners are
18 going to make these decisions. That's kind of how they
19 act in Russia. We don't operate that way. So we
20 basically respond to subdivision applications and
21 requests based on the landowners' desires. So we may
22 not know about future plans.

23 We -- we have some sort of a planning document
24 that kind of lays out some concepts, but there's nothing
25 written in stone and there's nothing rigid about that.

1 It's just some basic guidelines for people to consider.

2 And I have heard comments from individuals on
3 the reroute, and I don't have their names, but there's a
4 couple of them that have explained to me that that is
5 their intention to develop their land at some point in
6 the future. I -- I didn't bother to write down their
7 names, and that's -- that's my bad because I suppose I
8 talk to so many people, but since Burleigh County's not
9 aware of it, but I've had people tell me that their
10 intention is to develop land in that reroute area so I
11 have to take that as pretty much fact.

12 Q. Mr. Boeshans also testified that the State of
13 North Dakota pays the taxes to Burleigh County related
14 to the Summit pipeline and Summit pays nothing. Is that
15 accurate?

16 A. I believe so.

17 Q. Okay. And he said Burleigh County gains tax
18 revenue associated with the Summit pipeline if it were
19 to be built. Is that accurate?

20 A. I -- I think it's -- I think that's a play on
21 words. Because, first off, Burleigh County would get
22 some property taxes from the State of North Dakota, but
23 Burleigh County citizens pay taxes into the State of
24 North Dakota. So I don't know that you could just say
25 Burleigh County gains property taxes based on the Summit

1 thing because that's -- it's North Dakota money that's
2 going to Burleigh County.

3 Q. Okay. You mentioned the area outside of
4 Bismarck and rural developments. And could you look at
5 Burleigh County 101, the map that the Burleigh County
6 GIS people put together and Mr. Flanagan testified about
7 earlier today?

8 A. Okay.

9 Q. Could you provide a few more details in regards
10 to that four-mile, what's been termed a "buffer"?

11 A. Right. Yeah, I can. Because, actually, 17
12 or 18 years ago that ETA issue is exactly why I'm
13 sitting before you here today. That was the issue that
14 affected me the most because I was in the ETA area of
15 the city of Bismarck and I didn't appreciate the law
16 that formed that. And so I actually went to work and
17 was successful in getting that law somewhat changed to
18 where, instead of the four-mile ETA, what has been
19 referred to as the buffer area, that hasn't -- that has
20 no basis in -- in the history.

21 Originally Bismarck had a two-mile
22 extraterritorial jurisdiction. There's a state law that
23 says a city may extend its zoning jurisdiction a certain
24 distance outside the city limits based on the
25 population. So every city is different.

1 Lincoln, for example, is a smaller area than
2 Bismarck would be, but based on Bismarck's population,
3 they were able to, by ordinance, extend the ETA out four
4 miles. And that's when it affected me. Because when I
5 bought my property 37 years ago, my property line was
6 the existing ETA of the city of Bismarck. And I knew
7 that full well. So I purchased land right on the
8 outside of that ETA for my own personal reasons. But
9 then they were allowed to extend that to four miles and
10 that's when it affected me and that's when I got
11 involved.

12 And I ended up becoming appointed to the
13 advisory committee on -- advisory commission on
14 intergovernmental relations by the governor. And I sat
15 on a lot of those meetings and we were able to get the
16 law changed to where now, from the two to four, we have
17 a joint powers agreement with the City of Bismarck that
18 Burleigh County is the lead jurisdiction in the two to
19 four-mile. So the City of Bismarck exerts zoning
20 control in the zero to two, and the two to four falls
21 under Burleigh County zoning jurisdiction.

22 Now just to be clear, there's so many
23 similarities between the ordinances because for a long
24 time the City of Bismarck, and for good reason, was
25 actually doing the planning and the zoning for all of

1 the city of Bismarck plus Burleigh County, because
2 Burleigh County did not have their own planning and
3 zoning department.

4 Now it was myself -- mostly me and one other
5 commissioner, that we went to work and we actually
6 created the Burleigh County Planning and Zoning
7 Department so that nobody could say, "Gee, the county
8 doesn't have a planning and zoning, we need, you know,
9 the city out there doing that." And we actually
10 terminated the City of Bismarck. They offered to do
11 this much cheaper than we could even do it ourselves.

12 And the problems we were having in the ETA were
13 relative to the planning and zoning. Burleigh County
14 has spent millions of dollars repairing problems in
15 these rural subdivisions outside and around the city
16 limits that the city is able to basically wash their
17 hands of these decisions. They'll approve these rural
18 subdivisions, and then when there's problems, and
19 literally millions of dollars' worth of problems -- and
20 I can certainly provide a list if you would like, but
21 we're out there correcting drainage and -- and bad
22 culverts and roads not working and -- anyway, it's just
23 been a giant cluster. And we said enough is enough and
24 so we're pushing back on that particular issue right now
25 and even today.

1 So I wanted to make sure that you didn't think
2 that that buffer area was something that wasn't relative
3 because at this point, according to our agreement with
4 the city, this agreement can be canceled at any point.
5 So the city extraterritorial jurisdiction technically is
6 at the four-mile line.

7 And another reason why that's significant is
8 when we were developing the ordinance that was saying
9 this hazardous liquid pipeline is going to be a minimum
10 of ten miles away from the ETA line, I meant -- because
11 I was helping write it -- I meant the four-mile line.
12 So, essentially, we didn't want that pipeline anywhere
13 within 14 miles of the city limits of Bismarck.

14 And I'll tell you why. Because at the time --
15 when I first started hearing about this pipeline stuff,
16 I really didn't see it as a threat. I recognize in
17 North Dakota that we have a lot of pipelines. There's
18 pipelines that ran right next to the place that I spent
19 most of my childhood out on the farm. I didn't really
20 see it as a problem.

21 It wasn't until a meeting that included Summit
22 and their lawyer where the lawyer handed me this report
23 from this Satartia, Mississippi, incident. And so I
24 went home with that report and I started reading it and
25 I went "Un-oh, this is a problem." Because in that

1 report -- you may recall, somebody else testified to you
2 and they sat here and they had a Burleigh County map and
3 then they had that red plume thing.

4 And I think it was you, sir, that asked them who
5 made that? How did you -- how did that get created or
6 however?

7 Well, I can tell you how that got created. I
8 did it. Because I took that Satartia, Mississippi,
9 government report, factual government report, that told
10 us that that plume from Satartia, Mississippi, traveled
11 33 kilometers. And so I looked it up in the book and
12 that's 18.6 miles.

13 MR. GLUDT: Your Honor, I'm going to object.
14 We're --

15 THE WITNESS: Yeah. I figured you would, sir.

16 MR. GLUDT: -- heading down the road of
17 Satartia. We know about Satartia. We've heard the
18 testimony.

19 THE WITNESS: You haven't heard mine.

20 MR. GLUDT: That's my objection, Your Honor.

21 MR. PELHAM: Your Honor, the proceeding is the
22 objections are made and you rule on the objections. The
23 witness doesn't have the opportunity to interject during
24 objections. It's not appropriate.

25 THE WITNESS: I'll give you that.

1 ALJ HOGAN: Mr. Bitner, we've heard a lot about
2 Satartia in the previous hearings, and all of that is
3 still part of the record. So I don't know -- I don't
4 even remember what question was posed to you, but
5 perhaps Mr. Bakke could ask his next question.

6 THE WITNESS: Well, I think the reason --

7 ALJ HOGAN: Because I think we kind of went down
8 the road pretty far there.

9 THE WITNESS: It has to do with the effect of
10 this plume model discussion on Bismarck and Burleigh
11 County.

12 ALJ HOGAN: Mr. Bakke, please ask your next
13 question.

14 MR. BAKKE: Sure.

15 Q. (BY MR. BAKKE) So let me ask you, you've been
16 here listening to testimony or not being permitted to
17 ask questions about the dispersion model by Summit.
18 Were you present at the meeting with the Summit
19 representatives on November 27, 2023, that Ms. Senger
20 attended as well?

21 A. Yes.

22 Q. Okay.

23 A. I was.

24 Q. Okay.

25 A. And that's part of why I want to talk about the

1 dispersion model stuff.

2 Q. So what are your concerns in regards to the
3 plume model?

4 A. Okay. There's certain specific models for plume
5 model. And I'm basically frustrated that -- that this
6 Commission has been convinced that somehow that plume
7 model information should not be disclosed to the public.

8 MR. GLUDT: Objection, Your Honor. Mr. --
9 Commissioner Bitner is not an expert in plume modeling.
10 It appears he's heading down the path of his knowledge
11 in plume modeling. The Commission has issued its order
12 on Summit's dispersion modeling information. We've
13 covered this with Ms. Senger. We're heading down the
14 same path.

15 ALJ HOGAN: Mr. Bitner, you can give us in a
16 very general, short summary of what your concerns are,
17 but, again, we've already discussed the plume modeling,
18 we've already talked about how the Commission doesn't
19 have jurisdiction over safety.

20 THE WITNESS: I know all that.

21 ALJ HOGAN: And I understand you want to provide
22 us more than that, but we just don't have the --

23 A. Briefly. We have a list here of approved plume
24 model programs. The plume model program that Summit
25 used is not even on the list. This thing here, this

1 documentation says:

2 Documentation should note that FEMA managed
3 the Interagency Modeling and Atmospheric
4 Response Center, which is called IMAAC.
5 IMAAC provides plume models for real-world
6 emergencies involving significant hazardous
7 atmospheric releases and atmospheric
8 modeling support for national level
9 exercises and local exercises. State,
10 local, and federal officials can request
11 IMAAC support by contacting this IMAAC
12 technical hub. It's managed by these
13 Defense Threat Reduction Agency at this
14 phone number or emailing this
15 imaac@fema.dhs.gov.

16 And so we -- we would have that available. I
17 think that -- I think you have -- the reason I'm
18 bringing it up is I think you have been misinformed on
19 this, because on the next page here it says that this
20 program was run using ALOHA.

21 Now, ALOHA is a plume modeling software that's
22 used by the City of Bismarck which informs the Bismarck
23 Rural Fire in the event of an emergency that requires a
24 response. So they'll do the plume modeling inhouse
25 using ALOHA. And so ALOHA was selected for this here

1 particular thing because its attributes are highly
2 effective for emergency preparedness and response.

3 ALOHA is a free software and was developed and
4 supported by the Atmospheric Response Division, ERD, a
5 division within the National Oceanic and Atmospheric
6 Administration in corroboration with the Office of
7 Emergency Management of the U.S. Environmental
8 Protection Agency. And so these things are available to
9 us as a government agency for free and with support.

10 So for them to do this objecting and all that
11 stuff relative to plume models, I think, is disingenuous
12 and it's not fair to you folks.

13 Q. (BY MR. BAKKE) On the topic of safety, because
14 I just heard the judge say that the PSC has no
15 jurisdiction over safety, so let me phrase it in a
16 little bit different way, because I understand two of
17 the issues to be addressed by the PSC in relation to the
18 reroute is that the construction, operation, and
19 maintenance of the Summit pipeline at the proposed
20 location should produce minimal adverse effects on the
21 environment and upon the welfare of the citizens of
22 North Dakota.

23 And do you view, in your role as the Burleigh
24 County chairman, the welfare of the citizens to include
25 health and safety?

1 A. Absolutely.

2 Q. Okay. And then another issue to be addressed is
3 will the construction, operation, and maintenance of the
4 facility at the proposed location minimize adverse human
5 and environmental impacts?

6 And do you consider safety and health of the
7 citizens of North Dakota to potentially be impacted in
8 an adverse sort of way if the Summit pipeline is
9 constructed?

10 A. Yes. I think they could be negatively impacted.

11 Q. So let's move on to another topic, and I just
12 want to cover this briefly because there was some
13 questions about -- with Mr. Flanagan in relation to
14 whether he was taking a position on his concerns about
15 the southern alternative route proposed by Summit or
16 studied by Summit or whether he was speaking on behalf
17 of Burleigh County.

18 And so you're the county chairman so you can
19 speak on behalf of Burleigh County.

20 A. Yes.

21 Q. Have you looked at -- and you can look at
22 Exhibit Burleigh County 102, at the proposed southern
23 alternative route by Summit. And can you describe what
24 concerns, if any, Burleigh County has about the southern
25 alternative route considered or studied by Summit?

1 A. Well, based on my understanding of what can
2 happen in the event of a problem, I would be fighting
3 that southern route like I was the third monkey on the
4 ramp to Noah's Ark and it was starting to rain. Because
5 we have too many people. We have a lot of wind from the
6 south. We've got an airport. We got the University of
7 Mary. And not only that, my son and his wife and my
8 grandchildren live right there and I would have a
9 serious problem with running through there.

10 And I can tell you, based on my experience as a
11 Missouri River fisherman, that if you had to pick a
12 route that you knew was never going to fly and never get
13 approved, that would be it. Because there's absolutely
14 not any place that's as bad for a route in Burleigh
15 County -- well, essentially, it's the two routes they've
16 chosen. They're just -- they couldn't pick a worse
17 route if you tried. I'm sorry, that's a long answer.

18 Q. Let's turn to the topic of electrical supply for
19 the Summit pipeline. And you look at Burleigh County
20 103, that's the map of Capital Electric that provides
21 the areas in Burleigh County, or at least some of them,
22 served by Capital Electric or -- and the ones served by
23 MDU. And what concerns do you have, if any, on behalf
24 of Burleigh County in relation to electrical supply
25 issues for the Summit pipeline in Burleigh County?

1 A. Well, thanks for that question. Again, that's
2 going to be kind of a long answer.

3 For probably the last, I don't know, 15 years or
4 more I've served on a number of committees with Capital
5 Electric. The members advisory committee, the
6 nominating committee, the elections committee, the
7 credentials committee. So I've been involved with
8 Capital Electric, more or less, for quite a long time.
9 And so it occurred to me, based on my experience with
10 hazardous liquid gas, that a power outage of some sort
11 could have a real catastrophic result in Burleigh
12 County. And the reason --

13 See, I grew up out in the country, and at one
14 time in my age, my young age, we were stormed in for
15 three days without power. And it was just my dad and I.
16 And we had a fireplace so we were okay. But I said when
17 the day comes when I'm in charge, we're going to have a
18 generator because we're just not going to have that
19 problem. So now today, between -- I own four different
20 generators. So that if the power goes out, I'd be at
21 either my place or my son's place. Both of them are set
22 up with two different generators. One's gas and one's
23 propane in case the gas doesn't work. But that was so
24 that I could make sure that we had power.

25 And so I'm thinking about the pipeline, saying,

1 "What happens if these pump stations lose power?"
2 Because in review of a bunch of research, I found out
3 that there's a critical point in these pipelines that if
4 a compressor goes out and the power outage leads to a
5 problem, you can have a significant operational problem
6 in this pipeline if it gets below, like, a thousand
7 or 1,200 PSI, it starts to change phase from the
8 supercritical to the gas phase. And what that does is
9 it changes the entire volume inside the pipe --

10 MR. GLUDET: Objection, Your Honor. I don't
11 believe any foundation has been laid for this witness as
12 an expert in pipeline construction or operation. We're
13 getting detailed analysis of pipeline construction and
14 operation from Commissioner Bitner.

15 THE WITNESS: I testified before that I am an
16 expert now, but that's okay.

17 ALJ HOGAN: Maybe you can just give us a general
18 overview of your concerns, Mr. Bitner.

19 A. Well, the concern is that we have had many power
20 outages since -- in the 37 years that I've owned my
21 property, I probably had 15 power outages. So we know
22 it happens.

23 And then I asked Capital Electric, I said so if
24 we have this brownout or blackout situation -- because I
25 think we've all, at our levels, been hearing that

1 there's a problem with capacity in the grid for
2 electricity here in North Dakota. We have the Southwest
3 Power Pool issue.

4 And back in February of 2019, I mean you may
5 recall this, that the temperatures were getting towards
6 20 below and the wind turbines all shut down because of
7 the cold temperature. So the coal-fired power plants
8 were on laydown because we were using the wind power,
9 and then the gas peaking plants that were supposed to
10 kick in to replace that power that the wind turbines
11 weren't making couldn't come up because apparently the
12 gas valves up and down between here and the Bakken were
13 froze up and so they couldn't fire those up. And here
14 we are, an energy-producing state like North Dakota that
15 you all know well the electrical generation issues here,
16 that all of a sudden we had no power of our own. And we
17 paid dearly for that, the way I understand. I know
18 Commissioner Haugen-Hoffart might have better
19 information about what that caused.

20 But -- so the answer is that these electric
21 concerns that we have, we heard testimony that Summit
22 doesn't so much as have anything more than a solar panel
23 backup on these valves.

24 My history is in this electrical --
25 electromechanical systems and hydraulics and gas and

1 computer technology is my background. And we're relying
2 -- we're putting Burleigh County citizens all at risk
3 with very minimal -- essentially no backup. I have more
4 of a -- more generating capacity in my shop than this
5 company seems to have.

6 So what do you do in the event of a power
7 outage. I'd personally like to know that because I
8 don't think that we're getting straight information here
9 based on all the testimony that I've sat through.

10 Q. And have you heard any testimony or seen any
11 documents from Summit that identify what would happen if
12 the pipeline lost power and, in particular, the main
13 valves that are identified for -- to be located in
14 Burleigh County?

15 A. The only thing I recall on that was testimony
16 yesterday from Mr. Powell, that that -- that said that
17 that would be catastrophic.

18 MR. GLUDET: Objection, Your Honor. I think
19 that's a mischaracterization of the testimony.

20 ALJ HOGAN: Well, the record will reflect what
21 the testimony provided.

22 Q. (BY MR. BAKKE) Other than the solar power that
23 Mr. -- backup at the valve itself, is what I understood
24 from Mr. Powell, are you aware of any other backup
25 electrical supply that Summit plans or has specified for

1 the Summit pipeline?

2 A. No.

3 Q. Have you contacted Capital Electric to determine
4 whether they have any limitations on the power they can
5 provide for the Summit pipeline or throughout Burleigh
6 County?

7 A. Yes.

8 Q. Okay. And what have they indicated in that
9 regard?

10 A. Well, they don't -- they don't have the
11 capability to just instantly fix lines that are broke
12 down in the wintertime, you know, winter storms and
13 whatnot that take down power lines, just flat out take
14 out the infrastructure. And so there's really no
15 backup. I mean, they can route and route around certain
16 areas. I know that from those conversations.

17 And I guess I should also point out, because
18 somebody asked me, that in the event of a brownout or a
19 blackout situation, who gets cut first, the residents or
20 the industrial uses? So in -- what Capital Electric
21 manager, Paul, what he told me is that the industrial
22 users are the first ones that get cut in the event of a
23 brownout or a blackout or something. So their goal,
24 according to policy of Capital Electric, is to provide
25 power to the residents and the homes rather than the

1 industrial uses.

2 Q. There was testimony by Mr. Powell yesterday that
3 there was simply, at least in his opinion without
4 contacting any of the governmental entities or other
5 entities that had jurisdiction or involvement south of
6 Bismarck, that there was simply no path that was even
7 possible south of Bismarck for the Summit pipeline to go
8 and to cross the Missouri River south of Bismarck. Do
9 you believe that is accurate?

10 A. No.

11 Q. And why not?

12 A. Well, because they put a DAPL pipeline in down
13 across the river. Didn't seem to be any problem. I
14 know that stretch of river really well because I -- in
15 the past I've had time to fish. I don't have much time
16 anymore but I had time to fish. And there's a lot of
17 area south of Bismarck where you could put a pipeline.
18 It wouldn't necessarily be close to the reservation,
19 wouldn't necessarily have to be close to Bismarck. But
20 there's a lot of areas that I've seen that you could put
21 a pipeline.

22 And I do want to point out and -- early, early
23 on John Warford asked me to attend a meeting. And this
24 would have been at Randy Bakke's office. And in that
25 meeting there was, I think, three or four Summit people.

1 And I asked the question of Summit at that point, "Why
2 won't you put the pipeline further south, to the south
3 of Bismarck?" And the response was "We don't want to
4 have another DAPL."

5 And, Commissioners, that's not a very good
6 answer. They were worried about the optics apparently
7 and they just didn't want to have a DAPL, but yet we'll
8 go ahead and we'll put this pipeline near the biggest
9 population center in this area of the state? I'm sorry,
10 I just can't agree with that.

11 Q. Switching topics, could you look at BC109? That
12 is the dispersion model that Summit did for the State of
13 Minnesota that's a publicly-available document on a
14 4-inch feeder pipeline. What, if any, information did
15 that provide to Burleigh County to assess welfare of the
16 citizens and adverse minimal impact issues for the
17 citizens of Burleigh County?

18 A. And I don't think this provided very good
19 information for me.

20 Q. Okay.

21 A. I mean, mainly because we're talking about a
22 totally different pipeline and a totally different area.
23 And I think, if I remember right, this was a 4-inch
24 pipeline?

25 Q. Correct.

1 A. And here in Burleigh County, we're talking about
2 a 24-inch pipeline which, in case you didn't know, and
3 I'll go ahead and tell you, that the volume in a 4-inch
4 pipeline, it takes 88.2 4-inch pipelines to equal the
5 volume in a 24-inch pipeline. So if these guys were all
6 concerned about accidental releases from a 4-inch pipe,
7 well, you just magnify that by 88.2. And that's why
8 that doesn't do much for me.

9 Q. Did you have a chance to review the expert
10 testimony of a geologist in Iowa, Ryan Clark, who
11 provided testimony on the Summit pipeline hearings in
12 Iowa?

13 A. Yes, I did.

14 Q. Okay. And did you find anything in his
15 testimony to be significant that you think should be
16 considered by the PSC in this matter?

17 A. Yes, I did.

18 Q. Okay. And what was that?

19 MR. GLUDET: Objection, Your Honor. Hearsay.
20 Mr. Clark's not here to be cross-examined and we're
21 back-dooring some testimony right now.

22 MR. BAKKE: It's sworn testimony that was
23 provided in the public proceeding. It's --

24 MR. GLUDET: In Iowa, Your Honor.

25 MR. BAKKE: It's not hearsay. It's sworn

1 testimony in a public proceeding. That's not hearsay.

2 ALJ HOGAN: But you're not producing that
3 witness, but you want to get the statements in of that
4 witness?

5 MR. BAKKE: No. He reviewed the entire
6 testimony.

7 THE WITNESS: I found it myself, Your Honor.

8 ALJ HOGAN: Well, that's not the problem. The
9 problem is if you're going to provide the statements of
10 somebody that testified in Iowa for the validity of what
11 those statements are and that person is not here to be
12 cross-examined, that's the problem so --

13 THE WITNESS: I have an answer for that.

14 ALJ HOGAN: Well, your attorney needs to address
15 it.

16 Q. (BY MR. BAKKE) Yeah, I can ask it to you a
17 different way.

18 A. Okay.

19 Q. Do you know if any of the other states that this
20 Summit pipeline is proposed to go through have geology
21 that would permit CO2 to be stored in those states other
22 than shipping it to North Dakota?

23 A. Yes. Based on my research, similar geology
24 exists in Iowa and, I believe, Illinois as well.

25 Q. There's been some testimony about PHMSA and the

1 issue of whether PHMSA speaks to whether dispersion
2 modeling information should be kept confidential or has
3 to be kept confidential. Have you looked at documents
4 in that regard to see what position PHMSA takes on
5 dispersion modeling?

6 A. Yes, I have.

7 Q. And do you have in front of you Exhibit 32,
8 Landowners Exhibit 32?

9 A. That would be in this one?

10 Q. That would be in that one.

11 A. Yes, I do.

12 Q. Okay. And what information in there from PHMSA
13 representative Sean Quinlan has any significance on the
14 issue of plume modeling information for CO2 pipelines?

15 A. Well --

16 MR. GLUDT: Objection, Your Honor. This has
17 been asked and answered. We went over this exhibit
18 yesterday. I don't think Commissioner Bitner needs to
19 read in and talk about this statement once again.

20 ALJ HOGAN: I agree. We went over all this
21 yesterday. So if you have new questions about this,
22 that's fine, but we addressed all this yesterday so we
23 need to move on.

24 MR. BAKKE: I don't think that was anybody on
25 behalf of Burleigh County. That was on behalf of a --

1 Mr. Jorde was asking Mr. Powell about this from Summit's
2 perspective. Now I'm asking about Burleigh County's
3 perspective on this issue of the availability of plume
4 model information and why they believe that information
5 should be available to the public.

6 Mr. Powell took the position that PHMSA does not
7 indicate it should be released or takes a position that
8 it should not be released, that somehow it's some
9 national security threat or otherwise. These documents
10 contradict that and help explain why Burleigh County is
11 requesting that the public, for their own safety,
12 preparedness, and protection, can see the plume model
13 information to be prepared in the event of a CO2 leak.
14 And so I think it is important to get Burleigh County's
15 perspective on this.

16 This is my last topic. We're ahead of schedule
17 now. I think it's important that the PSC consider
18 Burleigh County's perspective on this issue.

19 ALJ HOGAN: Well, wouldn't you agree this is
20 more relevant to your motion to reconsider the
21 protective order than it is the topics we're here to
22 talk about today?

23 MR. BAKKE: I'm not saying it's not relevant,
24 but it's a topic that's already been discussed. And
25 yesterday Mr. Powell took a position that appears to be

1 directly contrary to what PHMSA has said in their own
2 documents. So it's also impeachment of what Mr. Powell
3 said.

4 ALJ HOGAN: Mr. Pelham, do you have any thoughts
5 on behalf of the Commission? I mean, my thought is this
6 is -- this is what the motion is requesting and I think
7 we address it through the motion practice rather than
8 with taking hearing testimony on it today.

9 MR. PELHAM: I -- you know, this isn't a very
10 good procedural response, but I think we know what
11 Commissioner Bitner's going to say. It's been covered.
12 There's a dispute over whether or not the plume modeling
13 that's been deemed to be protected information per a
14 motion that was made in -- and an order issued in August
15 of 2023 that has been in place and we have a motion for
16 reconsideration that was filed the day before the start
17 of the hearings. I'm not sure -- with all due respect
18 to Commissioner Bitner, I know he has an opinion on it,
19 but whether or not that is going to move us forward on
20 it, I don't -- I don't necessarily think it will.

21 THE WITNESS: Can I say something?

22 ALJ HOGAN: No.

23 The document, landowner -- I'm getting confused
24 with the two exhibit numbers -- Landowner 32 was
25 admitted yesterday. It says what it says. It speaks

1 for itself. I think we've already established Burleigh
2 County's position that they believe the plume model
3 should be public information so we need to move past
4 this because we are covering the same ground repeatedly
5 on the plume modeling. So I am going to sustain the
6 objection.

7 MR. BAKKE: Okay. And for our offer of proof,
8 we would have had him discuss the Landowner Exhibit 32
9 and 33.

10 Can I ask him why Burleigh County believes it
11 would be advisable for the plume model information,
12 dispersion modeling information to be made available to
13 the public from Burleigh County's perspective?

14 ALJ HOGAN: If you can tell me how his answer is
15 going to be any different than Ms. Senger's answer.
16 Didn't she address all of that?

17 MR. BAKKE: She addressed it from an emergency
18 management and preparedness standpoint. I don't know
19 what he's going to say, whether it goes beyond that or
20 whether it's limited to that.

21 ALJ HOGAN: Were you -- Mr. Bitner, you were
22 here for Ms. Senger's testimony; correct?

23 THE WITNESS: Yes, I was.

24 ALJ HOGAN: Are your concerns any different than
25 hers?

1 THE WITNESS: I think so.

2 ALJ HOGAN: So I'm going to ask you not to
3 repeat what she's already stated, but if you have
4 independent concerns, you can share those.

5 A. Okay. This kind of --

6 ALJ HOGAN: Go ahead.

7 A. Okay. This speaks to something I mentioned
8 earlier. I think you folks as the Public Service
9 Commission were misinformed in earlier testimony. One
10 of the first hearings that we had here in Bismarck,
11 somebody that apparently worked for PHMSA was telling
12 you that PHMSA would consider that plume model stuff to
13 be privileged information based on critical
14 infrastructure. And I think you probably took the guy's
15 word for it because he was a previous PHMSA employee.
16 But then we come to find out these folks actually sent
17 letters to these companies saying that's just not the
18 case.

19 So the point here is that -- I think the bigger
20 point is I think you folks have been misled, not that we
21 -- we know everything we need to know at this point
22 about plume models and about CO2 and whatnot. That's
23 not going to change one little thing that we do in
24 Burleigh County, to be honest with you. We've got
25 professionals on the job. And that plume model means

1 nothing anymore. Now it's just the point that they're
2 trying to hide it. And what's the point in hiding it
3 when the government themselves tells us you should share
4 that so you do appropriate risk management planning and
5 things like that.

6 I'm offended that the North Dakota Public
7 Service Commission has been manipulated over that one
8 little issue. I'm sorry, but as a Burleigh County
9 commissioner, I think it's appropriate for me to point
10 that out even though there's objections and the whole
11 thing to that plume model stuff. I'm sorry. Thank you.

12 Q. (BY MR. BAKKE) Mr. Bitner, any other concerns
13 on behalf of Burleigh County with the current route of
14 the Summit pipeline that you haven't addressed already?
15 I know we've gone through this in pretty rapid-fire
16 fashion.

17 A. Yeah. One thing I know it's been touched on, I
18 don't want to spend much time on it, but, you know, we
19 heard in the initial testimony from I believe it was the
20 North Dakota Geological Survey, that there was 11 sites
21 in Burleigh County that were possible subsidence or --
22 or landslide areas. We know that Burleigh County has a
23 lot of landslide areas here. And this reroute
24 apparently jumped that number up to 18. And that
25 certainly amplified my concerns.

1 MR. BAKKE: I have no further questions.

2 ALJ HOGAN: Mr. Gludt.

3 MR. GLUDT: Briefly, Your Honor.

4 ALJ HOGAN: Thank you.

5 CROSS EXAMINATION

6 BY MR. GLUDT:

7 Q. Commissioner Bitner, you just accused the Public
8 Service Commission of being misled. We received
9 testimony last Friday from a witness that testified that
10 Mr. Bitner had told this witness that upon completion of
11 Summit's storage project and the end of the tax credits,
12 that you told your constituents that their property,
13 pore space rights and their surface rights, were going
14 to be transferred to the State. Is that true?

15 A. No, I didn't say pore space rights.

16 Q. Did you say surface land rights?

17 A. No. I didn't say surface land rights. I'm
18 talking about title to the land.

19 Q. So title --

20 A. And by the way --

21 Q. Excuse me, Mr. Bitner.

22 A. -- I'm not accusing the PSC of being misled. It
23 was Summit and their witnesses that I think was
24 misleading the PSC.

25 Q. So at a Burleigh County commission meeting, you

1 indicated to those in attendance --

2 A. Uh-huh.

3 Q. -- that at the completion of the Summit storage
4 project --

5 A. No. I wasn't --

6 Q. -- that title --

7 A. -- talking about Summit. I wasn't talking about
8 Summit in any way, shape, or form.

9 Q. Okay. Let's say at a completion of a carbon
10 dioxide storage facility project, that when that's
11 completed --

12 A. Uh-huh.

13 Q. -- their title to their land would be
14 transferred to the State, is what you told your
15 constituents?

16 A. That's not accurate. That's not an accurate
17 depiction of what I said.

18 Q. So that witness was lying?

19 A. I didn't say that. I said what you just said
20 wasn't accurate. What -- what I said was based on 38-22
21 of the North Dakota Century Code, information that I got
22 from a senator, a sitting senator, that he got
23 from counsel for the North Dakota Legislative Council.
24 So this 38-22 says that at the end or the completion of
25 a project, depending on whenever that is, it basically

1 starts a clock. And the Industrial Commission, they can
2 apply, I believe, for a certificate of completion. And
3 then after a period of ten years, according to North
4 Dakota Century Code 38-22, title to the storage
5 facility, which is defined in that law as pore space,
6 title to the storage facility and the storage substances
7 transfers to the State of North Dakota without payment
8 of any compensation.

9 Q. Are you aware of an email that was sent to the
10 Mercer County state's attorney, the Oliver County
11 state's attorney, that repeated my phrasing of what you
12 said to the state's attorneys?

13 A. No, I'm not aware of that.

14 Q. Are you a lawyer, Mr. Bitner, Commissioner
15 Bitner?

16 A. No, I'm not.

17 Q. Are you an expert in PHMSA federal regulations?

18 A. Well, I'm kind of getting to be like that from
19 too much of this.

20 Q. Are you an expert in electrical grid and power
21 supply?

22 A. No.

23 Q. Are you an expert in plume modeling?

24 A. Getting there.

25 MR. GLUDT: I have no further questions.

1 ALJ HOGAN: Mr. Pelham, any questions?

2 MR. PELHAM: Yes. Thank you.

3 CROSS EXAMINATION

4 BY MR. PELHAM:

5 Q. Good afternoon, Commissioner. Having been in
6 many hearings, and I know you've attended many as well,
7 there seems to be just a simple breakdown, complete
8 breakdown, in communication between Burleigh County and
9 Summit. Would that be a fair statement?

10 A. I'd say so, sir. It's almost become a joke. At
11 Burleigh County commission meetings, do you know that
12 now every time we have a meeting there's going to be
13 some commissioner that says, "Hey, is there anybody from
14 Summit in the room?"

15 Q. Okay. Fair enough.

16 And I don't know if this will move the ball
17 forward at all, but if you could identify from the --
18 from the Commission's standpoint or you individually
19 what it is, a potential path forward for establishing a
20 relationship or perhaps reestablishing or creating a
21 relationship between Burleigh County and Summit?

22 A. Yeah, I --

23 MR. JORDE: Objection, relevance.

24 ALJ HOGAN: The objection is noted. I'll allow
25 him to answer.

1 A. Okay. I actually had a conversation with Summit
2 representatives about that. And mainly our objection is
3 proximity to Bismarck, whether it's north or south.
4 That's -- that's clear. You know, we're worried about
5 how do we protect the citizens in the event, whether
6 it's unlikely or not, but how do we save our people? So
7 I said, "Can you just go further away?" And they said,
8 "Well, where do you think we should move it to?" And I
9 said, "I think the people will tell you that."
10 Eventually, you're going to get to someplace where the
11 people are not opposed to that. They don't look at
12 their land as future developable land, that in -- in
13 their reasonable lifetime and such.

14 I think that there's too much focus -- it's
15 almost as if they picked the -- picked the -- drew a
16 line in the sand and that's the only thing for
17 consideration. They haven't budged. The in-and-out is
18 still the same; right? All they've done is curved it up
19 a little bit further north, which probably can't be
20 fought as effectively as it was fought right here by
21 Bismarck, but the end result is still the same. So I
22 think that they could move that and work with
23 landowners.

24 Because I do know that in Burleigh County there
25 is a route. We were accused of basically zoning them

1 out. That wasn't the point at all. There is clear
2 paths in Burleigh County where, first off, we don't have
3 the jurisdiction. We couldn't stop them if we wanted
4 to. But they didn't investigate any of that. They
5 didn't bother asking any of our people. I mean, we've
6 got professionals that are involved in this stuff.

7 You know, I'm just the big dummy, I guess, that
8 gets to speak, but I already tried that with them.

9 Q. Appreciate that response, sir.

10 Southwest water resources, did you say southwest
11 water resources --

12 A. South Central --

13 Q. South Central, sorry.

14 A. -- Regional Water.

15 Q. South Central Regional Water, they have a board;
16 right?

17 A. A board?

18 Q. A board.

19 A. I think so.

20 Q. And have you or anyone to your knowledge in
21 Burleigh County had any discussions with them related to
22 the proposed route?

23 A. I -- I think so, but I don't remember who would
24 have contacted them or what the response would have
25 been. I heard something about that.

1 Q. And early on in your testimony here today, sir,
2 you were testifying as to some individuals who came up
3 to you, and you didn't recall their names so I'm not
4 going to ask about that, but as far as development of
5 land on the proposed reroute area.

6 A. Right.

7 Q. Can you tell the Commission whether or not
8 there's any current plans for development of
9 subdivisions along the proposed reroute at present?

10 A. We don't have any applications today that I'm
11 aware of.

12 Q. All right.

13 A. All that was, was conversation that people told
14 me that that was their intentions.

15 Q. Fair enough. Thank you, sir. No further
16 questions.

17 A. You're welcome.

18 ALJ HOGAN: Mr. Jorde, any questions?

19 MR. JORDE: Yes, Your Honor. I've got some
20 questions.

21 CROSS EXAMINATION

22 BY MR. JORDE:

23 Q. Mr. Bitner, you were asked by Summit's counsel
24 if you were an expert in PHMSA regulations. My
25 question, sir, is can you read English?

1 A. Yes, sir.

2 Q. And have you been reading English for several
3 decades?

4 A. Yes, sir. That's been a -- I guess I can go off
5 on that tangent just a little bit. All my life I've had
6 this thing that was considered a -- what I considered to
7 be a blessing and a curse. I read at an extremely high
8 level and comprehension is very high and I was blessed
9 with a near photographic memory. So from the earliest
10 time that I can remember, I've been wanting to learn how
11 everything works. And that's the reason for my
12 technological background, is because I could never get
13 enough reading. Fortunately now that I'm getting a
14 little older it is slowing down. But, yes, I can read
15 English.

16 Q. And so you, no doubt, became aware that PHMSA is
17 responsible for regulating the safe transportation of
18 hazardous materials through safety standards and so they
19 have federal minimum safety standards like laying the
20 pipe, thickness of pipe, number of welds, and those
21 things. Have you come to understand that?

22 A. Yes.

23 Q. And you understand that the safety standard to a
24 federal minimum of how something should be built has
25 nothing to do with where that thing may or may not be

1 located?

2 A. That's correct.

3 Q. And so when the --

4 A. My understanding of the -- no, I'm sorry.

5 Q. No, go ahead.

6 A. My understanding from -- from reading English is
7 that -- you know, that PHMSA really kind of talks about
8 the locals actually having that jurisdiction.

9 Q. Well, and so during your testimony or when
10 you've been on the stand, the statement was made that
11 the PSC has no jurisdiction over safety. However, as a
12 Burleigh County commissioner, is it your request that
13 safety considerations and factors related to safety and
14 risk are taken into account when deciding whether or not
15 the proposed Summit route is in an intelligent location
16 or not?

17 A. Well, I would ask for that, yeah. And I
18 understand that people kind of stand behind the law and
19 said, well, the law says this is what we need to do, but
20 I think we should keep in mind that that same law was --
21 was put in place years ago. Nobody ever considered a
22 CO2 pipeline in regard to the pipeline laws of North
23 Dakota. Those were all -- everybody knows that an oil
24 pipeline or a natural gas pipeline or something has
25 these certain minimal risks. We live with that every

1 day.

2 Q. And have you come to understand that the federal
3 pipeline construction specifications as to how something
4 can be operated, maintained, or initially built, that
5 those apply regardless of where a developer proposes to
6 locate such a pipeline?

7 A. Yes.

8 Q. And so have you concluded that safety standards
9 are very different than the mere concept of considering
10 safety concerns when potentially routing hazardous
11 infrastructure?

12 A. I would agree.

13 Q. Now --

14 A. I think that --

15 Q. Go ahead.

16 A. My understanding is that PHMSA is currently
17 reevaluating those standards for carbon dioxide
18 pipelines. And I think that's for good reason. I don't
19 know what they're going to come up with, but I do know
20 that based on information we've been presented, that
21 they're redoing those regulations apparently because
22 there's deficiencies.

23 Q. Along those lines, sir, were you aware that
24 yesterday the state legislature of Illinois, both the
25 house and the senate, voted to ban all new CO2 projects

1 until the Federal Government sets forth new safety
2 rules?

3 MR. GLUDT: Objection. Relevance.

4 A. I did not know that.

5 ALJ HOGAN: The objection is noted. I -- I
6 don't think we need to go down that line of questioning,
7 Mr. Jorde. I'll allow Mr. Bitner's answer to that one
8 question to stand, but I don't think we need to explore
9 further what other states are doing.

10 Q. (BY MR. JORDE) You said that Summit
11 representatives stated to you in apparently a
12 justification of why they were planning, proposing to go
13 so close to the populated center of Bismarck, that,
14 quote, "We," meaning Summit, "don't want another DAPL."
15 Was that your testimony?

16 A. Yes.

17 Q. And so -- I mean, did you take that to mean that
18 they -- essentially, they didn't want a standoff with
19 Native Americans so they figured it would be easier to
20 run the route through Burleigh County? Or, I mean, how
21 did you take that?

22 A. That's exactly how I took it. Of course my
23 response was, well, just wait until a hundred thousand
24 people in Burleigh County get upset about this.

25 And just so you know, the person that -- in case

1 anybody wants to check, but the person that said that to
2 me was Jeff Skaare.

3 Q. And then Mr. Pelham had asked you about a
4 breakdown in communication with -- between Burleigh
5 County and Summit. And now, sir, related to any
6 breakdown, whether it's relevant or not, do you
7 attribute at least some of that to Summit's ongoing and
8 consistent lack of transparency in how they've dealt
9 with this project?

10 A. I guess my opinion on that is that they just
11 thought they were going to run over North Dakota. They
12 were going to run over Burleigh County. They didn't
13 bother even saying "Would you mind?" I mean, we don't
14 have any problem communicating with people that want to
15 develop things in Burleigh County. I think we're open.
16 We're certainly open for business. We look out for the
17 citizens. They just -- they just didn't connect with
18 us.

19 Q. Understood, sir. I appreciate your testimony.
20 No further questions.

21 ALJ HOGAN: Commissioner Christmann.

22 COMMISSIONER CHRISTMANN: I'm not going to be
23 like Brian Jorde and put you on the spot about something
24 that happened in Illinois yesterday, but just generally,
25 in Burleigh County, do you typically copy whatever Cook

1 County, Illinois, does?

2 THE WITNESS: No. Absolutely not.

3 COMMISSIONER CHRISTMANN: I didn't think so.

4 Getting more to this case, though, instead of
5 straying in those kind of directions as Mr. Jorde was
6 doing, you mentioned pipeline laws being in place for
7 many years before the CO2 --

8 THE WITNESS: Yes.

9 COMMISSIONER CHRISTMANN: -- pipeline concept
10 came up; right? But isn't it right that we -- that
11 since this has been a big topic in North Dakota, we had
12 a regular legislative session and we had a special
13 legislative session and neither one chose to change
14 these laws in regards to pipeline -- CO2 pipeline
15 siting?

16 THE WITNESS: I'm not aware of that, but I'll
17 take your word for it, sir.

18 COMMISSIONER CHRISTMANN: And Burleigh County
19 and Bismarck, has there been concerns about other
20 developments going in that are large energy users in
21 regards to this perceived energy capacity shortage?

22 THE WITNESS: I think that's something we would
23 be more inclined to consider now that we know about it.
24 I think this snuck up on all of us here in North Dakota.
25 It wasn't until the advent of these data centers and

1 whatnot that we started to realize the precariousness of
2 the grid.

3 COMMISSIONER CHRISTMANN: Like some of the
4 developments going up north that I drive by every time
5 back and forth to home. Nobody's restrained anything
6 there with --

7 THE WITNESS: Not yet, but I do think that's a
8 valid concern moving forward.

9 COMMISSIONER CHRISTMANN: I think you might have
10 said 14 miles, but how far -- say you've got the
11 Bismarck city limit, you've got the ETA, you got that
12 other -- that four-mile whatever it was called. How far
13 out of Bismarck do you want this? What would be --

14 THE WITNESS: Well, I was trying to be -- I was
15 trying to have a little balance on that. Because I
16 looked at -- for example, that 18-and-a-half-mile plume
17 from Satartia, Mississippi, that followed terrain and
18 whatnot. And I know -- I believe that the CO2 is most
19 hazardous close in. But based on just that one, I
20 thought, to me, it was trying to strike a balance
21 between not go to the end of that 18.6 miles but at
22 least some distance that acknowledges that, in the event
23 of an accident, it's dangerous to -- I said 14 just
24 because.

25 COMMISSIONER CHRISTMANN: So 14 -- I looked at

1 your -- not your but Burleigh County's Exhibit 104. So
2 14 would take you out a little past McKenzie; right?

3 THE WITNESS: I would suppose so, yes.

4 COMMISSIONER CHRISTMANN: And I'm sure you care
5 about the people of Driscoll just as much as you care
6 about the people of Bismarck.

7 THE WITNESS: Yes, yes.

8 COMMISSIONER CHRISTMANN: What if they want a
9 14-mile setback? Then there's nowhere through Burleigh
10 County anymore.

11 THE WITNESS: I recognize that, sir.

12 COMMISSIONER CHRISTMANN: And even if they
13 didn't, as you would go around and get north of
14 Bismarck, based on this Burleigh County Exhibit 104,
15 this kind of a hodgepodge of -- of townships with
16 Burleigh County zoning jurisdiction, so there would be
17 nowhere -- even if you didn't want to cross -- if you
18 want to go further north and find a river crossing, you
19 couldn't get through out east of Wilton anywhere either
20 without being within far less than four -- within three
21 miles of a Burleigh County zoning jurisdiction township;
22 correct?

23 THE WITNESS: I don't think so. I think there's
24 a clear path through those townships where they have
25 their own zoning jurisdiction, that it's not under

1 Burleigh County control, and I think they could -- I
2 think they could find a way. Obviously, the best
3 answer, if it just wasn't in North Dakota at all.

4 COMMISSIONER CHRISTMANN: Okay. And the last
5 thing, you said they couldn't have picked two worse
6 spots than what are on the table, between what's really
7 on the table and the south route. Is the route that's
8 really on the table, is that worse than the original
9 route or is it marginally better?

10 THE WITNESS: It seems to be the same to me.
11 It's got the same starting and the same end point. Just
12 the fact that you looped a little further north doesn't
13 address the concerns that I would have based on
14 everything that we know.

15 COMMISSIONER CHRISTMANN: Thank you. No other
16 questions.

17 ALJ HOGAN: Commissioner Haugen-Hoffart.

18 COMMISSIONER HAUGEN-HOFFART: I'm going to
19 expand upon that. The concerns that you have or the
20 county commission?

21 THE WITNESS: Both. I am speaking for the
22 Burleigh County Commission. We've discussed that at a
23 county commission meeting, because of the need to make
24 decisions quickly and move along with a lawyer and
25 anything else, that I have that -- that okay from the

1 Burleigh County Commission.

2 COMMISSIONER HAUGEN-HOFFART: Okay. I have no
3 further questions.

4 ALJ HOGAN: Mr. Dawson.

5 SUBSTITUTE DECISIONMAKER DAWSON: No questions.

6 ALJ HOGAN: Any redirect?

7 MR. BAKKE: Just briefly, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. BAKKE:

10 Q. And in terms of the 14 miles that Burleigh
11 County is requesting the Summit pipeline be moved
12 further away from Bismarck, that would be from the
13 Bismarck existing city limits; is that correct?

14 A. No. That would have been from 10 -- yes, 10
15 miles from the four miles. So it would have been
16 14 miles from the city limits.

17 Q. Okay. And that request by Burleigh County, is
18 that request being made to the PSC so that there would
19 be minimal adverse impacts and effects on the welfare of
20 the citizens of North Dakota and in particular Burleigh
21 County?

22 A. I can't really speak to whether we're asking the
23 PSC for that, but that was -- that was what had to do
24 with the Burleigh County ordinances. Whether -- I guess
25 I hadn't really considered whether we should make that

1 request, but that was the underlying information for the
2 zoning ordinances.

3 Q. But that's what the Burleigh County Commission
4 would like to see?

5 A. Yes.

6 Q. Regardless of who the ultimate decisionmaker is?

7 A. Yes.

8 Q. And do you believe there would be less adverse
9 human and environmental impact if it was moved further
10 away to more rural townships and locations?

11 A. You know, I think it would have less of an
12 impact on the city of Bismarck and the population
13 concentration. It seems like no matter where we would
14 have it in North Dakota, it's going to affect people.
15 And I really don't want anybody affected based on what I
16 know about it.

17 Q. Okay. And that 14 miles from the city limits,
18 that would be in every direction from Bismarck: north,
19 south, east, west?

20 A. Yes.

21 Q. In regards to a path through Burleigh County
22 where the pipeline could be built further away, could
23 you take a look at Burleigh County 104?

24 A. Okay.

25 Q. And that identifies townships where Burleigh

1 County has zoning jurisdiction and ones that are
2 identified as civil townships. And what's the
3 difference?

4 A. The Burleigh County zoning jurisdiction applies
5 to either unorganized townships or townships that have
6 delegated their zoning authority to Burleigh County.

7 Q. Okay. And so if we look at just the civil
8 townships, that's where Burleigh County does not have
9 zoning jurisdiction?

10 A. Correct.

11 Q. Okay. And can you see that there would be
12 multiple paths around Bismarck to the east and to the
13 north where the Summit pipeline could go where Burleigh
14 County has no zoning jurisdiction?

15 A. Yes. That's what I referred to earlier.

16 Q. Okay. That would be the white townships?

17 A. Yes.

18 Q. Okay. And then if we take some of the more
19 northern townships in Burleigh County where Burleigh
20 County does have zoning jurisdiction, the pink ones such
21 as Canfield, Phoenix, Florence Lake, are there those
22 ones where, if Burleigh County did have a say in where
23 the Summit pipeline could be located, where Burleigh
24 County zoning might say those locations in certain parts
25 of those townships would be acceptable or more

1 acceptable than it is now?

2 A. Well, I think we would certainly consider it.
3 We have ample room in the zoning ordinances for
4 variances and waivers and different things that -- that
5 make a lot of that possible, yes.

6 Q. Okay. And as you sit here today, are there any
7 specific constraints that you're aware of that would
8 prevent the Summit pipeline from going through these
9 civil townships further to the east and then going to
10 the north?

11 A. A little humor. Years ago in that Rock Hill
12 Township, I had to go up there and haul a crashed
13 airplane home with my semi. I couldn't recommend going
14 through Rock Hill. That's just too rocky but...

15 Q. Other than that?

16 A. No. No, sir.

17 Q. Okay.

18 MR. BAKKE: I have nothing further.

19 ALJ HOGAN: Mr. Gludt, any additional questions?

20 MR. GLUDT: No, Your Honor.

21 ALJ HOGAN: Mr. Pelham.

22 MR. PELHAM: No, Your Honor.

23 ALJ HOGAN: Mr. Jorde.

24 MR. JORDE: No. No thank you.

25 ALJ HOGAN: Any other questions from the

1 commissioners or Mr. Dawson?

2 All right. Thank you, Mr. Bitner.

3 All right. Next witness.

4 MR. JORDE: Your Honor, the landowners will call
5 Dr. Mark Jacobson, who looks like he's with us remotely
6 here.

7 Can you hear us, Doctor?

8 MARK JACOBSON: Yes, I can hear you.

9 MR. JORDE: Wonderful.

10 ALJ HOGAN: Mr. Jacobson, I'll have you start by
11 stating your full name for the record and spelling your
12 last name.

13 MARK JACOBSON: Yeah, it's Mark Zachary
14 Jacobson, J-A-C-O-B-S-O-N.

15 ALJ HOGAN: Mr. -- or Dr. Jacobson, before you
16 testify, I'm required by law to advise you on the
17 penalties for perjury in the state of North Dakota.

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

21 Do you understand what perjury is?

22 MARK JACOBSON: Yes.

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

1 MARK JACOBSON: Yes, I do.

2 ALJ HOGAN: All right. Thank you.

3 Go ahead, Mr. Jorde.

4 MR. JORDE: Yes.

5 **MARK JACOBSON,**

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

8 DIRECT EXAMINATION

9 BY MR. JORDE:

10 Q. Dr. Jacobson, did you cause to be prepared
11 some -- what's known as prefiled or written testimony in
12 the form of questions and answers to be used as a
13 summary of your opinions in this matter?

14 A. Yes, I did.

15 Q. And along with the question and answers, the
16 written questions and answers, you supplied a few
17 attachments, one being your resume and another being a
18 peer-reviewed article that you authored; is that
19 correct?

20 A. Yes, it is. Correct.

21 Q. And then since the time of preparation of your
22 written testimony, you and I talked and I wanted to be
23 completely -- make you completely aware that Summit now
24 claims they have 57 ethanol plants participating in
25 their proposed project and that their total costs have

1 gone up. Is that a fair statement?

2 A. I'm aware of that, yes.

3 Q. Okay. And then in response to that, is it true
4 that you prepared a new page to be a part of your
5 prefiled -- or part of your written testimony that
6 essentially is a diagram depicting -- depicting your
7 findings based on that information?

8 A. Yes. I updated my previous results with the new
9 numbers that I had available and provided them back to
10 you.

11 Q. All right. Very good.

12 MR. JORDE: Your Honor, I would offer at this
13 time exhibit -- Landowner Exhibit 27, which is the
14 direct written testimony, and then also Landowner
15 Exhibit 50, which is the diagram Dr. Jacobson
16 referenced.

17 ALJ HOGAN: 50 being passed out. Okay.

18 MR. JORDE: Yes, Roseanne, please. I'm sorry.

19 ALJ HOGAN: All right. Is there any objection
20 to 27 -- Landowner 27 or 50?

21 Mr. Dublinske.

22 MR. DUBLINSKE: There is, Your Honor. And with
23 all due respect to Dr. Jacobson, we object to the
24 testimony and the admission of the testimony and
25 exhibits and to the witness as a whole for a couple of

1 separate reasons, either of which I think would be
2 sufficient.

3 First of all, if you look at the prefiled
4 testimony, and we don't have to guess at what's going to
5 be asked because the testimony is prefiled, it is
6 entirely about the comparative benefits of carbon
7 sequestration from ethanol versus in this particular
8 case conversion to battery-electric vehicles and
9 powering the grid that charges them from wind and solar.

10 That sort of broad, general -- it's a pretty
11 high-level argument, clearly could have, should have,
12 and to some degree was argued in the 2023 hearing. None
13 of that has anything to do with the issues that are
14 specified in the reconsideration order. That is solely
15 an argument about the project as a whole which would
16 have been appropriate a year ago but not now.

17 Second separate objection is strictly a
18 relevance objection that this testimony, as I mentioned
19 a moment ago, is a comparative argument between, you
20 know, if we take a pool of capital and invest it in
21 carbon capture for ethanol versus if we invest it in
22 battery-electric vehicles, wind and solar, Dr. Jacobson
23 argues that we would be better off in the second
24 scenario where we invest it differently. But that's not
25 the issue that's in front of the board. The board is

1 not choosing from a menu of different capital allocation
2 options. It's looking at an application and judging it
3 against the legal standards in the state of North
4 Dakota.

5 So for either of those reasons, this is
6 inappropriate and we would object to any of this
7 testimony or this witness coming in.

8 ALJ HOGAN: Mr. Pelham.

9 MR. PELHAM: I agree with Mr. Dublinske to a
10 large extent, but at the same time I am not going to
11 join in the objection. I think that the Commission can
12 give whatever weight it decides to give as to this type
13 of testimony in similar aspects as to the economic
14 aspects. I know that that's not -- it's apples and
15 oranges, but we -- we have, you know, gotten somewhat
16 outside of some of the specific specified issues from
17 the Commission's order, but at the same time I do
18 believe the landowners, Mr. Jorde's clients, do have the
19 ability to present their case as they believe that they
20 should submit it.

21 So, with that said, I don't object, but I do
22 have concerns.

23 ALJ HOGAN: All right. I am going to note the
24 objection, but I will admit the exhibits, allow the
25 testimony, and just advise the Commission to weigh it,

1 give it the weight it determines it should get, if any
2 at all.

3 So with that, Mr. Jorde, you can continue.

4 MR. JORDE: Yes, thank you.

5 Q. (BY MR. JORDE) And, Doctor, what just happened
6 was maybe foreign to you. I'll just state as a preface
7 to my next question that effects on the environment and
8 impacts on the environment are present in all three
9 factors the PSC considers, hence why I have you here.
10 But we're not going to go through every line. That was
11 the point of getting your testimony pulled together.

12 I want to first just spend a minute or two on
13 your CV so I don't gloss over that, so I establish you
14 as an expert. Can you just give a very brief background
15 of your CV education, what you do, and why your opinions
16 should be considered?

17 A. Yes. Thank you. I'm a professor of civil and
18 environmental engineering at Stanford University. I
19 have been for the past 30 years; since 1994. Prior to
20 that I did my Ph.D. in atmospheric sciences at UCLA. I
21 did a master's degree there. I did a previous master's
22 degree in environmental engineering at Stanford
23 University. I did two undergraduate degrees, one in
24 civil engineering and one in economics at Stanford
25 University as well.

1 And my expertise is not only looking at the
2 impacts on the atmosphere of energy sources in terms of
3 air pollution and climate impacts, but I also study
4 energy systems and their impacts on the environment and
5 ways to transition the energy system to minimize impacts
6 and address large-scale environmental problems such as
7 air pollution and global warming and energy security.

8 So I can add more of it. That's briefly --

9 Q. Yeah, I -- that was a very, very brief
10 description, but I think that satisfied what I needed to
11 do there.

12 If you could just summarize your opinions, your
13 kind of ultimate conclusions for the Commission, please
14 do that.

15 A. Well, ignoring even the comparison with wind, I
16 mean I work a lot -- I've worked a lot on the impacts of
17 ethanol on the environment, ethanol fuels and producing
18 the fuels on the environment. And in particular I've
19 also -- this goes back to 2007 when I published a paper
20 on the impacts of transitioning the United States
21 vehicle fleets to entirely ethanol-based E85 vehicles
22 replacing gasoline vehicles and looking at the impacts
23 on air pollution, health in particular, and finding that
24 in about three-quarters of the United States such a
25 transition, just converting from gasoline to

1 ethanol-fuel vehicles running E85, would increase air
2 pollution death rates and also illnesses. The only
3 locations where it would not was in the southeast United
4 States. And since then I've done a lot of other work
5 looking at impacts on land use, water supply, air
6 pollution, and climate of converting to an ethanol
7 infrastructure.

8 As you noted in my -- in my report, expert
9 report, I did a paper recently on examining the Summit
10 pipeline, the previous version of it, in which I looked
11 at some of these impacts but also to compare it to
12 another scenario of investing the same amount of money
13 in wind turbines powering battery-electric vehicles.

14 But the main conclusion, if I just were looking
15 at the overall impact of building a carbon capture
16 infrastructure with a pipeline infrastructure attached
17 to these 57 ethanol refineries, the main impact is that
18 you're going to saddle consumers into this
19 infrastructure for decades and this will mean -- this
20 will slow down a transition to clean or renewable
21 sources.

22 Ethanol versus gasoline is almost -- almost the
23 same amount of carbon equivalent emissions no matter how
24 you slice it. Some studies show slightly more, some
25 studies show slightly less. Adding carbon capture to

1 the fermentation process at ethanol refineries hardly
2 puts a dent into that impact.

3 So there's really no benefit of -- on a large
4 scale, in terms of carbon emissions, on putting it -- of
5 adding these pipelines plus carbon capture equipment,
6 but there's definitely an increase of air pollution and
7 there's an increase of cost of energy and fuel.

8 And this is where this comparison with
9 alternatives becomes important. When I did the
10 comparison with wind powering electric vehicles, I
11 find -- well, I found in the original study about 2.4 to
12 4 times the carbon dioxide equivalent emission savings
13 and about on the order of up to \$60 billion plus over
14 30 years savings to consumers in fuel costs, primarily
15 in fuel costs. I've revised the numbers and they're
16 summarized in this graph and we still get, with revised
17 numbers, about 2.1 to 3.4 times the CO2 savings of going
18 to electric -- battery-electric vehicles powered by wind
19 versus this carbon capture scheme, and a net savings of
20 48 to \$84 billion in mostly fuel costs due to -- so, in
21 other words, a loss to consumers.

22 Consumers are going to be saddled with high fuel
23 costs, in other words, for decades to come with this --
24 with this scheme and saddled with higher relative carbon
25 equivalent emissions and air pollution. Air pollution

1 emissions will continue.

2 E85 vehicles, as I mentioned earlier from my --
3 going back to our 2007 study -- and we did several other
4 studies looking at that issue. E85 vehicles will
5 increase air pollution or keep it the same versus
6 gasoline vehicles that will keep the death rate similar
7 from air pollution.

8 Land use requirements, you'll require enormous
9 amounts of land in the order of -- in terms of --
10 compared with just building wind farms even, you need to
11 grow corn for all this. I mean, photosynthesis is
12 extremely inefficient for producing energy. Only
13 1 percent of energy from the sun gets converted to
14 energy in a biofuel crop, whereas solar panels are
15 20 percent efficient. In other words, 20 percent of the
16 energy in the sun gets converted to electricity. So if
17 you use -- if you put solar panels on a piece of land,
18 you're getting 20 times more energy compared with
19 growing a biofuel crop.

20 And on top of that, electric vehicles use
21 one-fourth the energy as internal combustion engine
22 vehicles such as flex-fuel vehicles. So if you use
23 solar -- or you can use wind, but let's say solar to
24 power battery-electric vehicles, you're using
25 one-eightieth the land area as growing a biofuel crop to

1 power a flex-fuel vehicle. So you're not only using
2 humongous amounts of land -- and a good portion of that
3 land requires water. About 13 percent of all corn in
4 the United States is irrigated. And so that would --
5 you know, growing all that corn for -- and irrigating a
6 big portion of it for energy takes up a big portion of
7 the water supply.

8 You're taking water, you're taking land, you're
9 increasing or keeping the same air pollution, and you're
10 hardly putting a dent in carbon versus -- and you're
11 basically making it more difficult to transition to
12 something that's much cleaner in terms of air pollution,
13 much more reduction of carbon, much less land use, much
14 less water consumption.

15 So, to me, if you're really looking at the big
16 picture, you really need to look at all the
17 possibilities of what to do and not just say, well, this
18 might benefit certain people and approve it, because
19 it's going to saddle consumers especially with high fuel
20 costs for decades to come.

21 Q. So in this -- throughout this process and
22 recently -- and Mr. Powell's, who you may or may not
23 know, 2024 testimony, Summit claims that the project,
24 not just the pipeline, I guess, but the whole project,
25 will play an important role in reducing greenhouse gas

1 emissions. Is -- is your testimony -- I mean, is that
2 like technically true, if we just look at that
3 statement, but what you're broadening it out to, what
4 are the big net effects as opposed to just that one
5 sentence?

6 A. Yeah. Well, even if you look at the greenhouse
7 gas emissions that are argued to be reduced, well, I
8 mean I calculate based on the new data -- because based
9 on the new data, you not only have the emissions
10 reductions associated with adding carbon capture, but
11 you have to then add in emissions that are added back to
12 the air due to the energy required to compress the CO2
13 and to run it through the pipeline, to build the whole
14 pipeline system, and the fact that there's going to be
15 downtime for this carbon capture equipment.

16 So the 18 million metric tons per year CO2 that
17 the pipeline could hold, that's a maximum. That's not
18 the actual amount that will go through the pipeline.
19 But I could calculate based on -- well, starting based
20 on the previous numbers and then just scaling it up
21 based on the new number of refineries and then
22 accounting for the reduction of CO2 savings due to the
23 increased -- the energy required to compress the CO2,
24 run it through the pipeline, and also to build the
25 pipeline system, it's about 13.8 million metric tons per

1 year. That's -- that's what it could allegedly be
2 reduced through the system, but that's on the equivalent
3 of less than 0.2 percent of U.S. greenhouse gas -- CO2
4 emissions alone just from fossil fuel sources, not even
5 counting all the other CO2 emission sources.

6 I mean just by doing the wind projects instead,
7 you're going to get, instead of .2, you're getting
8 closer to .8 or, you know, somewhere between .5 and
9 1 percent of U.S. CO2 reduction, emission reductions.

10 So it's a -- even in the best case, that's --
11 you're still going to put a -- I mean, it's a small dent
12 in the CO2 emissions and -- but you're not even --
13 that's just what's avoided, but there's still a huge
14 amount of CO2 emissions associated with this ethanol
15 production process. Because there's CO2 associated with
16 the growing of the crops, of cultivating the crops,
17 fertilizing them, energy going to watering them,
18 transporting.

19 And you can't transport ethanol by pipeline.
20 You have to train, truck, or barge it around. And this
21 is one of the reasons why the CO2 emissions from ethanol
22 is higher, especially the upstream portion, than
23 gasoline in some cases, is because of this fact that you
24 can put -- at least get -- at least you can put oil
25 through pipelines but you can't put ethanol in

1 pipelines.

2 And so you end up putting not only greenhouse
3 gas emissions but black carbon, which is the main
4 component of soot, the second leading cause of global
5 warming, that comes from diesel exhaust. Trains,
6 trucks, and barges all use diesel exhaust -- or diesel
7 fuel and, as a result, emit diesel, which is the second
8 leading cause of global warming, which is not even
9 accounted for in any of these analyses.

10 So you have all these emissions that are -- and
11 plus you have the combustion emissions of the ethanol
12 vehicles. Electric vehicles have zero emissions from
13 the tailpipe. You have similar emissions from a
14 tailpipe from ethanol vehicles as gasoline vehicles.
15 And so when you go to electric vehicles, you'll reduce
16 so much more carbon dioxide but you reduce -- air
17 pollution, you reduce all the air pollution from the
18 tailpipe of the vehicles.

19 So it is really important to compare other
20 technologies. In fact, not comparing with other options
21 in such an infrastructure project that will last for
22 decades is, I think, really going to potentially damage
23 the people in North Dakota as well as the other states
24 involved here.

25 Q. So to kind of sum up then, is it your opinion

1 that approving this project based on your education,
2 experience, background, expertise, training will -- will
3 not produce just minimal adverse effects on the
4 environment?

5 A. Oh, no. This is a major -- there's 2,500 miles
6 of pipeline. So you're going to be invading people's
7 lands and digging up their soil, causing all sorts of
8 soil displacement, and it will damage habitat, some
9 habitats in some cases, maybe inadvertently.

10 But the main impact that I look at is the impact
11 on air pollution and climate. And this will have
12 virtually zero benefit for climate.

13 And it will be -- as I mentioned, it's going to
14 -- when you put up an infrastructure, it's really
15 encouraging people and really going to make a lot of
16 people who buy flex-fuel vehicles and then they'll hold
17 on to them for 15, 20 years. And this will make it
18 difficult to transition to something that actually is
19 solving the problem, is helping to solve the problem.

20 So as an opportunity cost, it's an enormous
21 opportunity cost. But as an actual cost, the air
22 pollution is going to be enormous. It's already
23 enormous from ethanol refineries. It's already enormous
24 from gasoline vehicles or flex-fuel vehicles and from --
25 in terms of the air pollutants that come out, like

1 aldehydes, acetaldehyde in particular, formaldehyde,
2 molecular organics. It's very well known that flex-fuel
3 vehicles compared with gasoline, they emit more organic
4 gases, more oxides of nitrogen, similar amounts of --
5 well, more acetaldehyde and formaldehyde, which are both
6 carcinogens, less toluene, less butadiene, and benzene,
7 which are also carcinogens. So the carcinogens equal
8 out, but the higher organics, the lower NOx both
9 contribute to more ozone.

10 And this is why the ethanol-fuel vehicles cause
11 similar air pollution or more air pollution depending on
12 where you are than gasoline. But it's going to cause
13 tremendous damage compared with alternatives.

14 But also, given the short time we have to
15 address climate and address air pollution health
16 problems worldwide -- and just to put it in perspective,
17 air pollution is the second leading cause of death
18 worldwide. Seven and a half million people die from air
19 pollution, hundreds of millions more become ill. In the
20 United States, it's about a hundred thousand people die
21 each year from air pollution.

22 And global warming is such a large problem right
23 now, we're reaching record temperatures everywhere on
24 the earth. We need -- we have six years to solve
25 80 percent of the problem. And when we propose

1 solutions that -- first of all, this won't even be
2 implemented for several years to build this whole
3 infrastructure, and during that time all emissions will
4 continue. And then we're just going to continue
5 emissions for years to come as opposed to starting right
6 away to transition to clean or renewable energy that
7 eliminates air pollution emissions and climate relevant
8 emissions. That is going to really slow down the
9 solution to climate change and air pollution problems,
10 and it will also devastate the landscape. I mean, you
11 don't need 2,500 miles of pipelines to use
12 battery-electric vehicles.

13 Q. Sir, your testimony is very detailed as are the
14 scholarly articles that you've provided. And like I
15 promised, I'm not going to go through all those. So I
16 appreciate your testimony. I'm going to turn you over
17 to others who may have questions for you. Thank you.

18 ALJ HOGAN: Mr. Dublinske.

19 MR. DUBLINSKE: Thank you, Your Honor.

20 CROSS EXAMINATION

21 BY MR. DUBLINSKE:

22 Q. Good afternoon, Dr. Jacobson.

23 A. Good afternoon.

24 Q. And this may sound familiar from the motion we
25 were arguing over earlier but -- well, actually, let me

1 start with one other -- with one question. Your actual
2 testimony is pretty brief and part of it is summarized
3 in your article. I gather that the main point of the
4 testimony is to introduce and provide what lawyers call
5 foundation for the attached article that you wrote.
6 Fair?

7 A. You mean in the testimony, you mean all the
8 preamble to the testimony is foundational?

9 Q. Well, there's four or five pages of testimony,
10 part of which introduces you, part of which introduces
11 the paper. My point is that there's not a lot in that.
12 What that really does is just presents to the Commission
13 the paper that you wrote; correct?

14 A. Yeah. Most of it's focused on the results of
15 the paper, I would say.

16 Q. And I understand that any summary inherently
17 will lose a lot of subtle -- a lot of subtlety and
18 nuance, but let me give it a shot and you can tell me if
19 I do okay.

20 On page 4 of that testimony you summarize your
21 paper. And is it fair to say that your summary is that,
22 comparatively speaking, it would result in lower costs
23 for drivers and lower carbon emissions if, rather than
24 capturing carbon from ethanol, everyone switched to
25 battery-electric vehicles and, second, that those

1 vehicles were charged from a grid that's powered by wind
2 and solar?

3 A. That's a conclusion. Yeah, the specific study
4 looked at taking the same amount of money -- I think at
5 the time it was \$5.6 billion -- and using that money to
6 purchase wind farms to then run battery-electric
7 vehicles which individuals would purchase. And then
8 there's a difference in the purchase price of the
9 electric version versus the gasoline version. It was
10 like more expensive for the electric version by about
11 \$21,000 per vehicle.

12 And -- but, yeah, the conclusion is correct,
13 that it would be -- because of the fuel -- enormous fuel
14 cost savings primarily, your -- the consumers would save
15 a huge amount of money. And because of the larger
16 carbon emissions reductions, you're going to get, I
17 think in that case, 2.4 to 4 times the CO2 emission
18 reduction compared with the ethanol plan in the -- in
19 the paper that was published.

20 Q. Fair to say that in your view, based on that
21 result, that you believe the public should switch to
22 battery-electric vehicles and the grid should switch to
23 wind and solar immediately?

24 A. As fast as possible, yes. Our decisions going
25 forward should be focused on electrifying transportation

1 and providing electricity as much as possible with
2 clean, renewable energy. I know it can't be done
3 overnight, but every decision going forward should have
4 that focus, I would say.

5 Q. So I want to ask about that. You say "every
6 decision going forward." So in your view, government
7 should use its decision-making power to force people off
8 of the use of fossil fuels. Fair?

9 A. Well, I didn't say government had to do this. I
10 mean, I think government helps to do this. I think --

11 Q. That's the question we're here for, right --

12 A. Pardon?

13 Q. -- is the government decision?

14 A. Yeah. Well, I think it's all levels of society.
15 So individuals -- well, I'm providing what I think will
16 give us the best result and consumers the best result.
17 So the best way to do that, yeah, I have my own opinion,
18 but that's -- that's, I guess, you know, up to each
19 state --

20 Q. You have that, in your paper, one of the
21 vehicles that you use to set that up was an F-150
22 Lightning.

23 A. Correct.

24 Q. Is your position that all the farmers and
25 ranchers in North Dakota should switch to

1 battery-powered trucks as soon as they can?

2 A. Yeah. I mean -- I mean, it's to -- I will say
3 it's to their benefit to do that from a cost point of
4 view, from a health point of view, climate point of
5 view, and a land use point of view, and a water supply
6 point of view. So there are many other options besides
7 the Lightning F-150 for electric trucks now, but, yeah,
8 that was one option.

9 Q. You're aware that North Dakota has the third
10 fewest charging stations in the country?

11 A. That is -- can change as well. And, you know, I
12 started -- I had an electric car in 2009. There were
13 virtually no charging stations anywhere, yet I managed
14 to drive hundreds of miles on trips and found places to
15 charge. I'm not saying that's how everybody should
16 live, but I'm saying charging stations are growing
17 rapidly.

18 There are -- I can look at a map. I bet I'll
19 find thousands of charging stations in North Dakota if I
20 looked at a map right now. There are a lot more than
21 people usually think, but I don't -- I don't know the
22 number. I'm just guessing. There are probably lots.

23 Q. Would you have reason to question if I said that
24 you can knock a zero off that, that it's closer to a
25 hundred than to a thousand?

1 A. I mean, if -- if you have the data. Like I was
2 surprised -- I -- I don't know if that includes people's
3 individual homes where people have their own chargers in
4 their homes. Usually when you get a car, you usually
5 put a charger in your own home. So 90 percent of
6 travel, 95 percent of travel, is within 30 miles of
7 homes. And these cars -- well, electric trucks now have
8 a range of several hundred miles. So, you know, when
9 you buy an electric truck, you usually would put it --
10 and if you have a home, that is -- not everybody has
11 homes. A lot of people have apartments so that's more
12 of an issue for people with apartment complexes. But if
13 you do have your own home --

14 Q. Switch over --

15 A. Sorry.

16 Q. Switch over from the transportation side of the
17 equation to the grid side of the equation. Obviously
18 your paper calls for charging those vehicles off of a
19 grid that is wind and solar-powered in its entirety.
20 Have you been involved in the siting permit process for
21 any wind or solar?

22 A. Not personally but --

23 Q. There's been plenty of coverage of it. I assume
24 you're aware that there's a significant percentage of
25 counties in the United States that have moratoria

1 against new wind and solar development and that number
2 is growing.

3 A. Well, okay, but -- okay. South Dakota last
4 year, 96 percent of all the electricity it consumed was
5 produced by wind and hydropower. And North Dakota is, I
6 think, ranked like number maybe 11 in the states with
7 the highest percentage of their electricity generated
8 from wind, water, and solar, with primarily a lot of
9 wind.

10 So I don't think these -- there are moratoriums
11 certainly, but it isn't stopping the growth of -- in the
12 Midwest in particular, for wind in particular but also
13 solar. Because I mean Minnesota -- not Minnesota.
14 Montana and Iowa are both at 80 percent wind, water,
15 solar in their generation of electricity relative to
16 their consumption. Nebraska, Oklahoma, Kansas are also
17 -- and Idaho as well, are also in the top 10 or so
18 states in terms of percentage.

19 There's really -- we're much further along than
20 most people realize in many states in the United States.
21 There are a lot of states that aren't very far along,
22 but they're not in the Midwest where you have so much
23 wind.

24 Q. Now, your paper calls for a rapid
25 decarbonization of the electric grid. Does that paper

1 include any assessment of what economic impact that
2 would have on North Dakota specifically if we moved away
3 from oil and gas?

4 A. Yeah. In fact, I've got a -- some statistics I
5 can draw up if you just want to give me one second.

6 Q. Dr. Jacobson, that was not my question.

7 A. Okay.

8 Q. My question was did the paper that you submitted
9 include an economic analysis for North Dakota of the
10 economic impacts of moving away from oil and gas?

11 A. Well, the paper I submitted was focused on this
12 -- the comparison of the ethanol pipeline system and
13 with wind and solar. So I didn't look at what's the
14 cost of keeping the entire grid stable, but I do have
15 some statistics on that from other sources if you're
16 interested, but I didn't discuss that in that paper.

17 Q. Thank you.

18 MR. DUBLINSKE: I have no further questions.

19 ALJ HOGAN: Mr. Pelham, any questions?

20 MR. PELHAM: Thank you.

21 CROSS EXAMINATION

22 BY MR. PELHAM:

23 Q. Good afternoon, Professor. I'm just wondering
24 if you have an opinion on the future from your
25 perspective of the ethanol industry?

1 A. Well, I know there's a big push from the
2 agricultural consortium to increase ethanol use. So
3 from a -- just from a purely business point of view, I
4 can see how that has gained traction because there are a
5 lot -- there's obviously a lot of farmers, western corn
6 farmers in particular, and corn is used for ethanol and
7 that's a potential use of fuel.

8 So if you're just looking at it from the point
9 of view of farmers and ethanol producers, there's a lot
10 of money to be made. But if you're looking at it from
11 the point of view of consumers, it's really expensive to
12 use ethanol as a transportation fuel, and it's getting
13 more expensive. And there are much cheaper alternatives
14 that are also much healthier for citizens of the states
15 and better for the climate and also will provide energy
16 security for decades to come.

17 So what actually happens is a question of
18 politics. What I think should happen, if we're looking
19 at it from a social cost point of view -- and a social
20 cost point of view is one that looks at health costs and
21 climate costs and energy costs together as opposed to a
22 business perspective which looks only at the business
23 cost. From a social cost point of view, it's far
24 beneficial to move away from any type of combustion
25 fuel, whether it's gasoline or diesel or ethanol.

1 So what happens will depend a lot on lobbying,
2 as we see. Because -- I mean, even in the Inflation
3 Reduction Act in the United States, you know, 40 percent
4 of the technology -- of the funding, the subsidies that
5 are proposed, are going toward technologies that are not
6 necessarily helpful at all, like carbon capture, blue
7 hydrogen, direct air capture, small modular nuclear
8 reactors, bioenergy, but there are lobbies that push for
9 these and that's how they get into them. So that's the
10 issue.

11 Whether it happens or not, I can't say. Whether
12 it should happen from a scientific point of view, it's
13 definitely not helpful.

14 Q. You mentioned carbon capture, storage. What's
15 your view, if any, on the future of carbon capture,
16 storage in -- in North Dakota?

17 A. Well, first of all, the -- there's no financial
18 benefit of putting carbon under the ground. I mean,
19 that's probably the best thing to do with it, but
20 there's no benefits. There's -- 73 percent of all
21 carbon capture projects worldwide to date are -- the
22 carbon dioxide that's captured has been used for
23 enhanced oil recovery and not sequestered under the
24 ground. Only a small portion of the carbon dioxide has
25 been put into the ground.

1 So I'm just kind of surprised to see that this
2 was their proposal, not that it's not -- I mean, I'd
3 rather see it go into the ground than be used for
4 enhanced oil recovery. Because enhanced oil recovery,
5 about 40 percent of the CO2 that's captured goes right
6 back to the air immediately. And then you're digging up
7 more oil because that's the purpose of enhanced oil
8 recovery, is to make oil less dense by binding carbon
9 dioxide to it so more of it can come out faster and then
10 you burn more oil so that defeats the purpose of trying
11 to sequester carbon.

12 But my understanding also was even though this
13 was promised to be for sequestration, there was
14 something I read about, and I don't know if it turned
15 out to be a false story or not, that Summit changed
16 their mind and is now considering it for enhanced oil
17 recovery.

18 But if that's -- if it's going to be used for
19 sequestration, the problem is always that any kind of
20 carbon capture always increases your carbon dioxide.
21 And you can prove this. Carbon capture and direct air
22 capture always increase CO2. The reason is, even if in
23 the best case -- let's say you're using -- because
24 there's an energy -- well, let me just say any type of
25 synthetic carbon capture.

1 Trees are great. So trees can take out carbon
2 dioxide from the air, sequester it in the wood, but they
3 don't require energy and they don't require equipment.

4 Carbon capture requires energy and equipment.
5 And even in the best case of using renewable energy,
6 when you use renewable energy for that carbon capture,
7 you're preventing that renewable energy from replacing a
8 fossil source directly. And replacing a fossil source
9 with renewable energy removes more carbon dioxide than
10 running carbon capture equipment with renewable energy.

11 So it's always an opportunity cost to use carbon
12 capture equipment. And it's -- so, in other words,
13 you're always going to be increasing CO2 relative to
14 using that renewable energy for a better purpose.
15 And --

16 Q. Professor, forgive me for being a bit slow here,
17 though, but as I understand the proposed project here
18 that the line is being proposed to be sited for is the
19 removal of CO2 from the ethanol-producing process so
20 that it can be sequestered. So I don't understand or
21 follow you, sir, forgive me, as to how that would create
22 more CO2 in the process.

23 A. Well, there's two ways. Depends, like --
24 because -- like in this case you are using energy. Now
25 this case of taking the CO2 from the fermentation

1 process, it's a purer strain than, let's say, taking the
2 CO2 from a coal plant so it doesn't require as much
3 energy to extract that CO2. You do still need energy to
4 compress the CO2, run it through the pipe. And in that
5 case, that energy can -- is additional energy
6 requirement that would not otherwise be used.

7 And so normally that -- let's say that -- in the
8 best case, let's say you were using wind energy to run
9 that -- provide that electricity to pressurize the CO2.
10 Well, you could have taken that wind energy and replaced
11 a coal source and you would have reduced more CO2.

12 That's the point I'm trying to make. It's
13 always an opportunity cost. It's always a trade-off no
14 matter what you're doing. It's important to look at the
15 alternatives of what you could be doing better.

16 And in this case, that's what I did. In this
17 case, the bigger -- the bigger opportunity cost is not
18 so much the energy used for the compression, it's the
19 fact that you're using the ethanol at all. Why are you
20 using ethanol? Almost all of the use of the ethanol is
21 to run transportation vehicles. And my point is, is
22 that's an opportunity cost in itself.

23 And so you would reduce a lot more CO2 by going
24 to electric vehicles powered by renewable sources. And
25 by saddling -- by focusing on putting money into these

1 ethanol refineries and keeping them alive, that's
2 saddling consumers for decades for high fuel costs and
3 higher CO2 emissions.

4 So there's definitely going to be an increase of
5 CO2 emissions compared with taking that same amount of
6 money and investing in a clean, renewable energy
7 infrastructure with electric vehicles.

8 Q. Thank you, sir. I don't have any other
9 questions for you.

10 ALJ HOGAN: Mr. Bakke, any questions?

11 MR. BAKKE: No questions, Your Honor.

12 ALJ HOGAN: Commissioner Christmann.

13 COMMISSIONER CHRISTMANN: Okay. So I'm no
14 engineer like you so I don't want the total engineering
15 long explanation. Can you give me kind of a simple
16 Rancher Randy kind of an explanation? I've noticed this
17 never happens, but why can't we ship ethanol in a
18 pipeline?

19 THE WITNESS: Because it corrodes. Ethanol is
20 corrosive and it will corrode the pipeline pretty
21 quickly.

22 COMMISSIONER CHRISTMANN: Just too expensive to
23 line them or something with a non-corrosive?

24 THE WITNESS: That part -- well, it's just not
25 been done so it must be either too expensive or it

1 doesn't actually work very well for the length of
2 pipelines. So, yeah, I don't know the -- I'm not a
3 pipeline expert, so to speak. I just know that it's
4 corrosive and that's -- yeah, it hasn't -- it's never
5 been done.

6 COMMISSIONER CHRISTMANN: Did I get your number
7 right? You said 96 percent of the electricity consumed
8 in South Dakota last year was from wind and solar?

9 THE WITNESS: No. Wind and hydro. So -- in
10 fact, I'll give you the exact numbers. There's actually
11 hardly any solar in South Dakota. But, yeah, South
12 Dakota, 96.52 percent of the electricity consumed was
13 produced from wind. 69.7 percent wind, 26.5 percent
14 hydro, about 0.35 percent utility PV, and about
15 0.03 percent rooftop PV. That adds up to 96.5 percent
16 of the total consumption. In North Dakota it's
17 56.3 percent.

18 COMMISSIONER CHRISTMANN: So --

19 THE WITNESS: 5 percent hydro, 51.3 percent
20 wind.

21 COMMISSIONER CHRISTMANN: Does that mean that
22 that's what percent of their electricity came from those
23 sources or that those sources produced an amount of
24 electricity equivalent to that percentage of the power
25 that they use?

1 THE WITNESS: I think a lot -- so of the amount
2 that was consumed, of the amount that was consumed, not
3 the amount that was produced but the amount that -- of
4 the amount that was consumed, in South Dakota,
5 69.7 percent of the amount consumed, equivalent of
6 69.7 percent was produced by wind, equivalent of
7 26.5 percent was produced by hydro.

8 COMMISSIONER CHRISTMANN: Would you argue my
9 point that there's a hell of a lot of the time that
10 they're producing that energy that you're counting as
11 being consumed by them but they're exporting it because
12 they're overproducing for what they need at that moment
13 in time --

14 THE WITNESS: Oh, yes, for sure.

15 COMMISSIONER CHRISTMANN: -- and there would be
16 a lot of hours -- let me finish. There would be a lot
17 of hours out of the year where they'd be sitting in
18 dark, cold houses if they didn't have things other than
19 renewables far more than 4 percent of the time?

20 THE WITNESS: Well, I agree with part of your
21 statement but not the entire part. Yes, they're
22 producing -- there are also -- other generators include
23 coal and gas and fossil fuels. So they're producing
24 more than they consume, over a hundred percent. But if
25 -- my point is there you could replace those with

1 batteries and more solar or solar plus more wind.

2 And, also, South Dakota is connected to a grid.
3 So even if the state itself doesn't have enough
4 electricity at a given moment, it's connected to the
5 whole western grid.

6 There are seven countries in the world that are
7 a hundred percent renewables in the annual average,
8 including an island, you know, Iceland, which is a
9 hundred percent renewables, all geothermal, wind, and
10 hydro. Mostly hydro and geothermal, some wind.

11 But then California, actually for the last
12 55 days, has been over a hundred percent renewables for
13 up to 10 hours a day and, on average, has been
14 around 80 percent -- close to 80 percent renewables on
15 the grid. And this is an increase of, like, compared
16 with last year, 12 or 15 -- 12 to 15 percent. And, in
17 fact, during the night up to about 12 percent of all the
18 electricity at night is produced by batteries in
19 California right now. So --

20 COMMISSIONER CHRISTMANN: So two of your
21 comments there led me to subsequent questions. You
22 talked about California. Do you live in the Stanford,
23 Fremont area, somewhere there?

24 THE WITNESS: Yes, I'm in the Stanford area,
25 yeah.

1 COMMISSIONER CHRISTMANN: So how often do you
2 have to go out and take long trips in subzero weather
3 with your battery car?

4 THE WITNESS: I don't. But, I mean, in Norway
5 they do. And I think around 90 percent of all cars sold
6 last year were battery-electric cars in Norway. Same in
7 Sweden and Finland. There are a lot of battery-electric
8 cars. And Iceland as well.

9 COMMISSIONER CHRISTMANN: Isn't it -- isn't it
10 you Californians that started the big subsidies for
11 carbon capture ethanol that led to these ethanol plants
12 wanting to do this in the first place?

13 THE WITNESS: It's possible. I wouldn't put it
14 past our state to do that.

15 COMMISSIONER CHRISTMANN: Possible, but it's
16 true; correct?

17 THE WITNESS: I mean, I don't know, but I'll --
18 I'll defer to you on that one, but it's possible from my
19 point of view, yes.

20 COMMISSIONER CHRISTMANN: And then in the
21 earlier answer, you talked about, well, South Dakota
22 could, you know, have more batteries so that they would
23 have power when these renewables aren't working. And
24 you also talked a lot about wind and especially on the
25 solar side of it.

1 You're familiar with the large volume of
2 critical elements and rare earth minerals that it takes
3 to produce those batteries and solar panels; correct?

4 THE WITNESS: Oh, yes. But that's --

5 COMMISSIONER CHRISTMANN: And when you were
6 talking about land use impacts, tell me about how the
7 land use impacts in places like Congo and China are from
8 producing those things for us?

9 THE WITNESS: Very trivial in comparison with
10 replacing the fossil fuels that are -- that they're
11 replacing. I mean, for --

12 COMMISSIONER CHRISTMANN: Very trivial -- I'm
13 sorry. So the land use impacts are very trivial. What
14 about the human impacts? And coming up with your study
15 -- and I'm sorry, I did not get time to read your study
16 in advance, but I'm really looking forward to it.

17 Did you interview any Uyghur slaves in China or
18 any prepubescent miners in Congo about how it is to
19 produce those things for the United States of America at
20 affordable prices?

21 THE WITNESS: Maybe if we can address one issue
22 at a time. Like you're talking about the land
23 requirements. Can I get to that first?

24 COMMISSIONER CHRISTMANN: Sure.

25 THE WITNESS: And then I'll get to the Congo.

1 In the United States, 1.3 percent of all U.S.
2 land area's occupied by the fossil fuel industry. There
3 are -- in North America, there are 50,000 new oil and
4 gas wells drilled every year. And this is for fuel, to
5 provide fuel for mostly gas but also oil. And if you
6 transition the United States to a hundred percent
7 renewables for all purposes -- that's electricity,
8 transportation, buildings, and industry -- we calculate
9 less than 1 percent of the land would be occupied so
10 that would be a reduction of land use compared with a
11 fossil fuel industry.

12 But the difference is with a fossil fuel
13 industry you need to increase -- you need 50,000 new oil
14 and gas wells every year forever, whereas you transition
15 to a renewable energy infrastructure, then the growth of
16 that -- the land footprint will only increase slowly
17 because we don't -- we eliminate the need for continuous
18 fuel. With fossil fuels you need continuous fuel to
19 fill up your gas tank, to provide gas for your home, and
20 so you need to mine continuously. You eliminate that
21 need to mine continuously.

22 So the amount of mining that's required for
23 fossil fuels is orders of magnitude larger than for a
24 wind, water, solar system that includes batteries.
25 Because the batteries, you -- basically, you produce

1 them once every 15, 20 years.

2 I mean, I have a battery from a 2009 car and
3 it's the same battery system. It's been 15 years. It's
4 only degraded about 20 percent. But the batteries today
5 are much better. They're warrantied for -- some of them
6 are warrantied for 15,000 cycles. That's like 40 years,
7 over 40 years.

8 And they also recycle. Batteries are now
9 recycled. Redwood Materials is a company that recycles
10 97 percent of the battery components. Sunon is a
11 battery company. They recycle a hundred percent of
12 their battery components. So the lithium is recycled
13 and most of the materials.

14 The Congo, you're talking about cobalt mostly,
15 and there are batteries now that have no cobalt in them.
16 LFP batteries, for example. So there are alternatives
17 if that's the major concern.

18 But, again, the land use -- compare the land use
19 requirements for, let's say, mining batteries is, again,
20 trivial to the land use required to mine fossil fuels.
21 It's two orders of magnitude less because you need
22 fossil fuels, you have to mine them continuously. There
23 are over 6 to 900 -- I think there's 900,000 wells in
24 Pennsylvania alone, mostly fracking wells for gas.

25 So we're talking apples and oranges. You know,

1 they're small numbers for batteries and other clean,
2 renewable energy infrastructure compared to fossil fuel
3 infrastructure. So there are -- sorry.

4 COMMISSIONER CHRISTMANN: Go ahead. No, go
5 ahead.

6 THE WITNESS: Well, let me -- you can either
7 repeat a question or ask --

8 COMMISSIONER CHRISTMANN: Did you say
9 1.3 percent of America in mining activity?

10 THE WITNESS: Not in -- 1.3 percent for -- well,
11 a combination of the 3.2 million abandoned oil and gas
12 wells and the 1.2 million active oil and gas wells.
13 There are millions of miles of pipelines. There's
14 storage facilities. There's refineries. There's
15 hundreds of thousands of gas stations. There are coal
16 mines. So we're talking about the whole fossil fuel
17 infrastructure.

18 COMMISSIONER CHRISTMANN: I want to emphasize
19 coal mines in particular. I've been close to your area.
20 I've been in San Francisco and pray that I never have to
21 go back. Have you ever been up here? I'm from 70 miles
22 northwest of Bismarck in the heart of coal country.

23 THE WITNESS: I mean, I was in Montana a few
24 weeks ago, which is near -- not too far -- I don't know
25 if I've been in North Dakota.

1 COMMISSIONER CHRISTMANN: I'd like to invite you
2 to come and visit it sometime and see the way that we
3 reclaim the coal mine land.

4 THE WITNESS: Yeah, it's -- I mean, it's a
5 beautiful state from what I've seen of it. There's a
6 lot of mining going on, though, of gas wells. You can
7 fly over. I have flown over it. You can look down and
8 you can see all these pockmarks of wells everywhere.
9 Thousands of them.

10 COMMISSIONER CHRISTMANN: And then they get
11 reclaimed. It's a beautiful thing.

12 When you fly over, were those battery-powered
13 planes you flew over in? Because as I understand it, a
14 lot of the need for this that we've heard in previous
15 hearings is for plant-based jet fuel. And I have yet to
16 see a large commercial airliner run on batteries.

17 THE WITNESS: Well, jet fuel is not going to
18 help climate or air pollution -- sorry. Replacing jet
19 fuel with what they call sustainable aviation fuel which
20 is from ethanol is definitely not going to make a dent
21 at all in climate or air pollution problems.

22 So just as a pure substitute, if you're not --
23 if the issue is not climate or air pollution or, you
24 know, those other environmental issues, then, yeah,
25 sure, you can use all sorts of combustion fuels.

1 COMMISSIONER CHRISTMANN: My last line --

2 THE WITNESS: If that's what your priority is.

3 COMMISSIONER CHRISTMANN: Okay. And my last
4 line here is have you listened to our hearings, this
5 current round? We started Thursday and continued
6 yesterday and today. Have you listened to the hearings?

7 THE WITNESS: Just for about 20 minutes before I
8 came on.

9 COMMISSIONER CHRISTMANN: Okay. We've had other
10 witnesses, and I'm not a hundred percent sure but I
11 think some of them may have been Mr. Jorde's clients,
12 that talked about the need for more CO2 in the
13 atmosphere because it improves their crops and the
14 grazing for their cattle. And you seem to be very
15 anti-CO2. So can you bring those two concepts together?
16 Or maybe you don't like cattle either. I don't know.

17 THE WITNESS: I mean, CO2 is -- there's natural
18 CO2 in the background atmosphere, but increasing CO2, we
19 do not need increased CO2 compared -- I mean, the crops
20 grow well with current CO2. Whether they grow slightly
21 better with even more CO2, you can argue that, but
22 that's -- you're also -- you have to contrast that with
23 the much greater damage from higher temperatures.

24 I mean last year, the global average temperature
25 was almost 1.5 degrees higher -- it was 1.48, I think,

1 in the global average -- higher than from the
2 1850-to-1900 period. And that is way faster growth rate
3 of temperatures. And the damage due to that, all these
4 wildfires, you have to look at the enhanced wildfire
5 damage, the enhanced flooding, enhanced droughts, more
6 intense hurricanes, more intense storms, the famine that
7 occurs in many parts of the world. All the impacts of
8 climate change, which are estimated to be about \$30
9 trillion per year by 2050, are going to far outpace any
10 of this small amount of, you know, growing grass, the
11 slight growth rate of -- increased growth rate of grass.

12 So, again, it's comparing, like, something
13 trivial with something, like, enormous. So it's -- I
14 mean, the argument -- the CO2 argument, that CO2's
15 beneficial and that's why we should allow CO2, that's --
16 usually that's an argument maintained by what are called
17 the "climate deniers" or "climate contrarians" usually
18 so I -- you know, it's kind of -- the credibility
19 usually goes away when people start using that argument.

20 COMMISSIONER CHRISTMANN: Okay. Well, I have no
21 more questions, but as a lifelong North Dakotan, I just
22 want to leave you with an invitation, while the students
23 are home for the summer, to come up to North Dakota.
24 It's as green and beautiful with the current climate as
25 I've ever seen it. We just came off of a beautiful

1 winter. It's lovely up here. Come out and visit our
2 Badlands and our beautiful prairies.

3 THE WITNESS: Yeah. No, it is a beautiful
4 state. I love it as far as I've seen it from
5 photographs and pictures.

6 ALJ HOGAN: Commissioner Haugen-Hoffart.

7 COMMISSIONER HAUGEN-HOFFART: Dr. Jacobson,
8 thank you for your testimony. I'm not going to ask you
9 any questions for the sake of time because I know we
10 have a lot of other witnesses to go through. So, again,
11 I'm just going to thank you for your time.

12 THE WITNESS: Thank you.

13 ALJ HOGAN: Mr. Dawson, any questions?

14 SUBSTITUTE DECISIONMAKER DAWSON: No questions.

15 ALJ HOGAN: Mr. Jorde, any redirect?

16 MR. JORDE: Yes. Thank you.

17 REDIRECT EXAMINATION

18 BY MR. JORDE:

19 Q. So you gave some detailed testimony that, if
20 we're looking from the point of consumers, which, of
21 course, would fall under the welfare of the citizens of
22 North Dakota, that approving this project would
23 ultimately have negative effects; is that correct?

24 A. Yes. And it -- I mean, driving an electric car,
25 you use one-fourth the energy as driving a combustion

1 car and you spend on average one-fourth as much for
2 fuel. And this is like a -- and you will recognize this
3 right away. Like if you're spending \$100 a week on
4 fuel, you will end up spending \$25 a week on fuel, and
5 probably even less as prices go up for combustion fuels.

6 I mean, I have -- I've been fortunate to have my
7 own home with solar, I have an electric car, and I have
8 not paid a gasoline bill since 2017. And I produce all
9 my own electricity in the annual average, including for
10 my whole home.

11 And I will say that electric cars are extremely
12 efficient. They're amazing in terms of efficiency. And
13 I think once somebody drives them, they never want to go
14 back. So this is -- I would just hope people are, like,
15 looking -- not looking at new technologies and saying,
16 "Oh, this is -- we have to stick to the old
17 technologies." This is something that's really good and
18 -- I mean, I try to practice what I preach. And I will
19 say that electric cars are efficient and clean and they
20 have hardly any repairs and they're resilient.

21 So I would -- in this case, by kind of pushing
22 people to go towards more combustion for the next
23 30 years, that's going to set people back in terms of
24 their pocketbooks for decades to come.

25 Q. And then Commissioner Christmann asked you if

1 you were aware that some people have testified that
2 their position is that they don't want to sequester CO2
3 or they're skeptical because they think it's a benefit.
4 And I don't care if you agree or disagree, but do you
5 understand that the conclusion of those people is we
6 don't need a pipeline because they believe, whether
7 rightly or wrongly, we don't need to be sequestering
8 CO2? Do you at least understand that point?

9 A. Yes. That makes sense. I mean, the best way to
10 sequester CO2 is not to emit it in the first place. And
11 so spending a dollar to stop emissions somewhere is
12 better than trying to capture the emissions. And so
13 this is why we want to, you know, focus on not emitting
14 from combustion vehicles in the first place.

15 Q. And so regardless of what anyone thinks about
16 the -- that line of thought process, they say we don't
17 need the pipeline, and then your expert opinion says if
18 we actually care about impacts and environmental
19 preservation and the things the PSC is charged with
20 relative to these greenhouse gases, you also say that a
21 2,500-mile CO2 pipeline is not the answer. Yes?

22 A. Correct. I mean, you're just adding
23 infrastructure and it's hardly having any benefit and it
24 has a huge cost associated with it.

25 Q. All right. So either way, West Coast, East

1 Coast, North Dakota, those testimonies all get to the
2 same point, we don't need the pipeline; correct?

3 A. That's -- yeah, that's my opinion.

4 Q. All right. Well, thank you so much, Professor.
5 I appreciate the time and I don't have anything further.

6 A. Thank you.

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

9 MR. DUBLINSKE: Nothing.

10 ALJ HOGAN: Mr. Pelham.

11 MR. PELHAM: No, Your Honor.

12 ALJ HOGAN: Mr. Bakke.

13 MR. BAKKE: No, Your Honor.

14 ALJ HOGAN: Any other commissioner questions or
15 Mr. Dawson?

16 COMMISSIONER CHRISTMANN: Your Honor, I don't
17 know when the appropriate time to ask this is, but could
18 we have a late-filed exhibit from Mr. Jorde? I'd like
19 to see the source of the information showing that
20 96 percent or more of the electricity consumed in South
21 Dakota is produced by wind, solar, or hydro.

22 THE WITNESS: Yeah, I --

23 (Simultaneous speaking)

24 MR. JORDE: Yep, we'll get that link right over
25 to you.

1 THE WITNESS: Okay.

2 MR. JORDE: You can send it to me, Professor,
3 and I'll get it --

4 THE WITNESS: Yeah, I'll send it to you.

5 MR. JORDE: You bet.

6 ALJ HOGAN: All right. Thank you, Dr. Jacobson.

7 THE WITNESS: Thank you. Thank you all.

8 ALJ HOGAN: Thank you.

9 All right. Mr. Jorde, you have one additional
10 witness you wanted to call this afternoon?

11 MR. JORDE: Yep. I've got Dr. Ted Schettler
12 who's on -- on board. I didn't know if you wanted to
13 take a quick break. I'm not going to take a whole hour
14 with him so I suspect we're going to be --

15 ALJ HOGAN: Do you think we can get through him
16 in an hour, give or take a little?

17 MR. JORDE: My plan is to be done by -- I mean,
18 not my questioning, his entire presentation to be done
19 by 5, all questioning.

20 ALJ HOGAN: Okay. Do we need -- would we like a
21 short break? Five minutes. Let's do a five-minute
22 break, quick restroom break, and then we will proceed
23 with the last witness for the day.

24 (Recess)

25 ALJ HOGAN: Mr. Jorde, do we have you?

1 Mr. Jorde, can you hear me?

2 MR. JORDE: Yes, I can. For some reason I
3 couldn't unmute, Your Honor, but I can hear you.

4 ALJ HOGAN: Great. And has your next witness --

5 MR. JORDE: Yep.

6 ALJ HOGAN: -- joined?

7 MR. JORDE: There he is, Dr. Ted.

8 ALJ HOGAN: There he is. He wasn't there when I
9 said it just so you know.

10 MR. JORDE: All right.

11 ALJ HOGAN: All right. We're going to get
12 started. Mr. Jorde, I'll let you formally call your
13 next witness.

14 MR. JORDE: Yes, thank you. Landowners call Dr.
15 Ted Schettler.

16 ALJ HOGAN: Dr. Schettler, I'll have you state
17 your full name for the record and please spell your last
18 name.

19 TED SCHETTLER: My name is Ted Schettler,
20 S-C-H-E-T-T-L-E-R.

21 ALJ HOGAN: And, Dr. Schettler, before you
22 testify this afternoon, I'm required by law to advise
23 you on the penalties for perjury in the state of North
24 Dakota.

25 Perjury is a Class C felony punishable by a

1 maximum fine of \$10,000, a maximum five years'
2 imprisonment, or both.

3 Do you understand what perjury is?

4 TED SCHESSLER: I do.

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

8 TED SCHESSLER: I do, Your Honor.

9 ALJ HOGAN: All right. Thank you.

10 Go ahead, Mr. Jorde.

11 MR. JORDE: Yes, thank you.

12 **TED SCHESSLER,**

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

15 DIRECT EXAMINATION

16 BY MR. JORDE:

17 Q. Dr. Schessler, did you cause to be prepared what
18 we've been calling direct or prefiled written testimony,
19 approximately 13 pages, to be utilized in this matter?

20 A. I did.

21 Q. And, Doctor, that testimony also lays foundation
22 for and summarizes some attachments that you've
23 included. One is a bio, kind of a CV on yourself, and a
24 second is a scientific article that you authored
25 in 2022; is that correct?

1 A. That's correct. The scientific article, I did
2 author that. It was not published in a scientific
3 journal, but I put that together from a variety of
4 published peer-reviewed sources, yes.

5 Q. Understood. So essentially a summary of
6 peer-reviewed information; correct?

7 A. That's correct.

8 Q. All right. And so that we don't have you on the
9 witness stand here all day, sir, what I'm going to do,
10 I'm going to offer your testimony here and we'll see if
11 there's any objections and then I'm going to ask you a
12 handful of questions about it. Okay?

13 A. That's fine.

14 Q. All right.

15 MR. JORDE: I will offer Landowner Exhibit 26.

16 ALJ HOGAN: Any objection, Mr. Dublinske?

17 MR. DUBLINSKE: Yes, Your Honor. First of all,
18 the same objections as last time, that this is a topic
19 to the general toxicology with respect to various
20 concentrations of CO2 that is not unique to the
21 reconsideration case. It is strictly material that
22 could have, should have, and certainly was discussed a
23 year ago. And I think Your Honor, with all due respect,
24 both yesterday and last Friday, did sustain several
25 objections on that basis.

1 I understand that we just had, obviously, Dr.
2 Jacobson. His material was at least somewhat unique.
3 But the toxicology of CO2 is something that's been
4 discussed previously in this case.

5 In addition, with respect to this particular
6 subject matter, the only thing it's relevant to is
7 safety, which I think clearly is an area that has been
8 repeatedly ruled to be outside of the board's -- or the
9 Commission's jurisdiction.

10 So for those reasons we would object to the
11 admission of the testimony and object to the witness.

12 ALJ HOGAN: Mr. Pelham, any position on the
13 prefiled testimony and the testimony of Dr. Schettler?

14 MR. PELHAM: I would agree and join in the
15 objection. As to the scope, I think that this is
16 testimony and evidence that could have been and
17 certainly was, to a large degree, previously covered in
18 prior hearings by the Commission.

19 There is -- I would not join in the objection as
20 to the safety aspect. While the Commission does not
21 have primacy over safety, PHMSA does, but there are
22 elements of safety that the Commission does have some
23 jurisdiction over. So I would not join in that part of
24 the objection.

25 Thank you.

1 ALJ HOGAN: Which part are you joining in?

2 MR. PELHAM: Joining in the scope and the fact
3 that this testimony that's being offered has -- has been
4 covered in prior hearings, and landowners, intervenors
5 had the opportunity to present evidence on the scope of
6 this at prior hearings, and since the reconsideration
7 motion was granted, it's essentially outside of the
8 scope.

9 ALJ HOGAN: And correct me if I'm wrong,
10 Mr. Jorde, your intent is to offer the prefiled
11 testimony and to ask very limited questions this
12 afternoon?

13 MR. JORDE: Well, first I'm going to offer the
14 prefiled testimony and then I have some questions for
15 him relative to another study that's out there.

16 ALJ HOGAN: And do we have that study or is
17 that --

18 MR. JORDE: No.

19 ALJ HOGAN: -- something you're offering as an
20 exhibit?

21 MR. JORDE: I mean, I -- I can -- no, I am not
22 offering that as an exhibit. I'm just going to ask him
23 some questions.

24 MR. BAKKE: Your Honor, for purposes of having a
25 record on behalf of Burleigh County, is it okay if I

1 state a position in relation to --

2 ALJ HOGAN: Go ahead.

3 MR. BAKKE: -- the request?

4 I believe this witness should be allowed to
5 testify. And it's my understanding that, on the scope
6 issue, part of the scope of this proceeding is issues
7 one and three identified by the PSC, the first one being
8 whether or not the Summit pipeline construction and
9 operation and maintenance will produce minimal adverse
10 effects on the welfare of the citizens. And certainly
11 the impact of CO2 on individuals' health is clearly
12 relevant to that issue that is being heard in these
13 hearings now.

14 And then in relation to issue number three, his
15 testimony would also be relevant to the issue of whether
16 the construction, operation, and maintenance produces
17 minimal adverse human impacts, once again directly
18 relevant to what I understand his prefiled testimony and
19 testimony here today relates to.

20 So I just wanted that to be on the record as to
21 Burleigh County's position.

22 ALJ HOGAN: I obviously don't set the scope -- I
23 did not dictate or set the scope of the purpose for
24 these hearings. That is determined by the PSC. So I'm
25 inclined to follow what Mr. Pelham has set forth on

1 behalf of the Commission.

2 I think it's hard to parse out the prefiled
3 testimony. So I'm going to admit the prefiled
4 testimony, note the objections, and, again, I said this
5 numerous times, we're covering a lot of the same ground
6 so let's not spend a lot of time on ground that's
7 already been presented or topics or items that have
8 already been presented by other witnesses or last year
9 during our set of hearings.

10 MR. DUBLINSKE: Your Honor, just for
11 clarification, because this will come up again and again
12 and again, I read the August 2023 order that the
13 Commission has made a finding with regard to the
14 adequacy of the information in front of it on human
15 health and safety and animal health and safety. But
16 even if Mr. Bakke's right about the first criteria,
17 about impacts, I understand the scope of this hearing to
18 be, yes, those impacts as to those changes or new items
19 in the reroute and other adjustments that have been made
20 by Summit in the reconsideration filing, not to re-open
21 the entire case, and that that -- you know, impacts
22 broadly are still a live issue for everything.

23 And this will come up obviously with several of
24 the remaining witnesses. So I would just be -- if
25 you're willing to give a clarification on that ruling, I

1 think it would be helpful.

2 MR. JORDE: Well, Your Honor, I've got to jump
3 in here. So all of this testimony and any testimony
4 you're going to hear is relevant to the reroute. If
5 they rerouted one inch, that one inch is now potentially
6 affecting new people and has different considerations
7 and needs to be discussed. So all of this testimony is
8 relevant to the potential routing of a hazardous CO2
9 pipeline on the Bismarck reroute and the alleged hundred
10 other changes they've made across the state.

11 MR. DUBLINSKE: It is not unique to that. And
12 the general material could and should have been
13 presented in the 2023 hearing.

14 MR. JORDE: There's no order that says that.
15 There's no restriction. There's no law. There's no
16 rule that it states that. I realize that's Summit's
17 wish, but that's not the law. It's not the rule.

18 ALJ HOGAN: Mr. Pelham, any clarification you'd
19 like to put on the record?

20 MR. PELHAM: I don't disagree with Mr. Jorde as
21 to the reroute nature, but there is the cumulative
22 nature of testimony that has been presented, and I think
23 that there, at some point, does need to be a limitation
24 as to that because it just gets to be repetitive and is
25 not conducive to efficiency and efficient use of the

1 Commission's time.

2 Certainly there is an understanding as to the
3 hazardous nature of this pipeline. We've spent a lot of
4 time on that at this hearing today as well as at many
5 prior hearings.

6 So I think my objection really is -- stands on
7 that there needs to be some limitation as to the
8 repetitiveness that has already been provided in terms
9 of evidence and testimony at numerous hearings at prior
10 times, including prior to the reconsideration order.

11 ALJ HOGAN: Mr. Dublinske, the clarification I
12 can give you is what was published by the Commission in
13 its notice of hearing which did include those three
14 broad issues. I understood that to be within the scope
15 of the revised route.

16 But, again, we're somewhat circling back to
17 these same issues. So I concur -- I have similar
18 concerns with Mr. Pelham that we're accumulating
19 evidence that's already been provided.

20 So I guess we have to proceed the way we can,
21 and I would just direct Mr. Jorde and Mr. Bakke that we
22 don't want to hear the same information over and over
23 again. So you both have been at all the hearings, you
24 know what's been presented. And so at this point I
25 think new information, information or evidence that

1 hasn't previously been provided or testified to or
2 contained in an exhibit, is what we're looking to be
3 presented at this hearing.

4 MR. JORDE: Yep. And one of the problems is the
5 secret information that the PSC only has. We have no
6 idea what claims are made in there as to toxicity and
7 effect and we are at a disadvantage and, therefore, need
8 to put on evidence because we're just guessing what
9 Summit -- what claims Summit has made to the PSC
10 privately.

11 So can I -- is that exhibit admitted, 26, Your
12 Honor?

13 ALJ HOGAN: Yes, I did admit it. I have noted
14 the objections, and with multiple of these other
15 exhibits, I would allow the Commission to give it what
16 weight it deems it should have.

17 So go ahead, Mr. Jorde.

18 MR. JORDE: Thank you, very much.

19 Q. (BY MR. JORDE) Doctor, I don't want to belabor
20 this so I'm going to kind of help this along. You
21 received your MD from Case-Western and you've got a
22 master's degree in public health from the Harvard School
23 of Public Health; is that right?

24 A. That's correct.

25 Q. All right. And your prefiled written testimony

1 obviously can be read. It says what it says. What I
2 would like to ask you about is other literature that
3 you've come across. And are you familiar with a study,
4 so called the Shell Global Solutions International BV
5 study, relative to toxicity findings? Are you aware of
6 that?

7 A. I am, yes, uh-huh.

8 Q. And what I want to get to, and I hope it doesn't
9 take too long, is just your critique of that study,
10 because I don't know if Summit has cited that in their
11 secret documents they provided to the PSC that we can't
12 see, and so I want you to tell the PSC why they
13 shouldn't rely on that study if that's something that's
14 been cited by Summit in these documents we don't have or
15 otherwise provided.

16 So can you just do a summary of why that study
17 should not be considered and the failings of it, in your
18 opinion?

19 A. Well, I'd be happy to give a summary of it. And
20 I would describe what I'm going to say as the limits of
21 this study.

22 It is a study of carbon dioxide exposures in a
23 group of healthy males aged 18 to 25. And they exposed
24 these healthy males to varying concentrations of carbon
25 dioxide, including 6 percent, 7 and a half percent, and

1 9 percent carbon dioxide for a period of one hour. And
2 they did a variety of tests on them while they were
3 doing it. It measured their blood pressure. It
4 measured the pH, the acid-base concentration in their
5 blood, their respiratory rate, and so on.

6 The purpose of this study was to observe whether
7 or not this group of young healthy males could tolerate
8 those concentrations of carbon dioxide.

9 And following the exposure period, they then
10 administered a test called the P-deletion test which
11 they used to draw inferences about the neurological
12 impact of exposure to those concentrations of carbon
13 dioxide. And they did this so-called P-deletion test at
14 10 minutes, 30 minutes, and 60 minutes after the
15 exposure stopped.

16 They concluded that these volunteers tolerated
17 exposure to 6 percent and 7 and a half percent CO2 quite
18 well, but they did not tolerate exposure to 9 percent at
19 all well.

20 Now I started this by saying that I wanted to
21 talk about the limitations of this. First of all, this
22 is a population of young healthy males and we should not
23 extrapolate the results of this to our general
24 population.

25 In fact, the authors in that paper themselves

1 say that the tolerance to carbon dioxide is certainly
2 also dependent on the age and physical conditions of the
3 individual as well as the underlying cardiac or
4 pulmonary disease. They observed that other studies
5 have shown a large variability in tolerance based on
6 those factors such as age. And, in fact, other studies
7 show that older people are much less tolerant of carbon
8 dioxide than young, healthy people, and people with
9 underlying health conditions are more susceptible to
10 carbon dioxide.

11 The final thing I'll say about this study is
12 this P-deletion test that they use to measure and
13 observe the neurological effects of these exposures is a
14 test that was devised in order to determine when a
15 person who has undergone some surgical procedure as an
16 outpatient that requires general anesthesia, the
17 P-deletion test is used to determine when that person is
18 awake enough to be discharged from the clinical facility
19 in the company of somebody else who will drive him or
20 her home. It is not a test that is adequate for
21 determining the capacity to do complex decision-making.

22 Moreover, when they applied this P-deletion test
23 in this particular study that we're talking about here,
24 they only did half of it. They -- the investigators
25 used this test which requires the subject to identify

1 the letter P in a row of letters that contains not only
2 letters P but also B, D, and Q. They use -- they gave
3 the study subjects three minutes to see how many rows
4 they could read across to identify the Ps and cross them
5 out. That's what they did. But the P-deletion test
6 also includes an evaluation of how accurate they were
7 during the -- during taking the test.

8 So this study actually tells us something about
9 the speed with which people could read these letters but
10 nothing about the accuracy. And the reason why this is
11 important is because if we're trying to make some --
12 come to some conclusion about safety levels of CO2
13 exposure during the time of a release -- accidental
14 release of CO2, we must understand that since CO2 is
15 heavier than air and is colorless and odorless, that
16 people who find themselves in a plume of CO2 that's
17 released from a ruptured pipeline or a leaking pipeline
18 will not know that they're in a plume of CO2 until they
19 develop symptoms that are disturbing. At that point
20 they're going to need to make some complex decisions.
21 They're going to have to decide what's going on, what am
22 I going to do about it, and how am I going to do it?
23 And that's far more taxing on cognitive function than
24 identifying Ps in a row of letters on a piece of paper.

25 So I think we should be very careful about

1 drawing conclusions from this study as to whether or not
2 there's going to be sufficient neurological impairment
3 from a CO2 release that will get in the way of a person
4 being able to self-rescue and get out -- into safety.

5 So I'll stop there.

6 Q. And I appreciate that, that summary. I want to
7 touch on one or two other things. So you mentioned that
8 this particular study, this Van Der Schrier experimental
9 study, which is referenced in this Shell Global
10 Solutions International BV study, was limited to healthy
11 males 18 to 25 who were further -- an exclusion criteria
12 was further that anyone with panic disorder,
13 hypertension, a history of present or history of illicit
14 drug use or present or history of alcohol along with all
15 sorts of other things, those people were left out so it
16 only left the most healthy of the healthiest males, 18
17 to 25. Is that your understanding?

18 A. That's correct.

19 Q. And, in fact, it also had an exclusion related
20 to cigarettes. And is it true that smoking -- cigarette
21 smoking can, ironically, potentially result in CO2
22 tolerance in some cases?

23 A. That's been described in some papers in the
24 literature. And it's not too surprising since people
25 who smoke cigarettes are regularly exposed to elevated

1 levels of CO2 so they will have developed some
2 tolerance.

3 This particular group of healthy males 18 to 25,
4 the restriction was they couldn't smoke more than 10
5 cigarettes a day, but we don't know whether they smoked
6 none or whether they smoked eight or something in
7 between. We just simply don't know.

8 Q. So along with being somewhat -- or critical here
9 or at least elevating our suspicions to the methodology
10 and criteria of this particular study, do you also
11 disagree about its application to any type of real-world
12 emergent situation a person might find themselves in?

13 A. Well, I think that that's the important point,
14 that whenever you look at a study of any kind, you look
15 at the study population and how the study was conducted
16 and then you ask yourself how generalizable is this to
17 the general population or to some segment of the general
18 population. And that's when you go from sort of the
19 research world into public health.

20 And I think that the findings in this study are
21 of interest. I pointed out how I think that they misuse
22 the P-deletion test to draw inferences about
23 neurological impacts. But in the case of CO2 pipelines,
24 we're talking about a very diverse population of men,
25 women, of all ages and of all health conditions, with

1 many different health conditions. So we can't
2 generalize from this study as to whether or not what --
3 what the tolerable levels of CO2 are in the general
4 population. That's for certain to be true.

5 Q. And, lastly, Doctor, this study we've been
6 discussing was an industry-sponsored, meaning oil
7 companies-sponsored and co-authored, study; correct?

8 A. That's correct.

9 Q. All right, Doctor, I don't have any further
10 questions. Again, I think the literature and documents
11 speak for themselves so I'm going to turn you over for
12 cross-examination.

13 ALJ HOGAN: Mr. Dublinske, any questions?

14 MR. DUBLINSKE: Your Honor, as a preliminary
15 matter, we spent 15, 20 minutes talking about a study
16 that is nowhere in evidence. I think it would be proper
17 to have that study introduced as a late-filed exhibit.
18 If Mr. Jorde is willing, that's great. Otherwise, we
19 would ask that we be allowed to do so because it just
20 doesn't make a lot of sense to have spent 20 minutes
21 talking about it if it's nowhere to be seen.

22 ALJ HOGAN: Mr. Jorde, can you late file an
23 exhibit with the study?

24 MR. JORDE: No. And I object to that on the
25 basis that this presentation and this evidence is due to

1 the fact we do not know what Summit has provided the
2 PSC. We don't -- the critique of this study is such
3 that it is not relevant at all to these proceedings, but
4 to the extent that the PSC is potentially relying on
5 this industry-related information through other Summit
6 documents that only the PSC knows about, that was the
7 limited purpose of this testimony. So as the doctor
8 went through the study, it has no application to the
9 North Dakota situation, which is why he wanted to --
10 which is why we wanted to make a critique of it.

11 So, no, I would not offer this, I would not
12 provide this study, because it's not applicable, which
13 was the point of this testimony.

14 MR. DUBLINSKE: Your Honor, I don't mean to
15 sound cynical, but it's certainly a coincidence,
16 notwithstanding Mr. Jorde's purported rationale, that in
17 Iowa when Dr. Schettler submitted testimony, Summit had
18 three weeks to file written rebuttal testimony and that
19 study was a non-trivial part of Dr. Lumpkin's rebuttal
20 testimony. It certainly seems like sort of
21 pre-rebutting rebuttal that they don't know whether it's
22 going to actually be made or not. I question the
23 appropriateness of that.

24 But in any event, again, I don't want to raise
25 my objection yet again because I know you've ruled on it

1 twice already today, but it's clear that what happened
2 here is a lot of material that was submitted in Iowa
3 Mr. Jorde just happened to have handy and it was a
4 pretty easy thing to try and bulk up his case by dumping
5 a bunch of Iowa stuff in here. And that case was key to
6 the Iowa rebuttal.

7 There's no reason that the board -- or the
8 Commission should have to listen to 20 minutes of
9 testimony with no context for what it's about.

10 MR. JORDE: Well, so Summit can put on a
11 rebuttal case. I don't have to make their case for
12 them. And we're in North Dakota. We're not in Iowa.
13 And this is proper evidence.

14 ALJ HOGAN: Well, I'm not familiar with
15 everything that came in during the Iowa proceedings so
16 I'll take both your words for what happened there.

17 We've already had testimony about the study so I
18 think it's appropriate to bring the study into the
19 record. So, Mr. Dublinske, if you want to file it, I
20 will accept into the record as a Summit exhibit, the
21 study itself, and I will note landowner objection to it.

22 MR. JORDE: Yep. Hearsay, foundation, and
23 relevance.

24 ALJ HOGAN: Well, Mr. Jorde, you opened this
25 door so I'm going to allow it in.

1 MR. JORDE: No. No. The PSC's ruling, not
2 letting us see the Summit information, opened all of
3 this door and has created all of this problem.

4 ALJ HOGAN: Mr. Dublinske.

5 MR. DUBLINSKE: Thank you, Your Honor. We will
6 get that filed and we have no questions for this
7 witness.

8 ALJ HOGAN: All right. Mr. Pelham, any
9 questions?

10 MR. PELHAM: No.

11 ALJ HOGAN: Mr. Jorde -- I'm sorry. Mr. Bakke,
12 any questions?

13 MR. BAKKE: No questions.

14 ALJ HOGAN: Commissioner Christmann, any
15 questions?

16 COMMISSIONER CHRISTMANN: None, Your Honor.

17 ALJ HOGAN: Commissioner Haugen-Hoffart.

18 COMMISSIONER HAUGEN-HOFFART: No questions.
19 Thank you for your testimony.

20 ALJ HOGAN: Mr. Dawson, any questions?

21 SUBSTITUTE DECISIONMAKER DAWSON: No questions.
22 Thank you.

23 ALJ HOGAN: All right. Well, thank you,
24 Dr. Schettler, for your testimony today. And that's all
25 the questions we have for you.

1 THE WITNESS: You're welcome. And thank you.

2 ALJ HOGAN: Words I did not think I was going to
3 say, we are ahead of schedule today.

4 So are there any other matters we need to
5 address before we adjourn?

6 MR. DUBLINSKE: Your Honor, just a question. I
7 notice that we had Mr. Steinbronn and Ms. Barr
8 (phonetic) on the list for today. Have those been moved
9 or are those no longer witnesses that are being called?

10 MR. BAKKE: So Mr. Steinbronn was my witness,
11 and that's the one where I said there was some
12 scheduling issues. I haven't decided for sure whether
13 I'll call him tomorrow.

14 One witness I did intend to call tomorrow, and
15 I'm going to speak with her this evening, sustained an
16 injury and is in a lot of pain and was on her way either
17 to the hospital or the doctor, I believe, so she may be
18 on painkillers. I can't tell you anything more. That's
19 Bailey Elkins. So whether she's going to be able to
20 testify or not looks like in peril so I don't know what
21 we do about that, but that's obviously beyond our
22 control. And then I have Chad Wachter tomorrow as our
23 first witness in the morning. But I'll know more about
24 both of those other witnesses today, but we should be
25 fine timewise. I can't speak for Mr. Jorde.

1 MR. JORDE: I would concur. I suspect we'll be
2 finishing well before 5 tomorrow. Tentatively, I'm
3 moving Ms. Barr to tomorrow, but like Mr. Bakke, based
4 on how today went, I might be calling witnesses so --
5 but for now I'm moving Ms. Barr who would be a very
6 short testifier to tomorrow.

7 ALJ HOGAN: All right. Any other matters to
8 address before we conclude for the day?

9 Mr. Pelham, did you have anything?

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

11 ALJ HOGAN: Mr. Bakke.

12 MR. BAKKE: The only other thing is another
13 housekeeping detail. I did ask Mr. Powell about the
14 Welspun lawsuit, and BC110 is a copy of that complaint
15 that I was asking him about, and I would offer BC110.

16 ALJ HOGAN: Let me get to it.

17 Any objection from Summit to BC110?

18 MR. DUBLINSKE: Relevance. But if that's noted,
19 we have no objection to it coming in.

20 ALJ HOGAN: Mr. Pelham.

21 MR. PELHAM: Question the relevance, but I don't
22 have any objection.

23 ALJ HOGAN: All right. I will note objection,
24 as well question relevance, but I will leave that to the
25 Commission to determine and I will admit BC110.

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Anything else, Mr. Bakke?

MR. BAKKE: No, Your Honor.

ALJ HOGAN: Mr. Jorde.

MR. JORDE: Nope. Thank you very much.

ALJ HOGAN: Any other matters?

All right. Well, then we will stand in recess
until 8:30 tomorrow morning.

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