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ATTORNEYS AT LAW

July 19, 2023

Via Hand-Delivery

Steve Kahl
Executive Secretary
North Dakota Public Service Commission
600 E. Boulevard Avenue, Dept. 408
Bismarck, ND 58505-0480

**Re: SCS Carbon Transport LLC
Midwest Carbon Express Project
Case No: PU-22-391**

Dear Mr. Kahl:

Enclosed for filing in Case No. PU-22-391, please find *Bismarck Area Intervenors' Post-Hearing Brief* and *Certificate of Service*, with seven copies of same.

Please do not hesitate to contact the undersigned if you have any questions about this filing.

Very Truly Yours,



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STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

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

Case No: PU-22-391
OAH File No: 20230002

BISMARCK AREA INTERVENORS¹ POST-HEARING BRIEF

I. INTRODUCTION

The Public Service Commission (“Commission” or “PSC”) should deny Applicant SCS Carbon Transport LLC’s (“Summit” or “Summit Carbon”) Consolidated Application seeking a waiver or reduction of procedures and time schedules and a certificate of corridor compatibility and route permit as it has failed to meet its burden of proof under N.D.C.C. § 49-22.1-09, and otherwise. The Consolidated Application should be denied as Summit has failed in its statutory burden, and has moreover failed to demonstrate its proposed carbon dioxide pipeline is of “such length, design, location or purpose that it will produce minimal adverse effects” to the citizens of Bismarck and Burleigh County. N.D.A.C. § 69-06-06-01(2)(m).

For these reasons and as discussed more fully below, Bismarck Area Intervenors request the Commission deny the Consolidated Application as it relates to Burleigh County, North Dakota.

II. PROCEDURAL BACKGROUND

On October 17, 2022, Summit Carbon filed its *Application for Waiver or Reduction of Procedures and Time Schedules* (Docket # 1-3) and its *Application for a Certificate of Corridor Compatibility and Route Permit* (Docket # 1-4) (“Consolidated Application” or “Application”).

¹ Intervenors Warford, Wachter and Moldenauer are referred to collectively herein as “Bismarck Area Intervenors”.

The Commission held five (5) public hearings on Summit's Consolidated Application in the following locations in North Dakota:

1. Bismarck, ND – March 14, 2023;
2. Gwinner, ND – March 28, 2023;
3. Wahpeton, ND – April 11, 2023;
4. Linton, ND – May 9, 2023
5. Bismarck, ND – June 22, 2023.

Numerous members of the public were present at the public hearings to provide comments and testimony to the Commission, almost all of it in opposition to Summit's Application.

Numerous persons have intervened in these proceedings, including the following persons, all of whom are opposed to Summit's Application:

1. John H. Warford, Jr. as Trustee of the John H. Warford, Jr. Revocable Trust ("Warford"),
2. Chad Wachter ("Wachter"),
3. Chad Moldenhauer ("Moldenhauer")
4. SPLJ LLP - Pam Schonert and Susan Doppler , Burleigh County, ND;
5. Paul Kuetemeyer, Burleigh County, ND;
6. Steven J. Laine and Pamela M. Laine Family Trust, Emmons County, ND;
7. James Rockstad, Richland County, ND;
8. Kevin and Ann Bernhardt, Emmons County, ND;
9. Randall and Karla Waloch, Sargent County, ND;
10. 8N2E Properties, LLP - Marilyn Bryan, Lon and Roberta Klusmann, Gordon Morris, Jeffery Morris, Daniel Morris, and Teresa Yarlott, Burleigh County, ND;
11. Larry Hoge, Burleigh County, ND;
12. BRH LLLP, Burleigh County, ND;
13. Kari Curran, Sargent County, ND;
14. Brosowske Farms-Tom and Maxine Brosowske, Richland County, ND;
15. Mary Kuehn, Richland County, ND;
16. Dean Twardoski; Burleigh County, ND;
17. Connie Erickson, Burleigh County, ND;
18. Hoge Farm LP, Burleigh County, ND;
19. Tim Hoge, Burleigh County, ND;
20. Harry L. Malloy Trust, Howard Malloy, Trustee; Burleigh County, ND;
21. John Carrels, Dickey County;
22. Staroba Revocable Living Trust - Loren and Diane Staroba, Richland County;
23. Verdell Jordheim and Phyllis Jordheim Living Trust, Richland County;
24. Valera Hayen, Sargent County;
25. Shirley Waloch, Sargent County;
26. BRH LLLP, Brent and Rachelle Herbel, Burleigh County;

27. Tony Hoge, Burleigh County;
28. Leon Mallberg, Sargent County; and
29. APH Farms, Arden Hagerott, Jonathan Hagerott, and Janel Olson, Morton County.
30. Laborers District Council of Minnesota and North Dakota (LIUNA)
31. Dorothy Barondeau, McIntosh County, ND
32. Deborah Mitchell, McIntosh County, ND
33. David Locken, Dickey County, ND
34. Dwight Kertzman, Emmons County, ND
35. Kevin Frederick, Burleigh County, ND
36. Diane Zajac, Richland County, ND
37. Scott Irmen and MaryJo Irmen, Burleigh County, ND
38. Rose Dotzenrod and Benjamin Dotzenrod, as manager of Soil Acre LLC
39. James Tiegs, Dickey County
40. Linda Gayman, Dickey County
41. Emmons County, ND

The Bismarck Area Intervenors filed various applications, petitions and motions, and generally provided written and testimonial evidence at three of the public hearings against Summit's proposed pipeline route being approved in close proximity to the City of Bismarck's extra-territorial area ("ETA") and other higher density population areas in Burleigh County. Summit Carbon did not successfully rebut the evidence provided by the Bismarck Area Intervenors, and that evidence shows Summit has not met its burden.

III. LAW & ANALYSIS

A. Legal Standard

The North Dakota statute that governs the Commission's siting determination relevant to Summit's Application provides as follows:

The commission is guided by, but is not limited to, the following considerations, when applicable, to aid the evaluation and designation of sites, corridors, and routes:

1. Available research and investigations relating to the effects of the location, construction, and operation of the proposed facility on public health and welfare, natural resources, and the environment.
2. The effects of new gas or liquid energy conversion and gas or liquid transmission technologies and systems designed to minimize adverse environmental effects.

3. The potential for beneficial uses of waste energy from a proposed gas or liquid energy conversion facility.
4. Adverse direct and indirect environmental effects that cannot be avoided should the proposed site or route be designated.
5. Alternatives to the proposed site, corridor, or route that are developed during the hearing process and which minimize adverse effects.
6. Irreversible and irretrievable commitments of natural resources should the proposed site, corridor, or route be designated.
7. The direct and indirect economic impacts of the proposed facility.
8. Existing plans of the state, local government, and private entities for other developments at or in the vicinity of the proposed site, corridor, or route.
9. The effect of the proposed site or route on existing scenic areas, historic sites and structures, and paleontological or archaeological sites.
10. The effect of the proposed site or route on areas that are unique because of biological wealth or because the site or route is a habitat for rare and endangered species.
11. Problems raised by federal agencies, other state agencies, and local entities.

N.D.C.C. § 49-22.1-09. (Emphasis Added)

The PSC's administrative rules in relation to applications furthermore require the applicant to set forth the "factual basis demonstrating that the proposed facility is of such length, design, location or purpose that it will produce **minimal adverse effects.**" N.D.A.C. § 69-06-06-01(2)(m) (emphasis added).

B. The Purported Evidence Supporting Summit's Application is Woefully Inadequate, and the Countervailing Evidence Against the Application as it Relates to Siting the Pipeline Close To Bismarck is Overwhelming.

As set forth below, when the Commission considers each of the statutory factors in light of the evidence presented to the Commission (and in some cases the evidence not presented to the Commission) it is clear that Summit has failed to meet its burden and equally clear the Application should be denied. The following headings and analysis therein correspond with the relevant subsections of Section 49-22.1-09.

1. Available research and investigations relating to the effects of the location, construction, and operation of the proposed facility on public health and welfare, natural resources, and the environment.

Carbon capture or carbon sequestration is essentially an emerging technology that has only come on line commercially in recent years. While there are some entities in existence in the United States that transport supercritical state carbon dioxide through pipelines (including a few short pipelines in North Dakota)², the effects of a failure of such pipelines, including its adverse effects on the environment, on animals, and on human beings, is largely untested and unknown. The same is true of Summit's more than 2,000 mile long 24" diameter pipeline extending from ethanol plants in Iowa and Nebraska all the way to Oliver County, North Dakota. There is very little available scholarly or scientific research concerning pipelines such as the one Summit proposes. While this would be the very first of its kind and definitely the longest such carbon dioxide pipeline in the United States, the potential adverse effect on the environment and on human beings' health and safety has not been carefully studied, if at all, through the research process.

However, there is one carbon dioxide specific study published in 2014 in the International Journal of Greenhouse Gas Control, which analyzed the effects of a rupture or failure of a carbon dioxide pipeline, and this study shows that a failure could be extremely dangerous and potentially deadly to human beings and animals. *See An integrated, multi-scale modelling approach for the simulation of multiphase dispersion from accidental CO₂ pipeline releases in realistic terrain, M. Woolley et al., accepted for publication June 2, 2014, published in the International Journal of*

² There are only approximately 5,000 miles of CO₂ pipelines in existence in the entire U.S., in comparison to over 2.6 million miles of natural gas and petroleum pipelines. <https://www.phmsa.dot.gov/faqs/general-pipeline-faqs#>.

Greenhouse Gas Control. (Docket # 56).³ This study concluded the area that would be dangerous to life and health from an accidental or intentional release or rupture of a carbon dioxide pipeline is much greater than that claimed by Summit Carbon.⁴

While there is not much scholarly or scientific research in this area given its recent emergence, there has been abundant real world investigation of the effects on the “public health and welfare” that is highly relevant to Summit’s proposed pipeline. This real world investigation relates to the aftermath and follow up to the Satartia, Mississippi carbon dioxide pipeline rupture disaster that occurred in February of 2020. The Satartia disaster was so serious that it prompted the federal government to re-evaluate the PHMSA regulations applicable to carbon dioxide pipelines in light of the Satartia incident. (Docket # 144 [Exhibit # W147]). PHMSA stated on May 26, 2022: “The new measures, as well as an enforcement action taken today are a result of PHMSA’s investigation into a CO₂ pipeline failure in Satartia, Mississippi in 2020 that resulted in local evacuations and caused almost 50 people to seek medical attention.” (Docket # 144). PHMSA further announced it would be “conducting research solicitations to strengthen pipeline safety of CO pipelines”, confirming the lack of research as discussed above. (Docket # 144). And

³ References herein to the PSC’s docket are denoted as (Docket # ____).

⁴ The Commission should reject arguments that attempt to compare the safety and siting of this carbon dioxide pipeline with oil and gas pipelines and other similar gas and liquid pipelines that have been in existence and operating safely for many decades. A Congressional Research Service (CRS) report (Docket # 145) will likely be touted by Summit to validate this kind of false argument. However, those types of pipelines and pipeline failures have been closely studied and investigated for many decades, but the same is not true of carbon dioxide pipelines like the one Summit proposes to build. The above referenced study confirms the lack of research into high pressure carbon dioxide pipelines, stating, “Whilst the physics of high-pressure releases of substances such as natural gas and propane is relatively well understood (Cowley and Tam, 1988; Richardson and Saville, 1996), CO₂ possesses some unusual physical properties which make its release behaviour more challenging to predict.” Research and investigations of other kinds of hazardous liquid and gas pipelines simply do not validate the siting of Summit’s proposed pipeline in any way.

it announced: “To strengthen CO2 pipeline safety, PHMSA is [. . .] initiating a new rule making to update standards for CO2 pipelines, including requirements related to emergency preparedness, and response[.]” (Docket # 144). PHMSA’s new rules and updated safety standards have not yet been promulgated.

PHMSA recently hosted a two-day public meeting and forum in Des Moines, IA from May 31 – June 1, 2023, to discuss carbon dioxide pipeline safety. The notice and webcast are linked at PHMSA’s webpage: <https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=165> (site last visited July 19, 2023). Several news stories reported on the meeting, including one story that reported in part:

Predicting where a carbon dioxide release from a pipeline will go can be a costly, time-consuming venture, according to a panel of experts assembled by PHMSA to discuss what is called ‘dispersion modeling’ on Thursday in Des Moines.

That’s because of all the factors that can affect the heavier-than-air gas, which, in the case of the Sartaria incident, pooled near the break and eventually migrated northwest toward the town. The surrounding air had been very still at the time.

Those carbon dioxide plumes can be affected by air temperature, wind strength and direction, the lay of the land, the size of the pipe rupture — even whether there is standing corn in nearby fields.”

[. . .]

“Max Kieba, director of program development for PHMSA who moderated the talk, said changes to modeling requirements are under consideration but that the costs of the modeling must be weighed against its benefits.

PHMSA is sponsoring university research to develop a computational fluid dynamics modeling system that would improve threat identifications and be cost effective, but it might not be complete for years.

Dean Kluss, a Wright County supervisor, said it is “absurd” to not require pipeline companies to use the advanced modeling techniques to ensure the safety of residents. “If we know what’s best, why don’t we do the modeling?” he said. “Figure it out. If we can send a man to the moon, we can figure this out.”

[Simon] Gant[, who studies fluid dynamics for a British regulatory agency,] said real world pipeline leak simulations are also needed to verify whether the modeling software is accurate and to determine how much the gas can penetrate different types of dwellings.

(Iowa Capital Dispatch, [Experts: Predicting CO2 pipeline rupture threats can be extremely costly](https://iowacapitaldispatch.com/2023/06/01/experts-predicting-co2-pipeline-rupture-threats-can-be-extremely-costly/), by: Jared Strong – June 1, 2023, <https://iowacapitaldispatch.com/2023/06/01/experts-predicting-co2-pipeline-rupture-threats-can-be-extremely-costly/> (site last visited July 14, 2023)).

The public meeting in De Moines confirms the available research related to carbon dioxide pipeline siting and dispersion modeling is in its incipient stages. The Des Moines PHMSA meeting further confirms that siting a carbon dioxide pipeline in close proximity to population centers prior to available research confirming the safety of such an approach would be reckless. Moreover, the Des Moines meeting discussion by PHMSA’s experts and other experts confirms Summit’s own dispersion modeling should be immediately released to the parties, to the City of Bismarck and Burleigh County, to other affected North Dakota Counties, and to the public. This is necessary to verify and otherwise validate the methodology and assumptions Summit relied on in performing its analysis. Currently, Summit has used the “trust us” approach on the safety of siting this pipeline close to Bismarck.

Despite this attitude that the Commission and public should “just trust” it, it is clear Summit should not be trusted without the Commission receiving solid verification to support Summit’s claims. For example, Summit’s purported expert John Godfrey testified at the Linton hearing essentially that Summit’s pipeline route in close proximity to Bismarck is completely safe, although on cross examination he admitted he was totally unfamiliar with the proposed route near Bismarck, had never walked or driven along the proposed route, knew nothing of the proximity of schools or existing residential subdivisions to the route, and knew nothing of the local topography or prevailing winds:

RJB: “And I noticed today when we walked in here and the public walked in here there was a handout at the table here for everyone to look at showing the proposed route. Have you seen that?”

JG: “No.”

RJB: “And on here, it doesn’t show any of the housing developments north of Bismarck close to the pipeline route. It makes it look like there’s really nothing anywhere close to the pipeline other than farmland.”

JG: “I’m not familiar with that map.”

RJB: “Do you know why Summit would keep off the actual development on this map showing where the route is in relation to Bismarck and not include the housing developments, schools...”

[. . .]

RJB: “In relation to this pipeline route on exhibit 137 that you believe is reliable prepared by Burleigh County, when did you either walk or drive or investigate that route?”

JG: “I have not.”

RJB: “Unlike Mr. Briggs who did go through that route yesterday to try to determine what would happen to the city of Bismarck if there was a release, correct?”

JG: “Mr. Briggs testified that he drove the route in response to a question? I would have no idea what part of the route he drove or how thorough or what he looked at. I would have no idea what he thought. That’s speculation again.”

RJB: “He testified that he drove the route north and east of Bismarck and he was asked by one of the attorneys or perhaps the commissioners ‘did you drive anywhere on that route other than the north and east?’ and I think his answer was ‘No. That’s the area I focused on.’ Correct? Where you here for that?”

JG: “I was here and I believe that was his answer.”

RJB: “Okay. And Mr. Jundt, unlike you, would have intimate knowledge of the topography in this location of the pipeline north and east of Bismarck, wouldn’t he?”

JG: “I can’t testify as to what his intimate knowledge is. I don’t want to speculate on that either. I will confirm that I have no idea of the topography in that part of town. I did not visit it.”

Linton Hearing, May 9, 2023 (Docket # 212:2) at timestamps 5:03 – 7:46.⁵ While Summit has testified in line with its public advertising campaign that its pipeline route close to Bismarck is completely safe, no witness was presented who did any analysis, study, or even scrutinized the topography or walked the land where the Summit pipeline is requested to be constructed.

⁵ References herein to the cited portions of the recorded public hearings are to the PSC’s Docket Numbers, and where an applicable to a specific disc containing the relevant portion of the recording. For example the second portion of the Linton public hearing recording would be denoted as (Docket # 212:2).

Similarly, no evidence was presented by Summit to verify its claim it can assure the Commission, the Intervenors, and the public its pipeline route is safe based on the dispersion modeling it allegedly performed. Although Summit claims its dispersion modeling must be kept secret and never see the light of day, Summit took the opposite approach in South Dakota in parallel proceedings before the South Dakota Public Utilities Commission. In the November of 2022 written testimony of Godfrey (Docket # 222) to South Dakota's Public Utilities Commission Godfrey discusses specific details about Summit's dispersion modeling. *Id.* at pages 7-8. It defies logic that Summit would allow and have Godfrey provide testimony in South Dakota on its dispersion modeling, but refuse to do so in North Dakota.

Summit's "just trust me" approach is not allowed pursuant to North Dakota law, which mandates the Commission analyze the application in light of the "*available* research and investigations relating to the effects of the location, construction, and operation of the proposed facility on public health and welfare, natural resources, and the environment." How can research that has yet to be undertaken or research (Summit's dispersion modeling) that is kept secret be considered "available"? Unless or until Summit releases its sealed dispersion modeling (Docket # 194) to the public and to the impacted political subdivisions, and unless and until it is confirmed the dispersion modeling proves its plan to site the pipeline in Burleigh County near population centers is safe, the Commission should refuse to consider Summit's dispersion modeling as available "research" or "investigation" under Section 49-22.1-09.

As indicated in the PHMSA press release (Docket # 144) concerning its new rule making in light of the Satartia incident, it also announced it would conduct a "failure investigation report for the 2020 pipeline failure in Satartia." The Failure Investigation Report – Denbury Gulf Coast Pipeline was completed by the United States Department of Transportation and is publicly

available at <https://www.phmsa.dot.gov/news/phmsa-failure-investigation-report-denbury-gulf-coast-pipelines-llc> (site last accessed July 14, 2023) and is also filed with the Commission at Docket # 152 (Exhibit # W155). This is the kind of “available investigation” Section 49-22.1-09 had in mind that should be considered by the Commission in evaluating Summit’s proposed route in Burleigh County. Some of the “key points” discussed by PHMSA in its Investigation are:

- On February 22, 2020, a carbon dioxide (CO₂) pipeline operated by Denbury Gulf Coast Pipelines LLC (Denbury) ruptured in proximity to the community of Satartia, Mississippi. The rupture followed heavy rains that resulted in a landslide, creating excessive axial strain on a pipeline weld.
- Carbon dioxide is considered minimally toxic by inhalation and is classified as an asphyxiant, displacing the oxygen in air. Symptoms of CO₂ exposure may include headache and drowsiness. Individuals exposed to higher concentrations may experience rapid breathing, confusion, increased cardiac output, elevated blood pressure, and increased arrhythmias. Extreme CO₂ concentrations can lead to death by asphyxiation.
- When CO₂ in a super-critical phase (which is common for CO₂ pipelines) releases into open air, it naturally vaporizes into a heavier than air gas and dissipates. During the February 22 event, atmospheric conditions and unique topographical features of the accident site significantly delayed dissipation of the heavier-than-air vapor cloud. Pipeline operators are required to establish atmospheric models to prepare for emergencies—**Denbury’s model did not contemplate a release that could affect the Village of Satartia. [emphasis added]**
- Local emergency responders were not informed by Denbury of the rupture and the nature of the unique safety risks of the CO₂ pipeline. As a result, responders had to guess the nature of the risk, in part making assumptions based on reports of a “green gas” and “rotten egg smell” and had to contemplate appropriate mitigative actions. Fortunately, responders decided to quickly isolate the affected area by shutting down local highways and evacuating people in proximity to the release. Denbury reported on its PHMSA F 7000.1 accident report that 200 residents surrounding the rupture location were evacuated, and forty-five people were taken to the hospital. Denbury also reported that to the company’s knowledge, one individual was admitted to the hospital for reasons unrelated to the pipeline failure. No fatalities were reported.
- This event demonstrated the need for:
 - Pipeline company awareness and mitigation efforts directed at addressing integrity threats due to changing climate, geohazards, and soil stability issues.

- Improved public engagement efforts to ensure public and emergency responder awareness of nearby CO2 pipeline and pipeline facilities and what to do if a CO2 release occurs. This is especially important for communities in low-lying areas, with certain topographical features such as rivers and valleys.

The pipeline operator, Denbury, was fined by PHMSA for its serious negligence and other wrongdoing in relation to the Satartia incident. (Docket # 262).

Satartia involved a much shorter pipeline (77 miles) than Summit's proposed pipeline. The pipeline near Satartia was located in a rural area of Mississippi, nothing like the City of Bismarck and higher population areas in Burleigh County where Summit proposes its pipeline. Regardless of these differences, the Satartia investigation reveals the pipeline company and local first responders were not at all ready for what happened and further reveal the extreme danger and harm to people who are caught unaware by the carbon dioxide cloud that migrated farther away from the rupture site than had been anticipated by Denbury. While the Satartia incident included a hydrogen sulfide gas additive to the liquid state carbon dioxide that gave it the "rotten egg" smell and green color that prompted emergency calls, Summit's proposed pipeline will carry pure carbon dioxide that will be invisible, odorless, and colorless.

The Commission received two letters from Chiefs Dustin Theurer and Joel Boespflug (Docket ## 115 and 116) about the lack of meaningful outreach to them by Summit concerning what might be required in a pipeline emergency situation. This was confirmed during Commissioner Bitner's June 2nd Bismarck testimony where he stated there was no communication between Summit and Burleigh County's emergency manager about emergency equipment, training, response plans, or anything similar. Bismarck Hearing, June 2, 2023 (Docket # 299:2) at timestamps 3:48:05 – 3:48:34. The Commission also heard testimony from Summit's emergency and fire safety expert Phil Oakes, who confirmed he had no idea if Summit has actually performed

what he described as “best practices” by communicating with Burleigh County Rural Fire Department and Bismarck Fire Department about emergency planning and equipment required to respond to a carbon dioxide leak or rupture:

RJB: You talked about Summit and the efforts that they plan to make with local fire personnel along the route and EMS. Have you been given any information to indicate that that has been done by anyone at Summit? For instance, with the Bismarck Fire Department?

Oakes: I believe the question I was asked if Summit was to do that, would that be best practice, and that would be a best practice. I was not told or indicated if that had occurred yet. Just simply asked if it was best practices.

RJB: and are you aware of any location along the Summit pipeline route where they have actually reached out and communicated with a local fire department or emergency management services regarding training and providing information to them regarding the Summit pipeline?

Oakes: again sir, I was only asked if they did it, would that a best practice. I have not discussed with Summit if they have done that. I was just asked if it would be best practice.

Linton Hearing, May 9, 2023 (Docket # 212:2) 1:39:31 – 1:40:53. Although the information is readily available, Summit has apparently learned nothing from the failures of Denbury that devastated Satartia.

The same PHMSA press release (Docket # 144) discussed the PHMSA Deputy Administrator’s meeting with Satartia first responders, noting:

“I recently visited with the first responders in Satartia to hear firsthand of the pipeline failure so that we can improve safety and environmental protections for CO pipelines and work to protect communities from experiences like this,” [] “The safety of the American people is paramount and we’re taking action to strengthen CO pipeline safety standards to better protect communities, our first responders, and our environment.”

The Commission heard in detail at the Linton hearing from one such first responder Gerald Briggs (Briggs’ resume Docket # 264 [W172]), a fire/EMS coordinator from Mississippi, who responded to the scene of the Satartia disaster. Chief Briggs assisted with the Satartia evacuation and with

those who were injured by or had succumbed to the carbon dioxide.⁶ He observed people who were unconscious from the carbon dioxide incident, had breathing difficulty, who were sweating, had dizziness, experiencing convulsions, and were vomiting and foaming at the mouth. Briggs confirmed the carbon dioxide cloud or plume traveled 25 miles from the rupture site (Google Map Docket # 270 [W178]), and he also interacted with people as far as 3 miles from the rupture site who had physical symptoms of carbon dioxide poisoning from that incident.⁷ A Google Earth Map shows the distance from the rupture site to various areas Chief Briggs interacted with victims. (Docket # 269 [W177]) Chief Briggs described in detail the serious and life threatening effects on the health of numerous individuals exposed to carbon dioxide in the Satartia leak. He also described how the serious health effects have lingered for years for at least one individual, and how the carbon dioxide continued to leak for over 2-3 hours after the shut off valve for the pipeline was closed.⁸

The Federal Government's investigation that followed the Satartia incident and the incident itself demonstrate siting a pipeline near a high consequence area like the City of Bismarck⁹ likely would result in severe adverse consequences to the public health and welfare, which would potentially include a lot of people dying or becoming very sick from carbon dioxide poisoning,

⁶ Linton Hearing, May 9, 2023 (Docket # 212:1) at time stamps:

3:32:50 – vomiting / shortness of breath

3:34:50 – collapsed on the ground

3:37:57 – not breathing / foaming at nose and mouth / unconscious / unresponsive

⁷ *Id.* at time stamp 3:48:30

⁸ Linton Hearing, May 9, 2023 (Docket # 212) at time stamps 3:45:28 – 3:46:34 & 3:58:50 – 4:00:53.

⁹ The applicable federal pipeline regulation, 49 C.F.R. § 195.452, confirms and Summit admits the City of Bismarck and the areas east and north of Bismarck (including the proposed Missouri River crossing route) meet the definition of a high consequence area. Linton Hearing, May 9, 2023 Docket # 212:2) at timestamps 33:09 – 35: 20.

not to mention the potential long term health consequences. It is not a matter of if, but rather when, pipeline leaks will occur as testified to by Summit's own expert John Godfrey at the May 9, 2023 Linton Hearing. On cross examination, Godfrey agreed there have been a number of "reportable releases" in the just over 5,000 miles of carbon dioxide pipeline in the United States, but for unknown reasons he was not able to recall any specifics about such reportable releases (unlike his earlier highly specific testimony [Docket # 222] to South Dakota's equivalent of the PSC). The following Godfrey testimony illustrates these points:

RJB: "Now, there's been testimony in this case that there are approximately 5,150 miles of CO2 pipeline in the U.S. Does that sound accurate to you?"

John Godfrey: "Yes it does."

RJB: "In fact, that's what you told the South Dakota equivalent of Public Service Commission in your sworn testimony in that matter, correct?"

JG: "As I sit here today I don't recall the exact number in the testimony, but I did cite the number and the source was PHMSA at the time the testimony was written."

RJB: "Okay. And in those 5,150 miles of existing CO2 pipeline, there have been 102 leaks of CO2 pipelines, correct?"

JG: "I don't recall as I sit here today what the numbers were at that time for that mileage."

RJB: "Isn't that the testimony you offered to the South Dakota Public Service Commission is there had been 102 leaks of CO2 pipelines in the U.S. out of those 5,150 miles?"

JG: "I'm really good at remembering a lot of numbers but I'm just missing that specific one today. That was taken from PHMSA data on the date and the time that the testimony was filed and that's updated, you know, monthly, so I do not recall the specific number that was included."

RJB: "And we can get the South Dakota PSC report to the commissioners here in North Dakota, but if I do the math, what that tells me is of CO2 pipelines that exist in the U.S. as of your testimony fairly recently just a couple months ago in South Dakota, 2% of those CO2 pipelines in the U.S. have had a release, correct?"

JG: "I'm sorry, you said '2% of those pipelines'. I'm not sure I understand what you mean by that."

RJB: "Well if I do the math and I take 5,150 miles of pipeline, and there's 102 leaks on 5,150 miles is 2%. See the math I'm doing?"

JG: "Yeah, but that math is oversimplifying because it doesn't take into account what those specific leaks were. I was more specific in my testimony whether the leaks were from line pipe or whether they were fully contained on operator facilities from things like pump stations and compressor stations. That's the majority of leaks – are small leaks that occur at facilities or occur during course of maintenance. The

number of leaks on line pipe out on the right away which would be comparable to your line pipe mileage is a different statistic.”

RJB: “And that statistic is 37 leaks on CO2 pipelines where it’s actually in the pipeline itself, not at a valve station or some other location, correct?”

JG: “I don’t recall the exact number as I sit here and I don’t recall what timeframe that is, either.”

RJB: Regardless of the timeframe there’s only 5,150 miles of CO2 pipeline, correct?”

JG: “That’s the approximate mileage of [inaudible] pipeline.”

RJB: “Would you agree with me that 102 leaks in CO2 pipelines over 5,150 miles of CO2 pipelines in the U.S. is very concerning?”

JG: “As I sit here today, I can’t recall exactly what the source of all of those releases were, and I think if it was really highly concerning, I would have testified to that.”

RJB: “Well those releases were of significant quantity that they were reportable releases of CO2 to PHMSA, correct?”

JG: “They were classified as reportable releases, yes.”

RJB: “And in order to be a reportable release of CO2 at a pipeline or a valve station along the pipeline, it has to meet a certain quantity for the release of CO2, correct?”

JG: “I believe quantity is one of the specifications and one of the requirements for release reporting, yes. I don’t have that regulation right in front of me.”

Linton Hearing, May 9, 2023 (Docket # 212) at timestamp 3:29:50 - 40.22.

The City of Bismarck’s ETA is only approximately 2 miles from the proposed route in several locations to the east, northeast and north, and 2 miles or less from three grade schools in or near Bismarck. (*See, e.g.* Map with ETA and Schools (Docket # 134 [W137]). The prevailing winds¹⁰ in the Bismarck area are from the north and east much of the time, and like Satartia, atmospheric conditions could allow an invisible, odorless and tasteless plume to travel much farther than predicted, potentially well within City limits. While Summit’s testimony to the Commission and its “Carbon Facts” try to explain away Satartia as completely different – “[O]ur proposed project will [] transport [] CO2, which is of high purity, nonexplosive, and nonflammable. The system in Mississippi carried Hydrogen Sulfide, which is flammable and

¹⁰ Summit’s expert Godfrey did not disagree that winds have an effect on the dissipation of the carbon dioxide plume and the distance it will travel. (Linton Hearing [Docket # 212:2] JG: “That is correct. It [wind] will have an effect on both the direction and the speed at which it disperses.” [time stamps 9:03 – 9:12]).

highly toxic.” [Docket # 262]) – the Satartia incident actually shows how much worse a rupture occurring near Bismarck would be where the public (many thousands more than Satartia) and first responders are unable to see or detect the carbon dioxide plume. Summit’s Chief Operating Officer (“COO”) James Powell confirms this fact, but he repeats the fallacy that Summit should just be trusted:

RJB: “And that’s why CO2 is so dangerous, isn’t it? It’s because there’s no odor to it, it’s not visible, it’s not like natural gas you can smell or where you see the fire. People can be totally unaware that they’re going to be exposed to carbon dioxide, correct?”

JP: “Well you said, you used the appropriate term, there. Fire. There will be no fire, so you’re correct in saying the risk is the vapor itself, but there’s also vapor with natural gas, refined products, crude oil. The difference is this vapor for CO2 is not combustible. The vapor in those products is combustible.”

RJB: “Well, is the CO2 visible?”

JP: “No, it’s colorless.”

RJB: “Can you smell the CO2?”

JP: “No, it’s odorless.”

RJB: “And that’s why it’s so dangerous, because people may not know that they’re exposed until it’s too late, correct?”

JP: “Again, you’re asking me to speculate about a situation. As I’ve mentioned many times, we’ve done the dispersion analysis and the associated risk assessment, and we’re happy to share that with the commissioners.”

Bismarck Hearing, March 14, 2023 (Docket # 78:1) at timestamps 2:50:41 – 2:51:59.

Video footage of a controlled pipeline failure shows in graphic detail what the Satartia incident looked like and what a rupture could look like in populated areas of Burleigh County. (Docket # 252). Summit admits the video is authentic and “un-doctored”. (Docket # 237). Viewing the video should cause the Commission to reject Summit’s “just trust us” attitude with its proposed pipeline route in populated areas of Burleigh County.

The Satartia investigation confirms carbon dioxide pipelines like the one proposed by Summit should await the results of actual available research and PHMSA’s new rules and should be sited in rural areas, not in areas where there is any appreciable population density at all. This

factor (“available research and investigation [of the] public health and welfare”) weighs heavily against Summit’s Application as it relates to Burleigh County.

In addition, there will also be additional direct negative impacts to public health in Bismarck, Burleigh County, and other counties. In that regard, Rachelle Herbel, the spouse of long-time Bismarck Board Certified interventional radiologist Brent Herbel, M.D., testified as follows:

Liebel: If the commission approves the current site of the pipeline and assuming you’re not going to build a basement, would you still build your house in this location?

RH: No. We cannot build our house there. We can’t live anywhere near there. No. [. . .]

RH: My husband and I are having conversations about actually moving out of Bismarck-Mandan if this is allowed to be able to go into the ground [be]cause nobody will be safe. . . .

[. . .]

RJB: Ms. Herbel, am I correct in understanding that your husband is an interventional radiologist at Sanford?

RH: Yes sir.

RJB: And there is just 2 interventional radiologists working at Sanford presently, is that correct?

RH: Um, right now he has 3 partners, but 1 has resigned so currently there are a total of 3 that are full-time and 1 does IR off and on.

RJB: And your husband has been very involved in training in training medical students from University of North Dakota Medical School?

RH: Very much so and he loves doing it.

RJB: In fact, he recently received an award from the medical school, correct?

RH: He did.

RJB: Is it fair to say your husband could get a job probably anywhere in the US?

RH: He really could. I can say with 100% confidence he is one of the best IR physicians in the country. He just is. He is immensely talented.

RJB: And he is highly respected in the community, I can tell you that and because of this possible pipeline, your husband and you are thinking about leaving the community?

RH: Yeah. We’ve... we are having those discussions.

RJB: Would agree with me that would be a huge loss to our community if we were to lose the best intervention radiologist?

RH: Medically speaking, yes. . . .

Bismarck Hearing, June 2, 2023 (Docket # 299:2) at timestamps 1:48:45-1:55:30. Losing Bismarck’s premier interventional radiologist and highly regarded and recognized mentor for

UND Medical School students is an irreparable loss and detriment to the public health of Bismarck and Burleigh County residents, and other counties.

4. Adverse direct and indirect environmental effects that cannot be avoided should the proposed site or route be designated.

Summit has not provided any showing that its pipeline route in Burleigh County will not adversely affect the environment. Although Summit's dispersion modeling could shed much light on what sorts of environmental damage a traveling plume would wreak on the environment, Summit is unwilling to unseal that document so the public can judge for itself what harms may arise. As the Commission is aware and as set forth in its Application, the dense phase carbon dioxide is extremely cold and in a liquid state (Document # 1-4, at Table 2.1.1). A release of liquid carbon dioxide, being heavier than air and following the natural contours of the ground, will migrate into low areas, likely killing all vegetation, insect and animal life that is encountered there. The scale of this sort of environmental damage would depend on local topography and the weather and other conditions at the time of a release. The video (Docket # 252) of the controlled rupture of the carbon dioxide pipeline that took place in Norway or some other unknown location shows Summit's carbon dioxide pipeline in any location will be very bad for the environment when there is a leak or a rupture.

5. Alternatives to the proposed site, corridor, or route that are developed during the hearing process and which minimize adverse effects.

During these proceedings, Summit has paid lip service to exploring an alternative route or routes through Burleigh County, but the reality is that Summit has never truly considered any route through Burleigh County other than the northerly route that skirts the City of Bismarck in many locations less than two miles from its ETA. The truth is that Summit has never bothered to explore

any alternative route that would minimize the effects on the City of Bismarck and populated areas in Burleigh County.

Summit submitted its proposed pipeline route in its *Application for a Certificate of Corridor Compatibility and Route Permit* (Docket ## 1-1, 1-5), but Summit has purposefully obscured the route location in Burleigh County and several of its witnesses either feigned ignorance or were legitimately unaware when asked specific questions about the distance from the pipeline to various residential subdivisions and schools in Burleigh County. For example, at the May 9th Linton hearing, Summit's CO2 dispersion analysis expert John Godfrey was asked about the pipeline route to the north and east of Bismarck and he responded that he was not aware of the precise route:

RJB: "Let me ask you this, Mr. Godfrey. Is it your testimony that you don't even know where this proposed route is to go north and east of Bismarck by Summit?"

John Godfrey: "I have the general idea where it is from the exhibits that have been put before this commission and the exhibits that I've looked at, but have I studied it in sufficient detail to offer an opinion on a air dispersion model? No."

Linton Hearing, May 9, 2023 (Docket # 212:2) at timestamps 3:55 – 4:23. At the March 14, 2023 Bismarck hearing, Summit's witness Erik Schovanec described alternative routes for crossing the Missouri River that Summit allegedly had carefully considered:

RJB: "You were asked some questions about the Missouri River. Were you involved at all in trying to determine what routes were available for the pipeline to cross the river?"

ES: "I was."

RJB: "So what did you do to try to determine what locations were possible locations for a river crossing?"

ES: "There are hundreds of inputs that go into the routing of a pipeline. So, the location of the Missouri River crossing is obviously very critical. So, we analyzed multiple locations. Several miles to the north and several miles to the south of our current sited location, there were numerous things that were taken into consideration, all of which weighed into our decision. One of those is, you know, cultural and heritage sites that may be found or were found. We did extensive amounts of surveys on both sides of the river. You have constructability of the river, and you've got scour and lateral migration considerations. You also have easement

considerations. We've assessed all of those and we have secured easements with landowners on both sides of the Missouri River, and our current sited route in our estimation is the most preferred route based on weighing of all those different factors."

RJB: "So you indicated the area that Summit analyzed or looked at for the river crossing was several miles to the north or several miles to the south of the current proposed location?"

ES: "Yes, I did state that we analyzed multiple locations going several miles to the north and all locations in that range and several miles to the south."

RJB: "And what is several miles?"

ES: "I would say 2.5 to 3 miles to the north and 2.5 to 3 miles to the south."

Bismarck Hearing, March 14, 2023 (Docket # 78:2) at 48.45 – 51:02.

When pressed by counsel for Bismarck Area Intervenors for specifics about Summit's alleged alternative route analysis, Schovanec was evasive and made it clear that Summit very early on determined it would only follow its "preferred route" just to the north of Bismarck and really had not seriously considered any other routes at all:

ES: "So generally, the pipeline length is a determining factor in the route of the pipeline. It's one of the many considerations, so we looked at a south option and a north option very early on in the process, and it was very quickly determined that the more preferred route was to go to the north of Bismarck."

RJB: "Well, preferred by Summit, correct?"

ES: "Preferred for various reasons, and again, we've got, you know, an expert witness that can speak to some of the different sensitive areas that are avoided to the south. Certainly, no route is perfect. You have to weigh lots of different factors when routing a pipeline, and we made that determination to site our pipeline where it is. And it's current location is after exhaustive amounts of iterations, refinements, subject matter reviews, regulatory agency consultations, and data sets that we've received from Fish and Wildlife, consultations with the Army Corp of Engineers. So there's a lot of things that go into the siting of the route. The location and the current location of the crossing of the Missouri River was generally agreed to as a good location by the Army Corp of Engineers. We've got a section 408 permit that we've submitted with them in that exact location."

RJB: "Okay. And my question related to your comment about what you call the preferred route. When you say it was the preferred route- preferred route by Summit, correct?"

ES: "I wouldn't say that's correct."

RJB: "Well who else preferred that route other than Summit?"

ES: "There's a lot of things that go into the route of the pipeline. Our preferred route is a straight line. Obviously we can't do that, so there's a lot of different things

that go into routing the pipeline. I've named them off, you know, numerous times here. So I would say that's the current sited route as it stands today."

RJB: "And I'm just trying to get you to answer my question. Who else determined this was the preferred route other than Summit?"

ES: "It is the current pipeline route, it's the preferred location of crossing the Missouri River. [. . .]

Id. at timestamps 53:00 – 55:59.

Although Schovanec said Summit had retained an expert witness "that can speak to some of the different sensitive areas that are avoided to the south", no such expert was ever presented to the PSC by Summit. Similarly, no witness was ever produced nor any documents from Fish and Wildlife, Army Corps of Engineers, or any other governmental agency presented suggesting the Summit requested route was the only available route, let alone the preferred route. Earlier, at the April 11, 2023 hearing in Wahpeton, Summit's COO James Powell was asked by Commissioner Christmann for Summit's alternative route to the south of Bismarck:

Commissioner Christmann: "Lastly, and the details of it are something that I'd prefer to get into in Linton or Bismarck later, but I want to make sure that this isn't being dropped at Gwinner. I asked you to prepare an assessment based on some of the concerns that have been brought out about the route going north of Bismarck about looking at going south of Bismarck, south of the University of Mary somewhere. Are you working on that?"

James Powell: "Yes, diligently working on that. So, we'll work with Mr. Bender to get that information and what form we provide that information, but yes. We are diligently working on that."

Wahpeton Hearing, April 11, 2023 (Docket # 179:1) at timestamps 4:01:30 – 4:02:19. Powell testified at the May 9th Linton hearing about the Commission's request, and he indicated that the counties affected by the southern route would be "very clear":

James Powell: "At the request of the commissioners we're analyzing a route south of Bismarck."

RJB: "So my question is in relation to the 72% of the easement. Which counties would this affect? The southern crossing."

JP: "I'd rather not get into that here. When we submit the analysis it will be very clear what's impacted."

Linton Hearing, May 9, 2023 (Docket # 212:1) at 1:15:00 – 1:15:29.

Nearly 3 months after Commissioner Christmann’s request, Summit finally provided what it describes as its “Bismarck Route Analysis” in which it asserts it considered and rejected an alternative crossing of the Missouri River to the south of the University of Mary. (Docket # 275). While it described this document as an “analysis” it is clear that no real analysis was performed. For example, Summit never described what route or routes had been analyzed, never showed a proposed location for a Missouri River crossing to the south of Bismarck, never reached out to the applicable federal agencies concerning permitting for an alternative river crossing, and never did any of the work that would illustrate it had really studied an alternative route. The type of alternative route analysis Erik Schovanec described at the May 9 Hearing (specifics on cultural and heritage sites, specific constructability issues, river scour and lateral migration data, problems with easements, etc.) was nowhere present in Summit’s “Bismarck Route Analysis”.

The “Bismarck Route Analysis” raised non-specific issues, argues that it would be nearly impossible to obtain necessary federal permitting, and confirms the only consideration Summit actually considered was seeking to avoid another DAPL-style situation. Summit made imprecise claims that the Missouri River is wide in some areas, there are historical sites such as Fort Abraham Lincoln and Fort Rice, without analyzing any precise route which would avoid these locations. Summit’s “analysis” is clearly nothing more than an argument put together by its attorneys meant to convey an impression of the inevitability of the pipeline route to the north of Bismarck. Summit’s “alternative route analysis” evidence shows it never actually considered any real alternatives either to the south or to the north of Bismarck. The Commission should reject Summit’s faux alternative route analysis. This factor weighs heavily against Summit’s Application.

7. The direct and indirect economic impacts of the proposed facility.

As the Commission is aware, Summit’s pipeline is intended to serve numerous out-of-State ethanol facilities in order to obtain billions of dollars in federal tax credits. Summit’s investors who stand to gain are various limited liability company and other corporate entities, whose owners are undisclosed and largely unknown. Summit has only disclosed 5 such investors to the Commission: (1) Continental Resources, Inc., (2) TPG Rise Climate, (3) Summit Agricultural Group, (4) SK Group, and (5) Tiger Infrastructure Partners. (Docket # 199). While the true identity of Summit’s investors remains a mystery, Summit has submitted the identities of the ethanol facilities which would make use of the pipeline. Summit’s submission in this regard shows only 1 out of the 35 ethanol facilities that have signed on with Summit is a North Dakota facility, the Tharaldson Ethanol in Casselton, ND. <https://summitcarbolutions.com/ethanol-plant-partners/> (site last visited July 18, 2023). Very few if any North Dakota ethanol industry jobs would be affected by this pipeline that seeks to transport out-of-State waste for “permanent storage” underground. If the pipeline were to be put on hold, for example to require Summit to submit a route farther away from Bismarck or to await PHMSA’s newer, better, and safer carbon dioxide pipeline rules, no North Dakota ethanol industry jobs would be impacted

Relevant to Summit’s investors, North Dakota has enacted legislation that takes effect August 1, 2023 prohibiting foreign government foreign business ownership of real property in North Dakota.¹¹ Based on this law and because of news stories identifying Summit Carbon’s

¹¹ Two bills were passed by the ND Legislature during the 68th Legislative Assembly, and were signed by the Governor to protect agricultural land and real property from foreign ownership and development by foreign adversaries. The only foreign country excepted from the foreign ownership prohibition is Canada. 47-10.1-02(1). HB1135 was passed with a vote of 90-1 in the ND House and a unanimous vote of 47-0 in the ND Senate. SB2371 was passed with a vote of 83-8 in the ND House and a unanimous vote of 47-0 in the ND Senate. The new legislation will

investors to potentially include a Chinese consortium controlled or owned by the Chinese Communist Government (China Silk Road – an “anchor investor” in TPG Rise), a Saudi Arabian public investment fund (also having a potential ownership in TPG Rise), and SK Group (a South Korean company), numerous North Dakota Legislators signed a letter addressed to the North Dakota Attorney General Drew Wrigley requesting the North Dakota AG’s Office investigate the apparent ownership of land interests in North Dakota through the aforementioned foreign companies/governments that will have a direct ownership interest in the pipeline and in the attendant interest in real property. (Docket # 305 at pdf page 24 of 137)¹² The 31 North Dakota Legislators pointed out the apparent foreign ownership of the pipeline and related easements by foreign interests and asked for an investigation. They also pointed out James Powell’s apparent duplicity in reporting to the Commission only 5 total investors, but testifying there are many more.

In relation to the construction of the pipeline itself, Summit has conceded it will utilize out-of-State manpower to build the pipeline and the contractors it has identified are also out-of-State companies. Those pipeline contractors identified by Summit are Texas company Pumpco, Inc. and Wisconsin company Precision Pipeline, LLC. Neither is a North Dakota company. The contractors who will apparently build the pipeline are more of the same out-of-State companies like the ones Summit has utilized for other work on its behalf (Docket # 162 – Gulf Interstate Engineering; frost heave study; Docket # 190 – Tetra Tech, Inc.: pump station noise study; Docket # 223 – Gulf Interstate Engineering; buoyancy control study). This is not to mention all of the out-of-State consultants Summit has also hired to testify on its behalf before the Commission. In relation to labor, Intervenor LIUNA filed a report containing a socioeconomic analysis of

become effective in August of 2023. https://ndlegis.gov/assembly/68-2023/regular/bill-overview/bo2371.html?bill_year=2023&bill_number=2371 (last accessed July 18, 2023)

¹² The letter was provided to the Commission at the June 2, 2023 Bismarck hearing.

Summit's use of non-local labor to build its pipeline, in which it finds that large energy projects like Summit's typically utilize only about 10% local labor. (Docket # 158). LIUNA's expert Lucas Franco, who testified at the June 2, 2023 Bismarck hearing stated that he expects Summit will likely utilize a lot of traveling labor to build the pipeline.

Additionally, although the Bismarck Area Intervenors attempted during these proceedings to discover specific information about what might happen if Summit (a limited liability company) should abandon its North Dakota carbon dioxide pipeline, such as when the federal government might change its "green energy" tax policy, it is a virtual certainty the State of North Dakota and its citizens will pay the cost of remediating the effects of an abandoned pipeline and Summit and its limited liability investors will bear none of that cost. This would be another very large direct negative economic impact to the State of North Dakota and its taxpaying citizens.

North Dakota Legislative Representative SueAnn Olson, also a CPA, testified at the June 2, 2023 hearing about the adverse economic impact to the citizens of North Dakota when there is a leak in the Summit pipeline at any location along its route in North Dakota, when the pipeline is shut down or abandoned, an eventuality which will no doubt occur.¹³ She explained how limited liability companies (LLCs) work, the significant benefits to the investors and extremely limited liability an LLC has when a leak occurs or when the CO2 pipeline is at some point shut down or abandoned. Many, if not all, of the known investors in the Summit pipeline are LLCs. She explained that in the event of a catastrophic failure of CO2 pipeline "an LLC can be a pretty empty pocket".

¹³ A transcript of Representative SueAnn Olson's testimony in its entirety in written format is attached to this post-hearing brief as Exhibit A. Her testimony can be found on Docket # 299:3 at timestamps 1:24:10 – 1:39:54.

The financial exposure to the citizens of North Dakota, and the adverse economic impact to the citizens of North Dakota relating to the Summit pipeline cannot be overstated. Summit and its investors, as LLCs, will have the legal right, and will no doubt exercise their legal right, to leave North Dakota and its citizens “high and dry” economically and otherwise, when a leak occurs and the pipeline is someday shut down.

Olson also explained that Summit is not even providing a bond, or some significant financial asset or undertaking to execute on, when a leak occurs and when the carbon dioxide pipeline shuts down, to provide financial security for the citizens of North Dakota and affected landowners. This should be frightening to the PSC that it will be saddling the citizens of North Dakota, including future generations, with a huge financial liability when a leak occurs and when the pipeline ceases to operate. Should the PSC be inclined to approve the Summit pipeline, it should require a significant bond from Summit of \$20 billion dollars, at a minimum. With its application Summit provides no assurance or mechanism to assure the citizens of North Dakota there will be any funds, let alone sufficient funds to make the citizens of North Dakota, including affected landowners, whole, when a leak occurs and when the pipeline shuts down.

Before rendering any decision in this case, the PSC should also require Summit to provide a prospectus to the PSC, to the Intervenors, and to the public, which is readily available to Summit and which it provided to investors and potential investors, as Representative Olson recommended.

With all due respect to the Commissioners, it would be irresponsible to approve Summit’s application unless and until the Commission, the Intervenors, and the public know all the beneficial owners and the layers of ownership of the investors in Summit, and of Summit itself, and related Summit entities, so the PSC knows exactly who they would be providing a permit to. The Summit investor information has been requested by this Commission, but Summit has rebuked that request

in its typical cavalier fashion. To the Bismarck Area Intervenors' knowledge there has never been an application presented previously to the PSC in its entire history where the applicant has refused the Commission's request to identify and provide details on the investors of the project requested to be approved. Query how the Commission can assure the citizens of North Dakota there will be "minimal adverse impact" to the citizens of North Dakota, economically or otherwise, without knowing who the investors in the Summit pipeline are.

The direct and indirect negative economic impacts to the Bismarck and Burleigh County should the Summit pipeline be constructed are also considerable. For example, Commissioner Bitner testified about the hit Burleigh County's tax base would sustain if the pipeline corridor is constructed in the middle of the County's residential developments just outside Bismarck's ETA. He testified about the tax revenues that would be lost for just a few of the many future developments that are currently planned for the County, including for developments known as The Ranch and Heritage Reserve. Commissioner Bitner testified:

RJB: "What, if any, tax benefits would there be to Burleigh County in the event that the Summit pipeline was built in its proposed route or anywhere in Burleigh County?"

BB: "[. . .] I have information here from our tax director that on two subdivisions that were located on this map that you showed me earlier, I want to deviate here a little bit and take some liberty, but The Ranch subdivision north of the pipeline and this Heritage Reserve that's south of the pipeline. When those two subdivisions are built out completely and looking at the average price of a home in those subdivisions, The Ranch subdivision, they have the potential of \$63.5 million dollars' worth of residential value and \$3.4 million dollars of commercial value. The potential tax revenue for The Ranch when it's completely built out for the residential value is \$505,044.60 for the \$3.4 commercial value, for a total estimated at current mill rates of \$535,086.10, and then for the Heritage Reserve subdivision on the other side of the pipeline when those hundred to hundred-fifty lots are fully built out, their average price of approximately \$750,000. We know there are some that are a little bit less and some that are more. They're looking at additional tax revenue of \$596,193.75 per year, so just those two subdivisions, you might remember I mentioned we have 350 subdivisions, just those two we're looking at over a million dollars in tax revenue per year for Burleigh County. That's without the pipeline in place.

RJB: “And there are as you said in the Burleigh County area in the path of this, literally dozens of subdivisions and more that would be built if the pipeline wasn’t there.”

BB: “Clearly, yes.”

RJB: “So we’re talking about Summit contributing supposedly up to \$400,000 a year not paid by them, paid by the state of North Dakota, vs. many millions of dollars being paid by rural subdivisions that would continue to develop or develop in the area of the pipeline.”

BB: “Right. As a Burleigh County commissioner, I’ll take one Ranch subdivision over a CO2 pipeline. It’s more valuable as a county.”

Bismarck Hearing, June 2, 2023 (Docket # 299:2) at timestamps 3:25:35 – 3:29:30. Those millions of dollars in yearly revenues determined by Burleigh County and testified to by Vice Chairman Burleigh County Commissioner Bitner would result in a substantial direct adverse economic impact to the County. Additionally, for the same reasons this pipeline will adversely affect the County’s tax base, the subdivisions that would have been built and annexed into the City will directly impact the City’s coffers as well.

Bismarck area developers Chad Wachter and Chad Moldenhauer provided un rebutted testimony that they will have great difficulty completing residential developments in the County on which they have already spent substantial sums of money. Each of them testified lots that are adjacent to the pipeline corridor would not be nearly as marketable as other lots, and both stated they believe buyers will not want to purchase those lots at all. Summit’s siting of the pipeline in Burleigh County will dramatically impact Wachter and Moldenhauer, as it will other developers and landowners.

During several of the public hearings Summit presented testimony about the number of rights of way / easements it had obtained from North Dakota landowners. Summit has most recently on July 11, 2013 provided a ROW (Right of Way) Progress Report as of July 10th, 2023 (Docket # 355). That report shows that Burleigh County has the lowest percentage of any county in North Dakota for right of way easements executed. Warford and others filed with the

Commission copies of certain Easements and Pipeline Rights of Way Summit presented to the Commission at various points in time. *See e.g.*, Warford’s [unsigned] Easement (Docket # 101); Richter Easement (Docket # 155). The latest ROW progress chart from Summit filed with the Commission on July 10, 2023 shows its procurement of easements in Burleigh County has essentially stalled out. This is because Summit is attempting to site a high pressure carbon dioxide pipeline near populated areas, and the landowners themselves are not persuaded this pipeline is appropriate for such areas. The following chart illustrates Summit’s lack of ROW progress in Burleigh County historically:

Date	Parcels Executed	% Parcels Executed	Docket
3/27/2023	67	55.37%	(Docket # 85)
4/10/2023	67	55.37%	(Docket # 190)
5/12/2023	68	56.20%	(Docket # 223)
7/10/2023	71	58.68%	(Docket # 355)

There are numerous easements of record obtained by Summit Carbon, including the foregoing Richter Easement, and including others recorded in the Burleigh County Recorder’s Office. While those easements generally provide defense, indemnity, and hold harmless by Summit in favor of landowners, specifically excepted from the easements are “claims, liabilities or damages as may be due to or caused by the acts of Landowner, or its servants, agents or invitees.” *See, e.g.* Richter Easement.

In this regard, many landowners in the path of the proposed pipeline route provided testimony and evidence about the easements as well as their inability to secure insurance coverage under their own policies of liability insurance. Specifically, witnesses Marilyn Bryan, Susan Doppler, Rose Dotzenrud, Loren Staroba, James Rockstad, Pamela Schoner, Julie Stramer and Randall Waloch testified their insurance companies have already excluded or will exclude

coverage for the Summit easement locations on their property, under at least the pollution exclusion and possibly on other grounds¹⁴.

For example, at the June 2, 2023 Bismarck hearing, landowner Marilyn Bryan testified in opposition to the Summit pipeline because of the lack of any benefit to North Dakota landowners and because the pipeline would devalue her property. She also testified she had been advised in a letter from her liability insurance carrier [Docket # 329] that no coverage would be provided were there a leak or rupture. And she described the highly questionable indemnity provision Summit provides landowners in its easements. The following testimony illustrates these points:

MB: [. . .] And what insurance company would insure the property against the damages of a leak or rupture? And I referred to the letter from our insurance company saying that they have a pollutant exclusion in our liability policy. Who is going to insure us?"

Zachary Pelham: "And ma'am, let me just stop you there. We're passing out a copy of what's been marked as 'MB2' [Docket # 329] which is a copy of that letter. Let me just ask you a few questions about that if I can."

MB: "Sure."

ZP: "So, due to your concern about potential liability and risk should this pipeline be forced upon you against your will, you reached out to your insurance company to get opinions on whether or not there would be liability coverage for you in certain circumstances. Is that correct?"

MB: "That is correct."

ZP: Alright, and I don't know if you're aware or if you listened to our prior hearing, but an easement agreement or a proposed easement agreement is in the record and there's something in that that's called an indemnification clause. Are you aware that Summit claims to indemnify landowners in certain circumstances, but not the landowner or any of its tenants or invitees if there's a claim that you did something wrong. Do you understand then Summit does not hold you harmless?"

MB: "I understand that."

ZP: "And because of that you then went to get an opinion from the insurance company that you pay annual premiums to to see if you could essentially pay to protect yourselves from their risk to you, correct?"

MB: "Correct."

ZP: "And the ultimate opinion was that there would be no liability coverage and they wouldn't even provide the defense of a lawyer to you."

MB: "That's correct."

¹⁴ There can be no dispute the CO₂ gas to be transported in the Summit pipeline is clearly a dangerous pollutant with no value or use.

ZP: “And then you would be out in the cold on your own to fund out of pocket any claim or allegation if you, a tenant, a farm tenant, did anything that led to a leak rupture spill.:

MB: “That’s correct.”

Bismarck Hearing, June 2, 2023 (Docket 299:1) timestamp 2:03:32 – 2:05:09.

Ms. Bryan provided similar testimony to questioning by legal counsel for Bismarck Area Intervenor, Randall Bakke, including that other hazardous liquid pipelines on her property that have a beneficial use are not excluded like Summit’s carbon dioxide pipeline is:

RJB: “[] Turning to this exhibit, Ms. Bryan, MB2 [Docket # 329], this is a letter dated April 10, 2023 that you receive from your insurance agent from Northern States Insurance Services, correct?

MB: “Yes, that’s correct.”

RJB: “Okay, and they tell you that CO2 transported in the Summit pipeline would be considered a pollutant, correct?”

MB: “That’s correct.”

RJB: “But they go on to tell you that other gases or things that have a beneficial use on your property are not considered under your insurance policy to be a pollutant, correct?”

MB: “That’s correct.”

RJB: “So, things that you would use on your property, oil, natural gas, agricultural chemicals, those types of things would be covered under your policy with Northern states in the event there was some loss or catastrophic event?”

MB: “Yes.”

[. . .]

RJB: “And your agent, Mr. West, from Northern States also tells you that not only do they not provide an attorney to defend you if there’s an event with this pipeline, but they also tell you they don’t even have coverage available because he says there’s no endorsement or rider that would provide this type of liability coverage?”

MB: “That is correct.”

RJB: “You can’t even go out and buy insurance to protect you if it goes on your land, Summit’s telling you you should take all the risk. Your family should risk bankruptcy losing everything so they can put the pipeline on your property?”

MB: “That’s correct.”

Bismarck Hearing, June 2, 2023 (Docket 299:1) Timestamps 2:12:49 to 2:15:20.

Summit Carbon even received the same kind of letter from the Chief Claims Officer for Farmers Union Insurance in which Farmers Union indicated there would be no coverage for landowners for “losses caused by pollutants”, and indicated there is likely a policy exclusion for

any such claims. That letter (Docket # 265 [W173]) was in direct response to questions about coverage for Summit's carbon dioxide pipeline.¹⁵

Another landowner, Susan Doppler, also testified about the lack of available liability insurance coverage from her own insurance company, State Farm:

RJB: “[] Could you take a look at SD2 [Docket 332]? That’s the letter you received from State Farm from your agent on..”

HH: “From State Farm?”

RJB: “Right. Dated on May 18, 2023. And I see that the second page discusses some exclusions. It says ‘Exclusions’ on the top, and then they go through the pollution exclusions, which we’ve heard about before, but I think this is the first letter we’ve seen from an insurance company, at least that I’m aware of in this case, where State Farm lists an additional ground for not providing coverage to your property. And I’m looking at the bottom of the third paragraph on the first page where they say one reason is due to you ‘not owning the pipeline’ but furthermore negligence would be a factor as well. So, State Farm has told you there’s two grounds why you would not get insurance coverage if this pipeline came through. One, you don’t own the pipeline, and second, because it carries a pollutant and would be excluded under the pollution coverage.”

Susan Doppler: “Correct.”

Bismarck Hearing, June 2, 2023 (Docket # 299:2) at timestamp 1:32:58 – 1:34:06. Not only is the indemnification language by Summit to landowners highly questionable, their own insurance carriers will not provide them any coverage if there were to be a leak or rupture.

The direct and indirect economic impacts of Summit's carbon dioxide pipeline on the State of North Dakota and its citizens, Burleigh County, the City of Bismarck, and all area first responders, as well as the landowners where the pipeline route is proposed to operate cannot be overstated. Summit argues it and its mystery investors stands to lose billions of dollars if the

¹⁵ Bismarck Hearing, June 2, 2023 (Docket # 299:1) at timestamp 2:15:20 – 2:15:51:

RJB: “And were you aware that yesterday summit submitted a letter from Farmers Union and that’s W173 and even the insurance agent or claims officer they’ve consulted from Farmers Union insurance says this means that there may be no coverage from your policy in event there is a release of pollutants meaning CO2.”

MB: “I do understand that.”

pipeline in North Dakota is not built, that the ethanol plants will lose millions or billions of dollars in lost “green ethanol sales”, that the citizens of the State of North Dakota will lose out on not having good paying pipeline construction jobs, and the counties themselves will lose out on lost tax revenues. While these claims by Summit are demonstrably false, none of this is relevant to the Bismarck Area Intervenors’ objections to the pipeline route or what the Bismarck Area Intervenors are requesting of the Commission: Bismarck Area Intervenors are not opposing the pipeline per se, but rather simply seek to have it moved a safer distance from Bismarck and populated areas of Burleigh County. Requiring the pipeline to be moved would not result in the loss of billions of dollars for Summit’s investors, the loss of millions or billions from a lack of “green ethanol”, or a loss to the State of North Dakota or its counties. Moving the pipeline will not result in the pipeline project stopping. It will simply cause some delay. That delay is a creature of Summit’s own choosing, as it should have been exploring alternative routes in order to minimize the impacts on Bismarck and Burleigh County to begin with, but it chose not to do so, instead sticking with its “preferred route.”

Summit’s pipeline is not good economically for anyone except for Summit’s investors, primarily those who may be from other countries, including a direct adversary, the Chinese government, and wealthy out of state billionaires and companies, who will capitalize on federal tax credits. The pipeline is decidedly bad for the City of Bismarck and Burleigh County. This factor weighs heavily against Summit’s Application.

8. Existing plans of the state, local government, and private entities for other developments at or in the vicinity of the proposed site, corridor, or route.

The Commission heard abundant testimony from numerous witnesses about existing City and County plans and developments in the vicinity of the proposed Summit pipeline route.

Former Bismarck Mayor Dr. John Warford testified at length about his 12 year tenure as the Mayor of Bismarck where he was intimately involved with planning and growth issues that affect and serve to guide future development and related decision making in the City of Bismarck and in the County. He testified as did other witnesses that Bismarck's growth path is to the North and Northeast of Bismarck, and that placing the pipeline as Summit proposes to do right in the path of growth and future pockets of population would radically interfere with those plans. He testified this would present essentially a "no-build" zone that would be very bad for Bismarck's and Burleigh County's long-planned future growth and orderly development, as well as for Bismarck's emergency services, and for its tax base.

Burleigh County's future growth is guided by a document entitled "Burleigh Growth 2015" which identifies the Burleigh County Future Land Use Plan (a/k/a "Land Use Plan"). (Docket # 142 [W145]). Per the Land Use Plan document:

The Land Use Plan is focused on the physical form of the Planning Area today and in 2040. It reflects Burleigh County's adopted policies on land use. Proposed Goals, Objectives and Policies apply to both public and private properties.

[. . .]

The Land Use Plan is intended to serve as a guide for Burleigh County when reviewing private development proposals and making decisions on the location of public facilities.

Id. at 10.¹⁶ The map that depicts Burleigh County's future growth shows almost all such growth will be to the North, Northeast, and to the East. Figure 3.1 – Future Land Use Map. *Id.* at page

¹⁶ The Land Use Plan evolved from the earlier created Burleigh County Future Land Use Study (itself a continuation of earlier County-level planning work). It included extensive processes such as data collection, reviews of information, interviews, research, tours, detailed site analysis, public meetings, community workshops, business and citizen surveys, development of maps and additional analyses. Per the document itself, "[t]he Land Use Plan serves a number of broad purposes, including:

- Complements the Burleigh County Comprehensive Plan adopted in 2014 and fulfills the County's commitment in that Comprehensive Plan to "adopt a

30. Summit's May 30, 2023 appraisal report (Docket # 293) containing alleged "market research" does not contradict this well-known fact in any way.¹⁷

Burleigh County Commissioner Brian Bittner testified about the many subdivisions currently located in Burleigh County, and he testified at length about the County's growth plan and the proximity of the Summit Carbon pipeline to existing and planned future subdivisions.

Bitner testified in part as follows:

Comprehensive Plan and a Land Use Plan to guide the future growth within Burleigh County. [footnote omitted]"

- Provides, together with the related Comprehensive Plan, the Land Use Plan a guide for the county's land development regulations and zoning decisions.
- Provides information and insight that will be used for the upcoming update of the metropolitan travel demand forecasting model and Bismarck-Mandan Long Range Transportation Plan.
- Provides a sound basis for Burleigh County investments and daily decision-making process.
- Provides guidance to landowner and developer investment and building decision-making. Effective planning gives individual, commercial and corporate investors the confidence to build in this area.
- Reflects Burleigh County in the year 2040. Given the projected countywide increase in population (approximately 46,000 additional people), and the probable rate of technological change between the present date and 2040, it is impossible to describe the future face of the county with any degree of certainty or precision."

(*Id.* at 9).

¹⁷ Wade Becker of Boulder Appraisal performed "comprehensive market analysis" of existing subdivisions in the County under which there are existing easements, including hazardous liquid pipeline easements. He concludes, incorrectly, that because such pipelines have not adversely affected the property values in those developments, Summit's carbon dioxide pipeline will likewise not adversely affect property values. Becker never appeared to testify about his report so the basis for the report is unknown. However, numerous landowners and others directly contradicted Becker's opinions, and testified as to the significant devaluation and adverse impacts on the development of property in the County should the Summit pipeline be built on their land or other people's land. Some of those who testified in this regard include, Pamela Schonert, Susan Doppler, Marilyn Bryan, Connie Erickson, Lianne Rockstad, Lon Klusmann, Kevin Shive, Clint Feland Chad Wachter, Chad Moldenhauer, Jackie Andahl and Joe Hillerson.

BB: [Referring to the map prepared by Burleigh County (Docket # 318 [W191])
“Yes. Clearly, Burleigh County has over 350 subdivisions and it goes anywhere from one to two lot subdivisions up to 400, 450 homes in a subdivision.”

RJB: “So, in Burleigh County there are 350 subdivisions?”

BB: “Approximately, yes.”

RJB: “In Burleigh County, would most of them be closer to Bismarck itself?”

BB: “Most of them.”

[. . .]

RJB: “Now in terms of these developments. And I see on here that they can be identified in different ways by the colors we have. Yellow, which is outlying suburban.. What does that mean on a growth map, yellow, and it’s identified as outlying suburban.”

BB: “That would generally refer to what we would call large lot subdivisions. Sometimes an acre and a half, maybe up to as much as five acres per lot.”

RJB: “And can we see on the growth plan for Burleigh County that there is yellow that’s on both sides of the proposed path of the Summit pipeline? Particularly directly to the north of Bismarck, both on the east and west side of highway 3?”

BB: “Right. I can see that, but I should point out based on my knowledge here that existing subdivisions up in that area are not on this map. I think this map is maybe 2014 or 2015 vintage.”

RJB: “But that’s the most current growth map that Burleigh County has, correct?”

BB: “Correct. It’s due to be reviewed. We try to get this done every five to ten years, but.. We’re busy too.”

RJB: “So this would be what we’re seeing on there for the existing subdivisions would be as of 2014, 2015?”

BB: “Yes.”

RJB: “Many more closer to the pipeline both north and south of that are already built.”

BB: “Yes, and not only that, I asked the planning director if we have subdivisions in the works that haven’t made the agenda yet, and I think there’s up to possibly eight subdivisions that are in the planning stages right now.”

[. . .]

RJB: “And according to Mr. Flanagan, how many are in process right now for rural subdivisions in Burleigh County.”

BB: “I believe he told me approximately eight, but he’s here and I’m sure he’ll give exact information.”

RJB: “And do you know approximately where those eight subdivisions in process are located at in relation to Bismarck?”

BB: “I don’t know.”

RJB: “The other thing that’s identified on exhibit 191 is kind of a darker shade of yellow or perhaps gold would be a better way to describe it, which is described as suburban. What is suburban areas?”

BB: “That’s what we would anticipate becoming part of city limits in the real near future.. For example, on that really comes to mind would be Silver Ranch subdivision.”

Bismarck Hearing, June 2, 2023 (Docket # 299:2) at 2:31:26 – 2:35:31.

Commissioner Bitner’s testimony referenced Exhibit 191, which contains yellow highlighting that is the same as that contained Burleigh County’s Land Use Plan (Docket # 142 [W145])¹⁸. The map in the Land Use Plan likewise shows in yellow highlighting the residential subdivisions located to the North and Northeast outside Bismarck’s boundaries, which are in close proximity to the proposed corridor of Summit’s pipeline. Figure 1-5 (at page 10). Another map in the document shows the population density (reflected by various colors denoting persons per acre) in various parcels within the County’s townships, which further shows there are simply too many people living extremely close to the proposed Summit pipeline route. Figure 1-6 (at page 12).

Commissioner Bitner identified numerous existing residential subdivisions within two miles of the proposed pipeline route, including identifying by name a handful of the many subdivisions on the map (Docket # 322 [W195]): Silver Ranch, Heritage Reserve, Prairie Crest First, Northwood Estates, 4Ks Replat, and Country Hills. Bismarck Hearing, June 2, 2023 (Docket # 299:2) at 2:35:51 – 2:39:18. Bismarck area developers Chad Wachter and Chad Moldenhauer developed some of those existing residential subdivisions and have invested many millions of dollars in existing and currently being developed subdivisions and testified about their own plans to build developments that would be in the path of Summit’s pipeline. Both Moldenhauer and Wachter testified in no uncertain terms that Summit’s proposed route in Burleigh County would dramatically adversely affect their plans, and cause huge economic losses to them. Other landowners testified similarly.

¹⁸ James Powell, Summit’s COO from Texas, knew nothing about Bismarck’s past, current, and future growth path and he incorrectly testified that Bismarck’s growth path was “[g]enerally every direction, but it looks like predominately to the east.”

Another local entity that has extensive knowledge of Bismarck and Burleigh County's future growth path is the Bismarck-Mandan Home Builder's Association (BMHBA). The Board of BMHBA adopted a resolution opposing Summit Carbon's pipeline route adjacent to the City of Bismarck, which it stated is "in direct conflict with the future path of Bismarck's growth to the North and Northeast" and which it stated "will impede the approval of residential developments and subdivisions in and around the City of Bismarck", and which will "add to the costs of emergency services within the community without compensation." (Docket # 310 [W183]).

This factor weighs heavily against Summit's Application.

11. *Problems raised by federal agencies, other state agencies, and local entities.*

As discussed at length above under the first factor of Section 49-22.1-09, PHMSA is in the process of re-writing its rules that will control carbon dioxide pipelines and other facilities. <https://www.phmsa.dot.gov/news/phmsa-failure-investigation-report-denbury-gulf-coast-pipelines-llc> (site last accessed July 14, 2023); also filed with the Commission at Docket # 152. This rule making by PHMSA is in direct response to the Satartia incident and arises out of the well-known shortcomings of PHMSA's current rules as discussed recently at PHMSA's public meeting in Des Moines. <https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=165>. This is a huge problem for Summit's carbon dioxide pipeline, which has been raised by the very federal government agency that is tasked with overseeing and enforcing pipeline safety for projects like the one proposed here by Summit. PHMSA's rule-making in light of Satartia is indeed a problem for Summit's Application.

The Commission is also well aware of problems with Summit's Application raised by State agencies. For example, the Commission received a letter dated March 3, 2023 from the State Geologist pointing out problems with Summit's use of generic survey data rather than ND specific

Geological Survey landslide maps and data. (Docket # 113). Summit has also been requested by the Commission to explain its plan to bury the 24” steel pipe only 4 feet below grade, when it is common knowledge that frost is oftentimes driven much deeper than 4 feet into the soil during North Dakota’s harsh winters. *See* Summit’s Frost Heave Study, prepared by Summit’s engineering firm in Houston, Texas. (Docket # 254). The Commission further requested information about the problem of pipeline buoyancy, which was allegedly addressed by the same Texas engineering company. (Docket # 223).

There is also the problem of Summit refusing to provide a map that clearly shows its route through Burleigh County such that the Commission would be able to determine the proximity to residential subdivisions and schools. At the April 11, 2023 hearing in Wahpeton, Commissioner Haugen-Hoffart addressed the Commission’s requests to Summit that Summit had not been promptly responding to:

HH: “Commissioner Haugen-Hoffart?”

Commissioner Haugen-Hoffart: “Thank you. I’m glad Mr. Christmann brought that up on some of our requests. It seems like some of our requests are getting very delayed and we would like some of this information so when we go to hearings we can have that and be able to ask questions on that, so I hope some of this information can be expedited for upcoming hearings. So, thank you for working on that. I’m kind of stuck on it. We’re asking to approve a pipeline and when we were talking about the liquid going through the pipeline, the question was asked ‘who owns that’ and no answer was given. Can we get an answer to that?”

Wahpeton Hearing, April 11, 2023 (Docket # 179:1) at timestamps 4:02:24 – 4:03:15.

At the local level, residents of Bismarck and Burleigh County, and other North Dakota Counties signed an online Advisory Petition opposing Summit’s pipeline. <https://www.ipetitions.com/petition/advisory-petition-of-citizens-of-burleigh-county> (last visited July 14, 2023). The version of the petition applicable to Burleigh County residents demands the carbon dioxide pipeline be moved at least 25 miles from Bismarck’s extra-territorial area. *Id.* The

total number of online and hard copy (Docket # 317) advisory petitions filed with the Commission at the June 2, 2023 hearing is 1,634. The fact that 1,634 Burleigh County citizens signed a petition opposing the proposed Summit pipeline route because its too close to Bismarck, and addressing other public health and safety concerns, establishes on its own that the proposed Summit pipeline route does not “produce minimal adverse effects” on the citizens of Bismarck and Burleigh County.

Similar to local citizens opposing the pipeline through advisory petitions, there was nearly uniform opposition to the pipeline presented at the 2023 Burleigh County Commission meetings that addressed concerns of the citizens about the carbon dioxide pipeline. For example, Burleigh County Commission Vice Chairman Brian Bitner testified at the June 2, 2023 in Bismarck that there was absolutely no support for the pipeline at the Burleigh County Commission’s meetings:

RJB: “Okay. And in terms of the meetings where the Summit pipeline has come up, can you tell us approximately how many meetings there has been where there’s been some public discussion about the proposed Summit pipeline?”

BB: “Well, I believe there’s been four, possibly five meetings that were specifically relative to the pipeline and probably some additional ones that referred to it.”

RJB: “So let’s focus on the meetings before the county commission. Can you give us an approximation of how many public citizens from Burleigh County have attended those meetings which you understand to be people who were interested in commenting upon and listening to Burleigh County’s analysis of the proposed pipeline?”

BB: “I asked a question earlier of staff and I didn’t get a real good answer, but the capacity of the Baker room where we hold our meetings in the city county building, there was probably 100 people. Give or take. I think that’s a safe number. And virtually every one of these meetings have been standing room only. So the meetings have been very well attended.”

RJB: “And in terms of the individuals who were there commenting on the Summit pipeline, have those individuals been some in favor, some against the pipeline?”

BB: “There’s two sides to that. We’ve had two or three Summit representatives that have attended those meetings and so those two or three possibly four total over a few meetings may have been there to support the pipeline, but I can’t recall a single citizen in Burleigh County supporting the pipeline at any of our meetings. Any meetings.”

RJB: “So all the citizens of Burleigh County that attended the Burleigh County Commission meetings where the topic of the Summit pipeline came up were uniformly opposed to the pipeline?”

BB: “Yes... Which I should point out, that’s a very unusual thing in Burleigh County. We’ve had a number of real controversial issues over the years such as wind turbine sightings, such as refugee issues, such as, you know, several things like that. There’s always been two sides to the issue – Some citizens feel this way, some citizens feel that way, and you have to make a decision based on that. This is a completely different thing. This is 100% of the citizens that are presenting to us that are not affiliated with that company have been opposed to this.

Bismarck Hearing, June 2, 2023 (Docket # 299:2) at timestamp 2:19:35 – 2:22:26.

Additionally, Bismarck Public Schools adopted a resolution in May of 2023 “wholeheartedly support[ing]” the efforts of the City of Bismarck and Burleigh County to move Summit’s carbon dioxide pipeline farther away from Bismarck into more rural areas of North Dakota. (Docket # 312 [W185]). The resolution adopted by the Bismarck City Commission on May 9, 2023, supported Burleigh County’s zoning efforts as those efforts impacted Summit’s pipeline and also specifically requested the pipeline be sited a “minimum of twenty-five miles from the extra-territorial limits of the City of Bismarck[.]” (Docket # 311 [W184]).

Other local problems raised include the Burleigh County Board of Health’s Health Statement in which it expressed “concern for the risk of hazardous liquid gas exposure to humans and to the environment” and cautioned that “first responders and hospitals [] may not be prepared for a mass toxic gas incident [and] recommend[ing] that hazardous liquid pipeline routes be kept at minimum distances [] from all occupied structures and residences and until an emergency response plan is approved and recommended[.]” (Docket # 104 [W104]). And Bismarck School Board President Jon Lee testified:

Lee: It does frighten me a bit that this is a new product that is moving through a pipeline. We’re kind of a pipeline city. . . . When you think of evacuating a school you really need a fleet of EVs . . . electric vehicles to get people out and that kind of concerns me a little bit because I haven’t been privy to a plan of how that would work with residents or our schools so my concern is that and just the growth of our

city. . . it doesn't make sense to me that we would run the pipeline right up against the edge of one of the most populous areas in the State.

[. . .]

Pranis: Knowing the risks and potential risks of this kind of pipeline, would you be more or less likely to support locating a new school on or near the pipeline?

Lee: I would not personally support that. I am 1/5th of the governing body but I'm not . . . I am having a little bit of regret having built Silver Ranch where it's at knowing that this could happen. Yeah. . . I'm not gonna lie, I've lost sleep at night.

Bismarck Hearing, June 2, 2023 (Docket # 299:3) at timestamps 1:54:18 – 1:57:00.

A greater public health risk and concern is hard to imagine than the safety and vulnerability of young schoolchildren. This alone establishes Summit cannot meet the requested standard of “minimal adverse effects” to the citizens for its preferred route.

As the Commission is keenly aware, both Burleigh and Emmons Counties have adopted land use ordinances that implicate Summit's proposed pipeline route. The challenged Emmons County Ordinance was filed on February 17, 2023 (Docket # 49); and presented to the Commission during the March 14, 2023 PSC hearing. (Docket # 107). Burleigh County's April 17, 2023 Ordinance was filed with the Commission on May 5, 2023 by Mitch Flanagan, Burleigh County Building, Planning & Zoning Department (Docket # 206). While the ordinances are not technically a “problem” for Summit's proposed pipeline as they do not serve as a de facto ban as Summit argues, generally the ordinances require Summit to apply for a permit with each of those Counties, require certain set-backs be followed, and other requirements be met as set forth in the Ordinances. Summit would easily be able to apply for a permit and would be able to comply with the Ordinances, but it has refused to take any such action.

There is no dispute: Summit has not made any attempt to comply with either of the County Ordinances, and has not sought a permit from either Burleigh or Emmons County. In fact, Summit has filed a motion with the Commission seeking an order that states both Ordinances are superseded and preempted by State and Federal law. *Motion to Declare Emmons County and*

Burleigh County Ordinances Superseded and Preempted, dated June 1, 2023. (Docket # 282) (“the Pre-Emption Motion”). Burleigh County Commission Vice Chairman Brian Bitner provided testimony on this topic to the Commission at the June 2, 2023 hearing in Bismarck. Per Commissioner Bitner’s testimony, Burleigh County’s enacted Ordinance applies to a carbon dioxide pipeline such as the one Summit Carbon proposes to construct in Burleigh County, and he testified that Summit Carbon has never applied for such a permit:

RJB: “And you just mentioned the application. Could you turn to exhibit Summit? It’s not in that same binder. It’s a Summit binder with their exhibits in it.”

BB: “Okay.”

RJB: “And Summit is the application by Summit that they submitted to the Public Service Commission back on October 17, 2022. Let’s turn to page 61. It’s got various parts in it. We can maybe help you find page 61... Let’s turn to Summit’s application: Section 10.9 Land Use. That says the applicant, meaning Summit, the applicant will obtain and apply with applicable county permits and zoning and land use regulations. Permits for the project may include but are not limited to building permits, grade and fill permits, ditch crossing permits, road and utility permits, and conditional use permits. Have I read that correctly? Okay. And the ordinance, the March 6, 2023 ordinance and the April 17, 2023 ordinance, would that fall under zoning and land use regulations?”

BB: “Yes.”

RJB: “Okay. Summit told the PSC in their application on October 17, 2022 they will comply with? And even up to today, Summit has not done that in Burleigh County, correct?”

BB: “Correct.”

RJB: “And yesterday the PSC, the attorneys for Summit filed a Motion to Declare Emmons County and Burleigh County Ordinances Superseded and Preempted. Are you aware of that?”

BB: “I’m aware of that, yes.”

[. . .]

RJB: “So rather than complying with the requirements with Burleigh County on hazardous liquid pipelines, Summit just said they objected to it?”

BB: “Yeah. I’m amazed by that. I can’t imagine why anybody would have an objection to providing us with your safety plan. [. . .]

Bismarck Hearing, June 2, 2023 (Docket # 299:2) at timestamp 3:01:04 – 3:04:19.

As the Commission is aware, Summit takes the position the County Ordinances are preempted and superseded by both State and federal law. For the reasons previously briefed and

argued by Bismarck Area Intervenors, Summit's position is incorrect and the Commission is well within its legal authority to reject Summit's motion. Summit will likely tout a recent Federal Court opinion from Iowa in which the Court held Shelby County Iowa's ordinance was superseded and preempted by both Iowa and federal law. However, the Iowa ordinance is significantly different than the Ordinances at issue in North Dakota,¹⁹ and Iowa law does not vest Iowa's version of the PSC with the same statutory authority and constraints as does North Dakota law. Specifically, Iowa law does not have a statute such as N.D.C.C. § 49-22.1-13, which expressly requires applicants to "comply with" and not violate all "local land use; zoning; or building rules, regulations, or ordinances". *Id.*

Burleigh County's Ordinance further requires pipeline applicants such as Summit Carbon to provide a copy of their emergency plan to the County, and Summit has never provided its emergency plan to Burleigh County. In this regard, Bitner testified:

RJB: "Okay. And then there's certain items that are supposed to be followed up by pipeline companies in terms of information and documents they're supposed to provide to Burleigh County. Is that correct?"

BB: "Yes, it is."

RJB: "So if we look at, as an example, subsection roman numeral three, one of the things the pipeline company who is applying to build a pipeline in Burleigh County is supposed to do is submit a public safety plan?"

BB: "Yes."

¹⁹ In the federal court case, the Iowa ordinance was held to be preempted by Iowa State law only "to the extent it restricts Summit's ability to negotiate easements with landowners", a feature not contained in the Burleigh County or Emmons County Ordinances. The federal court also "impliedly" held the "distance and siting" requirements were preempted because "[c]ommon sense suggests these restrictions would eliminate all or almost all land in Shelby County on which [the] pipeline could be built", which is not true in relation to Burleigh County's Ordinance. The Iowa Ordinance was also held to be preempted by federal law (the PSA) because it mandated safety restrictions beyond those already mandated under federal law, again, an issue not present in the Burleigh County Ordinance. There are other significant differences between the Iowa ordinance and those Ordinances at issue before the PSC here in North Dakota.

RJB: "After this ordinance went into effect on March 6, 2023, did Summit file or provide a public safety plan to Burleigh County?"

BB: "Not that I'm aware of, no."

RJB: "One of the other things that Summit was supposed to do after March 6, 2023 was provide Burleigh County with an emergency action plan, information disclosure requirements. Did Summit do that?"

BB: "Not that I'm aware of, no."

RJB: "One of the other things that Summit is supposed to do with Burleigh County is provide a emergency response and hazard mitigation plan for hazardous liquid pipelines. Did they do that?"

BB: "No. Not that I'm aware of."

RJB: "There was a letter sent to the Burleigh County Planning Department by Summit by Mr. Jeff Skari on March 8, 2023 on behalf of Summit objecting to this ordinance. Were you aware of that?"

BB: "Yes."

Bismarck Hearing, June 2, 2021 (Docket # 299:2) at timestamp 2:56:34 – 2:58:49. On June 1, 2023, Burleigh County filed with the Commission a Statement asking the PSC to "postpone any final determination relating to the issuance of a permit for any CO₂ pipeline under consideration until PHMSA updates its standards for CO₂ pipelines." (Docket # 280). Burleigh County's request was made so that the Commission and Burleigh County would have the benefit of PHMSA's updated carbon dioxide pipeline rules and standards, which according to PHMSA itself will be better and safer, and will address lessons learned from Satartia.

As set forth above, there is overwhelming evidence of "problems" with Summit Carbon's Application, which have been raised by the federal government (through PHMSA), the State of North Dakota, Burleigh and Emmons Counties, the City of Bismarck, Bismarck School District, and numerous other local entities. This factor weighs heavily against Summit's Application.


IV. CONCLUSION

At every step of the process, and with virtually every interaction with landowners, the public, and governmental representatives, Summit has been the proverbial "bull" in a "China shop". Its arrogance and hide the ball tactics have been on full display during the course of these

proceedings. Greater disrespectful, condescending and arrogant conduct by a private business, its employees and representatives, is hard to imagine. But regardless of its entitled approach to the siting of its proposed pipeline in North Dakota, the evidence presented during these proceedings confirms Summit has failed in its burden of proof to show minimal adverse effects on the public health and welfare on the residents of Bismarck and Burleigh County. Applying the statutory factors in N.D.C.C. § 49-22.1-09 to the evidence demonstrates Summit's Application should be denied.

Dated this 19th day of July, 2023.

BAKKE GRINOLDS WIEDERHOLT

By: 

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Testimony of SueAnn Olson at June 2nd Hearing in Bismarck

SueAnn Olson: “Commissioners, my name is representative SueAnn Olson. I’m a CPA and I’ve spent my career working with all types of business entities. I think that it’s important that the PSC understand and consider who the beneficial owners of Summit Carbon Solutions are. You might ask ‘Why do we care who the owners are?’ To answer that question, let’s roll all the way back to what an LLC is, and why businesses choose to operate as an LLC. Compared to corporations, LLCs, which are limited liability companies, are relatively new. Wyoming was the first state to authorize LLCs in 1977, and most other states passed LLC legislation in the mid-1990s, including North Dakota in 1993. I would guess that most new business entities that are formed today are formed as LLCs. Why is that? Well, there are several reasons- They offer flexibility, LLCs are generally taxed as partnerships, and have broad discretion on how income deductions and tax credits are allocated among the LLC members. Their owners can be anyone – Other corporations, LLCs, partnerships, trusts, or individuals. LLCs offer one level of taxation. As I said, they’re most often treated as partnerships, and that means that those income deductions and tax credits pass out to the underlying owners. A corporation, on the other hand, pays tax at a corporate level and shareholders pay tax again when money or property comes out of the corporation. LLCs essentially pay tax at just the owner level. LLCs offer limited liability. For most investors, they cannot be called upon to contribute more money into the LLC beyond their original contribution unless they have agreed to it in the beginning. Now, these factors would be very important to Summit’s operation. Their activities are driven by the Federal tax credit under code section 45Q. At full capacity as noted on Summit’s website, they could generate 1.5 billion dollars of tax credits per year. These credits can be a direct pay from the Federal government regardless of the members’ ability to use the credits against their own U.S. income tax liability for up to 5 of the 12 years of the credit. The credits can also be sold to others. The LLC has tremendous

flexibility in how they claim, allocate, or sell those credits. Limited liability is also extremely important to Summit investors. Limited liability means that liabilities of the company can't trace through to the owners. The only thing investors can lose is their original contribution. The impact of limited liability is incredibly important to our North Dakota citizens and to the state of North Dakota if there's a catastrophic failure. Who will be responsible for the damage to life and property? An LLC can be a pretty empty pocket.

Most of us think in terms of main street businesses. If something goes wrong, the business has to stand behind their product or service, right? In terms of pipelines, we are most familiar with pipelines that are local utility zones. We know we're their place of business is. Many of us may drive by it every day. We know that if there is a problem, even decades after a pipeline has been placed in service, we can actually stop by their office to seek a resolution. This type of business also has other assets that are at risk if the company fails to fulfill it's promise of safe operation. A publicly traded corporation, like the PSC probably normally deals with, also has the additional check and balance of being accountable to its shareholders. This may not be the case with Summit. Unless the affected states require a significant bond against a catastrophic event, there may not be anyone to turn to as a remedy. I would envision that very little capital will be retained in the entity. Some undisclosed portion of Summit's underlying owners appear to be private equity investors. Private equity investors are typically promised a particular return on investment. Therefore, cash that is not needed to pay for easements, construction, and operating costs, will be distributed to the investors. And, since this is an LLC, the underlying owners cannot in most cases be required to come up with cash to pay a settlement for damages. I think this may be particularly true after the 12 years of the tax credit have expired. At that point, most of the investors will likely roll out of the entity with just a shell remaining as the owner. For example, one of the disclosed investors, Summit Agricultural Group, highlights past investments that they got in and out of within a five-year

timeframe. At least several of the currently disclosed investors' websites indicate that they are utilizing private equity funds. These funds usually have a targeted duration at the onset- They are not in it for the long haul. Clearly North Dakota needs to understand how our citizens are made whole if the project has a failure. Members of the Commission, if it hasn't already been provided, you should request and review any and all prospectus that are utilized to attract investors. A prospectus typically explains the business operations and expected timeline of an investment and would provide a great deal of useful information. Are there other reasons why it matters who the owners are? Well, yes. The state recognizes that foreign ownership of North Dakota property may be a threat. That's why House bill 1135 and Senate bill 2371 passed by wide margins in the legislature and were signed into law by the governor. Make no mistake, a 99-year easement is an acquisition of a property right, and allowing such a pipeline to potentially fall into foreign control is something we should be very cautious about. Interestingly, the federal government is also aware that they don't know enough about potential bad actors doing business in the U.S. The corporate transparency act was passed in 2021 with final rules issues early this year. Starting in 2024, most businesses will have to report their owners to the federal government. The two bills that were passed by our legislature are a start in this direction, too, and the legislature plans to continue studying foreign ownership in the interim. Given the enormity of this project, it only makes sense for North Dakota to be very clear and very intentional about whom we are dealing with. This is why the attorney general has asked to investigate who the owners of Summit Carbon Solutions are.

And I have just a couple of observations. As a CPA I always promise my clients I would tell them what I think. They didn't have to listen, but I felt obligated to tell them. Under 45Q, I think somebody earlier had stated it, but January 1st, 2033 is the deadline for starting construction in order to get the 12 years of credits. It certainly feels like, to me, that this project has been presented with a great deal of urgency. That there just isn't time

to take a very measured and careful approach, and that seems odd to me. I think the potential for an ownership is something we need to be very careful about, just from an economic standpoint, and I know that's beyond this scope, but we're taking federal money. It's our taxpayer money essentially, or will eventually when we pay for it, to send money as a credit to the investors and to the extent it's foreign money, it just really rankles, because at least if money stayed in the U.S., there'd be some turnover of those dollars and there'd be some additional economic benefit, and when we're sending money to foreign owners, I mean, that just isn't the case. My concern about it being an LLC with nobody *really* being responsible, because certainly in all the tax planning I've done, I mean, you layer one LLC on top of another and you make it so hard that you can't really get to the ultimate owner who might actually have a pocket that could make things right, and we seem to be focusing a lot on the economics, but there is real danger in what this pipeline is. And the other piece that was handed out to you was some information that had been requested by a law firm here in town related to a CO2 pipeline not nearly as big as what we're talking here, but you'll see the pictures which are quite telling. This is on a ranch in Montana where they've had a number of failures that have happened over a period of several years, so to think somehow that it isn't possible that there's a breach somewhere, and it may not be someone punching a hole, but whoever builds this pipeline is also hiring contractors. We all know the problem with hiring good people. If there's a poor weld somewhere, it's hard to predict where, there's so much threat that can happen with this, that to think that it just isn't possible that there would be a failure doesn't seem to be born out. I'm sure the people in this project were quite certain there wouldn't be failure, either. And yet on this ranch they've had multiple, I mean, you can hardly describe it differently than, you know, explosions almost, what they've done to the property. This is real and the fact that I think it would be quite easy in how they're set up that there's no one really that will become terribly accountable for this, just by nature of who the owners are and how you set these things

up, so I feel like this was valid information for you also to think about as we move forward. So that would conclude my statement.”

Hope Hogan: “Alright. Thank you. Mr. Bender, any questions?”

Lawrence Bender: “No questions.”

HH: “Mr. Pelham?”

Zachary Pelham: “No questions. Thank you.”

HH: “Mr. Jorde, any questions?”

Brian Jorde: “Yes, thank you. You agree that it would be irresponsible for this commission to approve this application until and unless they know all of the beneficial owners and the layers of ownership so they know exactly who they would be permitting?”

SO: “Oh, I think that absolutely should happen. And again, when you’re talking private equity investors, there’s a prospectus out there, there may be several, that talks about the expected how long these people are in, or whatever, but to really have an understanding who is the planned owner? Not they they could even entirely predict that with real accuracy, but if they’re promising all of the investors ‘Hey, in 12 years you get out’, it starts telling you who’s left, and there would be nothing, really no assets, nothing to help cover a problem that might pop up.”

B: “Would you be surprised to learn that their private placement memorandum has an exit strategy of 5 to 7 years?”

SO: “Well it doesn’t surprise me. I figured it shouldn’t be longer than 12. The 12 years of the credit.”

BJ: “And are you aware that they in their own discretion could sell any portion of the entity and any landowner subjected to it would have a new pipeline owner that they may not know anything about?”

SO: “Yeah, I mean, again I would guess that the documents allow for a transfer of the easements, so yes.”

BJ: “And the exhibit that you passed around. Is it your understanding that these are depicting ruptures of CO2 and then the after effect of CO2 rupture in the ground and the soil?”

SO: “Yes, I mean, this is Montana property, so I don’t know exactly what the whole thing looked like pre-breach, but they’re rather startling, and wouldn’t make you think that you could use that particular piece of ground for anything afterwards. I mean, there’s no grass, there’s nothing for grazing. Yeah, it looks like it’s, you know, the moon.”

BJ: “I paged through all these photos, and I didn’t see any first responders, I didn’t see anyone from the pipeline company here to address this. Do you have any idea where they were after these breaches?”

SO: “I don’t, and you can see the cover letter that went with that. They had requested a great deal of information from Montana. Luckily these things are out where there’s not a population and this wasn’t a big line, so we weren’t talking anything that would come close to, I’m sure, the size of a 24” pipe, but it has an affect if there’s a breach, for sure.”

BJ: “Would you purchase a property in or near a CO2 pipeline similar to this, similar to what’s proposed here, knowing what you know and the obvious evidence that we have before us?”

SO: “No. When you look at those pictures, when you look at the ground, what would you use it for? I mean it has no agricultural value I would say at that point and certainly no one would want to actually live in those areas.”

BJ: “Alright. Thank you very much.”

HH: “Mr. Bakke, any questions?”

RJB: “No questions.”

HH: “Commissioner Christman?”

CC: "I don't have any questions. Thank you, representative Olson for being here."

HH: "Commissioner Haugen-Hoffart?"

CHH: "No questions, but thank you so much for being here, representative."

HH: "And Mr. Dawson?"

MD: "No questions."

HH: "Alright, thank you."

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

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

Case No: PU-22-391
OAH File No: 20230002

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the following documents:

1. *Filing Letter to Steve Kahl from Randall Bakke dated July 19, 2023; and*
2. *Bismarck Area Intervenors' Post-Hearing Brief.*

were on July 19, 2023, filed with the North Dakota Public Service Commission and served electronically to the following:

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Dated this 19th day of July, 2023.

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